



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.21.8

JANUARY 2, 2014

EFFECTIVE DATE

(01-02-2014)

PURPOSE

- (1) This transmits a revision of IRM 5.21.8, *Adjustments to International Cases*, for collection employees.

MATERIAL CHANGES

- (1) This IRM section is being revised by Editorial Update to correct a typographical error in the exhibit.

EFFECT ON OTHER DOCUMENTS

IRM 5.21.8 supersedes IRM 5.21.8, dated 12/02/2013.

AUDIENCE

The target audience is revenue officers in SB/SE Field Collection (FC).

Dretha Barham
Director, Collection Policy

5.21.8

Adjustments to International Cases

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5.21.8-1 Supporting Documentation

5.21.8.1
(12-02-2013)
Overview

- (1) This IRM provides specific procedural guidance for international revenue officers when requesting adjustments on certain documents involving international taxpayers. These procedures may also have applications that domestic revenue officers will find useful.
- (2) The audience for this IRM is revenue officers in SB/SE Field Collection (FC).

5.21.8.2
(12-02-2013)
Adjusting ASFR / SFR Assessments

- (1) Ensuring compliance with U.S. tax law in international cases can be extremely complex. As an international revenue officer (RO), you must consider a taxpayer's tax status, sources of foreign income, and applicable treaties when determining the taxpayer's filing requirements.
- (2) For Automated Substitute for Return or Substitute for Return (ASFR/SFR) reconsiderations on U.S. citizens and resident aliens living abroad, an original Form 1040, *U.S. Individual Income Tax Return*, must be submitted with appropriate forms and schedules (i.e. Form 2555, *Foreign Earned Income*, Form 1116, *Foreign Tax Credit*). Any Form 3870, *Request for Adjustment*, for a U.S. citizen, resident alien, or green card holder must have an original return submitted. The return must bear an official IRS date stamp and an original signature. If a joint return, both parties must sign the tax return.
- (3) An international revenue officer must generally secure an original Form 1040NR, *U.S. Non-resident Alien Income Tax Return*, with all supporting schedules to submit for an adjustment on ASFR/SFR cases for non-resident aliens.

Note: There may be instances where securing an original return from an international taxpayer is not possible or practical. An adjustment request can be submitted without an original return if warranted by the circumstances, but only with managerial approval on Form 3870. Before approving, the group manager will review to assure that the revenue officer received answers to pertinent questions regarding citizenship, substantial presence test, and effectively connected income.

- (4) All IMF international tax returns are processed at Brookhaven campus, even those with only wages. Send IMF international returns to the Brookhaven campus at the address shown below.

E-Mail Address	E-Fax Number	Mailing Address
*SBSE ASFR-RECONS	855-386-1135	Internal Revenue Service ASFR Operation Stop 654 1040 Waverly Avenue Holtsville, NY 11742-9013
		Overnight or Express Mail: IRS – ASFR Operations, Mail Stop 654 1040 Waverly Ave. Holtsville NY 11742-9013

- (5) For non-resident aliens (NRAs) with an ASFR/SFR adjustment, when no return is secured further investigation is required to determine the taxability of the income. In addition to analyzing sources of income and provisions of applicable treaties, you will have to verify a taxpayer's personal documentation or research internal and external locator sources when appropriate. **Do not request adjustment without actually communicating with the taxpayer and obtaining any needed information or applicable return.**
- (6) The key to recommending an adjustment on an NRA assessment is that you are not just taking the taxpayer's word for not being liable to file. It may not always be possible to determine or verify the taxpayer's status when considering an international adjustment. It will be necessary to rely on a preponderance of evidence that reasonably seems to confirm what the taxpayer indicates to you by both the taxpayer's proof and/or the use of locator sources.

5.21.8.3
(12-02-2013)

**Guidelines for
ASFR/SFR Adjustments**

- (1) The following are guidelines that must be considered in adjusting ASFR/SFR assessments regarding NRAs.

Note: Contact with the taxpayer or power of attorney is mandatory for any adjustment. If the taxpayer claims theft issues are present, consult IRM 5.1.12.2, *Identify Theft*, for proper actions.

- (2) Determine taxpayer's citizenship:
 - To determine citizenship IDRS CC MFTRAU or CC DDBKD, passport or green card may be considered.
 - A copy of a foreign passport provided by the taxpayer to justify an abatement is not sufficient, but can be submitted as part of supporting evidence if it is complete and current with all pages present.
- (3) Determine if there is effectively connected income:
 - Effectively connected income is determined by taxpayer involvement in a U.S. trade or business. See IRC 864(b) and (c).
 - Activities that constitute being engaged in a U.S. trade or business include personal services, self-employment, partnership income, income as a beneficiary of an estate or trust, or certain activities relating to trading in securities.
- (4) Determine if taxpayer meets the substantial presence test:
 - Subject to certain limited exceptions, an individual meets this test if he has been present in the U.S. for at least 183 days during a three-year period that includes at least 31 days in the current year. See IRC 7701(b)(3).
 - Confirmation must be made when taxpayers claim that they have not been in the U.S., and therefore are not liable for U.S. tax. You must document the application of the substantial presence test in all adjustment recommendations.
 - There are investigative tools that you can use to determine a person's time in the U.S., such as Treasury Enforcement Communication System (TECS) historical travel data and Department of State records of registration with a U.S. Consulate in a foreign country. Although these tools do not provide an absolutely complete record of a taxpayer's time in the U.S., it may help to indicate when a taxpayer was present in the country. It does provide both arrival and departure information on NRAs.

- (5) Determine if taxpayer paid the taxes to a foreign government, and
 - Taxpayer may indicate that they paid taxes to the foreign government and do not owe the U.S. taxes. Taxpayer must provide evidence of payment in the form of a cancelled check, documentation of a wire transfer, a copy of the relevant return filed in the foreign country, or other indication of taxes withheld by a foreign government, pursuant to a treaty.
- (6) Determine if there is an applicable treaty.
 - Taxpayer may claim that the income is not taxable based on an income tax treaty with the foreign country. The taxpayer may provide a copy of Form 8233, *Exemption from Withholding on Compensation for Independent (& Certain Dependent) Personal Service of a Non-resident Alien Individual*, or Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals)*, which would show that the taxpayer claimed to be an NRA with respect to U.S. compensation or U.S. source investment income.

Note: NRAs are generally not required to file Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, to disclose a treaty claim that relates to withholding on U.S. source investment income or compensation from dependent personal services. See Treas. Reg. 301.6114-1(c). The burden is on the taxpayer, however, to prove that he is a resident, and not merely a national or citizen of a country with which the United States has a treaty.

Reminder: In the absence of a filed Form 1040NR, recommending adjustment of an NRA assessment requires verification, rather than solely relying on the taxpayer's claim of not being subject to U.S. taxation.

5.21.8.4
(12-02-2013)
**Obtaining an ITIN for
ASFR/SFR
Reconsideration**

- (1) An Individual Taxpayer Identification Number (ITIN) is a tax processing number issued by IRS. The ITIN is only available to individuals who:
 - Are required to have a taxpayer identification number for tax purposes,
 - Do not have, and are not eligible to obtain, an SSN from the Social Security Administration (SSA), and
 - Have a valid filing requirement or are filing a U.S. Federal income tax return to claim a refund of over-withheld tax.
- (2) Generally a U.S. Federal income tax return must accompany the ITIN application.

Caution: Applications for individuals who are requesting an ITIN as a spouse or a dependent of a primary taxpayer must attach a valid U.S. Federal income tax return to the Form W-7, *Application for IRS Individual Taxpayer Identification Number*.

Note: See

Pub 1915, *Understanding Your IRS Individual Taxpayer Identification Number*, for further information on the ITIN.

- (3) Procedures for requesting an ITIN for cases in which ASFR/SFR reconsideration is needed have often caused delays and confusion in processing Form

3870. Both the ITIN Operation and the ASFR/SFR unit need the original return to process the corresponding requests. The ITIN unit at the Austin campus requires the original tax return and supporting documentation be attached to Form W-7 when submitted for processing. However, the original tax return must also be attached to Form 3870 in order to process the reconsideration request. Form 3870 for the reconsideration request is sent to the Brookhaven ASFR/SFR unit.

- (4) The following procedures should be used in all cases where a taxpayer is requesting an ASFR/SFR reconsideration and is submitting Form W-7 for an ITIN:
- Date stamp Form W-7 with the received date.
 - Review the Form W-7 application and the original supporting documents to determine if the form and supporting documents meet foreign status and identity requirements. (Refer to the instructions for Form W-7). If the taxpayer provides copies of the supporting documents, the documents must be a certified copy by the issuing agency.

Note: The ITIN unit has final approval regarding the validity of the documents provided.

- Complete the IRS-only box on Form W-7 using the document number codes for the types of documents reviewed. See Exhibit 5.21.8-1.. You must also include your employee Standard Employee Identifier (SEID) number. Attach the original documents or certified copies from the issuing agency to the Form W-7 application.
- Mail Form W-7, supporting documents, the original return(s) and Form 3870 via overnight mail to the ITIN Operations Unit:

Internal Revenue Service

ITIN Operation

Mail Stop 6090 - AUSC

3651 South Interregional Hwy 35

Austin, TX 78741-0000

- International ROs can use the ITIN – RTS to verify that an ITIN has been assigned to the TP. The ITIN unit will process the Form W-7 application, and send the original return with the Form 3870 to the ASFR/SFR unit in Brookhaven Campus for processing. An ITIN will be assigned to the taxpayer within 30 days.
- The status of the adjustment(s) can be checked using IDRS.

5.21.8.5
(12-02-2013)
**Adjustments on
Qualified Intermediary
Cases**

- (1) Sometimes when filing Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, a qualified intermediary (QI) mistakenly does not claim credit on line 66 of the form for the withholding that was done, either by himself or someone else. QIs can claim the withholding credits, based on the Forms 1042-S issued to them, even though they are not the actual withholding agent.
- (2) In such cases, it will be necessary for the revenue officer to obtain copies of the Forms 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, issued to the QI that reflect the withholding. See IRM 5.21.7.3.1, *Procedures for Working Qualified Intermediary Cases*.

- (3) The following substantiation must accompany Form 3870 when an adjustment is requested for Form 1042 line 66 *after* the due date of the return:
- A signed amended Form 1042,
 - A signed letter from the QI explaining the reason for requesting the adjustment, and
 - A copy of the original, voided original, and corrected Forms 1042-S.

See IRM 21.8.2.12.10.3, *Amended Form 1042 Returns with Line 66 Changes for Qualified Intermediaries*.

- (4) Before submitting an adjustment, review the forms for common errors, such as entering the credit on the wrong line.
- (5) Forward Form 3870 with substantiation attached to Centralized Case Processing (CCP) for processing using your area mailbox. Any forms sent directly to Accounts Management (AM), without being routed through CCP, will be rejected.

Caution: The name and TIN of the recipient on Form 1042-S must match the name and TIN on the return in which the credit is being claimed or the credit will be disallowed. See IRM 21.8.2.9.6.2(3), *BMF International Adjustments*.

- (6) The Entellitrak (E-TRAK) system can be used to secure information about the Forms 1042-S. When ROs request the E-TRAK information, they must put something in the Integrated Collection System (ICS) history indicating that they sent the request to the group's E-TRAK resource person, and include that person's name. No GM approval is required and there is no need for the E-TRAK resource person to access the case to verify completion of the request.
- (7) For purposes of adjustment requests, at the time of this revision Accounts Management (AM) will not accept E-TRAK prints in lieu of copies of Forms 1042-S. However, AM has agreed to accept the information from IDRS command code IRPTRL in lieu of copies of Forms 1042-S. Revenue officers can use the summary page on IRPTRL as verification for Form 1042 line 66 credit. The RO does not have to print all the Form 1042 credits on IRPTRL. The RO must use document code 02 when obtaining IRPTRL prints. This will specifically show the Form 1042 credits.

Note: E-TRAK sometimes has more complete information than IRPTRL so you may want to check the information from both sources.

- (8) The credits reflected on IRPTRL must match the credits claimed on the Form 1042.

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Exhibit 5.21.8-1 (01-02-2014)
Supporting Documentation

Type of Document	Documentation Codes	Proves Foreign Status	Proves Identity
Passport	1	X	X
National Identification Card	2	X	X
U.S. Drivers License	16		X
Civil Birth Certification	17	X	X
		Note: Proves foreign status only if documents are foreign.	
Medical Records (Dependent applicants under the age of 6)	20	X	X
		Note: Proves foreign status only if documents are foreign.	
Foreign Drivers License	21		X
U.S. State Identification Card	22		X
Foreign Voters Registration Card	23	X	X
U.S. Military Identification Card	24		X
Foreign Military Identification Card	25	X	X
School Records (Dependents under the age of 18)	26	X	X
		Note: Proves foreign status only if documents are foreign.	
Visa (U.S.)	32	X	X
See IRM Exhibit 3.21.263-4 for specific visa definitions and work authorization.			
United States Citizenship and Immigration Services (USCIS) Photo Identification	38	X	X

