



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

21.8.1

AUGUST 17, 2023

EFFECTIVE DATE

(10-01-2023)

PURPOSE

- (1) This transmits revised IRM 21.8.1, International, IMF International Adjustments.

MATERIAL CHANGES

- (1) IRM 21.8.1.1.2 - Updated Accounts Management Authorities based on PEI clearance comments.
- (2) IRM 21.8.1.2.2 - Added Form 8288-C to list of international forms.
- (3) IRM 21.8.1.2.10 - Added the note to the end of paragraph 1, regarding CIS routing to exam based on LB&I clearance comments.
- (4) IRM 21.8.1.2.14 - Added Form 8288-C to list of international forms. Revised paragraph 1 based on LB&I clearance comments.
- (5) IRM 21.8.1.2.18 - Removed Command Code NAMEB from list based on LB&I clearance comments.
- (6) IRM 21.8.1.3.3 - IPU 23U0411 issued 03-16-2023 - Updated waiver of time requirements chart in paragraph 6 based on Rev. Proc 2023-19.
- (7) IRM 21.8.1.3.4 - IPU 22U1178 issued 12-07-2022 - Removed additional child tax credit from example of refundable credits to resolve confusion.
- (8) IRM 21.8.1.3.4 - Updated chart in paragraph 2 with current year information.
- (9) IRM 21.8.1.3.6 - Updated Private Letter Ruling Revenue Procedure in paragraph 4 to current year.
- (10) IRM 21.8.1.5.1 - Updated territory addresses based on LB&I clearance comments.
- (11) IRM 21.8.1.5.3 - IPU 23U0411 issued 03-16-2023 - Updated the routing address for Form 8898 based on current Form instructions.
- (12) IRM 21.8.1.5.4 - Updated maximum net earnings subject to social security for tax year 2023 in paragraph 7.
- (13) IRM 21.8.1.5.5 - Revised paragraph 2 based on Form 1040-SS for 2023.
- (14) IRM 21.8.1.6.6 - Revised paragraphs 2 and 3 with current year information.
- (15) IRM 21.8.1.12.6.1 - IPU 22U1178 issued 12-07-2022 - Updated the filing statuses in the paragraph 1 note to better align with the Form 1040NR.
- (16) IRM 21.8.1.12.7 - IPU 22U1178 issued 12-07-2022 - Updated the Reminder in paragraph 1 to better clarify the affected tax years.
- (17) IRM 21.8.1.12.14 - Added reference to Form 8288-C in paragraph 6.
- (18) IRM 21.8.1.12.14.5 - Updated IRM citation for ID Theft IRM based on clearance feedback from IPSO. Added IRPTR U as research path based on clearance feedback from TAS.

- (19) IRM 21.8.1.12.16 - IPU 23U0559 issued 04-27-2023 - Added a Note to paragraph 3 due to changes to the U.S. - Hungary Double Taxation Treaty.
- (20) IRM 21.8.1.12.19 - Removed citations to obsoleted publications in paragraph 1.
- (21) IRM 21.8.1.17.1 - Deleted paragraph 9 about exempt scholarship income based on LB&I clearance comments.
- (22) IRM 21.8.1.18.1 - IPU 23U0559 issued 04-27-2023 - Added information to paragraph 2 chart about changes to the U.S.- Hungary Double Taxation Treaty. Revised chart title name to become 508 compliant.
- (23) IRM 21.8.1.19.1 - IPU 23U0411 issued 03-16-2023 - Added link to IRM 21.5.1.5.2 to explain reassignment procedures from IMF to BMF base on SERP Feedback number 8824.
- (24) IRM 21.8.1.20.3 IPU 23U0559 - issued 04-27-2023 - Added a Note to paragraph 3 due to changes to the U.S. - Hungary Double Taxation Treaty.
- (25) IRM 21.8.1.22 - Removed reference to Form 8288-A from the title.
- (26) IRM 21.8.1.22.1 - Added Form 8288-C to paragraphs 1,2, and 5.
- (27) IRM 21.8.1.22.2 - Added reference to Form 8288-C to paragraph 1.
- (28) IRM 21.8.1.23 - IPU 23U0559 issued 04-27-2023 - Updated Form 8804-C routing instructions in paragraph 8.
- (29) IRM 21.8.1.24.1 - Added reference to Form 8288-C to paragraph 4.
- (30) Editorial corrections have been made throughout this IRM.

EFFECT ON OTHER DOCUMENTS

IRM 21.8.1 dated August 19, 2022 effective October 1, 2022 is superseded. Interim Procedural Updates 22U1178, 23U0411, and 23U0559 have been incorporated into this IRM.

AUDIENCE

The primary users of this IRM are Wage and Investment employees. The IRM is intended for Customer Account Service issues involving IMF international returns.

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21.8.1

IMF International Adjustments

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- 21.8.1.1
(10-01-2017)
Program Scope and Objectives
- (1) The general purpose of this IRM is to provide guidance to Accounts Management employees assigned to work IMF international cases
 - (2) Audience: This IRM is intended for Customer Account Service issues involving IMF international returns. The primary users of this IRM are Wage and Investment employees.
 - (3) Policy Owner: Director of Accounts Management.
 - (4) Program Owner: Accounts Management, Process and Program Management, Business Management.
 - (5) Primary Stakeholders: Wage and Investment (W&I), Large Business and International (LB&I), Small Business, Self Employment (SBSE).
 - (6) Program Goals: Program goals for this type of work are included in the Accounts Management Program Letter as well as IRM 1.4.16, Accounts Management Guide for Managers.
- 21.8.1.1.1
(10-01-2017)
Background
- (1) Employees in the Accounts Management (AM) organization respond to telephone calls and taxpayer correspondence, process claims, certain applications and other internal adjustment requests.
 - (2) This IRM provides guidance to Accounts Management employees assigned to work IMF international cases.
- 21.8.1.1.2
(10-01-2023)
Authorities
- (1) See IRM 1.2.61.2, Current W&I Division Delegations of Authority for information about authorities delegated to Accounts Management.
- 21.8.1.1.3
(10-01-2017)
Roles and Responsibilities
- (1) IRM 1.1.13.7.3, Accounts Management provides information about roles and responsibilities in AM.
 - (2) IRM 21.1.1, Accounts Management and Compliance Services Overview provides responsibility guidance to AM employees.
- 21.8.1.1.4
(10-01-2017)
Program Management and Review
- (1) IRM 1.4.16, Accounts Management Guide for Managers provides guidance for program management and review of programs assigned to AM.
- 21.8.1.1.5
(10-01-2017)
Program Controls
- (1) The current year Accounts Management Program Letter, Measures and Operating Guidelines.
 - (2) IRM 21.10.1, Embedded Quality (EQ) Program for Accounts Management, Campus Compliance, Field Assistance, Tax Exempt/Government Entities, Return Integrity and Compliance Services (RICS) and Electronic Products and Services Support.

21.8.1.1.6
(10-01-2023)
Acronyms

- (1) The table below contains some of the common acronyms used in this IRM

Acronym	Meaning
AC	Action Code
ACA	Affordable Care Act
ACM	Alternative Calculation for Marriage
ACS	Automated Collection System
AMS	Account Management Services
CII	Correspondence Imaging Inventory
ES	Estimated Tax
FEIE	Foreign Earned Income Exemption
FLC	File Location Code
FTC	Foreign Tax Credit
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
ITIN	Individual Taxpayer Identification Number
OCD	Credit for Other Dependents
OPI	Over the Phone Interpreter Service
SSN	Social Security Number
TAS	Taxpayer Advocate Service

21.8.1.1.7
(10-01-2017)
Related Resources

- (1) This IRM cites many Internal Revenue Code sections. The primary code sections are:

- IRC 901
- IRC 911
- IRC 931
- IRC 933
- IRC 1441
- IRC 1445
- IRC 1446.

- (2) The following publications are used for International issues. Use them as technical reference material or provide to taxpayers when necessary. These publications are available for reference on SERP and on the internet at <http://www.irs.gov>

- Publication 3 - Armed Forces' Tax Guide
- Publication 54 - Tax Guide for U.S. Citizens and Resident Aliens Abroad
- Publication 514 - Foreign Tax Credit for Individuals
- Publication 515 - Withholding of Tax on nonresident Aliens and Foreign Entities
- Publication 516 - U.S. Government Civilian Employees Stationed Abroad
- Publication 570 - Tax Guide for Individuals With Income From U.S. Possessions
- Publication 597 - Information on the United States-Canada Income Tax Treaty
- Publication 901 - U.S. Tax Treaties
- Publication 970 - Tax Benefits for Education.

(3) In addition to these publications, some general information publications are also printed in Spanish for the convenience of taxpayers. The following publications are available for reference on SERP and on the internet at <http://www.irs.gov>

- Publication 1 (SP), Your Rights as a Taxpayer (Spanish Version)
- Publication 1544(SP), Reporting Cash Payments of Over \$10,000 (Received in a Trade or Business) (Spanish Version)
- Publication 4261(SP), Do You Have a Foreign Bank Account? (Spanish).

(4) General processing procedures outlined in this IRM are used in conjunction with the following IRMs:

- IRM 21.5 - Account Resolution
- IRM 21.6 - Individual Tax Returns
- IRM 21.7.12 - Non-Master File Accounts (NMF) Adjustments
- IRM 21.8.2 - BMF International Adjustments
- IRM 13 - Taxpayer Advocate Service
- IRM 21 - Customer Account Services
- IRM 25.6 - Statute of Limitations
- IRM 25.12 - Delinquent Return Refund Hold Program
- IRM 20 - Penalty and Interest.

21.8.1.2
(10-01-2018)
**International IMF
Preview**

- (1) Contact representatives using this IRM must have had basic IMF Adjustments, Integrated Data Retrieval System (IDRS), Correspondence Imaging Inventory (CII), and AMS (Account Management Services) training to effectively use the material presented in this International IRM.
- (2) Integrated Automation Technologies (IAT) are tools that help employees with case completion. The screens access numerous IDRS control codes multiple times to improve quality by simplifying and standardizing research paths and consolidating IDRS Command Code responses on one screen.
- (3) All references to the Internal Revenue Code or Treasury Regulations (Treas. Regs) can be researched on Westlaw.
- (4) For the forms addressed in this IRM, see IRM 21.8.1.2.2.

21.8.1.2.1
(10-01-2021)

**Campus Consolidation
and Program
Centralization**

- (1) Due to the ramp-down of the Philadelphia Submission Processing Campus (PSPC), International Individual Master File (IMF) return processing moved in its entirety to the Austin Submission Processing Campus (ASPC) in June of 2007. However, the Philadelphia Accounts Management Campus (PAMC) continues to process IMF international Accounts Management work.
- (2) Correspondence, amended returns, no-merge cases, and/or Form 1040X involving the following issues are considered "IMF International Issues" and are worked at PAMC.
 - Form 1040-NR, Form 2555, Form 1116, Form 1040-SS, Form 8233, Form 8833, Form 8840, Form 8689, and related notices with Filing Location Codes 98, 66, 20 or 21. Refer to Document 6209 Section 4- Document Locator Number <http://serp.enterprise.irs.gov/content/6209/6209.html>.
 - Dual Status
 - Form 1042-S for individual taxpayers, received loose, or with taxpayer correspondence
 - Correspondence or amended returns for changes due to "tax treaties"
 - Spanish language correspondence relating to Form 1040-PR or Form 1040-SS and/or other international issues
 - Form 1040 Schedule H for U.S. Territories
 - Form 843 Excess Social Security Tax claims for addresses in U.S. Territories
 - Form 1040X Foreign Tax Credit carryback claims
 - Form 4442 addressing international issues such as tax treaties, U.S. citizens living overseas, self-employment tax for individuals living in a territory, etc.

Note: The U.S. Territories consist of the U.S. Virgin Islands, Puerto Rico, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Accounts Management adjustment cases involving these territories are handled by the international function in Philadelphia. This does not include EIP 1 inquiries about any of the territories.
- (3) Update IMF international Identity Theft (IDT) cases under the IMF INTL work type, category codes IDT1, IDT3, IDS1, program codes 40011, IDS3, IDT3 program code 40013 and for IDT8/IDS8, program code 40017, and then re-assigned in CII to IDTVA AM international Identity Theft. For further information about IMF IDT routing refer to IRM 25.23.4, IDTVA Paper Process.

21.8.1.2.2
(10-01-2023)

IMF/NMF Forms

- (1) IMF international Individual Income Tax Returns:
 - Form 1040 with Form 1116, Form 2555, Form 4563, Form 5074, or Form 8689 attached
 - Form 1040-C
 - Form 1040-NR
 - Form 1040-PR
 - Form 1040-SS

Note: **DO NOT** send Form 1116, Foreign Tax Credit cases to IMF international unless the amended return requires math verification (see IRM 21.5.3.4.5, Math and Master File Verification of Claims and Amended Returns) and

Form 1116 is attached, or the total Foreign Tax Credit claimed is above the threshold amounts shown in IRM 21.6.3.4.1.6(4) (both situations require a change to the Foreign Tax Credit).

(2) NMF international Income Tax Returns:

- Form 926
- Form 8404
- Form 1040-NR Fiduciary

(3) Foreign Withholding Tax Returns and Associated Forms:

- Form 8288, Form 8288-A , Form 8288-B and Form 8288-C
- Form 8804
- Form 8805
- Form 8813
- Form 1042
- Form 1042-S

(4) Foreign Information Returns:

- Form 926
- Form 5713
- Form 8233
- Form 8833
- Form 8840
- Form 8843
- Alien Exemption Certificate Form W-8BEN, Form W-8 BEN-E, Form W-8ECI, Form W-8EXP, Form W-8IMY, and Form W-8CE

21.8.1.2.3
(10-01-2022)
**Web Sites and
Telephone Numbers**

(1) The following Websites are helpful when researching international issues:

- Submission Processing Website at <https://irssource.web.irs.gov/WI/SitePages/SP.aspx>
- IRC codes listed here by section number at <http://www.fourmilab.ch/ustax/ustax.html>
- Tax treaties on line at <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>
- Various international topics at <http://www.irs.gov/Businesses/International-Businesses>
- IRS Bulletins, Notices, Announcements, etc. at <http://www.irs.gov/irb/>
- U.S. Citizenship and Immigration Services (USCIS) Website at <http://www.uscis.gov>
- The Social Security Administration Website <http://www.ssa.gov/>
- United States Department of State at <http://www.state.gov/>
- International dialing codes at <http://www.countrycallingcodes.com/>

(2) International customers may call the International Accounts Management line (International Taxpayer Customer Service) at 267-941-1000 (NOT toll-Free).

(3) International assistors may transfer International calls to other International Applications if necessary, including international EIN International, IMF Acct., International BMF Acct., International Tax Law, International US Cert, and International ACS Support. If the taxpayer's inquiry cannot be addressed by

transferring to one of the International Applications or by providing one of the helpful telephone numbers in paragraph 5 below, follow the Form 4442 referral process.

- (4) Assistors staffing the International Taxpayer Customer Service line **DO NOT** use the Telephone Transfer Guide (TTG) to transfer calls.

Exception: When international customers call the international line (267-941-1000) and say they want to go to a Taxpayer Assistance Center (TAC), the international CSR/TLS will first try to resolve all issues presented by the taxpayer on the call. If it is determined that TAC service is still needed, the CSR/TLS will transfer the caller to 1055 (Application 55) for English, or 1056 (Application 56) for Spanish so an appointment can be made. The international CSR/TLS will advise the customer to explain to the TAC appointment CSR that the customer called the international line, and that the international CSR/TLS that transferred the call to them has already provided help, but the caller still requires a TAC appointment. For further information refer to IRM 21.1.1.3, Customer Service Representative (CSR) Duties.

Note: Although international assistors do not follow the TTG, it is a good resource to determine if a topic is a Tax Law, or Account issue. For more exceptions refer to the IRM section relevant to your topic.

- (5) Assistors staffing any toll-free application will not transfer to the International Taxpayer Customer Service line (267-941-1000). Provide the following helpful telephone numbers to international callers for working international issues when necessary. Ensure the callers are informed these are not toll-free numbers. For hours of operation, refer to The Source for Telephone numbers <http://serp.enterprise.irs.gov/content/who-where/ttg/telephone-numbers.html>. If the caller does not want to call back, follow the referral process. See IRM 21.3.5.4, Referral Procedures, for more information.

Business Unit	Phone	Fax
International Accounts Management	(267) 941-1000**	(681) 247-3101
International Automated Collection System (ACS) Support	(267) 941-1004**	
Automated Underreporter (AUR)	(267) 941-1026 (Hours of Operation Monday through Friday 7 am to 8 pm.)	(267) 466-1023
Excise Tax Form 720 , Form 730 , Form 2290 , Form 8849	Excise Tax is BMF. Refer to IRM 21.8.2.2.3 , Web Sites and Telephone Numbers	

Business Unit	Phone	Fax
International Estate and Gift	866-699-4083 (toll-free) 859-320-3456* (not toll-free)	
International Examination	(267) 941-1037**	(267) 466-1439
Offer in Compromise (OIC)	(267) 941-1004**	(267) 466-1034
(OIC) - Accepted Offers Only	(631) 447-4018	
Taxpayer Advocate Service - English speaking	(787) 522-8601	(787) 522-8691
Taxpayer Advocate Service - Spanish speaking only	(787) 522-8600	
U.S. Certification Program	(267) 941-1000**	(267) 466-1035

Note: * This number goes to voice mail and messages and get checked daily. The International Estate and Gift e-mail address is sbse.eg.intl@irs.gov. Provide this information to callers when necessary.

Caution: Numbers marked with (**) CANNOT be called using IRS phones on the FTS system.

21.8.1.2.3.1
(06-21-2021)
**Telephone Numbers for
Courier Service Mailing**

- (1) Use these phone numbers for international taxpayers that need to send packages and documentation to the different campuses. If the courier service (FED EX, UPS, etc.) requests a phone number for the destination use:

Campus	Telephone number
Andover	(978) 474-9822
Atlanta	(678) 530-6616
Austin	(737) 800-7718
Brookhaven	(631)977-3206
Cincinnati	(859) 320-4647
Fresno	(559) 454-6168
Kansas City	(816) 499-5216
Memphis	(901) 707-3668
Ogden	(801) 620-3738
Philadelphia	(267) 466-1832

Caution: Use the telephone numbers listed above for use on express mail air bills only. Do not use these numbers for technical issues.

21.8.1.2.3.2
(10-01-2022)

**Over the Phone
Interpreter Service (OPI)
For International
Non-Toll Free calls**

- (1) Assistors staffing the International Non- Toll Free telephone line (267) 941-1000 have the ability to use the OPI Service. The OPI service requires the input of a Personal Identification Number (PIN) to gain access. Contact your management to acquire a PIN.
 - (2) The OPI is a secure telephone interpreter service, which allows employees to communicate with taxpayers who have limited English proficiency.
 - (3) OPI is available 24 hours a day on regular business days.
 - (4) OPI allows for the disclosure of information to interpreters. All employees of OPI are bound by contract to comply and assume responsibilities under the Disclosure of Information Safeguards. In fact, Security and Disclosure requirements prohibit contractor/interpreters from recording conversations or making electronic copies of conversations or information discussed with taxpayers. All notes are destroyed upon completion of the call.
 - (5) Because OPI is a contracted service that charges by the minute, assistors on the international line must, to the extent possible, be certain the caller is in the correct application. This will avoid unnecessary use of the OPI services.
 - (6) If you receive a call from a Limited English Proficient (LEP) taxpayer, and require the OPI service, explain to the caller you are trying to contact an interpreter. See IRM 21.1.1.5, Over the Phone Interpreter Service (OPI) Applications for access instructions.
 - (7) An interpreter will be connected to the call.
 - (8) Brief the interpreter. Summarize what you wish to accomplish and give any special instructions.
 - (9) Add the LEP taxpayer to the line, by pressing the Conference key on the IUP-ER CTIOS Desktop.
 - a. Complete disclosure verification as if you are talking directly to the taxpayer.
 - b. Continue with the conversation.
- Caution:** If the call requires transferring to another application within the international non-toll free line disconnect the translator prior to transferring the call.
- (10) To avoid unnecessary OPI charges, ensure the taxpayer and interpreter disconnect at the end of the call. When the caller disconnects, you will automatically move to “available” status and capture the next call. If the system does not place you in available status and the line is still open, make the following statement: The call is complete and you may hang up now. After the statement, press the Release key.

21.8.1.2.3.3
(10-01-2018)

OPI Interpreter’s Role

- (1) The OPI Interpreter is there to help you in communicating with the LEP taxpayer regardless of the individual’s preferred language by removing the language barrier between you and the caller.

- (2) Interpreters are trained to speak in the “first person”. Please conduct the conversation as if you are communicating with an English-speaking customer, in the first person

Example: Do say: I need you to provide me your tax forms.

Example: Do NOT say: I need you to tell the taxpayer to provide their tax forms

- (3) Use short sentences.
- Speak in short sentences and ask the non-English speaker to do the same. Over-the-phone interpreting is done consecutively, thus the call is most effective with concise sentences.
 - Pause at the end of a complete thought to allow for interpretation.
- (4) Avoid compound questions. Asking a single question at a time will help avoid misunderstandings and set a good rhythm.
- (5) If you sense the LEP customer does not understand, rephrase the question in a different manner.
- (6) Avoid using acronyms.

21.8.1.2.3.4
(10-01-2018)
Providing OPI Feedback

- (1) All IRS employees who use the Over-the-Phone Interpreter service can provide feedback about the service by completing Form 14162, OPI Service Feedback and submitting it by E-mail to the address on the Form.

21.8.1.2.4
(10-06-2020)
Translation Services

- (1) Linguistic Policy, Tools and Services (LPTS) will translate documents written in several foreign languages to English.
- (2) To have a document translated, follow the procedures in IRM 25.23.4.19, Requesting Translations of Certain Languages.

21.8.1.2.5
(10-01-2022)
Taxpayer Advocate Service (TAS)

- (1) On June 10, 2014, the IRS Commissioner and National Taxpayer Advocate (NTA) announced the IRS’s adoption of a Taxpayer Bill of Rights (TBOR). These Rights are now part of Pub 1, Your Rights as a Taxpayer. The TBOR lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. You are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For more information about the TBOR see <https://irsource.web.irs.gov/SitePages/TaxpayerBillOfRights.aspx>.
- (2) Per the TBOR, taxpayers have the right to expect a fair and just tax system which provides taxpayers with the opportunity to have their facts and circumstances considered when it might affect their underlying liabilities, ability to pay, or ability to provide information timely.
- (3) Taxpayers have the right to receive help from the Taxpayer Advocate Service (TAS) if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through normal channels. For more information on the Taxpayer Bill of Rights, visit <https://irsource.web.irs.gov/SitePages/TaxpayerBillOfRights.aspx>

- (4) Refer taxpayers to TAS when the contact meets TAS criteria, see IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria), or when Form 911, Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order) is attached and steps cannot be taken to resolve the taxpayer's issue the same day.
- (5) "Same day" includes cases that can be resolved in 24 hours, as well as cases where steps can be taken within 24 hours to begin resolving the issue. See IRM 13.1.7.5, Same Day Resolution by Operations
- (6) When making a TAS referral, use Form 911, and forward to TAS in accordance with your local procedures.
- (7) The National Taxpayer Advocate has reached agreements with the Commissioners of the Wage and Investment (WI) Division, Small Business and Self-Employed Division (SB/SE), Tax Exempt and Government Entities (TEGE) Division, Criminal Investigation (CI), Appeals, and Large Business and International (LBI) Division, that outline procedures and responsibilities for the processing of TAS casework when either the statutory or delegated authority to complete case transactions rests outside of TAS. These agreements are known as Service Level Agreements (SLAs). The SLAs are located on the Intranet at <https://irsource.web.irs.gov/TAS/SitePages/SLA.aspx>.
- (8) When referring cases to TAS, keep in mind that TAS employees do not have the delegated authority to make international adjustments. TAS employees, can, however, help taxpayers with certain international issues. For more information about TAS's delegated authorities, see IRM 13.1.4, Taxpayer Advocate Case Procedures - TAS Authorities.
- (9) For taxpayers who prefer to contact TAS directly, provide the toll-free number **877-777-4778**. International callers who cannot dial toll-free will refer to Publication 1546-EZ, The Taxpayer Advocate Service Is Your Voice at the IRS, for contact information.
- (10) Sometimes a taxpayer is unable to effectively complete the steps necessary to resolve the tax issues. In these cases, the taxpayer may need to obtain a CPA, Attorney or Enrolled Agent to help the taxpayer in working effectively with TAS to resolve the issue.
- (11) Taxpayers may be eligible for free or nominal fee help and representation from a Low Income Taxpayer Clinic (LITC). LITCs
 - help low income individuals in resolving federal tax problems such as audits, appeals, litigations, and tax collection disputes.
 - provide services to taxpayers who speak English as a second language, including education about taxpayer rights and responsibilities, and consultations on individual tax issues.
 - services must be free or cost a nominal fee. LITCs receive funding from the IRS and the program receives oversight from the National Taxpayer Advocate, but the clinics are wholly independent of the IRS.
 - are located in each state, Puerto Rico, and the District of Columbia, but not every clinic offers a complete range of services. For a complete list of LITCs, services offered, and contact information, see Pub 4134, Low Income Taxpayer Clinic List.
- (12) If you want to report a systemic problem to TAS, you can do so by using the Systemic Advocacy Management System (SAMS) a web-based method of

identifying, prioritizing, and working issues that affect multiple taxpayers. The SAMS application is available on the Systemic Advocacy pages at <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>, or you may call 877-777-4778 or TTY/TDD 800-829-4059. When submitting issues through SAMS, do not include taxpayer information.

- (13) Taxpayers can use the internet version of SAMS on the Systemic Advocacy pages at <http://www.irs.gov/advocate/>. Those without internet access can request a Form 14411, Systemic Advocacy Issue Submission, by calling 800-TAX-FORM (800-829-3676). If you suggest the taxpayers report a systemic problem by using SAMS, remind taxpayers to not include taxpayer information in their submissions and to be sure to include a phone number where a TAS employee can reach the taxpayer if TAS has any questions about the submission.
- (14) For Taxpayer Advocate contact information for U.S. territories and international refer to the local taxpayer advocate contact page at *SERP - TAS - LTA Addresses - Who/Where* ([irs.gov](http://www.irs.gov))

21.8.1.2.6
(10-17-2018)
**General Disclosure
Guidelines**

- (1) IRC 6103 establishes the taxpayer's (T/P's) right to confidentiality of returns and return information. You must ensure that you provide correct information to the correct T/P or authorized representative. Check the Integrated Data Retrieval System (IDRS) Command Code (CC) CFINK for the Power of Attorney (POA).
- (2) IRC 7213, IRC 7213A , and IRC 7431 provide criminal penalties and civil remedies to ensure that T/Ps' returns and return information remain confidential.
- (3) For more information on General Disclosure Guidelines, refer to IRM 21.1.3.2, General Disclosure Guidelines. For a full discussion on disclosure, refer to IRM 11.3.1 through IRM 11.3.41.

21.8.1.2.7
(10-01-2018)
Technical Issues

- (1) Refer all unresolved technical issues using an IRM or publication to campus management. If management is unable to make a determination, follow local procedures that involve coordinating resolution through the Planning and Analysis Section.
- (2) When necessary, the analyst from the Planning and Analysis Section will review and forward any international problems requiring the attention of the Headquarters International Analyst.
- (3) IRM 21.1.2.2.2, IRM 21 - Change Requests/SERP Feedback, lists the various forms used to request changes or submit comments and/or suggestions.
- (4) When an issue is questionable, but does not meet CAT-A criteria, and help is needed from Examination, follow procedures in IRM 21.5.3.4.7.2.1, Examination Technical Assistance Request.

21.8.1.2.8
(10-01-2018)
**Competent Authority
Cases**

- (1) Rev. Proc. 2015-40 allows a U.S. taxpayer to request help from the U.S. Competent Authority on issues arising under a tax treaty between the U.S. and a foreign country.

- (2) The IRS LB&I Commissioner acts as the U.S. competent authority, charged with administering the provisions of tax treaties, interpreting and applying the treaties, and reaching mutual agreement in specific cases.
- (3) The U.S. competent authority conducts the competent authority process through two offices, Advance Pricing and Mutual Agreement Program (APMA) and the Treaty Assistance and Interpretation Team (TAIT). APMA has primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. tax treaties. TAIT has primary responsibility for cases arising under all other articles of U.S. tax treaties. TAIT also has primary responsibility for cases arising under U.S. tax treaties with respect to estate and gift taxes. APMA and TAIT each can consider cases arising under the permanent establishment articles of U.S. tax treaties, and both offices will coordinate and collaborate on such cases and on any other cases as necessary
- (4) Send written requests for APMA to:

Internal Revenue Service
Deputy Commissioner International, Large Business and International Division
1111 Constitution Ave. N. W.
SE:LB:TTPO:APMA:K 534-01
Washington, DC 20224
- (5) Send written requests for TAIT to:

Commissioner International, Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue. N.W.
SE:LB:TTPO:AMPA:TAIT:K 570-03
Washington, DC 20224
- (6) Direct any questions about competent authority requests to the attention of APMA or TAIT, as necessary, at the above address.
- (7) Nonresident aliens or foreign corporations generally must contact the Competent Authority of the country of their residence with their inquiries.
- (8) For more information, see Tax Treaties on IRS.gov at <http://www.irs.gov/Individuals/International-Taxpayers/Tax-Treaties>.

21.8.1.2.9
(10-01-2018)

**Use of Fax and
Signature Stamps for
Taxpayer Submissions**

- (1) The IRS is involved in a significant number of taxpayer contacts to perfect returns during the filing process, to resolve issues identified in post-filing, and to secure delinquent returns.

Note: When contacting taxpayers, follow procedures in IRM 21.1.3.2.3, Required Taxpayer Authentication, for purposes of identification and to prevent unauthorized disclosures of tax information. Also, use caution when leaving information on answering machines or voice mails.
- (2) Based on requests from practitioners and other stakeholders, the Service developed guidance on the acceptance of faxes and signature stamps approved for Servicewide adoption.
- (3) Refer to IRM 21.3.4.3.7, Use of FAX for Taxpayer Submissions, for current procedures for the acceptance of fax and signature stamps.

21.8.1.2.10
(10-01-2023)
**Examination Criteria
Cat-A International**

- (1) For domestic issues, refer to information contained in Exhibit 21.5.3-2, Examination Criteria (CAT-A), and IRM 3.11.6.8, Form 1040X Routing Guide, for applicable Examination criteria.
- (2) Suspend the following types of international claims and issues as **2CATA** for classification:

#

Caution: Before forwarding any case to Examination involving a tax increase or credit decrease review Exhibit 21.5.3-1, Claim Processing with Examination Involvement.

- IMF Dual Status Claims Form 1040-NR converted to Form 1040, Form
- Nonresident alien claiming non-taxable income due to receiving pension
- information see IRM 21.5.9.5.12.7, Carryback of Foreign Tax Credit (FTC).
- more information see IRM 21.7.12.7.1, Fiduciary Filed Form 1040-NR, U.S. Nonresident Alien Income Tax Return.
- Form 1040-NR claiming temporary living or business expenses more
- Revocation of IRC 6013 (g) - joint return with a nonresident alien

#

Note: Refer all international Identity Theft (IDT) cases to Exam using the CAT-A referral reasons listed in the drop-down menu for identity theft cases.

Note: When referring any of these claims to Examination through CII, select HQ XX from the drop-down listing of reasons referred.

- (3) If the taxpayer cites an IRC, Regulation, Tax Treaty, etc., research the reference and try to secure an explanation unless the claim meets other Examination Criteria. This information may be available on-line through Westlaw at *Westlaw Sign In | Thomson Reuters*.

21.8.1.2.11
(10-01-2020)
Referrals to Examination

- (1) The following instructions refer to paper cases not on the Correspondence Imaging Inventory (CII). For CII cases refer to IRM 21.5.1.5, Correspondence Imaging Inventory CII Procedures.
- (2) Every international case sent to Exam Classification **MUST** include:
 - A current transcript (TXMOD, MFTRA or IMFOLT)
 - A printout of RTVUE for the Taxpayer Identification Number (TIN) and year on the claim, plus any other year(s) referenced

Reminder: Do not provide the original return if all needed schedules are being included.

- A printout of the entity module (ENMOD or INOLE) of the individual involved or referenced.
- (3) When the claim year or related return modules show an “-L” freeze (generated by TC 420 input), the case **MUST** have an AMDISA print (do not request the original return). Every “-L” freeze has an AIMS record. The last 2 digits of the AIMS control number show which area office has control of the AIMS data base.
- (4) When an amended return claim is being referred to Examination Classification, ensure that pages 1 and 2 of Form 1040X are complete, including verification of all needed schedules and forms required for making an issue determination. Form 1116 is required to verify a Foreign Tax Credit. IRM 21.5.3.4.7.2, Examination “Disallows,” “Accepts,” or “Selects” the Claim, lists the requirements for Examination area claim referrals.

Note: An IDRS control must remain on the account under the employee’s profile number **or** a unique control number designated by local management (ex. 05XXX33333). IRM 21.5.3.4.7, Processing Claims and Amended Returns With Examination Involvement, lists the control follow-up time frames.

- (5) When the case is returned from Examination, follow the steps in the table below.

If Examination Classifier:	CSR actions:
Rejects the claim	<ul style="list-style-type: none"> • Resolve the reason for the rejection, e.g., more documentation or IDRS research. • Initiate telephone call to taxpayer, or • Correspond with taxpayer using Letter 916C, input TC 290.00 Blocking Series 05 or 00 if the original return is in hand.
Accepts the claim	Input necessary Transaction Codes, Reference numbers, TC 29x, Blocking Series 05, or 00 if the original is in hand, and reverse the TC 470.
Disallows the claim in part	<ul style="list-style-type: none"> • Input necessary transactions, TC 29x, Blocking Series 18, or 00 if the original return is attached. If the original return was filed electronically, use blocking 00. Attach an IMFOLR print. Do not use blocking series 18. • Send Letter 106C - include the complete and exact disallowance explanation provided by the classifier. Use an open paragraph, if necessary, and include the taxpayer's appeal rights. <p>Note: When using CII, save the PDF 106C letter. Attach it to the case with the Attach File button on the actual tax period involved. See IRM 21.5.1.5.1, CII General Guidelines for more information.</p>

If Examination Classifier:	CSR actions:
Disallows the claim in full	<ul style="list-style-type: none"> • Input necessary transactions, TC 290 .00, Blocking Series 98, or 99 if the original return is attached. If the original return was filed electronically, use blocking series 99. Attach an IMFOLR print. Do not use blocking series 98 • Send Letter 105C - include the complete and exact disallowance explanation provided by the classifier. Use an open paragraph if necessary and include the taxpayer's appeal rights, even for statutory disallowances. <p>Note: When using CII, save the PDF 105C letter. Attach it to the case with the Attach File button on the actual tax period involved. See IRM 21.5.1.5.1, CII General Guidelines for more information.</p>
Selects the claim	<ul style="list-style-type: none"> • When correspondence is attached to the claim, send Letter 86C explaining that the claim is selected for further review by the Examination Department. Refer to IRM 21.3.3.4.2.1, Use of 86C Letter - Referring Taxpayer Inquiry/Forms to Another Office for follow up time frames. • If there is no TC 976 present on the account, input TC 971, Action Code 013, using the received date of the claim.

- (6) If a copy of the disallowance letter is returned for association, attach the copy with the original return.

Note: Copies of disallowance letters forwarded to the Centralized Print Site will not be returned for association. These letters will be available on CTRL-D if they are needed at a future date. See IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures.

21.8.1.2.12
(10-01-2022)

Protective Claims

- (1) Protective Claims are formal or informal claims, amended returns for credit or refund normally based on expected changes in a:
- Current Regulation,
 - Pending legislation, or
 - Current litigation

- (2) Taxpayers file a protective claim when their right to a refund is contingent on future events. These claims are filed to protect the taxpayer’s right to recover internal revenue tax before the expiration of the statute of limitations. For this reason, they are all considered to meet “CATA” criteria. See IRM 21.5.3.4.7.3, Protective Claims, for more information.
- (3) **Send All Protective Claims** to Examination Classification.
- (4) Send Only complete Protective Claims to Examination Classification. Prior to sending to Classification, screen all protective claims for:
 - Statute timeliness
 - Completeness, and
 - Signature(s)

Note: For further guidance on Statute timeliness refer to IRM 25.6.1.10.2.7, Claims for Credit or Refund – General Time Period for Submitting a Claim.

- (5) If the claim is not processable, call or correspond with taxpayer for missing information. If no reply is received, follow normal adjustment procedures for rejecting the claim. Any requested missing information must be provided by the taxpayer before the refund statute expiration date for a claim to be considered complete.

Note: See IRM 21.3.3.5.1.1, Suspense Timeframes, for more information on suspending case for taxpayer reply.

21.8.1.2.13
(10-01-2018)
Unpostables

- (1) Unpostables are transactions which cannot post to the Master File. A transaction that fails to post to an account is returned to the originating campus for corrective action. See IRM 21.5.5, Unpostables, for complete information.

21.8.1.2.14
(10-01-2023)
International Forms Processing

- (1) IMF international return processing is done by the Austin Submission Processing Campus (AUSPC). International returns are assigned unique File Location Codes (FLC).

File Location	File Location Code
Philadelphia (international adjustments)	66 and 98
Austin (original return processing)	21 and 20

- File Location Codes 66, and 21 contain all IMF returns with a U.S. territory address (with a 5- digit zip code), Form 1040-PR and, Form 1040-SS.
 - IMF File Location Codes 98, and 20 contain all 1040 series returns with an address from a foreign country and all returns filed with any of the Forms listed in paragraph 3 below.
- (2) International returns include:
 - Form 1040-NR
 - Form 1040-PR
 - Form 1040-SS

Note: Send Form 1040-GUAM to Guam.

- (3) International processes any Form 1040 series with the following attachments:
- Form 1116- Foreign Tax Credit. Subject to the tolerance levels identified in IRM 21.6.3.4.1.6, Form 1116, Foreign Tax Credit.
 - Form 2555- Foreign Earned Income Exclusion
 - Form 4563 - Exclusion of Income for Bona Fide Residents of American Samoa
 - Form 5074 - Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands
 - Form 8288-A - Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests
 - Form 8288-C - Statement of Withholding Under Section 1446(f)(4) on Dispositions by Foreign Persons of Partnership Interests
 - Form 8689 - Allocation of Individual Income Tax to the U.S. Virgin Islands
 - Form 8805 - Foreign Partner's Information Statement of Section 1446 Withholding Tax
 - Form 8833 - Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
 - Form 8840 - Closer Connection Exception Statement for Aliens
 - Form 8843 - Statement for Exempt Individuals and Individuals with a Medical Condition
- (4) An international return is also any Form 1040 series with the following indications:
- a. Any address outside the 50 United States or the District of Columbia
 - b. Taxpayer claiming Dual Status (Form 1040 and Form 1040-NR filed together as taxpayer claims part year residence and part year non-residence)
 - c. Primary or both taxpayers are nonresident aliens (NRA)
 - d. Tax Treaty benefit or exemption is claimed
 - e. IRC 911, 931, or 933 is invoked
 - f. Taxpayer is a treaty trader or Fulbright grantee

Note: Returns on which taxpayers convert income paid in foreign currency to U.S. currency are not considered international (e.g., Canadian dollars converted to U.S. dollars).

21.8.1.2.15
(10-01-2020)
**General Adjustment
Procedures for
International Accounts**

- (1) When adjusting IMF international accounts using CC REQ54, REQ77 or transferring credits using CC ADD/ADC24, ADD/ADC34 or ADD/ADC48, input a Filing Location Code (FLC) 66 or 98 according to the primary location code shown on TXMOD or ENMOD. When the primary location code is 21 or 66 input FLC 66. When the primary location code is 20 or 98 input FLC 98.

Exception: Input FLC 21 on adjustments to U.S. Virgin Islands cover over accounts input at the Austin Accounts Management Campus.

- (2) Input FLC 66 or 98 when adjusting accounts incorporating forms that are listed in international Forms Processing IRM 21.8.1.2.14 above, and IMF/NMF Forms listed in IRM 21.8.1.2.2.

21.8.1.2.16
(10-01-2021)

**Timeliness
Determinations**

- (1) Based on Rev. Rul. 2002-23, a document mailed from a foreign country with a timely official postmark of the foreign country is treated as being timely filed.
- (2) This rule applies to all documents required or permitted to be filed with the Service, including returns, claims, requests for an extension to file, and payments made with returns.
- (3) If the last day for filing falls on a Saturday, Sunday or a legal holiday, then a document with a foreign country official postmark date on or before the next succeeding day that is not a Saturday, Sunday, or legal holiday is treated as timely filed under IRC 7503 and Rev. Rul. 2002-23. The term legal holiday is defined under Rev. Rul. 2002-23 and IRC 7503 as a legal holiday in the District of Columbia, in the United States, or a statewide legal holiday in the state where the federal tax return, claim for refund or other documents are required to be filed or sent. The term does not include legal holidays in foreign countries, unless such holidays are also legal holidays in the District of Columbia or applicable state, as described above. See Rev. Rul. 2002-23 for more requirements when foreign mail is received later than such mail is ordinarily received.
- (4) The postmark determination for documents sent from a foreign country also applies to designated international private delivery services. The list of designated delivery services (both international and domestic) is only updated when new delivery services are added in lieu of or in addition to the designated Private Delivery Services (PDSs).
- (5) The current types of delivery services through designated PDS's, per are:
 - DHL Express, DHL Express 9:00, DHL Express 10:30, DHL Express 12:00, DHL Express Worldwide, DHL Express Envelope, DHL Import Express 10:30, DHL Import Express 12:00, DHL Import Express Worldwide.
 - Federal Express (FedEx): FedEx First Overnight, FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International First Flight out, FedEx International Priority, and FedEx International First; FedEx International Economy and
 - United Parcel Service (UPS): UPS Next Day Air Early AM, UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

21.8.1.2.16.1
(10-01-2021)

**Calculation of Failure to
File (FTF) and Failure to
Pay Penalties (FTP) on
Taxpayers Abroad**

- (1) Under Reg. 1.6081-5, certain U.S. taxpayers abroad may qualify for an automatic two-month extension to file an income tax return and to pay any tax shown on the return.
- (2) For U.S. taxpayers overseas filing on a calendar year basis, the Service uses 6/15 as the due date from which to calculate both the failure to pay and failure to file penalties (IRC 6651(a)(1) and IRC 6651(a)(2)), for taxpayers who qualify for an automatic two-month extension under Treasury Reg. 1.6081-5, but file and/or pay late.

Caution: The automatic two-month extension does not extend the payment date for interest. Interest is calculated beginning with the original due date. For more information refer to IRM 20.1.2.2.3.3, Taxpayers Abroad

Reminder: For tax year 2020, Notice 2020-23 postponed tax payment and filing deadlines until July 15, 2020. For tax year 2021, Notice 2021-21 postponed tax payment and filing deadlines until May 17, 2021

(3) Failure to File

- a. If a return from a taxpayer abroad is not filed by the due date, including extensions, a penalty of 5 percent per month, or fraction of a month, (not to exceed 25 percent) is calculated on the amount of tax required to be shown on the return, less any amount paid on or before the last date prescribed for payment. For income tax returns filed more than 60 days late, the minimum 6651(a)(1) penalty is the lesser of \$435, adjusted for inflation, or 100 percent of the tax that was shown on the return and that was not paid on or before the due date. When FTF penalty under IRC 6651(a)(1) and the penalty for failure to pay tax on the return under IRC 6651(a)(2) both apply for the same months, the 5 percent FTF penalty is reduced by the amount of the FTP penalty for that month. The reduction does not apply if the minimum penalty applies. See IRM 20.1.2.3.7.4, Minimum Penalty.
- b. For U.S. citizens or residents whose tax homes and abodes, in a real and substantial sense, located **outside** the U.S. and Puerto Rico, and for U.S. citizens and residents in military or naval service, on duty outside the U.S. and Puerto Rico, their extended due date for a calendar year income tax return is June 15.
- c. If the taxpayer meets the two-month extension requirements, a statement to this effect must be attached to the return. If the statement was not provided and a penalty notice was issued, consider the information the taxpayer provides with the notice dispute before abating.
- d. If the return is not filed by the extended due date, the penalty calculation starts the following day. For calendar year taxpayers, the penalty starts on June 16th.
- e. If a taxpayer needs more time to file, they must file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, by checking box 8 for an additional four months (the extended due date of the return becomes 10/15 for a calendar-year filer). This additional time does not extend the time for payment of the tax due on the return.
- f. Taxpayers outside the country can request an additional 2 month discretionary extension (beyond the 6 months provided by Form 4868) by sending a letter to the Austin Campus explaining the reason(s) they need an additional 2 months to file.
- g. Taxpayers out of the country may request an even longer extension by filing Form 2350 if they expect to meet certain tests later than 30 days before the latest extended due date otherwise available.

Note: The two- month discretionary extension is not available to taxpayers who have an approved Form 2350.

21.8.1.2.16.2
(10-01-2018)

Period of Limitation

- (1) A period of limitation is a time period established by law to review, analyze and resolve taxpayer and/or IRS related issues.
- (2) The Internal Revenue Code statute requires the Internal Revenue Service to assess, refund credit, and collect taxes within specific time limits. These limits are known as the Periods of Limitations. When they expire, we cannot assess

additional tax, allow a claim for refund by the taxpayer, nor take collection action. The determination of Statute expiration differs for Assessment, Refund, and Collection.

- (3) The Statute function reviews amended returns which reflect an increase in tax and documents that unpost or are rejected for statute imminent or expired periods.
- (4) Statute imminent cases are those cases requiring either an original assessment or a subsequent assessment and the Assessment Statute Expiration Date (ASED) is within 90 days, or expired.
- (5) The following categories meet the criteria for possible imminent statute cases:
 - Statute period original returns for input through processing
 - Additional assessments on cases that have an ASED within 90 days
 - Additional assessments on cases with an expired ASED
 - Statute period returns to be re-input with a received date more than 2 1/2 years old.

21.8.1.2.16.3
(10-01-2018)
**Statute Year Claims and
Amended Returns**

- (1) Once it is determined that an assessment of tax is necessary, take the following action when a claim or amended return is filed indicating a tax increase and the statute for assessment expires within 15 to 90 days:
 1. Prepare Form 10959, Statute Control Transmittal, and hand carry case with current research (IMFOL print) attached to the Statute Coordinator on a Form 3210, Document Transmittal.
 2. When routing these cases to the statute function, leave the control base open to the originator and update the activity to "statute".
 3. Close the control base only after receiving notification from the statute function that they will keep the case.
 4. When the case is returned stamped "CLEARED BY STATUTES", following normal adjustment procedures.

Caution: Follow procedures in IRM 25.6.1.9.9.2, After Hours and Imminent Assessments when the Assessment Statute Expiration Date is less than 15 days.

- (2) Once it is determined that a timely claim or amended return to decrease tax is filed (check the postmark date), take the following action:
 - a. Accounts Management resolves cases indicating a decrease in tax even if the statute is imminent or expired.
 - b. Follow normal adjustment procedures.
- (3) If a claim or amended return for tax decrease is incomplete and the return is received within the refund statute expiration date (RSED), refer to IRM 25.6.1.10.2.5, Claims for Credit or Refund - Processing Directions.
- (4) If a claim or amended return was received before the RSED, more information was requested to process the claim or amended return, and the taxpayer submits the information after the RSED but within 45 days (75 days for overseas taxpayers) of the IRS request, then allow the claim or amended return as referenced in IRM 25.6.1.10.2.5.2, Submission of Additional Information Necessary to Make a Determination on the Claim After the RSED.

- (5) If a claim or amended return for tax decrease is not timely, deny the claim or amended return sending a formal disallowance Letter 105C stating that the statute for refund has expired. Input TC 290 .00, along with the applicable reason code using Blocking Series 98 (complete claim disallowance without original return) or 99 (complete claim disallowance with original return). If the original return was filed electronically do not use blocking 98, use blocking series 99. Attach an IMFOLR print. Include appeal rights paragraphs in the 105C letter.
- a. In general, if a claim for refund was filed within three years of the date that the original return was filed, the amount of the refund is limited to amounts paid in the three year period before the filing of the claim for refund **plus** the period of any extension of time to file the original return.
 - b. If the claim for refund is not filed within three years of the date when the original return was filed but is filed within two years of the date when a payment was made, the amount of the refund is limited to amounts paid within the two year period before the filing of the claim for refund.
- Note:** This means all prepaid credits expire for refund three years after the return due date or extended due date, whichever is later.
- c. Alternatively, payments received after the return filing date are refundable for two years from the payment received date.
 - d. Credits transferred to a balance due module are refundable for two years from the corresponding date of the cycle in which the transfer occurred. Refer to IRM 25.6.1.10.2.5, Claims for Credit or Refund - Processing Directions, for more information.

21.8.1.2.17
(10-01-2018)
**Math Error Codes /
Taxpayer Notice Codes
(TPNC)**

- (1) When an error is made on an international return, a specific range of notice code numbers are assigned. They are listed in research material according to the type of return filed, and do not follow strict numerical sequence. Review the list to locate the specific notice number.
- (2) Reference sources that provide literal definitions for these codes, which are also referred to as Input Codes and Notice Codes, can be found in Chapter 9 of Document 6209.

21.8.1.2.18
(10-01-2023)
IDRS Command Codes

- (1) Account research is performed through the Integrated Data Retrieval System (IDRS). Command Codes are used to access different types of taxpayer information. See the Command Codes Job Aid on SERP under the "IRM Supplements" tab.
- (2) The most common command codes and their purposes are:
 - ADJ54 - Used to adjust taxpayer's account.
 - ENMOD - Used to request the entity module for a specific TIN
 - IMFOL - Displays entity and tax information that is posted for on-line query. It accesses the IMF and allows several screen displays based on the definer codes used.
 - INOLE - Used to access the most current entity data from the National Account Profile, (NAP) files.
 - IRPTR - Accesses the Information Returns Masterfile (IRMF), which contains income and withholding data reported to the IRS from payers/employers, i.e., W-2, 1099, 1098 and Form 1042-S.
 - NAMEE - Name and address data is entered to research a missing EIN.

- NAMEI - Name and address data is entered to research a missing SSN.
- NAMES - Name and address data is entered to research a missing SSN.
- REQ54 - Overlays TXMOD on the TXMOD screen to request ADJ54 screen.
- RTVUE - Contains line by line original tax return information that is posted to the Master File. RTVUE also shows math error corrections. It accesses the Return Transaction File (RTF) and contains all edited, transcribed and corrected data from the return. This command code requires a definer to access an index type screen. For further explanation of the displays and definer codes, refer to the Command Code Job Aid on SERP. This command code can be used as an alternative to command code ESTAB requests.
- TPIIP - Research a taxpayer using only the last 4 digits of SSN and last name.
- TRDBV - Used by IDRS users to gain detailed read-only access to the tax return data base.
- TXMOD - Used to research a specific tax period. It is only available for active modules and shows pending information. Command code IMFOL may be used if TXMOD is not available.

21.8.1.2.19
(10-01-2018)
Unallowable Codes

- (1) During return processing, a two-digit unallowable code identifies disallowed items. These can include a taxpayer's deduction, exemption, item exceeding statutory limitations, items of a questionable nature, or items not supported by the proper information or schedule.
- (2) Document 6209 contains unallowable codes and their explanations. This information can also be found on SERP at <http://serp.enterprise.irs.gov/content/6209/section-3-12.html>.
- (3) These codes appear on TXMOD and a sample is on Servicewide Electronic Research Program (SERP) in the Command Code Job Aid.

21.8.1.2.20
(05-08-2020)
Tax Treaties - General

- (1) The United States has income tax treaties (conventions) with a number of foreign countries. Under these treaties, residents of foreign countries are taxed at a reduced rate, or are exempt from U.S. income tax on certain types of income they receive from sources within the United States. These reduced rates and exemptions vary among countries and with specific items of income.

Note: For information on how tax treaties relate to the status of certain visas refer to IRM 21.8.1.19.

Reminder: U.S. citizens or residents can also receive certain benefits from tax treaties. Refer to Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad.

- (2) In some cases, tax treaties permit foreign individuals who are residents of the treaty country to visit the United States, practice their profession, and earn income (sometimes in limited amounts) for a limited period without having to pay U.S. income tax with respect to such income.
- (3) Treaty provisions relating to such income is found in Publication 901, U.S. Tax Treaties.

- (4) Taxpayers and contact representatives can access the individual country treaties through the internet. Access <http://www.irs.gov> and search for Tax Treaties.
- (5) The U.S.S.R. income tax treaty remains in effect for the following members of the Commonwealth of Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. In 1992, the U.S. entered into a separate income tax treaty with Russia. In 2001, Ukraine entered into a separate agreement, and in 2003, Kazakhstan also entered into a separate agreement.

21.8.1.3
(10-01-2021)

Foreign Earned Income

- (1) **Foreign Earned Income** is income received for personal services performed in a foreign country or countries while satisfying other IRC 911 requirements.
- (2) U.S. citizens and resident aliens residing and working in a foreign country are subject to the same U.S. income tax laws as U.S. persons in the United States. However, they may qualify for the election to exclude some, or all, of their foreign earned income from their gross income when they meet the requirements of IRC 911; and they may separately elect to exclude or deduct from gross income their foreign housing expenses.

Reminder: Civilian employees working in a combat zone are subject to the same rules and must complete a Form 2555, Foreign Earned Income, if they want to elect to exclude some, or all, of their foreign earned income. See IRM 5.19.10.6.1(7), Combat Zone Exclusion of Income.

- (3) This exclusion of income is provided under IRC 911. Taxpayers can claim the 911 foreign earned income exclusion by filing a Form 2555, Foreign Earned Income, with their Form 1040.

Note: A nonresident alien taxpayer who has a U.S. citizen or resident alien spouse and elects to be taxed as a U.S. resident alien could qualify under the physical presence test if the time requirement is met.

21.8.1.3.1
(10-01-2021)

Income Classifications

- (1) Many types of income can be classified into three categories for purposes of the IRC 911 foreign earned income exclusion.
- (2) **Earned income** is compensation for personal services performed. The source of earned income is the place where the services are performed. The following types of income have been classified as earned income:
 - Salaries
 - Wages
 - Commissions
 - Bonuses
 - Professional fees
 - Tips
- (3) The following types of income have been classified as **unearned** income:
 - Dividends
 - Interest
 - Capital gains
 - Gambling winnings
 - Alimony

- Social Security benefits
- Pension and annuities

(4) Some types of income are considered variable, they may fall into the category of **earned, unearned or partly both**. They are:

- Business Profits
- Royalties
- Rents

(5) For more information on the various types or classifications of income, see Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad.

21.8.1.3.2
(10-01-2021)

**Qualifying for the
Foreign Earned Income
Exclusion**

(1) A taxpayer must meet the following requirements in order to qualify for the foreign earned income exclusion:

- Tax Home Test
- Bona Fide Residence Test
- Physical Presence Test

(2) Qualified individuals may elect to exclude their foreign earned income from their gross income. To qualify, the taxpayer **must**:

- a. Have a tax home in a foreign country, **and**
- b. Be a U.S. citizen or resident alien who is a national of a country with which the United States has an income tax treaty with a nondiscrimination clause, **and**
- c. Be a bona fide resident of a foreign country or countries for a full taxable year, **or**
- d. Be a U.S. citizen or U.S. resident alien and be physically present in a foreign country or countries for 330 days.

(3) An individual who resides or is present in a U.S. territory does not qualify for the foreign earned income exclusion.

- a. Some taxpayers may qualify for the territory exclusion. See IRM 21.8.1.10.2, IRC 931 Territory Exclusion (Form 4563).
- b. Disallow claims for the foreign earned income exclusion and inform the taxpayer about the territory exclusion, if the taxpayer appears to qualify.

Caution: Johnston Islands are not specified territories nor a foreign country. **DO NOT** allow claims for a Territory Exclusion or Foreign Earned Income Exclusion for income earned while working in Johnston Islands. Use Letter 105C to deny the claim. Ross Island is considered part of the Antarctic region, Disallow claims from Ross Island.

(4) For purposes of the foreign earned income exclusion, foreign earned income does not include any amount paid by the United States or any of its agencies to its employees, whether from appropriated or non-appropriated funds. Payments to employees of non-appropriated fund activities include the following:

- Armed forces post exchanges
- Officers and enlisted personnel clubs
- Post and station theaters
- Embassy commissaries

Note: Amounts paid by the United States or its agencies to persons who are **not** their employees may qualify for exclusion or deduction.

- (5) If a U.S. Government employee is paid by a U.S. agency that assigned that person to a foreign government to perform specific services for which the agency is reimbursed by the foreign government, the compensation is from the U.S. Government. It **does not** qualify for the exclusion or deduction if the individual continues as an employee of the U.S. Government.
- (6) Consider the following factors when determining the taxpayer's tax home:

Tax Home
The tax home is in the general area of the taxpayer's main place of business, employment or post of duty, regardless of where the taxpayer maintains their family home.
The tax home is the place where the taxpayer is permanently or indefinitely engaged in work as an employee or as a self-employed individual.
The tax home, for taxpayers who do not have a regular or main place of business because of the nature of their work, is considered to be where they regularly live. Example: Taxpayers employed on offshore oil rigs in territorial waters of a foreign country that work a 28 day on 28 days off schedule, and return to their family residents in the United States during their 28 days off, have their tax home in the United States where they regularly live.
For taxpayers who do not have a regular or main place of business, nor a regular place to live, their tax home is considered the place where they work.
The location of a taxpayer's abode depends on where their economic, family, and personal ties are. "Abode" does not have the same meaning as tax home.

- (7) Consider the following factors when determining if a taxpayer qualifies for the foreign earned income exclusion as a bona fide resident (IRC 911(d)) of a foreign country.

Bona Fide Residence Factors
<p>The taxpayer must be a U.S. citizen or resident alien who is a citizen or national of a country with which the U.S. has an income tax treaty with an applicable nondiscrimination clause in effect and who is a bona fide resident of a foreign country or countries, for an uninterrupted period that includes an entire tax year.</p> <p>Note: See Publication 901, U.S. Tax Treaties, for a list of these countries.</p>
<p>The taxpayer must have earned their income for personal services rendered in a foreign country or countries.</p> <p>Exception: Income earned for personal services rendered in a foreign country as an employee of the U.S. Government or one of its agencies or instrumentalities.</p>
<p>The taxpayer must have established residency in a foreign country, or countries, for an uninterrupted period. This must include an entire tax year. (For example, January 1 - December 31 for calendar year filers.)</p>
<p>The taxpayer must have earned income attributable to the uninterrupted period of bona fide residence. The income must be received no later than the year after the services were performed.</p>
<p>The taxpayer must establish that they have set up permanent living quarters for themselves .</p>
<p>The taxpayer must establish that their work in the foreign country is indefinite or for an extended period of time.</p>
<p>The taxpayer must NOT have submitted a statement to the authorities of a foreign country or countries stating that they are not a resident of that country or countries and therefore not liable for any income taxes of that country or countries. IRC 911(d)(5) denies the taxpayer the status of “qualified Individual” and they are not eligible for the foreign earned income exclusion as a bona fide resident if such statements have been submitted.</p>

- (8) The following definitions are clarification of terms used in the above chart which identifies bona fide residence factors.
- a. **Foreign Country** - A territory under sovereignty of a government other than the United States.

Note: International waters are not treated as foreign countries. Individuals working on oil rigs in international waters, on a 28 day on 28 days off basis, are not considered bona fide residents of a foreign country.
 - b. **Entire Taxable Year** - A 12- month period, calendar or fiscal. A calendar year is the period beginning January 1 and ending December 31. A fiscal year begins with a month of the taxpayer’s choosing and ends on the last day of the month, following a 12- month period.

- c. **Uninterrupted Period** - The taxpayer may leave the country for brief temporary trips abroad for vacation or business, but must have clear intentions of returning to their foreign residence or to a new bona fide residence in another country without unreasonable delay.
- (9) Consider the following factors when determining if a taxpayer qualifies for the foreign earned income exclusion due to their physical presence in a foreign country.

Physical Presence Factors
The taxpayer must be a U.S. citizen or resident alien physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months. Exception: This requirement is unconditional, except in the instances stated below in Waiver of Time Requirements. See IRM 21.8.1.3.3
The taxpayer must have foreign earned income attributable to the 12-month period and receive it no later than the year after the services were performed.
The taxpayer must have foreign earned income for personal services rendered in a foreign country.
The taxpayer must not consider foreign earned income paid to them as an employee of the U.S. Government or one of its agencies as foreign earned income for purposes of the IRC 911 foreign income exclusion.

- (10) Consider the following explanations when determining if the taxpayer qualifies for the IRC 911 foreign earned income exclusion due to their physical presence:
- a. A “full day” is a continuous period of 24 hours starting at midnight and ending with the following midnight.
 - b. The day of arrival or departure is not counted in determining the 330 days.
 - c. The “qualifying days” may include vacation time spent on foreign soil.
 - d. The 330 full days presence on foreign soil need not be consecutive, and may be interrupted by periods during which travel is over international waters, or in which the taxpayer is otherwise not present in a foreign country (*i.e.*, a brief visit to the United States).
- (11) The physical presence test does not depend on the type of residence the taxpayer establishes, the nature or purpose of the stay abroad, nor their intentions about returning to the United States. It is based only on how long the taxpayer stays in a foreign country or countries.

21.8.1.3.3
(03-16-2023)
**Waiver of Time
Requirements**

- (1) IRC 911(d)(4) allows certain taxpayers who had to leave a foreign country because of war, civil unrest, or similar adverse conditions to waive the minimum time limitation requirements specified under either the bona fide residence or physical presence test.

- (2) Taxpayers who qualify for the waiver must be able to show that they reasonably could have expected to meet the minimum time requirements if they had not been required to leave the country.

Note: Each year the IRS publishes a list of countries and dates that qualify for the waiver in the Internal Revenue Bulletin.

- (3) Waiver of the minimal time limitation requirement is accomplished by:
- a. Submitting a statement with the return explaining that they expected to meet the applicable time requirements, but the conditions in the foreign country prevented them from the normal conduct of business and
 - b. Entering "Claiming Waiver" in the top margin on page 1 of the Form 2555.
- (4) **Burden of Proof:** when the documentation which would prove the taxpayer's intent to meet the physical presence time requirement is unavailable, the taxpayer must provide a statement with a complete explanation. If the taxpayer meets the waiver based on their statement, allow the election. To qualify for relief under IRC 911(d)(4), an individual must have established residency or have been physically present in the foreign country prior to the date listed in the annual waiver revenue procedure that the individual was required to leave.
- (5) Individuals who establish residency, or are **first** physically present in the foreign country **after** the date that the Secretary prescribes, are **not** treated as qualified individuals under IRC 911.
- (6) A Revenue Procedure is generally issued each year to list the countries and dates those countries are eligible for the IRC 911(d)(4) waiver. The latest additions are listed in the following table:

Note: If an individual left one of the countries listed in the revenue procedure on or after the specified departure date, they are treated as a qualified individual with respect to meeting IRC 911.

Country	Tax Year	Date of Departure - On or After
Democratic Republic of the Congo	2019	January 13, 2019
Haiti	2019	February 14, 2019
Iraq	2019	May 14, 2019
Sudan	2019	April 11, 2019
Venezuela	2019	January 24, 2019
Peoples Republic of China excluding Hong Kong and Macau	2019 and 2020 (through July 15, 2020)	December 1, 2019
Iraq	2020	March 25, 2020
Afghanistan	2021	April 27, 2021
Burma	2021	March 30, 2021
Chad	2021	April 17, 2021
Ethiopia	2021	November 5, 2021
Iraq	2021	January 19, 2021
Ethiopia	2022	January 3, 2022
Iraq	2022	January 14, 2022
Ukraine	2022	February 12, 2022
Belarus	2022	February 28, 2022
China	2022	April 11, 2022
Mali	2022	July 29, 2022

Note: Rev. Proc. 2020-27 announced eligibility for the waiver of time requirements to meet substantial presence is granted globally as of February 1, 2020. The period covered by this revenue procedure ends on July 15, 2020, unless an extension is announced by the Treasury Department and IRS. For purposes of IRC section 911, an individual who left China on or after December 1, 2019, or another foreign country on or after February 1, 2020, but on or before July 15, 2020, is treated as a qualified individual with respect to the period during which that individual was present in, or was a *bona fide* resident of, that foreign country if the individual establishes a reasonable expectation that they would have met the requirements of IRC 911(d)(1) but for the COVID-19 Emergency. Individuals will be told in the 2020 Instructions for Form 2555, to write COVID-19 “Emergency Relief” in the top margin of page 1 of the 2020 Form 2555 when claiming the waiver in Rev. Proc. 2020-27.

- (7) Taxpayers may claim the exception on their original return, or if an original return has been previously filed, taxpayers must file a Form 1040X with the correct Form 2555 for the year the exception is being claimed, within the normal 3- year statute of limitation period.

21.8.1.3.4
(10-01-2023)
**Foreign Earned Income
Exclusion (Form 2555)**

- (1) Once the taxpayer has established that their tax home is in a foreign country and the taxpayer meets either the bona fide residence test or the physical presence test, they may elect to exclude from their income all or some of the amount of their foreign earned income.
- (2) The foreign earned income of an individual which can be excluded for any taxable year cannot exceed the amount of foreign earned income computed on a daily basis. The maximum excludable annual rates are listed in the following table:

Taxable Years	Annual Rate
2019	\$105,900
2020	\$107,600
2021	\$108,700
2022	\$112,000
2023	\$120,000

Note: The maximum foreign earned income exclusion amount is adjusted annually for inflation.

- (3) When both spouses have foreign earned income and each meet either the bona fide residence test or the physical presence test, each must file a separate Form 2555. In this case, for tax year 2023, up to \$240,000.00 can be excluded.
- (4) IRC 911(d)(6) denies the double benefit that could occur if taxpayers claimed the foreign earned income exclusion and did not reduce it by adjustments to income, or did not reduce certain itemized deductions and credits related to the excluded income. An adjustment to income can cause an adjustment to the foreign earned income exclusion on Form 2555, line 26. This line is always checked when there is an adjustment to income which is related to the excluded earned income.
- (5) Itemized deductions related to excluded income must be reduced on Schedule A. Such reductions must always be checked when there are itemized deductions, (i.e., moving expenses, employee business expenses, etc.), related to excluded earned income. See Publication 54 for more details.
- (6) Generally, the reduction of nonrefundable credits is limited to that portion which is specifically related to the excluded income.
- (7) In applying the IRC § 911 foreign earned income exclusion limitations under community property laws, the total community income excluded cannot exceed the amount excludable if the income is not community property income.

Note: For information on registered domestic partners filing from community property states, refer to Pub 555, Community Property

- (8) Wages received by employees of the United States Government, or any of its agencies, working overseas do not qualify for exclusion of foreign earned income under IRC 911. These employees include:

- Military personnel

Caution: This includes any military personnel assigned to the North Atlantic Treaty Organization (NATO) or any other international organization.

- State Department employees
- IRS employees
- Drug Enforcement Agency (DEA) employees

Note: Amounts paid by the U.S. government or its agencies to persons not their employees, may qualify for foreign earned income exclusion or deduction. If unsure, correspond with the taxpayer for a clarification. Publication 15-A, Employer's Supplemental Tax Guide, can answer questions to help determine if the taxpayer is an employee or an independent contractor.

- (9) The foreign earned income exclusion has no impact on the requirement for the payment of self-employment tax. See IRM 21.8.1.17.
- (10) The exclusion is not available if travel, and therefore employment, in a foreign country is restricted by regulations pursuant to the Trading With the Enemy Act (50 U.S.C. 1701 etc. seq.) or the International Emergency Economic Powers Act (50 U.S.C. App.) mentioned in IRC 911. There are some exceptions, primarily for journalists who travel with permission from the Treasury Department.
- (11) If income is excluded under the foreign earned income exclusion, the income is not considered as compensation in determining the amount of IRA contribution.
- (12) Taxpayers who claimed the foreign earned income exclusion, housing exclusion, or housing deduction on Form 2555, Foreign Earned Income, must figure their tax using the Foreign Earned Income Tax Worksheet.
- (13) Use reason code 014 when the taxpayer is adding foreign earned income and excluding the same foreign earned income on Form 2555 at the same time (generally a TC 290.00). Use RC 031 for all other foreign earned income exclusion changes.

21.8.1.3.4.1
(12-15-2021)

**Foreign Earned Income
US-Australia Claims**

- (1) Claims have been identified where the preparer is filing for refunds by taking questionable tax and treaty positions involving Foreign Earned Income Exclusion (FEIE) tied to taxpayer closing agreements made with the IRS under the U.S.- Australia Tax Treaty. The preparer may file claims for multiple years for each taxpayer.
- (2) Claims are generally filed using Form 1040X.
- (3) If you receive a Form 1040X, or correspondence indicating a decrease to AGI, taxable income, and/or tax as a result of a change to the FEIE for income earned in Australia, change the activity code to AUS2555 and suspend the case to CII number 0539280188.
- (4) An authorized user will access this link for further procedures. <https://vpwsentshrcmn35.ds.irsnet.gov/common>.

- (5) If your claim meets the specific identifiers listed in the link above, the case is referred back to you with instruction to follow disallowance procedures found in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures.
- (6) When issuing the 105c Claim Disallowance letter, explain to the taxpayer “We can’t allow your claim for the Foreign Earned Income Exclusion because of the Closing Agreement between you and the Internal Revenue Service ”. Paragraph C is used for this explanation. Provide the taxpayer with litigation, and appeal rights.
- (7) If your claim does not meet the specific identifiers listed in the link above, the case is referred back to you with instruction to follow normal adjustment procedures.

21.8.1.3.5
(10-01-2012)
**Housing
Exclusion/Deduction**

- (1) Qualified individuals may separately elect to claim the housing exclusion or the housing deduction, in addition to the foreign earned income exclusion. The housing exclusion applies only to amounts considered paid for with employer-provided amounts. The housing deduction applies only to amounts paid for with self-employment earnings.
- (2) The initial election is made by filing Form 2555 with:
 - A timely filed return (including any extensions)
 - A return amending a timely filed return, or
 - A late filed return (determined without regard to any extensions) filed within one year from the original due date of the return.
- (3) The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) made the following changes to IRC 911 effective for tax periods beginning on or after January 1, 2006.
 - The calculation of the base housing amount (line 32 of Form 2555) is now related to the maximum foreign earned income exclusion. The amount is 16 percent of the exclusion amount (computed daily) multiplied by the number of days in the qualifying period that fall within the tax period.
 - The amount of qualified housing expenses is limited to 30 percent of the maximum foreign earned income exclusion (computed daily) for the calendar year in which the taxable year of the individual begins multiplied by the number of days within the applicable period. However, the law provides for adjustments to the percentage based on geographic differences in foreign housing costs relative to housing costs in the United States.
 - For a comprehensive list of adjusted limitations on housing expenses see the Form 2555 instructions. <http://core.publish.no.irs.gov/instrs/pdf/i2555--2020-00-00.pdf>

Reminder: Some of these adjusted limitations on housing expenses change on an annual basis.

21.8.1.3.6
(10-01-2023)
**Election and Revocation
of Form 2555**

- (1) Once a taxpayer chooses to exclude foreign earned income or housing amount, that choice remains in effect for that year and all later years unless they revoke it.

- (2) If an election choice is revoked, a new election may **not** be made before the sixth (6th) taxable year after the revocation without the consent of the IRS.
- (3) If a taxpayer files an amended return revoking a Foreign Earned Income election follow all normal adjustment procedures. Make the requested adjustment. Research subsequent years to determine if the Foreign Earned Income election was taken. If research shows the election was taken in subsequent years, advise the taxpayer in writing they may have to file corrected returns for those years since the election was revoked and a new election may not be made before the sixth taxable year after the revocation without consent of the IRS.

Example: Taxpayer files a Form 1040X for tax year 2021 revoking the Foreign Earned Income election. Research shows the same taxpayer took the election in tax year 2022. If the tax year 2021 adjustment is allowable (no CAT-A criteria), make the adjustment in tax year 2021 and issue correspondence to the taxpayer advising them they may have to file a corrected return for tax year 2022 because their Foreign Earned Income election was revoked in 2021 and a new election may not be made before the sixth taxable year after the revocation without consent of the IRS.

- (4) Taxpayers can request IRS consent for reelection before the sixth taxable year after the revocation by requesting a Private Letter Ruling (PLR) from the address below:

Note: A request for a PLR must be submitted with payment of the correct fee. The first Revenue Procedure each year (currently Rev. Proc. 2023-1), which is published in the Internal Revenue Bulletin, includes the fee schedule. The package will be marked: RULING REQUEST SUBMISSION.

Associate Chief Counsel (International)
Internal Revenue Service
ATTN: CC:PA:LPD:DRU Room 5336
1111 Constitution Avenue
Washington, DC 20044

21.8.1.3.7
(10-01-2019)
**Late Filed IRC 911
Exclusions**

- (1) Treas. Reg. § 1.911-7(a)(2)(i)(D) allows citizens or residents of the United States to take the foreign earned income exclusion. The exclusion is allowed under certain conditions and with some limitations. Publication 54 contains further information.
- (2) The IRC911 foreign earned income exclusion (Form 2555) is made with:
 - A timely filed return (including any extension),
 - A return amending a timely filed return, or
 - A late-filed return, filed within 1 year from the original due date of the return (determined without regard to any extension).
- (3) The IRC 911 foreign earned income exclusion is allowed on prior year returns not listed above when the taxpayer has a PLR under Treasury Regulation § 301.9100-3, allowing the exclusion.
- (4) The taxpayer does not need a PLR to claim the IRC911 foreign earned income exclusion on prior year returns in the following situations:

- The taxpayer **owes no** federal income tax after considering the exclusion and files Form 1040 with Form 2555 or a comparable form attached either before or after the Internal Revenue Service discovers that the taxpayer failed to elect the exclusion, or
- The taxpayer **owes** federal income tax, after considering the foreign earned income exclusion, and there is no IRS discovery that the taxpayer failed to make a timely election. The taxpayer prints legibly at the top of the first page of the Form 1040: "Filed Pursuant to Treasury Regulation §1.911-7(a)(2)(i)(D)".

Note: Indications of IRS discovery would be a Taxpayer Delinquency Investigation (TDI) or Substitute For Return (SFR) notice where the tax is proposed to be assessed or was assessed prior to the taxpayer filing a prior year return with a IRC 911 foreign earned income exclusion.

- (5) If the taxpayer owes federal income tax and there **is** IRS discovery that the taxpayer failed to make a timely election:
- a. Correspond with the taxpayer and advise that they must request from Associate Chief Counsel, International, a PLR by the Service under Treas. Reg. 301.9100-3 to qualify for the IRC 911 foreign earned income exclusion election.
Note: Review prior year tax returns on AMS or RTVUE to determine if the taxpayer made a timely election to claim the exclusion. If the exclusion is allowed on a prior year tax return, then the taxpayer's election remains in effect for all subsequent tax returns until it is revoked.
 - b. Advise the taxpayer of the procedure to obtain the PLR. See IRM 21.8.1.3.6 for more information on securing the PLR.
 - c. When a PLR is secured, the taxpayer will be provided a copy before the foreign earned income exclusion election is allowed.

21.8.1.3.8
(10-01-2020)
Loose Form 2555

- (1) U.S. citizens and resident aliens abroad have the option to file Form 2555, or an acceptable facsimile that exhibits their entitlement to the benefits under IRC 911. The Form 2555 should accompany a Form 1040, but it is sometimes submitted without the return.
- a. The taxpayer may believe that Form 2555 is the only form required to be filed.
 - b. Form W-2 must be attached to obtain a refund.
- (2) Research to determine if a return is on file for the taxpayer. Use research command code TXMOD and/or the CFOL commands.

If ...	Then ...
A return has posted and there is no indication of a math error or a balance due	Associate the Form 2555 with the return.
A return has posted and there is an indication of a math error or the account has a balance due	Review the original return and Form 2555 on RTVUE to determine if the exclusion has previously been allowed.
The Form 2555 exclusion has already been considered	Associate Form 2555 and refile the return.
The Form 2555 exclusion requires a change to the previously allowed exclusion amount	Adjust accordingly. Remember to use Reason Code 031 (Foreign Earned Income Exclusion).
No Form 2555 exclusion has been previously allowed	Determine if election is timely, and if so, adjust accordingly. If not, notify the taxpayer the exclusion will not be allowed.
There is no indication of a return having been filed for the tax year in which the exclusion is being claimed	Notify the taxpayer to file Form 1040 and attach the Form 2555 for processing.
The excludable income on Form 2555 is included in the tax computation on Form 1040	Input an adjustment transaction using TC 291 for the tax decrease computed on the allowable exempt income.
Adding Foreign Earned Income and excluding the same Foreign Earned Income on Form 2555 at the same time (usually TC 290.00)	Adjust accordingly using Reason Code 014 (Foreign Earned Income Reported on Form 2555).

21.8.1.3.9
(10-01-2013)

Form 673, Statement for Claiming Benefit of IRC 911 to Discontinue Withholding from Wages

- (1) IRC 3402(a) requires employers to withhold taxes from wages earned at "source". However, an employer may discontinue the withholding of income tax from the wages of an employee who is a U.S. citizen or resident alien employed abroad, if certain conditions are met.
- (2) IRC 3401(a)(8)(A) allows employees to file a signed statement including a declaration under penalties of perjury, along with a current Form W-4, declaring that they meet or will meet the qualifications of IRC 911(d) (qualified individual) for the taxable year and that they are exempt from tax on the maximum foreign earned income exclusion amount of earned income for the year in question.
- (3) The Form W-4 must specify either:

- a. Exempt status, and the taxable year for which the Form W-4 is effective, or
 - b. The number of withholding allowances allowed, based on exemptions, deductions (including the IRC 911 deduction) and credits.
- (4) The Internal Revenue Service provides Form 673, Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by 911, for U. S. citizens. A statement can be accepted in lieu of Form 673 if the taxpayer shows to their employer that they will meet either the bona fide residence test or the physical presence test and shows the estimated housing cost exclusion.
- (5) Employers withhold income tax from any wages the employee earns in the United States and any income exceeding the IRC 911 limitations.
- (6) For questions involving the Form W-4 penalty program, contact the Campus Collection Branch.
- (7) Form 673 can only be used by a U.S. Citizen.

Note: Form 673 is not filed with the IRS. The U.S. employer receives the completed Form 673 from the employee. If the IRS receives loose Forms 673, forward them to the employer.

21.8.1.3.10
(03-03-2016)

U.S. Travel Restrictions

- (1) The following chart contains the countries to with U.S. travel restrictions.

Country	Starting Date	Ending Date
Cuba	January 1,1987	December 21, 2015

- (2) Taxpayers present in one of the foreign countries listed above during the time frames shown are in violation of U.S. law and are not treated as a bona fide resident of or physically present in those foreign countries.
- a. The income they earn from sources within these countries for services performed does not qualify as foreign earned income.
 - b. Housing expenses they incur while in one of these countries cannot be included in computing their foreign housing amount.

Exception: Notice 2006-84 announced that the limitations of IRC 911(d)(8)(C) do not apply to qualified individuals who perform services at the U.S. Naval Base at Guantanamo Bay, Cuba. Therefore, such individuals are eligible for the exclusion under IRC 911, if they meet the other requirements of that section.

21.8.1.3.11
(10-01-2021)

International Boycott

- (1) If a taxpayer participates in or cooperates with an international boycott during the tax year, their foreign taxes resulting from boycott activities reduce the total taxes available for credit.

Note: For more information, see Publication 514, Foreign Tax Credit for Individuals.

- (2) Use Form 5713, International Boycott Report, to report operations in or related to boycotting countries, and the receipt of boycott requests and boycott agreements made.

- (3) A list of the countries that may require participation in or cooperation with an international boycott is published by the Department of the Treasury each calendar quarter. The following countries are currently listed:

- Iraq
- Kuwait
- Lebanon
- Libya
- Qatar
- Saudi Arabia
- Syria
- Republic of Yemen

Note: Taxpayers that have operations in or related to, or with the government of, a company of, or a national of United Arab Emirates prior to April 8, 2021, must still file Form 5713, International Boycott Report, to report those operations.

- (4) Form 5713, International Boycott Report, is currently processed at the Ogden Campus.

21.8.1.4 (10-28-2013)

Foreign Tax Credit (Form 1116)

- (1) Under IRC 901, a Foreign Tax Credit is allowed for income, war profits, and excess profits tax (referred to as income taxes) paid or accrued during the taxable year to a foreign country, or a U.S. Possession (a U.S. Possession is also referred to as a U.S. Territory). In addition, a Foreign Tax Credit is allowed under IRC § 903 for foreign levies imposed in lieu of an income tax otherwise creditable under IRC 901.

Note: For individuals claiming a Foreign Tax Credit on Form 1116, the U.S. territories normally include American Samoa and Puerto Rico. With respect to Guam, The Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, special rules apply. (See Publication 570)

- (2) A U.S. citizen or resident alien must report world-wide income from all sources, regardless of where they live. Generally, the taxpayer must pay a tax on the foreign income to the country or countries from which this income is derived. If the taxpayer pays a tax on the foreign income to the country or countries from which the income is derived, the Foreign Tax Credit is designed to minimize having such income subject to tax by both the United States and the foreign country. Publication 514, Foreign Tax Credit for Individuals, and the instructions for Form 1116, Foreign Tax Credit (Individual, Estate, or Trust), contain detailed information on this credit.

21.8.1.4.1 (10-01-2021)

Who May Claim the Foreign Tax Credit

- (1) Individuals, either U.S. citizens or resident aliens, minimize double taxation by electing to claim the Foreign Tax Credit by using Form 1116. If a non-U.S. citizen is a bona fide **resident** of Puerto Rico for the entire tax year, the resident alien rules apply.

Note: If an individual is a **resident** of a U.S. territory (except Puerto Rico or American Samoa), and not a citizen or resident of the U.S., the Foreign Tax Credit **cannot** be taken, except as described in paragraph (2) below.

- (2) A nonresident alien can claim a credit for income taxes paid or accrued to a foreign country or territory of the United States **only** on foreign source or

territory source income that is effectively connected with a trade or business in the United States. For information on alien status and effectively connected income, see Publication 519, U.S. Tax Guide for Aliens.

21.8.1.4.2
(10-01-2022)
Claiming the Credit for Foreign Taxes

- (1) Eligible taxpayers may claim a Foreign Tax Credit for foreign income taxes **paid or accrued** (or taxes paid or accrued in lieu of those taxes) during the tax year to any:
 - Foreign country
 - U.S. territory, or
 - Political subdivision (e.g., city, state, or province) of the foreign country or U.S. territory. For further information, See Publication 570
- (2) **Important:** When a Foreign Tax Credit is claimed:
 - a. It is a nonrefundable credit, and
 - b. Foreign income taxes cannot generally be claimed as a deduction in the same year on Schedule A.
- (3) If the taxpayer chooses not to claim a credit for foreign taxes, IRC 164(a)(3) allows a U.S. citizen or resident alien to claim a deduction on Schedule A for foreign income tax paid or accrued.
- (4) Taxpayers excluding income from the territories cannot claim the Foreign Tax Credit for foreign income taxes paid on the excluded income. See IRC 931 and IRC 933.
- (5) Citizens or residents cannot claim the Foreign Tax Credit for foreign income taxes paid or accrued on income that is exempt from tax under the foreign earned income exclusion, or the foreign housing exclusion (IRC 911). See Publication 514, Foreign Tax Credit for Individuals, for definitions of accrued and paid.
- (6) A Form 1116 must be filed to claim the Foreign Tax Credit unless one of the following exceptions is met:
 - The taxpayer meets the requirements for exemption from foreign tax limit discussed in Publication 514 and chooses exemption from the Foreign Tax Credit limit. They do not file Form 1116. Instead, they enter foreign taxes paid directly on Form 1040, line 31.
 - A shareholder of a controlled foreign corporation who chooses to be taxed at corporate rates on the amount they must include in gross income from that corporation uses Form 1118 to claim the Foreign Tax Credit.
 - The taxpayer paid income taxes to the U.S. Virgin Islands. The taxpayer must use Form 8689, Allocation of Individual Income Tax to the Virgin Islands.
- (7) Adjust accordingly, using TC 29X with Reason Code 036 (Tax Credits).

Reminder: If the amount claimed as Foreign Tax Credit is later refunded from the foreign country, then the U.S. income tax return must be amended to include the amount received. Debit interest is computed from the date the refund is received from the foreign country to the payment date, plus all interest received from the foreign country is added to the

computed interest for the total debit interest owed. For further information see IRM 20.2.10.3.2, Interest on Adjustments to FTC.

- (8) IRC 164(a)(3) allows a U.S. citizen or resident alien who itemizes deductions to claim foreign income tax paid or accrued as a deduction on Schedule A.

21.8.1.4.3
(10-01-2015)

**Foreign Taxes for Which
a Credit Cannot Be
Claimed**

- (1) A credit cannot be claimed for the following foreign taxes:
- a. Taxes paid to a foreign country that the taxpayer does not legally owe, including amounts **eligible** for refund by the foreign country
 - b. Taxes imposed by and paid to certain foreign countries (see IRM 21.8.1.4.6, Computation - Foreign Tax Credit for a list of countries designated by the U.S. Secretary of State as having repeatedly provided support for acts of international terrorism, and countries with which the U.S. does not have diplomatic relations, and countries whose governments the United States does not recognize)
 - c. Payment of foreign tax that is returned to the taxpayer, a related person, or a party to the transaction generating the tax, in the form of a subsidy
 - d. Taxes attributable to **excluded** income from sources within the United States territories (See Publication 514 for more information.)
 - e. Tax withheld from dividends and other income from property, if certain minimum holding period requirements are not met
 - f. Other taxes designated in the Instructions to Form 1116.
- (2) On January 1, 2008, Mexico adopted the “impuesto empresarial a tasa unica” (IETU). Mexico repealed the IETU, effective January 1, 2014. The IRS will not challenge that the IETU is an income tax that is eligible for the Foreign Tax Credit under Article 24(1) of the Income Tax Treaty between the United States and Mexico.

21.8.1.4.3.1
(04-21-2022)

**France CSG and CRDS
credits**

- (1) Representatives of the United States and the French Republic, reached an understanding which now allows taxpayers to claim a foreign tax credit for French Contribution Sociale Generalisee (CSG) and Contribution au Remboursement de la Dette Societe (CRDS), provided they meet all the requirements under IRC 901.
- (2) Generally, no deduction or credit is allowed, for social security taxes paid or accrued to a foreign country with which the United States has a totalization agreement. However, these taxes are not social taxes covered by the totalization agreement between the two countries therefore a foreign tax credit is allowed.
- (3) Taxpayers have 10 years to file a claim for refund of U.S. tax if they find that they paid or accrued more creditable foreign tax than the credit claimed. For further information see IRM 21.8.1.4.5.
- (4) Refer to the following chart to respond to any calls or claims made for France CSG and CRDS credits:

If	Then
Taxpayer calls requesting information on how to file their amended return	Accounts Management (AM) assistors trained and available to respond to tax law questions, will advise callers of the new IRS position on CSG and CRDS credits and provide callers with information on how to correct their returns, if applicable. ITLA must be used for these call types
Taxpayer calls inquiring about their refund based on an amended return claiming CSG and CRDS credits	AM assistors available and trained in account calls will follow normal call procedures
Taxpayer files a Form 1040-X, or amended return noting French Social Taxes , CSG or CRDS on top or in part 3 of the Form 1040-X	AM assistors will follow all normal adjustment procedures for foreign tax credit adjustments For further information refer to IRM 21.8.1.2.10

21.8.1.4.4
(10-01-2022)
Election - Foreign Tax Credit

- (1) Each tax year, an individual has a choice of electing:
 - a. To take the amount of any qualified foreign income taxes paid or accrued as a Foreign Tax Credit against U.S. income tax, or
 - b. To take the deduction on Schedule A, Form 1040
- (2) Generally, the taxpayer must treat all foreign taxes paid or accrued in the same tax year in the same manner. See IRC 901(m)(6) IRC 901(k)(7), IRC 901(l)(4), IRC 901(j)(3) and IRC 908(b) which allow a deduction for taxes that cannot be claimed as a credit.
- (3) An individual taxpayer may change their election from claiming a deduction to claiming a credit, for foreign income taxes paid or accrued, at any time during the period within 10 years from the due date for filing the return for the tax year for which the claim for credit is made. The period for changing their election from claiming a credit to claiming a deduction is 3 years from the time the original return was filed. See IRC 901(a) , IRC 6511(a) and (d) and Treas. Reg. §1.901-1(d).
- (4) An individual changing no other election may file a claim or an amended return:
 - For credit, or
 - For refund of U.S. income taxes

If ...	Then ...
Foreign taxes are claimed as a deduction on Schedule A of Form 1040	Completion of Form 1116 is not required.

If ...	Then ...
Form 2555 exclusion is taken	Foreign taxes available for the credit are prorated.

Note: A credit or a deduction for foreign taxes paid on income excluded under the foreign earned income exclusion or the foreign housing exclusion cannot be taken.

21.8.1.4.5
(10-01-2022)
Period of Limitation - Foreign Tax Credit

- (1) A taxpayer has a ten-year period of limitation to file a claim for refund of U.S. tax for a year when the taxpayer must pay or accrue a larger foreign tax than originally claimed as a credit for that year. For further information, see Statute IRM 25.6.1.10.2.8.4, Foreign Tax Credit.
- (2) The same 10- year limitation period applies to:
 - a. A claim for refund based on the correction of math errors in figuring the Foreign Tax Credit
 - b. The discovery of qualified foreign taxes not originally reported on the return, and
 - c. Any other change to the size of the credit, including one caused by a correction to the Foreign Tax Credit limitation or a taxpayer decision to claim a credit for the taxes rather than a deduction.

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- (3) The 10 years are counted from the due date of the return (ignoring any extension for filing the return) for the year in which the foreign tax expense is paid or accrued. Do not confuse this limitation period for claiming a refund with the ten-year carryover and one-year carryback periods. For carryback and carryover information see IRM 21.8.1.4.7.
- (4) For detailed information on Foreign Tax Credit Carryback claims, see IRM 21.5.9.5.12.7, Carryback of Foreign Tax Credit (FTC).
- (5) The usual three-year period of limitation applies for refunds attributable to deductions of foreign income taxes reported on Schedule A.

21.8.1.4.6
(10-01-2022)
Computation - Foreign Tax Credit

- (1) With respect to individual taxpayers, the foreign tax credit is calculated separately on separate Forms 1116 for the seven categories of income below:
 - Section 951A category income
 - Foreign branch income
 - Passive category income
 - General Limitation Category Income
 - Section 901(j) Category Income
 - Income Re-sourced by Treaty.
 - Lump Sum Distributions

Note: See Publication 514 for further information on the classification of this income.

- (2) Taxpayers are instructed to use a separate Form 1116 for each category of income. Also, they are instructed to use a separate Form 6251 for the Foreign Tax Credit offset of alternative minimum tax. However, if separate forms are

adjusting the alternative minimum tax Foreign Tax Credit, use Reason Code 041 (Alternative Minimum Tax Foreign Tax Credit).

- (3) If the taxpayer paid taxes to more than 3 countries or territories with the same type of income, then additional Forms 1116 must also be used.

Caution: The taxpayer cannot combine the same type of income for different countries and/or territories by writing “various” where the name of the country is to be listed.

Exception: Income passed through from a mutual fund or other Regulated Investment Company (RIC) on a country by country basis can be aggregated. Filers can enter the total of all income passed through from mutual fund or other RIC in a single column in Part I of Form 1116. Taxpayers are instructed to enter “RIC” on line g of Part I. If they have not shown the term “RIC” on Line G of Part 1 of Form 1116, terms like “various”, or “OC” are acceptable **only** if the income is passive, or high taxed general category income and we have enough information to determine that the income has been passed through a mutual fund or other RIC . Otherwise correspond for either a corrected Form 1116, or written clarification that the income has been passed through a mutual fund or RIC. Refer to Pub 514, Foreign Tax Credit for Individuals for more information.

- (4) The credit on each category of income cannot exceed the proportionate amount of U.S. tax paid on that category of income. This is called the Foreign Tax Credit limitation. Therefore, the Foreign Tax Credit is limited to the lower of the Foreign Tax Credit limitation or the foreign tax paid or accrued attributable to that category of income.

Note: Refer to IRM 20.2.10.3.2, Interest on Adjustments to FTC, for information on interest computation.

- (5) For each type of income, the taxpayer totals all the foreign income taxes paid on that category of foreign source taxable income and compares it to the total U.S. tax liability multiplied by the fraction equal to the amount of that category of foreign source taxable income over world-wide taxable income.
- (6) The amount of foreign income tax paid or accrued that can be claimed as a credit against the federal income tax is subject to a ‘reduction’ or ‘scale down’ if attributable to excluded or exempt income. When income is excludable or exempt from tax (e.g., IRC 911(a), IRC 931(a) for income from sources within American Samoa, and IRC 933(a) for income from sources in Puerto Rico), the amount of foreign income taxes claimed as a credit (or deduction) must also be reduced or “scaled down” to account for the income on which no U.S. tax is paid. See Form 1116, Part III, line 12, “Reduction in foreign taxes”.

Note: If the General category income is checked at the top of Form 1116, Foreign Tax Credit, with a zero or no entry on Line 12 **and** research shows a Form

2555, then request the taxpayer compute the reduction in foreign taxes. If a claim is filed, “no consider” the claim using a Letter 916C.

- (7) The amount allocable to excludable income is determined by multiplying the foreign tax paid or accrued by a fraction of the excluded foreign earned income (minus apportioned deductible expenses) divided by the total foreign earned income (minus allocable deductible expenses).

FTC Calculation		
Excluded Foreign Earned Income, Form 2555 (or other excluded foreign income) divided by	X	Total Foreign Taxes Paid, Form 1116, Part II
Total Foreign Earned Income, Form 2555 or Form 1116, line 1 (less expenses allocable to foreign earned income)		

- (8) If income other than foreign earned income (for example, earned income from U.S. sources or a type of income not subject to U.S. tax) is taxed by the foreign government, and the taxes on such other income can't be separated, the denominator is the total amount of income subject to foreign tax less allocated deductible expenses.
- (9) If a taxpayer has qualified dividends and/or capital gains and losses adjustments to the amounts reported on line 1a (gains), line 5 (losses) and/or line 18 (taxable income before subtracting exemptions) of Form 1116 may be required.
- (10) A U.S. citizen who is a resident of a treaty country may be able to claim an additional credit for some of the taxes paid to the treaty country on U.S. source income. Many treaties do this by allowing a taxpayer to treat an amount of U.S. source income as foreign source income, thereby increasing the foreign tax credit limitation of the taxpayer. The amount of re-sourced income is figured in accordance with the applicable treaty provision. For tax years beginning on or before August 10, 2010, and tax years beginning after December 31, 2017, the additional amount of credit may be calculated by using the worksheet contained in Publication 514. This special credit is provided by the treaties of the following countries:
- Australia
 - Austria
 - Bangladesh
 - Belgium
 - Bulgaria
 - Canada
 - Czech Republic
 - Denmark
 - Finland
 - France
 - Germany
 - Iceland
 - Ireland
 - Israel
 - Italy

- Japan
- Luxembourg
- Malta
- Mexico
- The Netherlands
- New Zealand
- Portugal
- Slovak Republic
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- The United Kingdom

(11) Do not use the worksheet in Publication 514 to figure the additional credit for the following countries:

- Australia
- New Zealand

If ...	Then ...
A statement is attached to the return, claiming a Foreign Tax Credit from the countries above	Process the claim as if it is calculated on Form 1116.

(12) IRC 901(j) denies the Foreign Tax Credit for taxes paid to certain countries due to nonrecognition of the foreign government (in most instances), the severance or lack of diplomatic relations, or the classification of the foreign country as one supporting terrorism.

(13) The Foreign Tax Credit is not currently available for taxes paid to the following countries a deduction for taxes paid to these countries is permitted:

- Iran
- North Korea
- Sudan
- Syria

(14) The foreign tax credit is not available for foreign income taxes resulting from boycott activities of the taxpayer and paid to the following countries (and any other country which the taxpayer knows participates in the boycott):

- Iraq
- Kuwait
- Lebanon
- Libya
- Qatar
- Saudi Arabia
- Syria
- Yemen

21.8.1.4.7
(10-01-2012)

**Carryback and
Carryover – Foreign Tax
Credit**

- (1) If, due to a limitation, a taxpayer could not claim the credit for the full amount of qualified foreign income taxes paid or accrued in a tax year in a separate category, IRC 904(c) allows a one-year Foreign Tax Credit carryback and then a ten-year carryover of the remaining excess foreign income taxes.
 - a. The excess foreign income taxes for that separate category is treated as paid or accrued in the applicable years to the extent of any excess foreign income tax limitation (the amount by which the limitation exceeds the amount of qualified taxes originally claimed) in those years.
 - b. The excess foreign income tax must be applied to the first eligible preceding year and then subsequent years. This is regardless of the relative benefits in various years.
 - c. Because of the Foreign Tax Credit limitation, a taxpayer may only use excess credits carried to years in which there was foreign income subject to U.S. tax.
- (2) Special restrictions apply to carryback and carryover cases.
 - a. The carryback or carryover of unused foreign taxes can be claimed only as a credit, not as a foreign tax deduction.
 - b. In a carryback or carryover year in which foreign taxes were used as a deduction, no credits are allowed for the foreign taxes carried to that year, but the available carryover is reduced by the amount that would have been allowed if the taxpayer had elected the credit.
- (3) The excess foreign taxes being carried back to the preceding tax year may be claimed by filing an Amended Return - Form 1040X with a Form 1116. IRM 21.5.9.5.12.7, Carryback of Excess Foreign Tax Credit, further explains processing carryback/carryover claims and when to refer FTC Carryback claims to Examination Classification.

Reminder: If paper case use Form 3210, Document Transmittal, when referring to Examination Classification.

- (4) Neither Form 1045 nor Form 1139 may be used to carryback foreign tax credits. Taxpayers must file Form 1040X or amended returns to carryback these credits. See IRM 21.5.9.5.12.7, Carryback of Foreign Tax Credit (FTC), for specific instructions and restrictions.

If ...	Then ...
An unused foreign tax is carried back	The statute of limitation on IRS assessment and collection of any tax resulting from the carryback for that year does not close until one year after the statute closes on the year in which the carryback originated.

21.8.1.5

(10-01-2019)

Territories of the United States

(1) The following principal territories of the United States also have independent tax administrations:

- Commonwealth of Puerto Rico (PR)
- U.S. Virgin Islands (USVI)
- Guam (GU)
- American Samoa (AS)
- Commonwealth of the Northern Mariana Islands (CNMI)

(2) Individuals born in U.S. territories are U.S. citizens.

Exception: Individuals born in American Samoa are U.S. nationals but generally treated the same as U.S. citizens for tax purposes.

(3) Many individuals residing in territories are permanent residents of the U.S. because they have a “green card” and for tax purposes they are treated the same as U.S. citizens.

(4) Individuals deriving income from one or more of the above U.S. territories may be required to file a territory income tax return, a U.S. income tax return, or both, depending on residency status, and the source of the taxpayer’s income.

(5) Federal employees residing in U.S. territories required to file income tax returns with both the Internal Revenue Service (IRS) and their territory treasury are not entitled to the Recovery Rebate Credit (RRC) from the IRS.

21.8.1.5.1

(10-01-2023)

Double Taxation

(1) Procedures to settle cases of double taxation are provided in bilateral agreements between the U.S. and the following territories:

- Puerto Rico
- U.S. Virgin Islands
- Guam
- American Samoa
- Commonwealth of the Northern Mariana Islands

(2) Refer written requests for the help provided under the mutual agreement procedures to the:

Deputy Commissioner (International), Large Business and International Division
Internal Revenue Service
SE:LB:TTPO:TA:TAIT:NCA 570-03
1111 Constitution Ave, NW
Washington, DC 20224

(3) Requests for help must contain the necessary information outlined in Rev. Proc. 2006-23. Refer taxpayers to the following offices for special information about the islands:

- **PUERTO RICO**

Departamento de Hacienda
Negociado de Asistencia Contributiva
Intendente Alejandro Ramírez Building
P.O. Box 9024140
San Juan, Puerto Rico 00902-4140

- **U.S. VIRGIN ISLANDS**

Virgin Islands Bureau of Internal Revenue
6115 Estate Smith Bay Suite 225
St. Thomas, U.S. Virgin Islands 00802-1332

- **GUAM**

Department of Revenue and Taxation and Taxpayer Services
Government of Guam
P.O. Box 23607
GMF, GU 96921

- **AMERICAN SAMOA**

Tax Division
Government of American Samoa
Executive Office Building
PagoPago, AS 96799

- **CNMI**

Commonwealth of Northern Mariana Islands
Division of Revenue and Taxation
P.O. Box 5234 CHRB
Dandan Commercial Center
Saipan, MP 96950

- (4) To resolve double taxation cases, the IRS has established general ledger accounts for the following territories:
- Guam
 - Commonwealth of the Northern Mariana Islands
 - American Samoa
 - U.S. Virgin Islands
- (5) When transferring/covering over money to or from one of the U.S. Territories identified in paragraph (4) above, use Form 3809, Miscellaneous Adjustment Voucher. Accounting uses a specific Blocking Series when numbering the Form 3809. The chart below lists how Accounting numbers the document and this DLN Blocking Series gives the indication of which territory is involved in the transfer.

Blocking Series	Territory
000-009 *	Guam
010-019 *	Commonwealth of the Northern Mariana Islands
020-049 *	American Samoa (Military cover over)
050-059 *	U.S. Virgin Islands
060-099 *	Military cover over - U.S. Virgin Islands

* For use on Form 3809 by ACCOUNTING ONLY.

- (6) When preparing a Form 3753, Manual Refund Posting Voucher, for one of the territories, the following information **must** be included on the form:

Territory	Account Number in the Remarks Section	Symbol in the TXPD Area
Commonwealth of the Northern Mariana Islands	4701	20X6737
U.S. Virgin Islands	4702	20X6738
Guam	4703	20X6740
American Samoa	4704	20X6741

Note: See IRM 21.4.4, Manual Refunds, for manual refund instructions.

21.8.1.5.2
(10-01-2015)
Bona Fide Residency Defined

- (1) IRC §937 and accompanying regulations contain the U.S. tax rules for determining if an individual is a bona fide resident of a territory and whether income is territory sourced or effectively connected with the conduct of a territory trade or business. Special income tax rules apply to bona fide residents of U.S. territories.

21.8.1.5.2.1
(10-01-2019)
Bona Fide Residency Rules

- (1) Bona Fide Residency Rules – An individual is generally considered a bona fide resident of a territory if during the taxable year that individual:
- Meets the “Presence Test”,
 - Does not have a tax home outside the relevant territory, and
 - Does not have a closer connection to the United States or a foreign country than to a territory.
- (2) Presence Test - An individual satisfies the “Presence Test” for a taxable year if that individual:
- a. Was present in the relevant territory for at least 183 days during the year
 - b. Was present in the relevant territory for at least 549 days during the three-year period consisting of the taxable year and the two immediate preceding years, provided that the individual was also present in the relevant territory for at least 60 days during each taxable year of the period
 - c. Was present in the United States for no more than 90 days during the tax year and present in the territory more days than in the United States.
 - d. Earned income (pay for personal services performed, such as wages, salaries or professional fees) from the United States of no more than \$3,000.00, or
 - e. Had no significant connection to the United States during the tax year (See Treas. Reg §1.937-1(b) through 1(e)).
- (3) The following days count as days present in the territory:
- A day that the individual is also physically present in the territory at any time during the day
 - Any day that an individual is outside of the relevant territory to receive, or to accompany on a full-time basis, a parent, spouse or child who is receiving qualifying medical treatment as defined in IRC § 213(d)(1)
 - Any day that an individual is outside the territory because the individual leaves or is unable to return to the territory during any 14 day period within which a major disaster occurs within the territory (for which a

Federal Emergency Management Agency (FEMA) notice of a Presidential declaration of a major disaster is issued in the Federal Register) or period for which a mandatory evacuation order is in effect for the geographic area in the territory in which the individual's place of abode is located

Note: Notice 2018-19 extends the 14- day period to 268 days for Puerto Rico and U.S. Virgin Islands due to the impact of hurricanes Irma and Maria effective beginning September 6, 2017 and ending May 31, 2018

- Any day that an individual is in transit between two points outside the United States and is physically present in the United States for fewer than 24 hours
- Any day that an individual is temporarily present in the United States as a student as defined in 152(f)(2)
- Any day that an individual is temporarily present in the United States as a professional athlete to compete in a charitable sports event
- Any day spent serving the relevant territory as an elected representative of the relevant territory or serving full time as an appointed official or employee of the government of the relevant territory, or any political subdivision thereof (See Treasury Reg. § 1.937-1(c)(3)(ii)(E)).
- Any day that an individual is outside of the United States and the relevant territory, except that an individual is not considered present in the relevant territory for more than 30 days during the taxable year.

Note: All the exceptions above do not count as days of presence in the United States.

- (4) These rules generally apply to taxable years ending after January 31, 2006. However, taxpayers may choose to apply these rules to all taxable years ending after October 22, 2004.

21.8.1.5.2.2
(10-01-2010)
Source Rules

- (1) Source Rules - In general, IRC 937(b) and the regulations provide that the principles for determining whether income is or is not U.S. sourced are applicable for determining whether income is or is not territory sourced. The principles for determining whether income is effectively connected with the conduct of a U.S. trade or business are applicable for purposes of determining whether income is effectively connected to a territory trade or business. In addition, the regulations contain the "U.S. Income Rule," which provides that:

- Income from U.S. sources is not considered income that is territory sourced or effectively connected with the conduct of a territory trade or business, and
- Income that is effectively connected with the conduct of a U.S. trade or business is not treated as territory sourced income or effectively connected with the conduct of a trade or business in a territory.

- (2) These rules are generally effective for income earned in taxable years ending after October 22, 2004. However, the U.S. Income Rule is effective for income earned after December 31, 2004.

21.8.1.5.2.3
(10-01-2022)
**Special Source Rules for
Certain Items of Income**

- (1) The regulations provide the following special source rules:

- The regulations preserve the existing treatment of income from the sale of goods purchased or manufactured in a territory, which provide for the allocation of this income between United States and territory sources.
- The regulations provide that gains from the disposition of certain personal property by a U.S. citizen or resident who owned the property on the date they became a bona fide resident of the territory may **not** be treated as from sources within a territory. This special gain rule applies to the disposition of certain personal property like stocks, bonds, debt instruments, and other investment property like diamonds or gold that is held for investment and sold within 10 years of the date that the individual became a bona fide resident. However, the regulations allow a taxpayer to **elect** to treat as territory source the portion of gain that accrued while the taxpayer was a bona fide resident of the territory.
- The regulations also provide special rules for determining the sources of dividends and interest from territory corporations.
- The special source rules for gains, dividends, and interest apply to dispositions and amounts paid or accrued after April 11, 2005.

(2) Please see CFR 1.937-2(f) for more information on this special source rule.

21.8.1.5.3
(03-16-2023)
**Form 8898, Statement
for Individuals Who
Begin or End Bona Fide
Residence in a U.S.
Possession**

- (1) Form 8898, Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession, is created based on the American Jobs Creation Act of 2004. (See IRC 937(c)).
- (2) The Form is used to notify the IRS that an individual became or ceased to be a bona fide resident of a U.S. Possession.
- (3) Beginning with tax year 2011, the Form 8898 is filed by individuals who have worldwide gross income in the tax year of more than \$75,000.00 and meet one of the following conditions:
- a. They take a position for U.S. tax purposes that they became a bona fide resident of a U.S. territory after a tax year for which they filed a U.S. tax return as a citizen or resident of the U.S.
 - b. They are a citizen or resident of the U.S. and take the position for U.S. tax purposes that they ceased to be a bona fide resident of a U.S. territory after a tax year for which they filed an income tax return as a bona fide resident of a territory.
 - c. They take a position for U.S. tax purposes that they became a bona fide resident of Puerto Rico or American Samoa after a tax year for which they are required to file an income tax return as a bona fide resident of the U.S. Virgin Islands, Guam, or the CNMI.

Note: A penalty of \$1,000.00 may be assessed for not filing a required Form 8898 or for not providing the required information. For more information, see IRM 20.1.9.18, IRC 6688 -Reporting for Residents of U.S. Possessions (U.S. Territories).

- (4) Taxpayers are instructed to send Form 8898 to the Austin Campus. Route any Form 8898 received to the Austin Campus at:
Austin Campus
3651 South IH 35.
Mail Stop 4301 AUSC
Austin, TX 78741.

21.8.1.5.4
(10-01-2023)
**Territories and
Self-Employment Tax**

- (1) Non-resident aliens are not subject to self-employment (SE) tax unless an international social security agreement in effect determines coverage under the U.S. social security system or they are bona fide residents of a territory. If a nonresident alien return is received claiming to owe SE tax, make the assessment using normal assessment procedures.
- (2) Bona fide residents, including nonresident aliens, of the following territories are subject to SE tax:
 - Puerto Rico
 - Guam
 - American Samoa
 - U.S. Virgin Islands
 - The Commonwealth of the Northern Mariana Islands
- (3) Puerto Rican residents liable for SE tax must report and pay tax to the United States IRS on Form 1040-PR or 1040-SS. Part V or VI on Page 4 of the Form 1040-PR/1040-SS must be completed for SE Tax.
- (4) SE tax is reported and paid to the United States IRS on Form 1040-SS for residents of:
 - Guam
 - American Samoa
 - U.S. Virgin Islands, and
 - The Commonwealth of the Northern Mariana Islands
- (5) Additional information about self-employment tax, as applicable to each U.S. territory, is contained in subsequent chapters.
- (6) For 2023 the self employment tax deduction is 7.65 percent (1/2 the SE Tax rate).
 - 6.2 percent is social security
 - 1.45 percent is hospital insurance (Medicare)

Formula for Calculating Total Earnings After Self- Employment Tax Deduction
--

Total Earnings After SE Tax Deduction = Total Earnings X .9235
--

- (7) For 2023, the self-employment tax rate is 15.3 percent;
 - 12.4 percent for social security tax
 - 2.9 percent for hospital insurance (Medicare)
 - (8) The maximum net earnings subject to social security is \$160,200 in 2023. The maximum net earnings subject to the Medicare portion remains unlimited.
- (1) While the income tax rules are coordinated for an individual who is a bona fide resident of a territory, individuals are still subject to U.S. self-employment tax and that tax is payable to the IRS. Form 1040-PR and Form 1040-SS are filed by taxpayers residing in Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands or the Commonwealth of the Northern Mariana Islands (CNMI) to:

21.8.1.5.5
(10-01-2023)
**Form 1040-PR and
1040-SS**

- a. Report net earnings from self-employment and pay self-employment taxes
 - b. Pay any household employment taxes (reported on Schedule H or H-PR)
 - c. Claim excess social security tax withheld (can be used in lieu of filing Form 843)
 - d. Pay any employee social security and Medicare tax on unreported tips, wages from an employer with no social security or Medicare tax withheld, or uncollected employee social security and Medicare tax on tips or group term insurance
 - e. Claim the Refundable Child Tax Credit (only qualified bona fide residents of Puerto Rico) for 2021.
 - f. Claim the Additional Child Tax Credit (available only to qualified bona fide residents of Puerto Rico) for years before and after 2021
 - g. Report and pay the Additional Medicare Tax
- (2) Form 1040-PR and Form 1040-SS are 2 page returns with two parts :
- Part I (Total Tax and Credits)
 - Part II (Bona Fide Residents of Puerto Rico Claiming Additional Child Tax Credit). For tax year 2021, bona fide residents of Puerto Rico claimed the Refundable Child Tax Credit.
- (3) For tax year 2023 only, the Refundable Child Tax Credit (RCTC) is claimed directly on the Form 1040-PR, or Form 1040-SS.
- (4) The RCTC is entered on Part I, Line 9 of the 2023 Form 1040-PR and 1040-SS .

Note: Only bona fide residents of Puerto Rico with a qualifying child or children according to IRC § 24(c) and 152 (b)(3) can claim the RCTC on either Form 1040-PR or 1040-SS. The qualifying child or children must be U.S. citizens or U.S. nationals, unless such individuals are residents of the United States. All individuals born in Guam, CNMI, USVI, Puerto Rico, and American Samoa, are either U.S. citizens or Nationals. Effective 01-01-2002, bona fide residents of the other U.S. territories cannot claim the RCTC on an income tax return filed with the United States. Instead, eligible individuals may claim RCTC on an income tax return filed with the territory.

- (5) When RCTC is claimed, the taxpayer's city and U.S. Territory residence must be present on the document to verify residency in Puerto Rico. If not in Puerto Rico, disallow the RCTC using letter 105C and formal claim rejection procedures.
- (6) The filing status is used to accurately compute the RCTC. Five filing statuses are available on the Form 1040-PR or Form 1040-SS. They are:
- Single
 - Married filing jointly
 - Married filing separately
 - Head of Household
 - Qualifying Widow(er)
- (7) Dependent information from Part 1, line 2, Qualifying Children, is used to compute the child tax credit.

(8) Schedule 8812 is not required, but the filer must include the qualifying child or children's names, SSN and relationship on the Form 1040-SS or Form 1040-PR.

(9) There must be at least one qualifying child for the RCTC.

Note: Correspondence may be necessary to perfect a return when the TIN of the dependent is missing.

(10) The instruction booklets for Form 1040-PR and Form 1040-SS contain the specific guidelines for this credit. Do **not** use Publication 17.

(11) For tax year 2020 a new line 11 is added to enter the deferral of self-employment and household employment taxes as permitted by Section 2302 of the CARES Act (PL 116-136). The instructions, and a worksheet to be included in the instructions, will be used to calculate the deferral reported on line 11.

(12) For tax year 2021 line 11 is designated for Credit for qualified sick and family leave wages

(13) Duplicate filing conditions may result from U.S. Virgin Island bona fide resident information returns posting to Form 1040-SS accounts, or vice versa. Follow procedures in IRM 21.8.1.7.11 for processing resultant CP36 notices.

21.8.1.5.6
(10-01-2020)
**Territories and Excess
Social Security Tax**

(1) Employers in Puerto Rico, the U.S. Virgin Islands and the other U.S. Territories pay their social security tax and Medicare tax to the U.S. Government on Form 941-SS, or Form 941-PR .

(2) If the employee works for two or more employers during the same calendar year and the total social security tax withheld is greater than the maximum amount for the year, the excess social security tax withheld can be claimed on Form 1040-PR or Form 1040-SS. Employees are encouraged to file these returns to claim refund of excess social security tax withheld from two or more employers.

(3) When an individual taxpayer is claiming excess social security tax, withheld from two or more employers, but does not have a Form 1040 filing requirement, a Form 843 claim can be filed.

Note: Part I, Line 8 of Form 1040-SS and Form 1040-PR have a provision to enter excess social security tax withheld. Encourage the taxpayer to file a return in lieu of Form 843.

(4) The Form 843 claim or Form 1040-SS or 1040-PR must have a withholding statement attached:

- Form W-2
- Form W-2 AS
- Form W-2 CM
- Form W-2 VI
- Form W-2 GU
- Form 499R-2/W-2 PR or
- A letter to substantiate all credits attached

- (5) Please see IRM 21.6.3.4.2.4, Excess Social Security and RRTA Tier I Tax Credits , and IRM 21.6.4.4.18, Additional Medicare Tax, to calculate the correct amount of excess social security tax withheld.
- (6) Excess social security tax claims are processed as “Territory” claims when the taxpayer is not required to file a U.S. tax return, and as “Domestic” claims when required to file a U.S. tax return.
- (7) Territory Claims:
 - a. Most taxpayers filing excess social security tax claims are not required to file a U.S. tax return. However, Form 1040-SS or 1040-PR can be used, as there is now a provision to report excess social security tax in Part 1, Line 8 on these returns.
 - b. When the taxpayer is not required to file a U.S. return, process the claim as noted in paragraph 8, below.
- (8) Processing Territory claims:
 - a. Check the Master File (MF), using CC TXMOD or CFOL, for the possible filing of a return.

If ...	Then ...
A return is on the MF	Verify that the excess social security tax has not been previously refunded.
The refund has not been previously allowed but a return is on MF	Allow the refund, adjust the account using a TC 290.00, Reason Code 055, source Code 1 . Input Credit Reference Number 252 for the amount of the excess social security tax. Note: Input an override code of “N” on Command Code ADJ54.
There is no record of a return on the MF	Check the Automated Non-Master File (ANMF) system to determine if a claim is previously processed. If you do not have access to the ANMF, see your lead or manager for help.
A refund has been previously issued	No consider the claim. Issue a 916c letter explaining to the taxpayer their refund had been previously allowed. Follow all other procedures in IRM 21.5.3.4.6.3, No Consideration Procedures.

If ...	Then ...
A refund has not been issued and there is no return posted on MF	Process the claim, by doing the following: <ol style="list-style-type: none"> a. Prepare Form 1040-SS based on the information provided by the claimant. Ensure the proper entity information is entered on the dummy return. b. <ul style="list-style-type: none"> • Enter the excess social security on part 1, line 8 of the Form 1040-SS • On the signature line enter "signature on attached claim, do not detach" c. Maintain the signed Form 843, or taxpayer claim in the CII data base. d. Send completed Form 1040-SS for processing, attach the claim containing the taxpayer signature.

(9) Domestic Claims:

- a. Excess social security claims are processed as domestic when the taxpayer is liable to file a U.S. tax return.
- b. The adjustments are done on the Master File using IDRS.
- c. Normal interest is allowed when processing these claims.

Note: Normal interest includes consideration of IRC 6611(e)(2) (i.e., amended claims date processing). See IRM 20.2.4, Overpayment Interest.

(10) Processing Domestic claims:

Research the Master File, using CC TXMOD and/or CFOL, for the tax return consistent with the claim filed.

If...	Then...
A tax return has been filed	Verify that the excess social security tax has not been previously refunded.
The refund has been previously allowed	Advise the taxpayer and return the claim.
The refund for this credit has not been previously issued	Allow the refund, adjust the account using a TC 290 .00 and Credit Reference Number 252 for the amount of the excess social security tax. Use RC 055, SC 1, and FLC 66.

21.8.1.5.6.1
(10-01-2022)

Form 8885, Health Coverage Tax Credit Form 1040-PR and Form 1040-SS

- (1) The Health Coverage Tax Credit (HCTC) is a refundable credit that pays for 72.5 percent of eligible health insurance costs of eligible recipients of trade readjustment allowances (paid to workers displaced by trade act) as well as eligible recipients of pensions paid at least in part by the Pension Benefit Guaranty Corporation (PBGC). For territory residents, the HCTC is claimed on Form 1040-PR or Form 1040-SS.
- (2) HCTC is effective for tax years through Dec. 31, 2021. For tax years 2016 through 2021, coverage through the Health Insurance Marketplace does not qualify for HCTC.
- (3) For further background information on the HCTC refer to IRM 21.6.3.4.2.9, Health Coverage Tax credit.
- (4) For information on HCTC eligibility requirements refer to IRM 21.6.3.4.2.9.1, HCTC Eligibility
- (5) For procedures on adjusting the HCTC portion of the Form 1040-PR and Form 1040-SS accounts refer to IRM 21.6.3.4.2.9.7, Health Coverage Tax Credit (HCTC) - Adjusting the Credit.

21.8.1.5.7
(10-01-2020)

Military Spouses Residency Relief Act

- (1) Public Law No. 111-97, 123 Stat. 3007 (2009) established the Military Spouses Residency Relief Act, (MSRRA).
- (2) MSRRA was enacted on November 11, 2009 and applies to all taxable years 2009 and subsequent.
- (3) MSRRA applies to certain spouses of active duty service members (civilian spouses) who:
 - Were away from their residence or domicile (tax residence) in one of the 50 States or the District of Columbia solely to be with the service member spouse serving in compliance with military orders at a military duty station in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico or the U.S. Virgin Islands.
 - Supported their tax residence in one of the 50 States or the District of Columbia.
 - Kept the same tax residence as a service member spouse.
- (4) MSRRA also applies to civilian spouses who:

- Were away from their tax residence in one of the U.S. territories solely to be with the service member spouse serving in compliance with military orders at a military duty station in one of the 50 States or the District of Columbia.
 - Maintained their tax residence in one of the U.S. territories under MSRRA.
 - Maintain the same tax residence as a service member spouse.
- (5) Notice 2010-30 provided certain civilian spouses claiming MSRRA relief with the following:
- For eligible civilian spouses claiming tax residence in a State or the District of Columbia under MSRRA, an extension of time through October 15, 2010 for paying the amount of tax shown on a federal income tax return for the tax year ending December 31, 2009.
 - For eligible civilian spouses claiming tax residence in a U.S. territory under MSRRA, a refund of federal income taxes paid to the IRS by civilian spouses meeting certain criteria.
- (6) Notice 2011-6 dated April 8, 2011, extends the relief and procedures under Notice 2010-30 to tax year 2010. Notice 2012-41 further extends the relief set forth in Notice 2010-30 to 2011 and subsequent years.
- (7) Under Notice 2012-41, such civilian spouses may be eligible for an extension of time to pay their income tax to October 17, 2012 for the 2011 tax year. For subsequent tax years, the same procedures will be adjusted for the correct filing date. To receive the extension taxpayers should mark “MSRRA” in red ink at the top of their returns and include the Form W-2, or equivalent that they received from their employers in the U.S. territory where they worked with their returns. Civilian spouses must mail the forms to the IRS Service Center shown in the Form 1040 instructions.
- (8) Pursuant to IRC 303(a)(2)(B) of the Veterans Benefits and Transitional Act of 2018, the spouse of a service member may elect to use the same residence for purposes of taxation as the service member regardless of the date on which the marriage of the spouse and the service member occurred.
- (9) Civilian spouses filing married filing separately will also attach the following declaration:

Penalty of Perjury Statement
<p>“I am claiming _____ as my residence or domicile under the Military Spouses Residency Relief Act (“MSRRA”). Under penalties of perjury, I declare that I am qualified for relief under MSRRA because I am present in _____ solely to accompany my spouse who is a service member serving in compliance with military orders, and my claimed residence or domicile is the same as my spouse’s residence or domicile.”</p>

Note: The signature must be original. Faxed and/or stamped signatures are not acceptable.

- (10) Taxpayers present and working in one of the 50 States or the District of Columbia and claiming a tax residence in one of the territories may file a claim

for refund. The refunds will be for income tax withheld and remitted by their U.S. employers to IRS, or for estimated tax payments that the taxpayer remitted to the IRS. Taxpayers claiming a tax residence in one of the territories under MSRRA and seeking a refund will:

- Complete the correct Form 1040 and mark “MSRRA” in red ink on the top of the return.
- Attach the statement signed under penalties of perjury described in paragraph (9) above, verifying the taxpayer’s qualifications for relief under MSRRA, and
- Mail the Form 1040 and attachments to the IRS Service Center shown in the Form 1040 instructions.

(11) If civilian spouses who qualify under MSRRA call or submit correspondence requesting abatement of Failure to Pay penalties previously assessed for take the following actions:

- Research the account to verify a Failure to Pay Tax timely penalty is assessed.
- Secure an originally signed perjury statement described in paragraph (9), above from the civilian spouse or their authorized representative.
- When the perjury statement is provided, grant penalty relief for the Failure to Pay Tax Timely penalty and the amount of FTP penalty computed to the original extension date. Input transaction code 271 for the amount of the assessed penalty, use source code 1 and reason code 065.

Note: Interest cannot be adjusted under MSRRA.

(12) Refer to IRM 20.1.2.2.3.3.1, Relief for Certain Spouses of Military Personnel for more information.

21.8.1.5.8
(10-01-2015)
**Military Cover Over -
U.S. Virgin Islands,
Commonwealth of
Northern Mariana
Islands (CNMI) and
American Samoa**

(1) Pursuant to IRC 7654, the following guidelines and procedures are written to administer United States cover over of income tax to the governments of bona fide residents serving in the United States Military.

Note: Military cover over procedures for Guam are different than those used for the U.S. Virgin Islands, CNMI and American Samoa. See IRM 21.8.1.5.9 for Guam military cover over instructions.

(2) The United States Defense Finance and Accounting Service (DFAS) and U.S. Coast Guard forward to the Territories Program Manager, a listing of all Active Duty Military Personnel who claim a U.S. territory as their State of Legal Residence, along with a list of reservists whose units are in the territories. This listing includes the name, SSN, tax year, amount of military pay, and amount of tax withheld.

(3) The Territories Program Manager reviews the listings, separates them by territory and forwards them to the PAMC Planning and Analysis Staff. The PAMC Planning and Analysis Staff Analyst then forwards the listings to the international Accounts Management Department for processing.

(4) The international Accounts Management Department researches each account identified on the listing for the presence of a TC 150.

- (5) Use the following chart for determining the tax accounts to include in the cover over.

If...	Then...
The account does not have a TC 150 posted to Master File under the given SSN	Research using the Command Codes FINDS, NAMEI, NAMES and INOLE for another SSN.
No other SSN found	No action is required on the account. Annotate on the cover over listing "No return on file."
Another SSN found	Research Master File for a TC 150.
No TC 150 posted	No action is required on the account. Annotate on the cover over listing "No return on file" and reference the other SSN re-searched.
TC 150 has posted	Verify the amount of tax.
The account has a TC 150 posted with a zero- money amount and no additional tax assessment	No action is required on that account. Annotate on the DOD listing "Zero tax liability."
The account has a TC 150, TC 290 and/or TC 300 with a significant money amount	Check for a TC 768 (EIC) and or TC 766.
No TC 768 and or TC 766 posted in module	Abate the amount of the total tax assessment (TC 150, TC 290, TC 300 or a combination).
The amount of the TC 768 (Total EIC available considering all TC 768, 764, 765 on the module) and/or TC 766 is more than the total tax assessment	Input a TC 290 .00 and notate in the remarks section "SD - No cover over available". (The history sheet is the Source Document.) Also notate DOD listing.
The amount of the TC 768 (Total EIC available considering all TC 768, TC 764, TC 765 on the module) and/or TC 766 is less than the total tax assessment	Abate the amount of the total tax assessment (TC 150 amount minus the EIC TC 768/764 and any TC 766 amount). Caution: Manually recompute any restricted penalties and/or interest (e.g., TC 160, 270, 340). Abate all manually assessed penalty and interest.

- (6) If the account shows a jointly filed return of a military employee and their non-military spouse, an allocation may be necessary.

Caution: These allocation procedures only apply to American Samoa and the U.S. Virgin Islands cover overs. See IRM 21.8.1.5.9.1 for allocation procedures used for Guam and CNMI military cover over.

- (7) Cover over only the portion of the tax on the joint return attributable to the income of the military spouse. **Do not** cover over the portion of the tax attributable to the non-military spouse. To allocate the tax to be covered over, divide the income attributable to the military spouse by the total income on IMFOLR. Multiply the resulting percentage by the net tax on IMFOLT for the joint account. The result is the amount of tax to be covered over on the joint account.

Joint Account Tax Cover Over Calculation				
Military Spouse Income				Amount to Cover Over
Total Income on IMFOLR	X	Net Tax on IMFOLT	=	

Note: If the non-military spouse was issued a Form W-2AS or W-2VI and it shows income tax withheld, deduct the amount of withholding from the amount of tax to cover over since this was paid to the territory treasury.

- (8) Do not cover over tax on income earned that is not for services performed for the armed forces (for example, employment at a retail establishment in the United States prior to or subsequent to the military service in the same year).
- (9) If self-employment tax and/or unreported tip income is present, do not abate the self-employment tax or unreported tip income portions.
- (10) Upon completion of all research, prepare a “Non-Filer Listing” showing the names, SSN’s and withholding amounts for accounts where it is determined in step (5) that there is no return on file. Send the completed “Non-Filer Listing” to the Territory Program Manager through the PAMC Planning and Analysis staff prior to the input of any account adjustments.

Note: “ Non-Filer Listings” need to be prepared only for Guam, American Samoa and CNMI military cover overs since U.S. Virgin Island non-filers are identified through the regular VI cover over process.

- (11) Input all abatements using FLC 66, IRS Received Date (use current date), Category Code “**ISPJ**”, Source Code 3, Reason Code 036 (Tax Credits), **Hold Code 4**, and in remarks notate “SD-Military cover over.”
- (12) Every account identified on the list must have an annotation on the DOD listing:
 - a. The amount of the cover over, or
 - b. The explanation of why there is no cover over. The key is as follows:

Cover Over Key
1 = No return (No TC 150)
2 = No tax liability

- (13) Every account where tax is abated requires a transfer of the credit from the individual's account to the specific territory general ledger account. This transaction requires the preparation of Form 3809.
- (14) Request for Accounting to number the Form 3809 using the Blocking Series specified for the territory that you are transferring funds for taxes paid. See IRM 21.8.1.5.1 (5).
- (15) Complete the Debit Portion of Form 3809 as follows:
- Name and Address box - The individual's entity information
 - TIN - The individual's SSN
 - MFT - 30
 - Check the MF box
 - Tax period - Tax period being debited
 - Transaction date - Current date
 - 1st TC (Transaction Code) - TC 820
 - Debit Amount - TC 291 amount or available credit
- Reminder:** Consider previously assessed penalties and interest affected by the adjustment action. Any decrease in penalties or interest paid, must be added to the overpayment amount. In addition, unassessed accruals of penalty and/or interest may reduce the overpayment amount.
- (16) The total amount of the duplicate military cover overs and adjustment corrections (IRM 21.8.1.5.8.2) must be deducted from the amount covered over to the territory.
- (17) Complete the Credit Portions of Form 3809 as follows:
- a. Name and address box - specify the territory and "6900 Account"
 - b. Check the NMF Box
 - c. Transaction date - current date
 - d. 1st TC (transaction code) -TC 700
 - e. Credit amount - TC 291 amount or available credit (whichever is less)
- (18) The Explanation Box must read "Military Cover Over - territory name."
- (19) The package sent to Accounting must include the following:
- Forms 3809
 - Adding machine tape showing individual Form 3809 amounts including the total
 - Amount column totaled and noted on the DOD listing
- Note:** Amounts on the adding machine tape and the DOD listing must match.
- Clip Forms 3809, DOD listing and adding machine tape together.

- (20) When all Forms 3809 are completed and totaled, return all DOD listings and the individual Forms 3809 to the Manager for review.
- (21) After review, prepare one master refund and a cover letter listing the amount of the cover over transmittal and any repayments.

Note: A master refund and cover letter are necessary for each territory for each individual tax year.

- (22) Each military cover over must include deposit routing information. A sample of this deposit form can be found as an exhibit in revisions to this IRM prior to 1-1-2006. If this information is missing, correspond with the U.S. Territory Program Manager for routing instructions.

Reminder: Information on the Accounting procedures involved in the control and disbursement of the cover over funds can be found in IRM 3.17.79.8, Processing Miscellaneous Refunds.

- (23) Place a monitoring control under IDRS profile number 0533311112 on the accounts to await the posting of the TC 820 amounts. Check the **weekly** CCA/42/43 (ZERO OVERAGE LISTING) to ensure that by reviewing the columns, the “-K” Freeze is still reflected in the “BOC CLC FREEZE CODES” column, and the “MF MODULE BALANCE AMT” column shows a credit. If these two items are not present on the listing, it is possible that an erroneous refund of the module credit balance occurred prior to the posting of the TC 820 debit. Further research of the account is necessary if the CCA/42/43 zero overage listing items have changed in these columns, see IRM 21.4.1.5.10, Refund Intercept Command Code NOREF with Definer “P”.
- a. If credit release occurs and the TC 846 has not yet been issued (check 23C date of refund), initiate refund intercept procedures included in IRM 21.4.1.5.10, Refund Intercepts CC NOREF with Definer **P**.
 - b. If the refund is not stopped, send Letter 510C to the taxpayer requesting return of the refund check.
 - c. Coordination with the unpostable area is necessary as the TC 820 will not post if the TC 846 is not intercepted. **CAUTION:** Monitor until the TC 820 is posted.

Note: Local procedural deviations may need to be negotiated if taxpayer does not return the erroneous refund. Bring this to the managers’ attention for coordination with the Planning and Analysis Staff for resolution.

21.8.1.5.8.1
(05-27-2020)

**Subsequent
Adjustments to Military
Cover Over Accounts -
U.S. Virgin Islands,
CNMI and American
Samoa**

- (1) Adjustments may need to be input to accounts after they have been covered over. However, the tax on the account would have been abated and the credit transferred to the territory based on the military cover over procedures.
- Caution:** Refer all adjustment requests on accounts with prior military cover activity to the IMF international Department of Accounts Management by fax to (681)-247-3101 or by mail to:
Philadelphia Campus
2970 Market St.
Mail Stop 3-E17.143
Philadelphia, PA 19104

- (2) Process tax increases and zero net tax change adjustments using procedures in IRM Part 21 without cover over consideration.
- (3) Do not use a TC 291 decreasing tax since there is no tax showing on the module as a result of the cover over. The net refund due the taxpayer because of the requested adjustment is calculated, but the adjustment is not input to the account.
- (4) Input TC 290 for .00 to file the adjustment request as a source document. Input remark "subsequent adjustment to military cover over account - tax decrease per IRM 21.8.1.5.8.1."
- (5) Issue a manual refund (TC 840) to the taxpayer for the net refund amount as calculated in step (3) above with any applicable interest. Input a TC 470 to the module to prevent the issuance of any balance due notices. Refer to IRM 21.4.4, Manual Refunds, for manual refund instructions.
- (6) Accounts Management carefully monitors these cases until the credit is applied to the account from the next cover over for the territory, and TC 470 is updated as necessary, to prevent the issuance of balance due notices until the account is resolved.
- (7) Apply credit to the taxpayer account from the next cover over to satisfy the balance due situation as follows:
 - a. Debit (TC 820) the NMF 6900 account stating the name of the territory.
 - b. Credit (TC 700) the taxpayer account where the tax decrease is made.
 - c. Input a TC 570 on the credit side of the transaction to prevent the release of the credit from the T/P account when necessary.
 - d. Indicate in Remarks "Subsequent adjustment to military cover over account" to: **(name of territory)** from **(tax year)**.
- (8) Release the TC 470 notice freeze and input history items on module as follows: "MILCO-ADJ" and "21.8.1.5.8".

21.8.1.5.8.2
(10-01-2007)

**Repayment of Duplicate
Military Cover Over and
Adjustment Corrections
- U.S. Virgin Islands,
CNMI, and American
Samoa**

- (1) If a duplicate credit (TC 700) is processed to the military cover over account 6900 from a duplicate Form 3809, or a subsequent adjustment to an account previously covered over, it necessitates the repayment of credit from the territory. There is a provision to deduct these amounts as a repayment from the next year military cover over total.

Reminder: ONLY use this procedure to correct Unpostable TC 820 transfers processed in duplicate or to satisfy a balance due situation in which a refund was issued to a taxpayer for a tax decrease needed on an account that was previously covered over. DO NOT follow this procedure on erroneous refunds.

- (2) Notify the Territories Program Manager of the total repayment amount prior to the processing of the cover over disbursement to the territory.
- (3) The Territory Program Manager will advise the proper territory to contact of the amount of the repayment.
- (4) To reduce the repayment amounts from the cover over, prepare Form 3809:
 - a. Debit (TC 820) the NMF 6900 account stating the name of the territory.

- b. Credit (TC 700) the taxpayer account where the duplicate credit was transferred from or where the tax decrease was necessary.
- c. Input a TC 570 on the credit side of the transaction to prevent the release of the credit from the T/P account when necessary.
- d. Indicate in Remarks "Repayment of Duplicate Military cover over" to: **(name of territory)** from **(tax year)**.

Caution: The TC 700 and TC 820 amounts must match.

21.8.1.5.9
(10-03-2007)
**Military Cover Over -
Guam**

- (1) The United States Defense Finance and Accounting Service (DFAS) and U.S. Coast Guard forward to the Territories Program Manager, a listing of all Active Duty Military Personnel who claim Guam as their State of Legal Residence, along with a list of reservists in the territories. This listing includes the name, SSN, tax year, amount of military pay, and amount of tax withheld.
- (2) Pursuant to IRC 7654, the Service must cover over (transfer) the net withholding on these individuals to the respective territory treasury on an annual basis. After the listing is received, it is reviewed by the Territory Program Manager and forwarded to the international Analyst on the Accounts Management Planning and Analysis Staff at the Philadelphia IRS Campus.
- (3) The Department of Defense will transmit the listing of state of legal residence personnel no later than six months following the close of the wage-earning year. PAMC will commence research by November 1st with a target completion date of January 31.
- (4) The tax amounts shown on the listing are verified against IRS transcripts and the net withholding is calculated. **Do not make any adjustments to the individual taxpayer accounts.** Forward the net totals, along with documentation to establish an audit trail, to the Deputy Commissioner, International (LBI). Any accounts that are not found on the Master File get reported back to the Deputy Commissioner, International through the Territories Program Manager for forwarding to the Guam Department of Revenue and Taxation (DRT) to match against their filing records.
- (5) DRT provides verification (transcripts) of all taxpayers that they find on their file. The Territory Program Manager will add the gross amount of withholding reported on the DFAS and Coast Guard listings for those TP's who filed with DRT to the net calculated by PAMC. This amount is then reported by the Territory Program Manager to the Chief, Revenue Accounting Systems and is included in their annual certification to the Department of Interior.

Note: In this instance, the IRS does not transfer the payment to the territory treasury. Payment is made to the territory by the Department of the Interior from appropriated funds.

21.8.1.5.9.1
(01-24-2008)
**Military Cover Over -
Verification Procedures -
Guam**

- (1) Request **IMFOLT** for each subject SSN on the listing to verify that a U.S. return is filed.
- (2) If a U.S. return is filed, determine the correct amount of the net collections of tax and notate this amount on the listing. Show zero on the listing if the credits exceed the tax amount. The net tax is the TC 150 amount reduced by subtracting the self-employment tax, Earned Income Tax Credit (EITC - TC 768), Additional Child Tax Credit (ACTC), and any other applicable credits.

- (3) If the account shows a jointly filed return of a military employee and their non-military spouse, an allocation may be necessary depending on whether the threshold amounts of IRC 7654(a) are met.

Note: These allocation procedures also apply to CNMI military cover over since the income tax rules for CNMI are similar to those of Guam.

If...	Then...
The AGI on the joint return is less than \$50,000.00 and if the gross income derived from sources within Guam is less than \$5,000.00	Cover over only the portion of the tax on the joint return attributable to the income of the military spouse. Do not cover over the portion of the tax attributable to the non-military spouse. Use the formula in (4) below to determine the allocation.
The AGI on the joint return is \$50,000.00 or more and if the gross income derived from sources within Guam is \$5,000.00 or more	The tax on the income is allocated by source. Where both spouses live and work in Guam, an allocation is not necessary. Cover over the total tax shown on the joint return. Note: If the non-military spouse is issued a Form W-2GU showing income tax withheld, deduct the amount of withholding from the amount of tax to cover over since this was paid to the Guam treasury.

Note: Do not cover over tax on income earned that is not for services performed for the armed forces. For example, employment at a retail establishment in the United States prior to or subsequent to the military service in the same year.

- (4) To allocate the covered over tax, divide the income attributable to the military spouse by the total income on IMFOLR. Multiply the resulting percentage by the net tax on IMFOLT for the joint account. The result is the amount of covered over tax on the joint account.

Cover Over Allocation Calculation				
Military Spouse Income	X	Net Tax on IMFOLT	=	Amount to Cover Over
Total Income on IMFOLR				

- (5) A separate “non-filer listing” is prepared by the employee performing the verification to record the name, SSN, and gross withholding as reported on the listing of everyone who did not file a U.S. tax return. Each page of the listing must reflect the verified total net tax amount on that page.
 - a. Notate the non-filer listing “**No Return**” if IDRS research shows that no U.S. tax return, other than a Form 1040-SS, has posted to the account. Do not mark the listing “**No Return**” if research shows that the taxpayer filed a joint return under the spouses TIN.

Note: If a “-C” freeze (Combat Zone Indicator) is present on the account, notate the non-filing listing with a “**C**”.
 - b. Input a TC 971 Action Code 150 on the account. Use the return due date as the transaction date and type “military double non-filer” in the remarks field.

Note: If the entity is not present on Master File, input a TC 000 to establish the entity, monitor for the transaction to post, then input the TC 971 Action Code 150. Use the address of the Philadelphia Accounts Management Campus because no notices will be sent since these are not our taxpayers.
- (6) Forward the annotated and totaled DOD listing, along with the “non-filer listing” prepared in step (5) above to the Territory Program Manager through the PAMC Planning and Analysis staff after researching and verifying all accounts on the listing.

21.8.1.5.9.2
(11-03-2017)
Unpostable Code 141 - Reason Code 0

- (1) There is an agreement between the IRS and the territories of Guam and American Samoa whereby cover over is paid on military non-filers with the
- (2) Returns that try to post to an account with a TC 971 Action Code 150 will unpost since these accounts have been covered over and the taxpayer must file with the respective territory. Unpostables will void the DLN and send the returns to Philadelphia Accounts Management, Building Location Number 3-E17.143 to be worked by the international departments.

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Exception: Form 1040-SS returns will not unpost.

- (3) PAMC must research to ensure that the taxpayer is listed on the cover over record for the tax period in question.

If ...	Then ...
The taxpayer is not listed on the cover over record	<ul style="list-style-type: none"> a. Input TC 972 Action Code 150. b. Reinput the return for processing.

If ...	Then ...
The taxpayer is listed on the cover over record	<ol style="list-style-type: none"> a. Close the IDRS unpostable control base. b. Line out the DLN and <u>circle out</u> the IRS received date. c. Notate on the cover over record the date that the return is sent to the correct territory. d. Send taxpayer Letter 86C to advise them that their tax return is being sent to the correct territory (Guam Department of Revenue and Taxation or American Samoa Tax Division) and not to contact IRS for the status of their refund, if applicable. e. Send the return to the Guam Department of Revenue and Taxation or American Samoa Tax Division using the “international” option on Form 9814, Express Services Routing Form. The shipping information is listed below.

Guam Department of Revenue and Taxation
Income Tax Assistance and Processing Branch
Attn: Paul Terlaje or Lawrence Terlaje
1240 Route 16
Barrigada, Guam 96913
Phone: (671) 635-1842

The address for American Samoa is:
American Samoa Tax Division
Executive Office Building.
PagoPago, AS 96799

21.8.1.6
(10-01-2019)
Puerto Rico

- (1) Puerto Rico is a self-governing commonwealth in association with the United States. The major difference between Puerto Rico and the 50 states is that bona fide residents of Puerto Rico are generally exempt from U.S. income tax on Puerto Rico source income.
- (2) Puerto Rico’s tax system is patterned after the U.S. tax system but there are variations in law and tax rates. U.S. citizens who have income derived from Puerto Rican sources may be liable for payment of Puerto Rican taxes. The U.S. citizen may also be liable for filing a U.S. tax return. The source of the income is an important factor in determining the tax liability of the income.
- (3) Wages earned by U.S. citizens for services performed in Puerto Rico for private employers are considered income from Puerto Rico sources.
- (4) Specific rules apply to residents of Puerto Rico who are employees of the U.S. government. As explained later, a U.S. return must be filed and Form 1116 used to calculate the Foreign Tax Credit to avoid double taxation.

- (5) Form 1040-PR, a Spanish language version of the Form 1040-SS, is used to report self-employment tax which is filed with the IRS in addition to the income tax return filed with Puerto Rico.

Note: Route inquiries concerning Form 1040-PR to the IMF international Department at the Philadelphia Campus via an e-4442 or prepare a paper Form 4442. Do not route non-form specific inquiries, such as installment agreement requests, to Philadelphia. Work these inquiries at the receiving site.

21.8.1.6.1
(10-01-2020)

**Filing Requirements and
Foreign Tax Credits -
Puerto Rico**

- (1) Use the following chart to determine the taxpayer's filing requirement for income tax and self-employment tax and Foreign Tax Credit. Publication 570, Tax Guide for Individuals with Income from U.S. Possessions, is also helpful.

If the taxpayer is...	And...	Then...
a bona fide resident of Puerto Rico (PR) for the entire tax year	has U.S. or other foreign-source income and PR source income	<ul style="list-style-type: none"> • a PR tax return must be filed reporting income from worldwide sources. Wages for services performed in PR, whether for a private employer, the U.S. Government, or otherwise, is reported on the PR return. A Foreign Tax Credit can be claimed on the PR return for income taxes paid to U.S. on U.S. source income, and U.S. government wages earned in PR. • a U.S. tax return must be filed reporting income from worldwide sources, but excluding PR source income. Exception: Wages earned in PR from U.S. Government or any of its agencies cannot be excluded. • A Foreign Tax Credit can be claimed on the US return for income taxes paid to PR.
a bona fide resident of PR for the entire tax year	<ul style="list-style-type: none"> • has only PR source income, and • does not have wages earned in PR from U.S. Government or any of its agencies, and • has no U.S. or other foreign source income. 	<ul style="list-style-type: none"> • a PR tax return must be filed reporting income from worldwide sources • the taxpayer does NOT have a U.S. income tax return filing obligation.

If the taxpayer is...	And...	Then...
a U.S. citizen or resident alien, and is NOT a bona fide resident of PR for the entire tax year	has U.S. and PR source income	<ul style="list-style-type: none"> • a PR tax return must be filed reporting only PR source income, including wages earned in PR from U.S. Government or any of its agencies. • a U.S. tax return must be filed reporting income from worldwide sources. Form 1116 can be used to claim a credit for income taxes paid to PR on PR source income.
a U.S. citizen or resident alien, and is NOT a bona fide resident of PR for the entire tax year	<ul style="list-style-type: none"> • has only PR source income, including wages earned in PR from U.S. Government or any of its agencies, and • has no U.S. source income 	<ul style="list-style-type: none"> • a PR tax return must be filed reporting only PR source income, including wages earned in PR from U.S. Government or any of its agencies. • a U.S. tax return must be filed reporting income from worldwide sources. Form 1116 can be used to claim a credit for income taxes paid to PR on PR source income.
a nonresident alien, and is NOT a bona fide resident of PR for the entire tax year	has U.S. and PR source income	<ul style="list-style-type: none"> • a PR tax return must be filed reporting PR source income. • a U.S. tax return (Form 1040-NR) reporting U.S. source income and following the rules for a U.S. nonresident alien.
married filing a joint return but living apart, with one residing in the U.S. and the other a bona fide resident of PR		the taxpayers must report income under the general rules above.
a member of the U.S. Armed Forces stationed in PR , and has a “state of legal residence” in the U.S, or the member’s civilian spouse is eligible for MSRRA benefits.		the military member or the civilian spouse are not considered bona fide residents of P R, and must file income tax returns based on the rules for U.S. citizens not considered bona fide residents of PR.

If the taxpayer is...	And...	Then...
a bona fide resident of PR and U.S. citizen or resident	<ul style="list-style-type: none"> has income from a trade or business, and is or is not required to file Form 1040 (U.S.) 	a Form 1040, or a Form 1040-SS, U. S. Self-Employment Tax Return, must be filed to report self-employment income and pay self-employment tax, in addition to the income tax return filed with PR.

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local routing procedures and include CC DDBKD prints for each dependent listed on the Form 1040-PR.

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21.8.1.6.2
(10-01-2019)
Allocation of Deductions and Credits - Puerto Rico

- (1) Taxpayers required to file both a U.S. income tax return and a Puerto Rico income tax return may not claim deductions or credits applicable to exempt PR income on their U.S. income tax return.
- (2) Deductions which do not specifically apply to any particular type of income are allocated between the PR sources and income from other sources to find the amount of deductions claimed on their U.S. tax return.
- (3) The following are examples of deductions which do not definitely apply to a particular type of income:
 - Alimony payments
 - Standard deductions
 - Certain itemized deductions (i.e., medical expenses, charitable contributions, real estate taxes and mortgage interest)
- (4) Use the following formula to determine the allowable portion of the deductions.

Allowable Deduction Calculation				
gross income subject to U.S. tax	X	deductions	=	allowable portion of deductions
gross income from all sources				

- (5) Personal exemptions are allowed in full.

Note: The personal exemption deduction is suspended for all taxpayers for tax years 2018 through 2025
- (6) Any U.S. citizen who must report Puerto Rico source income on their U.S. tax return may claim a Foreign Tax Credit on the U.S. return, to the extent computed on Form 1116 for income taxes paid to Puerto Rico on Puerto Rico source income. Form 1116 is attached to the U.S. tax return, Form 1040.

Pursuant to the terms of an agreement with the United States (5 U.S.C. Section 5517), withholding taxes for Puerto Rico resident who are U.S. government employees are paid directly to Puerto Rico. For more information refer to Pub 80, (Circular SS), Federal Tax Guide for Employers in US Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

- (7) When computing the Foreign Tax Credit, taxpayers who have both excludable and non-excludable income from Puerto Rican sources must reduce the foreign tax paid or accrued by the taxes allocable to the exempt income. Use the following formula to determine the reduction in foreign taxes.

Tax Reduction Formula				
Income from PR sources not subject to U.S. tax less deductible expenses allocable to that income	X	Tax paid or accrued to Puerto Rico	=	Reduction in Foreign Taxes
Total income subject to PR tax less deductible expenses allocable to that income				

- (8) **The only withholding tax credit that is allowed on a U.S. income tax return filed by a bona fide resident of Puerto Rico is that paid to the United States.** Taxpayers may also be allowed a Foreign Tax Credit on their U.S. income tax return for income tax paid to a U.S. territory.
 - a. The only withholding that is allowed is the withholding on W-2s that have an address in one of the 50 states or the District of Columbia.
 - b. If the address of the employer is not in one of the 50 states or the District of Columbia, disallow the credit.
- (9) Consider social security tax paid on a Puerto Rico W-2 when verifying excess social security tax claimed on Form 1040.

21.8.1.6.3
(10-01-2022)
**Child Tax Credit (CTC)
for U.S. Government
Employees in Puerto
Rico**

- (1) A child tax credit is allowed for each qualifying child under the age of 17 at the end of the year. For tax year 2021, the credit is allowed for each qualifying child under the age of 18 at the end of the year.
- (2) The Child Tax Credit may be both a non-refundable credit and a refundable credit. Refer to IRM 21.6.3.4.2.8, Additional Child Tax Credit for information on Schedule 8812, Credits for Qualifying Children and Other Dependents.
- (3) The credit has different rules depending on the tax year. **For tax year 2021:**
 - credit is \$3,000 for children ages 6 through 17 and \$3,600 for children ages 5 and under by December 31, 2021
 - the entire credit is refundable
 - no earned income is required
 - the qualifying child **must have an SSN issued before the due date of the return** (including extensions)

- the taxpayer and spouse, if filing jointly, must have a valid SSN or ITIN issued by the due date of the return (including extensions)
- the total of the Child Tax Credit is phased out by \$50 for each \$1,000 (or fraction thereof) the AGI exceeds \$150,000 in the case of a joint return/qualifying widow(er), \$112,500 if HOH, \$75,000 for all other filing statuses
- when the 2021 increased CTC amount is reduced below what would have otherwise been applicable based on prior legislation, then the rules for tax years 2018-2020 and 2022-2025 apply (as shown below)
- Form 1040 Schedule 8812 is required to claim CTC.

For tax years 2018 to 2020:

- the credit is \$2,000 per child, \$1,400 is refundable
- the earned income threshold for making the credit refundable is decreased from \$3,000 to \$2,500
- the child must have an **SSN** issued **before** the due date of the return
- the credit is phased out by \$50 for each \$1,000 or fraction thereof the AGI exceeds \$400,000 in the case of a joint return, \$200,000 for all other filers.

Note: IRC 24 provides a \$500 Credit for Other Dependents (ODC) for those dependents that do not qualify for the Child Tax Credit. The credit is for tax years 2018 - 2025. The credit is claimed on Schedule 8812. For further information on The Credit for Other Dependents see IRM 21.6.3.4.1.24.3, Credit for Other Dependents.

For tax year 2022

- credit is \$2,000 per child, up to \$1,500 is refundable
- the qualifying child **must have an SSN issued on or before the due date of the return** (including extensions)
- the taxpayer and spouse, if filing jointly, must have a valid TIN issued on or before the due date of the return (including extensions)
- the total of Child Tax Credit and Credit for Other Dependents is phased out by \$50 for each \$1,000 (or fraction thereof) the AGI exceeds \$400,000 in the case of a joint return, \$200,000 for all other filing statuses
- Schedule 8812 is required for those taxpayers claiming the Additional Child Tax Credit (ACTC).

For tax years 2017 and prior:

- the credit amount is \$1,000 per child
- the child must have a valid ITIN, SSN, or ATIN. For returns / amended returns filed after Dec. 18, 2015, it is required that the TIN is issued by the due date of the return (including extensions)
- the credit is phased out by \$50 for each \$1,000 that the AGI exceeds \$110,000 for married filing jointly; \$55,000 for married filing separately; and \$75,000 for all other others.

(4) The Child Tax Credit reduces the amount of tax owed by the taxpayer. In addition, if the credit exceeds the tax liability, **U.S. Government employees in Puerto Rico** can claim the difference as a refund. Refer to the Form instructions and in Publication 972, Child Tax Credit for details on how to compute the credit.

(5) To claim the Child Tax Credit, the taxpayer must file Form 1040.

Note: U.S. Government employees need to file their Form 1040 with the IRS and their Form 481/482 with the Department of Hacienda - Puerto Rico. They can also qualify for Child Tax Credit and the Additional Child Tax Credit.

(6) U.S. Government employees in Puerto Rico are able to reduce their Federal tax liability by the amounts listed in paragraph 3 above for each qualifying child under 17 years of age (under 18 years of age for tax year 2021). A qualifying child for this credit is someone who:

- Is claimed as a dependent on the tax return
- Is a son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, half- brother, half- sister, or a descendant of any of them (for example, your grandchild, niece, or nephew). A foster child is any child placed with you by an authorized placement agency or by a judgment, decree, or other order
- Is under the age of 17 (under the age of 18 for tax year 2021) at the end of the tax year
- Was a U.S. citizen, U.S. national, or a U.S. resident alien.

Caution: The Child Tax Credit is **not** available on Form 1040 to bona fide residents of PR who are not U.S. Government employees.

(7) The “Protecting Americans from Tax Hikes (PATH) Act of 2015” signed into law on December 18, 2015 prohibits an individual from retroactively claiming the child tax credit by amending (or by filing an original or supplemental return) for any year in which the taxpayer, spouse, or qualifying child did not have a valid TIN issued on or before the due date, or extended due date of the return. This provision applies to any return, or claim filed after December 18, 2015, as well as math error responses received after that date. For more information of processing these claim types refer to IRM 21.6.3.4.2.8.2, ACTC Adjusting The Credit.

21.8.1.6.3.1
(10-01-2022)
**Advance Child Tax
Credit-Tax Year 2021**

- (1) To be eligible to receive Advance CTC, the taxpayer (in the case of a joint return, either spouse) must have their main home in the 50 states or the District of Columbia.
- (2) No US territory resident is eligible for the ADVCTC from the IRS. However, Bona fide residents of Puerto Rico but may be eligible for the \$3,000/\$3,600 credit per child when filing
- 2021 Form 1040-PR
 - 2021 Form 1040-SS
- (3) Non-resident aliens do not qualify for Advance CTC payments based on paragraph 2 above.
- (4) Callers on the non-toll free international line with Advance CTC questions will be referred to the information found on <https://www.irs.gov/>.
- (5) For more information refer to IRM 21.6.3.4.1.24.2, Advance CTC

21.8.1.6.3.2
(03-10-2022)

**Advance Child Tax
Credit-Tax Year 2021
Payment Reconciliation**

- (1) In January 2022, the IRS mailed Letter 6419, Reconciliation Statement, to each taxpayer who received Advance CTC payments.
- (2) Taxpayers who received Advance Child Tax Credit (AdvCTC) payments complete Schedule 8812, Credit for Qualifying Children and Other Dependents, to reconcile the amount of payments received with the amount of Child Tax Credit (CTC) they can properly claim on their 2021 return.
- (3) For complete information about the ADVCTC reconciliation process, and procedures on adjusting affected tax accounts refer to IRM 21.6.3.4.1.24.2.1, Reconciling the Advance Child Tax Credit Payments.

21.8.1.6.3.3
(03-10-2022)

**Additional Child Tax
Credit (ACTC) for Non-
U.S. Government
Employees in Puerto
Rico**

- (1) The procedures in this IRM section pertain to tax years prior to 2021. For tax year 2021 see IRM 21.8.1.6.4.
- (2) Additional Child Tax Credit allows qualifying taxpayers to get a refund if the amount of their Child Tax Credit exceeds their tax liability.
- (3) Qualified residents of Puerto Rico are encouraged to file Form 1040-PR where the Additional Child Tax Credit can be claimed directly on the tax return by completing Parts I and II. The Schedule 8812 is not necessary when the Form 1040-PR or Form 1040-SS is used.
- (4) Qualifying taxpayers are those taxpayers that:
 - Are bona fide residents of Puerto Rico for the tax year
 - Have social security and Medicare taxes withheld from their wages, or the taxpayer paid self-employment tax
 - For tax years 2020 and prior, have **three** or more qualifying children with valid taxpayer identification numbers (TIN). **This does not apply for tax year 2021 or any later years.**
- (5) A qualifying child for purposes of the child tax credit for tax years 2005 and subsequent is a child who:
 - Is a son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, half- brother, half- sister, or a descendant of any of them (for example, your grandchild, niece, or nephew). A foster child is any child placed with you by an authorized placement agency or by a judgment, decree, or other order and
 - Is under the age of 17 (over 18 for tax year 2021) at the end of the tax year.
 - Is younger than the taxpayer (or the taxpayer's spouse, if filing jointly) or is permanently and totally disabled.
 - Did not provide over half of their own support for the tax year.
 - Lived with the taxpayer for more than half of the tax year or an exception applies.
 - Is not filing a joint return for the tax year or is filing a joint return for the tax year only to claim a refund of estimated or withheld taxes.
 - Was a U.S. citizen, U.S. national, or a U.S. resident alien.
- (6) Validate the claim for the Additional Child Tax Credit prior to adjusting the account.

Note: Refer to the current Form 1040-PR/1040-SS instructions for guidance on allowing ACTC.

(7) Allow claims with Form 1040 or Form 1040X (if TC 150 is present) in lieu of Form 1040-PR or Form 1040-SS when the taxpayer provides documentation. This documentation includes:

- a. Names and SSN's of qualifying children. For tax years 2018-2025, the child's SSN must be valid for employment and issued before the return due date (including extensions).

Note: The Protecting Americans from Tax Hikes (PATH) Act of 2015 signed into law on December 18, 2015 prohibits an individual from retroactively claiming the child tax credit by amending (or by filing an original or supplemental return) for any year in which the taxpayer, spouse, or qualifying child did not have a valid TIN issued on or before the due date, or extended due date of the return. This provision applies to any return, or claim filed after December 18, 2015, as well as math error responses received after that date. For more information of processing these claim types refer to IRM 21.6.3.4.2.8.2, Adjusting The Account.

- b. The primary, secondary and dependent TIN(s) on Form 1040/1040A must be valid.
- c. Schedule 8812 must be attached to Form 1040/1040A and be completed.
- d. Credit on Schedule 8812 must be recomputed.
- e. Verify that the amount on Schedule 8812 is the same as on Form 1040.
- f. Form W-2PR must be attached to Form 1040/1040-PR/1040-SS/1040-X.
- g. Ensure the Additional Child Tax Credit does not exceed the amount of social security, Medicare and Railroad Retirement tax withheld or the allowable percentage of the SE tax paid. If there are both wages and SE tax paid, the ACTC credit cannot exceed the amount of social security, Medicare and Railroad Retirement tax withheld plus the allowable percentage of the SE tax paid.

Note: See the **Additional Child Tax Credit Worksheet** for the allowable percentage on Page SS-7 of the *Instructions for Form 1040-SS*.

- h. If the claim is complete and valid, allow the Additional Child Tax Credit using TC 29X, Reference Code 336 to generate a TC 766. Use Reason Code 061 (Payments and/or Credits).

Note: When reversing Reference Code 336, a TC 29X with Reference Code 336 (with - minus) generates a reversal TC 767. Reason Code 061 (Payments and/or Credits) must be used.

Reminder: It is not necessary to input item reference number 887 to record the number of qualifying children since they are not dependents for purposes of an exemption deduction to reduce taxable income.

- (8) When the Form 1040 series is a married filing joint return and the original return is other than a married filing joint return, follow the procedures in (6) above with the following considerations:
- a. Check for copies of Form 1040-PR and Form 1040-SS, when applicable.
Note: If the only purpose that the Form 1040-PR and Form 1040-SS serve is to validate that the self-employment tax is paid - DO NOT ADJUST THE TAX.
 - b. Change the taxpayer's entity to married filing joint under the primary SSN. This allows the issuance of a joint refund check.
Caution: When changing the ENMOD and the spouse has a different name, place brackets i.e., [surname] around the primary taxpayer's surname. For further information refer to IRM 3.13.5.120.10, Inputting Name Changes for (Married Filing Jointly) Taxpayers.
- (9) When the Form 1040 is not filed but is needed, or Schedule 8812 is incomplete and is not perfected using the information available, proceed as follows:
- a. If the Schedule 8812 is incomplete and Form 1040 is not processed (no TC 150 posted), "X" out the received date and reject the claim using IDRS 916C letter.
 - b. If the Schedule 8812 is incomplete and Form 1040 is processed (TC 150 posted), "X" out the received date and reject the claim using IDRS 916C letter. Input a TC 290 for .00 and attach a copy of the Schedule 8812 request. Use the return and Schedule 8812 copy as the Source Document.
Caution: Do not return a numbered TC 150/976 document or a statute year return to the taxpayer.
- (10) When the Schedule 8812 is complete (all necessary documentation is attached) and the claim for Additional Child Tax Credit is verified, allow the credit using Reference Code 336 which generates a TC 766 credit. Follow procedures in (6) when applicable.
- Note:** The **Protecting Americans from Tax Hikes (PATH) Act of 2015** signed into law on December 18, 2015 prohibits an individual from retroactively claiming the child tax credit by amending (or by filing an original or supplemental return) for any year in which the taxpayer, spouse, or qualifying child did not have a valid TIN issued on or before the due date, or extended due date of the return. This provision applies to any return, or claim filed after December 18, 2015, as well as math error responses received after that date. For more information of processing these claim types refer to IRM 21.6.3.4.2.8.2, Adjusting The Account.
- (11) Previously allowed Additional Child Tax Credit appears on the tax account screen as a TC 766 with Reference Code 336.
- (12) When the credit is partially or fully reversed, the tax account shows a TC 767 with Reference Code 336.
- (13) Disallow the credit if it has been previously allowed. See IRM 21.6.3.4.2.8, Additional Child Tax Credit (ACTC), for more information.

- (14) For tax year 2015 and subsequent, filers of Form 2555 cannot claim the credit.
- (15) For tax year 2021, Puerto Rico residents who aren't government employees will claim the "Refundable Child Tax Credit" on Form 1040-PR or Form 1040-SS no social security or Medicare taxes or self-employment taxes are needed to claim the refundable CTC. The CTC for 2021 is fully refundable.

21.8.1.6.3.4
(10-01-2022)

Additional Child Tax Credit (ACTC) for U.S. Government Employees in Puerto Rico

- (1) The procedures in this IRM section pertain to tax years other than 2021. For tax year 2021 see IRM 21.8.1.6.4
- (2) The Additional Child Tax Credit is the refundable portion of the Child Tax Credit available to a person with one or more qualifying children. The Additional Child Tax Credit allows individuals whose tax liability is less than the full amount of the Child Tax Credit to receive a refund.
- (3) The Additional Child Tax Credit for one or two qualifying children is computed based on 15 percent of the earned income (that is considered in computing the taxable income) more than \$3,000.00 (\$2,500 for tax years 2018 through 2025).
- For tax years prior to 2018, the total maximum child tax credit is \$1,000.00 per child.
 - For tax years 2018 through 2020, the maximum child tax credit amount is \$2,000 of which \$1,400 is refundable.
 - For tax year 2023, the maximum child tax credit amount is \$2,000, of which \$1,500 is refundable.

Follow procedures in IRM 21.6.3.4.2.8, Additional Child Tax Credit (ACTC). There is a different computation for three or more qualifying children.

Note: Schedule 8812, Credits for Qualifying Children and Other Dependents, is used to figure the additional credit and attached to Form 1040/1040A. See Publication 17 and Publication 972 for more information on the Additional Child Tax Credit.

Note: For tax year 2021, U.S. government employees will claim the "Refundable Child Tax Credit" on Form 1040 or 1040-SR. It will be fully refundable, regardless of earned income.

- (4) For tax year 2015 and subsequent, filers of Form 2555 cannot claim the credit.

21.8.1.6.4
(03-10-2022)

Refundable Child Tax Credit for Bona Fide Residents of Puerto Rico

- (1) Under the American Rescue Plan (ARP), the child tax credit has been enhanced for 2021
- (2) Bona Fide residents of Puerto Rico can claim the Refundable Child Tax Credit (RCTC):
- if they didn't work and if they received no income. They are not required to have social security or Medicare taxes withheld, or have paid self-employment (SE) tax
 - if they only have one qualifying child
 - may receive an enhanced credit amount of up to \$3,600 for a qualifying child under age 6 and up to \$3,000 for a qualifying child over age 5 and under age 18.

21.8.1.6.5
(11-03-2017)
**Self-Employment Tax -
Puerto Rico**

- (1) Bona fide residents of Puerto Rico generally do not pay income tax to the U.S. on income sourced in Puerto Rico, however they do pay self-employment tax to the United States on income from a Puerto Rico trade or business.
- (2) Residents of Puerto Rico with income from a trade or business from sources within Puerto Rico, not required to file Form 1040 (U.S.), must file Form 1040-PR, Planilla Para La Declaracion De La Contribucion Federal Sobre el Trabajo por Cuenta Propia, or Form 1040-SS, U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico), with the United States to report self-employment income and pay self-employment tax, in addition to the income tax return filed with the Government of Puerto Rico.
 - a. The Form 1040-PR and the Form 1040-SS resemble a combination of Form 1040 Schedules C, F, SE and Schedule 8812. It also has a provision in Part I, line 4 to enter the total tax from Anexo H-PR.
 - b. See IRM 21.8.1.5.5 for information on the use of Form 1040-PR and Form 1040-SS.
- (3) Bona fide residents of Puerto Rico, who have both U.S. source income and self-employment income of \$400 or more, must file Form 1040 to report U.S. source income and attach Schedule SE to report self-employment tax.

Note: When only self-employment income is earned and Form 1040 is not required, the self-employment income is reported on Form 1040-PR or 1040-SS.

- (4) When the taxpayer files both Form 1040 and Form 1040-PR,
 - a. If the Form 1040 posted first, do not change ENMOD when the account is adjusted to assess the Form 1040-PR.
 - b. If the Form 1040-PR posted first, change the ENMOD to the information on the Form 1040, when the 1040 is processed.
- (5) The posting of an amended Form 1040-PR generates the following CP notices:
 - CP29, if an original return is **not** posted
 - CP36, if an original return is posted
- (6) Taxpayers who file U.S. Form 1040 and exclude self-employment income reported on either the Form 1040-PR or 1040-SS from their gross income, **cannot** take the deduction of one-half of the self-employment Tax on Form 1040.

21.8.1.6.6
(10-01-2023)
**Household Employment
Taxes - IMF Procedures**

- (1) The Social Security Domestic Employment Reform Act (SSDERA) of 1994 provides that domestic service employment taxes are now collected with income tax rather than employment taxes.
- (2) Domestic employees under the age of 18 are excluded from coverage if being a "Domestic Employee" is not their principal occupation. This provision is effective regardless of the amount of wages paid to the employee under 18.

Note: A "student" is considered an occupation.

- (3) A domestic employee receiving less than \$2,600.00 from an employer for tax year 2023 is not subject to Household employment taxes. The thresholds for prior years are as follows:
- a. \$2,400 for 2022 and \$2,300 for 2021.
- (4) Wages paid are reported on the domestic employers Schedule H/H-PR attached to Form 1040, Form 1040-NR, Form 1040-PR, Form 1040-SS, or Form 1041. Domestic employers not required to file a Form 1040, Form 1040-NR, Form 1040-PR, or Form 1040-SS must file a “stand-alone” Schedule H/H-PR.

Note: On a “stand-alone” Schedule H/H-PR, Submission Processing prepares a dummy Form 1040, Form 1040-NR, Form 1040-PR, or Form 1040-SS with a Return Processing Code of “Y” or Form 1041 for BMF accounts.

- (5) Employers reporting the additional tax with their individual taxes report the tax on schedule 2 and line 23 of Form 1040, line 23b of Form 1040-NR, or line 4 of Form 1040-SS.
- a. Include this additional tax with the TC 150 amount.
 - b. Use the right Blocking Series and RC 050 to adjust employment taxes from Schedule H/H-PR.

Caution: See IRM 21.6.4.4.8, Schedule H, Household Employment Taxes, for more instructions.

- (6) Social Security Domestic Reform Amendments (SSDERA) of 1994 requires the Schedule H/H-PR be filed for a calendar year.

Note: Fiscal year filers must report wages paid on a calendar year basis.

- (7) Employers who pay wages for employment, other than domestic employment, may choose to pay the employment taxes for the domestic employment with the employment taxes for the non-domestic employment (e.g., Form 941).
- (8) See IRM 21.7.2.3.4, Deposits, for deposit requirements.

21.8.1.6.7
(10-01-2015)
Schedule H/H-PR

- (1) Schedule H/H-PR has four parts:
- a. Part I - Social Security, Medicare, and Federal Income Taxes (Contribuciones al Seguro Social y al Medicare);
 - b. Part II - Federal Unemployment (FUTA) Tax (Contribucion Federal para el Desempleo (FUTA));
 - c. Part III - Total Household Employment Taxes (Total de Contribuciones sobre el Empleo de Empleados Domesticos); and
 - d. Part IV - Address and Signature (Direccion y Firma). Part IV is completed ONLY if the employer is not required to file a tax return or is filing a Form 1041.
- (2) A schedule H/H-PR must be present if an amount is present in Part I, Line 4 of the Form 1040-PR/1040-SS.
- (3) Schedule H/H-PR may be filed by both the Primary and Secondary taxpayers for international Form 1040 filers.

Note: Use IRM 21.6.4.4.8.5, Schedule H, Household Employment Taxes, - Social Security, Medicare, and Income Taxes Part 1, when adjusting the Schedule H for secondary taxpayers. Schedule H for Form 1040-NR and Schedule H-PR may be filed only by the primary taxpayer. The international 1040-NR program allows for input and adjusting of the primary employment taxes.

- (4) Use the Item Adjustment Code chart below to determine the correct reference numbers to use to adjust Part I, Social Security, Medicare, and Federal Income Taxes.

TITLE	ITEM ADJUSTMENT CODES
Adjusted total of income tax withheld (if requested by employee)	003
Taxable social security wages	004
Adjusted total of SSA/Medicare Tax	007
Taxable Medicare wages	073
Additional Medicare Tax (AdMT)	074

- (5) FUTA State Codes currently valid with MFT 10 must be input for adjusting the primary taxpayer information. The FUTA State Code is a three- character code made up of T (for RN 997) or W (for RN 998) followed by a two- character state.
- (6) The three character State Code input is systemically converted to the applicable reference number.

State Code Input	Computer Generated Reference Number	Reference
TPR	997	Taxes
WPR	998	Wages

Note: After “T” or “W”, the correct two - digit state abbreviation is used.

Example: The taxpayer reports \$1,200.00 FUTA tax paid to **Puerto Rico**. The tax examiner inputs State Code TPR for \$1,200.00 and the computer generates a TC 997 for \$1,200.00.

21.8.1.6.8
(10-01-2015)
**Interest- Free
Adjustments**

- (1) The interest-free provisions for adjustments on employment taxes are in effect for errors discovered on the Schedule H/H-PR. See IRM 20.2.10.5.3, Household Employment Taxes, for more information. The provisions apply to errors discovered on or after January 1, 2009. See Treas. Reg. 31.6205-1, 31.6413(a)-1, and 31.6413(a)-2. Additional information is also found in TD 9405, Employment Tax Adjustments and Publication 926, Household Employer’s Tax Guide.

- a. The interest-free provisions may apply to adjusted returns and original returns in certain cases of worker mis-classification. The adjustment to Schedule H is made by filing a Form 1040X with a corrected Schedule H (together being an adjusted return), or just an amended Schedule H if the employer has no Form 1040 filing requirement.
- b. Taxes imposed under the Federal Unemployment Tax Act FUTA (Part II, Schedule H) are not subject to the interest-free provision. As a result, when adjusting Schedule H taxes, it is sometimes necessary to use both TC 298 (for interest -free income and FICA adjustments, Part I, Schedule H) and TC 290 for the FUTA portion.
- c. Underpayment adjustments to income tax withholding, social security and Medicare taxes can be made interest-free if reported by the due date of the return for the return period the error is ascertained.
- d. Generally, adjustments to income tax withholding and Additional Medicare Tax withholding may only be made for quarters during the same calendar year. Adjustments to amounts reported as income tax or Additional Medicare Tax withheld in a prior calendar year may only be made to correct an administrative error. An administrative error occurs if the amount entered on Schedule H/H-PR as income tax or Additional Medicare Tax withheld is not the amount the employer withheld.

Note: Income taxes are only required to be withheld from wages for domestic employment if the employer and employee agree to the withholding.

- (2) For Schedule H/H-PR, the due date of the period the error is ascertained is the due date of the income tax return for the period the taxpayer discovered the error.
 - a. An error is ascertained when the employer has sufficient knowledge of the error to correct it.
 - b. For underpayment errors discovered on or after January 1, 2009, the provisions require that the underpayment be paid at the time the adjusted return is filed or interest will begin to accrue. The interest computation date used is the received date of the adjusted return.
 - c. Ascertained dates are not needed for tax decreases.
 - d. A statement (could be an amended Schedule H) must be attached to the return on which the adjustment is reported explaining the correction and designating the return period in which the error is ascertained and the return period to which the error relates.
 - e. Use the following chart to help in determining when to use a TC 298.

If...	Then...
An ascertained date is provided and the amended Schedule H/H-PR is filed by the due date of the return for the return period, in which the error is ascertained	Assess the increase using TC 298 with an interest computation date.
The ascertained date is not provided	Contact the taxpayer by telephone to obtain the information. Note: Do not correspond for the ascertained date unless corresponding for other information.
The ascertained date is not provided and is unable to be secured	Assess the increase using a TC 290.

Note: When contacting taxpayers, follow procedures in IRM 21.1.3.2.3, Required Taxpayer Authentication, for purposes of identification and to prevent unauthorized disclosures of tax information. Also, use caution when leaving information on answering machines or voice mails. (See IRM 11.3.2.6, Methods for Communication of Confidential Information.)

(3) Interest-free adjustments provisions.

If...	Then...
The adjusted Schedule H is filed and the tax paid by the due date of the return for the return period in which the error is ascertained and the underpayment is paid at the same time	No interest is due.
For increases in tax liability, the amended Schedule H is filed by the due date of return for the return period in which the error is ascertained, but the tax is not paid at the same time	Interest is computed from the received date of the adjusted Schedule H.

21.8.1.6.9
(10-01-2007)
**Loose Schedule H and
Anexo H-PR**

- (1) When processing a loose Schedule H or H-PR, use the procedures in Household Employment Taxes - IMF Procedures (see IRM 21.8.1.6.6) and in Schedule H/H-PR see IRM 21.8.1.6.7) in conjunction with procedures outlined in IRM 21 listed below:

If...	Then...
The TIN is an SSN	Follow the procedures in IRM 21.6.4.4.8.10, Schedule H, Household Employment Taxes Received Without Form 1040, U.S. Individual Income Tax Return. However, if the Schedule H /H-PR is from one of the territories, use Form 1040-PR or 1040-SS as the overlay.
The TIN is an EIN	Follow the procedures in IRM 21.7.4.4.1.11, Social Security Domestic Employment Reform Act and BMF Schedules H, or route to BMF.
The Schedule H does not have a TIN	Research for a TIN using NAMEE and/or NAMES.
A TIN is located	Process according to the instructions in IRM 21.6.4.4.8.10, Schedule H, Household Employment Taxes, Received Without Form 1040, U.S. Individual Income Tax Return. However, if the Schedule H/H-PR is from one of the territories, use Form 1040-PR or 1040-SS as the overlay.

21.8.1.7
(10-01-2022)
U.S. Virgin Islands

- (1) This section provides specific tax information as it relates to the U.S. Territory of the U.S. Virgin Islands.

Caution: The British Virgin Islands fall within the jurisdiction of the United Kingdom and are in no way connected with the United States or its political subdivisions or territories. Any returns or inquiries received with addresses from the British Virgin Islands are handled as international cases.

- (2) A very important factor in U.S. Virgin Islands taxation is whether the taxpayer is a bona fide resident of the U.S. Virgin Islands. An individual is considered a bona fide resident of the U.S. Virgin Islands for the entire year if they meet the requirements under IRC 937(a) and the regulations thereunder. For more information on bona fide residency see IRM 21.8.1.5.2.
- (3) An individual who is a U.S. citizen or resident alien, and NOT a bona fide resident of the U.S. Virgin Islands, will have a dual filing requirement with the United States and the U.S. Virgin Islands under IRC 932(a) and IRC 932(b) if the individual has income derived from sources within the U.S. Virgin Islands, or effectively connected with the conduct of a trade or business within the U.S. Virgin Islands, for the taxable year. The taxpayer should also attach to both

returns Form 8689 , Allocation of Individual Income Tax to the U.S. Virgin Islands and should allocate and pay tax due to the IRS and the U.S. Virgin Islands as shown on that form. See IRM 21.8.1.7.1.

- (4) IRC 932(c) allows a U.S. citizen, who is a bona fide resident of the U.S. Virgin Islands during the entire tax year, to file their tax return with the U.S. Virgin Islands and to pay the entire tax liability to the U.S. Virgin Islands. If the taxpayer fully complies with IRC 932(c) , there is no requirement to file a U.S. Federal income tax return for any tax year in which the taxpayer is a bona fide resident of the U.S. Virgin Islands during the entire year, **except when** they must pay any reportable tax to the United States, such as self-employment tax. Taxpayers are deemed to fully comply with IRC Section 932(c) if they report all income from all sources and identify the source of each item of income on their USVI tax return and fully pay their tax liability to the USVI.
- (5) For taxable years ending on or after December 31, 2006, an income tax return filed with the U.S. Virgin Islands under IRC 932(c) by an individual who takes the position they are a bona fide resident of the Virgin Islands (or an individual who files a joint return with someone taking the position that they are a bona fide resident) is generally deemed a U.S. income tax return for purposes of IRC 6501. For taxable years ending before December 31, 2006, see Notice 2007-19, 2007-11 IRB 689.
- (6) U.S. citizens who derive income from U.S. Virgin Islands sources and are not bona fide residents of the U.S. Virgin Islands must file identical tax returns with both the U.S. and the U.S. Virgin Islands. This is done by:
 - a. Filing the original return, which includes a Form 8689 and all other attachments and schedules, with the United States, and
 - b. Filing a copy of the U.S. return (including all attachments) with the U.S. Virgin Islands Bureau of Internal Revenue (BIR) by the due date for filing Form 1040.
- (7) In cases where the Form 1040 is processed having U.S. Virgin Islands withholding **only** and no Form 8689, apply the following:

If...	Then...
The taxpayer was given a withholding credit in error, but a refund has not been issued	Reverse the withholding credit and allow the computer to issue a bill.
A refund has been issued	Follow the erroneous refund procedures in IRM 21.4.5, Erroneous Refunds.

21.8.1.7.1
(10-01-2022)

Form 8689, Allocation of Individual Income Tax to the U.S. Virgin Islands

- (1) Form 8689, Allocation of Individual Income Tax to the U.S. Virgin Islands, is used to determine the amount of tax payable to the U.S. Virgin Islands.

Note: Form 8689 is not part of the Virgin Islands cover over process.
- (2) The Form 8689 must be attached to each copy of Form 1040. See IRM 21.8.1.7.

- (3) On Form 8689 the calculation entry from line 35, in Part III, "Allocation of Tax to the U.S. Virgin Islands," is not always brought forward to Form 1040. A comparison to Line 39 in Part IV, "Payments of Income Tax to the U.S. Virgin Islands", must first be done, and the lesser of the two amounts combined with the entry on line 44, and brought forward to Form 1040 next to line 18 with the notation "Form 8689." This prevents the allocation amount from being more than the amount of payments/credits paid to the U.S. Virgin Islands.

Note: A penalty of \$1,000.00 may be assessed for not filing a required Form 8689 or for not providing the required information. For more information, see IRM 20.1.9.18, IRC 6688 – Reporting for Residents of U.S. Possessions (U.S. Territories).

- (4) The credit for taxes paid to the U.S. Virgin Islands is nonrefundable. Use TC 29X with Reason Code 063 (U.S. Virgin Islands Credit on Form 8689) when applying or adjusting the tax. **Do not credit as a TC 766 at any time.** (These instructions apply to **NON-PIPELINE** functions ONLY.)

Caution: If the credit is given during processing with a TC 766, reverse it with a TC 767.

21.8.1.7.2
(10-01-2017)
**Individual Tax Liability -
U.S. Virgin Islands**

- (1) Individual taxpayers may claim estimated tax (ES) credits or credit elect on the return they are required to file, regardless of the jurisdiction (United States or Virgin Island) in which the return is filed. Provisions written in the law may provide for the "cover over" of these credits and other credits on the account.
- (2) Individual taxpayers that have a U.S. tax liability and request to have credit elect or estimated tax credit held by the U.S. Virgin Islands transferred to the U.S. must:
- First file their U.S. tax return, and
 - Submit a formal (written) request to the United States IRS for credit transfer from the Virgin Islands Bureau Of Internal Revenue (BIR).
 - Once the taxpayer has complied with (2) a) and b), forward the case to the technician having authorization to contact the U.S. Virgin Islands
 - The employee having authorization to contact the U.S. Virgin Islands must follow the instructions in Cover Over of Credits to the U.S. Virgin Islands on Repayment Cases. See IRM 21.8.1.7.6.
- (3) Individual taxpayers that do not have a U.S. tax liability, but request to have United States ES credits or a credit elect transferred to satisfy their U.S. Virgin Islands liability, **must:**
- Submit a written request to the Virgin Islands BIR for credit transfer from the U.S. IRS.
 - The BIR will submit a copy of the U.S. Virgin Islands return to verify filing
 - Once the documentation in a) and b) above is received, refer the case to the international Unit where the U.S. Virgin Islands cases are worked.
 - The employee having authorization to contact the U.S. Virgin Islands must follow the instructions in Cover Over of Credits to the U.S. Virgin Islands on Special Cases. See IRM 21.8.1.7.6.

Note: The transfer of credits to satisfy the U.S. Virgin Islands tax liability is permissible even when the U.S. refund statute has expired. A cover over is not a refund.

- (4) Requests from taxpayers, their authorized representatives, or claims requesting credit transfers from the U.S. Virgin Islands, must be forwarded to the international Department where the U.S. Virgin Islands cases are worked.
- (5) Citizens and residents of the U.S. Virgin Islands with income from a trade or business from sources within the U.S. Virgin Islands, who do not file a U.S. Form 1040, must file Form 1040-SS, U.S. Self-Employment Tax Return.
 - a. The Form 1040-SS resembles a combination of Form 1040 Schedules C, F, SE and Schedule 8812. It also has a provision in Part I, line 4 to enter the total tax from Schedule H. The Form 1040-SS is now used for more than just reporting of self-employment income and paying self-employment tax.
 - b. Bona fide residents of the U.S. Virgin Islands do not generally pay income tax to the United States on income, regardless of source. Their income tax return is filed only with the government of the U.S. Virgin Islands. However, their self-employment tax return must be filed with the IRS.
- (6) Individual taxpayers claiming the Schedule H tax that are not required to file Form 1040, but file Form 1040-SS, must report the tax on Form 1040-SS.

Note: When adjusting the tax, use the correct Blocking Series and RC 50 to adjust employment taxes from Schedule H or Schedule H-PR. See IRM 21.8.1.6.7 and IRM 21.6.4.4.8 for further instructions.

- (7) IRM 21.6.4.4.8.10 contains procedures for processing individual taxpayer's Schedule H tax when the individual is not liable to file the U.S. Form 1040. Also, Part IV of the Schedule H must be completed.
- (8) Individuals required to file Form 1040-SS may also be required to report and pay Additional Medicare tax on line 5.

21.8.1.7.3
(10-01-2021)
**Self Employment Tax -
U.S. Virgin Islands
Citizens and Residents**

- (1) Citizens and residents of the U.S. Virgin Islands with income from a trade or business who do not file a U.S. Form 1040, must file Form 1040-SS, U.S. Self-Employment Tax Return to report self-employment income and pay self-employment tax (SE).
- (2) Review the tax module to determine if SE tax is assessed on U.S. Virgin Island returns on the cover over listing with one-half of self-employment tax claimed on Page 1 of Form 1040, or if SE income is shown on the cover over return that shows a Form 1040-SS should be filed. Use the following table for case resolution guidelines.

Note: "Certification Cases" received from the U.S. Virgin Islands Bureau of Internal Revenue (BIR) address self-employment tax issues are worked at Philadelphia Accounts Management Campus (PAMC) using the procedures in this IRM section.

If...	Then...
The SE tax is assessed on Master File	Continue with IRM 21.8.1.7.4, U.S. Virgin Islands Cover Over Process.
The SE tax has is NOT assessed on Master File and a Form 1040-SS or Schedule SE is attached	<p>Assess SE tax.</p> <ol style="list-style-type: none"> 1. Input TC 290 for amount of SE tax from Form 1040-SS or Schedule SE. 2. Use reference code 889 for SE tax; TC 878/879 for SE income; TC 895/896 for Medicare income for primary/secondary taxpayers. 3. Input TC 806 as needed (U.S. withholding only). 4. Use Source Code 1; Reason Code 044 (and 51 if TC 806 is input); Hold Code 1; FLC 66; Blocking Series 05. 5. Notate in the remarks section "Self-Employment Tax." <p>Note: If no return is posted on Master File, process Form 1040-SS or Schedule SE to assess SE tax.</p>

If...	Then...
<p>SE tax is not assessed on Master File, and no Form 1040-SS or Form 1040-SE is attached</p>	<ul style="list-style-type: none"> • Correspond with taxpayer for missing Form 1040-SE on cases with questionable self-employment of under for 30 days. If response is received, assess SE tax. If no response is received, release the taxpayer's refund portion of the RT cover over claim. • Route cases with questionable self-employment more which may be subject to SE tax to international Compliance at the Philadelphia Campus 2970 Market Street, Mail Stop 2-H08.200, Philadelphia, PA 19104. Do not correspond for missing Form 1040-SE. Do not release the taxpayer's refund portion of the RT cover over claim.

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Note: If a Form 1040 is used by a VI resident to report SE income tax, they cannot take the deduction of one-half if the SE amount is on the Form 1040. When Form 1040-SS is used, this one-half provision is not on the form.

- (3) Payments for SE tax made to the BIR in error are returned to the taxpayer and the taxpayer is advised by the BIR that the Form 1040-SS must be filed with and paid to the IRS. Do not deduct these credits from the cover over.
- (4) Consider statute issues when assessing SE tax on Virgin Island filers.
 - The filing of an income tax return with the Virgin Islands starts the running of the ASED for tax periods and covered persons.
 - The filing of a Form 1040-SS does not start the running of the ASED for Form 1040 income tax.
 - Per Treasury Regulation 1.932-1(c)(2)(ii), an income tax return filed by a bona fide resident of the U.S. Virgin Islands (USVI) with the U.S. Virgin Islands Bureau of Internal Revenue (BIR) will be deemed to be a U.S. income tax return for purposes of IRC 6501(a). An "income tax" return as provided in Treasury Regulation § 1.932-1(c)(2)(ii) includes the Form 1040-SS. Therefore, the statute of limitations period for assessing self-employment tax per IRC § 6501(a) begins the earlier of when a bona fide resident of the USVI files a Form 1040-SS with the IRS or files an income tax return with the BIR.

Note: See IRM 21.8.1.7.11 for definitions of covered and non-covered persons.

21.8.1.7.4
(10-01-2021)
**U.S. Virgin Islands
Cover Over Processing -
Phase One**

- (1) Under IRC 932(c)(2), a bona fide resident of the U.S. Virgin Islands is generally required to report worldwide income to the U.S. Virgin Islands. A bona fide resident of the U.S. Virgin Islands, who fully reports and pays tax on their worldwide income to the U.S. Virgin Islands, and identifies the source of each item shown on the U.S. Virgin Islands return is not required to file a return with the IRS under IRC 932(c)(4).
- (2) A bona fide resident of the U.S. Virgin Islands who has U.S. income tax withheld should contact the USVI tax department to determine whether they can claim a tax credit on their USVI return for income taxes paid to the IRS.
- (3) The cover over of U.S. withholding that the U.S. Virgin Islands has allowed their taxpayers as a credit is accomplished through the cover over process. This process is performed in two phases.
- (4) Pursuant to IRC 7654(a), the following guidelines and procedures are written to administer United States cover over of income tax to the government of the U.S. Virgin Islands in respect of U.S. Virgin Islands bona fide residents.
- (5) In phase I, the Virgin Islands Bureau of Internal Revenue (BIR) sends a listing containing taxpayer identification information and amounts for cover over and, in some cases, amounts to be refunded directly to the taxpayers and/or transferred to the BIR, and a copy of pages 1 and two of the taxpayer's USVI income tax return. Send these items to the Austin Submission Processing (SP) international Analyst in Planning and Analysis.
- (6) The Austin Submission Processing international Analyst must hand carry the listings and tax return information to the pipeline coordinators/designees for processing. The U.S. Virgin Island received date should be stamped on the return. If it is not present, the IRS received date is entered.
- (7) A copy of the list is made by the Submission Processing analyst and given to the Austin Accounts Management international Analyst.

Note: Do not send for processing any VI cover over, or copies of VI cover over returns sent directly by taxpayers to IRS. All U.S. Virgin Islands cover over requests must be made by the BIR.

- (8) Austin Accounts Management receives a computerized U.S. Virgin Islands residents listing identifying bona fide residents of the U.S. Virgin Islands who have U.S. withholding, credit elects and/or estimated tax credits. The listing will contain two types of claims:

- Refund to Taxpayer (RT) Claims - These claims involve refunds paid directly to the taxpayer. Process these claims first to reduce interest paid.
- Refund to Virgin Islands (RV) Claims - These claims involve cover over to the Virgin Islands.

Note: RV claims may involve splitting a portion of the withholding to the taxpayer and a portion to the BIR.

- (9) Work U.S. Virgin Islands returns having U.S. withholding credits submitted to the IRS for processing under the "U.S. Virgin Islands cover over" agreement. VI cover over returns are processed at the Austin Submission Processing Campus and are identified by a 21221 DLN.

- a. The return is posted as a TC 150 .00.
- b. No amounts are transcribed from the return.
- c. The withholding credit is entered by Accounts Management prior to the preparation of the credit transfer Form 3809.
- d. The TC 820 that transfers the tax credit from the individual taxpayer's account to the U.S. Virgin Islands via the U.S. Virgin Islands account is entered on Form 3809 and is numbered as 21258 with 050-059 Blocking Series.

Note: In the Explanation Box on Form 3809, note the VI transmittal number and date of the transmittal. This notation is helpful if a duplicate TC 820 is posted and is covered over to the VI. See IRM 21.8.1.7.7 for repayment procedures if a duplicate credit goes to the VI.

- (10) Tax Examiners trained on VI Cover Over must not adjust the taxpayer's account until:
 - a. The copies of the returns are received from Submission Processing.
 - b. A TC 150 .00 is posted in the account.
 - c. The credits in the tax module have been verified against the U.S. credits on the U.S. Virgin Islands listing.
 - d. The refund statute expiration date is calculated.

Note: Do not allow Earned Income Tax Credit shown on a tax return filed with the BIR. In the unlikely event that the EITC is allowed during processing of the cover over return, reverse it.

- (11) Do not assess or cover over an account when the taxpayer filed directly with the IRS. Maintain a spreadsheet listing the name, TIN, tax period, and refund amount of all cover over requests that show a United States income tax filing. Submit the spreadsheet to the U.S. Territories Program Manager on a quarterly basis.

Note: Reverse all U.S. Virgin Islands withholding that is erroneously granted. Follow procedures in IRM 21.4.5.5.3, Category B Erroneous Refunds, for VI withholding that was refunded to the taxpayer.

21.8.1.7.5
(10-17-2021)
**U.S. Virgin Islands
Cover Over Processing -
Phase Two**

- (1) Phase II begins with returns received in Accounts Management international from Submission Processing and the returns have posted to Master File. Control all cases on IDRS using Category Code ISPJ with the date the case is received in Accounts Management.
- (2) Before processing cover over cases, check for outstanding balances (OBLs) on the taxpayer's other accounts. Only offset credit available for refund to a taxpayer to pay OBLs on that taxpayer's account(s). Do not offset any amount from the cover over payment to the Virgin Islands to cover outstanding taxpayer balances.

Caution: Do not correspond for missing signatures on any VI cover over cases since these are not our taxpayers.

- (3) Process RT claims with one adjustment.

- a. Input TC 290 .00 and TC 806 for the withholding credit amount. Withholding **WILL NOT** be posted to these accounts on IDRS during pipeline processing.
 - b. Use Blocking Series 63, Reason Code 51 and a Hold Code 3.
- (4) The processing of RV claims requires two adjustments.
- a. First adjustment: Input TC 290 .00 and a TC 806 for amount of credit to be refunded to the taxpayer. Use Blocking Series 05, Reason Code 51, and a Hold Code 3 to prevent the issuance of a notice.
 - b. Second adjustment: Input a TC 290 .00 and a TC 806 for the cover over amount. Use Blocking Series 63, Priority Code 8, Posting Delay Code 1, and a Hold Code 4, to prevent the issuance of a notice or refund. The transfer will post as a TC 820.
 - c. Close the IDRS control base.

Note: Use withholding documents received from the BIR to validate the U.S. withholding amount. CC IRPTR is available for use to verify withholding for cases without paper documents and as a tool to help in researching payment documents. You DO NOT need to verify withholding using CC IRPTR.

- (5) Prepare Form 3809 to transfer the cover over amount to U.S. Virgin Islands 6900 account. Note the VI transmittal number in the explanation box of the Form 3809 and complete the form as follows:

Debit portion	Credit Portion
Name and address box - Enter the taxpayer's entity information	Name and address box - specify the U.S. Virgin Islands - 6900 Account.
TIN box - Enter taxpayer's SSN	
MFT box - Enter 30	
Tax period - Enter the period being debited	
Check the MF box	Check the NMF box.
Transaction date - Enter the current date.	Transaction date - Enter the current date.
1st TC (Transaction) - Enter TC 820.	1st TC (Transaction) - TC 700.
Debit amount - Enter the amount covered over to the VI from the listing. Make sure TC 820 amount does not exceed the credit in the account or an unpostable condition will result.	Credit amount - available credit amount (usually the TC 806 amount) must match the TC 820 amount from the debit portion of the Form 3809.

Note: TC 570 is not needed for a credit going to a Non-Master File account, such as 6900.

- (6) Maintain an IDRS control on the account in "M" monitoring status under the designated IDRS profile number xxxxx11111 (i.e., 0635311111). Monitor weekly CCA/42/43 (Zero Overage Listing) for holding of the credit freeze until the posting of TC 820 to ensure that erroneous refunds are not issued to the taxpayer. Monitor IDRS until the TC 820 posts.
- (7) If the account freeze is released prior to the posting of the TC 820:

If ...	Then ...
Credit release occurs and the TC 846 is not yet issued (check 23C date of refund)	Initiate refund intercept procedures included in IRM 21.4.1.5.10, Refund Intercept CC NOREF.
Refund cannot be stopped	Follow Category D erroneous refund procedures in IRM 21.4.5.6.1, Account Actions for Category D Erroneous Refunds. Notify the BIR that an erroneous refund has been issued using the contact information listed below. Note: Since these are USVI taxpayers, and NOT IRS TAXPAYERS, IRS personnel cannot discuss the issue with the USVI taxpayer. Direct questions about the erroneous refund related to the VI cover over activity to the contact information below.

USVI Bureau of Internal Revenue
 Attn: Yvonne Hughes, Disclosure Officer
 6115 Estate Smith Bay Suite 225, St. Thomas, VI 00802
 Phone (340) 715-1040 extension 4215
 Fax (340) 774-2672

- (8) Once the TC 820 posts, check to see if listing shows an amount due the taxpayer.
- Check again for OBL's before releasing and allow the computer to offset if the remaining credit in the account is to be refunded to the taxpayer.
 - Input TC 290 .00, Priority Code 8, Blocking Series 63, Hold Code 3 to release the remaining credit, if applicable.
 - Once all actions have posted, prepare cover over letter for the VI.
 - Close IDRS control.

Note: There is a provision for the charge-back of interest to the BIR for interest paid on returns received later than 45 days from the date the return is originally received from the BIR. This charge back applies only to returns received after October 1, 2002. Accounts Management processes the

charge-back when instructed to do so by the Deputy Commissioner International, Overseas Operations, TAAS Division.

- (9) If there is already a posted return, a CP 36 generates:
- a. The CP 36 is worked only by those designated to process cover over cases.
 - b. Check to see if TC 150 on the posted return reflects SE Tax.

If ...	Then ...
The taxpayer is amending SE tax amount	Adjust accordingly and reduce cover over amount to cover this balance before proceeding with cover over procedures.
SE tax is NOT assessed	Consider SE tax or any tax due to the U.S. and any EITC credits erroneously allowed on this return. Once net is calculated, only this amount is covered over to the VI. Notate difference on the listing. See IRM 21.8.1.7.3

Note: Do not offset any amount from the cover over payment to the Virgin Islands to cover outstanding taxpayer balances. However, Virgin Island credit can be applied to SE tax assessments in the same module. Notate the transmittal accordingly.

Note: Duplicate filing conditions may result from U.S. Virgin Island bona fide resident information returns posting to cover over modules, or vice versa. See IRM 21.8.1.7.11 for instructions for processing resultant CP36 notices.

- (10) Verify that there are no outstanding accounts which require either a cover over payment from the U.S. Virgin Islands or a repayment of an erroneous amount sent to the U.S. Virgin Islands. If either of these situations exist, continue with Cover Over Payments or Repayments from the U.S. Virgin Islands. See IRM 21.8.1.7.7.
- (11) Prepare the letter to the U.S. Virgin Islands informing them of:
- a. The amount of the cover over check
 - b. The Transmittal or Special number along with the credits being added to the current cover over listing (in accordance with procedures in Cover Over Payments or Repayments from the U.S. Virgin Islands). See IRM 21.8.1.7.7.
 - c. The amounts deducted for the agreed outstanding balances (in accordance with procedures in Cover Over Payments or Repayments from the U.S. Virgin Islands.) See IRM 21.8.1.7.7, and
 - d. Any discrepancies found with the return or listing
- (12) Forward the cases and all documentation to the manager for review. After managerial review, forward the VI letter, along with copies of the listings, to the Refund Unit in the Accounting Branch. Also, efax a copy of the VI letter to the

Program Manager, U.S. Territories Program, Tax Treaty Assistance and Interpretation Team, LBI, U.S. Competent Authority at (866) 814-5271.

21.8.1.7.6
(10-01-2008)

Cover Over of Credits to the U.S. Virgin Islands on Special Cases

- (1) When handling a request to transfer estimated credits or credit elects to the U.S. Virgin Islands, the technicians who have authorization to contact the U.S. Virgin Islands must:
 - a. Secure a written agreement from the U.S. Virgin Islands indicating the amount of each account in question to confirm tax liability.
 - b. Once the U.S. Virgin Islands confirms the tax liability, prepare Form 3809 to transfer the credits to the U.S. Virgin Islands account, 6900 Account. If a transmittal is available from the V.I., enter the transmittal number and date in the Explanation Box of Form 3809.
 - c. List the Virgin Islands case reference number and credit amount on the memo/letter.
 - d. Input TC 590 CC 21 to the taxpayer's account after the TC 820 posts.
 - e. These procedures must be used in conjunction with the instructions in U.S. Virgin Islands Cover Over Process. See IRM 21.8.1.7.5.

21.8.1.7.7
(10-01-2018)

Cover Over Payments or Repayments from the U.S. Virgin Islands

- (1) Situations may arise that require the use of the following procedures to deduct credits from the cover over of tax to the U.S. Virgin Islands such as, but not limited to, taxes filed and erroneously paid to the U.S. Virgin Islands on the:
 - Form 1040-SS
 - Form 1040 Schedule H
 - Duplicate amount covered over
- (2) When notified by the U.S. Virgin Islands tax authority of a taxpayer having erroneously filed and/or paid their Schedule H or Form 1040-SS tax in the U.S. Virgin Islands:
 - a. The U.S. Virgin Islands informs the taxpayer of their requirement to file these forms in the United States.
 - b. Research to determine if the taxpayer has also filed the Form 1040-SS and/or Schedule H with IRS.
 - c. When the taxpayer has also filed with the U.S. and is in debit status, input a STAUP and coordinate the forwarding of the case to the person(s) working the U.S. Virgin Islands cover over. The instructions in (4) below explain how authorized personnel will credit the taxpayer's account.
 - d. When the taxpayer hasn't filed in the United States, request that the U.S. Virgin Islands forward the original Schedule H and/or Form 1040-SS to the Austin Internal Revenue Campus **immediately** and contact the authorized personnel to have the taxpayer's account credited.
- (3) Situations or cases which require a cover over payment or a repayment from the U.S. Virgin Islands must be handled by employees having the disclosure authorization to contact the U.S. Virgin Islands. This authorization list is kept by Disclosure Office 7 and is updated yearly via a memorandum from that office.
- (4) Authorized employees then:
 1. Contact the U.S. Virgin Islands government to inform them of the situation

- 2. Keep copies of the listing or secure a print of the account containing the amount outstanding
 - 3. Secure a written agreement from the U.S. Virgin Islands, identifying the amount of each account in question
- (5) Once an agreement is reached, perform the following:
- a. Maintain a list of the cases containing outstanding balances due until there is a cover over payment from which to deduct the outstanding balance.

Note: It may not be possible to handle all the cases having an outstanding balance with one cover over payment, but resolve as many cases as possible with each subsequent cover over.
 - b. Prior to the posting of the U.S. Virgin Islands credit to the balance due accounts, ensure that the credits weren't previously substantiated. If so, reverse the substantiation prior to posting the credit.

Note: Credits substantiated by other IRS offices are posted as a TC 766, but may be a TC 760 posted by Accounting.
 - c. Prepare a Form 3809 for each account being credited. The credit (TC 700 with a TC 570) section of the Form 3809 must reflect the taxpayer's account information and the agreed upon amount. Stamp the name and address portion with the name and address of the correct territory along with a matching amount for the debit (TC 820).
- (6) Deduct the total of the Forms 3809 crediting the taxpayer's accounts from the total of the individual Forms 3809, debiting the taxpayer's account. The difference, when the debit portion is higher, is the amount of the consolidated Form 3753.
- (7) These procedures must be used in conjunction with the instructions in U.S. Virgin Islands Cover Over Process. See IRM 21.8.1.7.5.

21.8.1.7.8
(11-03-2017)

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21.8.1.7.9
(03-12-2018)
**Miscellaneous U.S.
Virgin Islands Return
Processing and VI Cover
Over Considerations**

- (1) Certain situations may require the back-out of IRS returns. These can be claims requesting a change of bona fide residency from the United States to the Virgin Islands or where a copy of a VI return has posted to IDRS in error. These requests may also be in the form of "Certifications of Filings" received

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Exception: If **ALL** the income shown on the return is from Virgin Islands sources and they are not our taxpayer, back out the return. Follow erroneous refund procedures in IRM 21.4.5, Erroneous Refunds.

- a. DO NOT zero out accounts where there is any United States income shown on the return. Forward these cases to:
Philadelphia Accounts Management
2970 Market St.
Mail Stop 3-E17.143
Philadelphia, PA 19104
Employees authorized to contact the BIR for information will prepare these claims for Examination consideration. If within 90 days of the ASED, first send the case to the Statute function for prompt assessment.

Note: Austin Accounts Management will process requests involving cover over.

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- c. In cases where there is a Taxpayer Delinquency Investigation (TDI) or Underreporter Program (URP) activity on the account, do not refer the case to Examination or input a TC 590. Coordinate with the correct area.

- (2) If there is a TIN mismatch when the cover over return is processed, use the following table for case processing:

If...	Then...
The TIN does not match a valid TIN on INOLE or the return posts to the invalid segment of a TIN that clearly belongs to another taxpayer	Do not process the cover over and notate "SSN Mismatch" on the cover over transmittal document.
The TIN posts to the invalid segment because of a name control mismatch and it is apparent that the cause is that the taxpayer has failed to notify SSA of a name change	Process the cover over and notate on the transmittal document that the BIR will advise the taxpayer to contact SSA to correct their records.

- (3) Returns filed with IRS in addition to cover over activity:
 - a. Send Transcript Delivery System (TDS) prints or copies of returns filed by taxpayers with the IRS prior to or subsequent to the posting of cover over returns to the BIR. Include these return copies or transcripts with the cover over transmittals returned to the BIR through the U.S. Territories Manager after the cover over is processed.

Note: Input a TC 290 .00 to refile the return to release the duplicate filing freeze for any subsequent return that posts as a TC 976/977.

- b. Do not cover over accounts where there is a return already posted on Master File for the tax period in question, other than a Form 1040-SS.
 - c. On copies of returns sent to the BIR, notate on the transmittal whether a refund is issued.
- (4) Credit Discrepancies: In the case of credit discrepancies, only cover over to the amount available in the module and notate the cover over transmittal document accordingly.
- (5) U.S. Virgin Islands cover over cases with an open TC 420
- a. Returns submitted by the BIR for cover over may post to an account with an open TC 420 AIMS indicator. Follow instructions in Exhibit 21.5.10-1, Audit Information Management System (AIMS) STATUS CODE GUIDE - FIELD CASES, for case disposition.
- Note:** Instructions in Exhibit 21.5.10-1 stating “advise the taxpayer” will be substituted with “notate on the cover over transmittal.”
- b. For cases that need to be routed to international Compliance in Philadelphia, notate on the transmittal document that the return is a U.S. Virgin Islands cover over return. Include instructions for the exam classifier to contact the person sending the case for information concerning the cover over process and refer them to IRM 21.8.1.7.
- (6) If there is a Criminal Investigation (-Z) freeze on the account, do not cover. Notate the listing “CI.”
- (7) Refunds by the BIR based on United States Credits:
- a. The BIR may, on occasion, refund overpayments to a taxpayer that have already been refunded by the IRS. The BIR forwards these returns in separate groupings clearly marked as to the special processing necessary.
 - b. If instructions are unclear, have an individual authorized to contact the VI obtain clarification.

21.8.1.7.10
(10-01-2019)

Covering Over Net Collections of Tax When the Period of Limitations Has Expired - U.S. Virgin Islands

- (1) In accordance with IRC 7654(a) and (b)(1) and Significant Service Center Advice, WTA-N-112721-99, use the following procedures to help in covering over net collections of tax to the U.S. Virgin Islands Bureau of Internal Revenue when the U.S. period of limitations has expired.
- (2) When the U.S. Virgin Islands tax authority requests a cover over of the U.S. withholding and the statute has expired, follow the instructions below:
 - a. Use the instructions in U.S. Virgin Islands Cover Over Process. See IRM 21.8.1.7.5
 - b. Edit the received date on the return to reflect the date the return is received by IRS.

Note: There is no statute of expiration for covering over credits to the U.S. Virgin Islands.

- c. Circle out the U.S. Virgin Islands received date. It is used only when determining if the refund request is received timely in the U.S. Virgin Islands.
- d. If the taxpayer filed timely with the U.S. Virgin Islands, the taxpayer is entitled to a refund of any overpayment after the cover over amount.

Note: Per Significant Service Center Advice WTA-N-111044-00, dated October 26, 2000, if the taxpayer submitted the tax return to the U.S. Virgin Islands Bureau of Internal Revenue (BIR) within the Refund Statute Expiration Date (RSED), and part of the TC 806 is to be refunded to the taxpayer, the request is considered timely. Clear the refund request with the Statute Function and add the remarks on the document, "refund request was timely received in the U.S. Virgin Islands." Allow credit interest from the day the return was received in the U.S. Virgin Islands.

- e. Cover over the entire credit to the VI when the taxpayer submitted the request in the VI past the Statute date, do not consider issuing a refund.
- f. If a subsequent adjustment 54 document is necessary, the OVERRIDE-CD and RFSCDT fields may need to be addressed.

Note: See chart below:

If...	Then...
The current date is more than one year past the RSED	Enter override code "S" and use the RSED shown on TXMOD in MMDDYYYY format as the RFSCDT.
The current date is less than one year from the RSED	Enter override code "R" and use the RSED shown on TXMOD in MMDDYYYY format as the RFSCDT.

- g. The Form 3809 transfers the credit from the taxpayer's account into the 6900- account used for the U.S. Virgin Islands cover over. The 1st TC is a TC 820 for the withholding tax being transferred and the 2nd TC is a TC 570. The credit portion (TC 700 amount) must specify the U.S. Virgin Islands - 6900 Account (same as TC 820 amount).

Note: Remember that Business Operating Division (BOD) codes must be on all Non-Master File documents.

- h. Follow monitoring steps for the TC 820 posting shown in U.S. Virgin Islands Cover Over Process. See IRM 21.8.1.7.5.
- i. If the withholding credits are less than the total tax, reduce the total tax to the amount of the withholding and only prepare the Form 3809. Follow the instructions in U.S. Virgin Islands Cover Over Process. See IRM 21.8.1.7.5.

- (3) When notified by the BIR of a taxpayer for whom the BIR is requesting a cover over of the net collections of tax where the statute has expired and the credits have been moved to Excess Collections, follow the instructions below:

- a. Follow the instructions in U.S. Virgin Islands Cover Over Process. See IRM 21.8.1.7.5.

- b. Request the original excess collection transfer document, Form 8758, from Files.
- c. If the credit for the tax is moved to Excess, it must be located and reapplied to Master File.
- d. Determine the amount of credit requiring transfer to the taxpayer's account.
- e. Research Excess Collections Files using CC XSINQ. Be sure to have the amount of the remittance, the name control, and DLN.
- f. When the needed credits are found, prepare the Form 8765, IDRS Control File Credit Application, to have credits applied to the taxpayer's account.
- g. Once Form 8765 is prepared, route the Form and supporting evidence to the Unidentified Remittance Function located in the Accounting Branch. Restore the credit to the taxpayer's account to offset the balance due resulting from the cover over.

Note: Form 8765 does not require statute approval when all credit will be covered over to the VI.

21.8.1.7.11
(08-12-2011)

Statute of Limitations for Individuals Claiming to be Bona Fide Residents of the U.S. Virgin Islands

- (1) For tax periods ending before December 31, 2006, Notice 2007-19 provides that a U.S. citizen or resident alien with gross income of \$75,000.00 or more who took the position that they are a bona fide resident of the U.S. Virgin Islands (referred to in the notice as a "non-covered" person) and who filed an income tax return with the U.S. Virgin Islands in accordance with §32(c)(2), may start the statute of limitations for U.S. federal income tax purposes by filing a U.S. Form 1040 with the IRS, reporting no gross income and no taxable income for that taxable year.

Note: "Covered" persons are U.S. citizens and resident aliens with gross income of less than \$75,000.00 who took the position that they were bona fide residents of the U.S. Virgin Islands and filed their income tax return with the U.S. Virgin Islands under §932(c)(2). Covered persons need only provide this documentation upon examination because their U.S. Virgin Islands income tax return is deemed their U.S. income tax return for purposes of 6501.

- (2) For tax periods ending on or after December 31, 2006, Treasury Reg. §1.932-1(c)(2)(ii) provides that income tax returns filed with the U.S. Virgin Islands Bureau of Internal Revenue (BIR) under 932(c)(2) by U.S. citizens or resident aliens who take the position that they are U.S. Virgin Islands bona fide residents for the entire year will be deemed U.S. income tax returns. Therefore, the U.S. federal statute of limitations for all U.S. citizens and residents claiming bona fide resident status of the U.S. Virgin Islands generally commences upon the filing of an income tax return with the U.S. Virgin Islands. These taxpayers are generally not required to file income tax returns with the IRS.

Note: The final regulations incorporate the updated interim rules of Notice 2007-31, which amends and supplements Notice 2007-19. Notice 2007-31 also announces that the competent authorities of the United States and U.S. Virgin Islands entered into an agreement for the exchange of information for certain taxpayers who have an income tax return with the U.S. Virgin Islands under 932(c)(2) for tax periods ending on or after December 31, 2006, whereby the BIR will provide electronic files of income tax returns to the IRS.

- (3) These income tax returns are processed to Master File and can be identified by a 21211 or 21221 DLN with a TC 150 .00. The return will have “Filed Due to VI Notice 2007-31” stamped across the top of the return. Code and Edit will “X” all entries on the returns except:
- Entity information
 - CCC and RPC edits
 - Received date
- (4) The posting of these returns to Master File results in duplicate filing conditions if the module contains a previously posted 1040-SS or U.S. Virgin Islands cover over return. Input TC 290 .00 to release the -A freeze with a Hold Code 2 to stop the issuance of a notice to the taxpayer and to prevent erroneous refunds of cover over credits. Update the ASSED to 3 years from the U.S. Virgin Islands Bureau of Internal Revenue (BIR) received date stamped on the return, or return due date, whichever is later. Use CC FRM77 to update the ASSED date when necessary.
- (5) Bona fide residents of the Virgin Islands who fail to meet their USVI filing and payment requirements will have a Federal income tax return liability. However, such individuals are allowed a credit for amounts already paid to the U.S. Virgin Islands. Their “residual” Federal tax liability is equal to the difference between their entire income tax liability and the amount of income tax already paid to the U.S. Virgin Islands.

21.8.1.8
(10-01-2019)
Guam

- (1) This section provides specific tax information as it relates to the U.S. Territory, Guam.
- (2) Guam has its own separate and independent tax system, based on the same tax laws and tax rates that apply in the United States. See Publication 570 for more information.
- (3) U.S. citizens and residents who derive income from Guam and United States sources are not required to file income tax returns with both jurisdictions. They must file with either Guam or the United States, but **not both**. An important factor in the Guam tax system in determining where a return must be filed is whether the taxpayer is a bona fide resident of Guam. Individuals who are bona fide residents of Guam will file an income tax return only with Guam. For more information on bona fide residency see IRM 21.8.1.5.2.
- (4) If a U.S. citizen or resident’s adjusted gross income from all sources is at least \$50,000.00, their gross income consists of at least \$5,000.00 from sources in Guam, and they file a U.S. income tax return, they must attach Form 5074 to Form 1040.

Note: A penalty of \$1,000.00 may be assessed for not filing the required information. See IRM 20.1.9.18, IRC 6688 – Reporting for Residents of U.S. Territories. A Penalty Reason Code (PRC) is required with a penalty abatement see IRM Exhibit 20.1.1-2, Penalty Reason Code Chart for more information.

21.8.1.8.1
(11-03-2017)
**Filing Requirement
Chart - Guam**

- (1) Use the chart below for help in determining the jurisdiction (Guam or U.S.) with whom the taxpayers are required to file an income tax return:

If...	Then...
The taxpayer is a bona fide resident of Guam during the entire tax year	A tax return must be filed and tax paid on income derived from all sources to Guam.
The taxpayer is a U.S. citizen or a resident who is not a bona fide resident of Guam during the entire tax year	A U.S. tax return must be filed and tax paid on income derived from all sources to the United States. Note: Form 5074 may have to be attached.
A citizen of Guam is not a resident of the U.S. or Guam	A return must be filed with Guam.
A joint return is being filed by taxpayers living apart	The return must be filed with the jurisdiction where the spouse who has the greater adjusted gross income must file. Note: For this purpose, income is determined without regard to community property laws.
The taxpayer is a member of the U.S. Armed Forces stationed on Guam and is paid by the U.S. Government but has a state of legal residence (see IRM 3.22.3.9.4, Guam -- General Information), in one of the 50 United States or DC	The taxpayer is not considered a resident of Guam and therefore files an income tax return with the United States.
A bona fide resident of Guam has income from a trade or business	Form 1040-SS, U. S. Self-Employment Tax Return, must be filed with the IRS to report self-employment Income and pay self-employment tax, in addition to the income tax return filed with the Government of Guam.
The taxpayer is a member of the U.S. Armed Forces stationed in one of the 50 United States or DC or is a spouse of such service member and qualifies for benefits under MSRRA, and is paid by the U.S. Government but has a state of legal residence in Guam or is a spouse of such service member and qualifies for benefits under MSRRA. See Notice 2012-41	The taxpayer files an income tax return with Guam.

Reminder: The Form 1040-SS is a combination of Form 1040 Schedules C, F, SE, and consists of self-employment tax only.

(2) Use the following addresses once the filing jurisdiction is determined:

- **GUAM**

Government of Guam
Department of Revenue and Taxation
1240 Army Drive
Barrigada, GU 96913-1404

- **UNITED STATES**

Internal Revenue Service Center
Austin, TX 73301-0215

21.8.1.8.2
(11-03-2017)
**Credits and Payments -
Guam**

- (1) An individual earning income from Guam must make an ES declaration with Guam if residing there on the declaration due date.
- (2) If the taxpayer moves to the U.S. before the year is over, ES payments must be made to the jurisdiction where the taxpayer is residing at the time when the ES declaration is due. However, at the end of the year, the taxpayer must file a return with the United States if not considered a bona fide resident of Guam for that year. For more information on bona fide residency see IRM 21.8.1.5.2.
- (3) Liability for underpayment of estimated tax is payable to the jurisdiction (United States or Guam) where the taxpayer files their return.
- (4) All tax payments, credit elect amounts, and/or income taxes withheld in the United States or Guam are considered to determine if the return results in a balance of tax due or an overpayment. Do not allow a withholding tax credit unless the withheld income tax is paid to the United States or Guam.

Caution: Do not allow credit when the employer's address is outside of the United States, Guam, Commonwealth of Northern Mariana Islands (CNMI), U.S. Virgin Islands, Puerto Rico or American Samoa.

- (5) U.S. taxpayers may claim full credit on their Form 1040 for ES payments made to Guam and for credit elect amounts that were processed on returns filed in Guam for the prior year.
- (6) When a CP 23, 24, or 25 generates indicating an ES payment or credit discrepancy due to the posting of a return claiming ES credits paid to Guam, we can grant the taxpayer a substantiated credit (TC 760).
 - a. Substantiated credits require that the taxpayer responds to the discrepancy notice with adequate proof, such as cancelled checks, that the payments claimed are paid to Guam.
 - b. Substantiated credit elect amounts claimed require a completed Form 8796, Request for Return/Information (Federal/State Tax Exchange Program), verifying the amount of Guam credit elect claimed on the Form 1040. To allow credit verification, e-fax the request to 877-891-6035. If you do not have e-fax capability mail, the completed Form 8796 to:
IRS

Central Processing Unit Stop 93A
4800 Buford Highway
Chamblee, Georgia 30341

- c. Route requests for substantiation of Guam estimated payments and credit elect amounts substantiated by Disclosure Area 2 to the Austin Submission Processing Accounting Branch using Form 4446, as hard-core payment tracer cases. See IRM 3.17.64.33.1.1, Account 6570 Substantiated Credits Allowed (Nominal Account, DR Normal Balance)

Note: This procedure is different than the procedure used for the U.S. Virgin Islands and CNMI.

21.8.1.9
(10-01-2022)
**Commonwealth of the
Northern Mariana
Islands (CNMI)**

- (1) All information in this section pertains to the Commonwealth of the Northern Mariana Islands.
- (2) The Commonwealth of the Northern Mariana Islands (CNMI) has its own separate and independent tax system based partly on the same laws and tax rates that apply to the United States and partly on local taxes imposed by the CNMI government. Bona fide residents of the Commonwealth of the Northern Mariana Islands during the entire tax year must report their gross income from worldwide sources on their Northern Mariana Islands tax return.
- (3) Pursuant to the terms of an agreement with the United States (5 U.S.C. Section 5517), withholding taxes for CNMI residents who are U.S. government employees are paid directly to the CNMI. For more information, refer to Pub 80 (Circular SS), Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
- (4) If a U.S. citizen's adjusted gross income from all sources is at least \$50,000.00, their gross income consists of at least \$5,000.00 from sources in the CNMI, and they file a U.S. income tax return, they must attach Form 5074 to Form 1040.

Note: A penalty of \$1,000.00 may be assessed for not filing the required information. See IRM 20.1.9.18, IRC 6688 - Reporting for Residents of U.S. Possessions (U.S. Territories).

21.8.1.9.1
(10-01-2019)
**Filing Requirement
Chart - CNMI**

- (1) Use the following chart to determine a U.S. or CNMI resident or citizen filing requirement. A return is not filed with both.

If...	Then...
The taxpayer is a bona fide resident of CNMI during the entire tax year	A tax return must be filed and tax paid on income derived from all sources to CNMI with Form 5074 attached.
The taxpayer is a U.S. citizen or a resident who is not a bona fide resident of CNMI during the entire tax year	A U.S. tax return must be filed and tax paid on income derived from all sources to the United States with Form 5074 attached if they have CNMI source income.
A citizen of CNMI is not a resident of the U.S. or CNMI	A return must be filed with CNMI.
A joint return is being filed by taxpayers living apart	The return must be filed with the jurisdiction where the spouse who has the greater adjusted gross income must file. Note: For this purpose, income is determined without regard to community property laws.
The taxpayer is a member of the U.S. Armed Forces stationed on CNMI and is paid by the U.S. Government but has a state of legal residence (see IRM 3.21.3.77, Commonwealth of The Northern Mariana Islands - Overview), in one of the 50 United States or DC or a spouse of such service member and is eligible for benefits under MSRRA	The taxpayer is not considered a resident of CNMI and therefore files an income tax return with the United States.
A bona fide resident of CNMI has income from a trade or business.	Form 1040-SS, U. S. Self-Employment Tax Return, must be filed to report self-employment income and pay self-employment tax, in addition to the income tax return filed with the Government of CNMI.

Note: When the Form 1040-SS is filed, it resembles a combination of Form 1040 Schedules C, F, and SE. Taxpayers only requirement is to have self-employment tax calculated and paid with the return.

21.8.1.9.2
(10-01-2015)
Credits and Payments - CNMI

- (1) Consider credit for income taxes withheld at the source, estimated tax payments and withholding credits in determining if the return results in a balance of tax due or overpayment, regardless of the jurisdiction (U.S. or CNMI) in which they were received.

Caution: Do not allow a withholding tax credit unless the withheld income tax is paid to the United States or CNMI.

- (2) The taxpayer can take credit for these payments regardless of the jurisdiction to which they are liable. However, a taxpayer claiming credits other than U.S. credits, which cannot be verified via IDRS, must supply adequate documentation for the payments such as:
 - A W-2, (CNMI W-2C allow box 2a only)
 - A copy of a canceled check, or
 - A dated receipt stamped by the jurisdiction that received the payment(s)
- (3) Once proof of payment is received, credit the taxpayer's account for the substantiated amount using TC 766.

21.8.1.10
(10-01-2013)
American Samoa

- (1) The following section has specific tax information as it relates to the U.S. Territory, American Samoa.
- (2) Individuals born in American Samoa are considered U.S. Nationals but are not U.S. citizens. However, for tax purposes, they are generally treated the same as U.S. citizens.
- (3) American Samoa has its own separate and independent tax system that is based in part on the U.S. income tax system.

21.8.1.10.1
(10-01-2022)
**Filing Requirements -
American Samoa**

- (1) Individuals who are bona fide residents of American Samoa must report their gross income from world-wide sources on their American Samoan tax return. Bona fide residents of American Samoa may have an income tax filing requirement with the United States, American Samoa, or both, depending on the source of their income. For more information on bona fide residency see IRM 21.8.1.5.2.
- (2) Wages and salaries paid by the U.S. government to U.S. citizens and residents are subject to U.S. federal income tax and are not eligible for exclusion from gross income per IRC 931(d). These U.S. citizens and residents must file both U.S. and American Samoan tax returns.
- (3) U.S. citizens and residents who are bona fide residents of American Samoa are required to file a U.S. return and pay taxes on a net basis if they receive income from sources outside American Samoa (either U.S. or foreign source income).
- (4) U.S. citizens and residents who are bona fide residents of American Samoa may qualify to exclude income from sources in American Samoa, and income effectively connected with a trade or business in American Samoa, on their U.S. income tax return. See IRM 21.8.1.10.2 and Form 4563 for information on the territory exclusion.
- (5) U.S. citizens and residents who are bona fide residents of American Samoa are not required to file a U.S. tax return, provided their income is derived solely from sources in American Samoa and does not include wages or salary received from the U.S. government.

- (6) U.S. citizens and residents who are **not** bona fide residents of American Samoa report income from American Samoan sources on their American Samoan tax return. These taxpayers:
 - a. Must report world-wide income on their U.S. tax return
 - b. Can take credit on Form 1116 for taxes paid to the Government of American Samoa.
- (7) Those who report U.S. government wages on both U.S. and American Samoan tax returns may take a credit on their U.S. tax return for income taxes paid or accrued to American Samoa.
- (8) An agreement procedure exists to settle cases of double taxation between the U.S. and American Samoa. See IRM 21.8.1.5.1, Double Taxation.
- (9) Social Security benefits received by an individual may be taxed under Section 1 or Section 871, depending on whether the recipient is or is not a bona fide resident (BFR) of American Samoa. If the recipient is a BFR, the benefits are subject to tax under Section 1, regardless of whether the individual is or is not a U.S. citizen or national. If the recipient is not a BFR and is not a U.S. citizen/national, the benefits would be subject to tax under the nonresident alien rules of Section 871.
- (10) Bona fide residents of American Samoa with income from a trade or business, who do not file Form 1040 (U.S.), must file Form 1040-SS, U.S. Self-Employment Tax Return, with the IRS to report self-employment tax, in addition to the income tax return filed with the Government of American Samoa.
 - a. Bona Fide residents of American Samoa do not pay income tax to the U.S. on income earned in American Samoa, only SE tax. They are considered U.S. Nationals, not U.S. citizens
 - b. The Form 1040-SS resembles a combination of Form 1040 Schedules C, F, and SE. Only self-employment tax is calculated and paid with the return.

21.8.1.10.2
(10-01-2013)
**IRC 931 Territory
Exclusion (Form 4563)**

- (1) The Tax Reform Act of 1986 amended IRC931 and therefore affected the previously known "territory exemption" for tax years after 1986. Formerly, a U.S. citizen had the option to exclude gross income received from sources in certain U.S. Territories. The IRC 931 exclusion currently applies only to individuals who are bona fide residents of **American Samoa**.

Note: Individuals in the other territories do not qualify for the exclusion under IRC 931. Note, however, that the tax systems of the other U.S. territories are also coordinated with the U.S. tax system

- (2) See Publication 570 for a complete list of U.S. territories not eligible for the IRC 931 territory exclusion via IRC 932, IRC 933, IRC 934, and IRC 935.

Caution: Johnston Islands is not a specified U.S. Territory for purposes of IRC 931. DO NOT allow claims for a Territory Exclusion.

- (3) To claim the exclusion, taxpayers prepare Form 4563, Exclusion of Income for Bona Fide Residents of American Samoa, and attach it to their return.
- (4) When the exclusion is taken, taxpayers cannot take any deductions or credits on Form 1040 related to the excluded income. This includes:

- a. The standard deduction, and
 - b. Certain itemized deductions such as medical and dental expenses, gifts to charity and real estate taxes and mortgage interest on personal residence.
- (5) Employees of the United States Government, including its agencies, do not qualify for the IRC 931 exclusion on wages earned from that employment.

21.8.1.11
(10-01-2022)

Visa Information

- (1) Both immigrant and non-immigrant alien individual traveling to the U.S. can obtain many types of visas. The U.S. Citizenship and Immigration Services and the U.S. Department of State determine, based upon U.S. immigration laws, the type of visa, if any, that an alien individual is eligible to receive based upon the individual's intended purpose of travel, length of stay, and other factors. Aliens temporarily in the U.S. on non-immigrant visas are generally admitted for a specific purpose and specific time.

Note: Individuals granted certain non-immigrant visas who comply with the terms of the visa will not be considered physically present in the U.S. for tax purposes. See IRC 7701(b)(5). That is one of the primary reasons to determine the individual's non-immigrant visa status, since taxation is otherwise based on residency which includes a physical presence test. See IRC 7701(b)(3).

- (2) The USCIS website at <http://www.uscis.gov> and the Department of State website at <https://travel.state.gov/content/visas/en.html> contain specific information on the various immigrant and non-immigrant visas available to individuals.
- (3) See IRM 21.8.1.19 for procedures to gather proper documentation to process a claim for FICA taxes.
- (4) The following is a list of immigration forms and descriptions:

Form	Description	Work Authorization Status	Permanent Resident Alien
DSP-150	B-1/B-2 Visa and Border Crossing Card. Note: Form DSP-150 replaces Form I-186 and Form I-586.		N
DS-2019	Certificate of Eligibility for Exchange Visitor (J-1) Status. Evidence the alien is an exchange visitor. Must also show an I-94 with J-1 alien classification.		N

Form	Description	Work Authorization Status	Permanent Resident Alien
I-20	Certificate of Eligibility for Non-immigrant Student Status. Must also show an I-94 showing either F-1 or M-1 alien classification.		N
I-94 or I-94A	Arrival/Departure Record. Evidence the alien is a non-immigrant. Note: U.S. Customs and Border Protection (CBP) no longer issues paper I-94 forms to all travelers; some I-94 information is accessible online. For more information on recent changes to the I-94 refer to http://www.cbp.gov/travel/international-visitors/i-94-instructions		N
I-94W	Non-immigrant Visa Waiver Arrival/ Departure Form. Evidence that the alien is a visitor from a visa waiver country. Note: U.S. Customs and Border Protection (CBP) no longer issues paper I-94 forms to all travelers; some I-94 information is accessible online. For more information on recent changes to the I-94 refer to http://www.cbp.gov/travel/international-visitors/i-94-instructions		N
I-95 or I-95A	Crewman's Landing Permit. Issued to foreign crewman.	Legal alien not allowed to work off the vessel or aircraft	N

Form	Description	Work Authorization Status	Permanent Resident Alien
I-184	Alien Crewman Landing Permit and Identification Card. Issued to foreign crewmen.	Legal alien not allowed to work off the vessel or aircraft	N
I-192	Notice of Approval of Advance Permission to Enter the United States as a Non-immigrant.		N
I-508	Waiver of Rights Privileges, Exemptions and Immunities		N
I-551	Alien Registration Receipt Card (Green Card). Evidence of lawful admission for permanent residence.	Legal alien allowed to work	Y
I-551 STAMP	Temporary I-551. Evidence of lawful admission for permanent residence until the I-551 card is received.	Legal alien allowed to work	Y
I-766	Employment Authorization Document. Evidence of work authorization.	Legal alien allowed to work	N
I-797	Notice of Action. Accept only for Family Unity program aliens. There are numerous types of this form. For more information see http://www.uscis.gov/i-797-info	Legal alien	N

Note: Forms that begin with “I” (such as Form I-551) come from the United States Citizenship and Immigration Services (See the USCIS Web site at <http://www.uscis.gov>). Forms that begin with “DS” (such as DS-2019) come from the U. S. Department of State (See the State Department Web site at <http://state.gov>). Refer to the U.S. Customs and Border Protection website at <http://www.cbp.gov/> for further information.

- (5) The following table lists the various types of non-immigrant visas with a description of each:

Visa Symbol	Class (Description)	Section of the Law
A-1	Ambassador, public minister, career diplomat or consular officer, and immediate family	101(a)(15)(A)(i)

Visa Symbol	Class (Description)	Section of the Law
A-2	Other foreign government official or employee, and immediate family	101(a)(15)(A)(ii)
A-3	Attendant, servant or personal employee of principal A-1 or A-2, and immediate family	101(a)(15)(A)(iii)
B-1	Temporary visitor for business; amateur or professional athletes (competing for prize money only); domestic employee or nanny (must be accompanying a foreign national employer).	101(a)(15)(B)
B-2	Temporary visitor for pleasure, tourism, medical treatment.	101(a)(15)(B)
C-1	Alien in transit directly through U.S.	101(a)(15)(C)
C-1D	Combined transit and crewman visa	101(a)(15)(C)(D)
C-2	Alien in transit to United Nations Headquarters district under Section 11.(3), (4), or (5) of the Headquarters Agreement	101(a)(15)(C)
C-3	Foreign government official, immediate family attendant, servant or personal employee, in transit	212(d)(8)
C-4	Transit without Visa, see TWOV	212(d)(3) ; 212(d)(5)
CW-1	A CNMI-Only transitional worker	
CW-2	Dependent of a CNMI-Only transitional worker	
D-1	Crew member departing on same vessel of arrival	101(a)(15)(D)
D-2	Crew member departing by means other than vessel of arrival	101(a)(15)(D)
E-1	Treaty trader, spouse and children	101(a)(15)(E)(i)

Visa Symbol	Class (Description)	Section of the Law
E-2	Treaty investor, spouse and children	101(a)(15)(E)(ii)
E-3	Australian Specialty Occupation Workers	101(a)(15)(E)(iii)
F-1	Students – Individuals in the U.S. engaging in a full course of academic study. May include university or college, high school, private elementary school, seminary, conservatory, and language training program.	101(a)(15)(F)(i)
F-2	Spouse or child of F-1	101(a)(15)(F)(ii)
G-1	Principal resident representative of recognized foreign member government to international organization, staff and immediate family	101(a)(15)(G)(i)
G-2	Other representative of recognized foreign member government to international organization and immediate family	101(a)(15)(G)(ii)
G-3	Representative of non-recognized or nonmember government to international organization, and immediate family	101(a)(15)(G)(iii)
G-4	international organization officer or employee, and immediate family	101(a)(15)(G)(iv)
G-5	Attendant, servant, or personal employee of G-1, through G-4 and immediate family members of such attendant, servant, or personal employee.	101(a)(15)(G)(v)

Visa Symbol	Class (Description)	Section of the Law
H-1B	Temporary workers in a specialty occupation – individuals in the U.S. to perform services for a sponsoring employer for a fixed period of time. Requires higher education or equivalent. Includes fashion models and some Department of Defense (DOD) workers.	101(a)(15)(H)(i)(b)
H-1B1	Free trade agreement non-immigrant professional from Chile or Singapore	101(a)(15)(H)(i)(b)(1)
H-1C	Nurses going to work up to three years in health professional shortage areas	101(a)(15)(H)(i)(c)
H-2A	Temporary Agricultural Worker	101(a)(15)(H)(ii)(a)
H-2B	Temporary worker: skilled and unskilled	101(a)(15)(H)(ii)(b)
H-3	Trainee	101(a)(15)(H)(iii)
H-4	Spouse or child of an alien classified H-1, H-2, or H-3	101(a)(15)(H)(iv)
I	Foreign media Representatives	101(a)(15)(I)
J-1	Exchange visitor – Non-immigrant visa issued to individuals approved to participate in exchange visitor programs in the United States. Multiple categories of exchange visitors, including teachers, trainees, professor and research scholars, students, au pairs, and more.	101(a)(15)(J)(i)
J-2	Dependents of a J-1 visa holder (spouses and minor children).	101(a)(15)(J)(ii)
K-1	Fiance(e) of a U.S. citizen	101(a)(15)(K)
K-2	Minor child of K-1	101(a)(15)(K)
K-3	Spouse of a U.S. Citizen (LIFE Act)	101(a)(15)(K)(ii)

Visa Symbol	Class (Description)	Section of the Law
K-4	Child of K-3 (LIFE Act)	101(a)(15)(K)(iii)
L-1A	Intercompany transferee – executives and managers	101(a)(15)(L)
L-1B	Intercompany transferee- Specialized knowledge	101(a)(15)(L)
L-2	Spouse or child L-1	101(a)(15)(L)
M-1	Vocational student or other nonacademic student	101(a)(15)(M)(i)
M-2	Spouse or child of M-1	101(a)(15)(M)(ii)
M-3	Canadian or Mexican national commuter students –vocational/non academic institutions	104(a)(15)(M)(iii)
N-8	Parent of an alien classified SK-3 “Special Immigrant ”	101(a)(15)(N)(i)
N-9	Child of N-8 or of an SK-1, SK-2 or SK-4 “Special immigrant ”	101(a)(15)(N)(ii) through (iv)
NATO-1	Principal Permanent Representative of Member State to NATO and resident members of official staff or immediate family	Art. 12, 5 U.S.T. 1094, Art. 20, 5, U.S.T. 1098
NATO-2	Other representatives of member State; Dependents of members of a force entering in accordance with the provisions of the NATO Status-of-Forces agreement; Members of such a Force if issued visas	Art. 13, 5 U.S.T. 1094, Art. 1, 4 U.S.T. 1794, Art. 3, 4 U.S.T. 1796
NATO-3	Official clerical staff accompanying a representative of member state NATO and immediate family	Art. 14, 5 U.S.T. 1096
NATO-4	Official of NATO other than those qualified as NATO-1 and immediate family	Art. 18, 5 U.S.T. 1096
NATO-5	Expert other than NATO officials qualified under NATO-4, employed on behalf of NATO and immediate family	Art. 21, 5 U.S.T. 1100

Visa Symbol	Class (Description)	Section of the Law
NATO-6	Member of a civilian component who is either accompanying a Force entering in accordance with the provisions of the NATO Status-of-Forces agreement; attached to an Allied headquarters under the protocol on the Status of International Military headquarters set up pursuant to the North Atlantic Treaty; and their dependents	Art. 1, 4 U.S.T. 1794, Art. 3, 5 U.S.T. 877
NATO-7	Servant, or other personal employee of NATO-1 through NATO-6 classes or immediate family	Arts. 12-20, 5 U.S.T. 1094-1098
O-1	Extraordinary ability in sciences, arts, education, business or athletics	101(a)(15)(O)(i)
O-2	Individuals accompanying and providing essential support of O-1 visa holder	101(a)(15)(O)(ii)
O-3	Spouse/child of O-1 or O-2	101(a)(15)(O)(iii)
P-1	Individual or team athlete, or member of an entertainment group	101(a)(15)(P)(i)
P-2	Artist and entertainers in reciprocal Exchange programs	101(a)(15)(P)(ii)
P-3	Artists and entertainers in culturally unique programs	101(a)(15)(P)(iii)
P-4	Spouse or child of P-1, 2, or 3	101(a)(15)(P)(iv)
Q-1	International cultural exchange visitors	101(a)(15)(Q)(i)
Q-3	Spouse or child Q-2	101(a)(15)(Q)(ii)(II)
R-1	Religious workers	101(a)(15)(R)
R-2	Spouse/child of R-1	101(a)(15)(R)
S-5	Informant of criminal organization information	101(a)(15)(S)(i)

Visa Symbol	Class (Description)	Section of the Law
S-6	Informant of terrorism information	101(a)(15)(S)(ii)
T-1	Victim of a severe form of human trafficking	101(a)(15)(T)(i)
T-2	Spouse of a victim of severe form of human trafficking	101(a)(15)(T)(ii)
T-3	Child of victim of a severe form of human trafficking	101(a)(15)(T)(ii)
T-4	Parent of a victim of severe form of human trafficking (If victim is under 21 years of age)	101(a)(15)(T)(ii)
TN	Non-immigrant NAFTA Professional visa – Only issued to citizens of Canada and Mexico	214(e)(2)
TD	Spouse or child accompanying TN	214(e)(2)
TWOV	Transit without visa-Passenger/crew	212(d)(3);(5)
TWOV	Crew	212(d)(3);(5)
U-1	Victim of Certain Criminal Activity	101(a)(15)(U)
U-2	Spouse of U-1	101(a)(15)(U)
U-3	Child of U-1	101(a)(15)(U)
U-4	Parent of U-1, if U-1 is under the age of 21	101(a)(15)(U)
V-1	Spouse of an LPR who is the principal beneficiary of a family-based petition (Form I-130) which is filed prior to December 21, 2000, and is pending for at least three years	101(a)(15)(V)
V-2	Child of an LPR who is the principal beneficiary of a family-based visa petition (Form I-130) that is filed prior to December 21, 2000, and is pending for at least three years	101(a)(15)(V)

Visa Symbol	Class (Description)	Section of the Law
V-3	The derivative child of a V-1 or V-2	101(a)(15)(V)
TPS	Temporary Protected Status	INA Section 244

- (6) Visa Waiver Program - The Visa Waiver Program allows citizens of participating countries to travel without a Visa, for tourism or business for stays up to 90 days or less. For more information, visit the State Department web site <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>.

21.8.1.12
(10-01-2007)
Aliens

- (1) The following IRM sections provide specific tax information as it relates to aliens. Publication 519, U.S. Tax Guide for Aliens, contains more information.
- (2) Under U.S. tax laws, resident aliens are generally taxed in the same manner as U.S. citizens. Resident aliens are subject to U.S. tax on income from all sources, both within and outside the United States. Non-resident aliens are generally only taxed on their income from sources within the United States. However, nonresident aliens are subject to U.S. tax on certain foreign source income that is effectively connected with the conduct of a trade or business within the United States.
- (3) A nonresident alien's income that is subject to U.S. income tax is divided into two categories
- income that is effectively connected with a trade or business in the United States, including income received for performing personal services, and
 - income from sources within the United States that is not effectively connected with a trade or business in the United States, such as dividends, interest, rents, annuities and other fixed or determinable income.

Special rules apply to the taxing of the income of nonresident aliens. This depends on whether the income is from investments or from business activities, such as the performance of personal services in the United States.

21.8.1.12.1
(10-01-2019)
U.S. Departing Alien U.S. Income Tax Return (Form 1040-C)

- (1) Some aliens must obtain a Certificate of Compliance (also known as a departure, exit, or sailing permit) signed by an agent of the Field Assistance Area Director before departing the United States or any territory. Taxpayers obtain the certificate by scheduling a visit to a Taxpayer Assistance Center (TAC) office. Accounts Management will not provide Compliance Certificates .
- (2) This Certificate of Compliance is obtained by filing:
- Form 2063, U.S. Departing Alien Income Tax Statement, or
 - Form 1040-C, U.S. Departing Alien Income Tax Return.
- (3) The Form 2063 is not processed, and does not involve a tax computation. Route loose Forms 2063 to Files at the Austin Campus - Stop 6722.
- (4) The Form 2063 can be filed by the following departing aliens:

- a. Aliens, resident or nonresident, who have no taxable income for the tax year, up to and including the date of departure, nor for the preceding year, if the period for filing the income tax return for that year has not expired
- b. Resident aliens who have received taxable income during the tax year or preceding year, and whose departure will not hinder the collection of any tax.

Caution: If the IRS has information indicating that the alien is leaving to avoid paying their income tax, the alien must file a Form 1040-C.

- (5) Form 1040-C is used to report all income received and reasonably expected to be received during the tax year up to and including the departure date. This is not a final return, as the taxpayer must file Form 1040 or Form 1040-NR at the close of the tax year.
- (6) The following taxpayers must file Form 1040-C:
 - Non-residents having U.S. taxable income
 - Residents having U.S. taxable income who do not intend to return to the United States
 - Aliens involved in situations requiring a tax year termination
- (7) Taxpayers in the following categories do not have to obtain a sailing or departure permit before leaving the United States, but must support the claim for exemption with proper identification.

Categories	Departure Permit Exemptions
Category 1	Representatives of foreign governments with diplomatic passports, whether accredited to the United States or other countries, members of their households, and, servants accompanying them. Servants leaving, but not with a person with a diplomatic passport, must get a sailing or departure permit. See Publication 519 .
Category 2	Employees of international organizations and foreign governments, and members of their households whose compensation for official services is exempt under U.S. tax law and who receive no other income from U.S. sources. Note: An alien in category 1 or 2 who filed a USCIS waiver under IRC 247(b), of the Immigration and Nationality Act must obtain a sailing or departure permit.

Categories	Departure Permit Exemptions
Category 3	<p>Alien students, industrial trainees, and exchange visitors, including their spouses and children, who enter on an F-1, F-2, H-3, H-4, J-1, J-2 or Q visa only, and who receive no income from U.S. sources while in the United States under those visas other than:</p> <ul style="list-style-type: none"> • Allowances to cover expenses incident to study or training in the United States, such as expenses for travel, maintenance, and tuition • The value of any services or food and lodging connected with their study or training • Interest income on deposits not effectively connected with a U.S. trade or business <p>Note: A sailing/departure permit is not needed if the income is from: allowances to cover expenses incident to study or training (travel, maintenance, tuition); value of services, food, lodging; interest on deposits not effectively connected with the United States; or USCIS authorized employment compensation.</p>
Category 4	<p>Alien students, including their spouses and children, who enter on an M-1 or M-2 visa only and who receive no income from U.S. sources other than income from USCIS authorized employment or interest income on deposits not effectively connected with the United States.</p>
Category 5	<p>Certain other aliens temporarily in the United States who have received no taxable income during the tax year, up to and including the date of departure, or preceding tax year. Aliens covered by this paragraph are:</p> <ul style="list-style-type: none"> • Alien military trainees in the United States for training sponsored by the DOD, and who leave the United States on official military travel orders • Alien visitors for business on a B-1, or on both a B-1 and B-2 visa, who do not remain in the United States or a U.S. territory for more than 90 days during the tax year • Alien visitors for pleasure on a B-2 visa • Aliens in transit through the United States or any of its territories on a C-1 visa, or under a contract such as a bond agreement, between a transportation line and the Attorney General • Aliens who enter the United States on a border-crossing identification card or for whom passports, visas, and border-crossing identification cards are not required, if they are: visitors for pleasure, visitors for business who do not remain in the United States or a territory for more than 90 days during the tax year, or in transit through the United States or any of its territories
Category 6	<p>Alien residents of Canada or Mexico who frequently commute between that country and the United States for employment, and whose wages are subject to the withholding of U.S. taxes</p>

(8) Form 1040-C:

- a. It is posted as a Transaction Code 430, using Doc Code 61.
- b. Credit remains on the account until a Form 1040 or Form 1040-NR return posts.
- c. Send loose forms to the Files at the Austin Campus - Stop 6722.

(9) Joint Return on Form 1040-C: Generally, departing husbands and wives who are nonresident aliens cannot file joint returns. However, if both spouses are resident aliens, they can file a joint return on Form 1040-C if:

- Both spouses can reasonably expect to qualify to file a joint return at the normal close of their tax year, and
- The tax years of the spouses end at the same time

21.8.1.12.2
(10-01-2013)

**Test for Resident Alien
and Non-resident Alien
Status**

- (1) An alien individual is considered a resident for U.S. income tax purposes during a year, and thus liable for taxes on income from world-wide sources during that year, if they:
 - a. Are lawfully admitted to the United States for permanent residence (the “green card test”) including a taxpayer that holds a green card (Alien Registration Card) as a commuter from Canada or Mexico (see SCA-199950009), or
 - b. Are in the United States for at least 31 days in the current year and meets the substantial presence test. This test is met if the total number of days present in the year in question, plus 1/3 of the days present in the preceding year, plus 1/6 of the days present in the second preceding year add up to 183 days or more, or
 - c. Makes an election under 7701(b)(4) to be treated as a resident alien. See IRM 21.8.1.12.5, or Publication 519 for more information on this election.
- (2) For purposes of the substantial presence test, an individual is treated as present in the United States every day that they are physically present in the country at any time during the day with the following exceptions:
 - a. Days they regularly commutes to work in the United States from a residence in Canada or Mexico
 - b. Days they were in the United States for less than 24 hours when they were in transit between two places outside the United States
 - c. Days they planned to be out of the United States, but were unable to leave because of a medical condition that originated while they were in the United States - Form 8843 or similar statement
 - d. Days they were in the United States as a crew member of a foreign vessel.
 - e. Days they were an exempt individual. See the Exemption Chart below for exempt individuals:

Exemption Chart
An individual temporarily present in the United States because of diplomatic status
An individual temporarily present in the United States because of a visa that the Secretary of the Treasury determines to represent full-time diplomatic or consular status. Generally, individuals present in the United States under an "A" or "G" class visa are considered foreign government-related individuals with full time diplomatic or consular status. However, individuals present in the United States under an A-3 or G-5 visa as a personal employee, attendant, or domestic worker for either a foreign government or international organization official are not considered a foreign government-related individual with full-time diplomatic or consular status
An individual temporarily present in the United States because of full-time employment with an international organization
An individual temporarily present in the United States because of membership in the immediate family of a person described in the preceding 3 blocks in this chart (a foreign government-related individual)
A teacher or trainee, temporarily present in the United States under a "J" or "Q" visa (other than as a student), who substantially complies with the requirements of the visa, (usually limited to 2 years during the last 6 calendar years)
A student, temporarily present in the United States under an "F", "J", "M" or "Q" visa, who substantially complies with the requirements of the visa (usually limited to 5 years)
A professional athlete temporarily in the United States to compete in a charitable sports event
Immediate family members of exempt teachers and trainees

- (3) An exception to the substantial presence test is made by showing a closer connection to a foreign country. Even though an alien would otherwise meet the substantial presence test, they do not meet the test for the current year, if:
- a. The alien is present in the United States for less than 183 days during the current year,
 - b. It is established that for the current year the alien has a tax home in a foreign country, and has a closer connection to that country than to the United States and
 - c. The alien timely filed the Form 8840, Closer Connection Exception Statement for Aliens.
- (4) This exception to the substantial presence test does not apply for any year during which the alien has an application for adjustment of status pending or takes other steps to apply for status as a lawful permanent resident of the United States.

- (5) A resident alien is subject to tax under a special rule if their period of residence in the United States is interrupted with a period of non-residence. The special rule under IRC 7701(b)(10) applies if the resident alien meets all the following conditions.
- a. They were a U.S. resident for a period that includes at least 3 consecutive calendar years
 - b. They were a U.S. resident for at least 183 days in each of those years
 - c. They ceased to be treated as a U.S. resident
 - d. They then again became a U.S. resident before the end of the third calendar year after the period described in (1) above.

Under this special rule, the individual is subject to tax on their U.S. source gross income and gains on a net basis at the graduated rates applicable to individuals (with allowance deductions) for the period during which the individual is a nonresident alien, unless the individual is subject to a higher tax under the 30 percent tax on income not connected with a U.S. trade or business. See Pub 519, for more details.

21.8.1.12.3
(10-01-2019)
Resident Aliens

- (1) Resident aliens are those persons admitted for lawful permanent residence in the United States (the “green card test”) meet the substantial presence test, or make a first year election under IRC 7701(b)(4).
- (2) Generally, a resident alien taxpayer is entitled to deductions, exclusions, and credits under the same rules as a U.S. citizen.

Reminder: Certain tax credits may require a social security number.

- (3) All individuals are required to include a social security number (SSN) or individual taxpayer identification number (ITIN) with their federal income tax return. An alien can also apply for a SSN using Form SS-5, Application for a Social Security Number Card (Original, Replacement or Correction). Individuals who do not have and are not eligible to get a SSN must apply for an ITIN using a Form W-7, Application for IRS Individual Taxpayer Identification Number. The Form W-7 is filed with an income tax return unless the individual qualifies for one of the exceptions listed in the form instructions.
- (4) An individual who is a U.S. resident alien for an entire taxable year must generally file Form 1040. U.S. resident aliens have the same filing requirements as U.S. citizens. Like U.S. citizens, U.S. resident aliens generally cannot claim benefits provided by the United States under a tax treaty.

Caution: In some circumstances, an individual who is a resident under either the green card test or the substantial presence test may also be a resident of a treaty country under that country’s law. If the individual is a resident of the other country under the tiebreaker rules in the treaty, the individual may choose to file Form 1040-NR as a nonresident alien. An individual who makes this election must notify the Service on a Form 8833, Treaty-Based Return Position Disclosure, under Section 6114 or 7701(b). This form is filed with their Form 1040-NR.

- (5) A U.S. citizen or resident alien living outside the United States on the regular due date for filing an income tax return, is allowed an automatic 2- month extension for filing the return and paying tax if filing a calendar year return.

Note: The 2 month extension applies if, on the due date of the return, the U.S. citizen or resident:

- Was living outside the United States or Puerto Rico, and
- Had a main place of business or post of duty outside the United States or Puerto Rico, or
- Was in the military or naval service on duty outside the United States or Puerto Rico

(6) A resident alien must report all gross income from world-wide sources.

(7) An alien is a U.S. resident, for tax purposes, if they:

- a. Are lawfully admitted to the United States for permanent residence as the holder of a green card at any time during the year, including a taxpayer that holds the green card as a Canadian/Mexican commuter (see SCA-199950009)
- b. Meets the substantial presence test, or
- c. Makes an election to be considered a U.S. resident. See IRM 21.8.1.12.5

21.8.1.12.4
(10-01-2019)
Non-resident Aliens

(1) A nonresident alien is an individual who is neither a U.S. citizen nor a U.S. resident within the meaning of IRC 7701(b)(1)(A).

(2) The following are unique definitions of aliens where special residency rules apply:

- a. Alien Seamen - Alien seamen are not considered residents of the United States just because they are on a U.S. vessel. A residence can be established in the United States by acquiring a hotel or boarding house room, even if their work requires absence from the United States for long periods.
- b. Alien crewmen - Alien crewmen of a foreign vessel engaged in transportation between the United States and a foreign country, or territory of the United States, are not treated as present in the United States on those days unless the individual otherwise engages in any trade or business in the United States on such day.

21.8.1.12.5
(10-01-2019)
Electing to be Treated as a Resident Alien

(1) First-year election – An alien individual who was a nonresident alien in the prior year and who does not meet either the substantial presence test or green card test in the current year (i.e, the election year) may elect to be treated as a U.S. resident for tax purposes if they:

- Meet the substantial presence test in the year following the election,
- are present in the United States for at least 31 consecutive days in the year of the election, and
- are present in the United States for at least 75 percent of the number of days during the period beginning with the first day of the 31-day period (described above) and ending with the last day of the year of election

(2) In certain circumstances described below; a nonresident alien can make an election under IRC 6013(g) or (h) to be treated as a U.S. resident.

- (3) A nonresident alien individual with respect to whom an election made under IRC 6013(g) or IRC 6013(h) is in effect for the taxable year shall be treated as a resident of the United States
- For purposes of Chapter 1, (Normal Taxes and Surtaxes), for all of such taxable year, and
 - For purposes of Chapter 24 (relating to wage withholding) for payments of wages made during such taxable year.

- (4) To qualify as a resident under IRC 6013(g), the nonresident alien at the close of the tax year for which the election is made:

- Must be married to a U.S. citizen or resident, and
- Both must elect to have the benefits of this subsection apply to them

Note: The election is made by attaching a statement to an originally filed joint return or a joint amended return.

Note: The IRC 6013(g) election applies to all subsequent years until such time as the election is terminated.

- (5) To qualify for treatment as a resident and file a joint return under 6013(h), the individual must be a nonresident alien at the beginning of the tax year but a U.S. citizen or resident at the end of the tax year and at the close of the tax year in which the alien becomes a resident of the United States:

- The alien must be married to a U.S. citizen, or resident, and
- Both must elect to have the benefits of the subsection apply to them.

Note: The election is made by attaching a statement to an originally filed joint return, or a joint amended return.

- (6) For more information, see Publication 519.

21.8.1.12.6
(10-01-2021)

**Non-resident Alien Filing
Requirements - Form
1040-NR**

- (1) Non-resident alien individuals engaged or considered to be engaged in a trade or business in the United States **must** file a return, **even if**:
- Their income did not come from a trade or business conducted in the United States
 - Their income did not come from U.S. sources
 - Their income is exempt from tax

- (2) Non-resident alien individuals **not** engaged or considered engaged in a trade or business in the United States must file a return when their tax liability is not satisfied by withholding at source.

- (3) Non-resident alien students and trainees temporarily present in the United States under an F, J, M, or Q visa, are considered engaged in trade or business in the United States.

Note: A nonresident alien student, teacher, or trainee who is temporarily present in the United States under an F, J, M, or Q visa and who has no income that is subject to U.S. income tax does not have to file a Form 1040-NR.

- (4) A nonresident alien liable for filing a U.S. income tax return generally must file a Form 1040-NR.

Note: There is a restriction that does not allow taxpayers who filed a joint return in most instances to change to married filing separate returns after the return due date. However, this restriction does not apply in cases where the taxpayer requests a change from an erroneous 1040 series joint filing to 1040-NR separate filings.

Reminder: Non-Resident aliens cannot use the standard deduction or zero bracket amount unless they qualify under Article 21 of the United States - India Tax Treaty as students and business apprentices from India.

- (5) Beginning in 2017 (2016 tax year), nonresident alien filers have the option of filing Forms 1040-NR electronically through Modernized E-File (MeF). For an overview of MeF for individual filers refer to IRM 3.42.5.14, IRS e-file for 1040 Modernized e-File (MeF). For information about command code usage, for e-filed returns along with information about Form 8453, U.S. Individual Income Tax Transmittal For An IRS E-Filed Return refer to IRM 21.6.6.2.24, Electronic Filing System (e-file).
- (6) Form 1040-NR is due:
- On or before April 15, if using a calendar year, or the 15th day of the 4th month after the end of the tax year if a fiscal filer, who has earned wages subject to U.S. withholding tax under chapter 24. Generally, this is effectively connected income and is processed with Document Code 73.
 - On or before June 15, if using a calendar year, or the 15th day of the 6th month after the close of the tax year, if a fiscal filer who has income that is **not** subject to U.S. withholding. Generally, this is not effectively connected income and is processed with Document Code 72.

Note: If the taxpayer has both earned wages subject to U.S. withholding tax, as well as non-U.S. earned income, the due date is on or before April 15th if using a calendar year, or the 15th day of the 4th month after the end of the tax year, if a fiscal filer.

- (7) For tax years beginning on or after January 1, 2006 and ending before January 1, 2018, the requirement to file a return is eliminated for nonresident aliens who earn wages effectively connected with a U.S. trade or business less than the amount of one personal exemption. The nonresident alien also must have no other income in the U.S. that would trigger a filing requirement and would not otherwise be required to file a return. See Notice 2005-77 for more information.
- (8) For tax years beginning after December 31, 2017 and ending before January 1, 2026, the amount of the personal exemption is reduced to \$0. As a result of this change, nonresident aliens with gross income in excess of \$5 are required to file an income tax return for tax years 2018 through 2025.
- (9) The following Reason Codes identify changes from 1040 to 1040-NR filings and vice versa.
- RC 100 - Form 1040-NR filing requirement
 - RC 101 - Form 1040 filing requirement
- (10) Facsimile signatures may be used on Form 1040-NR in situations where a substantial number of returns are filed by preparers, subject to conditions, See Rev. Rul. 68-500.

21.8.1.12.6.1
(12-07-2022)

**Filing Status - Form
1040-NR**

(1) The filing status choices shown on the Form 1040-NR prior to tax year 2018 are:

- 1 = Single resident of Canada or Mexico, or a single U.S. national
- 2 = Other single nonresident alien
- 3 = Married resident of Canada or Mexico, or a married U.S. national
- 4 = Married resident of the South Korea
- 5 = Other married nonresident alien
- 6 = Qualifying widow(er) with dependent child

Note: The 2020 and 2021 version of Form 1040-NR only has single , married filing separately, and qualified surviving spouse filing statuses due to changes made by PL 115-97. Beginning in tax year 2022 estates and trusts are added as a filing status.

Note: A nonresident alien may elect under IRC 6013(g) or (h) to be treated as a resident alien and use married filing joint filing status and report worldwide income. To qualify under IRC 6013(g), the nonresident alien at the close of the tax year for which the election is made must be married to a U.S. citizen or resident, and both spouses must elect to have the benefits of this subsection apply to them. IRC 6013(h) applies to an individual who was a nonresident alien at the beginning of any taxable year but is a resident of the United States at the close of the year, is married to a U.S. citizen or resident at the close of the year, and who makes the election under IRC 6013(h) together with their spouse.

21.8.1.12.6.2
(10-01-2020)

**Exemptions - Form
1040-NR**

(1) The information below in this IRM subsection pertains to tax years prior to 2018. Section 11041 of PL 115-97 reduces the amount of the personal exemption to \$0 for all nonresident aliens including residents of Canada, Mexico, South Korea, and India for tax years 2018 through 2025.

(2) Residents of Canada, Mexico, and U.S. Nationals can claim exemptions for self, spouse, and/or other dependents on the same basis as U.S. citizens. On the Form 1040-NR, they check box 3 to claim their spouse and box 7c to claim dependents.

(3) Resident students or business apprentices of India are able to claim exemptions for self, spouse (if the spouse had no gross income for U.S. tax purposes and cannot be claimed as a dependent on another taxpayer's return), and/or other dependents on the same basis as U.S. citizens, if they are eligible for the treaty benefits under article 21(2) of the U.S.-India Income Tax Treaty.

(4) All others are allowed only one exemption for self only (Box 2, or 5). If more than one exemption is claimed, disallow the exemption(s) and send Letter 105C with the following fill-in: "As a nonresident alien filer, you are only allowed an exemption for yourself."

21.8.1.12.6.3
(10-01-2017)

**Non-resident Aliens and
Self-Employment Tax**

(1) Some nonresident aliens may be required to pay self-employment (SE) tax and be eligible to claim the deduction for one-half of SE tax on Form 1040-NR.

(2) A nonresident alien reporting SE tax must be subject to an international social security agreement in effect that determines that they are covered under the U.S. social security system.

- (3) Refer to the following chart to process amended Form 1040-NR returns which report SE tax.

If ...	And ...	Then ...
Taxpayer claims to owe SE tax and takes the deduction for one-half of SE tax paid	There is no country noted in the address portion of Form 1040-NR	Make the assessment using normal procedures. Issue correct IDRS letter to explain that we assessed their SE tax and encourage them to confirm with the Social Security Administration (SSA) that they are subject to an international social security agreement in effect that determines that they have coverage under the U.S. social security system. They can visit the SSA website at http://www.ssa.gov/international/ for more information. If they determine that they paid SE tax in error, they can file an amended return to claim a refund within 3 years from the due date of the return, or 2 years from the date of payment.
Taxpayer claims to owe SE tax and takes the deduction for one-half of SE tax paid	There is a country noted in the address portion of Form 1040-NR that has a bilateral social security agreement with the United States (totalization agreement). Refer to https://www.irs.gov/individuals/international-taxpayers/totalization-agreements for a list of countries.	Make the assessment using normal procedures.
Taxpayer claims to owe SE tax and takes the deduction for one-half of SE tax paid,	There is a country noted in the address portion of Form 1040-NR that does not have a bilateral social security agreement with the United States (totalization agreement).	Make the assessment using normal procedures. Issue correct IDRS letter to explain that we assessed their SE tax and encourage them to confirm with the Social Security Administration (SSA) that they are subject to an international social security agreement in effect that determines that they have coverage under the U.S. social security system. They can visit the SSA website at http://www.ssa.gov/international/ for more information. If they determine that they paid SE tax in error, they can file an amended return to claim a refund within 3 years from the due date of the return, or 2 years from the date of payment.

21.8.1.12.6.4
(03-19-2020)
**Article XXV United
States-Canada Income
Tax Convention**

- (1) Under the United States-Canada Income Tax Convention, a married Canadian resident who has U.S. source wages subject to tax in the United States may be able to compute their U.S. tax liability in accordance with a special provision in Article XXV(3).
- (2) For further information on the special provision and how the tax liability is calculated refer to IRM 3.22.3.11.5, Article XXV- United States and Canada Income Tax Treaty.

21.8.1.12.7
(12-07-2022)
**Non-Resident Alien
Filing Deadlines**

- (1) A nonresident alien individual engaged in a U.S. trade or business or who has a U.S. permanent establishment must file a Form 1040-NR . A Form 1040-NR can also be filed if the nonresident alien individual is receiving U.S. source income that is not properly withheld upon. The due date of a Form 1040-NR is April 15th for a nonresident alien individual who is an employee and received wages subject to U.S. income tax withholding, and June 15th for a nonresident alien individual who did not receive wages as an employee subject to withholding.

Reminder: Notice 2020-23 postponed tax payment and filing deadlines until July 15, 2020 for any person with a Federal income tax payment or a Federal income tax return due April 15, 2020 . Notice 2021-21 provides the due date for filing Federal income tax returns in the Form 1040 series and making Federal income tax payments in connection with one of these forms having an original due date of April 15, 2021, is automatically postponed to May 17, 2021.

- (2) In addition to the general rules, further filing deadlines apply to nonresident aliens engaged in a trade or business or who have a permanent establishment in the United States. See Treasury Regulation 1.874-1(b).
- (3) Failure to file timely U.S. returns by the applicable deadlines described below could result in the loss of certain deductions and credits under IRC 874(a) for taxes paid or accrued by nonresident aliens engaged in a trade or business or who have a permanent establishment in the United States:
 - a. Non-resident aliens required to file a Form 1040-NR for the first time, or who filed one for the immediately preceding tax year, must file no later than 16 months after the due date of their current year's return
 - b. Non-resident aliens who did not file for the preceding year must file their returns no later than 16 months after the due date or the date the IRS mails a notice advising the nonresident individual that the current year tax return is not filed and that certain deductions or credits may not be claimed, whichever is earlier
 - c. Non-resident aliens unsure about their status may file protective returns no later than 16 months after the due date.

21.8.1.12.8
(03-10-2022)
**Extensions of Time
Form 4868**

- (1) IRC 6081(a) permits the Service to use its discretion to grant reasonable extensions of time to file.
- (2) Individuals will receive an automatic six-month extension of time to file by filing Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.
 - a. U.S. citizens and resident aliens: Original due date is April 15th. The 6-month automatic extension is an extended due date of October 15th.

Note: A two-month extension of time to file and pay is granted to U.S. citizens and residents with tax homes and abodes located outside the United States and Puerto Rico, or who are in military or naval service on duty outside the United States and Puerto Rico, pursuant to Treas. Reg. 1.6081-5, resulting in an extended due date of June 15th. If the taxpayer requires more time to file beyond June 15th, they may file Form 4868 to obtain an automatic extension of an additional four months to October 15th. This form is due on or before June 15th.

Reminder: For tax year 2019, Notice 2020-23 postponed tax payment and filing deadlines until July 15, 2020. For tax year 2020, Notice 2021-21 postponed tax payment and filing deadlines until May 17, 2021.

- b. Non-resident aliens with wages, line 1a, Form 1040-NR: Original due date is April 15th. The 6- month automatic extension is extended until October 15th.
- c. Non-resident aliens with income other than wages, line 1a, Form 1040-NR: Original due date is June 15th. Non-resident aliens requiring more time to file beyond June 15, may file Form 4868 to obtain an automatic extension of time to file to December 15th. For more information refer to Pub 519 , US Tax Guide for Aliens.

Note: All dates in a, b, and c above assume taxpayers file income tax returns on a calendar-year basis.

- (3) Generally, taxpayers are eligible for a 6- month extension of time to file from the original due date of the return. However, taxpayers considered living abroad may receive an extension beyond 6 months. See IRM 3.11.212.2.4, Letter Requests.
- (4) These extensions of time apply to fiscal as well as calendar year filers, and must be adjusted when weekends and holidays are involved.

21.8.1.12.9
(10-01-2019)
**Form 2350, Application
for Extension of Time to
File U.S. Income Tax
Return**

- (1) Form 2350, Application for Extension of Time to File U.S. Income Tax Return, is for U.S. citizens and resident aliens abroad who expect to File Form 2555 , Foreign Earned Income. The taxpayer must:
 - a. Expect to qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction by meeting either the bona fide residence test or the physical presence test but not until after the tax return is due, and
 - b. Their tax home must be in a foreign country (or countries) throughout the period of bona fide residence or physical presence, whichever applies.
- (2) Form 2350, must be filed before the return due date (including the two- month automatic extension).
- (3) The extension will generally be to a date 30 days after the date on which the taxpayer expects to meet either the bona fide residence test or the physical presence test.

Note: Form 2350 can be filed without using another extension form first.

(4) Overlay ULC field on CC FRM77 with 98 when inputting a Form 2350.

21.8.1.12.10
(10-01-2019)
**Effectively Connected
Income**

- (1) If a nonresident alien or foreign corporation is engaged in a U.S. trade or business, all income, gain, or loss that is derived from sources within the United States, other than certain investment income, is treated as effectively connected income (ECI).
- (2) Whether or not a foreign person is engaged in a U.S. trade or business is determined on the basis of the facts and circumstances in each case.
- (3) The following chart has examples of U.S. source income considered effectively connected with a trade or business in the United States.

Effectively Connected Income - U.S. Source
Income earned or received for personal services performed in the United States including wages, tips, commissions, fees, business, or other compensation (subject to a de minimis exception that rarely applies See IRC 864 (b)(1)). The place where the services are performed, not where the compensation is paid, controls in determining the source of income from personal services. See Rev. Rul. 60-55.
Profit and loss derived from the operation of a business in the United States. For example, the sale of inventory property in the United States (purchased either in the United States or in a foreign country), or a share of U.S. source profits or losses of a partnership.
Community property income from a community property state involving a married couple one or both of whom are nonresident alien individuals is treated in accordance with IRC 879, Tax treatment of certain community income in the case of nonresident alien individuals.
Certain investment income from U.S. sources may or may not be treated as effectively connected with a U.S. trade or business. See Publication 519.
Fellowships and scholarships - Generally, a nonresident alien candidate for a degree that is temporarily present in the United States on an F-1, J-1, M-1, or Q-1 non-immigrant visa is considered engaged in a U.S. trade or business. The qualified portion of a scholarship or fellowship is not taxable. The non-qualifying portion, if any, of a scholarship or fellowship is treated as effectively connected income. This portion, if any, is withheld upon at a 14 percent (or lower) treaty rate, but taxed at graduated rates that apply to wages (rather than the flat 14 percent. Many tax treaties contain exemptions from U.S. taxation for scholarships and fellowships. The treaty provisions usually exempt the entire scholarship or fellowship amount regardless of whether the grant is a qualified scholarship under U.S. law.
Pensions are (generally subject to withholding at 30 percent or reduced treaty rate but can be treated as effectively connected income if paid to an individual who is a nonresident alien performing services in the United States after 1986 and the pension payment is attributable to those services.
Income from real property for which an election is made under IRC 871(d) to treat the income as ECI .
Gains and losses from the sale or exchange of U.S. real property interests under IRC 897.

Effectively Connected Income - U.S. Source
Gain and loss from the sale or exchange of a partnership interest in a partnership engaged in trade or business within the United States is treated as effectively connected income or loss to the extent of the portion of the partner's distributive share of effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the disposition. See IRC 864(c)(8) , which applies to sales, exchanges, or other dispositions occurring on or after November 27, 2017.
Income received by a nonresident alien performing services in the United States is treated as U.S. source income when it is received from a foreign government, foreign political subdivision, or international organization (as designated by the President of the United States by Executive Order). The employee may be able to exempt such wages from U.S. source tax if they satisfy certain requirements. See Pub 519 .

- (4) Foreign source income described in the Effectively Connected Income chart in paragraph 4 below is treated as effectively connected income if:
- The foreign source income is attributable to an office or other fixed place of business within the United States
 - The office or fixed place of business is a material factor in the production of such income, and
 - The office or fixed place of business regularly carries on activities of the type from which such income is derived.
- (5) The following chart identifies three types of effectively connected foreign source income.

Effectively Connected Income - Foreign Source
Rents and royalties for the use of, or for the privilege of using, intangible personal property (patents, copyrights, trademarks, secret processes and formulas, goodwill, trade brands, franchises and similar properties) located outside the United States, or from any interest in such property, and the rents or royalties are derived from the active conduct of a U.S. trade or business.
Dividends, interest, or amounts received for the provision of a guarantee of indebtedness issued after September 27, 2010, from the active conduct of a banking, financing, or similar business in the United States. A substitute dividend or interest payment received under a securities lending transaction or sale-repurchase transaction is treated the same as the amounts received on the transferred security.
Income, gain, or loss from the sale outside the United States, through the U.S. office or other fixed place of business, of stock in trade, property that would be included in inventory if on hand at the end of the tax year, or property held primarily for sale to customers in the ordinary course of business (but not if property is sold for use, consumption, or disposition outside the United States and an office or other fixed place of business in a foreign country was a material factor in the sale).

21.8.1.12.11
(10-01-2019)
**Treatment of
Non-Effectively
Connected and Certain
Other Income**

- (1) Non-effectively connected income is income not effectively connected with a trade or business in the United States.
- (2) Non-effectively connected income of nonresident aliens is taxed at 30 percent or a lower treaty rate of the gross amount of U.S. source income, subject to exceptions for certain types of income see Pub 519, U.S. Tax Guide for Aliens.

Note: It is taxable to nonresident aliens only when it is from U.S. sources.

- (3) Foreign source non-effectively connected income received by a nonresident alien does not have to be claimed or reported on a Form1040-NR.
- (4) Scholarships, fellowships, and grants are sourced according to the residence of the payer. Payments made by entities created or domiciled in the United States are generally treated as U.S. source income. Payments made by entities created or domiciled in a foreign country are generally treated as foreign source income. Such payments received by a nonresident alien for activities conducted outside the United States are treated as foreign source income. See Pub 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.
- (5) Non-resident aliens present in the United States **less** than 183 days during the tax year are not subject to taxes on gains from sales or exchanges of certain capital assets, unless such gains are effectively connected with a U.S. trade or business. See Pub 519.

- (6) Non-resident aliens temporarily present in the United States for less than 90 days and who receive less than \$3,000 in compensation for performing services are exempt from tax on such compensation if the services are performed either:
- for a nonresident alien individual, foreign partnership, or foreign corporation not engaged in U.S. trade or business, or
 - for an office or place of business kept in a foreign country or in a U.S. possession by a person who is a U.S. citizen or resident or by a domestic partnership or domestic corporation.

21.8.1.12.12
(10-01-2020)
**Statements Required
Under Treas. Reg
301.7701(b) – Form 8840
and Form 8843**

- (1) Non-resident aliens claiming a closer connection exception to the substantial presence test are required to file Form 8840, Closer Connection Exception Statement for Aliens. See Treas. Reg 301.7701(b)-8.
- (2) Aliens are not eligible for the closer connection exception if:
- They were present in the United States 183 days or more in the calendar year,
 - They are a lawful permanent resident of the United States (i.e., green card holder), or
 - They have applied for, or taken other affirmative steps to apply for, a green card or have an application pending to change their status to that of a lawful permanent resident of the United States.
- (3)) Certain exempt individuals (including teachers or trainees on a **J** or **Q** visa, students on an **F**, **J**, **M**, or **Q** visa, and professional athletes competing in a charitable sports event) and individuals who were unable to leave the United States because of a medical condition are required by Treas. Reg 301.7701(b)-8 to file a Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition, in addition to Form 8840, Closer Connection Exception Statement for Aliens, if they want to claim a closer connection exception.
- (4) Taxpayers required to file a Form 1040-NR are instructed to attach the Form 8840 (and, if required, the Form 8843) to their tax return for the tax year in question. Taxpayers not required to file a tax return are instructed to send the Form 8840 (and, if required, the Form 8843) to the address provided in the instructions to the form.
- (5) Research on IDRS any loose Form 8840 or Form 8843 that is received in the international Departments and attach to the latest tax return on file, or push code (TC 930) to the return being processed. See IRM 21.5.1.4.4.3 , Inappropriate Use of TC 930 Push Code for cases scanned into the Correspondence Imaging Inventory (CII). If there is no return on file or no indication that one has been received and is being processed, route the Form 8840 or Form 8843 to the Austin Submission Processing Campus, 3651 S IH-35 Austin TX 78741 DP 6126 AUSC.

21.8.1.12.13
(10-01-2021)
**Claims for Earned
Income Tax Credit (EITC)**

- (1) The terms Earned Income Tax Credit (EITC) and Earned Income Credit (EIC) are interchangeable. Use the following procedures in conjunction with the procedures found in IRM 21.6.3.4.2.7, Earned Income Tax Credit (EITC). Publication 519, U.S. Tax Guide for Aliens and Publication 596, Earned Income Credit (EIC) also include information on the EIC.

- (2) To qualify for the EIC, an alien taxpayer must, among other requirements, have lived in the United States for more than half of the tax year. For this purpose, the United States includes only the 50 states and the District of Columbia. See Pub 596 , Earned Income Credit (EIC)for detailed eligibility requirements.
- (3) U.S. military personnel stationed overseas can qualify for the EITC even when their children lived with them abroad the entire year if they meet all other qualifying factors. See Pub 3, Armed Forces' Tax Guide for more information.
- (4) Individuals who claim the benefits of 26 U.S. Code 911 (Foreign Earned Income Exclusion) cannot claim the EITC.
- (5) Disallow EIC if taxpayers are out of the United States, and not U.S. military personnel on extended active duty, or have claimed the benefits of IRC 911.
- (6) If the taxpayer is a nonresident alien for any part of the tax year, they are not eligible to claim the EITC, unless the taxpayer is married to a U.S. citizen or resident alien and they choose to file a joint return under IRC 6013(g) or (h). See IRM 21.8.1.12.5 or Publication 519 for more information on the election to be treated as a resident alien.
- (7) Taxpayers cannot claim EITC using an **ITIN**. The taxpayer (and spouse, if filing a joint return) and any qualifying child listed on Schedule EIC and taken into account in computing the amount of the credit must have an **SSN**. If the social security card says, "Not Valid for Employment," correspond with the taxpayer to determine the reason the SSN is issued. If the SSN is issued so that the individual could receive a federally funded benefit, such as Medicaid, disallow the credit.
- (8) In computing the amount of the EITC, a taxpayer can only take into account qualifying children with valid SSNs (not ITINs or ATINs). If a taxpayer has no qualifying children with valid SSNs, the taxpayer is only eligible for the self-only EITC amount.

Caution: If the taxpayer has two qualifying children, and only one has a valid SSN, then the taxpayer can claim the EITC only for that child, provided they meet all the other qualifying factors. Section of 9622 of the American Rescue Plan Act, 2021, eliminated the rule that disallowed the EITC to taxpayers whose qualifying children did not have valid SSNs.

21.8.1.12.13.1
(10-01-2021)
**EITC Erroneously
Claimed by Taxpayers
with Territory Address**

- (1) Generally, taxpayers who are bona fide residents of the U.S. territories are subject to different income tax rules under Sections 931-935: American Samoa (Section 931) and Puerto Rico (Section 933): Residents of these territories have an income tax filing requirement with the IRS only if the individual has income sourced in the United States or a foreign country. If they have only territory-sourced income they have no income tax filing requirement with the IRS.
Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands: Residents of these territories generally have no income tax filing requirement with the IRS and would file their income tax return only with their local territory tax department. If available in the territory, these residents would claim the EITC on a territory income tax return.

- (2) In any case, residents of the territories are generally not eligible to claim an EITC on a U.S. return. There have been some instances when territory residents are incorrectly claiming the EITC on an income tax return filed with the IRS.
- (3) In determining where a territory individual resides for income tax filing purposes and EITC eligibility purposes, the following factors may help
 - The address of the taxpayer and the taxpayer's employer on a Form W-2 (may show where the taxpayer works and resides).
 - The taxpayer's tax liability is zero but an EITC is claimed.
 - There is no indication on the Schedule EITC that the taxpayer has lived in the U.S. mainland for more than 6 months and/or has qualified dependent.

Note: One possible exception to when such an individual may be eligible to file an income tax return with the IRS and claim an EITC on that return is if the individual is a member of the U.S. Armed Forces stationed outside the U.S. mainland but retains their tax residency in the United States. In that instance, the individual will file a U.S. income tax return and claim the EITC with the IRS. Note: the same rule would apply to spouses of such service members. See Pub 570 for more information.

- (4) IRC 7701(a)(9) and Publication 596 define the term "United States," when used in a geographical sense, to include the 50 States and the District of Columbia. For this purpose, none of the U.S. territories, including Puerto Rico, are deemed part of the United States. This is an important factor when determining EITC residency requirements.
- (5) If an inquiry is received questioning the status of a refund, there may be a freeze on the account from initial processing. Do not release this freeze, unless the EITC eligibility requirements are met. If they are not, advise the taxpayer or representative of the ineligibility for EITC, and that they are not to file with IRS. Territory residents are to be encouraged to contact their local territory tax department. Reverse the EITC posting of credit reference number TC 764 with a TC 765, using CC REQ54.
- (6) Correspond for the required support If a claim is received with unclear qualifications for EITC.
- (7) Follow formal claim disallowance procedures when a claim is received and the taxpayer does not meet the qualifications for EITC.

21.8.1.12.13.2

(10-01-2022)

Exception for Members of the Armed Forces on Long-Term Active Duty

- (1) Members of the United States armed forces stationed in Puerto Rico or one of the other territories who have a State of Legal Residence in D.C. or one of the 50 states are required to file an income tax return with the IRS and are deemed to live in the United States during their duty period for purposes of the EITC.
- (2) IRC 32(c)(4) tells that members of the armed forces of the United States are treated as being in the United States for any period during which the member is stationed outside the United States on active duty in excess of 90 days. Therefore, a member who has an address in a territory meets the residency test for the EITC and is eligible if they meet the other EITC requirements.

21.8.1.12.14
(10-01-2023)

**180-Day Interest Free
Period for Chapter 3 and
Chapter 4 Withholding
or Withholding on
section 1446**

- (3) If the claim is questionable, research CC IRPTR to determine if the payer is Defense Finance and Accounting Service (DFAS). This will verify that the filer is a member of the armed forces.
- (4) Do not allow EITC until the taxpayer meets all requirements .

- (1) P.L. 111-147, the Hiring Incentives to Restore Employment Act (HIRE) enacted on March 18, 2010, added new Chapter 4 (FATCA) after Chapter Three. The act also amended IRC 6611(e), Interest on Overpayments by adding new paragraph IRC 6611(e)(4).
- (2) IRC 6611(e)(4), "Certain Withholding Taxes," provides that in the case of any overpayment resulting from tax deducted and withheld under chapter 3 or 4 and section 1446 of the Code, Code section 6611(e)(1), (2), and (3) is applied by substituting "180 days" for "45 days" each place it appears.

Note: For further information refer to IRM 20.2.4.7.6, 180- Day Rule.

- (3) One effect of this change means any refunds issued based on credits from Chapter 3 or Chapter 4 and section 1446 withholding due to amended returns filed after the date of enactment now carry a 180- day interest-free period instead of a 45- day interest-free period.

Reminder: The 180- day interest-free period also applies to original returns and IRS-initiated adjustments.

- (4) Chapter 3 includes code sections 1441 through 1443, which impose withholding requirements on withholding agents who pay income to foreign persons, including nonresident aliens, foreign corporations, foreign partnerships, foreign trusts, foreign estates, foreign governments, and international organizations. Chapter 4 refers to Foreign Account Tax Compliance (FATCA) and covers withholdable payments to foreign financial institutions and withholdable payments to other foreign entities.
- (5) Other transactions for which the 180-day interest free period for withholding apply include dispositions of U.S. real property interests under section 1445, withholding by partnerships on income effectively connected with the active conduct of a U.S. trade or business under section 1446(a), and withholding under section 1446(f) on the amount realized from the disposition for a gain of an interest in a partnership engaged in a U.S. trade or business.
- (6) Refunds of Chapter 3 and Chapter 4 withholding, or withholding under section 1446 can be claimed on Income Tax Returns by the person who has been withheld upon at source. Taxpayers generally claim these refunds by attaching a Form 1042-S, and Form 8805, or Form 8288-A , or Form 8288-C to the return. In certain cases, refunds may also be claimed by withholding agents on the forms used to report tax withheld at source under sections 1441 through 1443 and under section 1446. Refunds of Chapter 4 withholding are made under sections 1471 through 1474. Taxpayers generally claim these refunds by attaching Forms 1042-S, to an income tax return.
- (7) Master File programming accounts for the 180- day period on overpayments of Chapter 3 and Chapter 4 withholding or withholding under section 1446 on
 - a. original returns

- b. amended returns
- c. IRS-initiated adjustments.

Chapter 3 and 4 withholding is identified by TC 766 with Credit Reference Numbers (CRNs) 330 through 333. For more information on the 180-day interest-free period, refer to IRM 20.2.4.7.6, 180-Day Rule.

21.8.1.12.14.1
(10-01-2019)

**Claims for Tax Withheld
at Source**

- (1) If tax is withheld at source under IRC sections 1441 through 1443, or Chapter 4 (or on certain distributions under sections 1445 or 1446), the withholding agent **MUST** issue a Form 1042-S to the recipient.

Note: A letter from the United States Competent Authority is acceptable proof of withholding in lieu of Form 1042-S, the letter must be signed and state the withholding amount allowed and the correct tax year.

- (2) Use the following chart to handle claims for tax withheld at source.

21.8.1.12.14.3
(10-01-2022)

FATCA- 1042-S Matching Program - General Information - Identifying Related Letters, Transaction Codes, Reason Codes, 1042-S Data Fields

- (2) Accounts Management CSR's will report time spent on working the issues in this paragraph under 710-84390 (FATCA).
- (1) The IRS administers a program to verify that the Form 1042-S submitted by a recipient is valid for refund. See IRM 21.8.1.12.14.2 for more information.
- (2) The program evaluates certain data elements from the withholding agent's Form 1042-S (Copy A) submitted to IRS against the recipients Form 1040-NR. The comparison determines if:
- The Withholding Agent (WA) filed copy A of Form 1042-S with the IRS
 - The gross income reported on the Form 1042-S (box 2) is also reported on the recipients Form 1040-NR
 - The total of the Form 1042-S (box 7a plus box 8 if populated, or the entry in box 10 if populated) withholding equals the total of withholding claimed by the taxpayer on Form 1040-NR
 - The WA copy of Form 1042-S has the escrow box checked (box 7b)
 - The recipient's name (box 13a) on the WA copy matches the taxpayer name on the Form 1040-NR
 - The recipient's country code (box 13b) from the WA copy of Form 1042-S matches the country claimed on Schedule OI on the taxpayers Form 1040-NR
 - The taxpayer's TIN on Form 1042-S matches the TIN on Form 1040-NR.
- (3) If Form 1040-NR information matches Compliance either:
- Manually releases the refund (freeze) in part or in its entirety **or**
 - The freeze systemically releases at the end of the 154- day freeze.
- (4) If Form 1042-S information does not match Compliance reverses the credit (CRN 330) using TC 767 with the correct reason code below:
- Reason code 165 identifies multiple inconsistencies between the Form 1040-NR filed and the WA copy of Form 1042-S
 - Reason code 166 identifies the escrow box (7b for 2016) on Form 1042-S is checked on the WA copy of Form 1042-S
 - Reason code 167 identifies a name mismatch between the WA copy of Form 1042-S (box 13a) and the name provided on the taxpayers Form 1040-NR
 - Reason code 168 identifies a mismatch between the recipients TIN (box 13e for 2016) (if available) on the WA copy of Form 1042-S and the TIN provided on the taxpayers Form 1040-NR
 - Reason code 169 identifies that the total of tax withheld (box 7a plus box 8 if populated, or the entry in box 10 if populated) by all WA's does not match the total of credits claimed by the taxpayer on Form 1040-NR.
- (5) **IF THE MATCHING PROGRAM INDICATES A FORM 1042-S DOES NOT MATCH**, a Letter 5904C, Notification of Preliminary Claim Disallowance Regarding Chapter 3 or 4 Withholding, is issued. The letter advises the taxpayer we reduced or eliminated the amount shown on Form 1040-NR , line 25g because their Form 1042-S information does not match the information we received on Forms 1042-S filed by their withholding agents) and advises the taxpayer to contact their WA to correct any inconsistencies. The WA must check their Form 1042-S (Copy A) against what they submitted to the IRS

through the Filing Information Returns Electronically (FIRE) system or on paper and compare the information against what they provided to the recipient. The taxpayer and WA must determine the reason for a Form 1042-S not matching. If a reason is identified, the WA may need to submit an amended Form 1042-S with the IRS and/or provide a corrected form 1042-S to the taxpayer.

- (6) When a reversal posts (TC 767 with the correct reason code), an adjustment notice will generate to the taxpayer. After a reversal posts, the taxpayer may still have an overpayment or the taxpayer may now have a balance due.
- (7) Accounts Management will not validate frozen credits that remain (not reversed) on the account.

Example: The original return includes \$5,000 in frozen credits. \$1,000 is reversed with TC 767 and correct reason code. \$4,000 remains frozen. Accounts Management will only verify the \$1,000 credit that is reversed.

- (8) Accounts Management assistors will take the following actions on accounts affected by the matching program:
 - Follow all normal statute guidelines. Refer to Statutes for clearance or assessment when necessary. See IRM 25.6, Statute of Limitations.
 - Follow all normal Category A guidelines. See IRM 21.5.3, General Claims Procedures in conjunction with, IRM 21.8.1.2.10, Examination Criteria - CAT-A international.
 - Follow all normal freeze code procedures found in IRM 21.5.6, Freeze Codes.
 - Follow all normal amended return guidelines and procedures. For further information see IRM 21.5.2.4, Adjustment Guidelines-Procedures.

21.8.1.12.14.4
(02-04-2021)
**1042-S Credit
Frozen-Not Reversed
(Letter 5887c)**

- (1) When the matching program identifies a credit that requires further research, a TC 810-3 is placed on the account which creates the -E freeze. For further information on the matching criteria, refer to IRM 21.8.1.12.14.3.
- (2) Taxpayers whose accounts have been frozen will be notified by Letter 5887c, Notification of Preliminary Action Regarding Chapter 3 or Chapter 4 Withholdings Shown as Payments on Your Tax Return. The letter will advise the taxpayer the IRS is holding the portion of their refund that relates to the withholding credit they claimed on line 25g of Form 1040-NR while we review it. They don't need to do anything at this time. Our review can take up to six months from the date we received the return or the due date of the return, whichever is later.
- (3) The following table illustrates how AM assistors will reply to telephone/written inquiries concerning Letter 5887c issued because of their account being frozen based on a Form 1042-S credit.

If...	And...	Then...
Taxpayer writes or calls	The credit (TC 766 CRN 330) is frozen but has not been reversed	Research the taxpayers account to identify that the -E freeze is posted and there is a 1042-S credit (TC 766 CRN 330). If it is within the 154- day freeze period, advise the taxpayer their account is under review. The review can take up to six months. When the review is completed, IRS will either send your refund, deny it in full, or send a portion of it to you.
	The credit (TC 766 CRN 330) remains frozen and has not been reversed but the 154- day freeze period has expired.	<p>Research the taxpayers account to identify that the -E freeze is posted and there is a 1042-S credit (TC 766 CRN 330). If the 154- day freeze period has expired, prepare a Form 4442 explaining the taxpayer has contacted IRS and the -E freeze remains on the account. Advise the taxpayer we are elevating their concern to the business unit handling their account and they should hear from IRS in 6 to 8</p> <p>Reminder: The 154- day freeze begins from latter of the return received date, return due date, or correspondence received date</p>
	The credit is reversed	Refer to IRM 21.8.1.12.14.5 below.

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21.8.1.12.14.5
(10-01-2023)
**FATCA Matching
Program Form 1042-S
Credit Denials-Accounts
Management
Telephone/Written
Inquiries - Letter 5904C**

- (1) The instructions in this IRM section pertain only to IMF accounts where the taxpayer is issued a Letter 5904C Notification of Preliminary Claim Disallowance Regarding Chapter 3 or 4 Withholding, **and** one or more credits were reversed (TC 767, with correct reason code) because the withholding agent’s Form 1042-S (Copy A) submitted to the IRS did not match the information on the recipient’s Form 1040-NR.
- (2) IRM 21.8.1.12.14.3 notes that the taxpayer will receive Letter 5904C advising the taxpayer that their Form 1040-NR doesn’t match the information received from Forms 1042-S filed by their Withholding Agents.

- (3) The letter also advises the taxpayer to contact their withholding agent. The letter will specify all reasons for the mismatch.
- (4) The following table illustrates how AM assistors will reply to telephone/written inquiries concerning Letter 5904C, adjustment notices, and/or credit reversal (TC 767, with correct reason codes) where the 1042-S credit has been denied during the matching process.

Note: In all cases you must access **CC IRPTR** to determine that the WA has submitted Form 1042-S Copy A to IRS. If the WA has not submitted Form 1042-S Copy A to IRS, follow IRM 21.5.3.4.6.3, No Consideration Procedures, advise the taxpayer their Withholding Agent did not provide IRS with Form 1042-S Copy A, and the taxpayer must follow up with the Withholding Agent.

Reminder: A letter from the United States Competent Authority is acceptable proof of withholding in lieu of Form 1042-S, the letter must contain a signature and state the withholding amount allowed and the correct tax year.

If...	And...	Then...
Taxpayer writes or calls	Claims to be a victim of identity theft	Follow Identity Theft procedures in IRM 25.23.2, Identity Protection and Victim Assistance - General Case Processing
Taxpayer writes or calls	The taxpayer has not contacted their Withholding Agent	Advise the taxpayer to contact their Withholding Agent. Note: The taxpayer must contact the Withholding Agent and advise them the IRS states the Withholding Agents copy of Form 1042-S does not match the information reported on the taxpayers Form 1040-NR . The taxpayer and Withholding Agent will need to determine the reason for the mismatch, and if identified, the Withholding Agent may need to submit an accurate Form 1042-S with the IRS and/or provide a corrected copy of Form 1042-S to the taxpayer.
Taxpayer writes or calls	The taxpayer has already contacted their Withholding Agent	Research the account to locate the reason code posted with the TC 767 CRN 330. The if/then boxes below contain procedures for each reason code.

If...	And...	Then...
<p>Taxpayer writes or calls</p>	<p>Research shows the reversal reason code is 165 (multiple errors on Form 1042-S)</p>	<ol style="list-style-type: none"> 1. Access Command Code IRPTR using correct definer (L, I, or U) document code 02 to determine if the WA submitted Form 1042-S Copy A to IRS. If not follow no consideration procedures. See IRM 21.5.3.4.6.3, No Consideration Procedures, advise the taxpayer their Withholding Agent did not provide IRS with Form 1042-S Copy A, and the taxpayer must follow up with the Withholding Agent. 2. Access Command Code IRPTR using correct definer (L, I, or U) document code 02 to determine if the Form 1042-S escrow box (7b) was checked by the WA. If yes, follow the procedures in the box below. If no, go to the next step in this box. 3. Access IDRS to determine if the name from the WA copy of Form 1042-S substantially matches the name on the Form 1040-NR. If there is not a substantial match, follow the procedures for reason code 167 below. If the name matches go to the next step in this box. Note: When performing this match, consider that foreign naming conventions may show the surname as the first or second name among some Asian, Hispanic, and other nationalities. 4. Access IDRS to determine if the TIN on the WA copy of Form 1042-S matches the TIN on the Form 1040-NR. If not follow the procedures for reason code 168 below. If yes go to the next step. 5. Access IDRS Command Code IRPTR using correct definer (L, I, or U) document code 02 to determine if the total of all Form 1042-S credits match the total of credits claimed on Form 1040-NR. If not follow procedures for reason code 169 below. If yes go to the next step. Note: If all Forms 1042-S do not have tax ID numbers search using IRPTR(I) 6. If all the determinations made above are yes, adjust the recipient's Form 1040-NR tax account. Follow all normal CII adjustment guidelines using Transaction Code 290 .00 and Credit Reference Number 330 for the amount of the verified reversed credit(s). Use Reason Code 051 on the ADJ54 input screen Note: In all above scenarios E-Trak can be used. When assisting a caller, and you do not have access, to E-Trak prepare a Form 4442 to yourself for further research. Send the case to your lead for E-Trak research. The lead will either attach the results, if they were able to confirm the withholding, or add a case note indicating that they were unable to confirm the withholding

If...	And...	Then...
Taxpayer writes or calls	Indicates they have contacted their WA and the reason code is 166 (escrow box 7(b) on Form 1042-S is checked on WA copy)	<ol style="list-style-type: none"> 1. Access Command Code IRPTR using correct definer (L or I) document code 02 to determine if the WA has checked box 7(b) of Form 1042-S. E-Trak is also available for research. 2. If yes, Follow claim disallowance procedures in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures. Advise the taxpayer IRS cannot allow their refund because their funds are being held in escrow by the WA. If the escrow box is checked in error the WA must provide an amended Form 1042-S Copy A to the IRS and provide a copy of the amended 1042-S to the taxpayer. The taxpayer should allow 6 weeks for IRS to process the amended Form 1042-S filed by the WA. 3. If no, follow all other verification steps listed for Reason Code 165 above.
Taxpayer writes or calls	Indicates they have contacted their WA and the reason code is 167 (Name on Form 1042-S does not substantially match the name on masterfile)	<ol style="list-style-type: none"> 1. Access IDRS to determine if the taxpayer has a corrected Form 1042-S and the name on the corrected Form 1042-S substantially matches the name on the Form 1040-NR filed by the taxpayer. Note: When performing this match, consider that foreign naming conventions may show the surname as the first or second name among some Asian, Hispanic, and other nationalities 2. If yes, follow all other verification steps listed for Reason Code 165 above. 3. If no Follow procedures in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures. Advise the taxpayer IRS cannot allow their refund because the name on their Form 1042-S does not match the name on their Form 1040/1040-NR. If the Form 1042-S has the incorrect name the WA must provide an accurate Form 1042-S Copy A to the IRS and provide a copy of the accurate 1042-S to the taxpayer. The taxpayer should allow 6 weeks for IRS to process the amended Form 1042-S filed by the WA.
Taxpayer writes or calls	Indicates they have contacted their WA and the reason code is 168 (TIN on Form 1040-NR does not match the TIN on Form 1042-S).	<ol style="list-style-type: none"> 1. Determine if the taxpayer has an accurate 1042-S and the TIN on Form 1042-S matches the TIN provided on the Form 1040-NR filed by the taxpayer. 2. If yes, follow all other verification steps listed for Reason Code 165 above. 3. If no follow procedures in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures. Advise the taxpayer IRS cannot allow their refund because the TIN on their Form 1042-S does not match the TIN on their Form 1040-NR. If the Form 1042-S has the incorrect TIN the WA must provide an accurate Form 1042-S Copy A to the IRS and provide a copy of the accurate 1042-S to the taxpayer. The taxpayer should allow 6 weeks for IRS to process the accurate Form 1042-S filed by the WA.

If...	And...	Then...
Taxpayer writes or calls	Indicates they have contacted their WA and the reason code is 169 (The sum of all Forms 1042-S (box 7a plus box 8 if populated, or the entry in box 10 if populated) on IRPTR do not match the amount claimed on line 25g of Form 1040-NR.	<ol style="list-style-type: none"> 1. Access command code IRPTR using correct definer (L, I or U) Document Code 02. E-Trak is also available for research 2. Determine if the total of all Forms 1042-S withholding (box 7a) reported for the taxpayer matches the amount claimed by the taxpayer on Form 1040-NR. 3. If yes, follow all other verification steps listed for Reason Code 165 above. 4. If no, follow procedures in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures. Advise the taxpayer IRS cannot allow their refund because the total amount of withholding reported for them on all Forms 1042-S does not match the amount of credit they claimed on Form 1040-NR. If the Form 1042-S has the incorrect withholding amount, the WA must provide an amended Form 1042-S Copy A to the IRS and provide a copy of the amended 1042-S to the taxpayer. The taxpayer should allow 6 weeks for IRS to process the amended Form 1042-S filed by the WA

- (5) **Taxpayer did not have a TIN when the Withholding Agent provided the 1042-S to the taxpayer-** Individual taxpayers are not required to have a TIN or ITIN at the time a Form 1042-S is issued by a Withholding Agent. To claim the withholding from Form 1042-S on a tax return (Form 1040-NR), the taxpayer must apply for an ITIN. Because the Form 1042-S may have been issued before the taxpayer had an ITIN, the taxpayer's TIN may not appear on the Form 1042-S. Follow the instructions below to validate a reversed Form 1042-S credit (TC 767 with correct reason code) and adjust the account when the taxpayer did not have a TIN or ITIN when the Form 1042-S was issued by the Withholding Agent.

Note: If all Forms 1042-S do not have tax ID numbers search using IRPTR(I)

If...	Then...	Next steps...
Taxpayer provides Form 1042-S	<ol style="list-style-type: none"> 1. Compare the Form 1042-S provided by the taxpayer with the information on CC IRPTR(I), CC IRPTR(U) or E-Trak using the Withholding Agent's EIN. Note: If you are assisting a caller, and do not have access, to E-Trak prepare a Form 4442 to yourself for further research. Send the case to your lead for E-Trak research. The lead will either attach the results, if they were able to confirm the withholding, or add a case note indicating that they were unable to confirm the withholding. 2. Scroll through the data to locate the taxpayer's name for the credit you must validate 3. Once located perform all the matching steps for reason code 165 identified in the chart above in paragraph 4 of this section. 	<p>If the information DOES match, adjust the account by taking the following actions:</p> <ol style="list-style-type: none"> 1. Attach the Form 1042-S to your case, see IRM 21.5.1.5.3, CII Source Documentation. 2. Enter CII notes indicating Form 1042-S information matches. 3. Adjust the recipient's Form 1040-NR tax account using Transaction Code 290 .00 and Credit Reference Number 330 for the amount of the verified reversed credit(s). Use Reason Code 051 on the ADJ54 input screen.

If...	Then...	Next steps...
Taxpayer provides Form 1042-S	<ol style="list-style-type: none"> Compare the Form 1042-S provided by the taxpayer with the information on CC IRPTR(I), CC IRPTR(U) or E-Trak using the Withholding Agent's EIN. Note: . When assisting a caller, and you do not have access, to E-Trak prepare a Form 4442 to yourself for further research. Send the case to your lead for E-Trak research. The lead will either attach the results, if they were able to confirm the withholding, or add a case note indicating that they were unable to confirm the withholding. Scroll through the data to locate the taxpayer's name for the credit you must validate. Once located perform all the matching steps for reason code 165 identified in the chart above in paragraph 4 of this section. 	<p>If ALL the information DOES NOT match, take the following actions:</p> <ol style="list-style-type: none"> Attach the Form 1042-S to your case, see IRM 21.5.1.5.3, CII Source Documentation. Enter CII notes indicating Form 1042-S information does not match. Disallow the claim, follow procedures in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures. Advise taxpayer the specific information that they provided does not match the Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, information filed by their withholding agent.

21.8.1.12.14.6
(10-01-2021)

**FATCA Form 1042-S
Accounts Management
Forms 1040-NR
Amended Returns- (New
Form 1042-S Credits)**

(1) The instructions in this IRM section pertains to amended returns with a **new** Form 1042-S credit attached, meaning a credit that is not previously allowed or is not denied

Caution: TC's 810-3 or TC 767 with correct reason codes on IDRS do not confirm the Form 1042-S credit is new.

(2) The following table explains how Accounts Management assistors will work Form 1040-NR amended returns and substantiate a new Form 1042-S credit attached:

Reminder: A letter from the Unites States Competent Authority is acceptable proof of withholding in lieu of Form 1042-S, the letter must contain a signature and state the withholding amount allowed and the correct tax year.

Note: DO NOT forget to release the -A freeze.

If...	Then...	Next Steps/Additional Information...
Taxpayer provides Form 1042-S		Allow the credit. Adjust the recipient's Form 1040-NR tax account using Transaction Code 290 .00 and Credit Reference Number 330 for the amount of the credit.
Taxpayer provides Form 1042-S	<p>Follow all matching procedures listed for reason code 165 in IRM 21.8.1.12.14.5 (4).</p> <p>Reminder: If the Form 1042-S provided by the taxpayer does not have a TIN or ITIN, follow the procedures in IRM 21.8.1.12.14.5(5)</p>	<p>If the information DOES match, adjust the account by taking the following actions:</p> <ol style="list-style-type: none"> 1. Attach the Form 1042-S to your case, see IRM 21.5.1.5.3, CII Source Documentation. 2. Enter CII notes indicating Form 1042-S information matches. 3. Adjust the recipient's Form 1040-NR tax account using Transaction Code 290 .00 and Credit Reference Number 330 for the amount of the verified reversed credit(s). Use Reason Code 051 on the ADJ54 input screen.
Taxpayer provides Form 1042-S	<p>for reason code 165 listed in IRM 21.8.1.12.14.5 (3).</p> <p>Reminder: If the Form 1042-S provided by the taxpayer does not have a TIN or ITIN, follow the procedures in IRM 21.8.1.12.14.5 (5)</p>	<p>If the information DOES NOT match, take the following actions:</p> <ol style="list-style-type: none"> 1. Attach the Form 1042-S to your case, see IRM 21.5.1.5.3, CII Source Documentation. 2. Enter CII notes indicating Form 1042-S information does not match. 3. Disallow the claim, follow procedures in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures. 4. Advise taxpayer the specific information that they provided does not match the Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, information filed by their withholding agent.

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21.8.1.12.14.7
(03-12-2018)

**FATCA Form 1042-S
Accounts Management
Forms 1040-NR
Amended Returns
(Credits Denied).**

(1) The instructions in this IRM section pertains to amended returns with a **denied** Form 1042-S credit attached.

Caution: TC's 810-3 or TC 767 with correct reason codes on IDRS do not confirm the Form 1042-S credit is new.

Reminder: If a duplicate or amended return is received to claim the frozen credit, issue correspondex Letter 3064C, or other letter. Use the language from the correct if/then box at IRM 21.8.1.12.14.4 to advise the taxpayer of the delay.

(2) The following table explains how Accounts Management assistors will work Form 1040-NR amended returns and substantiate a delayed or denied Form 1042-S credit attached:

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Reminder: A letter from the Unites States Competent Authority is acceptable proof of withholding in lieu of Form 1042-S, the letter must contain a signature and state the withholding amount allowed and the correct tax year.

If...	Then/And...	Next Steps/Additional Information...
Taxpayer provides Form 1042-S		Allow the credit. Adjust the recipient's Form 1040-NR tax account using Transaction Code 290 .00 and Credit Reference Number 330 for the amount of the credit.
Taxpayer provides Form 1042-S	Allow the credit. Adjust the recipient's Form 1040-NR tax account using Transaction Code 290 .00 and Credit Reference Number 330 for the amount of the credit.	Follow all matching procedures for reason code 165 found in IRM 21.8.1.12.14.5

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If...	Then/And...	Next Steps/Additional Information...
Taxpayer provides Form 1042-S	Form 1042-S credit is denied (Letter 5904C TC 767 with the correct reason code)	<p>Follow all matching procedures for reason code 165 found in IRM 21.8.1.12.14.5</p> <p>Reminder: If the Form 1042-S provided by the taxpayer does not have a TIN or ITIN, follow the procedures in IRM 21.8.1.12.14.5 (5)</p> <p>If the information DOES match, adjust the account by taking the following actions:</p> <ol style="list-style-type: none"> 1. Attach the Form 1042-S to your case, see IRM 21.5.1.5.3, CII Source Documentation. 2. Enter CII notes indicating Form 1042-S information matches. 3. Adjust the recipient's Form 1040-NR tax account using Transaction Code 290 .00 and Credit Reference Number 330 for the amount of the verified reversed credit(s).

If...	Then/And...	Next Steps/Additional Information...
Taxpayer provides Form 1042-S	Form 1042-S credit is denied (Letter 5904C TC 767 with correct reason code)	<p>Follow all matching procedures for reason code 165 found in IRM 21.8.1.12.14.5</p> <p>Reminder: If the Form 1042-S provided by the taxpayer does not have a TIN or ITIN, follow the procedures in IRM 21.8.1.12.14.5 (5)</p> <p>If the information DOES NOT match, take the following actions:</p> <ol style="list-style-type: none"> 1. Attach the Form 1042-S to your case, see IRM 21.5.1.5.3, CII Source Documentation. 2. Enter CII notes indicating Form 1042-S information does not match. 3. Disallow the claim, follow procedures in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures. 4. Advise taxpayer the specific information that they provided does not match the Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, information filed by their withholding agent.

21.8.1.12.15
(10-01-2019)
Refunds of Tax Withheld on Social Security/Railroad Retirement Benefits (RRB) Paid to Non-resident Aliens

(1) A taxpayer requesting a refund of income tax withheld on social security benefits for their self, spouse, or as a dependent, must file Form 1040-NR with Form SSA 1042-S and/or Form RRB 1042-S attached. Form SSA-1042-S is issued by the Social Security Administration. Form RRB-1042-S is issued by the U.S. Railroad Retirement Board.

Note: A claim for refund of income tax withheld on social security benefits paid is not the same thing as a claim for refund of social security taxes paid. A Form 843, Claim for Refund and Request for Abatement, must be filed to claim a refund of social security taxes paid.

(2) During the part of the year that a taxpayer is a nonresident alien, 85 percent of any U.S. social security benefits (and the equivalent portion of Tier 1, Railroad Retirement benefits) received is subject to the flat 30 percent tax, unless:

- Exempt by treaty, or

- Subject to a lower treaty rate.
- (3) The following are the only countries where refunds are allowed for residents/citizens exempt or subject to a reduced rate from U.S. tax on their social security income. This information is located in Pub 915:
- Canada
 - Egypt
 - Germany
 - India (Benefits paid to individuals who are both residents and nationals of India are exempt from U.S. tax if the benefits are for services performed for the United States, its subdivisions, or local authorities.)
 - Ireland
 - Israel
 - Italy
 - Japan
 - Romania
 - Switzerland (Effective tax year 1998, withholding rate is 15 percent of the total benefit)
 - The United Kingdom (Scotland, Wales, England, and Northern Ireland).

Exception: See IRM 21.8.1.12.15.1 for American Samoa exception.

- (4) Residents of countries **NOT** mentioned above are **NOT ALLOWED** refunds of income tax withheld on social security/RRB benefits unless they are also either a U.S. citizen or a green card holder who does not claim benefits under an income tax treaty as a nonresident alien. Disallow claims in accordance with IRM 21.5.3.4.6, No Consideration and Disallowance of Claims and Amended Returns.
- Claims are being filed on behalf of Philippine widows who have had the mandatory 30 percent withheld on 85 percent of the SSA/RRB income. Do not allow these refunds, unless they reside in the United States
 - Preparers are filing series 1040 returns using the address of their firm, which is usually in Hawaii or California. Do not allow the refund if the Form 1042 SSA/RRB is issued to a Philippine resident.

Reminder: If a refund is issued in error, follow erroneous refund procedures in IRM 21.4.5, Erroneous Refunds.

- (5) Taxpayers filing amended returns claiming a refund of tax erroneously withheld on Social Security/RRB income must:
- a. Have filed a Form 1040-NR tax return or have proof of nonresident alien status, and
 - b. Be a resident of one of the countries mentioned above.
- (6) Non-resident aliens who file jointly with a U.S. citizen or resident and elect under the terms of IRC 6013 to be treated as resident aliens for tax purposes are subject to regular U.S. tax rates. These taxpayers complete the Social Security Benefits Worksheet found in the Form 1040 Instructions, to determine if they are entitled to a refund of the tax withheld on their social security benefits.

21.8.1.12.15.1
(08-01-2016)

Refund of Incorrectly Withheld Taxes on Social Security Benefits Paid to Resident Aliens and American Samoa Nationals

- (1) The Social Security Administration (SSA) may withhold tax from the social security benefits of resident aliens and American Samoa Nationals in error. SSA refunds taxes erroneously withheld if the refund can be processed during the same calendar year in which the tax is withheld.
- (2) If the SSA cannot refund the taxes withheld, the taxpayer must file a Form 1040 . To qualify for a refund, the following information/documentation must be submitted with their original tax return:
 - A copy of the Form SSA-1042S Social Security Benefits Statement
 - A copy of the “green card”

Reminder: Effective August 19, 1996, the US Citizenship and Immigration Service announced that the Form I-551 is the exclusive form of registration for lawful permanent resident aliens. Therefore, as of August 19, 1996 the Form I-151 is deemed invalid. For further information refer to IRM 3.22.3.11.1, Resident Alien-General Information.

 - A signed declaration that includes the following statements (or similar statements):
“The SSA withheld taxes erroneously because I am a permanent U.S. resident and my green card has been neither revoked nor administratively or judicially determined to have been abandoned. I am filing a U.S. income tax return for the taxable year as a resident alien reporting all my worldwide income. I have not claimed benefits for the taxable year under an income tax treaty as a nonresident alien.”

Exception: The copy of the green card and signed statement requirements above do not apply to bona fide residents of American Samoa. See IRM 21.8.1.10.1.

Note: If the taxpayer filed a complete return, the withholding credit should have been allowed during initial processing.
- (3) If the withholding credit is not allowed during initial processing and the taxpayer files a duplicate return creating a CP36, follow instructions below:
 - a. Allow the withholding credit if all required information/documentation is attached to the return.
 - b. If all required information/documentation is not available, correspond with the taxpayer. Request the missing information/documentation via the correct IDRS letter. Follow established guidelines and suspend the case.
 - c. If required information/documentation is secured, allow the withholding credit.
 - d. If no reply is received within the allotted time frame, follow established procedures to formally disallow the claim. See IRM 21.5.3.4.6, No Consideration and Disallowance of Claims and Amended Returns.
- (4) If the withholding credit is not allowed during initial processing and an unnumbered claim is received, follow instructions below:
 - a. Allow the withholding credit if all required information/documentation is attached to the claim.
 - b. If the claim is incomplete, do not formally disallow the claim. “X” through the received date(s) and return the claim to the taxpayer. Request all missing information using the correct IDRS letter.

Caution: Do not return a numbered claim to the taxpayer. Follow instructions in 3 above.

- (5) If you need to correspond with the taxpayer, advise them to contact SSA to correct their records.

21.8.1.12.16
(04-27-2023)

Gambling Winnings

- (1) Generally, nonresident aliens with gambling income are subject to tax at the 30 percent statutory rate on their gross proceeds from gambling won in the United States if that income is not effectively connected with a U.S. trade or business. However, they may be exempt from tax under IRC 871(j) or covered by an income tax treaty that reduces the tax rate.
- (2) Most gambling winnings must be reported on Form 1042-S for nonresident aliens. However, proceeds from a wager placed in blackjack, baccarat, craps, roulette, or big-6 wheel are not amounts subject to reporting. However, video versions of these games must be reported.
- (3) Gambling income of residents (as defined by the treaty) of the following foreign countries is not taxable by the United States pursuant to a treaty.

- Austria
- Belgium
- Bulgaria
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Hungary
- Iceland
- Ireland
- Italy
- Japan
- Latvia
- Lithuania
- Luxembourg
- Netherlands
- Russian Federation
- Slovak Republic
- Slovenia
- South Africa
- Spain
- Sweden
- Tunisia
- Turkey
- Ukraine
- United Kingdom

Note: For more information, see Publication 515 - Withholding of Tax on Non-resident Aliens and Foreign Entities.

Note: Gambling income of residents of Malta is taxed at 10 percent

Note: The US-Hungarian double tax treaty is no longer effective as of Jan. 8, 2023. However, as specified in the Convention, with respect to taxes withheld at source, the Convention will become ineffective on Jan. 1, 2024. In respect of other taxes, the Convention will become ineffective for taxable periods beginning on or after Jan. 1, 2024.

- (4) Non-resident aliens usually cannot offset incurred gambling losses against gross winnings.

Exception: Residents of Canada may claim gambling losses, but only to the extent of gambling winnings, to claim a refund of federal income tax withheld. Losses sustained in the types of gambling listed in paragraph (2) cannot be used to offset any taxable gambling winnings.

- (5) Canadian residents must include reportable gambling winnings on line 10a of Form 1040-NR, Schedule NEC -Tax on Income Not Effectively Connected with a U.S. Trade or Business. Use Transaction Code 291 Reason Code 037 (non effectively connected tax), to adjust.

Note: Canadian residents may enter eligible gambling winnings on line 10a and gambling losses on line 10b of Schedule NEC. The remaining net gambling winnings must be included on line 10c of Schedule NEC.

21.8.1.12.17
(10-01-2017)
**Scholarships and
Fellowships**

- (1) A scholarship is generally an amount paid for the benefit of a student at an educational institution to aid in the pursuit of studies. The student may be either an undergraduate or graduate student.
- (2) A fellowship is generally an amount paid for the benefit of an individual to aid in the pursuit of study or research.
- (3) A scholarship or fellowship is tax free only if:
1. The taxpayer is a candidate for degree at an educational institution (**see definitions below**), and
 2. The grant is a qualified scholarship or fellowship.

Scholarship and Fellowship Terms
<p>Candidate for Degree - A student (full or part-time) who attends a primary or secondary school, or is pursuing a degree at a college or university, or attends an accredited educational institution.</p> <p>Note: This includes graduate students, but not post-doctoral students.</p>
<p>Educational Institution - Maintains a regular faculty and curriculum, and has a regularly enrolled body of students in attendance at the place where it carries on its educational activities.</p>
<p>Accredited Educational Institution - Authorized to provide a fully credited program towards a bachelor's or higher degree, or a program of training to prepare students for gainful employment in a recognized occupation.</p>

- (4) A qualified scholarship or fellowship is any amount a taxpayer receives as a scholarship or a fellowship grant that is used under the terms of the grant for:
- a. Tuition and fees paid to enroll in, or to attend, an educational institution, or
 - b. Fees, books, supplies, and equipment required for the course at the educational institution. These items must be required of all students in the course.
- (5) A scholarship or fellowship also qualifies as tax free when the terms of the grant are not specific and the taxpayer uses the grant proceeds for tuition and course related expenses.
- (6) A scholarship or fellowship grant that requires the taxpayer to use the grant proceeds for a specific purpose such as those listed below (other than tuition or course related expenses) is considered incidental and is taxable.
- Room and board
 - Travel
 - Research
 - Clerical help, and
 - Equipment (not required of all students in the course)

Caution: The **same** scholarship or fellowship may be considered partially qualified and partially non-qualified.

- (7) **Payment for services cannot be excluded from income.**
- a. Taxpayers may not exclude any portion of their scholarship or fellowship, including any tuition reduction, that represents payment for teaching, research, or other services that the grantor requires as a condition for receiving the grant.
 - b. Stipends, tuition waivers, or any other financial aid paid to or on behalf of nonresident aliens that require that the recipient perform services in exchange for the financial aid are taxable as wages and are reported on Form W-2.

- (8) The qualified part of a scholarship or fellowship is not taxable for U.S. citizens, resident aliens, and nonresident aliens.
- (9) For U.S. citizens and resident aliens, the nonqualifying part of a scholarship/fellowship is generally taxed at the graduated rates (effectively connected income).
- (10) For nonresident aliens, the nonqualifying part of a scholarship or fellowship is generally subject to a federal income tax withholding rate of 30 percent, which is collected by the withholding agent (usually the payor of the grant) and reported by the withholding agent to the taxpayer on a Form 1042-S.

Note: Generally, a scholarship or fellowship may be effectively connected or non-effectively connected depending on the circumstance. A nonresident alien candidate for a degree that is temporarily present in the United States in F-1, J-1, M-1, or Q non-immigrant Visa (that is subject to withholding at 14 percent of the taxable portion of the grant reported to the taxpayer on Form 1042-S) is taxed at the graduated rates as effectively connected because the income is considered connected to a U.S. trade or business. If those requirements are not met then the taxable part of a scholarship or fellowship is taxed as non-effectively connected income (30 percent or reduced tax treaty rate) for a nonresident alien.

- (11) Recipients of the nonqualifying part of a scholarship or fellowship temporarily present in the United States in F-1, J-1, M-1, or Q non-immigrant status are subject to withholding at 14 percent of the taxable portion of the grant reported to the taxpayer on Form 1042-S. In these cases:
 - a. Even though the Form 1042-S has a tax rate of 14 percent, the scholarship or fellowship is considered effectively connected income and taxed at the graduated rates.
 - b. Withholding is still generally withheld on at a flat 14 percent rate, but at the withholding agent's option, there is an alternative procedure where they can withhold tax at the same graduated rates that apply to wages (instead of the flat 14 percent).

Caution: This option must still be reported on Form 1042-S (as effectively connected income).

21.8.1.12.17.1
(10-01-2023)
**Treaty Exempt
Scholarship and
Fellowship Income**

- (1) If applicable, a tax treaty can exempt all or part of a scholarship or fellowship (qualified or nonqualifying) paid to a nonresident alien grantee (and resident alien grantees from some countries) from taxation if the recipient meets the requirements stated in the treaty. Generally, the treaty will have requirements about:
 - The grantee's maximum presence in the United States
 - A required employer or payor
 - The maximum allowable amount that is exempt.

Note: The maximum presence, required payor, maximum allowable amounts, and any other requirements are in the specific treaty articles and will be consulted on a case by case basis as each treaty is different.

- (2) In some cases, nonresident alien grantees who later become resident aliens may still be able to exempt their scholarship/fellowship grants if the treaty has

an exception to its savings clause that covers the student or teacher article that is providing the exemption. For more information, see Pub 519, U.S. Tax Guide For Aliens.

- (3) Any nonresident alien grantee, who claims that part or all their scholarship or fellowship is exempt from taxation because of a tax treaty, must file Form W-8BEN with the correct university office.
- (4) When a scholarship or fellowship is paid by a U.S. payor to a nonresident alien in a foreign country, and is for activities performed, or to be performed outside the United States then the income is considered foreign source and is not reportable on Form 1040-NR.
- (5) Scholarships, fellowship grants, prizes, and awards received by a nonresident alien (person other than a U.S. citizen or U.S. resident alien) from a foreign government, agency, political subdivision, person, or international organization (any foreign entity) for the purpose of study within the United States are treated as foreign source income. This income, being foreign source income, does not have to be claimed or reported.

Note: U.S. citizens and resident aliens still must file under IRC 6012. They must report the income and the basis for exemption, if any.

- (6) Cash scholarship **prizes** won in a contest are not scholarships if they do not have to be used for educational purposes and are taxable regardless of how the money is used. A scholarship **prize** that can only be used when the recipient is enrolled as a candidate for a degree may be considered a qualified scholarship.
- (7) The total amount of the scholarship or fellowship grant (**not** including amounts exempt by a tax treaty and amounts that are taxed at the 30 percent statutory rate or reduced tax treaty rate) are claimed on Form 1040-NR Schedule 1.
- (8) The amount of the scholarship or fellowship exempt by a tax treaty is shown on line 1K of Form 1040-NR.
- (9) If the taxpayer is excluding items as allowed by IRC 117 (i.e., amounts used as fees, books, supplies, and equipment) that exceed amounts shown on Form 1042-S, then the taxpayer must attach a statement describing these amounts.

Note: These amounts must be part of the scholarship or fellowship and the excluded amounts can never exceed the total amounts.

- (10) If a taxpayer did not receive a Form 1042-S or Form W-2, then the taxpayer must include a statement from the taxpayer's college or institution showing the details of the scholarship or fellowship .
- (11) The following rules are in effect :
 - a. All amounts paid to U.S. citizens and resident aliens in the form of scholarships, fellowships, grants, and financial aid are income but not required to be reported to the IRS by the payers unless they represent payment for services (see paragraph (7) above). This is per IRS Notice 87-31.

Note: The income may still be taxable.

- b. All amounts paid to nonresident aliens in the form of scholarships, fellowships, grants, and financial aid, not excludable from gross income as qualified, must be reported to the IRS by the payor on Form 1042 and Form 1042-S regardless of the amounts paid.
- c. Only the taxable amount of the scholarship or fellowship should be reported on Form 1042-S, as well as any amounts exempt or reduced by a tax treaty.
- d. The amount of the qualified scholarship or fellowship that is exempt due to the exclusion is not reported on Form 1042-S.
- e. No withholding of federal income tax is necessary on grants made to nonresident alien students and trainees that originate from funds paid by the U.S. Agency of International Development (USAID) for the part of the grant that is dedicated to subsistence (i.e., food and lodging). This income is taxable and must be included on Form 1042-S.

(12) The following chart is used to determine taxable and tax-free amounts:

Proceeds used for	Degree Candidates	Non-degree Candidates
Tuition	Tax free	Taxable
Fees	Tax free*	Taxable
Books	Tax free*	Taxable
Supplies	Tax free*	Taxable
Equipment	Tax free*	Taxable
Room	Taxable	Taxable
Board	Taxable	Taxable
Travel	Taxable	Taxable
Teaching	Taxable	Taxable
Research services	Taxable	Taxable
Other services	Taxable	Taxable

Note: * Fees, books, supplies, and equipment are taxable if not required of **ALL** students in the course.

- (13) When adjusting an account because of a scholarship or fellowship exclusion, use ADJ54 with Transaction Code 29x along with Reason Code 084 (Scholarship or Fellowship Exclusion).
- (14) When adjusting an account to exempt a scholarship or fellowship because of a tax treaty, use ADJ54 with Transaction Code 29x along with Reason Code 083 (Income Exempt per Tax Treaty).

21.8.1.12.17.2
(10-01-2019)
Fulbright Grants

- (1) A Fulbright grant is generally treated as any other scholarship or fellowship when determining how much of the grant is tax free.
- (2) If a Fulbright grant is received for lecturing or teaching, it is payment for services and is taxable.

- (3) A Fulbright grant is a grant under the Mutual Education and Cultural Exchange Act of 1961, known as the Fulbright-Hays Act.
- (4) If the taxpayer receives a supplemental grant under the U.S. Information and Educational Exchange Act of 1948 (Smith-Mundt Act) for study, research, or teaching abroad, it is treated like a Fulbright grant. See Rev. Rul. 61-65.
- (5) A special rule applies if the grant is paid in non-convertible foreign currency:
 - a. All income must be reported in U.S. dollars.
 - b. In most cases, the tax must also be paid in U.S. dollars, however,
 - c. If at least 70 percent of the entire Fulbright grant is paid in non-convertible foreign currency (block income), that currency can be used to pay the U.S. tax, but only the part that is blocked income. See Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad for further details.

21.8.1.12.18
(10-01-2015)

**Treaty-Based Return
Position Disclosure
(Form 8833)**

- (1) A taxpayer takes a treaty-based return position by maintaining that a treaty of the United States overrules or modifies a provision of the Internal Revenue Code and thereby causes (or potentially causes) a reduction of tax on the taxpayer's tax return.

Note: For this purpose, a treaty includes but is not limited to, an income tax treaty; estate and gift tax treaty, or friendship, commerce, and navigation treaty. See Treas. Reg. 301.6114-1(a) and (b) for more information.

- (2) IRC 6114 generally requires that a treaty-based return position be disclosed.
 - a. Form 8833 is used to disclose the treaty-based return position.
 - b. A separate form is required for each treaty-based return position taken by a taxpayer and for which reporting is not expressly waived under Treas. Reg. 301.6114-1(c).
- (3) Taxpayers claiming a treaty-based return position are instructed to:
 - a. Attach Form 8833 to their tax return (i.e., Form 1040-NR)
 - b. If the taxpayer is not otherwise required to file a return, they are instructed to file the Form 8833 at the IRS campus where they would normally file a return to make a treaty-based return position disclosure as required under IRC 6114.

Caution: Not all filers claiming a treaty-based return position are required to file a Form 8833. For further information refer to Pub 519, U.S. Tax Guide for Aliens.

- (4) Research on IDRS any loose Form 8833 received in the international Departments and attached to the latest tax return on file, or push code (TC 930) to the return being processed. If there is no return on file, or no indication that one is received and is being processed, send the Form 8833 to the Ogden Campus Files function on a Form 3210 with the remark "For Storage in Alpha File."
- (5) In certain circumstances, tax treaty benefits can be claimed on Form 1040, provided:
 - a. Form 8833 is attached to the Form 1040 when required, **and**

- b. The treaty contains an exception to the saving clause for the particular article being claimed by the resident alien. In addition, all other requirements as provided by the treaty are met.
- (6) Certain dual-resident taxpayers can claim benefits under an income tax treaty. A dual-resident taxpayer is one who is a resident of both the United States and another country under each country's tax laws. The income tax treaty between the two countries must contain a provision that provides for resolution of conflicting claims of residence (tie-breaker rule). If the taxpayer determines that under the tie-breaker rules that they are a resident of the foreign country for treaty purposes, the taxpayer may claim treaty benefits as a resident of that foreign country, if they are otherwise eligible for the benefit and complies with the following filing requirements:
- a. If the taxpayer chooses to take a treaty-based return position, according to Treas. Reg. 301.7701(b)-7, this position must be disclosed by filing Form 8833.
 - b. As a nonresident alien, the taxpayer must file a Form 1040-NR and attach the Form 8833.

21.8.1.12.19
(10-01-2023)
**Child Tax Credits for
1040-NR Filers**

- (1) The Child Tax Credit (CTC) is for individuals who claim a child as a dependent, if the child dependent meets certain conditions. This credit in addition to the credit for child and dependent care expenses. As of the 2018 filing year, the qualifying child must have a valid SSN that is valid for employment and issued by the Social Security Administration before the due date of the tax return, including extensions. Processing procedures are located at IRM 21.6.3.4.1.24 , Child Tax Credit.
- (2) The Credit for Other Dependents (ODC) is for individuals with a dependent who meets additional conditions. The OCD is effective as of the 2018 filing year. This credit is in addition to the credit for child and dependent care expenses. The qualifying dependent must have a valid SSN, ITIN, or ATIN, issued to the dependent by the due date of the tax return including extensions. Processing procedures are located at IRM 21.6.3.4.1.24.3, Credit for Other Dependents.
- (3) The Additional Child Tax Credit (ACTC) is for certain individuals who get less than the full amount of the CTC. The ACTC cannot be claimed by a taxpayer who files Form 2555. As of the 2018 filing year, the qualifying child must have a valid SSN that is valid for employment and issued by the Social Security Administration before the due date of the tax return including extensions. The taxpayer must attach to Form 1040-NR a Form 1040 Schedule 8812 , Credits for Qualifying Children and Other Dependents. See publications 972 and 5307. Processing procedures are located at IRM 21.6.3.4.2.8, Additional Child Tax Credit (ACTC).
- (4) Form 1040-NR filers who have a main home in the 50 states or DC for more than half of 2021 will claim the Refundable CTC for tax year 2021 instead of the ACTC. The \$3,000/\$3,600 credit per child will be fully refundable for these taxpayers even if they have no income and owe no tax. The qualifying child must have a valid SSN that is valid for employment and issued by the Social Security Administration before the due date of the tax return including extensions. The taxpayer must attach to a Schedule 8812 to Form 1040-NR. See Pub 972, and Pub 5307.

- (5) In addition to being a qualified child for the CTC or ACTC, the child must have a SSN, as explained above. However, the qualifying dependent for the ODC may be a U.S. citizen, national, or resident alien.
- (6) Taxpayers show the dependent(s) qualifying for the child tax credit by checking the boxes in column 4, located in the exemptions area of the return.
- a. When the taxpayer failed to check the boxes on the original 1040-NR and the credit is disallowed:

If...	Then...
The number of exemptions on Form 1040-NR, is consistent with the amount of credit being claimed and all qualifications are met	Allow the credit.
The number of exemptions on Form 1040-NR , is more than the amount of credit claimed and the exemptions all meet the child tax credit qualifications	Allow the credit.
The number of exemptions claimed on , Form 1040-NR is less than the amount of credit claimed	Research the return and attachments for additional exemptions.
Additional exemptions found	Verify qualifications.
Qualifications met	Allow the credit.
Additional exemptions not found	Request additional exemption information from the taxpayer.
Additional exemptions provided and taxpayer meets all qualifications	Allow the credit.

- (7) When math verifying or figuring the child tax credit worksheet, ensure that the modified adjusted gross income includes the amount from Form 1040-NR, line 11 combined with the total of:
- Exclusion of income from Puerto Rico
 - Form 2555, lines 45 and 50
 - Form 2555-EZ, line 18 if prior to tax year 2019, and
 - Form 4563, line 15

21.8.1.12.20
(10-01-2022)
**IRC 877A -
Mark-To-Market Exit Tax**

- (1) Section 301 of the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "Act") added IRC 877A to the Internal Revenue Code which applies to individuals who on or after June 17, 2008, relinquish U.S. citizenship and long-term residents who cease to be lawful permanent residents of the United States.
- (2) See Notice 2009-85 for complete guidance for expatriation under IRC 877A.

- (3) See Form 8854, Initial and Annual Expatriation Statement, and Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits, for reporting responsibilities of former U.S. citizens or long-term residents subject to the provisions of IRC § 877A.
- (4) IRC 877A(a) generally imposes a mark-to-market regime on expatriates covered by section 877A, providing that all property of a covered expatriate is treated as sold on the day before the expatriation date for its fair market value. IRC 877A further provides that any gain arising from the deemed sale is taken into account for the taxable year of the deemed sale notwithstanding any other provisions of the Code. Any loss from the deemed sale is taken into account for the taxable year of the deemed sale to the extent otherwise provided in the Code, except that the wash sale rules of section 1091 do not apply. Under IRC 877A(a)(3), the amount that would otherwise be includible in gross income because of the deemed sale rule is reduced (but not to below zero) by \$767,000 for 2022. This amount is adjusted for inflation annually. The amount of any gain or loss subsequently realized will be adjusted for gain or loss taken into account under the mark-to-market regime without regard to the amount excluded. Pursuant to IRC 877A(b), a taxpayer may elect to defer payment of tax attributable to property deemed sold until the due date of the return for the year in which the property is sold.
- (5) IRC 877A(c) provides that the mark-to-market regime does not apply to deferred compensation items, specified tax deferred accounts, and interests in a non-grantor trust of which the covered expatriate was a beneficiary on the day before the expatriation date. If the covered expatriate is treated as the owner of any portion of a trust under the grantor trust rules (sections 671 through 679) on the day before the expatriation date, the assets held by that portion of the trust are subject to the mark-to-market regime (but see section 4 of Notice 2009-85 concerning coordination with section 684).
- (6) IRC 877A(d) provides alternative tax regimes that apply to “eligible deferred compensation items” and to other deferred compensation items (“ineligible deferred compensation items”). In the case of “eligible deferred compensation items,” IRC 877A(d)(1)(A) provides generally that the payor must deduct and withhold from any taxable payments to a covered expatriate with respect to such items a tax equal to 30 percent of the amount of those taxable payments. In the case of “ineligible deferred compensation items,” IRC 877A(d)(2)(A) provides that a covered expatriate generally is treated as having received an amount equal to the present value of the covered expatriate’s accrued benefit on the day before the expatriation date.
- (7) IRC 877A(e)(1)(A) provides that if a covered expatriate holds any interest in a specified tax deferred account on the day before the expatriation date, such covered expatriate is treated as having received a distribution of the covered expatriate’s entire interest in such account on the day before the expatriation date.
- (8) IRC 877A(f) provides that in the case of any direct or indirect distribution of property to a covered expatriate from a non grantor trust of which the covered expatriate was a beneficiary on the day before the expatriation date, the trustee must deduct and withhold from the distribution an amount equal to 30 percent of the taxable portion of the distribution. If the fair market value of the property distributed exceeds its adjusted basis in the hands of the trust, gain is recognized to the trust as if the property had been sold by the trust and the proceeds distributed to the covered expatriate.

- (9) IRC 877A(g)(2) provides that the term “expatriate” means:
- a. any U.S. citizen who relinquishes their citizenship and
 - b. any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6), as amended).

Pursuant to IRC 877A(g)(5), a long-term resident is an individual who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year that includes the expatriation date.

21.8.1.12.20.1
(10-01-2022)

Covered Expatriate

- (1) 877A(g)(1)(A) defines the term “covered expatriate” to mean an expatriate who:
- a. Has an average annual net income tax liability for the five preceding taxable years ending before the expatriation date that exceeds a specified amount that is adjusted for inflation; for 2022, the amount is \$178,000 (the “tax liability test”);
 - b. Has a net worth of \$2 million or more as of the expatriation date (the “net worth test”); or
 - c. Fails to certify, under penalties of perjury, compliance with all U.S. Federal tax obligations for the five taxable years preceding the taxable year that includes the expatriation date, including, but not limited to, obligations to file income tax, employment tax, gift tax, and information returns, if applicable, and obligations to pay all relevant tax liabilities, interest, and penalties (the “certification test”). This certification must be made on Form 8854 and must be filed by the due date of the taxpayer’s Federal income tax return for the taxable year that includes the day before the expatriation date. See section 8 of Notice 2009-85 for information concerning Form 8854.
- (2) IRC 877A(g)(1)(B) provides that an expatriate is not treated as meeting the tax liability test or the net worth test of section 877(a)(2)(A) or (B) if:
- a. The expatriate became at birth a U.S. citizen and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and has been a U.S. resident for not more than 10 taxable years during the 15- taxable year period ending with the taxable year during which the expatriation date occurs; or
 - b. The expatriate relinquishes U.S. citizenship before the age of 18 ½ and has been a U.S. resident for not more than 10 taxable years before the date of relinquishment.
- (3) The determination as to whether an individual is a covered expatriate is made as of the expatriation date.
- (4) IRC 877A(g)(3) defines the term “expatriation date” as the date an individual relinquishes U.S. citizenship or, in the case of a long-term resident of the United States, the date on which the individual ceases to be a lawful permanent resident of the United States within the meaning of IRC 7701(b)(6).
- (5) 877A(g)(4) provides that a citizen is treated as relinquishing their U. S. citizenship on the earliest of four possible dates:

- a. The date the individual renounces their U.S. nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)), provided the renunciation is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State
 - b. The date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)), provided the voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State
 - c. The date the United States Department of State issues to the individual a certificate of loss of nationality, or
 - d. The date a court of the United States cancels a naturalized citizen's certificate of naturalization.
- (6) Under IRC 7701(b)(6), a long-term resident ceases to be a lawful permanent resident if:
- a. The individual's status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with immigration laws has been revoked or has been administratively or judicially determined to have been abandoned, or
 - b. If the individual (1) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United State and the foreign country, (2) does not waive the benefits of the treaty applicable to residents of the foreign country, and (3) notifies the IRS of such treatment (which is generally achieved through filing of a Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

21.8.1.12.20.2
(01-06-2011)

**Covered Expatriate-
Deferral Election**

- (1) IRC 877A(b) provides that a covered expatriate may make an irrevocable election ("deferral election") with respect to any property deemed sold because of IRC 877A(a) to defer the payment of the additional tax attributable to any such property ("deferral assets"). The deferral election is made on an asset-by-asset basis. In order to make the election with respect to any asset, the covered expatriate must provide adequate security (defined below) and must irrevocably waive any right under any U.S. treaty that would preclude assessment or collection of any tax imposed because of IRC 877A. If the IRS subsequently determines that the security provided for the deferred tax no longer qualifies as adequate security, the deferred tax and interest will become due immediately, unless the covered expatriate corrects such failure within 30 days after the IRS mails notification of such failure to the last known addresses of the covered expatriate and the covered expatriate's U.S. agent.
- (2) Subject to the preceding sentence, the time for payment of the tax attributable to a particular deferral asset under the mark-to-market regime is extended until the earlier of the due date (without extensions) of the covered expatriate's income tax return for (a) the taxable year in which the asset is disposed of by sale, non-recognition transaction, gift, or other means, or (b) the taxable year

that includes the date of death of the covered expatriate. However, a covered expatriate may pay any tax deferred under IRC 877A(b), together with accrued interest, at any time.

- (3) IRC 877A(b)(7) provides that for purposes of section 6601, the last date for the payment of tax is determined without regard to the deferral election. Interest is computed at the underpayment rate established under IRC 6621 from the due date of the return (without extensions) for the taxable year that includes the day before the expatriation date and will compound daily under IRC 6622 until the entire amount owed is paid, including tax, any penalties, and interest.
- (4) IRC 877A(b)(5) provides that a covered expatriate may not make a deferral election with respect to a particular asset unless the covered expatriate makes an irrevocable waiver of any right under any U.S. treaty that would preclude the assessment or collection of any tax imposed because of IRC 877A. The covered expatriate must make the waiver on Form 8854, which must be filed with the covered expatriate's Federal income tax return for the taxable year that includes the day before the expatriation date. Additionally, acknowledgment of such waiver must be noted in the agreement to defer tax with respect to a particular property ("tax deferral agreement") as described below.
- (5) IRC 877A(b)(4)(A) provides that, in order to make a deferral election with respect to any asset, the covered expatriate must provide adequate security with respect to such asset. IRC 877A(b)(4)(B) defines the term "adequate security" as
 - a. A bond that is furnished to, and accepted by, the Secretary, that is conditioned on the payment of the tax (and interest thereon), and that meets the requirements of section 6325, or
 - b. Another form of security for such payment (including letters of credit) that meets such requirements as the Secretary may prescribe.
- (6) Any covered expatriate who wishes to enter into a tax deferral agreement under this notice must follow the instructions set out in the Instructions to the Form 8854 and Notice 2009-85 and submit to the following address a request to enter into a tax deferral agreement ("deferral request") by the due date of their return for the taxable year that includes the day before the expatriation date:

Department of the Treasury
Internal Revenue Service
Philadelphia, PA 19255-0049
- (7) The deferral request must include:
 - Two signed copies of the template agreement provided in Appendix A of Notice 2009-85
 - A description of the asset(s) with respect to which the covered expatriate is electing to defer tax
 - An attachment showing the calculation of the tax attributable to such asset(s) under the method set forth below
 - Documentation of the proposed security offered to secure the deferral of tax
 - A copy of an agreement with a U.S. agent, as described below, and
 - A copy of the covered expatriate's return for the taxable year that includes the day before the expatriation date.

Provided that the security offered by the covered expatriate is determined to be adequate to secure the tax being deferred, the IRS will sign the tax deferral agreement and provide one copy to the covered expatriate.

- (8) Additionally, the covered expatriate must attach a copy of the deferral request to their return for the taxable year that includes the day before the expatriation date. The covered expatriate may file the deferral request simultaneously with their tax return.
- (9) The tax deferral agreement must be periodically renewed according to the terms provided in the agreement. If the agreement is not renewed within the time frame specified in the agreement, the collateral is applied to the tax liability and interest.
- (10) In order to make a deferral election, a covered expatriate must appoint a U.S. person to act as the covered expatriate's limited agent for purposes of accepting communication related to the tax deferral agreement from the IRS on behalf of the covered expatriate, the timely enforcement of the terms of the tax deferral agreement between the covered expatriate and the IRS, and applying IRC 7602 and all related procedural provisions of the Code with respect to a request by the IRS to examine records, for the production of testimony, or for a summons by the IRS for such records or testimony related to the enforcement of the tax deferral agreement.
- (11) In order to authorize a U.S. person to act as an agent, the covered expatriate and the agent must enter into a binding agreement that is substantially similar in form to the agreement provided in Appendix B of Notice 2009-85. The agreement must be executed by the covered expatriate and the agent and must be submitted as part of the deferral request. The authorization must remain in effect for as long as the tax deferral agreement remains in effect.
- (12) If the U.S. agent resigns, liquidates, or terminates its responsibility as an agent of the covered expatriate, the covered expatriate must, within 90 days, notify IRS-Advisory in writing at the following address:

IRS Advisory
7850 SW 6th Court
Mail Stop 5780
Plantation, FL 33324-3202
- (13) The telephone contact for IRS Advisory is 954-423-7300 and the fax contact number is 954-423-7809.
- (14) This notification must contain the name, address, and TIN of the new U.S. agent (if any). If no new agent is appointed, then the tax deferral agreement will be in default and the collateral is applied to the deferred tax and interest attributable to all the deferral assets.

21.8.1.12.20.3
(10-01-2015)

**Determination of Tax
Attributable to Particular
Assets**

- (1) Deferral of tax is made on an asset-by-asset basis, and a covered expatriate who elects to defer the tax attributable to one or more assets must determine the amount of tax imposed because of IRC 877A(a) attributable to each asset deemed sold pursuant to IRC § 877A(a). The tax imposed because of IRC 877A(a) is the difference between:
 - a. The covered expatriate's tax liability for the portion of the taxable year that includes the day before the expatriation date as reflected on a Form

- 1040 with respect to that portion of the taxable year and that includes the net taxable gain resulting from all deemed sales under IRC 877A(a) and
- b. The covered expatriate's tax liability for the portion of the taxable year that includes the day before the expatriation date as reflected on a Form 1040 with respect to that portion of the taxable year but that does not include the net taxable gain resulting from all deemed sales under IRC 877A(a).
- (2) The amount of tax imposed because of IRC 877A(a) that is attributable to each asset is determined by multiplying the amount of tax imposed because of IRC 877A(a) by the ratio of
 - The gain, if any, includible in gross income under IRC 877A(a) with respect to that particular asset to
 - The gain includible in gross income because of IRC 877A(a) with respect to all gain assets deemed sold pursuant to IRC 877A(a).
 - (3) The tax attributable to that particular asset, computed as described in the preceding sentence, is the amount of tax that a covered expatriate may elect to defer under IRC 877A(b) with respect to that asset. The effect of such election is to reduce the amount of tax currently due and payable by the amount of the tax attributable to the asset with respect to which the election is made.
 - (4) In addition to IRC 877A , the Heroes Earning Assistance and Relief Tax Act of 2008 also added new IRC 2801 to the Code. Section IRC 2801 imposes a tax on each U.S. citizen or resident who receives a "covered gift or bequest" on or after June 17, 2008 from a "covered expatriate" whose expatriation date was on or after the same date. A **covered gift** is defined as any property acquired directly or indirectly from an individual who, at the time of such acquisition, is a covered expatriate. A **covered bequest** is defined as any property acquired directly or indirectly because of the death of an individual who, immediately before death, was a covered expatriate. The tax imposed by Section 2801 does not apply to **covered gifts** with an aggregate fair market value of less than \$14,000 for 2013 through 2017 tax years. The rate of tax imposed is equal to the greater of:
 - The highest applicable U.S. federal estate tax rate, or
 - The highest applicable U.S. federal gift tax rate in effect in the year that the gift or bequest is made.

Note: The aggregate fair market value of the gift or bequest is adjusted annually for inflation.

- (5) Certain charitable gifts and bequests, and certain gifts and bequests to spouses of "covered expatriates", are exempt from this transfer tax. The transfer tax is also reduced by the amount of any gift or estate tax paid to another country.

21.8.1.12.21
(10-01-2021)

**Economic Impact
Payments -Non
Residents**

- (1) Economic Impact Payments (EIP) are advanced payments of the Recovery Rebate Credit (RRC).
- (2) Beginning in calendar year 2020, several EIPs were made based on The Coronavirus Aid, Relief and Economic Security (CARES) Act, The Consolidated Appropriation Act of 2021 and The American Rescue Plan Act of 2021.

- (3) Taxpayers will report the RRC on their tax year 2020/2021 return and reduce the credit by each of the EIPs the taxpayer received. The 2020 RRC is based on information from the 2020 return and the 2021 RRC is based on information from the 2021 return. Any remaining credit will be allowed on the tax year 2020/2021 return. If the taxpayer was eligible for the EIP but the credit based on their 2020/2021 tax return is less than the EIPs they received, no repayment will be required.
- (4) Non-resident aliens including all dual-status aliens are not eligible to take the RRC. Non-resident aliens were not eligible for an EIP. However, dual-status aliens were paid an EIP if the tax return used for their EIP showed they were a resident alien at the end of that year. This showed that the alien would be a resident alien for the full taxable year of the credit that was advanced.
- (5) For further information including information on treatment of ineligible individuals who incorrectly received an EIP refer to IRM 21.6.3.4.2.13, Economic Impact Payments.

21.8.1.12.21.1
(04-12-2022)

**Recovery Rebate
Credits- Non Residents**

- (1) The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), created IRC 6428 which provides for a Recovery Rebate Credit (RRC) for eligible individuals. The CARES Act allowed for advance payment of the RRC which was referred to as Economic Impact Payments (EIP). In January 2021 a second Economic Impact Payment was enacted by Congress and in March 2021 the third Economic Impact Payment was enacted by Congress as an advance of the 2021 RRC.
- (2) The RRC is based on the information from the taxpayer's 2020 and/or 2021 return
- (3) Taxpayers will report the RRC on their tax year 2020/2021 return and reduce the credit by each of the EIPs. Any remaining credit will be allowed on the tax year 2020/2021 return. If the taxpayer was eligible for EIP but the credit based on their 2020/2021 tax return is less than the EIPs they received, no repayment is required.
- (4) Non-Resident Aliens including all dual status aliens are not eligible to take the RRC. Follow claim disallowance procedures found in IRM 21.5.3.4.6, No Consideration and Disallowance of Claims and Amended Returns for any nonresident and dual status aliens claiming RRC
- (5) For further information about Recovery Rebate Credits refer to IRM 21.6.3.4.2.14, Recovery Rebate Credit.

21.8.1.13
(10-01-2019)

Dual-Status Aliens

- (1) Dual-status aliens are those, who during the tax year, have been both:
 - A nonresident alien, and
 - A resident alien
- (2) The portion of the tax year before an alien arrives in the United States is a period of non-residence. The portion of the year after arriving in the United States can be a period of residence or non-residence, depending on the circumstances.
- (3) A similar situation arises in the year of departure. An alien who is a resident alien during the first part of the year maintains that status until the date of final departure. After departure, the alien becomes a nonresident.

Exception: An alien lawfully admitted to the United States for permanent residence, i.e., green card holder, who leaves the United States temporarily, and does not abandon their green card, retains a resident alien status even while abroad.

- (4) It is also possible to have a dual-status tax year in other than the years of arrival or departure. This usually occurs when an alien comes to the United States for a very short stay and then, because of changed circumstances, remains here for a lengthy period. Each case is considered based on the facts obtained.
- (5) Dual Status taxpayers may claim the Foreign Earned Income Exclusion, Housing Deduction and Housing Exclusion on the Form 1040 portion of their income by using a valid Form 2555. Income earned during the Form 1040-NR period cannot not be excluded with Form 2555.

21.8.1.13.1
(10-01-2019)

**Choosing to be Treated
as a U.S. Resident-
6013(h) election**

- (1) Married dual-status aliens can choose to elect under IRC 6013(h) to be treated as U.S. residents for the entire year, if they are:
 - a. A nonresident alien at the beginning of the year
 - b. A resident alien or U.S. citizen at the end of the year
 - c. Their spouse is a U.S. citizen or resident alien at the end of the year and
 - d. Both spouses join in making the election.

Note: See IRM 21.8.1.12.5 and Publication 519 for more information.

21.8.1.13.2
(10-01-2019)

**Taxation of Dual-Status
Aliens**

- (1) A Dual-status alien is taxed on income from:
 - a. All sources for the portion of the year the taxpayer is a resident alien, and
 - b. U.S. source and foreign source income that is treated as effectively connected to a U.S. trade or business for the portion of the year the taxpayer is a nonresident alien.

Note: When adjusting a dual-status return, use Reason Code 34 (Dual Status Tax).

- (2) Below is a table for determining the income subject to tax for dual-status taxpayers

SOURCE OF INCOME	TAXABLE OR NON-TAXABLE
Income from all sources for the part of the year the taxpayer is a resident alien	TAXABLE
Income from U.S. sources, and certain foreign source income that is treated as effectively connected with a U.S. trade or business for the part of the year the taxpayer is a nonresident alien	TAXABLE
Income from sources outside the United States, that is not effectively connected with a trade or business in the United States, if the taxpayer received it while they were a nonresident alien even if earned while a U.S. resident alien, or if they became a U.S. citizen or resident alien after receiving the income and before the end of the year	NON-TAXABLE
Income from U.S. sources whether the taxpayer received it while a nonresident alien or a resident, unless specifically exempt under the Internal Revenue Code or a tax treaty provision	TAXABLE

21.8.1.13.3
(10-01-2021)
**Filing Restrictions for
Dual-Status Aliens**

- (1) Dual-status taxpayers:
- a. Cannot use the standard deduction but can itemize allowable deductions
Exception: Students or business apprentices from India are eligible to claim the standard deduction under Article 21(2) of the United States - India Treaty, provided the taxpayer does not itemize deductions. See Pub 519, U.S. Tax Guide for Aliens.
 - b. Cannot use head of household tax rates
 - c. Cannot file jointly, but may claim exemptions for their spouse and children for the part of the year the taxpayer is a resident alien. Special rules could apply to residents of Canada, Mexico, South Korea, and (certain) residents of India. See Publication 519 for more information.
Reminder: For tax years 2018 through 2025, personal and dependent exemption deductions are eliminated for all taxpayers.
- (2) Below is a table for determining the income subject to tax for dual-status taxpayers.

SOURCE OF INCOME	TAXABLE OR NON-TAXABLE
Income from all sources for the part of the year the taxpayer is a resident alien	TAXABLE
Income from U.S. sources, and certain foreign source income that is treated as effectively connected with a U.S. trade or business for the part of the year the taxpayer is a nonresident alien	TAXABLE
Income from sources outside the United States, that are not effectively connected with a trade or business in the United States, if the taxpayer received it while they were a nonresident alien	NON-TAXABLE
Income from U.S. sources whether the taxpayer received it while a nonresident alien or a resident, unless specifically exempt under the Internal Revenue Code or a tax treaty provision	TAXABLE

(3) Dual-status taxpayers married for all or part of the tax year and who do not make an IRC 6013(h) election and file jointly (if eligible):

- a. Are required to use the tax rate schedules for married individuals filing separately when determining the tax on income effectively connected with a U.S. trade or business
- b. Cannot use the tax rate schedules for married individuals filing jointly or for single individuals

Reminder: Due to section 11041 of PL 115-97 personal exemption deductions are eliminated for all taxpayers for tax years 2018 through 2025.

21.8.1.13.4
(03-10-2022)

Filing Requirements of Dual-Status Aliens

(1) Dual-status aliens who are residents of the United States on the last day of the tax year must:

- a. File Form 1040 and write "Dual-Status Return" across the top
- b. Attach a separate statement (may use Form 1040-NR) and write "Dual-Status Statement" across the top, and
- c. Show the tax computation for the part of the year the taxpayer is a non-resident

(2) Dual-status aliens who are non-residents of the United States on the last day of the tax year must:

- a. File a Form 1040-NR and write "Dual-Status Return" across the top
- b. Attach separate statement (may use Form 1040) and write "Dual-Status Statement" across top, and

- c. Show the tax computation for the part of the year the taxpayer is a U.S. resident

21.8.1.13.5
(10-01-2014)

Duplicate Filing Situation (Both Return and Statement are Processed)

- (1) During processing, the Dual-status return and the statement may become separated. When both are processed, a duplicate filing condition is created.
- (2) Request both documents from Files if necessary to determine which return posted to the Master File.

If...	Then...
The controlling return posted and income is reported correctly	Input TC 290 .00 to satisfy the duplicate filing condition.
Either the "statement" or the return has posted reporting the income incorrectly	Adjust the account to reflect the correct tax, credits, withholding, filing status and exemptions. Advise the taxpayer.
It appears the same income is reported as effectively connected and non-effectively connected, and the correct classification cannot be determined	Correspond with the taxpayer for clarification.
Response received to correspondence	Adjust the return according to the response.
Response not received to correspondence	Consider the income as non-effectively connected and tax it at the 30 percent statutory rate.

21.8.1.13.6
(10-01-2022)

Net Investment Income Tax

- (1) The Health Care and Education Reconciliation Act of 2010 (PL 111-152) added a Net Investment Income Tax (NIIT) under IRC 1411 of the Internal Revenue Code for tax years 2013 and subsequent. The NIIT applies at a rate of 3.8 percent to certain net investment income of individuals, estates and trusts. Although IRC 1411 falls within Chapter 2A of the Code, entitled "Unearned Income Medicare Contribution", the tax is not a payroll tax.
- (2) In general, net investment income includes interest, dividends, capital gains, rental and royalty income, certain annuities and income from businesses in which the taxpayer is not an active participant. Investment expenses, such as brokerage fees and rental property expenses, related to the net investment income are allowed. IRA distributions and employer pension annuities are not net investment income and, therefore, not subject to the tax.
- (3) Some common types of income not deemed to be net investment income include wages, unemployment compensation, self-employment income, Social Security Benefits, alimony, tax-exempt interest, operating income from a non-passive business, IRA distributions and distributions from certain qualified plans.
- (4) The 3.8 percent tax applies when taxpayers have net investment income and modified adjusted gross income (MAGI) above the following thresholds which are not indexed for inflation:
 - Single / Head of Household - \$200,000
 - Married Filing Jointly / Qualifying Widow(er) - \$250,000

- Married Filing Separately - \$125,000
- (5) Non-resident aliens (NRA) are generally not subject to the Net Investment Income Tax. However, if a NRA is married to a U.S. citizen or resident and has made, or is planning to make, an election under IRC 6013(g) to be treated as a resident alien for purposes of filing as Married Filing Jointly, the regulations provide these couples special rules and a corresponding IRC 6013(g) election for NIIT.
 - (6) Dual status individuals that were residents of the United States for part of the year and non resident aliens for the other part of the year are subject to the NIIT only with respect to the portion of the year during which the individual is a U.S. resident. The relevant threshold amount is not reduced or prorated for a dual-status resident.

Caution: NIIT could also be reported on lines 8a and 8c of Form 1040-NR Schedule 2 and carried forward to line 23b line of the 1040-NR portion of a dual status filing.

- (7) Bona fide residents of the Commonwealth of the Northern Mariana Islands, Guam, or the U.S. Virgin Islands are not subject to the NIIT with the IRS. BFRs of American Samoa and Puerto Rico are subject to the NIIT only if they have a U.S. income tax filing requirement.
- (8) The 3.8 percent tax is assessed on **the lesser of** the net investment income or the excess amount (if any) of MAGI over the threshold amount.

EXAMPLE: A single taxpayer has wages of \$180,000 and \$15,000 of interest and dividends. The taxpayer's MAGI of \$195,000 is less than the \$200,000 threshold, thus no NIIT is due.

EXAMPLE: A single taxpayer has wages of \$180,000 and received \$90,000 from a passive partnership interest, which is considered net investment income. The taxpayer's total income is \$270,000. The taxpayer's total income exceeds the threshold of \$200,000 by \$70,000. Since the NIIT is based on the lesser of \$70,000 or \$90,000, the taxpayer owes NIIT of \$2,660 (\$70,000 X 3.8 percent).

- (9) Taxpayers report Net investment income and net investment income tax on Form 8960 Net Investment Income Tax – Individuals, Estates and Trusts. Tax from Form 8960 is carried over to the Schedule 2 of Form 1040. The "Total Other Taxes" is then transferred to Form 1040, Line 23, or Form 1040-NR, line 23b.
- (10) Before adjusting NIIT, verify the net investment income and the net investment income tax posted in the "NI Income" and "NI Income Tax" fields on Command Code (CC) TXMOD or IMFOLR.

Note: The "NI Income" field is the lesser of the net investment income or the excess of MAGI over the applicable filing status threshold amount.

- (11) The amount of income which is subject to the Net Investment Income Tax is captured on line 16 and net investment income tax is captured on line 17 of Form 8960.

Note: If the income amount cannot be determined, divide the NIIT tax amount by .038.

21.8.1.14
(10-01-2007)
**Joint Returns with a
Non-resident Alien
Spouse - 6013(g)
election**

- (1) IRC 6013(g) allows a U.S. citizen or resident alien married to a nonresident alien to file a joint return, provided an election is made by both individuals to be taxed on their worldwide income.
- (2) The nonresident alien is treated, as a resident alien of the United States for purposes of the income tax laws. Neither spouse may claim under any tax treaty not to be a U.S. resident. The nonresident alien spouse must have either a valid SSN or an ITIN.
- (3) Failure to keep and supply all the necessary books, records and other information pertinent to the determination of the joint tax liability could result in termination of the election by the Internal Revenue Service.
- (4) The election applies to the taxable year for which it is made and to all subsequent tax years unless suspended or terminated.
- (5) The election is suspended for any tax year after the election year if neither spouse is a U.S. citizen or resident alien at any time during the taxable year .
- (6) Either spouse may revoke the election for any taxable year so long as the revocation is made prior to the due date for the filing of the income tax return for such year.
- (7) The election automatically terminates upon legal separation under a decree of divorce or of separate maintenance, or the death of either spouse.

Note: The above rules apply in the case of alien individuals who do not become resident aliens of the United States during the taxable year.

- (8) If correspondence is received revoking the joint election:
 - a. Research to determine if a separate return is filed for the resident spouse, using CC TXMOD and/or CFOL Command Codes.
 - b. When the return is correctly filed, associate the correspondence with the return.
 - c. When the return is not filed, push code the correspondence to the primary SSN account. See IRM 21.5.1.4.4.2, TC 930 Push Codes.
 - d. When the original return posts and the document is received, verify that the correct filing status is used.
 - e. When a joint return is filed, forward it to Examination for classification.

21.8.1.15
(10-01-2019)
**Manual Refunds to
Non-resident Aliens That
Include Interest**

- (1) When the Service issues a refund to a nonresident alien taxpayer that includes interest, the Service must withhold tax on the interest. Do not withhold when
- (2) Determine the correct amount of tax to be withheld (30 percent) per IRC 1441, or the applicable tax treaty rate. See tax treaty tables at <https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables> for more information.

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Reminder: The Service must withhold at 30 percent if the taxpayer doesn't claim a reduced rate of withholding by providing the correct documentation to support the rate of withholding or exemption claimed. (e.g., Form W-8 BEN)

(3) Prepare four-part Form 5205.

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(5) Prepare Form 3809

- Use TC 850 to debit the employee's account. The debit date of the TC 850 is the 23c date of the posted TC 770
- Use TC 730 to credit the 4610 Account (NMF) for the amount of tax being withheld from the refund interest. Use the "CR-INT-TO-DT" as the transaction date of the TC 730. See IRM 21.4.4.6.1, Monitoring Manual Refunds, for monitoring requirements.

Reminder: Do not prepare Form 3809 to transfer the amount of interest withheld to

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(6) Input the adjustment to IDRS.

- a. On the same REQ54, input TC 29X for the amount of tax decrease and/or refundable credit.
- b. Input TC 770 for the gross amount of tax being withheld from interest.

Note: The interest payable amount used on Form 5792 is a different amount than the TC 770 amount input on ADJ54. The interest payable amount on Form 5792 is the net interest (total gross interest minus the amount withheld)

- c. On ADJ54, the "CR-INT-TO-DT for the TC 770 is the refund schedule date on the Form 5792".
- d. Use Blocking Series 05, SC 1, FLC 98, and the correct Reason Code, CII Indicator 1, and CII case ID.
- e. Input a 2- cycle posting delay and Hold Code 4.
- f. Attach Part 4 of Form 5205 and Copy E of Form 1042-S with the TC 29X adjustment.

(7) Submit the refund document, Form 5792 and related forms, along with the case itself, to the manager for review. For further information see IRM 21.4.4, Manual Refunds.

(8) Forward Form 5205, Form 1042-S, the refund document, Form 3809, and a copy of (interest computation) COMPAC or COMPAD to Accounting.

21.8.1.16
(06-29-2019)

Community Property

(1) Community property laws affect how taxpayers calculate their income on a federal tax return if when married, live in a community property state or country, and file separate returns. Community property laws also affect registered domestic partners domiciled in certain states. The law of the state or country where the taxpayer lives will determine if the taxpayer has community property, community income, or both. See Pub 555 , Community Property.

(2) For community property issues involving a nonresident alien spouse, see IRC 879 , Tax Treatment of certain community income in the case of nonresident

alien individuals, IRM 25.15.5.2 , Community Property States, Pub 555 , Community Property, and Form 8958 , Allocation of Tax Amounts Between Certain Individuals in Community Property States.

21.8.1.16.1
(10-01-2019)

Domicile vs. Residence

- (1) The terms “residence” and “domicile” have different meanings and are not interchangeable. A person may choose to have several residences, but can only have one domicile.
- (2) Any temporary place of abode may be a residence. A domicile is a place of abode that is fixed and permanent or, at least, of indefinite duration. See Pub 555, Community Property.
- (3) It is not necessary for the tax examiner to determine the state or country in which the taxpayer is domiciled. In all cases, the taxpayer’s intent controls. Intent is shown by a taxpayer’s actions. A taxpayer must be able to demonstrate that they intended a given place to be a permanent home.
- (4) A spouse’s domicile is generally the domicile of the first spouse shown on the federal tax return. The community property rules apply if one spouse is domiciled in a community property state or country, even if the other spouse resides outside the community property state or country.

21.8.1.16.2
(10-01-2019)

Community Property of nonresident Aliens (IRC 879)

- (1) Special tax rules for community property income apply to a U.S. citizen who is married to a nonresident alien spouse and domiciled in a community property state of the United States, Guam, Puerto Rico or a foreign country. In addition, nonresident aliens are subject to these special rules if they earn community property income and domiciled in a community property state or country.

Exception: If an election is made under IRC 6013(g) or (h). See IRM 21.8.1.12.5

- (2) IRC 879 establishes rules to allocate community income between spouses regardless of local community property law if at least one spouse is a nonresident alien.

Note: IRC 879 does not apply if an election under IRC 6013(g) or (h) is made. See IRM 21.8.1.12.5.

- (3) Income earned by either spouse through wages, business, or a partnership must be treated as income of the spouse who earned it, regardless of community property laws.
- (4) Self-employment tax:
 - a. If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under state foreign community property laws applicable to such income, then the gross income and related deductions are generally treated as gross income and deductions of the spouse carrying on the trade or business. If the trade or business is jointly operated, the gross income and related deductions belong to each spouse on the basis of their respective distributive share of the gross income and deductions. See IRC 879 and IRC 1402(a)(5).
 - b. However, if the other spouse exercises substantially all the management and control over the trade or business, all the gross income and related deductions are treated as income and deductions of that spouse. This

paragraph does not apply to any income derived from a trade or business carried on by a partnership of which both or one of the spouses is a member.

- c. If any portion of a partner's distributive share of the ordinary income or loss from a trade or business carried on by a partnership is community income or loss under the state or foreign country community property laws applicable to such a share, all of such distributive share is included in computing the net earnings from self-employment of such partner, and no part of the share is taken into account in computing the net earnings from self-employment of the spouse of such partner.

Note: A person is not a self-employed person, unless they have their own business, or unless the person is a member of a personal services partnership.

- (5) Form 8958, Allocation of Tax Amounts Between Certain Individuals in Community Property States is used by individuals, including nonresident aliens, subject to domestic or foreign community property laws and file separate returns.

21.8.1.17
(10-01-2019)
**Self-Employment Tax -
U.S. Citizens and Aliens
Living Abroad**

- (1) Self-employment is a social security and Medicare tax on net earnings from self-employment. The following section provides information on self-employment tax as it relates to U.S. citizens and aliens living abroad.
- (2) U.S. citizens and resident aliens living abroad are subject to the same self-employment tax imposed under IRC 1402(a) on U.S. citizens residing within the United States. See Pub 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad.
- (3) U.S. citizens and resident aliens living abroad are required to compute their "net earnings from self-employment" as U.S. citizens and resident aliens residing within the United States, without regard to the foreign earned income exclusion (IRC 1402(a)(11)).

21.8.1.17.1
(10-01-2019)
**Self-Employment Tax -
Exempt Individuals**

- (1) Members of the Clergy or members of a recognized religious sect are subject to self-employment tax on their income earned abroad. The self-employment is based upon net earnings from self-employment figured without regard to the foreign earned income exclusion or the foreign housing exclusion. See Pub 54 , Tax Guide for U.S. Citizens and Resident Aliens Abroad. However, these individuals may elect exemption from self-employment tax if they conscientiously oppose acceptance of public insurance due to religious reasons or due to the religious principles of their denomination. See Pub 517 , Social Security and Other Information for Members of the Clergy and Religious Workers.
- (2) **Individuals covered under a totalization agreement** - The United States may enter into agreements with foreign countries to eliminate dual coverage and dual contributions to social security systems for the same work. These agreements are commonly referred to as "totalization agreements."
 - a. As a general rule, self-employed persons subject to dual taxation are only covered by the social security system of the country where they reside
 - b. If self-employment earnings should be exempt from foreign social security tax and subject only to U.S. self-employment tax, the taxpayer

should request a certificate of coverage from the U.S. Social Security Administration of International Programs. The certificate establishes exemption from the foreign social security tax. See IRM 21.8.1.20.1 for details.

- 21.8.1.18
(10-01-2007)
**Retirement Withholding:
Survivor Benefit
Annuities (SBAs) -
Survivor Benefit Plans
(SBPs)**
- (1) A member of the U.S. military reaching retirement age may elect to receive, during their lifetime, a reduced U.S. military pension in order that their surviving spouse may continue to draw a U.S. military pension after their death.
 - (2) After the death of the U.S. military retiree, the pension that is paid to the retiree's "surviving spouse" is called a:
 - "Survivor Benefit Annuity" (SBA), or
 - "Survivor Benefit Plan" (SBP)
- 21.8.1.18.1
(10-01-2023)
**Survivor Benefit Annuity
(SBA) / Survivor Benefit
Plan (SBP) Taxability**
- (1) U.S. domestic tax law generally considers SBA/SBP benefits paid by the U.S. government or a political subdivision to be taxable income to non-residents receiving the benefit, unless an applicable provision of an income tax treaty between the United States and the country in which the nonresident alien recipient is a resident applies.
 - (2) SBA/SBP benefits paid by the U.S. government or a political subdivision to nonresident alien spouses who are residents and citizens of the following countries, with which the United States has income tax treaties with a **Government Services** article, are generally not taxable in the United States:

Country List	
• Australia	• Lithuania
• Austria	• Luxembourg
• Bangladesh	• Mexico
• Barbados	• Morocco
• Belgium	• Netherlands
• Bulgaria	• New Zealand
• China	• Norway
• Cyprus	• Pakistan
• Czech Republic	• Portugal
• Denmark	• Romania
• Egypt	• Russia
• Estonia	• Slovenia
• Finland	• South Africa
• Germany	• Spain
• Hungary (became ineffective as of Jan. 8, 2023. However, with respect to taxes withheld at source, the Convention will become ineffective on Jan. 1, 2024. In respect of other taxes, the Convention will become ineffective for tax periods beginning on or after Jan. 1, 2024)	• Sri Lanka
Iceland	• Sweden
• India	• Switzerland
• Ireland	• Thailand
• Italy	• Tunisia
• Jamaica	• Turkey
• Japan	• United Kingdom
• Kazakhstan	• Venezuela
• Republic of Korea (South Korea Only)	
• Latvia	

- (3) SBA/SBP benefits paid to residents and citizens of the following countries are generally taxable in the United States at the following tax rates under current tax treaties (or in the absence of a treaty):

Country	Tax Rate
Canada	15 percent
Commonwealth of Independent States (Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, and Uzbekistan)	30 percent
France	30 percent
Greece	30 percent
Indonesia	30 percent
Israel	30 percent
Philippines (If services are rendered in the United States)	30 percent
Poland	30 percent
Slovak Republic	30 percent
Trinidad and Tobago	30 percent
Ukraine	30 percent
Countries without Treaties	30 percent

21.8.1.19
(05-08-2020)
Visa Holders - General

- (1) An alien individual traveling to the U.S. can obtain many types of visas, both immigrant and non-immigrant. The U.S. Citizenship and Immigration Services and the U.S. Department of State determine, based upon U.S. immigration laws, the type of visa, if any, that an alien individual is eligible to receive based upon the individual's intended purpose of travel, length of stay, and other factors. Aliens temporarily in the U.S. on non-immigrant visas are generally admitted for a specific purpose and for a specific period of time.
- (2) Refer to the USCIS Web site at <http://www.uscis.gov> for more information on visas.
- (3) The taxation of an alien individual depends largely upon whether the individual is classified as a resident alien or nonresident alien. If the individual is determined to be a nonresident alien, they are generally taxed on all U.S. source income and on all income, that is effectively connected with the conduct of a trade or business in the United States. They are generally not taxed on foreign source income that is not effectively connected with a U.S. trade or business. For the most part, resident aliens are taxed in the same way as U.S. citizens.
- (4) The following are types and definitions of visas most frequently recognized by IRS:
 - H-1 Visa: "H-1" visas are for temporary workers in a specialty occupation (profession).
 - TN Visa: "TN" visas are trade visas for Canadian and Mexican professionals entering under the North American Free Trade Agreement (NAFTA).

- F Visa: The “F” visa is issued to alien students accepted as registered students by an educational institution or language learning program approved by the Attorney General.
 - J Visa: The “J” visa is issued to an alien entering for the purpose of teaching, instructing, or lecturing; studying; observing; conducting research; consulting; demonstrating special skills; or receiving training. These individuals are commonly referred to as “exchange visitors.” An alien temporarily present in the United States on a J Visa is admitted for an **initial period** of two years.
 - M Visa: The “M” visa is issued to an alien accepted as a registered student by an established vocational or other recognized nonacademic institution (other than in a language training programs) approved by the Attorney General.
 - Q Visa: The “Q” visa is issued to an alien participating (for a period not to exceed 15 months) in an international cultural exchange program approved by the Attorney General for providing practical training, employment, and the sharing of history, culture, and traditions of the country of the aliens nationality.
- (5) There are special rules for individuals in the U.S. on a “F”, “J”, “M”, and “Q” visa classification.
- Subject to certain limitations, “F”, “J”, “M”, and “Q” visa holders are treated as exempt individuals for purposes of the substantial presence test. As exempt individuals, they are not treated as being present in the United States, and as a result, they are frequently determined to be nonresident aliens without regard to the number of days spent in the United States.
 - Individuals in “F”, “J”, “M”, and “Q” visa status who are nonresident aliens and not engaged in a trade or business in the United States are treated as engaged in a trade or business in the United States and certain income they receive may be taxable as ECI. **F, J, M** or **Q** visa holders who are nonresident aliens shall exclude from U.S. gross income compensation paid by a foreign employer for the period they are temporarily present in the United States as **F, J, and Q** visa holders.

Note: This rule does not apply to an “M” visa holder.

- Individuals in **F, J, M, and Q** visa status, as well as certain other scholarship and fellowship recipients, are often eligible, pursuant to a treaty, for a lower withholding rate or an exemption from tax on the income earned for personal services performed in the United States.

Caution: J-1 Visa holders who participate in a Camp Counselor and Summer Work/Travel Program categories don’t qualify for the Students, Trainees, Teachers and Researchers tax treaty exemptions. These claims are generally identified and disallowed during original processing. For more information see IRM 3.21.3.82.9, Exchange Visitor Program.

- These four types of visa holders are exempt from social security and Medicare taxes on wages if the visa holder is classified a nonresident alien and the services are performed to carry out the purpose for which the visa holder was admitted to the United States. Restrictions on the type of work and the number of hours worked apply according to the type of visa held.

- In general, teachers, researchers and trainees temporarily present in the United States on a “J” or “Q” visa are no longer exempt if they were exempt as a teacher, researcher, trainee, or student for any part of 2 of the 6 preceding calendar years. If the teacher, researcher or trainee received compensation from a foreign employer, the limitation on being treated as an exempt individual is extended to four years during the preceding six years. Students temporarily present in the United States under **F, J, M, or Q** visas are generally treated as exempt individuals for only five calendar years, after which they are not treated as exempt individuals for purposes of the substantial presence test. See IRC 7701(b)(5)(E).

(6) See IRM 21.8.1.11 for a complete list of visas.

21.8.1.19.1
(03-16-2023)

**Foreign
Student/nonresident
Visitors - Exemption
from Federal Insurance
Contributions Act (FICA)
Tax**

- (1) IMF has the responsibility of verifying that the taxpayer submits a complete claim containing proper information and documentation. The adjustment portion of the claim is performed by BMF international. Reassign complete claims to BMF international, Refer to IRM 21.5.1.5.2, Cases Currently Assigned in CII for procedures in reassigning cases from IMF to BMF. The substantiation requirements for a complete claim can be located in IRM 21.8.2.7.3, Processing Employee Claims.
- (2) If the substantiation received is incomplete correspond for a complete claim. See IRM 21.8.2.7.3 for substantiation requirements. When complete substantiation is received reassign the claim to BMF international by updating case data per IRM 21.5.1.5.2, Cases Currently Assigned in CII for procedures in re-assigning cases from IMF to BMF.
- (3) See IRM 21.8.1.11 for a list of U.S. Citizenship and Immigration Services (USCIS) forms and their descriptions.

21.8.1.19.2
(12-16-2019)

**Validating
Exemption/Qualification**

- (1) When a telephone inquiry is received requesting the status of a previously filed paper claim or questions about a 512C or 513C letter, transfer the call to the BMF international application for resolution. Research the SSN account to determine if there is a CII case that will also be reassigned as BMF international.
- (2) When an original telephone or correspondence inquiry is received about a refund of erroneously withheld FICA tax, verify that the claim is valid, i.e.,
 - Form 1040-NR is filed within the statutory period
 - Individual is in a non-immigrant visa status that is eligible for the exemption
 - Employee has provided a statement from the employer indicating the amount of the repayment or reimbursement the employer provided, if any, and the amount of the credit or refund the employer claimed is authorized by the employee to claim.
- (3) When a paper claim is filed, but research shows that there is no account on record and no tax return is filed, do not process the claim. Follow procedures located in IRM 21.8.2.7.2.
- (4) When the employee filed a tax form other than the Form 1040-NR , follow procedures located in IRM 21.8.2.7.2 .

Exception: Do not disallow claims from F-1 or J-1 Visa holders who elect under IRC 6013(g) or IRC 6013(h) to file a joint return with their spouse as a resident alien. These claimants continue to be exempt from FICA under IRC 3121(b)(19) or IRC 3121(b)(10).

- (5) A teacher, researcher, or trainee in the United States with a **J** or **Q** visa is not automatically exempt from FICA tax:
- If the teacher, researcher, or trainee has visited the U.S. during any two of the six preceding calendar years (or four of the six years if the teacher, researcher or trainee received compensation from a foreign employer) as either a student, teacher, researcher or trainee, then they are no longer an **exempt individual** for the current year for purposes of the substantial presence test. Such an individual may have met the substantial presence test and thus considered a resident alien for the current year.

Note: Form I-94 Arrival/Departure Record contains the entry and departure dates which can be used to determine if they have exceeded the qualification period.

- Disallow the claim if you determine that it is not valid. Input TC 290 .00 with Blocking Series 98 or 99 and issue Letter 105C with the following fill-in paragraph:

Letter Paragraph

We have disallowed your claim because, in accordance with Internal Revenue Code 7701(b), you meet the substantial presence test and considered a resident alien; therefore, you do not qualify for exemption from FICA tax on wages.

- **If the individual's non-immigrant visa status changes from F-1, J-1, M-1, or Q to a different non-immigration visa status such as H-1B, then in most cases the individual, is then liable for social security and Medicare taxes from the day the status is changed.**

Note: T/P must provide documentation of exempt earnings up to the date the visa status changed. A copy of a pay statement with cumulative tax information is sufficient to support the claim for the exempt portion of the earnings.
 - Use care to properly adjust accounts when both a dual-status return (e.g., Form 1040 and a Form 1040-NR attached, or a Form 1040-NR with a Form 1040 attached) is filed.
- (6) A student in the United States with an **F** or **M** visa is not automatically exempt from FICA tax.
- Generally, a student is not exempt from FICA if they were a student, teacher, researcher, or trainee for more than any part of five calendar years.

Note: Check for Form 1040-NR filings. Disallow if Form 1040-NR was filed for more than 5 consecutive years.
 - A student exempt for more than five years is subject to the substantial presence test.

- If this individual meets the substantial presence test for the calendar year, they are considered a U.S. resident for tax purposes, and therefore liable for FICA tax. The claim is not valid and must be disallowed. Input TC 290 .00 with Blocking Series 98 or 99 and issue 105C letter with the following fill-in paragraph:

Letter Paragraph

We have disallowed your claim because, in accordance with Internal Revenue Code 7701(b), you meet the substantial presence test and considered a resident alien. Therefore you do not qualify for exemption from FICA tax on wages.

- (7) A student who meets the substantial presence test may still qualify for exemption from FICA tax provided they can show evidence that they do not intend to reside permanently in the United States.
- (8) A claim received after the statute has expired for refund (i.e., one that is not timely filed) is not valid and must be disallowed. Check postmark date to determine timeliness. See IRM 21.8.1.2.16.
- Send a Letter 105C and identify that the claim is not timely filed (include appeals rights).
 - Input a TC 290 .00 with Blocking Series 98/99 on the requester's tax account.
- (9) A claim received with a **J-2**, **F-2**, **H-1**, or **TN** visa is not a valid claim and must be disallowed.
- Input a TC 290 .00 with Blocking Series 98/99 on the requester's tax account.
 - Send 105C letter with the following fill-in paragraph:
"We have disallowed your claim because in accordance with Title 26, CFR 3121(b), your entry visa does not qualify you for exemption from FICA tax on wages."
- (10) A teacher, researcher, or trainee may qualify for exemption from FICA tax provided that they are a resident of a country with which we have a Totalization Agreement - Bilateral Social Security Agreement, and provides a copy of the statement from the foreign country, or the U.S. Social Security Administration, exempting the individual's pay from U.S. social security tax, but not foreign social security tax. See IRM 21.8.1.20, Totalization Agreement - Bilateral Social Security Agreement, for more information.

21.8.1.20
(10-01-2007)
**Totalization Agreements-
Bilateral Social Security
Agreements**

- (1) The United States has entered into Bilateral Social Security Agreements with several foreign countries to eliminate dual coverage and dual contributions to the social security system for the same work.
- (2) The Bilateral Social Security Agreement generally makes sure that social security taxes (including SE tax) are paid only to one country. See IRM 21.8.1.20.3 for a list of countries.

21.8.1.20.1
(10-01-2019)
**Substantiation of
Exempt Status**

- (1) In order for an individual or the individual's employer to substantiate the individual's exemption from FICA under the terms of a Bilateral Social Security Agreement, the individual or their employer must secure an Exemption Statement (Certificate of Coverage) from either the country in which the individual is employed or the individual's country of residence.
- (2) Some of the countries, with which the United States has agreements, will not issue certificates of coverage. In those countries, the employee or the employer can request a statement from the following address:

Social Security Administration
Office of International Programs
P.O. Box 17741
Baltimore, MD 21235-7741
- (3) For the employee or the employer to establish that the employee's income is subject **only** to U.S. social security tax, the U.S. employer can obtain more information or get a determination by:
 - Writing to the address in paragraph (2) above
 - Calling 800-772-1213 or 410-965-7306
 - Faxing to 410-966-1861, or
 - Accessing the SSA Web site at <http://www.ssa.gov/international>
- (4) Correspondence for Exemption Statements must include:
 - The employee's name
 - The employee's U.S. and foreign social security numbers
 - The employee's date and place of birth
 - The employee's citizenship
 - Country of permanent residence
 - The employee's country and date of hiring
 - The employer's name and address in the United States and in the foreign country
 - The beginning date and the expected ending date of the employee's assignment in the foreign country
 - There are other country specific requirements. See https://www.ssa.gov/international/coc-docs/help.html?URL=/apps6z/coc_db/help.html
- (5) The Exemption Statement must be kept by the employer because it establishes that the employee's pay is exempt from taxation in the foreign country.

21.8.1.20.2
(12-16-2019)
**Social Security Tax
Obligation**

- (1) Each Bilateral Social Security "Totalization" Agreement between the United States and a foreign country (except Italy) includes an exception to the territoriality rule under which an employee who is otherwise covered by both the United States and a foreign system remains subject exclusively to the coverage laws of the country in which they are working. Under the "detached-worker" exception, a person who is temporarily transferred to work for the same employer in another country remains covered only by the country from which they are sent. The "detached-worker" rule in U.S. agreements generally applies to employees whose assignments in the host country are expected to last 5 years or less. See https://www.ssa.gov/international/agreements_overview.html

- (2) Use the following charts (except for Italy) to determine the taxpayer's (U.S. citizen or resident alien) social security tax obligation when working in a foreign country. See also <https://www.irs.gov/government-entities/federal-state-local-governments/totalization-agreements>

If...	Then...
Sent abroad by a U.S. employer for less than 5 years	The taxpayer pays U.S. social security tax only.
Sent abroad by a U.S. employer for 5 years or more	The taxpayer pays foreign social security tax only.
Working for a foreign employer	The taxpayer pays the foreign social security tax only. However, if the foreign employer is an affiliate of an American employer, the American employer can enter into an agreement under Section 3121(l) to have United States social security coverage for the services of United States citizens and United States residents performing services for the foreign employer
Locally hired U.S. or foreign employer	The taxpayer pays foreign social security tax only.
Working for the U.S. government	Generally, taxpayer pays U.S. social security tax only.
Self-employed	Usually, taxpayer pays based on residency. However, the agreements with Belgium, France Germany, Italy and Japan do not use the residence rule as the primary determinant of self-employment coverage, and instead each agreement includes a provision to ensure that workers are covered and taxed on only one country. See https://www.ssa.gov/international/agreements_overview.html

Note: IRC 3121(l) addresses foreign employers affiliated with U.S. companies, in which case, the employee pays only U.S. social security tax for 5 years.

- (3) Use the following charts to determine the taxpayer's (foreign persons, including resident aliens for income tax purposes) social security tax obligation when working in the United States:

If...	Then...
Sent by a foreign employer for less than 5 years in the United States	Taxpayer pays foreign social security tax only.
Sent by a foreign employer for more than 5 years in the United States	Taxpayer pays U.S. social security tax only.

21.8.1.20.3
(04-27-2023)

**Claims of Exemption
from FICA Tax Because
of Bilateral Social
Security Agreement**

- (1) The procedures in this section do not refer to social security and Medicare claims made by F, J, M, or Q Visa holders. For those procedures refer to IRM 21.8.1.19.1
- (2) Claims of erroneously withheld social security and Medicare taxes must include:
 - Form W-2
 - Social Security Tax Exemption Statement
 - A signed statement from the employee or employer (whichever is applicable)
- (3) The signed statement included in the claim must state which unsuccessful attempts have been made to secure a repayment or reimbursement of the erroneously withheld social security and Medicare taxes from the employer. A Form 8316 is used for this purpose.

Note: Employees cannot use Forms 843 and 8316 to request a refund of Additional Medicare Tax. If Additional Medicare Tax is withheld in error, a taxpayer can claim a credit for any withheld Additional Medicare Tax against the total tax liability shown on the taxpayer's tax return by filing Form 8959, Additional Medicare Tax with Form 1040 or Form 1040-NR. If Additional Medicare Tax is withheld in error in a prior year for which the taxpayer already filed Form 1040 or 1040-NR, the taxpayer must file Form 1040X, Amended U.S. Individual Income Tax Return for the prior year in which the wages were originally received to recover the Additional Medicare Tax withheld in error.

- (4) The claim is only valid when it involves one of the countries with which the U.S. has a Bilateral Social Security (Totalization) Agreement. The following is a list of those countries:
 - Australia
 - Austria
 - Belgium
 - Brazil
 - Canada
 - Chile
 - Czech Republic
 - Denmark
 - Finland
 - France
 - Germany
 - Greece

- Hungary
- Iceland
- Ireland
- Italy
- Japan
- Luxembourg
- Netherlands
- Norway
- Poland
- Portugal
- Slovak Republic
- Slovenia
- South Korea
- Spain
- Sweden
- Switzerland
- The United Kingdom
- Uruguay

Note: The US-Hungarian double tax treaty became ineffective on Jan. 8, 2023. However, as specified in the Convention, with respect to taxes withheld at source, the Convention will become ineffective on Jan. 1, 2024. In respect of other taxes, the Convention will become ineffective for taxable periods beginning on or after Jan. 1, 2024.

- (5) Use procedures in IRM 21.8.2.8.4 for processing claims for FICA tax erroneously withheld.

21.8.1.20.4
(10-01-2007)

Adjusting IMF Accounts to Reduce Self-Employment Tax Due to Bilateral Social Security Agreement

- (1) In cases where the exempt taxpayer reported self-employment tax on their individual tax return, abate the tax using TC 291. For exempt status substantiation requirements, See IRM 21.8.1.20.1
- (2) Reduce the posted self-employment tax, self-employment income, and Medicare income amounts accordingly, using the following Credit Reference Numbers:
- 889 - Self-Employment Tax Adjustment
 - 878 - Primary Self-Employment Income
 - 879 - Secondary Self-Employment Income
 - 895 - Primary Medicare Income
 - 896 - Secondary Medicare Income

Note: Both SE income and Medicare income amounts must be reduced as necessary to correct the amounts reported since data from these adjustments is sent to Social Security Administration (SSA) electronically.

21.8.1.21
(10-01-2007)

General Organization for Social Insurance (GOSI)

- (1) The General Organization for Social Insurance, a Saudi Arabian government corporation, administers the Saudi Arabian Social Insurance System.
- (2) The Government of Saudi Arabia sends lump-sum benefit cancellation payments to United States taxpayers who irrevocably surrender their GOSI benefits.

- (3) The amount of the lump-sum payment consists of 5 percent of the non-Saudi worker's GOSI wage base plus a bonus.
- (4) GOSI benefit cancellation payments are fully includible in the recipient's gross income under IRC 61 in the year received. See Rev. Rul. 89-104
- (5) Disallow any claims received to reduce the taxpayer's income by the amount of the GOSI payment.

21.8.1.22
(10-01-2023)
Form 8288

- (1) IRC 1445 requires the deduction and withholding of tax by the transferee usually the buyer on amounts realized by the transferor/seller on dispositions of U.S. real property interests by a foreign seller.
- (2) Form 8288, U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons of U.S. Real Property Interests, is filed by the withholding agent to report the section 1445 tax withheld at source.
- (3) IRC 1446(f)(1) requires deduction and withholding of tax by the transferee on the amount realized on the disposition of an interest in a partnership if there is a gain and any portion of the gain would be treated under IRC 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.
- (4) Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, is also filed by the withholding agent to report the section 1446(f) tax withheld at source.

21.8.1.22.1
(10-01-2023)
**Claims for FIRPTA
Credits**

- (1) Taxpayer claims for FIRPTA credits on Form(s) 1040-NR, etc., must be accompanied by a received by IRS stamped Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, Copy B, or Form 8288-C, Statement of Withholding Under Section 1446(f) (for Withholding on Dispositions by Foreign Persons of Partnerships Interests). If a partnership disposes of a U.S. Real Property Interest, the foreign partners' allocable shares of the gain recognized are treated as effectively connected income included in effectively connected taxable income subject to withholding under IRC 1446(a), rather than section 1445. Therefore, if a partnership disposes of the U.S. real property interest, it must withhold under IRC 1446(a), rather than section 1445, on the gain recognized allocable to the partnership's foreign partners. If a transferee withholds on the sale of a U.S. Real Property interest by a foreign partnership, the partnership may claim a credit for the amount withheld allocable to its foreign partners against the amount of section 1446(a) tax it must withhold. So that the foreign partner can prepare its return, the partnership provides the partner with Form 8805, Foreign Partner's Information Statement of 1446 Withholding Tax, which is similar to domestic withholding claims being accompanied by a Form W-2.
- (2) Check the validity of the credits claimed on Form 8288-A, or 8288-C against the INTLWEBAPPS. prior to allowing the credit. The person verifying the credit will:
 - Access the account on IDRS to verify any FIRPTA credits already allowed during initial processing, or any later adjustments. See paragraph 3 below for further details.
 - Access INTLWEBAPPS, FIRPTA data base to verify the amount of credits paid in based on the transaction.

- Use Form 13698, International Credit(s) Verification Slip to notate the amount of credit verified
- Based on the amounts previously allowed on IDRS compared to the amounts verified on the FIRPTA data base, **notate the amount of unused credit available for adjustment** in the remarks section of the Form 13698, International Credit(s) Verification Slip. Attach the Form 13698 to the case as proof of verification.

Example: IDRS shows \$10,000 in FIRPTA credits allowed. The FIRPTA data base shows \$20,000 paid in based on the transaction. Notate the Form 13698 as having \$20,000 8288-A, or 8288-C credit. Also notate in the remarks section **\$10,000 unused credit available for adjustment**.

- Enter notes in the INTLWEBAPPS, FIRPTA data base explaining the amount of credit verified, and the taxpayer identification number where the credit is taken on an income tax return.
- (3) The presence of a TC 971 with Action Code 650 on the sellers MFT 30 tax module shows that a refund of the FIRPTA credits is posted on the BMF MFT 17 account for the amount shown. A TC 972 shows a reversal of a TC 971.
 - (4) When a Form 1040-NR tries to post to Master File, and a TC 971 Action Code 650 is present, the account is frozen from refunding and a Master File transcript generates. Research to determine if the FIRPTA credit claimed on the return is previously refunded as shown by the TC 971 Action Code 650.

If...	Then...
The Action Code 650 amount is the same as the Credit Reference Number (CRN) 332 amount	Input an adjustment to reduce the CRN 332 amount to zero, since the credit is already refunded.
The Action Code 650 amount is included in the CRN 332 amount (i.e., \$9,200.00 is part of the \$10,500.00 claimed)	Reduce the CRN 332 amount by the AC 650 amount since this is already refunded. See Caution below.
The Action Code 650 amount is not included in the CRN 332 amount	Input TC 571 to release the freeze on the account. CW the transcript.

Caution: Research the FIRPTA database or request the original return from Files, if necessary, to determine if the FIRPTA credit being claimed on the return is the same credit previously refunded according to the TC 971 CRN 332 transaction.

- (5) If correspondence or an amended tax return is received requesting credit for withheld FIRPTA tax, Form 8288-A, Copy B, or Form 8288-C generally must be attached to verify the credit. In situations where the tax is withheld and the seller did not receive a stamped copy of Form 8288-A, Copy B, or Form 8288-C from the IRS, the seller can establish the amount of tax withheld by attaching substantial evidence (e.g., closing documents, settlement statement) of the amount of tax withheld. For further information see IRM 3.21.25-4.

- (6) Perform the verification against the INTLWEBAPPS data base.
- (7) Allow the credit after the availability is verified with CRN 332 (which posts as a TC 766), Reason Code 069, and adjust tax, if necessary Refer to paragraph 2 above for verification instruction.

Note: When issuing a manual refund from a Form 8288 account, use Line Numbers 11-15, see IRM 2.4.20-12, Description of Line Item Numbers.

- (8) Credits substantiated by Form 8288-A, Form 8288-C, and 8805 are Chapter 3 withholding credits and subject to the 180- day interest- free period. For more information on the 180- day interest-free period refer to IRM 20.2.4.7.6, 180-Day Rule.

21.8.1.22.2
(10-01-2013)
**Claims for Credits for
Withholding Under
Section 1446(f)**

- (1) Taxpayer claims for credits for withholding under § IRC 1446(f) on Form 1040-NR, US Nonresident Alien Income Tax Return etc.; must be accompanied by Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, Copy B, or Form 8288-C, Statement of Withholding Under Section 1446(f) (for Withholding on Dispositions by Foreign Persons of Partnerships Interests) . If a partnership disposes of an interest in a partnership engaged in the conduct of a U.S. trade or business, the foreign partners' allocable shares of effectively connected gain recognized are treated as effectively connected income included in effectively connected taxable income subject to withholding under IRC 1446(a), rather than IRC 1446(f)(1).
- (2) Therefore, if a partnership disposes of an interest in a partnership engaged in the conduct of a U.S. trade or business, it must withhold under IRC 1446(a) rather than IRC 1446(f)(1), on the gain recognized allocable to the partnership's foreign partners. If a transferee withholds under IRC 1446(f)(1) on the sale of the partnership interest by a foreign partnership, the foreign partnership may claim a credit for the amount withheld allocable to its foreign partners against the amount of IRC 1446(a) tax it must withhold. So that the foreign partner can prepare its return, the partnership provides the partner with Form 8805, Foreign Partner's Information Statement of 1446 Withholding Tax, which is similar to domestic withholding claims being accompanied by a Form W-2.
- (3) Adjusting accounts making changes based IRC 1446(f) are similar to other FIRTPA credit adjustments. Refer to IRM 21.8.1.22.1 for procedures on adjusting accounts these accounts.

21.8.1.23
(04-27-2023)
**Withholding Tax on
Foreign Partners - Form
8804, 8805 and 8813**

- (1) Form 8804, Annual Return for Partnership Withholding Tax (Section 1446) Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, and Form 8813 Partnership Withholding Tax Payment Voucher (Section 1446) are used to pay and report IRC 1446(a) withholding tax that is based on effectively connected taxable income allocable to foreign partners, without regard to distributions.
- (2) The total withholding tax liability of the partnership for its tax year is reported on Form 8804. Form 8804 is processed to the Business Master File under MFT 08.
- (3) Form 8805 is used to report the amount of effectively connected taxable income allocable to the foreign partner, and the IRC 1446(a) tax withheld on behalf of the partner for the partnership's tax year. If the foreign partner is a foreign trust or estate, the foreign trust or estate must provide to each of its

beneficiaries, a copy of the Form 8805 furnished by the partnership. In addition, the foreign trust or estate must complete Schedule T for each of its beneficiaries and must provide that Schedule T information to each beneficiary. A foreign trust or estate must attach to the Form 1040-NR it files any Form(s) 8805 it receives and copies of the Form(s) 8805 it must furnish to its beneficiaries with the Schedule(s) T completed. Form 8805 is processed on a standalone computer system.

- A separate Form 8805 must be filed for each foreign partner.
 - A copy of each Form 8805 must be attached to the Form 8804 when filed.
- (4) The foreign partner must attach Form 8805 to their individual tax return to claim a credit on Form 1040-NR, Form 1120-F, or Form 8804, in the case of an upper tier partnership. **The TIN and the name of the partner on the Form 8805 must match the TIN and name on the U.S. tax return of the partner. See IRM 21.8.2.14.1. Allow credits verified using CC IRPTR and/or the INTLWEBAPPS database without further research.**

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verified on the INTLWEBAPPS database. The person verifying the credit must use Form 13698, International Credit(s) Verification Slip to document the amount verified. To allow the credit, input the adjustment using a TC 290 with Credit Reference(CRN) 331, Reason Code 069.

- (5) Any U.S. person erroneously made subject to the withholding tax would also receive Form 8805 from a partnership and must attach it when filing its return, e.g., Form 1040 or Form 1120-F to obtain the credit.
- (6) Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446), is used to transmit payments to the IRS.
- (7) Partnerships are instructed to attach withholding certificates which foreign partners submitted that support reduced IRC 1446 withholding, along with a computation of the reduction in withholding relating to each partner for which it is submitting a certificate, to their Form 8805 and Form 8813.
- (8) For partnership taxable years ending after December 31, 2007, partnerships are required to attach Form 8804-C, Certificate of Partner-Level Items to Reduce Section 1446 Withholding, from foreign partners to both Form 8813, Partnership Withholding Tax Payment Voucher Section 1446, and Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax filed with the IRS for any installment period or year for which such certificate is considered in computing the partnership's 1446 tax. The partnership must also attach a copy of the computation of 1446 tax due with respect to such foreign partner to all Forms 8813, Partnership Withholding Tax Payment Voucher (Section 1446), and Forms 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, filed with the IRS for any installment period or year for which such Form 8804-C is considered in computing the partnership's 1446 tax.

Note: Route any loose Forms 8804-C only to the Low Income Housing Team at the Philadelphia Campus, 2970 Market Street, Drop Point 4-E08.142, Philadelphia, PA 19104.

- (9) Withholding under IRC 1446(f) by acquirers of partnership interests held by foreign partners, to the extent subject to tax under IRC864(c)(8), withholding is currently reported using Form 8288, U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests.

21.8.1.24
(08-12-2011)

Withholding Certificates

- (1) A series of Forms W-8 are available and must be submitted to a withholding agent if an exemption or a reduced rate is being claimed.
- (2) Additional information and the purpose for each of the certificates are listed below.

21.8.1.24.1
(10-01-2023)

Form W-8, Certificate of Foreign Status

- (1) The possible forms that can be submitted as a certificate of foreign status are:
- Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.
 - Form W-8 BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) .
 - Form W-8ECI ,Foreign Person’s Claim of Income Effectively Connected with the Conduct of a Trade or Business in the United States.
 - Form W-8EXP ,Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding.
 - Form W-8IMY , Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.
 - Form W-8CE , Notice of Expatriation and Waiver of Treaty Benefits.
- (2) All Forms W-8 are submitted to the withholding agent/financial institution. The Form W-8 is not sent to the IRS.
- (3) The withholding agent keeps the Form W-8. A withholding agent must keep each withholding certificate and other documentation for as long as may be relevant to the determination of the withholding agent’s tax liability. For further information see Treas. Reg 1.1441-1(e)(4)(iii) and 1.1446-1(c)(2)(vi).
- (4) **CAUTION:** When a nonresident alien files a claim for erroneous backup withholding:
- a. Return the claim to the taxpayer, and
 - b. Advise the taxpayer to file the correct tax form (Form 1040-NR Individual or Form 1120-F Corporation) with a copy of Form 1099, Form 1042-S, Form 8805, Form 8288-A, or Form 8288-C attached.

21.8.1.24.2
(10-01-2022)

**Form W-8BEN,
Certificate of Foreign
Status of Beneficial
Owner for United States
Tax Withholding**

- (1) If the income is considered “fixed or determinable annual or periodical income,” such as interest, dividends, rents, royalties, premiums, annuities, profits, gains, etc., the nonresident alien recipient must provide Form W-8BEN to the withholding agent to claim reduced or exempt withholding under a U.S. Tax Treaty.
- (2) A foreign partner may submit Form W-8BEN to qualify a partnership to use a preferential rate of withholding under IRC 1446(a) relating to the foreign partner submitting the form.
- (3) A seller of a partnership interest may submit Form W-8BEN to claim reduced or exempt withholding under section 1446(f) under a U.S. Tax Treaty.

- (4) Return loose Forms W-8BEN or any W-8 series document sent in by an individual, to the taxpayer. The taxpayer must provide the form to their withholding agent/financial institution.
- (5) Associate loose Form W-8 series documents sent in by business taxpayers with their withholding tax return (i.e., Form 1042).

21.8.1.24.3
(10-01-2022)

**FORM W-8BEN-E,
Certificate of Entities
Status of Beneficial
Owner For United States
Tax Withholding
(ENTITIES)**

- (1) The Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities), is used by foreign entities to:
 - a. Document the foreign entity's status for purposes of IRC chapter 3
 - b. Document the foreign entity's chapter 4 status to a foreign financial institution with which the entity maintains an account;
 - c. Document the foreign entity's chapter 4 status with a withholding agent that is making chapter 4 withholdable payments to the foreign entity; and
 - d. Claim exemption from withholding under the code (for example, the portfolio interest exemption under IRC section 871(h)), or claim a reduced rate of withholding under a treaty.
- (2) The Form W-8BEN-E is not filed with the IRS. It must be submitted to, and kept by the withholding agent or the foreign financial institution receiving the W-8BEN-E from the foreign entity.
- (3) The Form W-8BEN-E is submitted by a foreign entity to claim that it is the beneficial owner of U.S. source income that is "fixed or determinable annual or periodical income" and entitled to a reduced rate of withholding or an exemption from withholding under a U.S. income tax treaty.
- (4) A foreign partner may submit Form W-8BEN-E to qualify a partnership to use a preferential rate of withholding under §1446(a) relating to the foreign partner submitting the form.
- (5) A seller of a partnership interest may submit Form W-8BEN-E to claim reduced or exempt withholding under section 1446(f) under a U.S. Tax Treaty
- (6) Loose Forms W-8BEN-E or any W-8 series document sent in to the IRS by an individual, will be returned to the individual taxpayer. The taxpayer must provide the form to their withholding agent/financial institution.

21.8.1.24.4
(10-01-2021)

**Form W-8ECI, Foreign
Person's Claim of
Income Effectively
Connected with the
Conduct of a Trade or
Business in US**

- (1) Generally, when a foreign person engages in a trade or business in the United States, all income from sources in the United States other than fixed or determinable annual or periodical (FDAP) income (for example, interest, dividends, rents, and certain similar amounts) is considered income effectively connected with a U.S. trade or business.
- (2) FDAP income may or may not be effectively connected with a U.S. trade or business. Factors to be considered to determine whether FDAP income and similar amounts from U.S. sources are effectively connected with a U.S. trade or business include whether
 - the income is from assets used in, or held for use in, the conduct of that trade or business, or
 - the activities of that trade or business were a material factor in the realization of the income.

- (3) Effectively connected income (ECI), after allowable deductions, is taxed at graduated rates applicable to U.S. persons and resident aliens, rather than at the 30 percent rate. ECI is reported on the recipients annual U.S. income tax or information return.
- (4) Foreign persons are generally subject to U.S. tax at a 30 percent rate on fixed or determinable, and annual or periodical income they receive from U.S. sources, however, no withholding under IRC 1441 or IRC 1442 is required on the following types of income:
 - Income subject to withholding under IRC 1445 (disposition of U.S. real property interests); and
 - Income subject to withholding under IRC 1446(a) (foreign partner's share of effectively connected income).
 - Income subject to withholding under IRC 1446(f) (foreign person's amount realized from the disposition for a gain of an interest in a partnership engaged in a U.S. trade or business).
- (5) A foreign person is defined as a:
 - Nonresident alien individual,
 - Foreign corporation,
 - Foreign partnership,
 - Foreign estate, or,
 - Foreign trust.
- (6) The Form W-8ECI, Foreign Person's Claim of Income Effectively Connected with the Conduct of a Trade or Business in US, is used by foreign persons to:
 - a. Establish that they are a not a U.S. person
 - b. Claim that they are the beneficial owner of the income for which Form W-8ECI is being provided, or are an entity engaged in a U.S. trade or business submitting Form W-8ECI on behalf of the owners, partners, or beneficiaries and
 - c. Claim that the income is effectively connected with the conduct of a trade or business in the United States and is includible in income by the beneficial owner
 - d. A W-8ECI reporting the income on which W-8ECI exemption is claimed, must report the U.S. TIN of the claimant
- (7) The Form W-8ECI is not filed with the IRS. It is submitted to, and kept by, the withholding agent when a recipient considers that its "effectively connected income" is exempt from withholding.
- (8) The Form W-8ECI is submitted by foreign persons who are beneficial owners of U.S. source income that is, or is deemed effectively connected with a trade or business in the United States and may be eligible for exemption from chapter 3 and section 1446 withholding.

- 21.8.1.24.5
(08-12-2011)
Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding
- (1) Investment income (stock, bonds, and other domestic securities, interest on deposits in banks, and payments from any other source) earned in the United States by foreign governments, international organizations, foreign central banks of issue, foreign tax-exempt organizations, foreign private foundations, or by the governments of U.S. Territories is exempt from Chapter 3 Withholding if the income is not derived from a commercial activity or from a partnership interest, or received from or by a controlled commercial entity.
 - (2) Foreign governments, international organizations, foreign central banks of issue, foreign tax-exempt organizations, foreign private foundations, or governments of U.S. Territories must submit Form W-8EXP to the withholding agent to:
 - a. Establish that they are a foreign person,
 - b. Claim that they are the beneficial owner of the income for which Form W-8EXP is being filed, and
 - c. Claim a reduced rate of, or exemption from, withholding.
- 21.8.1.24.6
(10-01-2022)
Form W-8IMY, Certificate of Foreign Intermediary, Foreign Partnership, or Certain U.S. Branches for United States Tax Withholding.
- (1) Foreign persons are subject to U.S. tax at a 30 percent rate on income they receive from U.S. sources that consists of:
 - Interest,
 - Dividends,
 - Rents,
 - Premiums,
 - Annuities,
 - Compensation for, or in expectation of services performed, or
 - Other fixed or determinable annual or periodical gains, profits or income.
 - (2) This tax is imposed on the gross amount paid and is generally collected by withholding on that amount.
 - (3) A payment is considered made whether it is paid directly to the beneficial owner or to another person, such as an intermediary, or flow through entity, that receives the payment on behalf of a partner, beneficiary, or owner.
 - (4) Form W-8IMY is provided to the withholding agent by:
 - A foreign person, or a foreign branch of a U.S. person to establish that it is a qualified intermediary (QI) that is not acting for its own account to represent that it has provided or will provide a withholding statement as required or if applicable, to represent that it has assumed primary withholding responsibility under chapters 3 or 4 of the code and/or primary Form 1099 reporting and backup withholding responsibility.
 - A foreign person, a foreign branch of a foreign person, or a foreign branch of a U.S. person, to establish that it is a QI acting as a QDD, as permitted by the QI agreement. A QDD that receives payments for which the QDD is entitled to a reduced rate of withholding under an income tax treaty may use its Form W-8IMY to both certify to its status as a QI acting as a QDD and to claim treaty benefits with respect to such payments or claim status as a foreign beneficial owner of a payment.
 - A foreign person, or a foreign branch of a U.S. person, to establish that it is a QI assuming primary withholding responsibility with respect to payments of substitute interest, as permitted by the QI agreement.

- For purposes of withholding under section 1446(f), a foreign person, or foreign branch of a U.S. person, to establish that it is a QI that is not acting for its own account and to represent that it has assumed primary withholding responsibility for a payment of an amount realized from the sale of an interest in a PTP or has provided, or will provide, a withholding statement, as required, for the amounts realized.
- A foreign person, or a foreign branch of a U.S. person, to establish that it is a QI not acting for its own account, to represent that it has assumed primary withholding responsibility for distributions from PTPs for which the QI acts as a nominee or has provided, or will provide, a withholding statement, as required, for the distributions
- A foreign person to establish that it is a non-qualified intermediary that is not acting for its own account for chapter 3 purposes (including for amounts subject to withholding under section 1446(a) or (f)), to certify its chapter 4 status (if required), to certify whether it reports U.S. accounts under chapter 4 (if required), and to show, if applicable, that it is using the form to transmit withholding certificates and/or other documentary evidence (when permitted) and has provided, or will provide, a withholding statement, when required (including for payments subject to withholding under IRC 1446(a) and, in certain cases, for IRC 1446(f)).

Note: A U.S. person cannot be a non-qualified intermediary.

- A U.S. branch that is acting as an intermediary to represent that the income it receives is not effectively connected with the conduct of a trade or business within the United States and either that it is using the form (1) to evidence it is treated as a U.S. person under Regulations section 1.1441-1(b)(2)(iv)(A) with respect to reportable amounts associated with the Form W-8IMY, or (2) to transmit the documentation of the persons for whom it receives a payment of such an amount and has provided, or will provide, a withholding statement, as required, and to certify it is applying the rules described in Regulations section 1.1471-4(d)(2)(iii)(C) when receiving a withholdable payment.
- For purposes of section 1446(f), a U.S. branch that is acting as an intermediary, to certify that it is acting as a U.S. person with respect to amounts realized on sales of interests in PTPs.
- A U.S. branch, to represent that it is treated as a U.S. person and is acting as a nominee for distributions from publicly traded partnerships under Regulations section 1.1446-4(b)(3) (or has otherwise provided (or will provide) a withholding statement for a distribution).
- A financial institution incorporated or organized under the laws of a U.S. territory that is acting as an intermediary or is a flow-through entity to represent that it is a financial institution (other than an investment entity that is not also a depository institution, custodial institution, or specified insurance company) and either that it is using the form (1) to evidence it is treated as a U.S. person under Regulations section 1.1441-1(b)(2)(iv)(A) with respect to reportable amounts associated with the Form W-8IMY, or (2) to certify that it is transmitting documentation of the persons for whom it receives a payment of such an amount and has provided, or will provide, a withholding statement, as required.
- For withholding under section 1446(f), a financial institution incorporated or organized under the laws of a U.S. territory that is acting as an intermediary or that is a flow-through entity, to certify that it is acting as a U.S. person for amounts realized on sales of interests in PTPs.

- A financial institution incorporated or organized under the laws of a U.S. territory that is acting as an intermediary or that is a flow-through entity, to certify that it is acting as a U.S. person and as a nominee for distributions from PTPs under Regulations section 1.1446-4(b)(3) (or has otherwise provided (or will provide) a withholding statement for a distribution).
- A foreign partnership or a foreign simple or grantor trust to establish that it is a withholding foreign partnership or withholding foreign trust.
- A foreign partnership or a foreign simple or grantor trust to establish that it is a non-withholding foreign partnership or non-withholding foreign simple or grantor trust for amounts subject to chapter 3 withholding to certify to its chapter 4 status (if required), to represent that the income is not effectively connected with a U.S. trade or business, and to certify that the form is being used to transmit withholding certificates and/or documentary evidence and that it has provided or will provide a withholding statement as required.
- A foreign partnership or foreign grantor trust to establish that it is an upper-tier foreign partnership or foreign grantor trust for purposes of section 1446(a) and, except for a partnership that is a PTP, to represent that the form is being used to transmit withholding certificates and/or documentary evidence and that it has provided, or will provide, a withholding statement, as required
- A foreign partnership to establish that it is the seller of an amount realized from the transfer of a partnership interest for purposes of section 1446(f) and, when applicable, to represent that it has provided, or will provide, a withholding statement with respect to a modified amount realized for purposes of withholding under section 1446(f) on the transfer.
- A foreign grantor trust transferring a partnership interest providing, on behalf of each grantor or other owner of the trust under Regulations section 1.1446(f)-1(c)(2)(vii), a withholding statement to allocate an amount realized to each grantor or owner for withholding under section 1446(f) on the transfer.
- A flow-through entity (including a foreign reverse hybrid entity) transmitting withholding certificates and/or other documentary evidence to claim treaty benefits on behalf of its owners, to certify its chapter 4 status (if required), and to certify that it has provided, or will provide, a withholding statement, as required.
- A nonparticipating FFI acting as an intermediary or that is a flow-through entity using this form to transmit a withholding statement and withholding certificates or other documentation for exempt beneficial owners described in Regulations section 1.1471-6 with respect to its receipt of a withholdable payment.
- A qualified securities lender (QSL) that is either a qualified intermediary (to the extent not acting as a QDD) or other entity certifying to a withholding agent that it is acting as a QSL in Part IV of Form W-8IMY with respect to U.S. source substitute dividends received from the withholding agent prior to January 1, 2023, pursuant to a securities lending transaction within the meaning of Notice 2010-46, available at https://www.irs.gov/irb/2010-24_IRB See, also, Notice 2020-2.
- A foreign intermediary or flow-through entity not receiving withholdable payments or reportable amounts that is holding an account with a participating FFI or registered deemed-compliant FFI providing this form for purposes of documenting its chapter 4 status as an account holder. No

withholding statement is required to be provided along with Form W-8IMY in this case. The entity may instead provide Form W-8BEN-E to document its chapter 4 status as an account holder of an FFI when it is not receiving withholdable payments or reportable amounts.

- A foreign partnership, foreign simple trust, or foreign grantor trust that is the seller of a life insurance contract (or interest therein) or a recipient of a reportable death benefit to establish its foreign status and to associate this form with any other applicable documentation for purposes of section 6050Y or chapter 3. See Regulations sections 1.6050Y-3 and 1.6050Y-4.

- (5) Form W-8IMY is provided to the withholding agent or payer before income is paid or credited on behalf of the beneficial owner.

Note: Failure to provide a Form W-8IMY, or failure to provide necessary documentation and withholding statements, may lead to withholding at a 30 percent rate, or the backup withholding rate.

21.8.1.24.7
(08-12-2011)

**Form W-8CE, Notice of
Expatriation and Waiver
of Treaty Benefits**

- (1) Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits, is submitted to a withholding agent by a “covered expatriate” in accordance with IRC 877A which became effective June 17, 2008. The Form W-8CE informs the withholding agent that the beneficial owner of the income is now a covered expatriate and that the covered expatriate has either a certain item of deferred compensation, a specified tax deferred account, or an interest in a non-grantor trust.

Note: This withholding tax is in lieu of any withholding tax imposed by Chapter 3 or Chapter 24 of the IRC.

- (2) The Form W-8CE must be furnished within 30 days of expatriation or, if earlier, by the day before the first distribution on or after the expatriation date for each specified tax deferred account, item of deferred compensation, or interest in a non-grantor trust. The form is given to each payer of the identified income and is not filed with IRS. The IRS should obtain this information from the covered expatriate on Form 8854, Initial and Annual Expatriation Statement.

21.8.1.24.8
(10-01-2019)

**Form 8233, Exemption
from Withholding on
Compensation for
Independent (& Certain
Dependent) Personal
Services of a
Non-resident Alien
Individual**

- (1) A nonresident alien individual who received compensation for independent personal services or certain dependent services performed in the United States must file Form 8233 with the withholding agent in order to claim reduced withholding or an exemption from withholding when eligible under an income tax treaty. Use the following chart to determine if nonresident alien individuals who are the beneficial owner of the income described below must use Form 8233.

If...	Then...
Receiving compensation for independent personal services performed in the U.S.	Use Form 8233 to claim a tax treaty withholding exemption for all or part of that compensation and/or to claim the daily personal exemption amount. Note: For tax years after 2017, nonresident aliens can no longer claim an exemption from withholding based on the daily personal exemption amount.
Receiving compensation for dependent personal services performed in the U.S.	Use Form 8233 to claim a tax treaty withholding exemption for all or part of that compensation.
Receiving non-compensatory scholarship or fellowship income and personal services income from the same withholding agent	Use Form 8233 to claim a tax treaty withholding exemption for part or all of both types of income.

(2) This form is **not** required if the taxpayer is a beneficial owner who is:

If...	Then...
Receiving compensation for dependent personal services performed in the U.S. and is not claiming a tax treaty withholding exemption for any part of that compensation	Form W-4 is used.
Receiving non-compensatory scholarship or fellowship income and not receiving any personal services income from the same withholding agent	Form W-8BEN is used. Note: If elected by the withholding agent, Form W-4 can be used for the non-compensatory scholarship or fellowship income.
Claiming only foreign status or treaty benefits with respect to income that is not compensation for personal services	Form W-8BEN is used.

Note: This exemption is not retroactive. However, the exemption from the withholding is effective for payments made retroactive to the date of the first payment covered by the Form 8233.

21.8.1.24.9
(10-01-2019)

**Form W-9, Request for
Taxpayer Identification
Number and
Certification**

- (3) The Form 8233 is processed at the Philadelphia Accounts Management Campus. Refer to IRM 21.8.6, Exemptions from Withholding (Form 8233) for processing instructions.
 - (4) Withholding agents are instructed to keep a copy of Form 8233 for their records, and give a copy to the nonresident alien.
- (1) An individual or entity who must file an information return with the IRS must obtain a correct Taxpayer Identification Number (TIN) to report for example:
 - Income paid to them
 - Real estate transactions
 - Mortgage interest they paid
 - Acquisition or abandonment of secured property
 - Cancellation of a debt
 - Contributions they made to an IRA
 - (2) U.S. taxpayers including U.S. resident aliens use Form W-9 , Request for Taxpayer Identification Number and Certification to provide their correct TIN to an individual or entity, required to file an information return with the IRS, and in doing so:
 - Certify that the TIN is correct (or to show that the taxpayer is waiting for a TIN)
 - Certify that the taxpayer is not subject to backup withholding, or
 - Claim exemption from backup withholding if the taxpayer is a U.S. exempt payee
 - (3) Foreign persons, or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead the use Form W-8, for Form 8233. For more information see Pub 515 , Withholding of Tax on Non-resident Aliens and Foreign Entities.
 - (4) All Forms W-9 are submitted to the withholding agent/financial institution. The Form W-9 is not sent to the IRS.
 - (5) The withholding agent keeps the Form W-9. A withholding agent must keep each withholding certificate and other documentation for as long as may be relevant to the determination of the withholding agent's tax liability. For further information see Treas. Reg. 1.1441-1(e)(4)(iii) and 1.1446-1(c)(2)(vi).

21.8.1.25
(10-01-2019)

**Form 3520 and Form
3520-A**

- (1) Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, is filed by U.S. persons (and executors of estates of U.S. decedents) to report:
 - certain transactions with foreign trusts
 - ownership of foreign trusts under the rules of IRC 671 and 679
 - receipt of certain large gifts or bequests from certain foreign persons

Note: A separate Form 3520 is filed for transactions with each foreign trust.

- (2) Form 3520-A, Annual Return of Foreign Trust With a U.S. Owner, is the annual information return of a foreign trust with at least one U.S. owner. The form provides information about the foreign trust, its U.S. beneficiaries, and any U.S. person who is treated as an owner of any portion of the foreign trust

under the grantor trust rules. A foreign trust with a U.S. owner must file Form 3520-A in order for the U.S. owner to satisfy its annual information reporting requirements under IRC 6048(b).

- (3) Each U.S. person treated as an owner of any portion of a foreign trust under the grantor trust rules IRC 671 and 679 is responsible for ensuring that the foreign trust files Form 3520-A and furnishes the required annual statements to its U.S. beneficiaries.
- (4) If a foreign trust fails to file Form 3520-A, the U.S. owner must complete and attach a substitute Form 3520-A for the foreign trust to the U.S. owner's Form 3520.
- (5) Civil Penalty adjustments (CP 15; CP 223) and duplicate filing conditions (CP 193) are generated for:
 - Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, and
 - Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner (Under IRC 6048(b))
- (6) Penalties are assessed under IRC 6677 for each tax year in which the Form 3520 and/or 3520-A is not timely filed and/or the information contained in the filing is incomplete or inaccurate.
- (7) Additional penalties are assessed under IRC 6677 if the non-compliance continues for more than 90 days after the IRS mails a notice of failure to comply with the required reporting.
- (8) Refer to IRM 21.8.2.19, Information Reporting Under IRC 6048 and IRC 6039F for instructions on processing Form 3520 and 3520-A adjustments. Also for more information see IRM 20.1.9.13 IRC 6677(a)—Foreign Trust Information Return—Form 3520 and IRM 20.1.9.14 IRC 6677(a) and (b)—Foreign Trusts With U.S. Owners—Form 3520-A.

21.8.1.26
(10-01-2021)

Form 5471 - Information Return of U.S. Persons with Respect to Certain Foreign Corporations

- (1) Form 5471 is filed by certain U.S. citizens and residents who are officers or directors of certain foreign corporations, and certain U.S. persons who are shareholders in certain foreign corporations, to report information with respect to the foreign corporation's international activities.
- (2) The Form 5471 includes Schedules A, B, C, F, G, and I. It also includes separate Schedules E (which includes E-1), H, I-1, J, M, O, P, Q and R.
- (3) This form and schedules are used to satisfy the reporting requirements of IRC 6038, IRC 6046, and related regulations.
- (4) The Form 5471 (and schedules) is filed with the income tax return filed by the taxpayer.
- (5) The due date of the Form 5471 is the same as that of the related income tax return.
- (6) An extension of time to file the income tax return is an extension of time to file Form 5471.

21.8.1.26.1
(10-01-2020)
Form 5471 Penalties

- (1) Failure to file Form 5471 and the correct schedule(s) can result in civil penalties under IRC 6038. The penalties are assessed on civil penalty modules for both IMF and BMF accounts with Penalty Reference Number 599, Failure to File Form 5471 in conjunction with Failure to File Corporate Return

Note: For further information refer to Document 6209 on SERP <http://serp.enterprise.irs.gov/databases/irm.dr/current/6209.dr/6209ch10-8-1.htm>

- (2) Area Office Examination assessed Form 5471 penalty adjustments will post with a TC 240 using Document Code 47. Examination assessed Form 5471 penalty adjustments will also post with a TC 240 using Document Code 54 and blocking series **52** or **53**. Only Examination can recommend reconsideration of this penalty when it is assessed by Exam.
- (3) Penalties on Form 5471 returns attached to a late filed Form 1120 return are automatically assessed on BMF MFT 13 modules using Penalty Reference Number 599. Refer to paragraph 1, above for further details. BMF international units process requests for reasonable cause relief on these systemically assessed Form 5471 FTF penalties.

Note: For more information on the automated penalty assessment and abatement process see IRM 21.8.2.20.1, Form 5471 Penalties and IRM 20.1.9.3 IRC 6038 - Information Reporting With Respect to Foreign Corporations and Partnerships.

- (4) IMF accounts do not have automated assessments. Penalties on IMF MFT 55 accounts with penalty reference numbers 599 are made during the examination process. Forward all requests for abatement of Examination assessed penalties, including Form 843 claims, to the office that input the manually assessed civil penalty.
- If the penalty is assessed using Document 47, research command code AMDIS to determine the Compliance office that recommended the assessment and route the request to that office.
 - If the penalty is assessed using Document code 54, research the account using IMFOL with definer A to determine the input operator, and route the case accordingly.

21.8.1.27
(01-02-2015)
The Affordable Care Act-International

- (1) The Patient Protection and Affordable Care Act (ACA) (PL 111-148), has added or modified several provisions to the Internal Revenue Code.
- (2) The following subsections provide procedures for adjusting IMF international accounts based on the ACA.

21.8.1.27.1
(10-01-2021)
Form 8962, Premium Tax Credit

- (1) The Patient Protection and Affordable Care Act (ACA) (PL 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (PL 111-152), created IRC 36B, which provides a refundable tax credit to help individuals and families afford health insurance purchased through a Health Insurance Marketplace. The Premium Tax Credit (PTC) is allowed for tax years 2014 and subsequent.
- (2) The amount of a taxpayer's PTC depends on the taxpayer's household income, family size and the cost of health insurance available to the taxpayer. A taxpayer's PTC for a taxable year is the sum of all the taxpayer's monthly

credit amounts. The credit amount each month is the lesser of the monthly premiums for the qualified health plan or plans in which the taxpayer and their family members (taxpayer, spouse and dependents) enroll, or the monthly premium for the taxpayer's applicable second lowest cost silver plan (also known as the benchmark plan) minus the taxpayer's monthly contribution amount. See paragraph 4 below.

- (3) The Marketplace offers health insurance plans at four standardized levels: bronze, silver, gold and platinum. The coverage for all plans at a certain level is the same, but costs and providers may differ. Bronze plans have the lowest premiums and cover 60 percent of health care costs; platinum plans have the highest premiums and cover 90 percent of costs.
- (4) A taxpayer's PTC is the lesser of the premiums for the qualified health plan or plans in which the taxpayer and their family members (taxpayer, spouse and dependents) enroll, or the premium for the taxpayer's benchmark plan minus the taxpayer's contribution amount. The contribution amount is the amount of the premiums a taxpayer is expected to pay if the taxpayer enrolls in the benchmark plan. The American Rescue Plan Act (ARPA) changed the applicable percentages, resulting in a larger PTC for most taxpayers for the 2021 and 2022 tax year. Taxpayers with HHI over 400 percent of the FPL are no longer prohibited from taking the PTC. The contribution amount is the taxpayer's household income times a percentage (applicable figure) that increases as the taxpayer's household income increases (2 percent adjusted annually for taxpayers with household income less than 133 percent of the Federal poverty line (FPL) up to 9.5 percent adjusted annually for taxpayers at 300-400 percent of the FPL). The credit is computed monthly and involves many special rules. The FPL is adjusted annually. The applicable figure is adjusted annually and is located in the instructions to Form 8962, Premium Tax Credit."

Note: The correct table to use is the table in effect at open enrollment, so for tax year 2020, the 2019 FPL table is used.

- (5) To claim the credit, taxpayers must complete Form 8962, Premium Tax Credit.
- (6) Eligible taxpayers can have advance payments of the PTC (APTC) made on their behalf. The Marketplace (not IRS) determines the amount of APTC by using information from a variety of sources (e.g., tax data provided by the IRS, information provided by the applicant, data from other government agencies, etc.). The Bureau of the Fiscal Service issues the APTC directly to the insurance provider monthly, which lowers the cost of the taxpayer's monthly premiums.
- (7) Taxpayers who choose to receive the benefit of APTC must reconcile the amount of the APTC with the amount of the PTC allowed on the Form 8962, Premium Tax Credit. A taxpayer who has excess APTC (APTC is more than the premium tax credit) must repay the excess by increasing their tax liability. For the 2020 tax year only, the ARPA suspended the requirement that taxpayers increase their tax liability by all or a portion of their excess advance payments. Additionally, taxpayers with excess APTC for 2020 are not required to file Form 8962. The tax liability that results from excess APTC may be limited for taxpayers with household income below 400 percent of the FPL. Net PTC (PTC is more than APTC) reduces a taxpayer's tax liability or results in a refund.

- (8) The repayment limitation for excess APTC ranges from \$300 for single (\$600 for all other filing statuses) with household income less than 200 percent of the FPL to \$1,250 for single (\$2,500 for all other filing statuses) with household income from 300 percent to less than 400 percent of the FPL. These amounts are indexed for inflation. Refer to IRM 21.6.3.4.2.12, Premium Tax Credit for specific annual ranges and limitations.
- (9) Taxpayers who purchased health insurance through an insurance marketplace will receive a summary of the information reported to IRS on a Form 1095-A, Health Insurance Marketplace Statement. The data on Form 1095-A will help taxpayers in completing Form 8962.
- (10) A taxpayer computes their PTC, net PTC and excess APTC on Form 8962, Premium Tax Credit. The net PTC or excess APTC is reported on Forms 1040, and 1040-NR. For the 2020 tax year only, taxpayers with excess APTC for 2020 are not required to file Form 8962 or report an excess advance premium tax credit repayment on their 2020 Form 1040 or 1040-SR.
- (11) Additional information is located in Pub 974, Premium Tax Credit.
- (12) Correspondence about PTC or a loose Form 8962 is controlled using category code IPTC for Form 1040-NR accounts.
- (13) Refer to IRM 21.3.5.4.1, When to Prepare a Referral if a Form 4442 is necessary for an ACA related issue.

21.8.1.27.1.1
(10-01-2018)
Qualifications

- (1) For qualification requirements refer to IRM 21.6.3.4.2.12.2, Premium Tax Credit (PTC) - Qualifications. The standard to qualify for the Premium Tax Credit for nonresident filers is no different from those for domestic filers. If the nonresident filer cannot meet the basic eligibility requirements, then the nonresident filer is not eligible for the Premium Tax Credit. Refer to Pub 974, Premium Tax Credit (PTC) for detailed qualification information.

21.8.1.27.1.2
(01-02-2015)
Overview

- (1) For an overview of the Premium Tax Credit, refer to IRM 21.6.3.4.2.12.3, At-Filing Overview.

21.8.1.27.2
(01-02-2021)
**The “8962 PTC Calc”
Tool**

- (1) To compute the Premium Tax Credit (PTC) and reconcile the PTC with advance payments of the PTC (APTC), on Form 8962, Premium Tax Credit, information such as family size, household income, FPL, and premiums paid must be taken into consideration. The amount of APTC paid on the taxpayer's behalf must also be taken into consideration. For the 2020 tax year only, taxpayers with excess APTC for 2020 are not required to file Form 8962 or report an excess advance premium tax credit repayment on their 2020 Form 1040 or 1040-SR.
- (2) AMS provides tools to verify taxpayer health care related information, input health care exemptions and for completing Form 8962. The tool pulls information from posted return data, FPL tables and insurance data from the Coverage Data Repository (CDR), including any APTC paid on behalf of an individual.
- (3) Since all data and reference material, except for posted return information, is kept outside of IDRS, an Integrated Automation Technologies (IAT) tool cannot be used to research or calculate the credit, but IAT can still be used to adjust accounts.

21.8.1.27.3
(08-01-2016)
**PTC math error
Responses and notices
for International**

- (4) The full discussion on accessing taxpayer data and using the 8962 PTC calc. tool is located in IRM 21.6.3.4.2.12.4, Tools For Accessing ACA Related Taxpayer Data.
- (1) Explaining PTC math errors can generally be done using Command Code (CC) RTVUE / CC TRDBV and/or using the math error notice table found in IRM 21.6.3.4.2.12.3.1, Math Error Conditions. Additional notice codes for Form 1040-NR accounts are listed in paragraph 3 below.
- (2) The majority of PTC math errors can be adjusted based on oral statement and do not require more documentation, see IRM 21.5.2.4.2, Adjustments With Oral Statement. As with other credits, math errors impacting other areas of the return, such as filing status, exemptions and total income, can have an impact on PTC.
- (3) When a taxpayer provides substantiation that a math error condition about the PTC is incorrect follow the guidance in IRM 21.6.3.4.2.12.5, Premium Tax Credit Notice/ Letter Responses.
- (4) If the substantiation is a loose filed Form 8962, follow the guidance in IRM 21.6.3.4.2.12.5.1, Loose Forms
- (5) The Taxpayer Notice Codes relevant to international generated by the filing of Form 8962 are

Error Point	TPNC for Form 1040-NR	ACA Verification Service Error Code
Taxpayer using the alternative calculation for marriage (ACM), but the taxpayer's ACM monthly contribution for primary does not match IRS computed ACM monthly for primary	389	273
Taxpayer using ACM, but the taxpayer's ACM monthly contribution for spouse does not match IRS computed ACM monthly for spouse	389	273
Taxpayer's entry for annual maximum premium assistance does not equal IRS computed annual amount	390	274

Error Point	TPNC for Form 1040-NR	ACA Verification Service Error Code
Taxpayer's entry for annual premium tax credit does not equal IRS computed annual amount	390	274
Taxpayer's total Premium Tax Credit (PTC) on Form 8962 does not equal IRS computed total	390	274
Taxpayer's entry for monthly maximum premium assistance does not equal IRS computed monthly amount for any month (January through December)	390	274
Taxpayer's entry for monthly premium tax credit does not equal IRS computed monthly amount for any month (January through December)	390	274
Taxpayer's total Advance Payment of Premium Tax Credit (APTC) on Form 8962 does not equal IRS computed total	391	274
Taxpayer's entry for Excess APTC on Form 8962 does not equal IRS computed amount	364	276
Taxpayer's entry for tax limitation does not equal IRS computed tax limitation (table)	364	276

Error Point	TPNC for Form 1040-NR	ACA Verification Service Error Code
Taxpayer's entry for Advance PTC Repayment on Form 1040-NR does not equal IRS computed amount	364	276
Taxpayer's filing status is MFS and no relief shown, but taxpayer is claiming PTC	481	345
Taxpayer's Household Income (HHI) as a percent of Federal Poverty Level (FPL) is greater than 400 percent, but taxpayer claiming PTC	482	345
Taxpayer did not claim exemption for self, but claimed PTC	483	345
Taxpayer used ACM, but did not report APTC on Form 8962 – ineligible for ACM	392	272
Taxpayer shows an ACM family size, but filing status is not MFJ – ineligible for ACM	392	272
Missing Form 8962, PTC claimed and no APTC received	484	344

Note: Non- international TPNC's for Form 8962 are located in IRM 21.6.3.4.2.12.3.1, Math Error Conditions.

21.8.1.27.4
(10-17-2018)

Amended International Returns with PTC Impact

- (1) Control all international amended 1040x returns and ACA correspondence with PTC impact as follows:

Doc Type	Program Code	Category Code
ACA-Corr	710-33010	IPTC

Doc Type	Program Code	Category Code
ACA 1040X (form 1040X)	710-33020	IPTX

- (2) Use the “8962 PTC Calc” tool in AMS on all amended returns impacting PTC. For some amended returns the impact is obvious, such as a Form 8962 attached, or PTC claimed on the amended return. For others, the impact to PTC is not obvious, such as a change to income, adding/deleting a dependent, or changing a filing status but a Form 8962 is not attached nor addressed on the amended return. For these types of amended returns, review Command Code (CC)TXMOD or CC IMFOLR / T for the presence of the PTC associated data elements shown in IRM 21.6.3.4.2.12.7, Premium Tax Credit (PTC) - Adjusting the Account. For the full discussion on amending returns with the Premium Tax Credit, refer to IRM 21.6.3.4.2.12.6, Premium Tax Credit Amended Returns.

21.8.1.27.4.1
(01-02-2015)
PTC Calculator response

- (1) After data is entered , the response provided by the calculator dictates the course of action. Any error condition is displayed at the top of each section of the calculator. For the full discussion on PTC calculator response refer to IRM 21.6.3.4.2.12.6.1, 8962 PTC Calculator Response.

21.8.1.27.4.2
(01-02-2015)
Adjusting PTC accounts

- (1) Just like domestic returns, PTC allowed on the original 1040-NR return posts as a computer-generated Transaction Code (TC) 766, credit reference number 262. Excess APTC Repayment is included in the total tax. For the full discussion on adjusting PTC accounts refer to IRM 21.6.3.4.2.12.7, Premium Tax Credit (PTC) - Adjusting the Account .

21.8.1.27.4.3
(10-01-2018)
Shared Responsibility Payment

- (1) Beginning in 2014 individuals must have either minimum essential coverage, an exemption from minimum essential coverage, or report a shared responsibility payment. For the complete discussion about the Shared Responsibility Payment (SRP) refer to IRM 21.6.4.4.20.3, Shared Responsibility Payment Overview.
- (2) Pursuant to section 11081 of PL 115-97, for months beginning after December 31, 2018, the amount of the shared responsibility payment is reduced to zero.

21.8.1.27.4.4
(05-01-2015)
Exemption from the Shared Responsibility Payment

- (1) A coverage exemption from the SRP is reported on Form 8965, Health Coverage Exemptions. Part I of Form 8965 is used to report a Marketplace granted coverage exemption, the Exemption Certificate Number (ECN) is located in CDR. Part II and Part III are used to claim an exemption transcribed by IRS. For the complete discussion about exemptions from the SRP refer to IRM 21.6.4.4.20.2, Form 8965, Health Coverage Exemptions.

21.8.1.27.4.5
(10-01-2020)
Coverage Check Box

- (1) For tax years 2014-2018, a taxpayer can show they and everyone in the tax household had minimum essential coverage for the entire year by checking the coverage check box. For the full discussion on adjusting accounts involving the coverage check box refer to IRM 21.6.4.4.20.1, Coverage Checkbox.

Exception: The check box is not be updated based on amended Forms 1040-NR.

21.8.1.27.5
(10-01-2017)
**Additional Medicare Tax
– 1040-NR, 1040-SS,
1040-PR**

- (1) The Affordable Care Act added an Additional Medicare Tax (AdMT) for tax years 2013 and onwards. The 0.9 percent tax applies to income subject to the Federal Insurance Contributions Act (FICA), the Railroad Retirement Tax Act (RRTA) and/or the Self-Employment Contributions Act (SECA).
- (2) The 0.9 percent tax applies to individuals' wages (which includes Form 4137, Social Security and Medicare Tax on Unreported Tip Income, and Form 8919, Uncollected Social Security and Medicare Tax on Wages), RRRA compensation and self-employment income above a threshold based on their filing status. Unlike traditional Medicare tax, AdMT is only imposed on earnings that exceed a certain threshold and employers only withhold AdMT on wages or RRRA compensation that exceeds \$200,000.
- (3) A taxpayer is subject to AdMT on any wages, self-employment income and RRRA compensation above the following thresholds:
 - Married Filing Jointly - \$250,000
 - Married Filing Separately - \$125,000
 - All other filing statuses - \$200,000.
- (4) AdMT is calculated on Form 8959, Additional Medicare Tax, and is carried over to:
 - Line 5 of Form 1040-SS and 1040-PR
 - Line 25c of Form 1040-NR.
- (5) Form 8959, Additional Medicare Tax, is broken down into 5 parts:
 - Part I - Additional Medicare Tax on Medicare Wages
 - Part II - Additional Medicare Tax on Self-Employment Income
 - Part III - Additional Medicare Tax on Railroad Retirement Tax Act (RRRA) Compensation
 - Part IV - Total Additional Medicare Tax
 - Part V - Withholding Reconciliation.
- (6) Although AdMT is figured separately for each type of income, the threshold amount for self-employment income in Part II is reduced by the total wages in Part I (but not below zero). In this way, wages and self-employment income are combined to determine the amount (if any) that exceeds the applicable AdMT threshold and is subject to the 0.9 percent AdMT. However, the threshold for railroad retirement (RRRA) compensation is not reduced by other income, which can result in a taxpayer with total earnings over the threshold but not subject to the 0.9 percent tax.

Example: J and K are married and file jointly. J has \$190,000 in wages subject to Medicare tax and K has \$150,000 in compensation subject to RRRA taxes. J and K do not combine their wages and RRRA compensation to determine whether they are over the \$250,000 threshold for a joint return. J and K are not liable to pay AdMT because J's wages are not in excess of the \$250,000 threshold and K's RRRA compensation is not in excess of the \$250,000 threshold.

- (7) Additional Medicare Tax withheld from wages is reported with Medicare tax withheld as a combined amount on Form W-2, box 6 (or Form 499R-2/W-2PR, box 20). Additional Medicare Tax withheld from RRTA compensation is reported in box 14. These amounts will be carried to Part V of Form 8959, Additional Medicare Tax to compute Total Additional Medicare Tax Withholding. The total AdMT withholding is included with the federal income tax withholding on Form 1040-NR or with total payments and credits on Form 1040-SS and 1040-PR.
- (8) Before adjusting AdMT, verify the Additional Medicare Tax posted in the “SSA AdMT” and “RRB AdMT” fields on Command Code (CC) TXMOD or IMFOLR. Note: The “SSA AdMT” field combines lines 7 and 13 of Form 8959, the “RRB AdMT” field is line 17 only.
- (9) To adjust AdMT:
 - Input a Transaction Code 29X for the tax amount
 - Input Item Reference Number 863 to update the “SSA AdMT” amount
 - Input Item Reference Number 901 to update the SSA AdMT amount field for the self-employment income reported in Part II of 8959
 - Input Item Reference Number 864 to update the “RRB AdMT” amount
 - Input Credit Reference Number 806 / 807 for the Additional Medicare Tax withholding (RC 051), if correct
 - Input Reason Code 136.

Note: RC 136 requires a corresponding Item Reference Number, such as 863 or 864. If the only issue is withholding, use RC 051.

21.8.1.28
(10-01-2019)
**Streamlined Filing
Compliance Procedures**

- (1) The implementation of the Foreign Account Tax Compliance Act (FATCA) and the ongoing efforts of the IRS and the Department of Justice to ensure compliance by those with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations with respect to non-U.S. investments. Even so, we understand some taxpayers acted non-willfully in failing to report foreign financial assets or reporting income from foreign financial assets
- (2) Because the circumstances of taxpayers with non- U.S. investments vary widely, the IRS offers Streamlined Filing Compliance Procedures (SFC).
- (3) These procedures have existed since September 2012. However, due to the increase in global economics, the streamlined filing compliance procedures have been expanded and modified to accommodate a broader group of U.S. taxpayers. For further information refer to *Streamline Filing Compliance Procedures* on irs.gov.
- (4) Previously, the procedures were only available to filers outside the United States. The Streamlined Filing Compliance procedures have been expanded to provide a means for U.S. taxpayers living in the United States to correct tax non-compliance with respect to non- U.S. investments resulting from non-willful conduct.
- (5) If the IRS has initiated a civil examination for any year covered by the submission, regardless of whether it relates to undisclosed foreign financial accounts, the taxpayer is not eligible to use these procedures. See specific instructions in the sections below for taxpayers with open audits. Similarly, a taxpayer under criminal investigation by IRS Criminal Investigation (CI) is also ineligible to use these procedures. See specific instructions in the sections below for tax accounts with CI activity.

- (6) The SFC cannot be used for reasonable cause purposes for previously filed returns. Therefore, penalty assessments made on previously filed returns will not be abated based solely on the filing of SFC original or amended returns. Normal reasonable cause procedures would still apply to previously filed returns; Example - A taxpayer late-filed a tax year 2019 Form 1040 and received a failure to file and failure to pay tax penalty. The filing of an amended return for tax year 2019 under SFC procedures is not reasonable cause for abatement of the previously assessed penalties.
- (7) Taxpayers filing under SFC must include a certification, signed under penalty of perjury. Two separate certifications must be used depending on the situation. Form 14653, Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures and Form 14654 , Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures.
- (8) The following sections provide procedural guidance for Accounts Management assistants to process amended returns filed under Streamlined Filing Compliance.

21.8.1.28.1
(04-29-2016)
**Streamlined Filing
Compliance - U.S.
Taxpayers Residing
Outside the United
States**

- (1) Individual U.S. citizens or green card holders (Form 1040 filers), or estates of U.S. citizens or green card holders filing income tax returns on behalf of the decedent (Form 1041 filers) qualify to use the Streamline Filing Compliance (SFC) procedure if:
- In any one or more of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) is past, the individual did not have a U.S. abode and
 - The individual was physically outside the United States for at least 330 full days
 - The compliance failures were non-willful.
- (2) Individuals, or estates of individuals, who are not U.S. citizens or green card holders may use this procedure if, in any one or more of the last three years for which the U.S. tax return due date (or properly applied for extended due date) is past, the individual did not meet the substantial presence test of IRC section 7701(b)(3). For more information on the substantial presence test, see Pub 519, U.S. Tax Guide for Aliens.
- (3) Under the SFC described in this section, U.S. taxpayers eligible to use these procedures who have not reported gross income or paid tax as required by U.S. law for any of the 3 years in the covered period will file delinquent or amended tax returns, together with all required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 8621), for the past three years and will file delinquent Report Of Foreign Bank & Financial Accounts (FBARs) (FinCEN Form 114, previously Form TD F 90-22.1) for the past six years.
- (4) Amended returns submitted through these procedures will not be subject to the failure-to-file and failure-to-pay penalties if the taxpayer meets the eligibility requirements below:

#

Note: Original delinquent returns will be processed similarly in Submission Processing.

If...	And...	Then...
For each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) is past and the statute of limitations is still open	A U.S. tax return has been filed previously	<p>1) Submit a complete and accurate amended tax return using Form 1040X, Amended U.S. Individual Income Tax Return, together with the required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 8621) even if these information returns would normally not be submitted with the Form 1040X had the taxpayer filed a complete and accurate original return.</p> <p>Note: Filers are instructed to write, “Streamlined Foreign Offshore” in red at the top of the first page of each amended return.</p> <p>2) Taxpayers will also complete, sign, and attach a Form 14653, Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures to each amended return certifying that the taxpayer (or taxpayers) are eligible for the streamlined filing compliance procedures; and that all required FBARs have been filed.</p>

(5) Filers seeking relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by an applicable treaty, will submit a signed statement requesting an extension of time to make an election to defer income tax that identifies the applicable treaty provision along with:

- The events that led to the failure to make the election.
- The events that led to the discovery of the failure.
- Whether they relied on a professional advisor, the nature of the advisor’s engagement and responsibilities, and
- If relevant, a Form 8891 for each tax year and each plan and a description of the type of plan covered by the submission.

Note: There are no actions for AM to take about this paragraph. This is information only. Form 8891 is obsolete as of December 31, 2014 per Rev. Proc. 2014-55

21.8.1.28.1.1
(08-01-2016)

**Adjusting Streamlined
Filing Compliance
Foreign Offshore
Accounts (Streamlined
Foreign Offshore - SFO)**

- (1) Filers using SFO will submit a package to a specific mailbox in Submission Processing in Austin. The filing package will contain:
 - Complete delinquent tax returns, together with the required information returns (Form 3520, Form 3520-A, Form 5471, Form 5472, Form 8938, Form 926, or Form 8621) for each of the most recent three years for which the U.S. tax return due date, including extensions is past or
 - If a U.S. tax return is filed previously, filers will submit a package containing amended tax returns using Form 1040X, Amended U.S. Individual Income Tax Return, together with the required information returns (Form 3520, Form 3520-A, Form 5471, Form 5472, Form 8938, Form 926, or Form 8621) for each of the most recent three years for which the U.S. tax return due date, including extensions is past.
- (2) For both delinquent originals and 1040X submissions, filers are instructed to write at the top of the first page of each return, and each information return, "Streamlined Foreign Offshore".
- (3) For both delinquent originals and 1040X submissions, filers must submit a signed certification statement certifying:
 - The taxpayer or taxpayers are eligible for the SFO procedure
 - The tax years and amounts owed for each year (including interest)
 - The taxpayer has filed all necessary FBAR
 - The specific reasons for failure to report all income, pay all tax, and submit all required information returns including FBAR.
- (4) Submission Processing (SP) in Austin will review the packages that contain both original and amended returns. SP will ensure the necessary certifications are attached and complete. If incomplete SP will correspond with the taxpayer to perfect the submissions. SP will attach an "AM Streamline Coversheet" to cases they have corresponded with the taxpayer on and notate the response, e.g., "Response Received and Attached" or "No Reply". Submission Processing will not review packages that contain **only** amended returns. Paragraph 9 below provides detailed information on corresponding to perfect streamline packages.
- (5) LB&I will review the submissions for statute considerations. LB&I will complete the "AM Streamline Coversheet" and attach it to the package notating their statute recommendations about open statutes and statute extensions.
- (6) Delinquent original returns will be processed in SP.
- (7) Form 1040X cases will be scanned to CII for Accounts Management processing and assigned to a designated IDRS number for subsequent assignment to CSRs.
- (8) One CSR must work all related cases.
- (9) Use the table below to determine if the required certification is complete:

#

Note: If the taxpayer completes the certification for only one or two tax years, and submits the same number of original and/or amended returns, do not question whether more years have been submitted. If the tax years listed on the certification are filed (whether original or amended), accept that the number is correct.

If...	Then...
<p>The certification is attached, and:</p> <ol style="list-style-type: none"> 1. The amounts owed for each tax year, including interest, are calculated, and 2. The taxpayer(s) have signed the certification under penalties of perjury <p>Note: If the amended return is a no tax change or a tax increase and the only item missing on the certification is the signature of one of the taxpayers, follow the instructions in Paragraph 10 below. Follow the sixth “then” box below for tax decreases.</p>	<p>The certification is complete. Follow the instructions in Paragraph 10 below.</p>
<p>The certification is marked as amended or corrected, and</p> <ol style="list-style-type: none"> 1. There is a Form 3465 from LB&I advising AM how to treat the amended certification 	<p>Make the adjustment recommended by LB&I.</p>
<p>The certification is marked as amended or corrected, and</p> <ul style="list-style-type: none"> • There is NOT a Form 3465 from LB&I advising AM how to treat the amended certification. 	<ol style="list-style-type: none"> 1. Suspend your CII case for 14 days 2. Securely e-mail the TIN to a designated mailbox: *LB&I OVDP Compliance with an explanation the case is being sent due to an Amended Certification. Enter CII notes indicating the case is referred to *LB&I OVDP Compliance due to Amended Certification with no Form 3465 3. When LB&I provides their response, make the adjustment recommended by LB&I
<p>The certification is not marked amended. Submission Processing has previously corresponded with the taxpayer for missing/incomplete information and received the necessary information, per the AM Streamline Worksheet</p>	<p>The certification is complete. Follow the instructions in Paragraph 10 below.</p>
<p>The certification is not marked amended. Submission Processing has previously corresponded with the taxpayer for missing/information and received no reply, per the AM Streamline Worksheet</p>	<p>Do not correspond a second time. Follow the instructions in the row below (no reply), beginning with the second bullet.</p>

If...	Then...
<p>There is no certification attached or the certification is attached but:</p> <ol style="list-style-type: none"> 1. The amounts owed for each tax year, including interest, are not calculated, or 2. The taxpayer does not sign the certification under penalties of perjury <p>Note: If the amended return is a no tax change or a tax increase and the only item missing on the certification is the signature of one of the taxpayers, follow the instructions in Paragraph 10 below. Follow the fourth “then” box below for tax decreases.</p>	<p>Call or correspond with the taxpayer. If corresponding, issue 178C, using the correct paragraph(s) to address the specific items missing from the certification. Suspend the case for 40 days.</p> <ul style="list-style-type: none"> • If the taxpayer responds with the necessary information, securely e-mail the TIN to a designated mailbox: “*LB&I OVDP Compliance” with an explanation the case is being sent post assessment and is a Certification Reply. Enter CII case notes saying referred to LB&I as a “Certification Reply”. Then follow paragraph 10 below. • If the taxpayer does not respond, treat the case like a normal 1040X case. Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code(AC) 178. Note: The 178C letter includes language advising the taxpayer if they do not respond, the case(s) will be closed using normal procedures, so no closing letter is necessary for “No Reply” cases. • After making the assessment on no response cases, securely e-mail the TIN to a designated mailbox: “*LB&I OVDP Compliance” with an explanation the case is being sent post assessment and is a “No Reply.” Enter CII notes indicating the case is referred to *LB&I OVDP Compliance due to “No Reply”.

(10) Accounts Management will perform the following actions prior to adjusting accounts under the Streamlined Filing Compliance Procedure:

- Review the account for a -Z freeze. If there is a -Z freeze on the account, contact CI to determine whether an amended return filed using the Streamlined Foreign Offshore Compliance Procedures can be processed. Follow CI’s direction. See -Z freeze instructions at IRM 21.5.6.4.52 -Z Freeze.
- Review each tax year for statute consideration. Refer to Statutes for clearance or assessment when necessary. See IRM 25.6 Statute of Limitations.
- Review Command Code AMDIS for examination involvement. Follow the table below if **any** of the affected accounts are found on Command Code AMDIS.

If...	Then...
All affected tax years are in AMDIS status less than 12	Process all related amended returns as Streamlined. Follow paragraph 11 below. Note: Forward the case to Exam, based on the AIMS data (after processing as Streamlined) when AMDIS status is 09 or greater and less than 90.
Any tax year is in AMDIS status 12 or greater	<ul style="list-style-type: none"> • Place your CII case in suspense for 14 days • Securely e-mail the TIN and affected tax periods to *LB&I OVDP Compliance enter the words ACTION: OPEN EXAM on SFO in the subject line of the e-mail message.

(11) To complete adjustments on Form 1040X filed under the SFC:

1. Input a Transaction Code (TC) 971 Action Code (AC) 178, using the amended return received date as the transaction date, to each affected tax year. TC 971 AC 178 denotes Streamlined Filing Compliance. The xClaim tool is programmed to allow AC 178.

Reminder: If a Form 8938 is part of the filing refer to IRM 21.5.1.4.4, Processing of Loose Forms or Schedules.

2. Ensure the payments are allocated correctly among the affected tax years according to the calculations made on the taxpayer certification. If not, follow normal credit transfer procedures using correct credit freeze codes to ensure no erroneous refunds occur.
3. Use IDRS command codes (e.g., NAMEI, ENMOD) to determine if the TIN is a valid Social Security Number, ITIN, or IRSN then follow the table below

If...	Then...
The TIN is an SSN or ITIN	Follow paragraphs 4 through 7 below
Research shows the only available TIN is an IRSN	<ol style="list-style-type: none"> 1. Use all normal adjustment procedures. 2. Treat the case as a normal 1040X, do not restrict the failure to file and failure to pay penalties. 3. Follow paragraphs 5 through 7 below.

4. Use all normal adjustment procedures, including the use of IAT tools, when making the tax assessment to each tax year, with the following exception: Restrict the failure to file and failure to pay penalties on each tax year by inputting TC 160 and TC 270 for zero dollars.

Note: If any payments were transferred, use correct posting delay codes on the adjustment(s) to ensure the adjustment does not post before the payments post correctly.

5. Allow the adjustment notice to generate. .
6. Do not correspond with the taxpayer.

Note: This includes not corresponding with the taxpayer even if no adjustment notice is generated.

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21.8.1.28.2
(04-29-2016)
**Streamlined Filing
Compliance - U.S.
Taxpayers Residing in
the United States**

- (1) As noted in 21.8.1.28(4) above, individual U.S. taxpayers, or estates of individual U.S. taxpayers are eligible to use the Streamlined Filing procedure if:
 - They are a U.S. Resident. For joint return filers, one or both of the spouses must be a U.S. resident.
 - They have previously filed a U.S. tax return (if required) for each of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) has passed
 - They have failed to report gross income from a foreign financial asset and pay tax as required by U.S. law, and may have failed to file an FBAR (FinCEN Form 114, previously Form TD F 90-22.1) and/or one or more international information returns (e.g., Form 3520, Form 3520-A, Form 5471, Form 5472, Form 8938, Form 926, and Form 8621) with respect to the foreign financial asset.
 - The failures above resulted from non-willful conduct

- (2) Under the SFC procedures described in this section, U.S. taxpayers eligible to use these procedures who have not reported income or paid tax as required by U.S. law for any of the three years in the covered period will file amended tax returns together with all required information returns (Form 3520, Form 3520-A, Form 5471, Form 5472, Form 8938, Form 926, or Form 8621), for the past three years and will file delinquent Report Of Foreign Bank & Financial Accounts (FBARs) (FinCEN Form 114, previously Form TD F 90-22.1) for the past six years. Eligible filers will also calculate a Title 26 miscellaneous offshore penalty equal to five percent of the highest aggregate balance/value of the taxpayer's foreign financial assets subject to the miscellaneous offshore penalty during the years in the covered tax return period and the covered FBAR period. For further information refer to *Streamline Filing Compliance Procedures* on irs.gov.

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- (3) Amended returns submitted through these procedures will not be subject to the failure-to-file and failure-to-pay penalties if the taxpayer meets the eligibility requirements below:

If...	And...	Then...
For each of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) is past and the statute of limitations is still open	A U.S. tax return is previously filed	<p>1) Submit a complete and accurate amended tax return using Form 1040X, Amended U.S. Individual Income Tax Return, together with the required information returns (Form 3520, Form 3520-A, Form 5471, Form 5472, Form 8938, Form 926, or Form 8621) even if these information returns would normally not be submitted with the Form 1040X had the taxpayer filed a complete and accurate original return.</p> <p>Note: Filers are instructed to write, "Streamlined Domestic Offshore" in red at the top of the first page of each amended return.</p> <p>2) Taxpayers will also complete, sign, and attach a Form 14654, Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures to each amended return certifying that the taxpayer (or taxpayers) are eligible for the streamlined filing compliance procedures; and that the taxpayer filed all required FBARs .</p>

- (4) Filers seeking relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by an applicable treaty, will submit a signed statement requesting an extension of time to make an election to defer income tax that identifies the applicable treaty provision along with:
- the events that led to the failure to make the election,
 - the events that led to the discovery of the failure,
 - whether they relied on a professional advisor, the nature of the advisor's engagement and responsibilities, and
 - if relevant, a Form 8891 for each tax year and each plan and a description of the type of plan covered by the submission. Form 8891 is obsolete as of December 31, 2014 per Rev. Proc. 2014-55

Note: There are no actions for AM to take about this paragraph. This is information only.

21.8.1.28.2.1
(08-01-2016)
**Adjusting Streamlined
Filing Compliance
Domestic Accounts -
(Streamlined Domestic
Offshore - SDO)**

- (1) Taxpayers using SDO procedures will submit a package to a specific mailbox in Submission Processing in Austin. The filing package will contain complete and accurate amended returns using Form 1040X , Amended U.S. Individual Income Tax Return for each of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) has passed together with any required information returns (e.g., Form 3520, Form 3520-A, Form 5471, Form 5472, Form 8938, Form 926, and Form 8621) even if these information returns would normally not be submitted with the Form 1040 had the taxpayer filed a complete and accurate original return. Taxpayers may NOT file delinquent original returns under these procedures. Filers are instructed to write, "Streamlined Domestic Offshore" in red at the top of the first page of each amended return.

Exception: Taxpayers who have accurately filed tax returns for the last three years but failed to file FBAR returns for any of the last six years may use Streamlined procedures to come into compliance with FBAR requirements. For further information refer to IRM 21.8.1.28.1.1

- (2) In addition to the 1040X returns, SDO filers must also submit a statement on the Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures attesting:
 - The taxpayer or taxpayers are eligible for the SDO procedures
 - The tax years and amounts owed for each year including interest
 - All required FBARs are filed
 - The failure to report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct

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- The miscellaneous offshore penalty amount is accurate.

- (3) LB&I will review the submissions for statute considerations. LB&I will complete the "AM Streamline Coversheet" and attach it to the package notating their statute recommendations about open statutes and statute extensions.

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- (4) Form 1040X cases will be scanned into CII for Accounts Management processing and assigned to a designated IDRS number for subsequent assignment to CSRs.
- (5) One CSR must work all related cases.
- (6) Accounts Management is responsible for reviewing the packages to ensure the necessary certifications are attached and complete. If incomplete AM will correspond with the taxpayer to perfect the submissions.
- (7) Use the table below to determine if the required certification is complete:

Note: If the taxpayer completes the certification for only one or two tax years, and submits the same number of amended returns, do not question whether

more years have been submitted. If the tax years listed on the certification are filed, accept that the number is correct.

If...	Then...
<p>The certification is attached, and:</p> <ol style="list-style-type: none"> 1. The amounts owed for each tax year including interest, are calculated, and 2. The miscellaneous offshore penalty is calculated and 3. The taxpayer(s) have signed the certification under penalties of perjury <p>Note: If the amended return is a no tax change or a tax increase and the only item missing on the certification is the signature of one of the taxpayers, follow the instructions in Paragraph 8 below. Follow the fourth " then" box below for tax decreases.</p>	<p>The certification is complete. Follow the instructions in Paragraph 8 below.</p>
<p>The certification is marked as amended or corrected, and</p> <ul style="list-style-type: none"> • There is a Form 3465 from LB&I advising AM how to treat the amended certification 	<p>Make the adjustment recommended by LB&I.</p>
<p>The certification is marked as amended or corrected, and</p> <ol style="list-style-type: none"> 1. There is NOT a Form 3465 from LB&I advising AM how to treat the amended certification. 	<ol style="list-style-type: none"> 1. Suspend your CII case for 14 days 2. Securely e-mail the TIN to a designated mailbox: *LB&I OVDP Compliance with an explanation the case is being sent due to an Amended Certification. Enter CII notes indicating the case is referred to *LB&I OVDP Compliance due to Amended Certification with no Form 3465 3. When LB&I provides their response, make the adjustment recommended by LB&I
<p>The certification is not marked amended. Submission Processing has previously corresponded with the taxpayer for missing/incomplete information and received the necessary information, per the AM Streamline Worksheet</p>	<p>The certification is complete. Follow the instructions in Paragraph 10 below.</p>
<p>The certification is not marked amended. Submission Processing has previously corresponded with the taxpayer for missing/information and received no reply, per the AM Streamline Worksheet</p>	<p>Do not correspond a second time. Follow the instructions in the row below (no reply), beginning with the second bullet.</p>

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If...	Then...
<p>There is no certification attached or, the certification is attached but:</p> <ol style="list-style-type: none"> 1. The amounts owed for each tax year, including interest, are not calculated, or 2. The taxpayer does not calculate the miscellaneous offshore penalty, or 3. The taxpayer does not sign the certification under penalties of perjury <p>Note: If the amended return is a no tax change or a tax increase and the only item missing on the certification is the signature of one of the taxpayers, follow the instructions in Paragraph 8 below. Follow the “then” box for tax decreases.</p>	<p>Call or correspond with the taxpayer. If corresponding, issue 178C , using the correct paragraph(s) to address the specific items missing from the certification. Suspend the case for 40 days.</p> <ul style="list-style-type: none"> • If the taxpayer responds with the necessary information, securely e-mail the TIN to a designated mailbox: “*LB&I OVDP Compliance” with an explanation the case is being sent post assessment and is a Certification Reply. Enter CII case notes saying referred to LB&I as a “Certification Reply”. Then follow paragraph 8 below. • If the taxpayer does not respond, treat the case like a normal 1040X case. Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code(AC) 178. Note: The 178C letter includes language advising the taxpayer if they do not respond, the case(s) will be closed using normal procedures, so no closing letter is necessary for “No Reply” cases. • After making the assessment on no response cases, securely e-mail the TIN to a designated mailbox: “*LB&I OVDP Compliance” with an explanation the case is being sent post assessment and is a “No Reply.” Enter CII notes indicating the case is referred to *LB&I OVDP Compliance “No Reply”.

(8) Accounts Management will perform the following actions prior to adjusting accounts under the SDO:

- Review the account for a -Z freeze. If there is a -Z freeze on the account, contact CI to determine whether an amended return filed using the Streamlined Foreign Domestic Compliance Procedures can be processed. Follow CI’s direction. See -Z freeze instructions at IRM 21.5.6.4.52, -Z Freeze.
- Review each tax year for statute consideration. Refer to Statutes for clearance or assessment when necessary. See IRM 25.6, Statute of Limitations.
- Review Command Code AMDIS for examination involvement. Follow the table below if any of the affected accounts are found on Command Code AMDIS.

If...	Then...
All affected tax years are in AMDIS Status less than 12	Process all related amended returns as streamline. Follow paragraph 9 below Note: Forward the case to Exam, based on the AIMS data (after processing as Streamlined) when AMDIS status is 09 or greater and less than 90.
Any affected tax year is in AMDIS status 12 or greater	<ul style="list-style-type: none"> • Place your CII case in suspense for 14 days • Securely e-mail the TIN and affected tax periods to *LB&I OVDP Compliance enter the words ACTION: OPEN EXAM on SDO in the subject line of the e-mail message.

(9) To complete adjustments on Form 1040X filed under the SDO:

1. Input a Transaction Code (TC) 971 Action Code (AC) 178, using the amended return received date as the transaction date, to each affected tax year. TC 971 AC 178 denotes Streamlined Filing Compliance. The xClaim tool is programmed to allow AC 178.

Reminder: If a Form 8938 is part of the filing refer to IRM 21.5.1.4.4

2. Ensure correct allocation of payments among the affected tax years (including the MFT 55 civil penalty module) according to the calculations made on the taxpayer certification. If not, follow normal credit transfer procedures using correct credit freeze codes to ensure no erroneous refunds occur.
3. Use IDRS command codes (e.g., NAMEI, ENMOD) to determine if the TIN is a valid Social Security Number, ITIN, or IRSN then follow the table below

If...	Then...
The TIN is an SSN or ITIN	refer to paragraphs 4 through 8 below
The TIN is an IRSN	<ol style="list-style-type: none"> 1. Use all normal adjustment procedures. 2. Treat the case as a normal 1040X, do not restrict the failure to file and failure to pay penalties. 3. Refer to paragraphs 5 through 8 below.

4. Use all normal adjustment procedures, including the use of IAT tools, when making the tax assessment to each tax year, with the following exception: Restrict the failure to file and failure to pay penalties on each tax year by inputting TC 160 and TC 270 for zero dollars.

Note: If any payments were transferred, use correct posting delay codes on the adjustment(s) to ensure the adjustment does not post before the payments post correctly.

5. Assess the 5 percent miscellaneous penalty on MFT 55 on the most recent tax year for which a Form 1040X is submitted. Assess the penalty based on the taxpayer's calculation. Input TC 290 for zero with blocking series 52 and penalty reason code 708

- 6. Allow the adjustment notices to generate .
- 7. Do not correspond with the taxpayer.

Note: This includes not corresponding with the taxpayer even if no adjustment notice is generated.

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21.8.1.28.2.1.1
(05-01-2015)
Adjusting Streamlined Filing Compliance Domestic Accounts - Taxpayer Files for FBAR Compliance Only

- (1) Taxpayers who have accurately filed tax returns for the last 3 years but failed to file FBAR returns for any of the last 6 years may use Streamline procedures to come into compliance with FBAR requirements.
- (2) These taxpayers are instructed to file a Form 1040X showing no changes to tax for the latest year in which they filed an income tax return and include the completed certification.
- (3) Take the following actions:

- 1. Verify the certification is complete. Prior to making the adjustment, follow the instructions in paragraphs 7 and 8 of IRM 21.8.1.28.2.1.

Exception: For these taxpayers, the section of the certification referring to additional tax and interest may be blank, do not correspond for this information. The rest of the sections of the certification must be complete and the taxpayer must submit the self- calculated Miscellaneous Offshore Penalty.

- 2. Input TC 290 for zero on the tax year for which the 1040X is filed. Do not send closing correspondence on Streamline FBAR Compliance only Streamline cases.
- 3. Input TC 971 AC 178 on the tax year for which the 1040X is filed.

Reminder: If a Form 8938 is part of the filing refer to IRM 21.5.1.4.4

- 4. Assess the 5 percent miscellaneous penalty on MFT 55 for the tax year for which the 1040X is submitted based on the taxpayer's calculation. Input TC 240 with blocking series 52 and penalty reason code 708. Allow the adjustment notice to generate.

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21.8.1.29
(10-17-2018)
Refund Claims
OVDP/OVDI

- (1) A 2018 district court order in *United States vs. Dominique G. Colliot* may prompt taxpayers to argue that they overpaid the Offshore Voluntary Disclosure Program (OVDP), or Offshore Voluntary Disclosure Initiative (OVDI) Miscellaneous Offshore Penalty (MOP).
- (2) The court focused on the government's ability to assess willful Foreign Bank and Financial Account Reporting (FBAR) penalties, and representatives may argue that the order impacts the analysis of the OVDP/OVDI MOP asserting that taxpayers overpaid the MOP.
- (3) The government disagrees with the court's reasoning. Additionally, other federal courts have made decisions contrary to the Colliot court's decision. The court's reasoning in Colliot has no impact on closed OVDP/OVDI cases since OVDP/OVDI cases are settled via Form 906, Closing Agreement on Final Determination Covering Specific Matters.
- (4) Taxpayers making a claim for refund of the OVDP/OVDI MOP will likely reference terms such as "voluntary disclosure" or "offshore financial arrangements" or "miscellaneous offshore penalty" or "Colliot".

Note: These claims are NOT associated with MOP penalties assessed under the Streamline Filing Compliance Procedures.

- (5) Penalties are assessed under MFT 55 with transaction code 240 using penalty reference numbers 594 through 598 and 709
- (6) Assistors receiving one of these claims will follow claim disallowance procedures located in IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures.
- (7) When issuing Letter 105c, provide the claimant with the following language, "The OVDP case was finalized with a closing agreement. Closing agreements are governed by IRC 7121, they are final and will not be reopened except upon a showing of fraud or malfeasance, or of misrepresentation of material fact".
- (8) **DO NOT PROVIDE APPEAL RIGHTS** found in paragraphs b, through f of the 105c letter.

21.8.1.30
(05-27-2020)
Section 965 Transition
Tax-International

- (1) Newly amended Section 965 of the Internal Revenue Code imposes a transition tax on untaxed foreign earnings of foreign corporations with U.S. shareholders by deeming those earnings to be repatriated (funds held in a foreign country by U.S. shareholders must be taxed). Foreign earnings held in the form of cash and cash equivalents are taxed at a 15.5 percent rate, and the remaining earnings are taxed at an 8 percent rate. Generally, the taxpayer may elect to pay the transition tax in installments over an eight-year period.
- (2) The IRC 965 transition tax program for IMF is centralized at the Brookhaven Accounts Management Campus (BAMC). If any correspondence or amended returns referencing IRC 965 are in international inventory the international assistor will take the following steps:
 1. Adjust the case following normal adjustment guidelines
Reminder: Use hold code 4.
 2. Add CII case note **IRC 965**.

3. Forward the case to your work leader.
4. Your work leader will review the case and add the CII case message "PAMC completed all international adjustment actions. Reassigning to BAMC for IRC 965"
5. The work leader will reassign the case to the BAMC Accounts Management Site Specialization Temporary Holding Number.
6. BAMC will complete any remaining adjustment actions related to IRC 965 and the case is not returned.

Exception: BAMC will return the case if correspondence is required when the adjustment differs from what the taxpayer expected based on the information they submitted. PAMC is responsible for issuing the correct correspondence and provide a statement advising the taxpayer they may receive correspondence, about the IRC 965 transition tax, under separate cover.

Note: Only cases requiring coordination between PAMC and BAMC are elevated to P&A.

- (3) Detailed information on Section 965 Transition Tax on Untaxed Foreign Earnings for individuals are located in IRM 21.5.13 , Section 965 Transition Tax on Untaxed Foreign Earnings.

21.8.1.30.1
(11-29-2018)

**Section 965
International-Telephone
inquiries**

- (1) The IRC 965 transition tax program for IMF is centralized at the Brookhaven Accounts Management Campus (BAMC)
- (2) IRC 965 tax law calls are deemed out of scope. For tax law calls follow IRM 21.1.1.3, Customer Service Representative (CSR) Duties.
- (3) If an IRC 965 account call is received on the non toll- free international line, the international assistor will provide answers for all international issues but cannot reply to any IRC 965 questions. Advise the caller you do not have the expertise to answer their IRC 965 inquiry. Offer to complete a Form 4442 referral to provide answers for the IRC 965 part of the call.

If	Then
The caller accepts the referral offer	<ul style="list-style-type: none"> • Follow procedures in IRM 21.3.5.4, Referral Procedures. • Be as specific as possible on the referral about the IRC 965 questions the caller presented. • Notate on the referral that the IRC 965 call came into the international non toll-free line and all the international issues have been answered. • When the referral is complete, securely e-mail the Form 4442 to the dedicated mail box at *W&I BAMC P&A.
The caller rejects the referral offer	<ul style="list-style-type: none"> • Advise the caller you will have to transfer the call to the dedicated IRC 965 telephone application. • Advise the caller they may still accrue international long distance telephone charges. • Transfer the call to 1171 for English, or 1172 for Spanish.