



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

21.8.2

AUGUST 30, 2024

EFFECTIVE DATE

(10-01-2024)

PURPOSE

- (1) This transmits revised IRM 21.8.2, International, BMF International Adjustments.

MATERIAL CHANGES

- (1) This IRM was revised to reflect the following changes:

IRM subsection	Description
IRM 21.8.2.2.3	IPU 23U1117 issued 11-22-2023. Updated International taxpayer customer service fax number to internal mailbox address per SERP Feedback #13864.
IRM 21.8.2.3.8.1	Updated references and deleted obsoleted references to IRM 21.7.2.
IRM 21.8.2.3.8.2	Updated references to IRM 21.7.2.
IRM 21.8.2.4	Updated references to IRM 21.7.2.
IRM 21.8.2.4.3	Updated references to IRM 21.7.2.
IRM 21.8.2.7.4	Updated references to IRM 21.7.2.
IRM 21.8.2.9.5.1	Updated the IRM and links in paragraph 2 NOTE and in paragraphs 3 & 7 to IRM 20.2.4.8.4, 180-Day Rule, per SERP Feedback #21038.
IRM 21.8.2.9.5.2	Updated the link to IRM 20.2.4.8.4, 180-Day Rule.
IRM 21.8.2.9.13	Updated the link to IRM 20.2.4.8.4, 180-Day Rule.
IRM 21.8.2.11	IPU 24U0583 issued 04-29-2024. Updated Form 8288, Form 8288-A, and Form 8288-C procedures.
IRM 21.8.2.11.3	IPU 24U0583 issued 04-29-2024. Added a new section titled Section 1446(f)(4) Credits and Form 8288-C.
IRM 21.8.2.12.10.3	Updated the NOTE in paragraph 7 per LB&I.
IRM 21.8.2.19.2	IPU 24U0583 issued 04-29-2024. Updated procedures per OSP policy change.
IRM 21.8.2.19.2	Updated procedures to include which Hold Code to use when denying the penalty.
IRM 21.8.2.19.3	Updated procedures to include which Hold Code to use when denying the penalty.

IRM subsection	Description
IRM 21.8.2.19.4	Updated procedures to include which Blocking Series to use when releasing the A freeze per SERP Feedback #20047.
IRM 21.8.2.20.2	Updated procedures to include which Hold Code to use when denying the penalty per SERP Feedback #20364.
IRM 21.8.2.21	IPU 24U0583 issued 04-29-2024. Added procedures for loose forms per SERP Feedback #18274.
IRM 21.8.2.21.2	Updated procedures to include which Hold Code to use when denying the penalty per SERP Feedback #20364.

- (2) This IRM was revised to reflect various editorial and grammatical changes. This includes changes to the organizational title Wage and Investment to Taxpayer Services where applicable.

EFFECT ON OTHER DOCUMENTS

IRM 21.8.2, dated September 6, 2023 (effective October 1, 2023), is superseded. Interim Guidance Number (IPU) 23U1117 issued 11-22-2023, and IPU 24U0583 issued 04-29-2024 is incorporated into this IRM.

AUDIENCE

The primary users of this IRM are Taxpayer Services employees. The IRM is intended for Customer Account Service issues involving Business Master File (BMF) International Returns worked in Accounts Management.

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Taxpayer Services Division

21.8.2

BMF International Adjustments

Table of Contents

21.8.2.1 Program Scope and Objectives

- 21.8.2.1.1 Background
- 21.8.2.1.2 Authority
- 21.8.2.1.3 Responsibilities
- 21.8.2.1.4 Program Management and Review
- 21.8.2.1.5 Program Controls
- 21.8.2.1.6 Acronyms
- 21.8.2.1.7 Related Resources

21.8.2.2 International BMF/NMF and CADE Overview

- 21.8.2.2.1 Campus Consolidation and Program Centralization
- 21.8.2.2.2 BMF/NMF Forms
- 21.8.2.2.3 Web Sites and Telephone Numbers
 - 21.8.2.2.3.1 Telephone Numbers for Courier Service Mailing
- 21.8.2.2.4 Translation Services - and Over the Phone Interpreter Service
- 21.8.2.2.5 Timeliness Determinations
 - 21.8.2.2.5.1 Failure to File and Failure to Pay Penalties
- 21.8.2.2.6 General Disclosure Guidelines
- 21.8.2.2.7 Referrals to the Taxpayer Advocate Service (TAS)
- 21.8.2.2.8 Technical Issues
- 21.8.2.2.9 Competent Authority Cases
- 21.8.2.2.10 General Adjustment Procedures for International Accounts
- 21.8.2.2.11 Use of Fax and Signature Stamps for Taxpayer Submissions
- 21.8.2.2.12 Examination Criteria
 - 21.8.2.2.12.1 Protective Claims
- 21.8.2.2.13 Period of Limitation
 - 21.8.2.2.13.1 Statute Year Claims
- 21.8.2.2.14 Unpostables
- 21.8.2.2.15 Form 673, Statement for Claiming Exemption from Withholding on Foreign Earned Income
Eligible for the Exclusions Provided by § 911

21.8.2.3 United States Territories

- 21.8.2.3.1 Double Taxation
- 21.8.2.3.2 Bona Fide Residence and Source Rules Concerning U.S. Territories
- 21.8.2.3.3 Puerto Rico
- 21.8.2.3.4 U.S. Virgin Islands, Guam, American Samoa and The Commonwealth of the Northern Mariana Islands

-
- 21.8.2.3.5 Penalty and Interest - CNMI
 - 21.8.2.3.6 Employment Tax Information
 - 21.8.2.3.7 Wage Documents for Territory Employees
 - 21.8.2.3.8 BMF Employment Returns - Form 940-PR, Form 941-PR, Form 941-SS, Schedule H/H-PR, and Form 943-PR
 - 21.8.2.3.8.1 Adjusting the Tax on Form 941-PR, Form 941-SS, and Form 943-PR
 - 21.8.2.3.8.2 Form 941-X(PR) and Form 941-X
 - 21.8.2.3.8.3 Sick Pay/SINOT
 - 21.8.2.3.8.4 Adjusting the Tax on Form 940 and Form 940-PR
 - 21.8.2.3.9 Form 945 - Annual Return of Withheld Federal Income Tax
 - 21.8.2.4 Household Employment Taxes - BMF Procedures
 - 21.8.2.4.1 Schedule H/H-PR - BMF Procedures
 - 21.8.2.4.2 Loose Schedule H/H-PR
 - 21.8.2.4.3 Interest-Free Adjustments
 - 21.8.2.5 Deposit Requirements
 - 21.8.2.5.1 FTD Payment System
 - 21.8.2.5.2 Electronic Federal Tax Payment System (EFTPS)
 - 21.8.2.5.3 Deposit Penalties and Penalty Relief
 - 21.8.2.6 Excess FICA
 - 21.8.2.7 Visa Holders - General
 - 21.8.2.7.1 Foreign Student/Nonresident Visitors - Exemption from FICA Tax
 - 21.8.2.7.1.1 Optional Practical Training (OPT) and Curricular Practical Training (CPT)
 - 21.8.2.7.2 Validating Exemption/Qualification
 - 21.8.2.7.3 Processing Employee Claims
 - 21.8.2.7.3.1 Adjusting Employee Visa Claims (Employer's Account - BMF)
 - 21.8.2.7.3.2 Adjusting Employee Visa Claims (Employee's Account - IMF)
 - 21.8.2.7.4 Claims from the Employer
 - 21.8.2.8 Totalization Agreements- Bilateral Social Security Agreements
 - 21.8.2.8.1 Substantiation of Exempt Status
 - 21.8.2.8.2 Social Security Tax Obligation
 - 21.8.2.8.3 Claims of Exemption from FICA Tax by Reason of Bilateral Social Security Agreement
 - 21.8.2.8.4 Processing Bilateral Agreement Claims
 - 21.8.2.9 Foreign Form 1120 Series Returns
 - 21.8.2.9.1 Form 1120-F, Income Tax Return of a Foreign Corporation
 - 21.8.2.9.2 Form 1120-F Filing Requirements
 - 21.8.2.9.3 Payment of Tax Due - Form 1120-F
 - 21.8.2.9.4 Computing Tax on Form 1120-F

#

- 21.8.2.9.5 Tax Adjustments - Form 1120-F and Form 1120-FSC
 - 21.8.2.9.5.1 180-Day interest-free Period for Chapter 3 and Chapter 4 Withholding
 - 21.8.2.9.5.2 Refundable Credits - Form 1120-F and 1120-FSC
- 21.8.2.9.6 Adjusting Penalty and Interest
- 21.8.2.9.7 Accounts Management Form 1120-F Amended Returns Filed Under Notice 2015-73 and Notice 2015-74
- 21.8.2.9.8 Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation
- 21.8.2.9.9 FSC Repeal and Extraterritorial Income Exclusion
- 21.8.2.9.10 Payment of Tax Due - Form 1120-FSC
- 21.8.2.9.11 Underpayment of Estimated Tax - Form 1120-FSC
- 21.8.2.9.12 Claims for Refund of Backup Withholding on Form 1120-F or Form 1120-FSC
 - 21.8.2.9.12.1 General Agreement on Tariffs and Trade (GATT)
- 21.8.2.9.13 Refunds on Form 1120-F/FSC That Include Interest
- 21.8.2.10 Foreign Tax Credit (Form 1116 and Form 1118)
 - 21.8.2.10.1 Who May Claim the Foreign Tax Credit
 - 21.8.2.10.2 Claiming the Credit for Foreign Taxes
 - 21.8.2.10.3 Election - Foreign Tax Credit
 - 21.8.2.10.4 Foreign Taxes for Which a Credit May Not Be Claimed
 - 21.8.2.10.5 Statute of Limitation - Foreign Tax Credit
 - 21.8.2.10.6 Computation - Foreign Tax Credit
 - 21.8.2.10.7 Carryback and Carryover - Foreign Tax Credit
- 21.8.2.11 Form 8288, Form 8288-A, and Form 8288-C
 - 21.8.2.11.1 FIRPTA and Section 1446(f)(1) Payments Received Without a Form 8288
 - 21.8.2.11.2 Claims for FIRPTA and Section 1446(f)(1) Credits
 - 21.8.2.11.3 Section 1446(f)(4) Credits and Form 8288-C
- 21.8.2.12 Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
 - 21.8.2.12.1 Withholding Agent/Withholding Tax
 - 21.8.2.12.2 Form 1042
 - 21.8.2.12.2.1 Form 1042-S
 - 21.8.2.12.2.2 Claims for Tax Withheld at Source
 - 21.8.2.12.2.3 FATCA - Programming Affecting Certain Forms 1120-F
 - 21.8.2.12.2.4 FATCA - Form 1042-S Matching Program - General Information - Identifying Related Letters, Transaction Codes, Reason Codes, Form 1042-S Data Fields
 - 21.8.2.12.2.5 FATCA Matching Program Form 1042-S Credit Reversals on Forms 1120-F - Accounts Management Telephone/Written Inquiries - Letter 5532C
 - 21.8.2.12.2.6 FATCA Matching Program Form 1042-S Credit Reversals on Forms 1120-F - Accounts Management Telephone/Written Inquiries - Letter 5533C
 - 21.8.2.12.2.7 FATCA Form 1042-S Accounts Management Form 1120-F Amended Returns (New Form 1042-S Credits)

-
- 21.8.2.12.2.8 FATCA Form 1042-S Accounts Management Form 1120-F Amended Returns (Credits Denied)
 - 21.8.2.12.2.9 FATCA Form 1042-S Accounts Management Telephone Inquiries (Withholding Agent) - Letter 5532C
 - 21.8.2.12.3 Form 1042 Filing Requirements
 - 21.8.2.12.4 Form 1042 Federal Tax Deposits
 - 21.8.2.12.5 Electronic Deposit Requirements
 - 21.8.2.12.6 Failure To Deposit Penalties - Form 1042
 - 21.8.2.12.7 Exemptions from Chapter 3 or 4 Withholding
 - 21.8.2.12.8 Amended Returns - Form 1042
 - 21.8.2.12.9 Processing Claim Adjustments for Form 1042
 - 21.8.2.12.10 Qualified Intermediary Agreements (QI)
 - 21.8.2.12.10.1 Refund Adjustments for Over-Withholding by Qualified Intermediaries (QI's), Withholding Foreign Partners (WP's) and Withholding Foreign Trusts (WT's)
 - 21.8.2.12.10.1.1 Adjustments for Over-Withholding on a QI by a Withholding Agent
 - 21.8.2.12.10.1.2 Adjustments For Over-Withholding by a Qualified Intermediary on its Accounts
 - 21.8.2.12.10.1.3 Repayment of Backup Withholding by a QI
 - 21.8.2.12.10.1.4 Credit or Refund Procedures for Over-Withholding by a Qualified Intermediary on an Amended Return
 - 21.8.2.12.10.2 Adjustments for NRA Under-Withholding Before Form 1042 is Filed
 - 21.8.2.12.10.2.1 NRA Under-Withholding After Form 1042 is Filed
 - 21.8.2.12.10.2.2 Special Rule Regarding Failure to Deposit Penalties
 - 21.8.2.12.10.3 Amended Form 1042 Returns with Line 67 Changes
 - 21.8.2.12.11 Loose Forms 1042-S
 - 21.8.2.12.12 Withholding at Source Refund Requests from Exempt Organizations and Private Foundations
 - 21.8.2.12.13 Central Withholding Agreements
 - 21.8.2.13 Exchange of Information With Treaty Countries, Form OECD
 - 21.8.2.14 Withholding Tax on Foreign Partners - Form 8804
 - 21.8.2.14.1 Applicable Forms - W/H Tax on Foreign Partners
 - 21.8.2.14.2 Form 8804 Estimated Tax Penalty
 - 21.8.2.14.3 Processing Amended Form 8804 and TRNS 193 Notices
 - 21.8.2.14.4 Form 8804-C §1.1446-6 Certifications
 - 21.8.2.14.5 Claims for Credit of IRC § 1446 Withholding Tax on Foreign Partners
 - 21.8.2.15 Form 1040-NR, U.S. Nonresident Alien Income Tax Return
 - 21.8.2.15.1 Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts
 - 21.8.2.16 Form 1065, U.S. Return of Partnership Income
 - 21.8.2.16.1 CP 282 - Form 1065
 - 21.8.2.17 Streamlined Filing Compliance Procedures
 - 21.8.2.17.1 Streamlined Foreign Offshore Procedures (SFO)

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- 21.8.2.17.1.1 Adjusting Streamlined Foreign Offshore Accounts
 - 21.8.2.17.2 Streamlined Domestic Offshore Procedures (SDO)
 - 21.8.2.17.2.1 Adjusting Streamlined Domestic Offshore Accounts
 - 21.8.2.18 Withholding Certificates
 - 21.8.2.18.1 Form W-8, Certificate of Foreign Status
 - 21.8.2.18.2 Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), and Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)
 - 21.8.2.18.3 Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States
 - 21.8.2.18.4 Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting
 - 21.8.2.18.5 Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting
 - 21.8.2.18.6 Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits
 - 21.8.2.18.7 Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual
 - 21.8.2.18.8 Form W-9, Request for Taxpayer Identification Number and Certification
 - 21.8.2.19 Information Reporting Under IRC § 6048 and IRC § 6039F
 - 21.8.2.19.1 Penalties Assessed Under § 6677 and § 6039F- Form 3520 & Form 3520-A
 - 21.8.2.19.2 Form 3520 & Applicable Penalties
 - 21.8.2.19.3 Form 3520-A & Applicable Penalties
 - 21.8.2.19.4 Form 3520 & Form 3520-A Possible Duplicate Filing Conditions (TRNS 193)
 - 21.8.2.20 Form 5471 - Information Return of U.S. Persons With Respect to Certain Foreign Corporations
 - 21.8.2.20.1 Form 5471 Penalties
 - 21.8.2.20.2 Form 5471 Penalties Systemically Assessed from Late-Filed Form 1120 Series or Form 1065
 - 21.8.2.21 Form 5472 - Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business
 - 21.8.2.21.1 Form 5472 Penalties
 - 21.8.2.21.2 Form 5472 Penalties Systemically Assessed from Late-Filed Form 1120 Series
- Exhibits
- 21.8.2-1 Failure to File or Late-Filed Form 5471 - Decision Tree
 - 21.8.2-2 Failure to File or Late-Filed Form 5472 - Decision Tree

21.8.2.1
(10-01-2017)
Program Scope and Objectives

- (1) The instructions and information contained in this IRM and in other applicable IRMs cannot address every possible issue that may arise. In some cases, it may be necessary to consult your lead/manager to determine the necessary corrective action. Any issue/question that cannot be resolved at the site-level or that could have Servicewide impact should be elevated to the Headquarter analyst with program responsibility.
- (2) **Purpose:** This IRM provides adjustment procedures for International returns processed to the Business Master File (BMF) and attempts to address the situations most frequently encountered when working BMF International returns.
- (3) **Audience:** The primary users of this IRM are Taxpayer Services employees. The IRM is intended for Customer Account Service issues involving Business Master File (BMF) International Returns worked in Accounts Management. Employees using this IRM must have had basic BMF 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 Manual.
- (4) **Policy Owner:** Director, Accounts Management
- (5) **Program Owner:** Accounts Management Process & Program Management Business Adjustments
- (6) **Primary Stakeholders:** Taxpayer Services (TS), Small Business Self Employed (SBSE), Large Business and International (LB&I).
- (7) **Program Goals:** Program goals for this type of work are included in the Accounts Management Program Letter as well as in IRM 1.4.16, Accounts Management Guide for Managers.

21.8.2.1.1
(10-01-2020)
Background

- (1) Employees in the Accounts Management (AM) organization respond to taxpayer correspondence and phone calls as well as process claims, certain applications and other internal adjustment requests.
- (2) The IRS is committed to a customer service program that encourages taxpayers to comply voluntarily with the tax laws and assists them in meeting their obligations.
- (3) The BMF International Program is committed to achieving excellence in the service it provides to its customers. We provide our customers with assistance in a manner that warrants the highest degree of public confidence. Customer Service Representatives (CSRs) practice courtesy and proper communication techniques while ensuring that responses are technically and procedurally accurate and complete.
- (4) CSRs assigned to the BMF International Program provide help to taxpayers on a wide range of topics relating to BMF International Issues.
- (5) IRM 21.8.2 includes information and instructions to resolve BMF International correspondence and amended returns and answer BMF International calls and attempts to address the situations most frequently encountered by the CSRs.

21.8.2.1.2
(10-01-2020)
Authority

- (1) The procedures in this IRM are an attempt to translate a variety of legal and administrative authorities into practical guidance assistants can use. Refer to IRM 1.2.1, Servicewide Policies and Authorities - Servicewide Policy Statements, for information.
- (2) These authorities take many forms: Treasury Regulations, the Internal Revenue Code (IRC), legislation, revenue rulings and revenue procedures, Taxpayer Bill of Rights, and advice from Counsel to name only some. These authorities are cited in this IRM as they apply to the topic being discussed.

Note: "IRC Sections" and "Regulation numbers" are not the same but you may find them used interchangeably in Publications, Form Instructions or IRMs.

- (3) The principal Internal Revenue Codes are cited in this IRM as they apply to the topic being discussed.

21.8.2.1.3
(10-01-2021)
Responsibilities

- (1) The Taxpayer Services Commissioner has overall responsibility for the policy related to this IRM which is published on a yearly basis.
- (2) The Director of Accounts Management is responsible for policy related to this IRM.
- (3) The Chief of this team is responsible for ensuring this IRM is timely submitted to publishing each year.
- (4) Additional information is found in IRM 1.1.13.7.3, Accounts Management (AM), and IRM 21.1.1, Accounts Management and Compliance Services Overview.
- (5) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see *Taxpayer Bill of Rights*. Under these rights, taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

21.8.2.1.4
(10-01-2020)
Program Management and Review

- (1) **Program Reports:** For information about the various diagnostics and reports used to assess the health of the program, refer to IRM 1.4.16.2.4, Measures and Diagnostic Goals, and to 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. See IRM 1.4.16, Accounts Management Guide for Managers, for information regarding program management and review.
- (2) **Program Effectiveness:** Program Effectiveness is determined by Accounts Management's employees successfully using IRM guidance to perform necessary actions and duties.

21.8.2.1.5
(10-01-2020)
Program Controls

- (1) Goals, measures, and operating guidelines are listed in the yearly Program Letter.
- (2) Quality data and guidelines for measurement are referenced in 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.

21.8.2.1.6
(10-01-2020)
Acronyms

- (1) Terms used in this IRM generally have the standard English definition. Where the term has a special meaning in the context of a BMF International matter, the term is defined or clarified in the subsection in which it is used.
- (2) All but the most common acronyms found in this IRM are spelled out when they are used for the first time in a subsection. The *ReferenceNet Legal and Tax Research Services* page provides an Acronym Database to research acronyms found within this IRM.

21.8.2.1.7
(10-01-2017)
Related Resources

- (1) The basic BMF account resolution/adjustment procedures are found in IRM 21.7, Business Tax Returns and Non-Master File Accounts. Non-Master File (NMF) International Adjustments procedures can be found in IRM 21.7.12, Non-Master File (NMF) Adjustments. Individual Master File (IMF) International Adjustments are found in IRM 21.8.1, IMF International Adjustments. Integrated Automation Technologies (IAT) are tools that assist employees with IDRS research. The screens access numerous IDRS control codes multiple times to improve quality by simplifying and standardizing research paths and consolidating IDRS Command Code (CC) responses on one screen. IAT procedures can be found in IRM 21.2.2-2, ACCOUNTS MANAGEMENT MANDATED IAT TOOLS. Use the general processing procedures outlined in this IRM in conjunction with the following IRMs:

- IRM 13, Taxpayer Advocate Service
- IRM 21, Customer Account Services
- IRM 25, Special Topics
- IRM 20, Penalty and Interest

Note: See IRM 21.8.2.2.2, in this IRM.

- (2) The following publications are used for International issues. They can be used as technical reference material or provided to taxpayers when necessary. These publications are available for reference on SERP and on the internet at <http://www.irs.gov>.
 - Publication 1, Your Rights as a Taxpayer
 - Publication 15, (Circular E), Employer's Tax Guide
 - Publication 51, (Circular A), Agricultural Employer's Tax Guide
 - Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad
 - Publication 80, (Circular SS), Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Island.
 - Publication 179, Circular PR, Federal Tax Guide for Employers in Puerto Rico
 - Publication 514, Foreign Tax Credit for Individuals (Form 1116 issues)
 - Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities

- Publication 516, U.S. Government Civilian Employees Stationed Abroad
- Publication 519, U.S. Tax Guide for Aliens
- Publication 536, Net Operating Losses (NOLs) for Individuals, Estates, and Trusts
- Publication 541, Partnerships
- Publication 542, Corporations
- Publication 597, Information on the United States-Canada Income Tax Treaty
- Publication 570, Tax Guide for Individuals with Income from U.S. Possessions
- Publication 850 series - A series of publications that provide glossaries of words and phrases in various languages for translation of federal tax terminology
- Publication 901, U.S. Tax Treaties

- (3) In addition to these publications, some general information publications are also printed in Spanish for the convenience of taxpayers. On SERP, they are located under IRM Supplements, then Language Resources (Formerly Spanish Tax Products), then Spanish Forms, Publications, and Notices. The letters “SP” follow the publication number.

Example: Publication 1 (SP), Publication 1546 (SP), Publication 3498 (SP), and Publication 596 (SP).

21.8.2.2 (10-01-2017) International BMF/NMF and CADE Overview

- (1) CADE is the Customer Account Data Engine. CADE will gradually mesh with Master File functionality. Through a number of incremental increases, CADE will ultimately replace the Master File and enable daily processing of eligible accounts. Taxpayer records are being moved from the current processing environment to CADE using a release-based approach starting with the simplest taxpayer accounts.
- (2) See IRM 21.8.2.2.2, for the forms addressed in this IRM.

21.8.2.2.1 (12-20-2021) Campus Consolidation and Program Centralization

- (1) As a result of the ramp-down of the Philadelphia Submission Processing Campus (PSPC), International Business Master File (BMF) return processing moved in its entirety to the Ogden Submission Processing Campus (OSPC) on January 1, 2007. However, Philadelphia Accounts Management Campus (PAMC) continued to process BMF International Accounts Management work until the work was moved to the Cincinnati and Ogden Accounts Management Campus in February 2013.
- (2) Correspondence and/or amended returns involving the following issues are considered “BMF International Issues” and are worked at CAMC and OAMC:

Exception: Form 843 Visa claims are considered “BMF International Issues” but are worked at OAMC only.

- Form 1120–F, Form 1120-FSC, Form 940-PR, Form 941-PR, Form 941-SS, Form 943-PR, and Form 944 (SP)
- Form 8288 series
- Form 8804, Form 8805, and Form 8813
- Foreign Withholding Form 1042 series
- Form 3520 and Form 3520-A
- Form 5471 and Form 5472

- Form 1120X with Document Locator Number (DLN) Filing Location Codes 98, 66, 60 or 78
- Form 8873 Extraterritorial Income Exclusion
- Form 1120X Foreign Tax Credit carryback claims
- Form 1118 Foreign Tax Credit adjustments regardless of the form it is attached to, such as Form 1120-F, Form 1120-FSC, or Form 1120X
- Form 1116 attached to Form 1041
- Amended Form 1040-NR Fiduciary
- Form 8891

Note: Form 8891 is obsolete as of December 31, 2014 per Rev. Proc. 2014-55.

- Spanish language correspondence related to BMF International

- (3) Non-Master File (NMF) processing ceased at the Cincinnati Submission Processing Campus (CSPC) as of October 31, 2018. NMF processing is now centralized at the Kansas City Submission Processing Campus (KCSPC).

Note: The Campus Program Locator Guide provides information on the continuing (Taxpayer Services) W&I and Small Business Self Employed (SBSE) program consolidation and centralization. The guide is on SERP at: *Campus Program Locator Guide*.

21.8.2.2.2 (10-01-2023) BMF/NMF Forms

- (1) BMF International Corporate Income Tax Returns:

- Form 1120 and Form 1120-C with Form 1118, Form 5712, Form 5712-A, Form 5735, and Schedule P

Note: American Samoa Economic Development Credit, reported on Form 5735, was extended. Section 119 of H.R. 1865 extended the credit to the first 16 taxable years which begin after December 31, 2006 and before January 1, 2022.

- Form 1120-F, U.S. Income Tax Return of a Foreign Corporation
- Form 1120-FSC, U. S. Income Tax Return of a Foreign Sales Corporation and Form 8873, Extraterritorial income Exclusion

- (2) BMF International Employment Tax Returns:

- Form 940-PR
- Form 941-PR
- Form 941-SS
- Schedule H (PR) (estate or church employees)
- Form 943-PR
- Form 944 (SP)

- (3) BMF Foreign Partnership Returns:

- Form 1065

- (4) BMF Foreign Information Returns:

- Form 5471
- Form 5472

- (5) BMF Foreign Withholding Tax Returns:

- Form 1042
- Form 8288
- Form 8804

(6) Foreign Trust and Estate Tax Returns:

- Form 1040-NR (Fiduciary)
- Form 3520
- Form 3520-A

(7) BMF Foreign Exempt Organization Returns:

- Foreign and U. S. territory addressed Form 990
- Form 990-PF and Form 990-T with Form 1118, Form 5712, Form 5712-A, Form 5735, or Schedule P attached. See Note in (1) above regarding Form 5735 and Schedule P.

(8) BMF Foreign Information Statements:

- Form 8805
- Form 8813
- Alien Exemption Certificate Form W-8, Form 1001, Form 4224, Form 8233, and Form 8709

Note: These Alien Certification Forms, except Form 8233, became obsolete on December 31, 2000.

- Alien Exemption Certificate Form W-8BEN-E, Form W-8ECI, Form W-8EXP, Form W-8IMY, and Form W-8CE.

(9) NMF International Income Tax Returns:

- Form 1120-IC-DISC K-1
- Form 926
- Form 8404
- Form 1040-NR Fiduciary

(10) Forms Associated with Foreign Withholding Tax Returns:

- Form 8288A
- Form 8805, Form 8813
- Form 1042-S, Form 1042-T

21.8.2.2.3

(11-22-2023)

**Web Sites and
Telephone Numbers**

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

- Submission Processing website at <https://irs.gov.sharepoint.com/sites/WI/SitePages/Submission-Processing.aspx>
- IRC listed by Code section number at <https://www.law.cornell.edu/uscode/text>
- Tax treaties online at <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>
- Various international topics at <https://www.irs.gov/businesses/international-business>
- Foreign Account Tax Compliance Act at <https://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>
- IRS FBAR and Title 31 at <https://www.irs.gov/business/international/index.html>
- IRS Bulletins, Notices, Announcements, etc. at <https://www.irs.gov/irb/>

- U.S. Citizenship and Immigration Services (USCIS) website at <https://www.uscis.gov>
- Lexis-Nexis at <https://www.lexisnexis.com/en-us/home.page>
- The Social Security Administration website <https://www.ssa.gov/>
- Qualified Intermediaries at <https://www.irs.gov/businesses/corporations/qualified-intermediary-system>
- Interactive Tax Assistant at <https://www.irs.gov/help/help-with-tax-questions-international-taxpayers>
- United States Department of State at <https://www.state.gov/>
- International dialing codes at <https://www.countrycallingcodes.com/>
- IR Web research center at <https://rnet.web.irs.gov/>

- (2) Assistors staffing the International line **DO NOT** use the Telephone Transfer Guide (TTG) to transfer calls. International assistors transfer calls, as necessary, within the International line using local procedures to the International EIN, International IMF Accounts, International BMF Accounts, International Tax Law, International U.S. Certification, and International Automated Collection System (ACS) applications. They can use “The Source for Telephone Numbers” at: *SERP - Telephone Numbers - The Source (irs.gov)* to provide the correct toll-free number to the caller or to provide hours of operation. If the caller is calling outside the United States, the assistor should perform the needed resolution. If the assistor is not trained or the caller does not want to call back, complete Form 4442, Inquiry Referral. Taxpayer inquiries are completed by the site receiving the call unless the site is not trained, e.g., Ogden Accounts Management Center (OAMC) is the only site trained to work Visa claims. If the international issue is only worked by OAMC route the inquiry

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for internal use only).

Exception: See IRM 21.8.2.11 to refer inquires requesting a stamped copy of Form 8288-A (Copy B).

See IRM 21.3.5.4, Referral Procedures, for complete procedures.

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

- (3) **Assistors staffing any toll-free line** should not transfer calls to the International line (267-941-1000). They can provide the International **non-toll-free number** or any of the numbers below to a caller for help with international issues. Ensure the callers are informed these are not toll-free numbers. If the caller does not want to call back, offer to prepare Form 4442, Inquiry Referral.

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Campus Consolidation and Program Centralization. For more information on the referral process see IRM 21.3.5.4, Referral Procedures.

Title or Organization	Phone	Fax or Mailbox
International (Taxpayer Customer Service)	267-941-1000**	
International Automated Collection System (ACS)	267-941-1004**	
Automated Underreporter (AUR)	267-941-1026**	267-466-1023
Electronic Federal Tax Payment System (EFTPS)	303-967-5916	
International Estate and Gift	866-699-4083 (toll-free) 859-320-3456* (not toll-free)	
Excise Tax (Form 720, Form 730, Form 2290 and Form 8849)	859-320-3581	
FBAR and Title 31 Helpline	866-270-0733 (toll-free) 313-234-6146 (not toll-free)	
International Examination	267-941-1037**	267-466-1439
Offer in Compromise (OIC) - General	267-941-1004**	787-759-5466
(OIC) - Accepted Offers Only	844-805-4980	
Taxpayer Advocate Service - English speaking	787-522-8601	855-818-5697
Taxpayer Advocate Service - Spanish speaking only	787-522-8600	
U.S. Certification Program	267-941-1000**	877-824-9110 (toll-free) 304-707-9792 (not toll-free)

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* This telephone number goes to voice mail, but messages are checked daily. The International Estate and Gift e-mail address is sbse.eg.intl@irs.gov, and can be provided.

Reminder: Numbers marked with (**) CANNOT be accessed using IRS phones.

21.8.2.2.3.1
(06-29-2021)
**Telephone Numbers for
Courier Service Mailing**

- (1) These phone numbers are for International taxpayers that 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) 320-5250
Fresno	(559) 454-6168
Kansas City	(816) 499-5216
Memphis	(901) 546-3700
Ogden	(801) 620-3738
Philadelphia	(267) 466-1832

Caution: The telephone numbers listed above are for use on express mail air bills only. These numbers are not to be used for technical issues.

21.8.2.2.4
(11-06-2020)
**Translation Services -
and Over the Phone
Interpreter Service**

- (1) Linguistic Policy, Tools and Services (LPTS) will translate documents written in several languages to English.
- (2) To have a document translated, follow the procedures in IRM 25.23.4.19, Requesting Translations of Certain Languages.
- (3) Over the Phone Interpreter Service (OPI) offers interpreter services for Limited English Proficient (LEP) callers. See IRM 21.8.1.2.3.2, Over the Phone Interpreter Service (OPI) For International Non-Toll Free calls, for procedures.

21.8.2.2.5
(10-01-2017)
**Timeliness
Determinations**

- (1) Based on Rev. Rul. 2002-23, treat a document mailed from a foreign country, with a timely official postmark of the foreign country, as timely filed.
- (2) This rule applies to all documents required or permitted to be filed with the Service, including returns, payments made with returns, claims, or requests for filing extensions.
- (3) If the last day for filing falls on a Saturday, Sunday or a legal holiday, then a document with an official postmark of the foreign country dated on or before the next succeeding day that is not a Saturday, Sunday, or legal holiday is treated as timely filed under IRC 7503. The term "legal holiday" is defined

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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 document is 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 additional 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 (PDS). The list of PDS's, both international and domestic, are only updated if a new delivery service is added to the current list.
- (5) The current types of delivery services through designated PDS's are found in *Notice 2016-30*.

21.8.2.2.5.1
(10-01-2023)

**Failure to File and
Failure to Pay Penalties**

- (1) Follow normal procedures to adjust Failure to File and Failure to Pay penalties. See IRM 20.1.2.2.3.3, Taxpayers Abroad, for policy.
- (2) If either penalty must be manually computed and assessed per IRM 20.1.2.2.3.3(9), follow the procedures below:
 - If the return is a late filed Form 1065 with computer condition codes **D** and **R**, and the return was filed late, then the penalty for filing late must be manually computed and assessed as outlined in IRM 20.1.2.4, Failure to File a Partnership Return - IRC 6698
 - If the return is a late filed Form 1120-S return with computer condition codes **D** and **R**, and the return was filed late, then the penalty for filing late must be manually computed and assessed as outlined in IRM 20.1.2.6, Failure to File S corporation Return - IRC 6699
 - If the return is any other partnership or corporate return (e.g., Form 1120) with computer condition codes **D** and **R**, and the return was filed late and/or the tax was paid late, then the penalties for filing and paying late must be manually computed and assessed as outlined in If the return is any other partnership or corporate return (e.g., Form 1120) with computer condition codes "D" and "R", and the return was filed late and/or the tax was paid late, then the penalties for filing and paying late must be manually computed and assessed as outlined in IRM 20.1.2.3, Failure to File a Tax Return or to Pay Tax - IRC 6651. Use hold code 0 (zero) to allow assessment notice to be generated.

21.8.2.2.6
(10-01-2017)

**General Disclosure
Guidelines**

- (1) For information on General Disclosure Guidelines, refer to IRM 21.1.3.2, General Disclosure Guidelines.

21.8.2.2.7
(10-01-2022)

**Referrals to the
Taxpayer Advocate
Service (TAS)**

- (1) Refer taxpayers to the Taxpayer Advocate Service (TAS) (see IRM Part 13, Taxpayer Advocate Service) when the contact meets TAS criteria (see IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria) and you can't resolve the taxpayer's issue the same day. The definition of "same day" is within 24 hours. "Same day" cases include cases you can completely resolve in 24 hours, as well as cases in which you have taken steps within 24 hours to begin resolving the taxpayer's issue. **Do not refer these cases to TAS, unless they meet TAS criteria and the taxpayer asks to be transferred to**

TAS. Refer to IRM 13.1.7.4, Same-Day Resolution by Operations. When referring cases to TAS, use Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), and forward to TAS in accordance with your local procedures. Preparation instructions for the Form 911 are available on the Form and in IRM 21.1.3.18, Taxpayer Advocate Service (TAS) Guidelines.

- (2) The National Taxpayer Advocate has reached agreements with the Commissioners of the Taxpayer Services (TS) Division, Small Business & Self-Employed Division (SB/SE), Tax Exempt & Government Entities (TEGE) Division, Criminal Investigation (CI), Appeals, and Large Business and International (LB&I) 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 (SLA's). The SLA's are located on the Intranet at <https://tas.web.irs.gov>.
- (3) When referring cases to TAS, keep in mind that although TAS employees can address certain issues for international taxpayers (e.g., request copy of a tax return or a payment tracer), TAS employees do not have the delegated authority to make international adjustments. For more information about TAS's delegated authorities, see IRM 13.1.4, Taxpayer Advocate Case Procedures - TAS Authorities.
- (4) For taxpayers who prefer to contact TAS directly, provide the toll-free number 877-777-4778. International callers who cannot dial toll-free may call 787-522-8601 (English assistance) and 787-522-8600 (Spanish assistance). Publication 1546, Taxpayer Advocate Service - Your Voice at the IRS, contains addresses and phone contact information for each Taxpayer Advocate office.

21.8.2.2.8
(10-01-2022)
Technical Issues

- (1) Refer all technical issues to campus management that cannot be resolved using the IRMs and publications referenced in this IRM. See IRM 21.8.2.2 and IRM 21.8.2.1.7. If management is unable to make a determination, use local assistance procedures that involve coordinating the resolution through the Planning & Analysis staff.
- (2) Follow procedures in IRM 21.5.3.4.7.2.1, Examination Technical Assistance Request, if the claim requires a legal interpretation but does not meet CAT-A criteria, see IRM 21.8.2.2.12, or is not on AIMS.
- (3) When necessary, the analyst from the Planning & Analysis staff reviews and forwards any international adjustment problems requiring the attention of the Headquarters International Analyst.

21.8.2.2.9
(10-01-2023)
Competent Authority Cases

- (1) Rev. Proc. 2015-40, 2015-35 IRB 236 or its (or theirs) successor(s) contains the procedures for a U.S. taxpayer to request assistance from the U.S. Competent Authority on issues arising under a tax treaty between the United States and a foreign country. For procedures for requesting assistance from the U.S. Competent Authority under the provisions of a tax coordination agreement between the United States and a U.S. Territory, refer to Rev. Proc. 2006-23, 2006-20 IRB 900, and the subsection titled "Double Taxation" in this IRM. See IRM 21.8.2.3.1.
- (2) The Commissioner, LB&I is 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. The U.S. competent authority conducts the competent authority process through the office the Advance Pricing and Mutual Agreement Program (APMA). APMA's transfer pricing teams have primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. tax treaties. The Treaty Assistance and Interpretation Team (TAIT) is the group in APMA that 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. TAIT and APMA's transfer pricing teams each can consider cases arising under the permanent establishment articles of U.S. tax treaties, and coordinate and collaborate on such cases and on any other cases as appropriate. APMA also has sole responsibility for requests involving unilateral, bilateral, or multilateral advance pricing agreements (APAs).

- (3) Written requests for, or any inquiries regarding competent authority assistance, are sent to:

For requests to APMA:

Commissioner, Large Business and International Division, Internal Revenue Service

1111 Constitution Ave, N. W.

SE:LB:TTPO:APMA:K

Washington, DC 20224

(Attention: APMA)

For requests to TAIT:

Commissioner, Large Business and International Division, Internal Revenue Service

1111 Constitution Ave, N. W.

SE:LB:TTPO:APMA:TAIT:K

Washington, DC 20224

(Attention: TAIT)

- (4) Direct any questions regarding competent authority requests to the attention of APMA or TAIT, as appropriate, at the above address.
- (5) In general, nonresident aliens and foreign corporations seeking competent authority assistance should make their request with the competent authority of the country in which they are a resident. However, some treaties allow nonresident aliens and foreign corporations to make their requests with the competent authority of either Contracting State.

21.8.2.2.10
(10-01-2017)

**General Adjustment
Procedures for
International Accounts**

- (1) When adjusting Business Master File (BMF) international tax accounts, or transferring credits input a File Location Code (FLC) as follows:

- Cincinnati - FLC 96 (Foreign) or FLC 97 (U.S. Possession)
- Ogden - FLC 60 (Foreign) or FLC 78 (U.S. Possession)

21.8.2.2.11
(10-01-2022)

**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 unau-

thorized disclosures of tax information. Also, use caution when leaving information on answering machines or voice mails. (See IRM 10.5.1.6.7.2, Answering Machine or Voicemail).

- (2) Based on requests from practitioners and other stakeholders, the Service developed guidance on the acceptance of faxes and signature stamps that was 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.

21.8.2.2.12
(10-01-2023)
Examination Criteria

- (1) The Domestic Examination Criteria are divided into two groups, Category A and Category B. For Domestic claims, refer to criteria contained in Exhibit 21.5.3-2, Examination Criteria (CAT-A) – General.
- (2) Category A criteria are issues that have highest examination potential and must be routed to Examination Classification prior to resolution of the taxpayer's issue. Some tax decrease cases with an open TC 420 ("L" freeze) are CAT-A criteria. Refer to IRM 21.5.3-1, Claim Processing with Examination Involvement.
- (3) Refer to IRM 21.5.3.4.12, Category B Criteria (BMF Only), for Category B criteria.
- (4) International Examination criteria are generally CAT-A only.
- (5) Only send case(s) meeting CAT-A criteria or technical inquiries to Exam Classification. Criteria used for international claims referral to Examination is found in the list below.

Exception: Do not send a case to Exam if the case has already been approved by LB&I.

- (6) Forward the following types of international claims and issues to Examination for classification:

21.5.9.5.12.7(8), Carryback of Excess Foreign Tax Credit (FTC), for specific procedures. #

- Form 1120-F, Form 1120-FSC, and Form 1120 returns with international increases in credits claimed for withholding at source greater than #
- Form 8288 tax decreases #
- Amended Form 1041 changing income from taxable to non-taxable that result in the original tax liability being reduced to zero and the tax #
- Form 1042 claims for tax decrease filed after the due date of the return
- Amended, corrected, and superseding Form 1065 is CAT-A if any of the conditions in IRM 21.7.4.4.2.9, Form 1065 and Form 1065X, Amended Return, Administrative Adjustment Request (AAR) and Bipartisan Budget Act (BBA), exist. #

Note: If the taxpayer cites an IRC, Regulation, Tax Treaty, etc., research the reference, attempt to secure an explanation, unless the claim meets other Examination Criteria. This information may be available on-line through Lexis-Nexis at <https://www.lexisnexis.com/en-us/home.page> or on Westlaw at <https://web2.westlaw.com/signon/default.wl?bhcp=1>.

- (7) When a claim is sent to Examination Classification, procedures consistent with IRM 4.19.11, Examination Classification of Work, must be followed. The sender must ensure pages 1 and 2 of Form 1120X are complete, including verification of all needed schedules and forms required for making a determination, before referring to Exam Classification. If the classifier determines that an additional schedule(s) is necessary, the case file will be returned to the sender to secure the necessary information (e.g., Form 1116 or Form 1118 is required to verify a foreign tax credit).
- (8) Normal research required when routing paper cases to Exam Classification. For CII cases refer to IRM 21.5.1.5, Correspondence Imaging System (CIS) Procedures:

Form	Doc(s) Required	IDRS Research
Form 1042	<ul style="list-style-type: none"> Form 1042 original (or T/P copy) and amended returns Form 1042-S (voided original (or T/P copy) and amended 1042-S forms) TC 29X adjustment documents 	Form 1042 Filer ENMOD, TXMOD, BMFOLI, BRTVU, and AMDIS Recipient ENMOD/INOLE, NAMEI/ NAMES, TXMOD, RTVUE/ BRTVU, and BMFOL/ IMFOL
Form 1120-FSC	<ul style="list-style-type: none"> Form 1120-FSC original (or T/P copy) and amended returns or Form 1120X with explanation TC 29X or TC 30X adjustment document 	Form 1120-FSC TXMOD, BMFOLI, AMDIS and ENMOD Parent Corporation Form 1120 TXMOD, BRTVU, BMFOL, AMDIS and ENMOD
Form 1120-F	<ul style="list-style-type: none"> Form 1120 original (or T/P copy) and amended or Form 1120X TC 29X or TC 30X adjustment documents 	Form 1120-F TXMOD, BMFOLI, BRTVU, AMDIS and ENMOD
Form 1041 & Form 1040-NR Fiduciary (Estate / Trust)	<ul style="list-style-type: none"> Form 1041 or Form 1040-NR original (or T/P copy) and amended TC 29X or TC 30X adjustment documents 	Form 1041 or Form 1040-NR TXMOD, BMFOL, BRTVU, AMDIS and ENMOD
Form 1065	<ul style="list-style-type: none"> Form 1065 original (or T/P copy) and amended TC 29X or TC 30X adjustment documents 	Form 1065 TXMOD, BMFOLI, BRTVU, AMDIS and ENMOD K-1s TXMOD, BMFOLI, BRTVU, AMDIS and ENMOD

Note: Prior to sending for Classification, an IDRS control must be placed on the account under a designated profile number, e.g., 05XXX33333. IRM 21.5.3.4.7, Processing Claims and Amended Returns With Examination Involvement, lists the control follow-up time frame. Assigning the case to CAT-A in CII automatically creates the IDRS control.

(9) If the case contains CAT-A criteria send to Exam Classification.

- (10) Make sure that the classification sheet contains complete and accurate information (including Building and Drop Points).
- (11) Category A claims involving multiple tax periods must be worked by the same Customer Service Representative (CSR). Send these claims to classification as one package. Do **not** send them as separate claims.
- (12) When the case is returned from Exam Classification, follow the steps in the table below.

If Examination Classifier	CSR Should
Rejects the claim	<ul style="list-style-type: none"> Resolve the reason for the rejection, e.g., additional documentation or IDRS research. Initiate telephone call to taxpayer, or Correspond with taxpayer using Letter 916C, input TC 290.00 Blocking Series 18 or 00 if the original return is in hand.
Accepts the claim	Input necessary transactions, TC 291/290, Blocking Series 15 or 00 and reverse the TC 470.
Disallows the claim in part	<ul style="list-style-type: none"> Input necessary transactions, TC 291/290, Blocking Series 18, or 00 if the original return is attached 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.
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 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.
Selects the claim	<ul style="list-style-type: none"> Send Letter 86C explaining that the claim has been selected for further review by the Examination Department and that they will be contacted by their office once a determination has been made. See IRM 21.3.3.4.2.1, Use of 86C Letter - Referring Taxpayer Inquiry/Forms to Another Office, for further instruction on cases forwarded within the same campus. Input TC 971, Action Code 013, using the TC 976 date or the received date of the claim (if no TC 976 is present on the account).

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

Note: Copies of disallowance letters on CII cases that are 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.

21.8.2.2.12.1
(10-01-2023)

Protective Claims

- (1) Protective Claims are formal claims or amended returns for credit or refund normally based on expected changes in a:
 - Current IRC section
 - Current regulation
 - Pending legislation, or
 - Current litigation
- (2) These claims are filed to protect the claimant's right to recover an Internal Revenue Tax before the expiration of the statute of limitations. For this reason, they are all considered to meet CAT-A criteria. See IRM 21.5.3.4.7.3.1, Processing Protective Claims, for additional information.
- (3) **All Protective Claims** must be sent to Examination Classification as Category A. All processable Protective Claims are selected by Examination Classification.
- (4) Protective Claims must be processable before sending to Examination Classification. Screen all protective claims for:
 - Statute timeliness
 - Completeness, and
 - Signature(s)
- (5) If the claim is not processable, call or correspond with taxpayer for missing information. If no reply is received, follow normal adjustment procedures in IRM 21.5.3.4.6.3, No Consideration Procedures, for rejecting the claim.

21.8.2.2.13
(10-01-2017)

Period of Limitation

- (1) The Internal Revenue Code (IRC) states that the Internal Revenue Service (IRS) will assess, and collect taxes, and that a taxpayer must file a claim for a credit or refund, within specific time limits. These limits are known as the **Period of Limitations**. When they expire, we cannot assess additional tax or take collection action, and a taxpayer cannot file a claim for credit or refund. The determination of period of limitations expiration dates differs for Assessment, Refund, and Collection.
- (2) The Statute function reviews amended returns that reflect an increase in tax and documents that unpost or are rejected for "statute imminent cases" (explained below) or because the relevant period of limitations has expired "(statute expired)."
- (3) Statute imminent cases are those cases requiring either an original assessment or a subsequent assessment and for which the Assessment Statute Expiration Date (ASED)-the period of limitations on assessment-is within 90 days, or expired.
- (4) The following are categories that meet the criteria for statute imminent cases:

- Statute period original returns for input through processing
- Additional assessments on cases that have an ASER within 90 days
- Additional assessments on cases with an expired ASER
- Statute period returns to be re-input with a received date more than 2 1/2 years old

21.8.2.2.13.1
(10-01-2017)
Statute Year Claims

- (1) Once it is determined that an assessment of tax is necessary, take the following action when a claim is filed indicating a tax increase and the statute for assessing will expire within 90 days:
 1. Prepare Form 10959, Statute Control Transmittal, and hand-carry the case with current research, i.e., BMFOL print, 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. The control base can be closed only after receiving notification from the statute function that they will keep the case.
 4. When the case is returned stamped "CLEARED BY STATUTES," it can be input or adjusted following normal adjustment procedures found in IRM 21.5.3, General Claims Procedures.
- (2) Once it is determined that a timely claim to decrease tax has been filed (check the postmark date), the case is resolved by Accounts Management, even if the statute is imminent or expired. Follow normal adjustment procedures.
- (3) Allow the claim if it was received before the Refund Statute Expiration Date (RSED), additional information was requested to process the claim, and the

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Reminder: See IRM 21.8.2.10.5, Statute of Limitation - Foreign Tax Credit, for special RSED considerations for claims including Foreign Tax Credit.

- (4) If a claim for tax decrease is not timely, deny the claim sending a formal disallowance letter (Letter 105C), stating that the statute for refund has expired. Input TC 290 .00 with Blocking Series 98 (complete claim disallowance without original return) or 99 (complete claim disallowance with original return). Provide appeal rights to the taxpayer.
 - a. Do not use expired credits to offset liabilities for other tax periods.
 - b. In general, amounts are refundable if they were paid within three years prior to the taxpayer's filing the return, plus the period of any extension of time to file the tax return.

Note: This means all advance payments expire for refund 3 years after the return due date or extended due date, whichever is later. For more information regarding advance payments, see IRM 25.6.1.7, Credits and Payments.
 - c. Alternatively, payments received after the return filing date are refundable for 2 years from the payment received date.
 - d. Credits transferred to a balance due module are refundable for 2 years from the corresponding date of the cycle in which the transfer occurred. Refer to IRM 25.6.1.10, Claims, Abatements and Refunds, for additional information.

21.8.2.2.14
(10-01-2023)
Unpostables

- (1) Unpostables are transactions which cannot post to the Master File. A transaction that fails to post to an account at the Enterprise Computing Center at Martinsburg (ECC-MTB) is returned to the campus (SC) for corrective action.
- (2) There are two types of unpostables:
 - Returns
 - Transactions
- (3) The Customer Service Representative:
 - a. Is responsible for preventing unpostable conditions when transferring payments and making changes to taxpayer's accounts, and
 - b. Should have a thorough understanding of the reason for unpostable conditions, and
 - c. Is responsible for resolving unpostable conditions created by adjustment actions. See IRM 21.5.5.4.2, Resolving Unpostables.
- (4) To resolve an unpostable, analyze each case, perform research and decide the proper corrective action. The unpostable condition shows on IDRS just below the transactions with an indicator before the transaction code such as: DU, NU, Unnn, CU, DN, DJ, RJ or DC. See *Document 6209* for explanations of these codes.

Note: CU (corrected unpostable) indicates a corrected transaction and no further action is needed.

- (5) Knowledge of the following information contained in Document 6209 is necessary to analyze and correct the unpostable:
 - Transaction Codes (TC)
 - 971 Action Codes (AC)
 - Item Adjustment Codes
 - Credit Reference Numbers (CRN)
 - Reason Codes (RC)
 - Priority Codes (PC)
 - Freeze Codes (FC)
 - Hold Codes (HC)
 - Math Error Notice Codes
- (6) Use Command Codes UPTIN, UPDIS, UPRES, and UPCASZ to research/resolve unpostable conditions per IRM 21.5.5.3.2, Researching Unpostables on IDRS. There is also useful information in IRM 3.14.1.6.3.3, Preventing Unpostable Transactions.

21.8.2.2.15
(10-01-2020)
Form 673, Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by § 911

- (1) IRC 3402(a) requires employers to withhold taxes from wages as they are earned. However, if certain conditions are met, employers may discontinue the withholding of income tax from the wages of employees who are U. S. citizens residing and working abroad.
- (2) IRC 3401(a)(8)(A) exempts certain compensation from the definition of wages, and allows employees to provide a written statement signed under penalties of perjury. The employee should attach the statement to a current Form W-4, Employee's Withholding Certificate, declaring that they meet or will meet the requirements of IRC 911(d) for the taxable year. The employer will consider whether the employee's foreign earned income is more than the limit on either

the foreign earned income exclusion or the foreign housing exclusion. The foreign earned income exclusion is adjusted annually for inflation. See Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, for the specific tax year and limit.

- (3) In addition to providing the statement, employees must specify on the Form W-4 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. A statement can be accepted in lieu of Form 673 if the taxpayer indicates to their employer that they will meet either the bona fide residence test or the physical presence test; provides their estimated housing cost exclusion; and their statement is signed under penalties of perjury. (See Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, for bona fide residence and physical presence requirements).

Note: Resident Aliens should submit a written statement in lieu of Form 673, see above.

- (5) Employers are required to withhold income tax from any wages the employee earns in the United States. In foreign countries, U.S. employers are required to withhold income tax from U.S. citizens and resident aliens on 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 U.S. citizens.

Note: The employee should provide Form 673 (or a substitute statement) to their U.S. employer and not to the IRS. Return any loose Form 673 (or substitute statement) documents received to the taxpayer. See IRM 21.1.7-17, Forms - Routing Guide, for procedures.

21.8.2.3

(10-01-2023)

United States Territories

- (1) The following are the principal United States territories that have independent tax administrations:
 - Commonwealth of Puerto Rico (PR)
 - U.S. Virgin Islands (USVI)
 - Guam
 - American Samoa (AS)
 - Commonwealth of the Northern Mariana Islands (CNMI)
- (2) Individuals born in a U.S. territory are generally U.S. Citizens, except in the case of American Samoa, where such individuals are U.S. Nationals who are treated the same as U.S. Citizens for purposes of many income tax provisions of the Internal Revenue Code. Individuals residing in a U.S. territory may also be treated as U.S. residents if they are lawfully admitted for permanent residence (that is, if they have a “green card”) or if they meet the substantial

presence test in the United States, which generally does not include their time in the territory. For tax purposes, U.S. residents are taxed the same as U.S. Citizens. See Pub 519 and/or Treas. Regs. Section 301.7701(b)-1(c).

- (3) 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 their residency status, the source of their income, and the particular filing rules applicable to the relevant territory. See IRM 21.8.1.5, Territories of the United States, for additional information on filing requirement for bona fide residents of U.S. territories.

21.8.2.3.1
(10-01-2023)
Double Taxation

- (1) Procedures to settle cases of inconsistent tax treatment by the United States and a U.S. territory are provided in tax coordination or implementation agreements between the United States and the following U.S. territories:

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

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

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

- (3) Requests for assistance must contain the necessary information outlined in Rev. Proc. 2006-23 and Publication 570, under the heading "Double Taxation." Taxpayers may be referred to the following offices for special information regarding each U.S. Territory:

• **PUERTO RICO**

Departamento de Hacienda
Negociado de Asistencia Contributiva
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

• **GUAM**

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

• **AMERICAN SAMOA**

Tax Division

Executive Office Building First Floor
PagoPago, American Samoa 96799

• **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

Division of Revenue and Taxation
P.O. Box 5234 CHRB
Saipan, MP 96950

21.8.2.3.2
(10-01-2022)
**Bona Fide Residence
and Source Rules
Concerning U.S.
Territories**

- (1) Bona fide residency rules - IRC 937(a) generally provides that the term bona fide resident of a territory means an individual who:

1. Is present for at least 183 days during the taxable year in the relevant territory,
2. Does not have a tax home outside of the territory, and
3. Does not have a closer connection to the United States, or a foreign country, than to the territory.

Note: See Treas. Reg. 1.937-1 for further details and special rules relating to these tests. See IRM 21.8.1.5.2, Bona Fide Residency Defined, and Publication 570 for more information on bona fide residency rules.

- (2) Source rules - In general, IRC 937(b)(1) and the regulations provide that the principles for determining whether income is U.S. sourced are generally applicable for determining whether income is territory sourced. The principles for determining whether income is effectively connected with the conduct of a U.S. trade or business are generally applicable for purposes of determining whether income is effectively connected to a territory trade or business. In addition, the "U.S. Income Rule" of IRC 937(b)(2) provides that:

- Income from U.S. sources is not considered income that is territory sourced or effectively connected with the conduct of a possession 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.

- (3) The regulations provide special source rules for certain items of income, including:

- a. Gain from the sale of goods manufactured in a territory,
- b. Gain from dispositions of personal property owned prior to, and sold or exchanged within 10 years after, becoming a bona fide resident,
- c. Dividends and interest from closely held territory corporations, and
- d. Other specific types of income such as that derived from space and ocean activities, and international communications.

Note: For additional information concerning territory source and effectively connected income rules, refer to Publication 570, Treas. Reg. § 1.937-2, and Treas. Reg. § 1.937-3.

21.8.2.3.3
(10-01-2015)
Puerto Rico

- (1) Puerto Rico is a self-governing commonwealth in association with the United States. The major tax differences between Puerto Rico and the 50 states are its local taxation system and the exemption from U.S. income tax provided in IRC 933 for Puerto Rico source income for bona fide residents of Puerto Rico.

- (2) Bona fide residents of Puerto Rico are only required to file a U.S. income tax return to report non-Puerto Rico source income. See Pub 570, Tax Guide for Individuals With Income from U.S. Possessions, for additional information.
- (3) Puerto Rico's tax system is patterned after the U.S. tax system, but there are variations in law and tax rates.
- (4) Employers in Puerto Rico are liable to the United States for social security and Medicare taxes (collectively Federal Insurance Contributions Act (FICA) taxes). They must file Form 941-PR with the IRS. They are also required to file Form 940-PR with the IRS to report unemployment taxes (FUTA tax).
- (5) Employers with **both** domestic and territory employees can file one Form 941 or Form 944 to include all wages.

21.8.2.3.4
(10-01-2021)
**U.S. Virgin Islands,
Guam, American Samoa
and The Commonwealth
of the Northern Mariana
Islands**

- (1) This subsection provides specific tax information as it relates to the following U.S. Territories: U.S. Virgin Islands (USVI), Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI).
Caution: The British Virgin Islands fall within the jurisdiction of the United Kingdom and are in no way connected with the U.S. or its political subdivisions or territories. Any returns or inquiries received with addresses from the British Virgin Islands are handled as international cases.

- (2) Each territory has its own separate and independent tax system and they have income tax laws and rates that are substantially the same as or are a "mirror" of the Internal Revenue Code (USVI, Guam and CNMI), or are generally similar to provisions of the Internal Revenue Code (American Samoa).
- (3) Employers who have resident employees in the above specified territories must file Form 941-SS with the IRS to report FICA taxes on wages earned by their employees.
- (4) As with Puerto Rico, employers are liable to the United States for social security and Medicare taxes (collectively Federal Insurance Contributions Act (FICA) taxes). They must file Form 941-SS with the IRS. Employers in the USVI are also required to file Form 940 with the IRS to report unemployment taxes (FUTA tax).
- (5) As with Puerto Rico, employers with **both** domestic and territory employees can file one Form 941 or 944 to include all wages.

21.8.2.3.5
(10-01-2020)
**Penalty and Interest -
CNMI**

- (1) Penalty and interest charged to a CNMI employer on Form 941-SS must be computed according to tax regulations as applicable to the states and D.C.
- (2) Form 941-SS is due by the last day of the month following the quarter for which wages were earned.
- (3) When a return posts to the incorrect tax period, follow the procedures in IRM 21.7.9.4.1, Resolving TRNS 193s and Amended/Corrected/Supplemental Returns.
- (4) General procedures for processing penalty and interest cases are outlined in IRM 20.1, Penalty Handbook, and IRM 20.2, Interest.

21.8.2.3.6
(10-01-2020)
**Employment Tax
Information**

- (1) Information on Employment tax may be found in the following publications:
- Publication 15, (Circular E), Employer's Tax Guide and Publication 15-A, Employer's Supplemental Tax Guide
 - Publication 51, (Circular A), Agricultural Employer's Tax Guide, for the types of agricultural work subject to social security and Medicare taxes
 - Publication 179, (Circular PR), Federal Tax Guide for Employers in Puerto Rico
 - Publication 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

Note: There are special employment tax rules relating to federal employers with employees in the CNMI and Puerto Rico. Please see *Special Withholding Rules for U.S. Federal Agency Employers With Employees in CNMI or Puerto Rico* on irs.gov or Section 13 of Publication 80 titled "Federal Agency Certifying Requirements of Federal Income Taxes Withheld From U.S. Government Employees and Federal Pension Recipients" for these special rules.

21.8.2.3.7
(10-01-2021)
**Wage Documents for
Territory Employees**

- (1) Employers filing Form 941-PR, Form 941-SS, Schedule H/H-PR, and Form 943-PR generally also file the following forms with the corresponding U.S. Territory (see the "Note" in IRM 21.8.2.2.1):
- Form W-2 AS (American Samoa)
 - Form W-2 GU (Guam)
 - Form W-2 VI (Virgin Islands)
 - Form W-2 CM (Commonwealth of the Northern Mariana Islands)
 - Form W-2 PR (Puerto Rico)
 - Form 499R-2 (Puerto Rico)
- (2) The wage bases for the two parts of the tax (Social Security and Medicare) are different, there is no ceiling on Medicare tax wages.
- (3) The employers are also required to file with the Social Security Administration a copy of the appropriate Form W-2 for each of their employees along with Forms:
- Form W-3 SS, or
 - Form W-3 (PR)
- (4) When there is a centralized payroll with U.S. residents and territory residents working for the employer, the Form 941-PR, and Form 941-SS are not filed.
- a. The employer includes the FICA payments from territory employees on Form 941 or Form 944 along with U.S. resident employees.
 - b. The employer prepares the appropriate Form W-2 for each employee based upon the government to which the withheld income taxes were paid.
 - c. Each type of Form W-2 must be accompanied by the Form W-3, Form W-3 SS, or Form W-3 (PR), as appropriate, when transmitting the data to SSA.
- (5) If taxpayers inquire about this process, refer them to:
- Publication 80

- Publication 179
- Form W-2 AS
- Form W-2 GU
- Form W-2 VI
- Form W-2 CM
- Form W-2 PR / Form 499R-2

- (6) If an employer has an employee who changes residence between territories, or between a territory and the United States during the year, a separate Form W-2 must be prepared for each jurisdiction of the employee's residency.
- (7) If an employer inquires about FICA tax reporting, tell them to keep a record of the combined wages and stop withholding the social security tax when total wages equal the maximum taxable wage figure for the employee for the year in question (there is no ceiling on Medicare tax wages).

Note: Refer taxpayers to Publication 15, Circular E, Employer's Tax Guide.

21.8.2.3.8
(10-01-2021)
**BMF Employment
Returns - Form 940-PR,
Form 941-PR, Form
941-SS, Schedule
H/H-PR, and Form
943-PR**

- (1) Form 940-PR, Planilla para la Declaración Federal Anual del Patrono de la Contribución Federal para el Desempleo (FUTA), is an annual return filed by employers in Puerto Rico to report unemployment taxes.
- (2) Form 941-PR, Planilla Para La Declaración Trimestral Del Patrono -La Contribución Federal Al Seguro Social Y Al Seguro Medicare, is a quarterly tax return filed by employers to report FICA taxes expected. The return is filed by employers whose principal place of business is in Puerto Rico.
- (3) Form 941-SS, Employers Quarterly Federal Tax Return - American Samoa, Guam, The Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, is a quarterly tax return filed by employers in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands to report social security and medicare taxes for their workers.
- (4) ANEXO H-PR, Form 1040 Schedule H (PR), Contribuciones sobre el Empleo de Empleados Domésticos, is an annual return used by employers in Puerto Rico to report Federal employment taxes on wages paid to household employees. This form replaced Form 942 after 1994. Schedule H-PR is also filed by individuals as an attachment to Form 1040 or Form 1040-PR using their Social Security Number (SSN) to report wages paid to their household employees. It can also be filed as a "stand-alone" document.
- (5) Form 943-PR, Planilla para la Declaración Anual de la Contribución Federal del Patrono de Empleados Agrícolas, is an annual return filed by agricultural employers in Puerto Rico to report income tax withheld and FICA taxes paid to farm workers, including household employees working in a private home on a for-profit farm.
- (6) See IRM 21.7.2.3.3, FICA Taxes (including Additional Medicare Tax), for information on:
- Social security wage limits and tax rates
 - Medicare tax rates
 - Tax rate and other information for Additional Medicare Tax (AdMT) which is effective for tax periods ending after December 31, 2012.
 - Legislative impact on these taxes.

21.8.2.3.8.1
(10-01-2024)
**Adjusting the Tax on
Form 941-PR, Form
941-SS, and Form
943-PR**

- (7) See IRM 21.7.2.7.5.2, Form 7200 - Letter 6312 and Letter 6313 Replies, for guidance on handling phone and correspondence replies to these letters.
- (8) See IRM 20.1, Penalty Handbook, and IRM 20.2, Interest, for normal procedures to adjust penalties and interest.

- (1) Adjustments required on these forms are made using normal BMF procedures found in IRM 21.7.2.4, Employment Tax Returns Procedures.
- (2) The Master File Tax Code (MFT) for Form 941-PR and Form 941-SS is **01**.
- (3) The MFT for Form 943-PR is **11**.
- (4) The due dates are as follows:

Form	Due Date
Form 941-PR	April 30, July 31, October 31, and, January 31
Form 941-SS	April 30, July 31, October 31, and, January 31
Form 943-PR	January 31

- (5) Blocking Series **00** is used with the original return; **15** without the original return.
- (6) Item Adjustment Codes (see IRM 21.7.2.4.1, Item Reference Numbers (IRN's) and Credit Reference Numbers (CRN's) - Employment Taxes.

Reminder: IRN 111 (total income tax withheld) is not used with Form 941-PR, Form 941-SS, and Form 943-PR.

- (7) CP 175/185 notices, which were generated for unexplained adjustments to withholding, tips, or FICA, are no longer issued beginning in January 2009.
- (8) When agricultural employers file Form 941-PR, but should file Form 943-PR, refer to IRM 21.7.2.4.6.2, Incorrect Type of Return Filed - Forms 941 and 943.
- (9) Form 944 is the annual employment tax return for small employers. Instead of filing quarterly tax returns (Form 941), certain eligible employers file an annual tax return (Form 944). Refer to IRM 21.7.2.4.7, Form 944, Employer's ANNUAL Federal Tax Return, for instructions on adjusting accounts where Form 944 filers file Form 941.
- (10) When adjusting a tax account using REQ54, or transferring credits using ADD24/ADD34/ADD48, see IRM 21.8.2.2.10.
- (11) See IRM 21.7.2.7, for COVID-19 Related Employment Tax Relief, for guidance on COVID-19 related employment tax credits applicable to employment taxes.

21.8.2.3.8.2
(10-01-2024)
**Form 941-X(PR) and
Form 941-X**

- (1) Form 941-X(PR), Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund (Puerto Rico version), is filed to correct FICA tax information previously reported on Form 941-PR.
- (2) Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, is filed to correct FICA tax information previously reported on Form 941-SS.
- (3) Refer to the following IRM subsections for instructions for processing Form 941-X(PR) and Form 941-X:
 - Form 941-X Tax Decreases - Adjusted Employment Tax Return, see IRM 21.7.2.4.5.6.1, Form 941-X Tax Decreases - Adjusted Employment Tax Return
 - Form 941-X Tax Decrease - Claim for Refund, see IRM 21.7.2.4.5.6.2, Form 941-X Tax Decrease - Claim
 - Form 941-X Tax Increases - Adjusted Employment Tax Return, see IRM 21.7.2.4.5.6.3, Form 941-X Tax Increases - Adjusted Employment Tax Return
 - For FTD penalty calculation for Form 941-X tax increases and decreases refer to IRM 20.1.4.21.5, Adjusted Returns (Forms 941-X, 943-X, 944-X, 945-X, and CT-1X).
- (4) Prior to January 1, 2009, Form 941C or Form 941CPR was filed to correct withholding of FICA information previously reported on Form 941-PR, Form 941-SS, Form 943-PR, or Form 945.

21.8.2.3.8.3
(10-01-2015)
Sick Pay/SINOT

- (1) Employers and third-party payers who have employees that are residents of territories must withhold from these employees and pay employer FICA taxes on most sick pay.
- (2) Employers that make their own sick pay (SINOT) payments report the payment subject to FICA tax on Form 941-PR or Form 941-SS.
- (3) The third party is responsible for informing the employer of the amount of benefits paid and what portion is taxable.
- (4) Employers reduce the tax liability by subtracting the sick pay (SINOT) paid portion in the Tax Adjustments section.
- (5) Third party payer of sick pay (SINOT) must withhold and deposit the employee's portion of Social Security and Medicare taxes on their Form 941-PR or Form 941-SS returns.
- (6) If the employer sends a computer printout and payment, assess the additional tax. See IRM 21.7.2, Employment and Railroad Tax Return, for instructions on how to adjust the taxpayer's account.

21.8.2.3.8.4
(10-01-2022)
**Adjusting the Tax on
Form 940 and Form
940-PR**

- (1) FUTA applies only to the USVI and Puerto Rico, and not to American Samoa, the Commonwealth of the Northern Mariana Islands, or Guam.
- (2) The MFT for Form 940-PR is **10**.
- (3) The return is filed once a year with the tax period ending on December 31. The return is due on January 31.

- (4) The Blocking Series are **00** with original return; **15** without original return; **50** when the state certifies wages/contributions; **51** when the state certifies no record of wages/contributions.

Note: When adjusting an account that contains a previous FUTA adjustment, and resolution is based on the state certification data, a specific Blocking Series must be used. Refer to IRM 4.19.5.4.7.4, Special Adjustment Blocking Series.

- (5) Item references are:

- **TPR** (state code) followed by a dollar amount for tax increase or decrease
- **WPR** (state code) followed by a dollar amount for wage increase or decrease

Note: The total of the item reference code amounts for tax must equal the TC 290 or 291 tax adjustment. If no increase or decrease to tax or wages is made, item reference codes are not needed.

- (6) Only the first \$7,000 paid to each employee is subject to FUTA tax.
- (7) Some organizations, such as religious, charitable, and educational organizations, are exempt from FUTA taxes. If an organization claims to be exempt from FUTA taxes, refer to IRM 21.7.7, Exempt Organizations and Tax Exempt Bonds. Exempt organizations can be identified on the Entity module by Employment Code (EC) "W."
- (8) The FUTA certification program is the method IRS uses to verify with the states that the credit claimed on the Form 940-PR and or Schedule H was actually paid into the states' unemployment funds. Puerto Rico and the U.S. Virgin Islands participate in this program. On recertification cases:

If	Then
The 940-PR account has an additional TC 290 assessment (with Blocking Series 50 or 51) and the state certification is provided	1. Recompute tax based on the recertification figures see (9) below. See IRM 20.1.4.21.6.1, Computation of the FTD Penalty (CAWR and FUTA Notices.) 2. Input the adjustment with Blocking Series 50. 3. Adjust TC 180 if applicable.
The taxpayer is not aware of the FUTA assessment or disagrees or does not understand the additional assessment	1. Use Letter 3064SP or Letter 380C to explain the adjustment to the taxpayer and request that they obtain a recertification from the territory. See note below. 2. Input STAUP for eight cycles. 3. Do not adjust account at this time.

- (9) The Department of Labor in PR can be contacted at 787-754-5270 or 787-754-5272. The Department of Labor in the U.S. Virgin Islands can be contacted at 340-776-3700 or by writing to:

Employment Security Agency
P.O. Box 789
St. Croix, U.S. Virgin Islands 00820

- (10) Complete Form 940 adjustment procedures are found in IRM 21.7.3.4, Unemployment Taxes Procedures. Form 940-PR is adjusted in the same manner.

21.8.2.3.9
(10-01-2012)

**Form 945 - Annual
Return of Withheld
Federal Income Tax**

- (1) Form 945 is used to report federal income tax withheld or backup withholding. All non-payroll items, namely pensions, annuities, Individual Retirement Annuities (IRAs), military retirement, gambling winnings, Back-up Withholding (BUWH), and Indian Gaming Profits, are reported on Form 945. As a general rule, all income tax and BUWH reported on Form 1099 or Form W-2G must be reported on Form 945.
- (2) Some taxpayers file Form 945 when a Form 1042 should have been filed. However, a Form 1042-S is provided to the recipient instead of a Form 1099.
- (3) Form 945 is subject to Federal Tax Deposit requirements. The periodic liabilities are reported on Form 945A. Form 945 tax deposit requirements are separate from Form 941-PR or Form 941-SS; they cannot be combined. Taxpayers follow either semi-weekly or monthly deposit schedules. For additional information see IRM 20.1.4.8, Deposit Rules for Forms 941, 943, 944, 945, and CT-1, and see Publication 15, Circular E, for Federal Tax Deposit Requirements.
- (4) The threshold for making deposits is currently \$2,500, see IRM 20.1.4.6, De Minimis Exception to Deposit Requirements.
- (5) The return is filed annually with tax period ending on December 31 and the return is due on January 31, following the close of the calendar year.
- (6) The MFT for Form 945 is **16**.
- (7) The taxpayer is required to file only for a calendar year in which withholding tax must be reported on Form 945.
- (8) Blocking Series **00** is used with an original return; **15** without the original return.
- (9) Item reference numbers are:
- 003 - Federal Income Tax Withheld
 - 008 - Backup Withholding
 - 184 - Adjustments to correct administrative errors

Note: Adjustments on Form 945 can only be made if they are the result of an administrative error.

21.8.2.4
(10-01-2024)
**Household Employment
Taxes - BMF Procedures**

- (1) On January 1, 1995, the Social Security Domestic Employment Reform Act (SSDERA) of 1994 was enacted. As a result, domestic service employment taxes are now collected with income tax rather than employment taxes.
Note: See IRM 21.7.2.4.6.1, Wages Subject to FICA and Income Tax Withholding, for the cash wages thresholds not subject to FICA and Income Tax Withholding.
- (2) Domestic employees under the age of 18 are excluded from coverage beginning in 1995, 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) Wages paid after December 31, 1994 are reported on the employer’s Schedule H/H-PR attached to Form 1040, Form 1040A, Form 1040-NR, Form 1040-PR, Form 1040-SS, or Form 1041. Employers not liable for a Form 1040/A/NR/PR/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/A/NR/PR/SS with a Return Processing Code of “Y” or Form 1041 for BMF accounts.
- (4) Employers claiming the additional tax with their individual taxes report the tax on Line 7a on Schedule 2 (Form 1040), Line 59a on Form 1040-NR, or Line 4 on Form 1040-PR or Form 1040-SS. Employers claim the additional tax on Form 1041 using Line 7 on Schedule G.
 - a. This additional tax is included in the TC 150 amount.
 - b. Use the appropriate Blocking Series and RC 050 for IMF to adjust employment taxes from Schedule H/H-PR.
- (5) SSDERA requires the Schedule H/H-PR be filed for a calendar year. Fiscal year filers must report wages paid on a calendar year basis.

21.8.2.4.1
(10-01-2023)
**Schedule H/H-PR - BMF
Procedures**

- (1) Schedule H/H-PR has four parts:
 - Part I is social security, Medicare, and Federal Income Taxes (Contribuciones al Seguro Social y al Medicare).
 - Part II is Federal Unemployment (FUTA) Tax (Contribucion Federal para el Desempleo (FUTA).
 - Part III Total Household Employment Taxes (Total de Contribuciones sobre el Empleo de Empleados Domesticos).
 - Part IV is 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) Schedule H/H-PR may be filed by a Trust or Church etc., either by itself or with Form 1041.
- (3) Use the following Item Adjustment Code list to determine the appropriate reference numbers to use to adjust Part I, social security, Medicare, and Federal income taxes:

- 003 - Federal Income Tax Withheld
 - 004 - Taxable Social Security Wages
 - 007 - Adjusted total of SSA/Medicare tax
 - 073 - Medicare Wages
 - 074 - Taxable Wages & Tips subject to Additional Medicare Tax (AdMT) withholding (valid for tax periods beginning after December 31, 2012.)
- (4) 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 or W, followed by a two-character state code. See a list of state abbreviations in Exhibit 3.11.3-10, State Codes and Zip Codes Perfection Chart (State Order).
- (5) The three-character State Code is input systemically and converted to the applicable reference number.
- (6) FUTA taxes are due on wages paid to domestic employees if the employer paid total cash wages of \$1,000 or more (for all household employees) in any quarter in the current or preceding calendar year.

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

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

Example: The taxpayer reports \$1,300 FUTA tax paid to **Puerto Rico**. The tax examiner inputs State Code TPR for \$1,300 and the computer generates a TC 997 for \$1,300.

- (7) For adjustments involving Form 1041 with Schedule H, refer to IRM 21.7.4.4.1.10, Form 1041 Claims and Requests for Adjustments.

21.8.2.4.2
(10-01-2007)

Loose Schedule H/H-PR

- (1) When processing a loose Schedule H/H-PR, use the procedures in this IRM in conjunction with the procedures outlined in IRM 21 listed below. See IRM 21.8.2.4, Household Employment Taxes - BMF Procedures.

If	Then
The Taxpayer Identification Number (TIN) is a 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.
The TIN is an Employer Identification Number (EIN)	Follow the procedures in IRM 21.7.4.4.1.11, Social Security Domestic Employment Reform Act and BMF Schedules H.

If	Then
The Schedule H does not have a TIN	Research for a TIN using NAMEE or NAMEB for an EIN, NAMES or NAMEI for an SSN.

21.8.2.4.3
(10-01-2024)
**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. The provisions were revised and 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 can also be found in TD 9405, Publication 926, and IRM 20.2.10.5, Employment Taxes.
 - a. The interest-free provisions may apply to adjusted returns and original returns in certain cases of worker misclassification. 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 may 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 errors may only be made for quarters during the same calendar year. Adjustments to amounts reported as income 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 withheld is not the amount the employer actually 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 be able to correct it.
 - b. For underpayment errors discovered on or after January 1, 2009, the new 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 to be 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 was ascertained and the return period to which the error relates.
 - e. Use the following chart to assist in determining when to use a TC 298.

Reminder: If the amended return is filed for the immediately preceding tax period, it is not necessary to contact the taxpayer for an ascertained date. Input TC 298 with the applicable interest computation date. See the **EXCEPTION** in IRM 21.7.2.4.5.6.3(3), Form 941-X Tax Increases-Adjusted Employment Tax Return.

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 was ascertained	Assess the increase using TC 298 with an interest computation date of the earlier of the IRS received date of the amended return or due date for filing the amended return. Per Treas. Reg. 31.6205-1(b)(2) and IRM 20.2.10.5.3, Household Employment Taxes.
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 10.5.1.6.7.2, Answering Machine or Voicemail).

(3) Interest-free adjustments provisions.

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

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21.8.2.5
(10-01-2023)
Deposit Requirements

- (1) Deposit requirements for the PR series returns are the same as for their domestic counterparts.
- (2) Form 941-PR deposit requirements are the same as for Form 941 and are shown in IRM 20.1.4.8, Deposit Rules for Forms 941, 943, 944, 945, and CT-1.
- (3) Form 940-PR deposit requirements are different from the Form 941 requirements. The unemployment tax deposit requirements are:
 - If the tax liability is \$500 or less and it is the end of the first, second, or third quarter, the tax is carried over to the next quarter.
 - If the fourth quarter tax liability is \$500 or less, the tax is due by the due date of Form 940-PR, which is January 31, or it and can be mailed in with the return.
 - If the tax liability is over \$500, and it is the end of any quarter, then the tax must be deposited by the last day of the following month.

Note: For further information refer to IRM 20.1.4.9, Form 940 Deposit Rules.

- (4) FUTA Taxes are required to be deposited as follows:

Quarter	Ending Date	Due Date
1st	March 31	April 30
2nd	June 30	July 31
3rd	September 30	October 31
4th	December 31	January 31

- (5) Form 943-PR annual return deposit requirements: In general, when the employer and employee portions of social security, Medicare and withholding taxes are \$2,500 or more, the taxpayers must periodically deposit their employment taxes using their required monthly or semiweekly deposit schedule. When the total tax amount is less than \$2,500, the tax is considered de minimis, and can be remitted with a timely filed return.

- Beginning in 2001, the threshold for the deposit requirement was increased from \$1,000 to \$2,500.
- Circular A, Agricultural employers Tax Guide, Section 7 has more information on the deposit rules.

(6) Form 945, Annual Return of Withheld Federal Income Tax, withholding tax deposits must be made separately from FICA and Medicare taxes. The 941 and 945 tax liabilities cannot be combined when making deposits. The \$2,500 deposit threshold requirement also applies to Form 945.

21.8.2.5.1
(10-01-2018)
FTD Payment System

(1) Taxpayers who file Form 941-PR, Form 943-PR, or Form 945 are required to pay the tax on these returns by making Federal Tax Deposit (FTD) payments if the liability equals or exceeds a designated threshold amount during the tax period for which the return is filed. The table below lists the applicable thresholds.

Form	Tax Period Ending	\$ Threshold
941	200103 and subsequent	2,500 (See Note below table.)
943	200112 and subsequent	2,500
945	200112 and subsequent	2,500

Note: For tax periods beginning January 1, 2010 and subsequent, if the Form 941 total tax liability is less than \$2,500 for the current quarter **or** the preceding quarter is less than \$2,500 and the taxpayer did not incur a \$100,000 next-day deposit obligation during the current quarter, the tax due can be paid when the return is filed.

- (2) These deposits are paid using one of the electronic payment options.
- (3) Beginning January 1, 2011 taxpayers **must** use an electronic payment option for all Federal Tax Deposits. See Treas. Reg § 1.6302-2(c) referencing Treas. Reg § 31.6302-1(h)(2) (iii) which addresses the electronic payment requirement; correspondingly, Treas. Reg § 31.6302-1(h)(3) addresses the deposits covered by that requirement and references Treas. Reg § 1.6302-2. Any exception to the electronic payment requirement would be published in the IRB per Treas. Reg § 31.6302-1(h)(5).
- (4) When a taxpayer makes a deposit the bank transmits the deposit to the Treasury Financial Agent (TFA). If the TFA delays transmitting the deposit to the Treasury, the employers account may be charged an FTD penalty for a late deposit. **Do not** initiate a credit transfer to change the date of the deposit. See IRM 20.1.4.24.1, Treasury Financial Agent Mishandling, for case resolution instructions.
- (5) Penalties are imposed if deposits are:
- Late
 - Insufficient amounts
 - Made directly to IRS

- Not made electronically, if so required
(See IRM 20.1.4, Failure to Deposit Penalty, for more information.)
- (6) The FTD penalty must be considered anytime there is an adjustment to tax whether an increase or decrease. See IRM 20.1.4.23, Manual Adjustments, for complete instructions.
- (7) Research IDRS to determine if a CP 194 or CP 207 was previously generated, whenever tax or periodic liability information is being adjusted. See IRM 20.1.4.14.6, Schedule Indicator Codes (SIC).
- (8) The taxpayer may create a duplicate filing condition by filing a separate return with each FTD. Resolve these "A" freeze conditions using TRNS 193 procedures in IRM 21.7.9, BMF Duplicate Filing Conditions. Notify taxpayers to make deposits electronically when necessary.
- (9) For more information on deposits and FTD penalties, see:
 - Circular E
 - Circular A
 - IRM 20.1.4, Failure to Deposit Penalty

21.8.2.5.2
(10-01-2018)
**Electronic Federal Tax
Payment System
(EFTPS)**

- (1) Electronic Federal Tax Payment System (EFTPS) is a tax payment system offered free by the U.S. Department of the Treasury. EFTPS enables taxpayers to pay their federal taxes electronically using the internet or telephone. Both business and individual taxpayers can use EFTPS. See IRM 21.7.1.4.8.1, Electronic Federal Tax Payment System (EFTPS), for more information.
- (2) The use of paper federal tax deposit (FTD) coupons was eliminated for deposits made after December 31, 2010. See Treas. Reg § 31.6302-1(h)(2)(iii). Therefore, beginning January 1, 2011, businesses not already required to use Electronic Funds Transfer (EFT) that have a deposit requirement (such as employment tax, excise tax, and corporate income tax) are required to make their federal tax deposits via an EFT system. For further information see IRM 20.1.4.2.2, Authorized Deposit Methods, and IRM 20.1.4.2.2.1, Electronic Funds Transfer (EFT).

21.8.2.5.3
(10-01-2012)
**Deposit Penalties and
Penalty Relief**

- (1) Taxpayers are required to make electronic deposits and are subject to FTD penalties, including a 10% penalty for avoiding the required deposit method. (See IRM 20.1.4.2.2, Authorized Deposit Methods, and IRM 20.1.4.7.1, Time Sensitive Four Tier Penalty System.)
- (2) Reasonable cause penalty relief is available to taxpayers who have been assessed deposit penalties. See IRM 20.1.1, Introduction and Penalty Relief, and IRM 20.1.4, Failure to Deposit Penalty, for information on penalty relief.

21.8.2.6
(10-01-2007)
Excess FICA

- (1) Excess FICA claims (not Foreign Student Visa Claims) are IMF Criteria.
- (2) Route cases received in the BMF inventory to Philadelphia Accounts Management - IMF International Department.

21.8.2.7
(10-01-2023)

Visa Holders - General

- (1) This subsection provides background information; it does not contain adjustment procedures. There are many types of visas, both immigrant and nonimmigrant, that an alien individual traveling to the U.S. can obtain. The U.S. Citizenship and Immigration Services (USCIS) 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 who are temporarily in the U.S. on nonimmigrant visas are generally admitted for a specific purpose and for a specific period of time.

Note: Individuals granted certain nonimmigrant visas that are in compliance 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 nonimmigrant visa status, since taxation is otherwise based on a physical presence test. See IRC 7701(b)(3).

- (2) The USCIS website at <https://www.uscis.gov> and the Department of State website at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html> contain specific information on the various immigrant and non-immigrant visas available to individuals.
- (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 that is fixed, determinable, annual, or periodic income and all ECI that is effectively connected with a U.S. trade or business. 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. See IRM 21.8.1.12.10, Effectively Connected Income, and IRM 21.8.1.12.11, Non-Effectively Connected Income, for more information.
- (4) The following are types and definitions of visas most frequently recognized by IRS:

Visa Type	Definition
"H-1"	Are issued to alien temporary workers in a specialty occupation (profession).
"TN"	Are issued to alien Canadian and Mexican professionals entering under the North American Free Trade Agreement (NAFTA)
"F"	Are issued to alien students accepted as registered students by an educational institution or language learning program approved by the Attorney General.

Visa Type	Definition
"J"	Are issued to an alien entering for the purpose of teaching, instructing, 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"	Are 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"	Are 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 the purpose of providing practical training, employment, and the sharing of history, culture, and traditions of the country of the alien's nationality.

- (5) There are special rules for "F," "J," "M," and "Q" visa holders.
- Subject to certain limitations, individuals in the U.S. on a "F," "J," "M," or "Q" visa classification are treated as exempt individuals for purposes of the substantial presence test. As exempt individuals, their days of presence in the United States do not count toward meeting the substantial presence test for residence determination, and as a result, they are frequently determined to be nonresident aliens without regard to the number of days spent in the United States. See IRC 7701(b)(3)(D).
 - Individuals in "F," "J," "M," and "Q" visa status who are nonresident aliens and who are not otherwise engaged in a trade or business in the United States are treated as engaged in a trade or business in the United States if they receive U.S. source scholarship income or grants described in IRC section 1441(b).
 - "F," "J," "M," and "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 that this rule does not apply to an "M" visa holder. See IRC 871(c) and IRC 872(b)(3).
 - 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.

- e. These four types of visa holders are exempt from social security and Medicare taxes (FICA) on wages as long as 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.
- f. There are limitations on the length of time that an individual will be an exempt individual for purposes of the substantial presence test. In general, teachers, researchers and trainees who are 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 who are temporarily present in the United States under "F" or "M" 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 Pub 519 for additional information.

(6) See IRM 21.8.1.11, Visa Information, for a list of U.S. Citizenship and Immigration Services (USCIS) forms and their descriptions.

(7) See IRM 21.8.1.11, Visa Information, for a list of visas and their descriptions.

21.8.2.7.1
(10-01-2016)

**Foreign
Student/Nonresident
Visitors - Exemption
from FICA Tax**

(1) Per IRC 3121(b)(19), certain nonresident alien individuals temporarily present in the United States are exempt from FICA tax for services performed as specified in § 101(a)(15)(F), (J), (M), and (Q) of the Immigration and Nationality Act.

(2) The following documentation substantiates the exemption from FICA tax for the individual holding an F, J, M or Q visa:

- A copy of the Visa
- Immigration and Naturalization Form I-94 (Arrival - Departure Record), or other documentation showing the dates of arrival and departure.

Note: Overseas filers will no longer have a Form I-94 in their possession, since the USCIS keeps this document when the student/visitor leaves the United States.

(3) In addition to (2) above:

- F-1 students need Form I-20, (Certificate of Eligibility for Non-Immigrant (F-1) Students Status)

Note: Form I-766, (Employment Authorization Document) is needed **only** if the student is engaged in Optional Practical Training (OPT).

- J-1 visa holders need Form DS-2019 (Certificate of Eligibility for Exchange Visitor (J-1) Status).

(4) Per IRC 3121(b)(10) certain services performed by students are exempt from FICA. Regulations interpreting the elements of the student FICA exception are

applicable for services performed on or after April 1, 2005. Under the new regulations, the employer qualifies as a “school, college or university” if:

- Its “primary function” is the presentation of formal instruction
- It maintains a regular faculty and curriculum, and
- It has a regularly enrolled student body attending classes where the entity regularly conducts educational activities.

Note: This “primary function test” was added to prevent hospitals, museums, and other non-school entities from benefiting from the Student FICA Exception.

(5) Under the regulations, to be considered a “student,” an employee must be:

- Enrolled in credit courses leading to an education credential and regularly attending classes at the employing school, college or university or affiliated organization, and
- Pursuing a course of study required for an educational credential or necessary for an examination or certification required in the field of study.

Note: Refer to Rev. Proc. 2005-11 for rules regarding the safe harbor for students carrying a half-time workload.

(6) Foreign agricultural workers temporarily admitted to the United States on H-2A visas are always exempt from U.S. social security and Medicare taxes, whether they are resident aliens or nonresident aliens. Allow claims from H-2A visa holders requesting refunds of erroneously withheld FICA tax provided they submit the information listed below. Process claim using procedures in Processing Employee Claims. See IRM 21.8.2.7.3.

- W-2(s) showing the tax withheld
- A copy of the visa showing the immigration status H-2A.

Note: Correspond with taxpayer for missing information using normal case suspense procedures.

21.8.2.7.1.1
(11-06-2017)
**Optional Practical
Training (OPT) and
Curricular Practical
Training (CPT)**

(1) This subsection provides background information; it does not contain adjustment procedures. F-1 and M-1 students may engage in two types of temporary employment that is directly related to their area of study: Optional Practical Training (OPT) and Curricular Practical Training (CPT). F-1 and M-1 students may be authorized to receive up to 12 months of full-time practical training at each educational level (e.g., a bachelor’s level, a master’s level), but students who receive science, technology, engineering, and mathematics (STEM) degrees may apply for an additional 17 months of OPT (OPT STEM Extension).

Note: M-1 students may engage in practical training only after they have completed their studies. F-1 students may participate in practical training before (pre-completion) and/or after (post-completion) they complete their studies. In order to be eligible for pre-completion OPT, F-1 students must have been enrolled for and completed one full academic year in the United States.

(2) Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 or M-1 student’s area of study. F-1 and M-1 students may

apply for OPT by filing an Application for Employment Authorization Document (Form I-765) with the USCIS. If approved, the USCIS will issue an Employment Authorization Document (EAD) (Form I-766) to the student. The EAD will indicate on the front that it is for OPT. The permit allows employment either on or off the campus of the university that issued the student's Form I-20.

- a. F-1 students often transfer to H-1 status before their OPT authorization ends. It is possible for someone who is currently in H-1 status to be eligible for a FICA refund provided the FICA was withheld from wages they earned while the OPT was in effect. They must meet the restrictions of IRC 3121(b)(19).

Note: M-1 students may not transfer to any H visa status if the training they received in the United States provided the qualifications for the employment they are seeking.

Note: Form I-797, Notice of Action, is a notice used by USCIS to notify an applicant of the approval of any change in status. It is also used as a receipt notice when an application is received and is pending at USCIS.

- b. Students with H-1 status, who previously had been F-1 or Q visa holders, can obtain a refund of FICA withheld up to the date their status was changed to H-1, if their EAD dates are current.
- (3) Curricular Practical Training (CPT), is alternative work/study, internship, cooperative education, or similar program that is offered by sponsoring employers through cooperative agreements with the F-1/ M-1 student's academic institution. A CPT must be part of an established curriculum.
- a. The work permit is reflected on the back of the student's Form I-20 and is employer-specific.
 - b. The student **will not** have an EAD for CPT work authorization.

21.8.2.7.2
(10-01-2023)
**Validating
Exemption/Qualification**

- (1) When a claim is received for a refund of erroneously withheld FICA tax, verify the claim is valid, i.e.:
- Form 1040-NR filed within the statutory period
 - Individual is in a nonimmigrant visa status that is eligible for the exemption
 - Employee has provided a statement from the employer indicating the amount of the reimbursement the employer provided (if any) and the amount of the credit or refund the employer claimed, or was authorized by the employee to claim
- (2) Follow the table below to determine if the claim can be processed:

If	Then
<p>Research shows there is no account on record and no tax return was filed</p>	<p>Send Letter 513C to request the filing of Form 1040-NR. Use an applicable paragraph or statement, such as: Because our records do not indicate a Form being filed on your behalf, we are unable to process your claim. The Form 1040-NR is an essential part of the erroneous withheld FICA process and therefore necessary 1040-NR to process your claim. If your Form 1040-NR has been filed since submitting this claim, please resubmit this claim with the indication "1040-NR." If you have not filed, complete and submit a Form 1040-NR with a copy of this claim we are returning to you, and this letter. Please indicate "1040-NR filed" on your 843 claim OR Because we do not have a record of receiving an income tax return for this tax period, we are unable to process your claim at this time. Please resubmit your claim six weeks after the return is filed.</p> <p>Note: Advise the employee of any additional information needed for a complete claim. Include the CII Case ID in the letter header information using the variable fill-in field after the "Form" field.</p>

If	Then
<p>Research shows the employee filed a tax form other than Form 1040-NR</p> <p>Note: Dual Status filings may occur when residency status changes. Use care to properly adjust accounts when a dual-status return is filed (e.g., a Form 1040 with a Form 1040-NR attached as a statement, or a Form 1040-NR with a Form 1040 attached as a statement). See IRM 21.8.1.13, Dual-Status Aliens, for information on dual status.</p>	<p>Reject the claim as follows:</p> <ol style="list-style-type: none"> 1. Input TC 290 .00 with the appropriate Blocking Series. See IRM 21.5.1.5.3, CII Source Documentation, and Document 6209, IRS Processing Codes and Information, for the appropriate Blocking Series. 2. Send Letter 916C with an applicable paragraph or statement, such as: Because our records indicate that you filed a Form 1040, U.S. Individual Income Tax return, we are unable to process your claim. The filing of the Form 1040 indicates that you are a resident of the United States for tax purposes. As a resident of the United States, you are not exempt from FICA Tax OR Because our records indicate that you filed a tax form other than the Form 1040-NR, we are unable to process your claim. The Form 1040-NR is an essential part of the erroneously withheld FICA tax process because it identifies you as a Nonresident Alien. Because you did not file the Form 1040-NR declaring your Nonresident Alien status, you are not exempt from FICA Tax. <p>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).</p>
<p>The claim is received after the statute for refund has expired (i.e., a claim that was not timely filed) is not valid and must be disallowed.</p> <p>Note: Check postmark date to determine timeliness. See IRM 21.8.2.2.5.</p>	<ol style="list-style-type: none"> 1. Input TC 290 .00 with Blocking Series 98/99 on the requester's tax account 2. Send Letter 105C and explain the claim was not timely filed (include appeal rights).
<p>The claim is received with an J-2, F-2, H-1, or TN visa</p> <p>Note: This is not a valid claim and must be disallowed.</p>	<ol style="list-style-type: none"> 1. Input TC 290 .00 with Blocking Series 98/99 on the requester's tax account 2. Send Letter 105C with the following fill-in: "We have disallowed your claim because, in accordance with Title 26, §3121(b), your entry visa does not qualify you for exemption from FICA tax on wages."

If	Then
<p>A teacher or trainee in the United States with a J or Q visa submits a claim AND does not meet the substantial presence test</p> <p>Note: A teacher or trainee is an individual, other than a student, who is temporarily in the United States under a “J” or “Q” visa and substantially complies with the requirements of that nonimmigrant status. For example, researchers, scholars, and physicians who are present in “J” or “Q” visa are included within the definition of “teacher or trainee.”</p>	<ol style="list-style-type: none"> 1. Review previously filed returns to ensure the teacher or trainee was not an exempt student, teacher or trainee 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). 2. Continue processing the claim using procedures in IRM 21.8.2.7.3.
<p>A teacher or trainee in the United States with a J or Q visa submits a claim AND does meet the substantial presence test.</p> <p>Note: The substantial presence test has been met if the employee has filed returns in 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).</p>	<ol style="list-style-type: none"> 1. Input TC 290 .00 with Blocking Series 98 or 99 on the requestor’s tax account 2. Send Letter 105C with the following fill-in: “We have disallowed your claim because in accordance with Internal Revenue Code 7701(b) you meet the substantial presence test and are considered a resident alien. Therefore, you do not qualify for exemption from FICA tax on wages.”
<p>A student in the United States with an F, J, M, or Q visa submits a claim AND does not meet the substantial presence test</p>	<ol style="list-style-type: none"> 1. Review previously filed returns to ensure the student was not exempt as a teacher, trainee, or student for any part of more than 5 calendar years. 2. Continue processing the claim using procedures in IRM 21.8.2.7.3.

If	Then
<p>A student in the United States with an F, J, M, or Q visa submits a claim AND does meet the substantial presence test</p> <p>Note: Check for Form 1040-NR filing. Disallow if Form 1040-NR was filed for more than 5 consecutive years.</p> <p>Exception: A student who has been exempt as a student, teacher or trainee for any part of more than 5 calendar years may still qualify as an exempt individual and be exempt from FICA tax provided the student can show evidence they do not intend to reside permanently in the United States. Evidence may consist of, but is not limited to:</p> <ul style="list-style-type: none"> • Maintaining a tax home in a foreign country during the year • Maintaining more significant contact (closer connection) with the foreign country, where the student has a tax home, than with the U.S. • Being present in the U.S. for less than 183 days during the year (usually occurs in the final year of education or training) <p>Note: These requirements are further explained in Pub 519, U.S. Tax Guide for Aliens.</p>	<ol style="list-style-type: none"> 1. Input TC 290 .00 with Blocking Series 98 or 99 on the requestor's tax account 2. Send Letter 105C with the following fill-in: "We have disallowed your claim because in accordance with Internal Revenue Code 7701(b) you meet the substantial presence test and are considered a resident alien. Therefore, you do not qualify for exemption from FICA tax on wages."
An individual claims exemption from FICA tax under a Totalization Agreement - Bilateral Social Security Agreement	See IRM 21.8.2.8, Totalization Agreements - Bilateral Social Security Agreements, for additional information.

21.8.2.7.3
(03-18-2020)

**Processing Employee
Claims**

- (1) All adjustments are done on the employer's Form 941 or Form 944 (Form 943 for H-2A claims) account and the resulting credit is transferred to the employee's individual account for refunding to the employee.
- (2) Follow the table below to determine if the required forms and substantiation required to process a **F-1, J-1, M-1, and Q visa** claim is complete:

Form/Substantiation	Additional Information
Form 843	A completed and signed Form 843 for each employer Note: If the claim is for more than one employer, but otherwise complete with all required documentation, process the claim.
Form 8316 or signed claim/ statement verifying that unsuccessful attempts have been made to obtain a refund from the employer.	Statements in lieu of the Form 8316 must include all the information requested on the Form 8316.
A copy of the employee's visa	Canadian citizens are not required to have a visa to enter the United States directly from Canada for the purposes of visiting or studying.
Form(s) W-2 or Form 4852	If not provided, attempt to verify the withholding amount using CC IRPTR. Note: If the visa status changed, a copy of a pay statement with cumulative tax information is needed to verify the FICA amount claimed.
Form I-94, Arrival/Departure Record, or other documentation showing the dates of arrival and departure	Overseas filers may not have Form I-94 since the U.S. Citizenship and Immigration Services (USCIS) keeps this document when the student/visitor leaves the United States.
DS-2019 (for J-1 visa only)	

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Form/Substantiation	Additional Information
Form I-20 (for F-1 and M-1 visas only)	<ul style="list-style-type: none">If the student is engaged in Optional Practical Training (OPT), Form I-766, Employment Authorization Document, is also required, see IRM 21.8.2.7.1.1.If Curricular Practical Training (CPT) the employer must match. <p>Caution: The employer may be a leasing company or a payroll company. The employer may be verified using Command Code (CC) IRPTR.</p>

(3) Follow the table below to determine if the required forms and substantiation required to process a **H-2A visa** claim is complete:

Form/Substantiation	Additional Information
A copy of the visa	Foreign agricultural workers temporarily admitted to the United States on H-2A visas are always exempt from U.S. social security and Medicare taxes, whether they are resident aliens or nonresident aliens
Form(s) W-2 or Form 4852	If not provided, attempt to verify the withholding amount using Command Code (CC) IRPTR. Note: If the visa status changed, a copy of a pay statement with cumulative tax information is needed to verify the FICA amount claimed.

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- (4) For **A, G, or other visa** status claims, contact your lead to verify qualification for exemption and required claim documentation.
- (5) If the employee has filed the appropriate tax return (Form 1040-NR) and submitted the proper documentation, do the following:
- a. Verify the employer has filed the final quarter Form 941 or annual Form 943/944 for the tax year corresponding to the claim.

- b. If the employer's Form 941 return for the final quarter is not located or the account is in balance due status, adjust the preceding quarter, which must be within the same tax year.

Example: If the final quarter for the tax year ending 201812 is not located, adjust 201809, then 201806 or 201803 in that order. If all quarters in the same tax year have a balance due, then follow procedures in IRM 21.8.2.7.3.1(2).

- c. If the employer's full paid Form 941/943/944 can't be located, perform the necessary IDRS research for the correct EIN.

Reminder: The EIN provided may be the parent or subsidiary of another company or part of a merger/takeover, etc.

- d. If, after all available research has been exhausted, you are still unable to determine the filing of a return, or a full paid module, or the employer is in a balance due status for all quarters of, or the annual return for, the tax year in which the claim was filed, disallow the claim on the requester's income tax account. Refer to IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures; include the following open paragraph in the disallowance letter:

Open Paragraph
Because our records do not indicate any payments being remitted to the Internal Revenue Service on your behalf for the particular tax period in question, we cannot allow the refund. You should contact your employer for the refund or to have them supply us with information substantiating that the payments corresponding to the taxes in question were paid.

Note: If the balance due on the employer's account (Form 941/943/944) is because of a penalty, the FICA claim may still be processed. See IRM 21.8.2.7.3.1(2), Adjusting Employee Visa Claims, for procedures to avoid an unpostable credit transfer.

- (6) If an incomplete claim for FICA tax is received:
 - a. Send Letter 513C to the claimant requesting the employee seek reimbursement from the employer. Advise the employee of any additional information needed for a complete claim. Include the CII Case ID in the letter header information; use the variable fill-in field after the **Form** field.
 - b. When sending a Letter 513C to the **employee**, also send a Letter 512C to the **employer** (unless Letter 512C was previously sent) advising the employer to reimburse the employee for any erroneously withheld FICA taxes and to file a Form 941-X, Form 943-X, or Form 944-X to correct the errors.

Note: These two letters are issued at the same time and reference each other in their content.

- (7) Refer to IRM 21.5.3, General Claims Procedures, for information on claim processing.

21.8.2.7.3.1
(11-07-2022)

**Adjusting Employee
Visa Claims (Employer's
Account - BMF)**

- (1) When the employee has filed the appropriate tax return (Form 1040-NR), submitted the proper documentation, and you have located the employer's Form 941/943/944:
- Input a TC 291 with appropriate Item Adjustment Codes to abate the student's portion of the FICA/Medicare wages and tax on the employer's account.

Caution: Pay special attention if a TC 606 is present in the employer's account. This transaction reverses when the TC 291 posts, which will cause the credit transfer part of the process to unpost if TC 606 is not addressed. See IRM 21.5.8.4, IDRS Guidelines for Credit Transfers, for additional information.

- Use Hold Code 4 and Blocking Series 15.
- Use Priority Code 8, if applicable, to avoid Unpostable Code (UPC) 328 RC 2.
- FLC 60.
- Category "IETP."
- Source Document (SD) employee portion of FICA (Attach Form 843 to the adjustment).
- Acknowledge all transactions that may be restricting the account. Do not overlay the "CORR DATE" field.
- Transfer credit from the employer's account to the employee's account. See (2) below.
- Inform the employer of the adjustment action using the new Paragraph "E" now available in Letter 512C (if the employer was sent the 512C Letter previously, then send Letter 288C. Refer to IRM 21.8.2.7.3 (6) b), for one explanation of why the employer may have been sent a 512C Letter previously.

Note: When sending Letter 288C you must use the statement as shown in the "Open Paragraph" below. Letter 288C is being revised to add a new paragraph containing the same statement. The Letter 288C revision is scheduled to be available in April 2016. Once the Letter 288C is revised you will use the new paragraph.

Open Paragraph
Because you didn't reimburse the tax you erroneously withheld from your foreign employee, (name, SSN of employee), when we sent you a 512C Letter , we adjusted your wages by \$x,xxx.xx and refunded the tax to the employee. Please adjust your account accordingly on the attached Form (941-X, 943-X, or 944-X) for your portion of the tax. You must also file Form W-2C, Corrected Wage and Tax Statement.

- **Combined Annual Wage Reporting (CAWR) will assess additional tax on the employer's account if the employer does not file an amended Form (941-X, 943-X, or 944-X), Form W-2C, and Form W-3C to correct the wages. Therefore, it is imperative to inform the employer of the adjustment action using the Letter 512C or Letter 288C, as appropriate.**

- (2) When transferring the erroneously withheld FICA credit from the employer's account to the employee's account, input the following on IDRS using CC ADD24:
- Input TC 820 (for the amount of the TC 291) to the employer's account (Form 941/943/944). Use the normal (un-extended) due date of the Form 941, Form 943, Form 944 or the payment date (whichever is later) as the transaction date. If there will be credit remaining on the account after the credit transfer posts, input TC 570 on this transfer and a TC 571 with a Posting Delay Code 4. If the employer account being adjusted has a balance due in the account being adjusted, do not use a TC 820. Instead, input a TC 652 or 672 to avoid an unpostable situation (Unpostable Code (UPC) 325). Apply credits (TC 650/670) beginning with most current paid date.

Caution: When the module balance is less than the erroneously withheld FICA credit, follow standard adjustment procedures, which may require adjusting or moving a credit from a prior quarter.

- Input TC 700 to the employee's account with a secondary TC 570 if a manual refund is being issued (when withholding is required on the interest). The transaction date of TC 700 is the later of: (1) The normal due date of the Form 1040-NR return, or (2) The date of the payment(s) transferred from the Form 941/943/944.

Note: When changing a credit date, an override code "2" is needed on both the debit and credit parts of the transfer to bypass the debit/credit date consistency check.

21.8.2.7.3.2

(11-06-2017)

Adjusting Employee Visa Claims (Employee's Account - IMF)

- (1) Determine if the employee is entitled to interest on the amount of FICA tax erroneously withheld, using either their return due date or any other applicable date. Interest is allowed on:
- Prior and current year returns/claims worked after the 45-Day interest-free period.
- Note:** To determine interest "from" and "to" calculation dates, refer to IRM 20.2.4, Overpayment Interest.
- If entitled, the interest must be manually computed using Command Code COMPA or ACT/DMI, InterestNet. See IRM 20.2.1.6, Interest Computation Tools and Reports: Systemically Calculated Interest.
 - If the employee is not entitled to interest, skip the interest withholding procedures. Follow local procedures to allow a computer-generated refund.
- (2) When the employee is entitled to interest, determine the correct tax rate and amount of tax to be withheld from interest, if applicable, per IRC 1441. A manual refund must be prepared if withholding tax from interest. Refer to related tax treaty amounts in the Tax Treaty Tables located at: <https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables>.

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- (3) Procedures for tax withheld from **refund interest** on the employee account (IMF):

Caution: The Form 1042-S is a dollar only form and must be rounded per the instructions. Therefore, when preparing the forms below and inputting the TC 770 adjustment, all amounts must be rounded to match the amounts on the Form 1042-S.

- a. Prepare four-part Form 5205.
- b. Prepare five-part Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.
- c. Input a TC 290 .00 with a TC 770 for the total amount of tax withheld from refund interest (typically 30% of the amount determined in Paragraph (1) above, see IRC 1441 for the 14% exception). Use Blocking Series 05, Source Code 1, Reason Code 099, file location code 98, Hold Code 4 and a 2 cycle posting delay (use 6 cycle posting delay if Form 1040-NR was sent to be processed), NSD with CII Indicator 1, and the CII Case ID of the BMF Visa Claim. The "CR-INT-TO-DT" for the TC 770 will be the refund schedule date of Form 5792.
- d. Prepare Form 3809 with a TC 850 to debit the employee's account and a TC 730 to credit the 4610 Account (NMF) for the amount of tax being withheld from refund interest. The debit date of TC 850 is the 23C Date of the posted TC 770. The credit date of TC 730 is the "CR-INT-TO-DT" for the TC 770.

Reminder: See IRM 21.4.4.6.1, Monitoring Manual Refunds, for monitoring requirements.

- (4) Prepare the manual refund, Form 5792, for processing to the employee's account. Prior to preparation of the manual refund, check for any outstanding balances due under the employee's TIN or Individual Taxpayer Identification Number (ITIN). Offset to pay outstanding balances prior to determining the overpaid amount.
 - The overpayment amount is the amount of the employer's tax decrease, which has been transferred to the employee's account as a TC 700. See IRM 21.8.2.7.3.1(2), Adjusting Employee Visa Claims (Employer's Account - BMF).
 - The TC 770 amount, when applicable, is the net interest amount calculated in Paragraph (3) (c) above.
 - The TC 840 is the total of these two amounts.
- (5) Submit the manual refund document (with the interest calculations), and all other forms and research along with the claim, to the manager for review.
- (6) Once the manager has given approval, forward Form 5205, Form 843 Claim, Form 1042-S (copies A thru D), Form 5792 (manual refund document), entire Form 3809, and the interest computation sheet to Accounting.

21.8.2.7.4
(10-01-2024)
**Claims from the
Employer**

- (1) Employer claims must be filed on the appropriate Form 94XX when requesting a refund for erroneously withheld FICA. See IRM 21.7.2.5.10.2, Employer Claims Involving Foreign Students, for processing these claims.

21.8.2.7.5
(10-01-2017)

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21.8.2.8
(10-01-2007)
**Totalization Agreements-
Bilateral Social Security
Agreements**

- (1) The United States has entered into Bilateral Social Security Agreements with many foreign countries in order to eliminate dual coverage and dual contributions to the social security system for the same work.
- (2) The Bilateral Social Security Agreement generally ensures that social security taxes (including Self Employment (SE) tax) are paid to only one country. See IRM 21.8.2.8.3, Claims of Exemption from FICA Tax by Reason of Bilateral Social Security Agreement, for a list of countries.

21.8.2.8.1
(10-01-2023)
**Substantiation of
Exempt Status**

- (1) In order for an individual or for the individual's employer to substantiate the individual's exemption from FICA under the terms of a Bilateral Social Security Agreement, the individual or the employer must secure an Exemption Statement (a 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 U.S. has agreements do not issue certificates of coverage. In those cases, the employee or the employer must request a statement from the following address:

Social Security Administration
Office of Earnings and International Operations
P.O. Box 17741
Baltimore, MD 21235-7742
- (3) For the employee or the employer to establish that the employee's income is subject to **only** 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 410-965-1977
 - Faxing to 410-966-7025, or
 - Accessing the SSA Web site at <https://www.ssa.gov/international>
- (4) Correspondence for exemption statements must include:
 - Employee's name
 - Employee's U.S. social security number
 - Employee's date and place of birth

- Employee's citizenship
- Employee's country of permanent residence
- Employee's place and date of hiring
- 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 employment in the foreign country
- The U.S. employer point of contact information (name and telephone number) to verify the employment information.

Note: Some countries may require additional information. Access the SSA's website at: https://www.ssa.gov/international/agreement_descriptions.html.

- (5) The Exemption Statement must be maintained by the employer as it establishes that the employee's pay is exempt from taxation in the foreign country.

21.8.2.8.2
(10-01-2023)
**Social Security Tax
Obligation**

- (1) The following charts summarizes social security tax obligation of U.S. citizens and resident aliens who are working in a foreign country:

If	Then
<p>Sent abroad by a U.S. employer for less than 5 years</p> <p>Note: The 5-year rule described above (also referred to as the "detached worker rule") generally applies with respect to countries with totalization agreements with the U.S. (except Italy).</p>	<p>The taxpayer pays U.S. social security tax only.</p>
<p>Sent abroad by a U.S. employer for more than 5 years</p> <p>Note: The 5-year rule described above (also referred to as the "detached worker rule") generally applies with respect to countries with totalization agreements with the U.S. (except Italy).</p>	<p>The taxpayer pays foreign social security tax.</p>

If	Then
Working for a foreign employer	The taxpayer pays the foreign social security tax only, unless the foreign employer is an affiliate of a U.S. employer that has entered into the contract coverage under Title II of the Social Security Act with the U.S. Treasury Department, by filing a Form 2032, Contract Coverage under Title II of the Social Security Act, with IRS that has been approved.
Working for the U.S. government	Taxpayer pays U.S. social security tax only.
Self-employed	Taxpayer generally pays U.S. self-employment tax.

Caution: There are some exceptions to these rules. Consult provisions of the applicable Totalization Agreement, which is available on the Social Security Administration's website at: *Totalization Agreement*.

Note: IRC 3121(l) addresses an agreement between the IRS and a U.S. company to extend U.S. social security coverage to a U.S. citizen and U.S. resident employees performing services outside the U.S. for a foreign employer affiliated with the U.S. company. If the agreement has been accepted by the IRS, then the U.S. citizen and U.S. resident employees of that foreign employer are subject only to U.S. social security taxes if working for 5 years or less for the foreign employer.

- (2) 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
<p>Sent by a foreign employer for less than 5 years in the United States</p> <p>Note: The 5-year rule described above (also referred to as the "detached worker rule") generally applies with respect to countries with totalization agreements with the U.S. (except Italy).</p>	Taxpayer pays foreign social security tax only.

If	Then
<p>Sent by a foreign employer for more than 5 years in the United States</p> <p>Note: The 5-year rule described above (also referred to as the “detached worker rule”) generally applies with respect to countries with totalization agreements with the U.S. (except Italy).</p>	<p>Taxpayer pays U.S. social security tax only.</p>

Reminder: There are some exceptions to these rules. Consult provisions of the applicable Totalization Agreement, which is available on the Social Security Administration’s website at: *Totalization Agreement*.

21.8.2.8.3
(10-01-2023)

**Claims of Exemption
from FICA Tax by
Reason of Bilateral
Social Security
Agreement**

(1) Claims of erroneously withheld FICA tax must include:

- Form 843, Claim for Refund and Request for Abatement
- Copy of Form W-2 (to prove the amount of social security and Medicare taxes withheld)
- Social Security Tax Exemption Statement
- A signed statement from the employee, or from the employer, or Form 8316, Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type, whichever is applicable
- A copy of Form I-94 (or other documentation showing the dates of arrival and departure).

Note: Copy of Visa or Form I-94 is needed only if not a U.S. citizen.

Note: Overseas filers no longer have the Form I-94 since the USCIS keeps this document when the student/visitor leaves the United States.

(2) The signed statement included in the claim must state that unsuccessful attempts have been made to secure refund of the erroneously withheld FICA tax from the employer. A Form 8316 may be used for this purpose.

(3) 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
- Mexico
- Netherlands
- Norway
- Poland
- Portugal
- Slovak Republic
- Slovenia
- South Korea
- Spain
- Sweden
- Switzerland
- The United Kingdom
- Uruguay

21.8.2.8.4
(10-01-2012)
**Processing Bilateral
Agreement Claims**

- (1) All bilateral agreement claim adjustments are input on the employer's Form 941 and the resulting credit is transferred to the employee's account for refunding. See IRM 21.5.3, General Claims Procedures.
- (2) If the employee has filed the appropriate tax return and submitted the proper documentation, process as follows:
 - a. Verify that the employer has filed the final quarter Form 941 for the tax year corresponding to the claim.
 - b. If the employer's return for the final quarter is not located, or the account is in balance due status, adjust the preceding quarter, which must be within the same tax year.

Example: If the final quarter for the tax year ending 201712 is not located, adjust 201709, then 201706, then 201703 in that order.
 - c. If the employer's full paid Form 941 account cannot be located, research CC ENMOD and/or CFOL to check for the possible usage of another EIN due to a takeover, merger, etc.
 - d. If, after all research available has been exhausted, and it cannot be determined that a return has been filed, that a full paid module exists, or the employer is in balance due status for all quarters of the tax year in which the claim was filed, reject the claim and include the following statement:

Open Paragraph
<p>Because our records do not indicate any payments being submitted to the Internal Revenue Service on your behalf for the tax period in question, we cannot allow the refund. You should contact your employer either for the refund, or to have them supply us with information substantiating that the payments corresponding to the taxes in question were paid.</p>

Exception: If the balance due on the employer's account (Form 941) is because of a penalty, the claim may still be processed. **Take steps to avoid creating unpostable transactions.**

21.8.2.9
(10-01-2007)
**Foreign Form 1120
Series Returns**

- (1) Every foreign corporation must file a Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, or Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation, if the corporation:
 - Is engaged in a trade or business within the United States (USTB) any time during the taxable year.
 - Has income from United States sources that is not effectively connected with the conduct of a trade or business within the United States if tax liability is not fully satisfied by withholding of tax at source (See IRM 21.8.1.12.11, Non-Effectively Connected Income).
 - Has income that is, or is treated as if, effectively connected with the conduct of a USTB. (See IRM 21.8.1.12.10, Effectively Connected Income).
 - Has overpaid U.S. income tax and is requesting a refund.
- (2) Refer to Form 1120-F instructions for others who must file.
- (3) Refer to IRM 21.7.4, Income Taxes/Information Returns, for general adjustment procedures.

21.8.2.9.1
(10-01-2018)
**Form 1120-F, Income Tax
Return of a Foreign
Corporation**

- (1) Form 1120-F is used to report a foreign corporation's U.S. income, gains, losses, deductions, and credits, to figure its income tax liability, and to claim any refunds due. A foreign eligible entity that has elected to be treated as a corporation generally will be treated as a foreign corporation. The income, gains, losses, deductions, and credits of a U.S. limited liability company will be treated as income, gains, losses, deductions, and credits of the foreign corporation owner, provided that the limited liability company has not elected to be treated as a corporation and is wholly owned by one foreign corporation.
- (2) A foreign corporation engaged in a USTB during the taxable year will be taxed on its income which is effectively connected (ECI) with the conduct of such USTB.
 - a. A foreign corporation that has a USTB may not be taxed on its ECI if it is a resident of a treaty partner country. In this respect the foreign corporation must make a Treaty-Based Return Position Disclosure on Form 8833 and attach the form to its Form 1120-F.
 - b. A foreign corporation that is not a resident of a treaty partner country; or is a resident of a treaty partner country but does not qualify to claim treaty benefits must file a Form 1120-F and pay tax on its ECI.

21.8.2.9.2
(10-01-2020)
**Form 1120-F Filing
Requirements**

- (3) A foreign corporation, regardless of its country of residence, which receives fixed, determinable, annual or periodic (FDAP) income from U.S. sources that is not ECI generally must file a Form 1120-F and pay the tax owed if its tax liability with respect to such income is not fully satisfied by withholding at source. In this respect, the Forms 1042-S it has received generally would reflect the amount of income and tax that have been withheld.

- (1) A foreign corporation's due date to file depends on whether it has an office or place of business in the United States.

Note: Beginning January 2019, Letter 6098C, Filing Requirements for Foreign Corporations, will be sent to certain corporations explaining Form 1120-F filing requirements. If you receive a call regarding this letter, explain to the taxpayer they can use the information in the letter as well as in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, to determine if they are required to file Form 1120-F. The IRS cannot make a determination of whether a taxpayer is required to file Form 1120-F.

- (2) For a foreign corporation that does not maintain an office or place of business in the United States, the Form 1120-F return is due the 15th day of the 6th month after the end of its tax year, unless an extension is filed. See IRM 21.8.2.2.5, Timeliness Determinations.
- a. To request an extension of time to file, a foreign corporation files Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, on or before the return due date.
 - b. A foreign corporation is considered a taxpayer abroad within the meaning of IRC 6081(a) and therefore may request an extension beyond the standard six months provided when filing Form 7004. (See IRM 3.11.16, Corporate Income Tax Returns, for guidance.)
- (3) For tax periods beginning after December 31, 2015, a foreign corporation that maintains an office or place of business in the United States must either file Form 1120-F by the 15th day of the 4th month after the end of its tax year (but by Sept. 15 if the tax year ends on June 30) or get an extension of time to file by the same return due date. To get an extension, the corporation may either:
- a. File Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, by the return due date.
 - b. Get an extension to the 15th day of the 6th month after the close of the tax year by attaching the statement described in Treas. Reg. §1.6081-5 to Form 1120-F. If additional time is needed beyond this extension, then a Form 7004 must be filed before it ends to obtain an extension of six months from the original due date of the return.
- (4) Extensions do not extend the time for payment of the tax. Tax must be paid by the due date of the return, without extensions.

Exception: Foreign corporations that follow the procedures under Treas. Reg. §1.6081-5 are entitled to pay on the 15th day of the 6th month after the close of their tax year. However, this extension does not extend the payment date for interest. Interest will be calculated beginning with the original due date.

21.8.2.9.3
(10-01-2021)
**Payment of Tax Due -
Form 1120-F**

- (1) A foreign corporation's requirement for payment of estimated tax depends on whether it expects its total tax for the year to be \$500 or more.
 - a. A foreign corporation that expects its tax liability to be \$500 or more must make estimated tax payments. The payments are due by the 15th day of the 4th, 6th, 9th, and 12th months of the tax year.
 - b. A foreign corporation that expects its tax liability to be less than \$500 does not have to make estimated tax payments. The payment of tax is due at the time the return is due.
- (2) Treas. Reg. 1.6302-1 and Treas. Reg. 31-6302-1(h)(3) sets forth that corporations must make all Federal Tax Deposits electronically.
- (3) Branch profits tax assessed under IRC 884 is not includible in total tax when determining the required annual payment of estimated tax. See IRM 20.1.3.4.1.1.4, Foreign Corporations. If an estimated tax penalty was assessed, re-compute the penalty by using the sum of Section I, Line 11, Schedule J, line 9, to compute the required annual payment. Use the Statutory Exception - Penalty Reason Code (PRC) 044.

Exception: If the amount on line 4 of Schedule J in Section II is zero, abate the entire penalty. For additional information, see IRM 20.1.3.4.1.1.4, Foreign Corporations.

- (4) All deposits posted to the Master File are used to verify the taxpayer's Form 2220 computations. Use the TC 660 amounts and dates when verifying the estimated tax liabilities. The taxpayer receives a notice if the amount of credits claimed on the return is more than the credits posted to Master File.

21.8.2.9.4
(10-01-2014)
**Computing Tax on Form
1120-F**

- (1) Form 1120-F filers that have effectively connected income:
 - a. Are engaged in a trade or business in the United States and are taxed at regular corporate rates
 - b. Complete Section II of the Form to compute tax

Note: 1120-F Returns with effectively connected income are processed with Document Code 67 (60367-XXX-XXXXX-X or 78367-XXX-XXXXX-X).

- (2) Form 1120-F filers that have non effectively connected income (FDAP):
 - a. Are not allowed deductions against this income
 - b. Are taxed at a flat 30%, or lower treaty rate, on this type of income
 - c. Complete Section I of the form to compute tax

Note: 1120-F Returns without effectively connected income are processed with Document Code 66 (60366-XXX-XXXXX-X or 78366-XXX-XXXXX-X).

21.8.2.9.5
(10-01-2017)
**Tax Adjustments - Form
1120-F and Form
1120-FSC**

- (1) When adjusting BMF international tax accounts using CC REQ54, or transferring credits using CC ADD24/ADD34/ADD48, see IRM 21.8.2.2.10.

1120-FSC must be sent to Examination for classification.

- (3) Refundable credits are not automatically audit criteria.

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21.8.2.9.5.1
(10-01-2024)

**180-Day interest-free
Period for Chapter 3 and
Chapter 4 Withholding**

- (4) Refer to IRM 21.7.4, Income Taxes/Information Returns, for general procedures for processing.

- (1) P.L. 111-147, the Hiring Incentives to Restore Employment Act (HIRE) enacted on March 18, 2010, added new Chapter 4, Foreign Account Tax Compliance (FATCA) after Chapter Three. The act also amended IRC 6611(e), Interest on Overpayments by adding new paragraph IRC 6611(e).
- (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 Chapter 4 of the Code, Code section 6611(e)(1), (2), and (3) shall be applied by substituting "180 days" for "45 days" each place it appears.

Note: For further information regarding Chapter 3 and Chapter 4 withholding refer to IRM 20.2.4.8.4, 180-Day Rule.

- (3) As it pertains to IRC 6611(e)(2), Refunds after claim for credit or refund, an amended return refund derived from Chapter 3 or 4 withholding that's filed after March 18, 2010 carries an interest-free period of 180 days, regardless of the taxable period to which such refund relates. The 180-Day interest-free period also applies to refunds of Chapter 3 or 4 withholding issued from original returns (IRC 6611(e)(1)) and resulting from IRS-initiated adjustments (IRC 6611(e)(3)). See IRM 20.2.4.8.4, 180-Day Rule, for effective dates.
- (4) Chapter 3 requires withholding agents to withhold on certain payments of fixed or determinable annual or periodical income from sources within the United States to foreign persons. Other transactions related to IRC Chapter 3 withholding are dispositions of U.S. real property interests (under Section 1445), withholding on effectively connected taxable income allocable to foreign partners (under Section 1446(a)), and withholding on the disposition of an interest in a partnership that is engaged in a U.S. trade or business (under Section 1446(f)(1)).
- (5) Chapter 4 requires withholding agents to withhold on withholdable payments to foreign financial institutions and non-financial foreign entities that do not meet certain reporting requirements under sections 1471 and 1472.
- (6) Refunds of Chapter 3 and Chapter 4 withholding can be claimed (i) on the beneficial owner's income tax return (e.g., Form 1040-NR, 1120-F), (ii) a partnership return (Form 8804) when the partnership is claiming a refund of amounts withheld under Section 1446(a) that are not reflected on Forms 8805 issued to its partners, (iii) a withholding agent return (Form 1042) when the withholding agent is claiming a refund of amounts that it directly paid (rather than amounts that it withheld) or when certain withholding agents (e.g., a qualified intermediary) are claiming a collective refund on behalf of their account holders, partners, owners, or beneficiaries; or (iv) on Form 8288 by a transferee partner for amounts withheld by a partnership under section 1446(f)(4).
- (7) Master File programming has been completed to account for the 180-Day period on overpayments of Chapter 3 and Chapter 4 withholding on original returns, amended returns, and IRS-initiated adjustments. Chapter 3 and Chapter 4 withholding is identified by TC 766 with Credit Reference Number (CRN) 330, 331, 332 and 333. In addition, **any** overpayment generated from Form 8804, is subject to the 180-Day interest-free period, not just that derived

from CRNs 330-333. For additional information on the 180-Day interest-free period, refer to IRM 20.2.4.8.4, 180-Day Rule.

Note: Taxpayers filing Form 1120-F are required to indicate the portion of its claimed overpayment attributable to Chapter 3 and Chapter 4 on Schedule W.

21.8.2.9.5.2
(10-01-2024)
**Refundable Credits -
Form 1120-F and
1120-FSC**

- (1) Refundable Credits are claimed on Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, lines 5a through 5i. The type of credits claimed on line 5i are:
 - Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, from line 12, page 2. See the instructions in "Section I" of Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, for additional information.
 - Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax.
 - Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
 - Form 1099 (various).
- (2) Refundable Credits are claimed on Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation, lines 2a through 2g. The type of credits claimed on line 2g are:
 - Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.
 - Form 1099 (various).
- (3) These refundable credits can be allowed without prior Examination Classification. To claim refundable credits, the recipient's copy of the information return, Form 1042-S, Form 8805, Form 8288-A, and withholding certificate (e.g., Form W-8BEN) must be attached.

Exception: If supporting documents are not attached see Paragraph (4) below.

Caution: Withholding agents may make payments to disregarded entities but they should not include them as a recipient on Form 1042-S unless the recipient is an entity treated as a resident of a country for which it may claim a reduced rate of withholding under an applicable income tax treaty. The withholding agent must file a corrected Form 1042-S if they do. See **Payments Made to Persons Who Are Not Recipients** of the Form 1042-S Instructions, for additional information. If you cannot match the recipient's name and TIN on the withholding agent's Form 1042-S to the recipient's Form 1042-S, do not allow the credit(s). If the TIN is not provided on the withholding agent's Form 1042-S, consider the TIN field a match. The withholding agent's Form 1042-S information must match the recipient's Form 1042-S information as indicated in IRM 21.8.2.12.2.4(2). Follow no consideration procedures in IRM 21.5.3.4.6.3, No Consideration Procedures, if the information does not match. Advise the filer of the Form 1120-F the claim cannot be considered until an amended Form 1042-S is filed.

- (4) To claim refundable credits the withholding document must be attached, or a statement from the withholding agent in support of the amount actually withheld. The statement must comply with the rules set forth in Pub 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns. A Competent Authority letter 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.

Note: These refundable credits are considered Chapter 3 Withholding credits and are subject to the 180-Day interest-free period. For more information on the 180-Day interest-free period refer to IRM 20.2.4.8.4, 180-Day Rule.

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- (6) To allow the credit, use TC 290 .00 and the appropriate Credit Reference Number (CRN). The CRN will generate TC 766 for the amount of the credit. To reverse the credit, use TC 290 .00 and the appropriate CRN with a (-). The CRN will generate TC 767 for the amount of the credit. There is no CRN for Form 1099, use TC 766 to allow the credit or TC 767 to reverse the credit.

Note: See IRM 21.8.2.12.2.2, Claims for Tax Withheld at Source, for complete procedures pertaining to amended returns claiming refunds or credits for overwithheld amounts.

- (7) Masterfile programming was implemented as of April 2013 and July 2015, on Form 1120-F, to ensure only overpayments of Chapter 3 or 4 withholding are given the 180-Day interest-free period. Therefore, the CRN on the account will depend on when the credit generated.

Caution: Exercise caution when adjusting tax or refundable credits; review the account to determine the correct amount of refundable credits and the appropriate CRN.

- (8) Before programming:

- CRN 330 - Form 1042-S
- CRN 331 - Form 8805
- CRN 332 - Form 8288-A
- CRN 333 - Amended Form 1042-S

- (9) After April 2013 programming:

- CRN 330 - Generates the overpayment resulting from tax deducted and withheld under Chapters 3 and 4, see Form 1120-F (Line 8b).
- CRN 334 - Generates the sum of Line 5f, Line 5g, Line 5h, Line 5i, any amount to the right of Line 5i minus Line 8b.

Caution: Since CRNs 331, 332 and 333 no longer generate on Form 1120-F, AM assistors will take no action to adjust the account for the purpose of creating these CRNs. Any adjustments required to these credits will be made using CRN 330.

(10) After July 2015 programming:

- CRN 330 - Generates Schedule W lines 1 and 3, 1120-F page 1 line 1 and page 1 line 8a
- CRN 334 - Generates the sum of Line 5f plus Line 5g

21.8.2.9.6
(10-01-2018)
Adjusting Penalty and Interest

- (1) A foreign corporation with an office or place of business in the U.S. gets an automatic extension of time to file to June 15th, while a foreign corporation without an office or place of business in the U.S. the original return due date is June 15th. If Form 1120-F return is misclassified as either with or without an office in the U.S., the return due date can be corrected in the module by posting TC 971 with Action Code 358 with the correct return due date (not extended due date) as the transaction date. See IRM 21.7.4.4.2.1.2, Correcting the Form 1120 Return Due Date. This should eliminate the need to manually change penalties. Once the due date is corrected, any extension can be corrected.

21.8.2.9.7
(01-20-2016)
Accounts Management Form 1120-F Amended Returns Filed Under Notice 2015-73 and Notice 2015-74

- (1) An amended Form 1120-F filed under Notice 2015-73, Listing Notice - Basket Option Contracts, or Notice 2015-74, Transaction of Interest - Basket Contracts, must comply with the notice requirements. See IRM 21.7.9.3.2, Amended Returns Filed Under Notice 2015-73 and Notice 2015-74, for notice requirements.
- (2) **ALL** amended tax returns notated in this manner will be reviewed by the Large Business and International (LB&I) Office of Tax Shelter Analysis (OTSA). If you receive an amended return that has been filed under Notice 2015-73 or Notice 2015-74, follow the instructions in IRM 21.7.9.3.2, Amended Return Filed Under Notice 2015-73 and Notice 2015-74.

21.8.2.9.8
(10-01-2021)
Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation

- (1) A corporation must have elected to be treated as a Foreign Sales Corporation (FSC), or small FSC, by filing Form 8279 prior to October 1, 2000, and the election must still be in effect.
- (2) Form 1120-FSC is used to report income, gains, losses, deductions, and credits of an FSC. It is also used to figure the FSC's income tax liability.
- (3) The FSC may be organized under the laws of certain qualifying foreign countries or territories of the United States, excluding Puerto Rico.
- (4) Foreign corporations that elected FSC status may not claim the benefits of any U.S. tax treaty.
- (5) An FSC that is a member of a controlled group must check the box on line 1 of Schedule J of the 1120-FSC and attach Schedule O of Form 1120.

21.8.2.9.9
(10-01-2021)
**FSC Repeal and
Extraterritorial Income
Exclusion**

- (1) The FSC Repeal and Extraterritorial Income Exclusion Act of 2000 effected the following changes:
 - Generally repealed the FSC rules
 - Provided taxpayers with an exclusion, which is figured on Form 8873, Extraterritorial Income Exclusion
 - Provided transition rules for existing FSC's
- (2) In general, the extraterritorial income exclusion applies to taxpayers with respect to transactions entered into after September 30, 2000, and before January 1, 2005. However, the exclusion does not apply, but the FSC provision does apply to any transaction in the ordinary course of trade or business involving a FSC that occurs:
 - Before January 1, 2002, or
 - After December 31, 2001, pursuant to a binding contract that is in effect on September 30, 2000 and thereafter, and is between the FSC (or a person related to the FSC) and a person other than a related person in a taxable year that begins before May 18, 2006

Note: More information on binding contracts is contained in the instruction booklets for Form 1120-FSC and Form 8873.

- (3) Taxpayers may elect to apply the extraterritorial income (ETI) exclusion rules instead of the FSC rules for transactions entered into during the transition period stated in (2) above. The election is:
 - Made by checking the box on line 2 of Form 8873
 - Made on a transaction by transaction basis
 - Effective for the tax year for which it is made, and for all subsequent tax years
 - Not applicable for transactions entered into before October 1, 2000
 - Revocable only with the consent of the IRS

Note: The American Jobs Creation Act of 2004 repealed the ETI Exclusion Provision generally for transactions after 2004 subject to a transition rule and a phase-out rule for transactions entered into during 2005 and 2006.

- (4) If an FSC has no foreign trade income for any 5 consecutive tax years beginning after December 31, 2001, the FSC is no longer treated as an FSC for any tax year beginning after that 5 year period.
- (5) Form 1120-FSC is processed at the Ogden IRS Campus. However, a corporation that makes an election to be treated as a domestic corporation under IRC 943(e)(1) must file Form 1120 or Form 1120-A at the campus address listed in the Form 1120 instruction booklet under the "Where to File" section.

Note: IRC 943(e)(1) was repealed for tax years beginning after 5/17/2006.

21.8.2.9.10
(10-01-2022)
**Payment of Tax Due -
Form 1120-FSC**

- (1) An FSC must pay the tax due in full no later than the return due date. See IRM 21.7.4.4.4.11.9, Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation, for more information on Form 1120-FSC.

- (2) Treasury Decision (TD) 9507 stipulates that beginning January 1, 2011, taxpayers must use an electronic payment option for all Federal Tax Deposits.

21.8.2.9.11
(10-01-2015)
**Underpayment of
Estimated Tax - Form
1120-FSC**

- (1) An FSC with a tax liability of at least \$500 that fails to make estimated tax payments when due may be subject to an estimated tax penalty, see IRM 20.1.3, Estimated Tax Penalties, for the period of underpayment. To avoid the estimated tax penalty, the FSC must make estimated tax payments totaling the smaller of its current tax liability or its prior year tax.
- (2) Form 2220, Underpayment of Estimated Tax by Corporations, is used to determine whether the FSC owes the penalty and to compute the amount of the penalty.
- (3) Generally, an FSC does not have to file the Form 2220 since the IRS can figure the amount of any penalty and bill the FSC for it. However, the FSC must complete and attach Form 2220 even if the FSC does not owe the penalty, if:
- The annualized income or adjusted seasonal installment method is used, or
 - The FSC is a "Large Corp." computing its first required installment based on the prior year's tax.
- (4) When the Form 2220 is attached to the Form 1120-FSC, the taxpayer must check the box on line 3 in the Tax and Payments section on page 1 of Form 1120-FSC and enter the amount of any penalty on that line.

21.8.2.9.12
(10-01-2017)
**Claims for Refund of
Backup Withholding on
Form 1120-F or Form
1120-FSC**

- (1) If a foreign corporation had income tax withheld from any payments (e.g., interest, dividends) it received because it was presumed to be a U.S. non-exempt entity that failed to give the payer its correct EIN:
- The foreign corporation may claim a credit on Form 1120-F/1120-FSC for the total amount withheld.
 - This type of withholding is called "backup withholding."
- (2) The amount withheld is shown in the right-hand column on Form 1120-F between lines 4 and 5j, and included in the total for line 5j, and on Form 1120-FSC between lines 1 and 2h, and included in the total for line 2h. The amount should be labeled "backup withholding."

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- (4) Follow the instructions for Processing Claims with Missing Schedules in IRM 21.5.3, General Claims Procedures, when the form cannot be verified.
- (5) When allowing a claim:
- Input TC 290.00 with Credit Reference Number (CRN) 766 and the amount of backup withholding requested.
 - Use CRN 767 to decrease backup withholding.

21.8.2.9.12.1
(10-01-2017)

General Agreement on Tariffs and Trade (GATT)

- (1) The General Agreement on Tariffs and Trade (GATT), is effective on refunds issued on or after January 1, 1995. The refunds affected by GATT are issued from Form 1120, Form(s) 990-C, and 990-T with a significant Form 990-T indicator. In addition, the 941 series, 940, and 720 refunds fall under GATT when the entity has corporate filing requirements. See IRM 20.2.4.9, Special Credit Interest Rules for Corporations.

Note: Beginning in tax year 2006, Form 990-C was replaced with Form 1120-C.

- (2) An overpayment greater than \$10,000 will have credit interest paid on it that is one and a half points below the normal corporate credit interest rate. (See IRM 20.2.4.9.1, GATT Credit Interest Computations on Overpayments.)
- (3) If all previous overpayments (excluding overpayment interest) for the tax module, plus the overpayment currently being processed, is less than or equal to the \$10,000 threshold, process the overpayment using normal corporate credit interest rates (COMPAC).

Note: The \$10,000 threshold may also be reached with the adjustment currently being processed. Once the cumulative overpayment exceeds the \$10,000 threshold amount (i.e., past overpayment principal that was refunded or offset, plus the overpayment currently being processed), interest on the excess is computed at the lower GATT rate.

- (4) If all previous overpayments (excluding overpayment interest) for the tax module were over \$10,000, process the current refund at the lower GATT rate (COMPAG).
- (5) When both CC COMPAC and CC COMPAG apply, add the COMPAC (first \$10,000) with the GATT interest (over \$10,000) to obtain the total interest allowed.
- (6) When issuing a manual refund the “45-Day interest-free period” must be considered. However, this does not mean that the refund is issued without interest. If the refund is issued within the 45-Day period, interest is allowed TO the received date of the claim, less the 9-day back-off period. See IRM 20.2.4.7.5, 45-Day Rule.

Note: This differs from the 45-Day interest-free period applicable to overpayments originating from the processing of original returns and carryback claims/applications. See IRM 20.2.4.7.5.2, 45-Day Rule and All Original Tax Returns

, and IRM 20.2.9.2, Determining the Overpayment Interest Period, for more information.

- (7) If the “45-Day interest-free period” has expired, interest is computed from the credit availability date to one day after IDRS input when using Form 5792, Request for IDRS Generated Refund (IGR).

Note: If using Form 3753, Manual Refund Posting Voucher, and the “45-Day interest-free” period has expired, compute interest to 3 work days from IDRS case closure and route to Accounting. Additional information for preparing manual refunds can be found in IRM 21.4.4.5.1, Preparation of Form 5792, IDRS Generated Refund.

Note: See IRM 20.2.4, Overpayment Interest, if trying to match a prior interest or the overpayment is being offset.

- (8) If there is a “Large Corp” or “CEP” indicator on the tax module, contact the designated large corporation unit before issuing the refund. See IRM 21.7.1.4.11.4, Campus Contacts for Large Corp Cases.

21.8.2.9.13
(10-01-2024)
**Refunds on Form
1120-F/FSC That Include
Interest**

- (1) Initiators **must carefully review** the account. You must ensure that there are no prior, duplicate, manual, or generated refunds issued at any other campuses or call sites. Review the taxpayer accounts to make sure that the prepaid credits the taxpayer is claiming for **refund** are available and were not used as an offset against any outstanding balances before you include them as part of the **Manual Refund**.
- (2) When the Service issues a refund to a nonresident alien taxpayer that includes interest, the Service is required to withhold tax on the interest with the following exceptions:
- a. The Service is not required to withhold tax on the interest if the amount
 - b. If the tax rate for that country is (“0”) per the Internal Revenue Code and the income tax treaties. See Publication 515, IRM 21.8.2.12.1, and IRM 21.8.2.12.7 for more information.
- (3) When processing an adjustment that results in a refund including interest, the interest must be manually computed. Use the following table when computing credit interest:

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“If” Computing Credit Interest	“Then” Use
Before 01/01/1999 for a Non-Corporate taxpayer.	COMPAC
On or after 01/01/1999 for a Non-Corporate taxpayer.	COMPA
Before 01/01/1995 for a Corporate taxpayer, regardless of the overpayment amount. See IRM 20.2.4.9, Special Credit Interest Rules for Corporations, for the definition of a “Corporate” taxpayer.	COMPAC

“If” Computing Credit Interest	“Then” Use
<p>On or after 01/01/1995 for a Corporate taxpayer and the overpayment amount is less than or equal to \$10,000.</p> <p>Caution: If the GATT threshold has been met, the overpayment will be computed at the GATT interest rate (COMPAG), regardless of the overpayment amount. See IRM 20.2.4.9.2, Determining the GATT Threshold.</p>	COMPAC
<p>On or after 01/01/1995 for a Corporate taxpayer and the overpayment amount is greater than \$10,000, or the GATT threshold has previously been met. See IRM 20.2.4.9.2, Determining the GATT Threshold.</p>	<p>COMPAG (GATT)</p> <p>Note: Add the COMPAC interest (first \$10,000) with the GATT interest (over \$10,000) for the total interest allowed.</p>

For additional interest computation tools, see IRM 20.2.1.6, Interest Computation Tools and Reports: Systemically Calculated Interest.

Caution: Form 1120-F overpayment can be comprised of Chapter 3 or 4 withholding (subject to the 180-Day interest-free period) and non-Chapter 3 or 4 withholding (subject to the 45-Day interest-free period). For information on the 180-Day interest-free period refer to IRM 20.2.4.8.4, 180-Day Rule.

- (4) Determine the correct tax rate and amount of tax to be withheld from the interest per IRC 1441 and IRC 1442 . If the tax treaty withholding rate is 0%, no withholding is required on interest. Treaty rates are found on the Tax Treaty Tables located at: *Tax Treaty Tables*.
- (5) Prepare four-part Form 5205.
- (6) Prepare Form 1042-S.
- (7) Prepare Form 3809 when transferring tax withheld on interest to 4610 account.

Note: Do **not** prepare a Form 3809 for transferring interest to the 4610 account

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- (8) Prepare the manual refund document, Form 5792 (for refunds over 10 million dollars use Form 3753). Additional information on preparing manual refunds can be found in IRM 21.4.4.5.1, Preparation of Form 5792, IDRS Generated Refund.

- a. The overpayment amount is the amount of the tax decrease and/or the credit available for refund.
- b. The TC 770 amount is the net interest (after the withholding is computed). Use the appropriate credit interest date on the adjustment.

Note: Do not withhold if the withholding on the interest is less than

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- c. The TC 840 is the total of the overpayment and the TC 770 amounts.

Note: Line numbers for manual refunds are listed in Exhibit 2.4.20-12, Description of Line Item Numbers.

- (9) Input the adjustment to IDRS and use CC RFUNDR to issue the manual refund.
 - a. On the same ADJ54 document, input TC 29X for the amount of the tax decrease and/or refundable credit.
 - b. Input TC 770 for the amount of tax withheld from the interest.
 - c. Use Blocking Series 18 or 15 for cases worked in CII and FLC 60.
 - d. Input a two cycle Posting Delay Code and a Hold Code 4.
 - e. Attach Part 4 of Form 5205 and Copy E of Form 1042-S with the TC 29X adjustment.
- (10) Submit the refund document and related forms, along with the case itself, to the manager for review.
- (11) Forward Form 5205, Form 1042-S, the refund document, Form 3809, and a print of COMPAC or COMPAD (interest computation) to Accounting. Attach screen prints of TXMODA and RFUNDR.

Reminder: The Form 1042-S is a dollar only form and must be rounded per the instructions. Therefore, all these forms and the TC 770 adjustment above must be rounded to match the amounts on Form 1042-S.

Note: The initiator must monitor the account until the TC 840 posts on Master File. The managers and employees must take responsibility for erroneous refunds when caused by the failure to monitor IDRS. More information is available in IRM 21.4.4.5.1, Preparation of Form 5792, IDRS Generated Refund.

21.8.2.10
(10-01-2023)
**Foreign Tax Credit
(Form 1116 and Form
1118)**

- (1) This subsection contains information and instructions for handling the foreign tax credit under IRC 901, IRC 903, IRC 902, IRC 906, and IRC 960.

Note: Section 902 has been repealed by P.L. 115-97, even though it remains applicable to taxable years of foreign corporations beginning prior to January 1, 2018, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.
- (2) The foreign tax credit (FTC) is a non-refundable credit for income, war profits, and excess profits taxes paid or accrued, or deemed paid or accrued, to a foreign country, including a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country (collectively, a "foreign income tax"); the term "foreign country", for purposes of claiming a foreign tax credit, means any foreign state, any U.S. territory and any political subdivision of any foreign state or of any U.S. territory.

- (3) Publication 514, Foreign Tax Credit for Individuals, as well as Form 1116, Foreign Tax Credit (Individual, Estate, or Trust), and Form 1118, Foreign Tax Credit - Corporations and instructions contain detailed information on this credit and may be helpful when resolving FTC issues.

21.8.2.10.1
(10-01-2023)
Who May Claim the Foreign Tax Credit

- (1) In general, U.S. citizens, domestic corporations, certain resident aliens in the United States or Puerto Rico, and certain estates and trusts may choose to claim a foreign tax credit.
- (2) A nonresident alien individual or a foreign corporation engaged in a U.S. trade or business during the tax year may take a credit for foreign income taxes paid or accrued (or deemed paid in case of a foreign corporation) to any foreign country or U.S. possession with respect to income effectively connected with the conduct of a trade or business in the United States.
- (3) To claim a foreign tax credit, an individual, estate, or trust must complete and attach Form 1116 to its income tax return. However, Form 1116 is not required if there is a minimal amount of foreign tax credit claimed for taxes on passive income reported on a qualified payee statement. If the foreign tax credit is claimed for a tax year without filing Form 1116, any foreign taxes paid or accrued in that tax year cannot be carried over to or from any other year. Additional information can be found in the Form 1116 Instructions.
- (4) To claim a foreign tax credit, a corporation must complete and attach Form 1118 to its income tax return. An individual (or estate or trust) who has made an election under section 962 must also complete and attach Form 1118 to their income tax return. Additional information can be found in the Form 1118 Instructions.

21.8.2.10.2
(10-01-2023)
Claiming the Credit for Foreign Taxes

- (1) Eligible taxpayers may claim a foreign tax credit for foreign income taxes “paid or accrued” or deemed paid or accrued 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

Note: For purposes of this credit, U.S. territories include the U.S. Virgin Islands, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. See Publication 570, Tax Guide for Individuals With Income From U.S. Possessions.

- (2) **Important:** When a foreign income tax is taken as a credit in a year:
 - a. The credit is nonrefundable, and
 - b. Generally, no foreign income taxes can be claimed as a deduction. However, see IRC 901(f), IRC 901(k)(7), IRC 901(l)(4), IRC 901(j)(3), IRC 901(m)(6), and IRC 908(b), which allow a deduction for certain taxes that cannot be claimed as a credit.
- (3) Taxpayers excluding income from the U.S. possessions cannot take the foreign tax credit for taxes paid on excluded income. Credit for taxes paid to the U.S. Virgin Islands are figured on Form 8689, not Form 1116.

Note: See IRM 21.8.2.10.6 for additional limitations.

- (4) The credit for foreign income taxes is allowed using TC 291.

21.8.2.10.3
(10-01-2023)

Election - Foreign Tax Credit

- (1) The annual election to take the amount of any foreign income taxes, as defined under Treas. Reg. § 1.901-2, paid or accrued as a foreign tax credit against U.S. income tax is evidenced by filing Form 1116 or Form 1118.
- (2) Under IRC 901(a) and Treas. Reg. § 1.901-1(d), which cross references IRC 6511(d)(3), an election to claim a credit, or to change from claiming a deduction to claiming a credit, for foreign income taxes paid or accrued in a particular year must be made before the expiration of the 10-year period prescribed by IRC 6511(d)(3)(A). Under IRC 6511(c), the period can be longer than 10 years if extended by an agreement.

Note: An election to claim a deduction, or to change from claiming a credit to claiming a deduction, for foreign income taxes paid or accrued in a particular year must be made before the expiration of the 3-year period prescribed by IRC 6511(a)

- (3) A cash basis taxpayer may elect to take the foreign tax credit on an accrual basis. An election must be made on a timely-filed original return, by checking the appropriate box on Form 1116 or Form 1118 indicating the cash method taxpayer's choice to claim the foreign tax credit in the year the foreign income taxes accrue. Once made, the election is irrevocable and must be followed for purposes of claiming a foreign tax credit for all subsequent years.

21.8.2.10.4
(10-01-2022)

Foreign Taxes for Which a Credit May Not Be Claimed

- (1) A credit may not be claimed in the taxable year for the following foreign taxes summarized below. For details and additional examples of foreign taxes for which a credit may not be claimed, see the instructions for Form 1116/1118 and Pub 514, Foreign Tax Credit for Individuals:

- Taxes paid or accrued on income to a foreign country that is not legally owed by the U.S. taxpayer for U.S. tax purposes, including amounts **eligible** for refund by the foreign country

Note: With regard to accrual basis taxpayers if the amount claimed as foreign tax credit is later refunded from the foreign country, then the U.S. income tax return for the year the credit was claimed must be amended to reduce the foreign tax credit claimed. Interest is computed from the date the refund is received from the foreign country to the full payment date, including any interest owed. The refund amount from the foreign country needs to also include any interest the taxpayer received from the foreign country. FTC recapture will be input with a TC 298 using the verified refund received date. See IRM 20.2.10.3.2, Interest on Adjustments to Foreign Tax Credit (FTC).

- Taxes imposed by and paid to certain foreign countries. See IRM 21.8.2.10.6, Computation - Foreign Tax Credit, for a listing of these countries. They have repeatedly provided support for acts of international terrorism, or are countries with which the United States does not have diplomatic relations, or are countries whose governments the United States does not recognize
- Tax paid to listed countries (and any other country which the taxpayer knows participates in the boycott) attributable to certain boycott activities of the taxpayer

- Payment of foreign tax that is directly or indirectly returned to the taxpayer, a related person, or a party to the transaction by the foreign tax jurisdiction, in the form of a subsidy described at IRC 901(i)
- Tax withheld from dividends and (after November 21, 2004) other income from property, if certain minimum holding periods are not met, or if the taxpayer is obligated to make related payments with respect to substantially similar or related property, see IRC 901(k) and (l); tax related to foreign income not subject to U.S. tax by reason of a covered asset acquisition, see IRC 901(m); foreign taxes that are subject to IRC 909 because they have been split from related income.

21.8.2.10.5
(10-01-2023)
**Statute of Limitation -
Foreign Tax Credit**

- (1) There is a ten-year period of limitation for filing a claim for credit or refund of U.S. tax attributable to a credit for foreign income taxes paid or accrued. There is a three-year period of limitation allowed for filing a claim for credit or refund of U.S. tax attributable to a deduction for foreign income taxes paid or accrued.
- (2) The ten-year limitation period applies to:
 - A claim for credit or refund based on the correction of math errors in figuring the foreign tax credit
 - The discovery of foreign income taxes not originally reported on the return
 - Any other change to the amount of the foreign tax credit, including one caused by a correction to the foreign tax credit limitation, a decision by the taxpayer to claim a foreign tax credit rather than a deduction for the foreign income taxes, or a payment of additional foreign income taxes.
- (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 income tax is paid or accrued.

Note: Do not confuse this limitation period for claiming a refund with the ten year carryover and one year carryback periods (see IRM 21.8.2.10.7, Carryback and Carryover-Foreign tax credit). Refer cases involving foreign tax credit carryovers to Examination Classification. Only refer Foreign Tax Credit

rybacks, for additional carryback information.

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21.8.2.10.6
(10-01-2023)
**Computation - Foreign
Tax Credit**

- (1) With respect to corporations, the foreign tax credit is calculated on separate Forms 1118 for the following six categories of income to determine the total credit allowed against U.S. tax. With respect to individuals, the foreign tax credit is calculated on separate Forms 1116 for certain lump-sum distributions from a retirement plan as well as for the six categories of income below:

Note: Additional categories of income may apply under IRC 245(a)(10), 865(h), 904(d)(6), or 904(h)(10). See §1.904-4(m).

- a. Section 951A income
- b. Foreign branch income
- c. Passive income (e.g., dividends, interest, royalties, rents, annuities, gain from the sale of property that produces investment income or non-income producing investment property, and gains from foreign currency or commodities transactions)
- d. General category income

- e. IRC 901(j) income, and
- f. Income resourced by treaty

Note: Section 951A income applies for tax years of foreign corporations beginning after 12/31/2017 and to tax years of U.S. shareholders with or within which such taxable years of foreign corporations end. Foreign branch income applies for tax years beginning after 12/31/2017.

- (2) A separate Form 1118, for corporate filers, and Form 1116, for estates, trusts, and individuals, is used for each category of income.
- (3) If an individual, estate or trust paid or accrued foreign income taxes to more than three foreign countries or U.S. possessions with the same category of income, then additional Forms 1116 must be used. If a corporation or individual (or estate or trust) who made a section 962 election paid or accrued (or deemed paid or accrued) foreign income taxes to more than three foreign countries or U.S. possessions with the same category of income, then additional Forms 1118 must be used. In the alternative, a taxpayer may submit a computer-generated Form 1118 and schedules if they conform to the IRS version.

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

- (4) The credit on each category of income cannot exceed the proportionate amount of U.S. tax paid on that type 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.
- (5) For each category 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. income tax liability multiplied by the fraction equal to the amount of that type of foreign source taxable income over worldwide taxable income. See *Instructions for Form 1118, Schedule B, Part II*.
- (6) Also there is the “reduction” or “scale down” of foreign tax due 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 Guam, American Samoa, and Northern Mariana Islands derived by a bona fide resident, and IRC 933 for income from sources in Puerto Rico derived by a bona fide resident), the amount of foreign income taxes that may be 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 going to be paid. See Form 1116, Part III, line 12, “Reduction of Taxes,” and Form 1118, Schedule G.
- (7) The amount of foreign income taxes allocable to excludable income under IRC 911(a) is determined by multiplying the foreign tax paid or accrued on foreign earned income by a fraction of the excluded foreign earned income (minus allocated and apportioned deductible expenses) divided by the total foreign earned income (minus allocated and apportioned deductible expenses). Similar rules apply to determine foreign income taxes allocable to excludable income under IRC 931(a) and IRC 933. Below is the formula for computing the Allocable Excludable Income Determination:

(Foreign tax paid or accrued) X	Excluded foreign earned income (minus allocated and apportioned deductible expenses)
	Total foreign earned income (minus allocated and apportioned deductible expenses).

- (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 jurisdiction, and the taxes on such income can't be separated, the denominator is the total amount of income subject to foreign tax less allocated deductible expenses.

Note: Applies to Form 1116 for individuals, estates, and trusts.

- (9) U.S. citizens residing in certain treaty countries may claim an additional credit by reason of special re-sourcing rules. The amount of re-sourced income is figured in accordance with the applicable treaty provision. For taxable years beginning on or before August 10, 2010, and taxable years beginning after the 2017 taxable year, the additional amount of credit may be calculated instead by using the worksheet contained in Publication 514. The additional credit by reason of re-sourced income is provided by the treaties of the following countries:

Countries		
Australia	Germany	New Zealand
Austria	Iceland	Portugal
Bangladesh	Ireland	Slovak Republic
Belgium	Israel	Slovenia
Bulgaria	Italy	South Africa
Canada	Japan	Spain
Czech Republic	Luxembourg	Sweden
Denmark	Malta	Switzerland
Finland	Mexico	The United Kingdom
France	The Netherlands	

Caution: Do not use the Worksheet at the end of Publication 514 to figure the additional credit for Australia and New Zealand. For additional information, see "Tax Treaties" in Publication 514.

If	Then
A statement is attached to the return claiming a foreign tax credit from the countries above as calculated using the worksheet	Process the claim as if it had been calculated on Form 1116. Reminder: The worksheet is obsolete as of August 10, 2010, and for taxable years beginning before the 2018 taxable year.

- (10) IRC 901(j) denies the foreign tax credit for taxes paid to certain countries due to non-recognition 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.
- (11) 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
- (12) 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
 - Republic of Yemen

21.8.2.10.7
(10-01-2022)
**Carryback and
Carryover - Foreign Tax
Credit**

- (1) If, due to a limitation, a taxpayer could not claim the credit for the full amount of foreign income taxes paid or accrued, or deemed paid or accrued, in the 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 limitation (the amount by which the limitation exceeds the amount of qualified taxes originally claimed) in those years.
 - b. The excess foreign income taxes must be applied to the first eligible preceding year and then to subsequent years. This is regardless of the relative benefits in various years.
- (2) There are special restrictions which apply to carrybacks and carryovers.

- a. The carryback or carryover of excess foreign income taxes can be claimed only as a credit, not as a foreign tax deduction.
 - b. In a carryback or carryover year in which foreign income taxes were used as a deduction, no credits are allowed for the foreign income taxes carried to that year, but the available excess foreign income taxes must be reduced by the amount that would have been allowed if the taxpayer had elected the credit.
- (3) Excess foreign taxes that are being carried back to the preceding tax year may be claimed by filing an amended tax return, either Form 1040X or Form 1120X, with a revised Form 1116 or Form 1118, respectively. See IRM 21.5.9, Carrybacks which further explains processing carryback/carryover claims and IRM 21.5.9.5.12.7, Carryback of Excess Foreign Tax Credit (FTC), for specific instructions and restrictions.
- (4) Form 1139 and Form 1045 **CANNOT** be used to carryback foreign tax credits.

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.

21.8.2.11
(04-29-2024)
Form 8288, Form 8288-A, and Form 8288-C

- (1) The Foreign Investment in Real Property Tax Act (FIRPTA) of 1980 was amended by the Deficit Reduction Act of 1984. This amendment added IRC 1445 to Chapter 3, Subchapter A, of the Internal Revenue Code of 1954.
- (2) IRC 1445 requires the deduction and withholding of tax by the transferee on amounts realized on dispositions of certain U.S. real property interests by a foreign transferor.
- (3) Form 8288, U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons, and Form 8288-A, Statement of Withholding on Certain Dispositions by Foreign Persons, are filed by the withholding agent (transferee) to report the tax withheld at source. Form 8288-C, Statement of Withholding Under Section 1446(f)(4) on Dispositions by Foreign Persons of Partnership Interests, are filed on a transaction-by-transaction basis and attached to Form 8288 in situations where the withholding agent (transferee) did not withhold the 10 percent withholding under IRC 1446(f)(1), see IRM 3.21.261.1.1.3, Form 8288-C Background, for additional information on Form 8288-C.
- (4) The Tax Cut Jobs Act (TCJA), enacted on December 22, 2017, added a new withholding provision section 1446(f)(1). 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. Notice 2018-29, 2018-16 I.R.B. 495, provided interim guidance under section 1446(f)(1) on withholding related to transfers of non-publicly traded partnerships interests in

partnerships, other than interests that are publicly traded and temporarily suspended withholding under section 1446(f)(4). Regulations 1.1446(f)-1 to -5 became effective 1/27/2021 as part of TD 9926, provided final guidance. Per the Notice and these regulations withholding and reporting requirements are fulfilled using Form 8288 and Form 8288-A upon the transfer of certain non-publicly traded partnerships.

- (5) Accounts Management work is worked by the International Department in the Cincinnati Accounts Management Center (CAMC) and the Ogden Accounts Management Center (OAMC).
- (6) These forms were processed on a separate system like Non-Master File (NMF) prior to processing year 2006.
- (7) Beginning in 2006, these forms were processed to the Business Master File under MFT 17 at the Philadelphia Submission Processing Campus. The DLN of the returns posted as DO 98, Tax Class 1, Doc Code 40 (98140-ddd-xxxxx-x). In 2007 and subsequent years, these forms are processed at the Ogden Submission Processing Campus and assigned the DLN (60140-ddd-xxxxx-x or 78140-ddd-xxxxx-x).

Note: NMF processed returns are worked in CSPC under DLN 17641-ddd-xxxxx-x when the Date of Transfer is 12/12/05 and prior.

- (8) The earliest tax period in which these returns post to Master File is 200512 with the earliest received date being 01/01/2006. The tax period is derived from the month and year of the Date of Transfer (DOT). Beginning in 2006, subsequent returns that attempt to post to a module that contain a TC 150 create TRNS 193 duplicate filing conditions. This is likely a supplemental return for an additional property from the same withholding agent.
- (9) In cases of multiple purchases of U.S. real property interests being acquired in the same month with the same DOT and property description (Line 2 Form 8288), a transferee may file a consolidated Form 8288 with a consolidated payment. They must also complete and submit sets (Copy A and Copy B) of Form 8288-A for each foreign person or entity, and Lines 2 and 3 must match amounts listed on Form 8288, Lines 5a through c and 6.

Exception: If there is a withholding certificate for any of the foreign persons or entities, that information must be reported on its own Form 8288 and submitted with the FIRPTA tax payment and the Form 8288-A (Copy A and B).

Note: The employees in the International Department should refer inquiries requesting a stamped copy of Form 8288-A (Copy B) to Ogden Submission Processing. For telephone calls prepare a Form 4442, Inquiry Referral, and

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clearly state that a copy of Form 8288-A (Copy B) needs to be mailed to the taxpayer using the taxpayer's current mailing address on file. Form 4442 referrals should be processed within 25 days. For correspondence route to Mail Stop 6110 OSC.

- (10) TRNS 193 notices generated on Form 8288 accounts are processed at the Ogden Accounts Management Campus.

Reminder: See IRM 21.8.2.2.12, Examination Criteria, for Form 8288 tax decreases.

Use the following instructions in conjunction with IRM 21.7.9, BMF Duplicate Filing Conditions, to resolve TRNS 193 notices on Form 8288 (MFT 17) accounts:

- a. Always input a Hold Code 4 on the CC ADJ54 adjustment.

Reminder: Use Priority Code 8, if applicable, to avoid Unpostable Code (UPC) 328 RC 2.

- b. Input the real property description from Line 2 of the Form 8288 in the remarks field of the CC ADJ54 adjustment.
- c. Input the Date of Transfer (DOT) on the CC ADJ54 adjustment.

Note: The year and month of the DOT input on ADJ54 **MUST** match the year and month of the tax period or the adjustment will unpost. Refer to IRM 3.12.279.63.2, UPC 332 RC 4 OSPC, and IRM 3.12.279.63.3, UPC 332 RC 5 OSPC.

- d. For a return filed for a subsequent sale within the same month, the Return Due Date (RDD) is 20 days from the DOT or 20 days from the withholding certificate letter date whichever is later and is not related to the first DOT posted on the module. Letters 3315 and 3318 are not considered Withholding Certificates, see the **EXCEPTION** in IRM 3.21.261.19.9(4), The Date of Withholding Certificate - Line 4.
- e. A late-filed Form 8288 is subject to interest, Failure to File and Failure to Pay penalties, see IRM 20.1.2, Failure to File/Failure to Pay Penalties, which must be manually assessed since the computer is unable to calculate these values. The RDD is 20 days from the DOT or the date in the new "Withholding Certificate Date" field, whichever is later. When a penalty is warranted, calculate the penalty from the RDD to the payment date.

Note: Beginning January 01, 2023, Submission Processing (SP) implemented programming to add a new withholding certificate letter date field to IDRS. The DOT is the actual date of transfer, and no longer the date of the withholding certificate letter. Therefore, SP will not need to change the date of transfer to the date of the withholding certificate.

Note: When manually computing interest, the running module balance method must be used so that all related transactions within the module are considered. See IRM 20.2.1.4.2, Manual Calculation of Interest, IRM 20.2.5.6.2, Manual Computations, and IRM 20.2.5.3, Interest on Penalties and Additions to Tax, regarding how to compute interest on penalties.

- f. When processing an adjustment to a Form 8288-A account, verify the validity of the credits against the INTLWEBAPPS, FIRPTA database and IDRS prior to allowing the credit. The person verifying the credit must follow the instructions in IRM 21.8.1.22.1(2), Claims for FIRPTA Credits, to update the database as necessary to reflect the correct information.
- g. Form 8288 will be processed to the tax period based on the date of transfer.

- h. If your penalties and interest are computed on the withholding certificate date you must include the withholding certificate date in the CII case notes.

If	Then
The Form 8288 is received after 20 days from the DOT or 20 days from the withholding certificate letter date whichever is later	Input TC 290 for the additional tax amount. Manually compute and assess TC 160, TC 270 and TC 340 using 20 days from the DOT or 20 days from the withholding certificate letter date whichever is later as the “from” date. TC 340 must be computed using the running module balance method for related transactions. See IRM 20.2.1.4.2, Manual Calculation of Interest, and IRM 20.2.5.6.2, Manual Computations.
The Form 8288 was timely filed and paid based on the DOT or withholding certificate letter date whichever is later	Input TC 290 for the additional tax and also enter a TC 160 .00, TC 270 .00, and TC 340 .00 to prevent penalty and interest assessments.

Note: If Form 8288-A is attached to Form 8288 and the Form 8288-A does not have a FIRPTA Unit stamp on it saying, “Copy B mailed,” fax the return to

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Caution: Do not establish Mail Filing Requirements for Form 8288.

- (11) Foreign buyers/sellers of U.S. real property or interests in certain partnerships are required to obtain ITIN’s in order to request reduced tax withholding and to pay withholding tax. Research for correct buyer/transferee TIN before re-inputting a tax return to the TIN of a Title, Escrow, Realty Company, etc. or third party TIN.

Note: Ogden will research IDRS to see if the payment posted to the title company EIN account. If it did, the BMF International unit will locate the FIRPTA payment from the title company account and transfer it to the actual transferee account, as necessary.

- (12) CP 105/125 balance due notices will generate on Form 8288 accounts because of incorrect posting of payments or higher assessments due to missing withholding certificates. Research and transfer misapplied payments or correspond for missing withholding certificates, as necessary.
- (13) Review penalty and interest claims received in correspondence to determine if the penalties and interest were correctly assessed by determining the DOT. If the return and/or the payment is received more than 20 days after the DOT or after the withholding certificate date whichever is later, the taxpayer is liable for

the penalties and interest on penalties. See IRM 20.2.5.3, Interest on Penalties and Additions to Tax, regarding how to compute interest on penalties.

- (14) If the return posts to the correct month, but the DOT is incorrect, penalties and interest may be assessed erroneously. If the return and payment are timely filed and posted to the correct month, input a TC 271, TC 161, and TC 341 to abate the erroneously assessed penalties and interest. A Penalty Reason Code (PRC) will be required with the penalty abatement. If not full paid as of the transfer date, then interest will need to be computed from due date to payment date. A TC 341 will be the difference between the original TC 340 and the correct amount.

Note: When manually computing interest, the running module balance method must be used so that all related transactions within the module are considered. See IRM 20.2.1.4.2, Manual Calculation of Interest, and IRM 20.2.5.6.2, Manual Computations.

21.8.2.11.1
(10-01-2023)
**FIRPTA and Section
1446(f)(1) Payments
Received Without a
Form 8288**

- (1) Some title companies, transferees, escrow companies, Certified Public Accountants (CPAs), attorneys, and realtors may send FIRPTA payments to deposit activity areas without a Form 8288. The payments are received in the following ways and any associated correspondence is sent to Accounts Management:
- A check with a check stub statement identifying it as a FIRPTA payment
 - A check with a statement or cover letter identifying the remittance as FIRPTA tax
 - A check, with or without a check stub attachment, attached to a Form 8288-A and/or Form 8288-B
 - A check, with or without a check stub statement or cover letter, attached to a copy of a deed and/or a copy of a HUD-1 settlement statement
 - A check, with or without a check stub statement or cover letter, attached to a copy of a withholding certificate
 - A check, with or without a check stub statement or cover letter, and/or a copy of a FIRPTA withholding tax return or withholding certificate from the states of Hawaii, California or Colorado
- (2) Return the correspondence to the taxpayer requesting that they file a Form 8288 and 8288-A using a Letter 3104C. Advise the taxpayer that these forms must be completed by the transferee and returned to the Ogden Submission Processing Campus for processing. Include the following open paragraph with the 3104C Letter:

Open Paragraph

We are returning your correspondence received with your FIRPTA payment of \$xxxx.xx on mm/dd/yyyy. To ensure proper application of your payment, please complete and return the enclosed Form 8288 and Form 8288-A to the Internal Revenue Service, P.O. Box 409101, Ogden, UT 84409.

21.8.2.11.2
(10-01-2023)

**Claims for FIRPTA and
Section 1446(f)(1)
Credits**

- (1) When taxpayers claim FIRPTA credits or credits for 1446(f)(1) withholding on their income tax return, they must submit Form 8288-A, Copy B (similar to domestic withholding claims being accompanied by a Form 1099), or a statement from the withholding agent in support of the amount actually withheld.
- (2) In addition, credits claimed on Form 8288-A, Copy B, must be verified with the FIRPTA database prior to allowance. FIRPTA Credit verification is requested using Form 13698, International Credit(s) Verification Slip.

Note: For further information on FIRPTA Credit verification, see IRM 3.21.25.18, Form 8805 Credit Verification of Pre-IRMF Section 1446 Credits Claimed on Form 1040-NR, Form 8804, Form 990-T, Form 1120-F, and Form 1040-NR Estate or Trust.

- (3) The presence of a TC 971 with Action Code 650 on a tax module indicates that a refund of the FIRPTA credit was issued from the BMF MFT 17 account for the amount indicated. A TC 972 indicates a reversal of a TC 971.
- (4) When a Form 8804 or Form 1120-F posts to Master File and a TC 971 Action Code 650 is present, the account is frozen from refunding and a Master File transcript titled PRIOR-REFD generates. Research to determine if the FIRPTA credit claimed on the return was previously refunded as indicated 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 has already been refunded.
The Action Code 650 amount is included in the CRN 332 amount (for example, \$9,200 is part of the \$10,500 claimed)	Reduce the CRN 332 amount by the Action Code 650 amount since this has already been refunded. See Caution below.
The Action Code 650 amount is not included in the CRN 332 amount	No action is necessary. Input TC 571 to release the freeze on the account.

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. For more information on Early FIRPTA Refunds, See IRM 21.8.5.4.11, Request for an Early FIRPTA Refund.

Reminder: Credits claimed on Form 8288-A will not post as CRN 332 after programming. See IRM 21.8.2.9.5.2.

- (5) If correspondence or an amended return is received requesting credit for withheld FIRPTA tax, it must be accompanied by a Form 8288-A, Copy B, so the credit can be verified, or a statement from the withholding agent in support of the amount actually withheld. See IRM 3.21.25.17, Credit Verifying Form 8288-A (FIRPTA) and section 1446(f)(1) Credits, for additional information.

Reminder: Attach the FIRPTA Credit Verification Slip, Form 13698, to the case as proof of verification and check the validity of the credits claimed on Form 8288-A against the INTLWEBAPPS, FIRPTA database and IDRS prior to allowing the credit. The person verifying the credit must follow the instructions in IRM 21.8.1.22.1(2), Claims for FIRPTA Credits, to update the database as necessary to reflect the correct information.

(6) Once credit availability is verified, allow withholding credit using CRN 332.

Reminder: These credits are considered Chapter 3 Withholding Credits and are subject to the 180-Day interest-free period. See IRM 21.8.2.9.5.1, 180-Day interest-free Period for Chapter 3 Withholding.

Note: When issuing a manual refund from a Form 8288 account, use Line Number 65.

21.8.2.11.3

(04-29-2024)

Section 1446(f)(4)

Credits and Form 8288-C

(1) When a partnership determines a foreign partner sells their shares, without the buyer withholding 10% of the amount realized, the partnership is required to file Form 8288 (Part IV) and Form 8288-C, Statement of Withholding Under Section 1446(f)(4) on Dispositions by Foreign Persons of Partnership Interests Under Section 1446(f)(4). The partnership must withhold "all distributions paid" to the buyer (new partner) "until the 10%" (plus interest) is satisfied. This may result in multiple forms being filed for the same sell of partnership shares. See IRM 3.21.261.1.1.3, Form 8288-C Background, for additional information on Form 8288-C.

(2) The presence of a Transaction Code (TC) 971 with Action Code (AC) 741 with a total amount withheld in the memo field will post to the partnership's BMF MFT 17 account. A new TC 971 AC 741 will post each time a new Form 8288 (Part IV) is processed. A TC 972 indicates a reversal of a TC 971.

Reminder: The payments associated with the TC 971 AC 741 will post to the buyers MFT 17 as TC 610.

(3) In addition, credits claimed on Form 8288-C, Copy B, must be verified with the FIRPTA database prior to allowance. FIRPTA Credit verification is requested using Form 13698, International Credit(s) Verification Slip.

Note: For further information on FIRPTA Credit verification, see IRM 3.21.25.18, Form 8805 Credit Verification of Pre-IRMF Section 1446 Credits Claimed on Form 1040-NR, Form 8804, Form 990-T, Form 1120-F, and Form 1040-NR Estate or Trust.

(4) If correspondence or an amended return is received requesting credit, it must be accompanied by a Form 8288-C, Copy B, so the credit can be verified, or a statement from the withholding agent in support of the amount actually withheld. See IRM 3.21.25.17(1), Credit Verifying Form 8288-A (FIRPTA) and section 1446(f)(1) Credits, for additional information.

(5) The TC 150 must be posted on the partner's (buyer) account before any over-payments are released.

- (6) The partner (buyer) can claim a refund for all of this withholding and reverse a TC 150 IF the seller files a return to report the gains from the sale of the stake in the partnership.

Note: Verification that the seller has filed a return to report the gains must be verified before reversal of the TC 150.

21.8.2.12
(10-01-2023)
**Form 1042, Annual
Withholding Tax Return
for U.S. Source Income
of Foreign Persons**

- (1) This subsection has been updated to reflect changes made to the Form 1042, Form 1042-S, Qualified Intermediary Agreement, and refund procedures associated with the implementation of the Foreign Account Tax Compliance Act (FATCA) in July 2014.
- (2) Income that is effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or foreign corporation is subject to the same income tax rates that apply to U.S. Citizens, residents, and domestic corporations, per IRC 871(b) and IRC 882. See IRM 21.8.1.12.10, Effectively Connected Income.
- (3) Income not effectively connected with the conduct of a trade or business in the United States is subject to a 30% tax rate (or lower treaty rate) whether or not the taxpayer engages in a trade or business in the United States, per IRC 871(a) and IRC 881 . See IRM 21.8.1.12.11, Non-Effectively Connected Income.
- (4) The Deficit Reduction Act of 1984 provides for repeal of the 30% tax on interest received by foreign persons on certain portfolio investments.
- (5) IRC 1441(a) and IRC 1442(a) require the withholding of income tax at the source on certain amounts paid to nonresident alien individuals, foreign partnerships, and foreign corporations. IRC 1471 and IRC 1472 require withholding on withholdable payments made to certain foreign financial institutions and non-financial foreign entities that have not met the reporting requirements under those sections.
- (6) See Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, for a more detailed explanation of withholding requirements.

21.8.2.12.1
(10-01-2017)
**Withholding
Agent/Withholding Tax**

- (1) A withholding agent is any person that has custody or control of an item of income of a foreign person subject to withholding. A withholding agent may be an individual, a trust, an estate, partnership, corporation, government agency, association, or tax-exempt foundation, whether domestic or foreign.
- (2) Withholding agents generally must withhold tax at a rate of 30% on items of fixed determinable annual or periodical income from sources within the United States paid to nonresident alien recipients and may also have withholding requirements under IRC 1471 and IRC 1472 on withholdable payments made to foreign entities and account holders of foreign financial institutions. See Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.
 - a. A “nonresident alien” includes any foreign individual, fiduciary, partnership, corporation, private foundation, organization, association or charitable institution.
 - b. Income qualifying as a scholarship, per IRC 117(a), requires withholding of taxes at a rate of 14% if the nonresident alien is temporarily present in the United States on an F, J, M, or Q Visa (a non-degree candidate).

- c. Income for compensation from personal services that is effectively connected with U.S. trade or business is **exempt from withholding** if the recipient is a foreign partnership or foreign corporation and it provides documentation establishing such exemption (i.e., Form W-8ECI). However, the income is still taxable, subject to estimated tax, and a tax return must be filed to report the income and pay any tax due at graduated rates.
- (3) The withholding agent may withhold at a lower treaty rate if the nonresident alien recipient is a resident of a country that has a tax treaty in effect with the United States. In order to be eligible for the reduced withholding, the nonresident alien must prove they are a resident of the treaty country, for income tax purposes.

21.8.2.12.2
(05-27-2015)
Form 1042

- (1) Form 1042 is the annual taxable return used by withholding agents to report tax withheld on U.S. source income paid to certain nonresident alien individuals, and corporations, etc.
- (2) Form 1042-T, Annual Summary and Transmittal of Forms 1042-S, serves as a transmittal for Form 1042-S returns, which are information returns filed with the IRS and furnished to the recipient that are used to report income paid to the foreign person. The Form 1042-T is Tax Class 5 and Document Code 01.
- (3) A withholding agent must file a Form 1042 by March 15th in order to pay and report taxes withheld. Form 1042 is a Master File annual tax return (NMF for 1984 and prior), filed only for the calendar year and cannot be filed as a fiscal year return.
- (4) Form 1042 is equivalent to the Form 945, Annual Return of Withheld Federal Income Tax, which is a withholding tax return only.
- (5) Form 1042 is processed using a Tax Class of 1, a Doc Code of 25, and one of the following File Locations Codes (FLC):
 - FLC 29 - If the withholding agent is located within the U.S.
 - FLC 60 - If the withholding agent is located outside of the U.S.
 - FLC 78 - If the withholding agent is located in one of the U.S. territories, territories, or the Commonwealth of Puerto Rico

21.8.2.12.2.1
(10-01-2023)
Form 1042-S

- (1) The withholding agent issues a Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, which is an information return similar to a Form 1099 series.
- (2) Form 1042-S provides the pertinent data in verifying that the withholding is correct including:
 - Unique Form Identifier
 - Income Code (identifies type of income paid)
 - Gross Income Paid
 - Chapter 3 or 4 exemption code/tax rate. The exemption codes are listed as part of the Form 1042-S.
 - Withholding Allowance (completed only for specific Income Codes, refer to current year form instructions)
 - Net Income
 - Federal Tax Withheld

- Tax withheld by other agents
 - Tax paid by withholding agent
 - Total withholding credit
 - Amount repaid to recipient
 - Withholding agent's information
 - Recipient's information (including the Country Code of residency of the recipient for tax purposes)
 - Primary withholding agent's information
 - Intermediary's information
 - Payer's information
 - State tax information
- (3) Form 1042-S returns can be filed on paper if there are less than 10 information returns for which data must be reported. If 10 or more information returns are submitted, withholding agents are required to file them electronically. See *IRS and Treasury issue final regulations on e-file for businesses*. All financial institutions must file Forms 1042-S electronically (regardless of how many forms are being filed). You can see *Electronic Reporting*, for stricter rules for partnerships filing Forms 1042-S.
- (4) Electronic submissions of 1042-S forms are filed using the Filing Information Returns Electronically (FIRE) System. FIRE, which is located at <https://fire.irs.gov>, is a Web based system so it is available 24 hours a day - 7 days a week. See Pub 1187, Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, for further information.
- (5) Forms 1042-S, whether filed on paper or electronically, must be filed with the Internal Revenue Service by March 15. Taxpayers may request a 30 day extension of time to file Form 1042-S by filing a completed Form 8809, Application for Automatic Extension of Time To File Information Returns. An additional 30 day extension may be requested by submitting a second Form 8809. Generally, requests for additional time are only granted in cases of extreme hardship or catastrophic event. See Pub 1187, Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, for rules on filing requests for an extension of time to file electronically.
- Note:** The Form 8809, Application for Extension of Time to File Information Returns, does not extend the time for filing Form 1042.
- (6) Paper Form 1042-S returns are filed at the Ogden Submission Processing Campus with the Form 1042-T being used as the paper transmittal form for paper Form 1042-S returns.
- (7) For assistance with electronic filings or extensions of time to file, taxpayers can contact the IRS by e-mail at mccirp@irs.gov or by phone at the following numbers:
- 866-455-7438 (toll free)
 - 304-263-8700 (toll call)
 - 877-477-0572 (fax)
 - 304-579-4105 (international fax)
- (8) The Form 1042 is the taxable return. It should reflect the withholding agent's tax liability and the total of all taxes withheld and paid over to the IRS, as reflected on the Forms 1042-S.

- (9) The Form 1042-S is processed with FLC 60, Tax Class 5, and Document Code 02 for paper documents.
- (10) Form 1042 and Form 1042-S are sorted, batched, numbered and follow basic pipeline processing.
 - a. During the Code and Edit function, the Form 1042-S returns are detached from the Form 1042 and processed separately.
 - b. Form 1042-S returns follow basic campus processing, but the records do not post to Master File.
- (11) The tax data extracted from Form 1042-S processing is exchanged with foreign countries with which the United States has a tax treaty or exchange of information agreement. Form OECD (Organization for Economic Cooperation and Development) is used to exchange this information. See IRM 21.8.2.13.
- (12) To claim any over-withheld amount, the income recipient must file Form 1040-NR, 1120-F, 1120-FSC, 990-T, 990-PF, or 8804, along with a copy of the Form 1042-S, even if a return is not otherwise required to be filed. This applies to all but a Qualified Intermediary (QI), Withholding Foreign Partnership (WP), Withholding Foreign Trust (WT) (and, for purposes of chapter 4 taxes only, a Participating Foreign Financial Institution (PFFI) or Model 1 Foreign Financial Institution (Model 1 FFI)) that is claiming a collective refund on behalf of its account holders, partners, owners, or beneficiaries pursuant to its respective agreement with the IRS. See IRM 21.8.2.12.10, Qualified Intermediary Agreements (QI), and Rev. Proc. 2022-43 and Rev. Proc. 2017-21 for information on collective refund procedures.
- (13) See IRM 21.8.2.12.2.2, Claims for Tax Withheld at Source, for claims involving Form 1042-S tax withheld at source.

21.8.2.12.2.2

(02-26-2018)

Claims for Tax Withheld at Source

- (1) If tax is withheld at source under sections 1441 - 1443, section 1446 (in the case of publicly held partnerships), or Chapter 4, the withholding agent **MUST** issue a Form 1042-S to the recipient.

Reminder: A Competent Authority letter 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.

Use the following chart to handle claims for tax withheld at source.

Exception: For Form 1120-F claims or amended returns follow IRM 21.8.2.12.2.7, FATCA Form 1042-S Accounts Management Form 1120-F Amended Returns (New Form 1042-S Credits), or IRM 21.8.2.12.2.8, FATCA Form 1042-S Accounts Management Form 1120-F Amended Returns (Credits Denied), accordingly.

If	Then
A foreign corporation had tax withheld by a withholding agent who reported this credit on Form 1042	The recipient can only recover this withholding by filing an income tax return.
The taxpayer files a claim on Form 843 for tax erroneously withheld	Return the claim to the taxpayer. Advise the taxpayer that an income tax return must be filed with Form 1042-S attached, even if a return is not normally required.
The taxpayer files an amended return	Process as a normal duplicate filing case, 1. Verify that the income on Form 1042-S is reported (use CFOL commands OR request return, if necessary). Note: When the income was not considered, adjust the account accordingly. 2. Research command code IRPTR or E-TRAK to verify the same information on the Form 1042-S is reported.
The taxpayer files an amended return claiming that the amount withheld on Form 1042-S was incorrect	Return the claim to the taxpayer. Advise the taxpayer to resubmit the amended return with a copy of the corrected Form 1042-S.
The taxpayer files an amended return with a corrected Form 1042-S.	1. Research command code IRPTR or E-TRAK to verify the same information on the Form 1042-S is reported. 2. When verified, allow the credit with transaction code 766. Input a TC 29X with a Reference Code 330 for the amount of the credit to generate the TC 766. Note: Use of the reference code 330 will cause Master File to use the 180- day interest-free calculation on the amount of the Chapter 3 or Chapter 4 withholding credit.

21.8.2.12.2.3
(10-01-2022)

FATCA - Programming Affecting Certain Forms 1120-F

- (1) During January 1, 2015 through December 31, 2015 all Forms 1120-F claiming Form 1042-S, Form 8288-A, and/or Form 8805 credits (Credit Reference Number (CRN) 330) will be reviewed for validity. Forms 1120-F with a credit balance will have the entire refund systemically frozen for up to 154 days. However, Forms 1120-F with a zero balance or a balance due will not have a systemic freeze. The items below will identify these systemically frozen refunds:

- - R Freeze
- Transaction Code (TC) 766 CRN 330
- TC 570
- TC 971 Action Code (AC) 746

DO NOT RELEASE THE FREEZE. The examples below illustrate how the systemic freeze will affect refunds or offsets of refundable credit amounts.

Example: TC 150 for \$1,000 with a CRN 330 for \$1,500 will generate the systemic freeze and hold the \$500 refund.

Example: TC 150 for \$.00 with a CRN other than 330 for \$1,000 and a CRN 330 for \$1,500 will generate the systemic freeze to hold the entire \$2,500 refund.

- (2) Beginning January 1, 2016 the entire refund is no longer frozen. All Forms 1120-F claiming withholding relating to Chapter 3 & 4 (Line 5i) will continue to be reviewed for validity but will no longer have a freeze code on the account. The amount of withholding claimed on Line 5i will be systemically frozen for up to 154 days with a Transaction Code (TC) 810. **DO NOT RELEASE THE FREEZE.** The items below will identify these systemically frozen refunds:

- TC 810
- TC 766 CRN 330
- TC 971 Action Code (AC) 746

- (3) Notices **will not** generate regarding the systemic freeze, which may result in taxpayer inquiries.

Note: Under the Hiring Incentives to Restore Employment (HIRE) Act enacted March 18, 2010, IRS has up to 180 interest-free days to review IRC Chapters 3 and 4 credits.

- (4) The 154 day freeze period begins from the later of the Form 1120-F due date or the date the complete return including all necessary documentation was actually filed.

Example: A complete refund 1120-F is filed in January. The refund will be held until September if the return due date is March 15th.

Example: A complete refund 1120-F is filed in May for a return due in March. The refund will be held until November.

- (5) **DO NOT RELEASE THE FREEZE.** Compliance will review the validity of these credits during the 154 day freeze period.

- (6) If additional time is necessary to review the credits, Compliance will extend the systemic freeze and send Letter 3064C. An extended freeze is identified by a TC 971 and AC 747 with a two-digit character (01-99; the number of cycles the freeze is extended) in the miscellaneous field.
- (7) If a taxpayer calls to inquire about their refund and it is a frozen CRN 330 (1042-S/8288-A/8805) refund (initial freeze) advise the caller: "The IRS will need additional time to process your return. Please allow IRS up to six months from the original due date or the actual filing date of the return whichever is later to receive your refund."
- (8) If a taxpayer calls to inquire about their refund and the initial freeze has been extended, advise the caller: "The IRS will need additional time beyond the initial six months indicated in the Form 1120-F instructions to process the return. Please allow up to 12 months from the original due date of the Form 1120-F or the date you actually filed the Form 1120-F, whichever is later, to process your return. If after our review you are due a refund, we will pay you interest on that amount from the later of the due date or the date you filed your return. We apologize for the inconvenience."
- (9) If a taxpayer calls to inquire about a balance due notice they received because we reduced or eliminated their credits, follow procedures in IRM 21.8.2.12.2.5 or IRM 21.8.2.12.2.6 as appropriate.
- (10) Refer taxpayers who indicate waiting for their refund will create economic harm to TAS. See IRM 13.1.7.3, TAS Case Criteria, for referral procedures.
- (11) If a duplicate or amended return is received for the purpose of receiving the frozen credit, issue correspondex Letter 3064C, or another appropriate letter and release the -A freeze. Use the language in Paragraph 7 or 8 above to advise the taxpayer of the initial or additional delay. Follow procedures in IRM 21.8.2.12.2.7 or IRM 21.8.2.12.2.8 to process other duplicate or amended returns accordingly.

Exception: If an amended return is received that will increase or decrease tax **and** is **unrelated to credit(s) originally claimed on Form 1120-F**, process per normal procedures following CAT-A criteria in IRM 21.8.2.2.12. A TC 29X adjustment will not release the systemic freeze.

- (12) If a duplicate or amended return is received claiming a new credit or a denied credit, follow procedures in IRM 21.8.2.12.2.7 or IRM 21.8.2.12.2.8 as appropriate.
- (13) Accounts Management CSRs will report time spent on working FATCA issues under 710-8439X (FATCA).
- (14) In addition to this **systemic review process**, Compliance will continue with their **manual review process** of Form 1042-S, Form 8805, and Form 8288-A credits on certain returns. The items below will identify these returns:

- Project Code Status "1080" will be on Command Code (CC) AMDISA

Note: As of January 25, 2016 Project Code "1501" will be used.
Effective May 30, 2017 Project Code **1501** will be converted to Project Code **1514**.

- Note:** If the taxpayer writes or calls asking about their refund, inform the taxpayer refunds of certain overpayments, which pertain to tax, withheld and reported on Forms 1042-S, 8805, or 8288-A may require additional time to be processed. Therefore, please allow up to six months for these refunds to be issued. If six months have passed, inform the taxpayer the refund will be delayed pending the examination of the tax return, prepare a referral (Form

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- (1) IRS implemented a systemic matching program to review the validity of credits on Forms 1120-F. See IRM 21.8.2.12.2.3 for more information.
- (2) The matching program compares information, listed below, from the withholding agent's Form 1042-S (Copy A) submitted to IRS against the recipient's Form 1042-S filed with their income tax return. The comparison will determine if Forms 1042-S match and/or if a credit was previously allowed. Box numbers that changed from year to year are noted below.

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what they provided to the recipient. The taxpayer and withholding agent will need to determine the reason for a Form 1042-S not matching. If a reason is identified, the withholding agent may need to submit an amended Form 1042-S with the IRS and/or provide a corrected copy of Form 1042-S to the taxpayer.

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- (6) If a taxpayer has more than one Form 1042-S that does not match, a separate Letter 5532C is issued for each Form 1042-S. However, only one adjustment (TC 767, RC 161) will post to IDRS to reverse the credits as long as the reversal occurs in the same cycle.

Example: Taxpayer attached five Forms 1042-S to their income tax return for a total credit of \$1,000. Two Forms 1042-S totaling \$300.00 do not match. Two Letters 5532C will be issued but only one TC 767 for \$300.00 with Reason Code 161 will post to IDRS.

- (7) **IF THE MATCHING PROGRAM INDICATES A FORM 1042-S WAS PREVIOUSLY ALLOWED**, a Letter 5533C, Notification of Preliminary Action Regarding Chapter 3 or Chapter 4: Credit Previously Allowed, is issued. The letter advises the taxpayer we reduced or eliminated the amount shown on Form 1120-F, line 5i because our records show that their credit has already been allowed.

- (8) If a taxpayer has more than one Form 1042-S that was previously allowed, a separate Letter 5533C is issued for each Form 1042-S. However, only one adjustment (TC 767, RC 162) will post to IDRS to reverse the credits as long as the reversal occurs in the same cycle.

Example: Taxpayer attached five Forms 1042-S to their income tax return for a total credit of \$1,000. Two Forms 1042-S totaling \$300.00 were previously allowed. Two Letters 5533C will be issued but only one TC 767 for \$300.00 with Reason Code 162 will post to IDRS.

- (9) **IF THE TAXPAYER FILED MULTIPLE 1042-S FORMS AND THE MATCHING PROGRAM INDICATES ONE FORM 1042-S DID NOT MATCH “AND” ONE FORM 1042-S WAS PREVIOUSLY ALLOWED**, a Letter 5532C and a Letter 5533C is issued. Two adjustments will post to IDRS, one TC 767 with Reason Code 161 and one TC 767 with Reason Code 162.

- (10) **IN ALL CASES**, if credits are reversed in separate cycles multiple TCs 767 will post to IDRS.

Caution: After a reversal posts (TC 767), there may still be a freeze. Some Form 1042-S credits will remain frozen until the 154 day freeze or the extended freeze is systemically released. **DO NOT RELEASE THE FREEZE.**

- (11) When a reversal posts (TC 767 (RC 161 or 162)), an adjustment notice (CP 210 or 220) 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.

- (12) Accounts Management will not validate credits that may still be frozen (not reversed) on the account.

Example: The original return includes \$5,000 in frozen credits. \$1,000 was reversed with TC 767 RC 161. \$4,000 remains frozen. Accounts Management will only verify the \$1,000 credit that was reversed.

- (13) Accounts Management assistors will take the following actions on accounts affected by the systemic 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 21.8.2.2.12, Examination Criteria.
- Follow all normal amended return guidelines and procedures. For further information see IRM 21.5.2.4, Adjustment Guidelines-Procedures.
- Follow all normal payment tracer guidelines and procedures. For further information see IRM 21.5.7, Payment Tracers.
- Follow all normal credit transfer guidelines and procedures. For further information see IRM 21.5.8, Credit Transfers.

21.8.2.12.2.5
(10-01-2018)
**FATCA Matching
Program Form 1042-S
Credit Reversals on
Forms 1120-F -
Accounts Management
Telephone/Written
Inquiries - Letter 5532C**

- (1) The instructions in this IRM subsection pertain only to accounts where the taxpayer was issued a Letter 5532C, Notification of Preliminary Action Regarding Chapter 3 or Chapter 4 Withholdings Shown as Payments on Your Tax Return, **and** one or more credits were reversed (TC 767, RC 161) because the withholding agent's Form 1042-S (Copy A) submitted to IRS did not match the recipient's (taxpayer's) Form 1042-S (any copy) filed with their income tax return. See IRM 21.8.2.12.2.4 for additional information about Letter 5532C.

- (2) The following table explains how Account Management assistors will respond to telephone/written inquiries concerning Letter 5532C, CP 210/220, and/or credit reversal (TC 767, RC 161):

Reminder: A Competent Authority letter 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.

If	And	Then
Taxpayer writes or calls	Asks why their credit was denied or doesn't understand their letter/notice	<ol style="list-style-type: none"> 1. Advise taxpayer their credit was denied because their Form 1042-S information did not match the information reported by their withholding agent. 2. Advise taxpayer they must contact their withholding agent to determine the reason for the mismatch. <p>Note: If a mismatch is identified, the withholding agent may need to submit a corrected Form 1042-S with the IRS and/or provide a corrected copy of Form 1042-S to the taxpayer.</p>
Taxpayer writes and explains the withholding agent confirmed the taxpayer's copy of Form 1042-S matches what the withholding agent submitted to IRS.	Taxpayer provides any copy of Form 1042-S	Follow the instructions in Paragraph (3) below.
Taxpayer writes and explains the withholding agent confirmed the taxpayer's copy of Form 1042-S matches what the withholding agent submitted to IRS.	Taxpayer DOES NOT provide any copy of Form 1042-S	<p>Request a copy and close case.</p> <p>Note: When taxpayer provides any copy of Form 1042-S, follow the instructions in Paragraph (3) below.</p>
Taxpayer calls and explains the withholding agent confirmed the taxpayer's copy of Form 1042-S matches what the withholding agent submitted to IRS.	Taxpayer provides any copy of Form 1042-S	Prepare Form 4442 for an In-House referral. Follow procedures in IRM 21.3.5.4, Referral Procedures. When working these referrals, follow the instructions in Paragraph (3) below.

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If	And	Then
Taxpayer calls and explains the withholding agent confirmed the taxpayer's copy of Form 1042-S matches what the withholding agent submitted to IRS.	Taxpayer DOES NOT provide any copy of Form 1042-S	Request a copy by fax and prepare Form 4442 for an In-House referral. Follow procedures in IRM 21.3.5.4, Referral Procedures. When working these referrals, follow the instructions in Paragraph (3) below. Note: If taxpayer cannot provide any copy of Form 1042-S by fax request a copy by mail and close case.
Taxpayer writes and states the withholding agent explained the original Form 1042-S DID NOT match	Taxpayer provides any copy of corrected Form 1042-S	Follow the instructions in Paragraph (3) below.
Taxpayer writes and states the withholding agent explained the original Form 1042-S DID NOT match	Taxpayer DOES NOT provide any copy of corrected Form 1042-S	Request a copy and close case. Note: When taxpayer provides any copy of Form 1042-S, follow the instructions in Paragraph (3) below.
Taxpayer calls and states the withholding agent explained the original Form 1042-S DID NOT match	Taxpayer provides any corrected copy of Form 1042-S	Prepare Form 4442 for an In-House referral. Follow procedures in IRM 21.3.5.4, Referral Procedures. When working these referrals, follow the instructions in Paragraph (3) below.
Taxpayer calls and states the withholding agent explained the original Form 1042-S DID NOT match	Taxpayer DOES NOT provide any corrected copy of Form 1042-S	Request a copy by fax and prepare Form 4442 for an In-House referral. Follow procedures in IRM 21.3.5.4, Referral Procedures. When working these referrals, follow the instructions in Paragraph (3) below. Note: If taxpayer cannot provide any copy of Form 1042-S by fax request a copy by mail and close case.
Taxpayer writes or calls	Claims to be a victim of identity theft	Follow Identity Theft procedures in IRM 25.23.11, Business Master File (BMF) Identify Theft Procedures for Accounts Management.

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- (3) Once the taxpayer's copy (any copy) of Form 1042-S is received, Account Management assistants will follow the instructions below to validate a reversed Form 1042-S credit (TC 767 RC 161) and adjust the account.

Caution: Accounts Management will not validate credits that may still be frozen (not reversed) on the account. To determine if the reversed Form 1042-S credit is valid you may need to request the original return.

If	Then	Next Steps/Additional Information
Taxpayer provides any copy of Form 1042-S	<p>1. Compare Form 1042-S with the information on CC IRPTR(L), Document Code 02, or E-TRAK to determine if the information listed in IRM 21.8.2.12.2.4(2) matches.</p> <p>Exception: If the taxpayer did not have a TIN when the withholding agent provided the Form 1042-S to the taxpayer follow procedures in Paragraph 4 below.</p>	<p>If ALL the information DOES match, adjust the account by taking the following actions:</p> <ol style="list-style-type: none"> 1. Attach Form 1042-S, 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 1120-F tax account using Transaction Code 290 .00 and Credit Reference Number (CRN) 330 for the amount of the verified reversed credit(s). <p>Reminder: If the systemic freeze is still on the account the adjustment will not release it, which may result in refund inquiries. For refund inquiries follow the procedures in IRM 21.8.2.12.2.3 to explain when the systemic freeze will release.</p>

If	Then	Next Steps/Additional Information
Taxpayer provides any copy of Form 1042-S	<div>1. Compare Form 1042-S with the information on CC IRPTR(L), Document Code 02, or E-TRAK to determine if the information listed in IRM 21.8.2.12.2.4(2) matches. Exception: If the taxpayer did not have a TIN when the withholding agent provided the Form 1042-S to the taxpayer follow procedures in Paragraph 4 below.</div>	<div>If ALL the information DOES NOT match , take the following actions: <div>1. Attach Form 1042-S, see IRM 21.5.1.5.3, CIS 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 information 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.</div></div>

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- (4) Follow the instructions below to validate a reversed Form 1042-S credit (TC 767 RC 161) and adjust the account when the taxpayer did not have a TIN when the Form 1042-S was issued by the withholding agent.

If	Then	Next Steps
Taxpayer provides any copy of 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)/E-TRAK using the Withholding Agent's EIN. 2. Scroll through the data to locate the taxpayer's name for the credit you are validating. 3. Once located determine if the information identifying the taxpayer, in addition to the withholding amount information on the Form 1042-S matches the information found. <p>Note: If the data cannot be located and/or the information does not match follow procedures directly below.</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, CIS Source Documentation. 2. Enter CII notes indicating Form 1042-S information matches. 3. Adjust the recipient's Form 1120-F tax account using Transaction Code 290 .00 and Credit Reference Number 330 for the amount of the verified reversed credit(s).
Taxpayer provides any copy of Form 1042-S	The data cannot be located on CC IRPTR(I)/E-TRAK using the Withholding Agents EIN and/or the information does not match	<p>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, CIS 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 information 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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21.8.2.12.2.6
(02-26-2018)
**FATCA Matching
Program Form 1042-S
Credit Reversals on
Forms 1120-F -
Accounts Management
Telephone/Written
Inquiries - Letter 5533C**

- (1) The instructions in this IRM subsection pertain only to accounts where the taxpayer was issued a Letter 5533C, Notification of Preliminary Action Regarding Chapter 3 or Chapter 4: Credit Previously Allowed, **and** one or more credits were reversed (TC 767 RC 162) because the credit was previously allowed. See IRM 21.8.2.12.2.4 for additional information about Letter 5533C.
- (2) If a taxpayer contacts Accounts Management concerning Letter 5533C, CP 210/220, and/or credit reversal (TC 767, RC 162), and either has questions and/or disagrees with the letter, ask the taxpayer to send in a copy of the Letter 5533C (mail or fax) and a copy of the Form 1042-S. Ask the taxpayer to state their questions/concerns on the copy of the letter. If the taxpayer states they do not have a copy of the Letter 5533C, then request just the Form 1042-S and document the question/concern the taxpayer has on CII.

Reminder: A Competent Authority letter 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.

- (3) Advise the taxpayer, once a copy of Letter 5533C and Form 1042-S is received, their inquiry will be elevated for research and they will receive a written response from the IRS within 30 days.
- (4) Once the copy of Letter 5533C and Form 1042-S is received from the taxpayer, Accounts Management will:
 1. Prepare Form 4442, explaining the taxpayer contacted AM, provided their Letter 5533C and Form(s) 1042-S and notate the taxpayer's question or comment. Provide the following information on Form 4442:
Taxpayer's TIN
Tax period
Withholding Agent's Name
Withholding Agent's TIN
Dollar amount of the credit being claimed
 3. Enter CII notes indicating why the referral was made.
 4. Keep the control base open. LB&I will respond in 14 days with instructions and language for a written response to the taxpayer.

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21.8.2.12.2.7
(10-01-2018)
**FATCA Form 1042-S
Accounts Management
Form 1120-F Amended
Returns (New Form
1042-S Credits)**

- (1) The instructions in this IRM subsection pertain to amended returns with a "new" Form 1042-S (any copy) attached. This means the Form 1042-S credit was not claimed on the original return and therefore was never verified. You may need to request the original return to determine if the Form 1042-S credit is new.

Caution: Just because one or more of the following transaction codes are posted on IDRS DOES NOT mean the Form 1042-S credit isn't new:
TC 971 AC 746
TC 971 AC 747
TC 767 with Reason Codes 161 or 162

- (2) The following table explains how Accounts Management assistants will work Form 1120-F amended returns and substantiate a new Form 1042-S credit attached:

Reminder: A Competent Authority letter 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.

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

If	Then	Next Steps/Additional Information
Taxpayer provides any copy of Form 1042-S	<p>Compare Form 1042-S with the information on CC IRPTR(L), Document Code 02, or E-TRAK to determine if the information listed in IRM 21.8.2.12.2.4(2) matches.</p> <p>Exception: If the taxpayer did not have a TIN when the withholding agent provided the Form 1042-S to the taxpayer follow procedures in IRM 21.8.2.12.2.5(4) above.</p>	<p>If ALL the information DOES match, adjust the account by taking the following actions:</p> <ol style="list-style-type: none"> 1. Attach Form 1042-S, see IRM 21.5.1.5.3, CIS Source Documentation. 2. Enter CII notes indicating Form 1042-S information matches. 3. Adjust the recipient's Form 1120-F tax account using Transaction Code 290 .00 and Credit Reference Number (CRN) 330 for the amount of the verified reversed credit(s). <p>Reminder: If the systemic freeze is still on the account the adjustment will not release it, which may result in refund inquiries. For refund inquiries follow the procedures in IRM 21.8.2.12.2.3 to explain when the systemic freeze will release.</p>

If	Then	Next Steps/Additional Information
Taxpayer provides any copy of Form 1042-S	<p>Compare Form 1042-S provided by the taxpayer with the information on CC IRPTR(L), Document Code 02, or E-TRAK to determine if the data elements listed in IRM 21.8.2.12.2.4(2) match.</p> <p>Exception: If the taxpayer did not have a TIN when the withholding agent provided the Form 1042-S to the taxpayer follow procedures in IRM 21.8.2.12.2.5(4) above.</p>	<p>If ALL the information DOES NOT match , take the following actions:</p> <ol style="list-style-type: none">1. Attach Form 1042-S, see IRM 21.5.1.5.3, CIS 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 information 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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- 21.8.2.12.2.8
(10-01-2018)
**FATCA Form 1042-S
Accounts Management
Form 1120-F Amended
Returns (Credits Denied)**

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

Caution: Just because one or more of the following transaction codes are posted on IDRS DOES NOT mean the Form 1042-S credit has been denied:
TC 971 AC 746
TC 971 AC 747
TC 767 with Reason Codes 161 or 162

Reminder: If a duplicate or amended return is received for the purpose of receiving the frozen credit, issue correspondex Letter 3064C, or another appropriate letter. Use the language in Paragraph 7 or 8 from IRM 21.8.2.12.2.3, to advise the taxpayer of the initial or additional delay.

(2) The following table explains how Accounts Management assistors will work Form 1120-F amended returns and substantiate a denied Form 1042-S (Copy B, C, or D) attached:

Reminder: A Competent Authority letter 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.

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

If	Then/And	Next Steps/Additional Information
Taxpayer provides any copy of Form 1042-S	Form 1042-S credit was denied (Letter 5532C TC 767 RC 161)	<p>Compare Form 1042-S provided by the taxpayer with the information on CC IRPTR(L), Document Code 02, or E-TRAK to determine if the data elements listed in IRM 21.8.2.12.2.4(2) match.</p> <p>Exception: If the taxpayer did not have a TIN when the withholding agent provided the Form 1042-S to the taxpayer follow procedures in IRM 21.8.2.12.2.5(4) above.</p> <p>If ALL the information DOES match , adjust the account by taking the following actions:</p> <ol style="list-style-type: none"> 1. Attach Form 1042-S, see IRM 21.5.1.5.3, CIS Source Documentation. 2. Enter CII notes indicating Form 1042-S information matches. 3. Adjust the recipient's Form 1120-F tax account using Transaction Code 290 .00 and Credit Reference Number (CRN) 330 for the amount of the verified reversed credit(s). <p>Reminder: If the systemic freeze is still on the account the adjustment will not release it, which may result in refund inquiries. For refund inquiries follow the procedures in IRM 21.8.2.12.2.3 to explain when the systemic freeze will release.</p>

If	Then/And	Next Steps/Additional Information
Taxpayer provides any copy of Form 1042-S	Form 1042-S credit was denied (Letter 5532C TC 767 RC 161)	<p>Compare Form 1042-S provided by the taxpayer with the information on CC IRPTR(L), Document Code 02, or E-TRAK to determine if the data elements listed in IRM 21.8.2.12.2.4(2) match.</p> <p>Exception: If the taxpayer did not have a TIN when the withholding agent provided the Form 1042-S to the taxpayer follow procedures in IRM 21.8.2.12.2.5(4) above.</p> <p>If ALL the information DOES NOT match, take the following actions:</p> <ol style="list-style-type: none"> 1. Attach Form 1042-S, see IRM 21.5.1.5.3, CIS 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 information 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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If	Then/And	Next Steps/Additional Information
Taxpayer provides any copy of Form 1042-S	Form 1042-S credit was denied (Letter 5533C TC 767 RC 162)	<ol style="list-style-type: none"> 1. Prepare Form 4442, explaining the taxpayer filed an amended return, and account research shows the credit was denied with a RC 162. Provide the following information on Form 4442: <ul style="list-style-type: none"> • Taxpayer's TIN • Tax period • Withholding Agent's Name • Withholding Agent's TIN • Dollar amount of the credit being claimed. 3. Enter CII notes indicating why the referral was made. 4. Keep the control base open. LB&I will respond in 14 days with instructions and language for a written response to the taxpayer.

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21.8.2.12.2.9
(12-16-2016)

**FATCA Form 1042-S
Accounts Management
Telephone Inquiries
(Withholding Agent) -
Letter 5532C**

- (1) The instructions in this IRM subsection pertain to withholding agents calling with questions about their Recipients Form 1042-S credit being denied by IRS.
- (2) The following table explains how Account Management assistors will respond to telephone inquiries from a withholding agent concerning a credit that was denied because the Withholding Agent's Form 1042-S (Copy A) submitted to IRS did not match the Recipient's Form 1042-S filed with their income tax return:

Caution: The withholding agent must compare **ALL** the fields on the Form 1042-S they provided to the recipient against what they actually submitted to IRS through FIRE (Filing Information Returns Electronically) or on paper before you can advise the withholding agent of the correct steps to take. If they haven't compared **ALL** the fields, explain they must compare **ALL** the fields to determine if the forms match.

If	And	Then
Withholding agent doesn't understand why their recipient's credit was denied		<ol style="list-style-type: none"> 1. Advise withholding agent the credit was denied because their Form 1042-S (Copy A) submitted to IRS or the information submitted to IRS through FIRE (Filing Information Returns Electronically) did not match the recipient's copy submitted with the recipient's return. 2. Advise withholding agent they must ensure that ALL fields match when comparing the Form 1042-S they provided to their recipient against what they actually submitted to IRS through FIRE or on paper (Copy A) to determine where the Forms 1042-S does not match. <p>Note: If the withholding agent has already compared the information follow the procedures below according to what the withholding agent claims.</p>
Withholding agent claims the Form 1042-S (Copy A) information submitted to IRS matches the recipient's Form 1042-S	Withholding agent compared and confirms ALL fields match	Advise withholding agent to instruct the recipient to provide IRS a copy of their Form 1042-S.

If	And	Then
Withholding agent claims Form 1042-S (Copy A) information was incorrect when originally submitted to IRS	Withholding agent compared and confirms ALL fields now match	Advise the withholding agent to: <ul style="list-style-type: none"> • Submit an amended copy of Form 1042-S (Copy A) with the corrected information to IRS. • Provide a copy of the amended Form 1042-S to the recipient. • Instruct recipient to provide their amended Form 1042-S to IRS. • Instruct recipient to allow the appropriate time for processing the amended copy of Form 1042-S (Copy A) (six weeks if filed electronically and eight weeks if filed by paper) before submitting their amended Form 1042-S to IRS. • File an amended Form 1042 with IRS if applicable.
Withholding agent claims the recipient's Form 1042-S information was incorrect when originally filed	Withholding agent compared and confirms ALL fields now match	Advise the withholding agent to: <ul style="list-style-type: none"> • Provide an updated copy of Form 1042-S to the recipient that matches exactly what was filed with IRS (Copy A). • Instruct recipient to provide the updated Form 1042-S that now matches exactly what was filed with IRS (Copy A) to the IRS.

If	And	Then
Withholding agent claims Form 1042-S (Copy A) information and the recipient's Form 1042-S information were both incorrect when originally submitted to IRS	Withholding agent compared and confirms ALL fields now match	Advise the withholding agent to: <ul style="list-style-type: none"> • Submit an amended copy of Form 1042-S (Copy A) with the corrected information to IRS. • Provide a copy of the amended Form 1042-S to the recipient. • Instruct recipient to provide their amended Form 1042-S to IRS. • Instruct recipient to allow the appropriate time for processing the amended copy of Form 1042-S (Copy A) (six weeks if filed electronically and eight weeks if filed by paper) before submitting their amended Form 1042-S to IRS. • File an amended Form 1042 with IRS if applicable.

21.8.2.12.3
(10-01-2021)
Form 1042 Filing Requirements

- (1) The Form 1042 is filed by all persons having the control, receipt, custody, disposal, or payment of interest, dividends, rent, salaries, etc., to the extent that any such items constitute gross income from sources within the United States, of nonresident alien individuals, or foreign corporations. Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations, can be used as a reference.
- (2) Form 1042 is due on or before March 15 of each year. Form 1042 and Form 1042-S must be filed whether or not any tax was withheld or was required to be withheld (i.e., income was exempt from withholding).
- (3) Taxpayers may apply for a 6 month extension to file by submitting a Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
 - a. Approval of the extension allows additional time to file the tax return, NOT additional time to pay the taxes.
 - b. Any undeposited taxes of \$200 or more, due by the Return Due Date (RDD), must still be deposited by that time. Undeposited amounts less than \$200 may be paid with the extension, but they still must be paid by the RDD.

21.8.2.12.4
(05-27-2015)
Form 1042 Federal Tax Deposits

- (1) All withholding agents are required to deposit the tax withheld. The amount of taxes withheld determines the frequency of deposits. See IRM 20.1.4.11, Form 1042, for additional information on deposit requirements and due dates for Form 1042.

- (2) Generally, withholding agents are required to deposit funds electronically. See Treas. Reg. § 1.6302-2(c), § 31.6302-1(h)(3).
- (3) For deposit purposes, each month is divided into four periods ending on the 7th, 15th, 22nd and last day of the month. These are referred to as the “quarter-monthly” periods and are labeled 1 through 60 on the tax return.
- (4) When the total tax for the year is at least \$200, the taxpayer is required to list their tax liability in the Record of Federal Tax Liability (ROFTL) Section.
- (5) See IRM 20.1.4-8 , Form 1042 Deposit Requirements For All Periods, to determine the frequency of deposits.
- (6) 90% Rule/Safe Haven: T.D. 9507 removed the 90% safe harbor rule from Treas. Reg. § 1.6302-2 beginning for tax periods 2011 and subsequent. For tax periods 2010 and prior, taxpayers are considered to have met the \$2,000 deposit requirement listed in (4) above if all the following statements are true:
 - a. At least 90% of the tax liability is deposited timely; and
 - b. Any underpayment is deposited with the first deposit that must be made after the 15th day of the following month, if the quarter-monthly period is in a month other than December. Any underpayment of \$200 or more that occurs during December must be deposited by January 31.

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21.8.2.12.5
(10-01-2018)
**Electronic Deposit
Requirements**

- (1) Beginning January 1, 2011, taxpayers must use an electronic payment option for all Federal Tax Deposits. See Treas. Reg § 31.6302-1(h)(2)(iii).
- (2) Refer to IRM 21.7.1.4.8.1.3, EFTPS Deposit Requirements, for criteria that determines which taxpayers are required to use EFTPS.
- (3) Taxpayers that are required to make electronic deposits, but fail to do so, may be subject to a penalty. See IRM 21.8.2.12.6, Failure To Deposit Penalties - Form 1042.
- (4) For additional information, see Treas. Reg. § 31.6302-1(h).
- (5) All taxpayers must enroll to use EFTPS by completing Form 9779, EFTPS Business Enrollment.
- (6) Taxpayers can enroll in EFTPS by completing the enrollment Form 9779 online on the EFTPS website at <http://www.eftps.gov>, or by requesting an enrollment form by calling the IRS Tax Forms toll free number (800-829-3676), or by calling the EFTPS Customer Service toll free number (800-555-4477) and then mailing the completed form.
- (7) For any additional information, taxpayers can call the EFTPS Customer Service Center (800-555-4477). For all EFTPS Customer Service Center Numbers see IRM 21.7.1.4.8.1.1, EFTPS Enrollment.

21.8.2.12.6
(10-01-2017)
**Failure To Deposit
Penalties - Form 1042**

- (1) Penalty processing on Form 1042 (Chapter Three Withholding (CTW)) began in processing year 2003.
- (2) Taxpayers are now liable for this penalty, see IRM 20.1.4.11, Form 1042, and should have been making timely deposits beginning in 2002.

Note: A distributing corporation may include on line 64a of Form 1042 any tax liability resulting from adjustments of underwithheld tax on corporate distributions if it made a reasonable estimate of its accumulated earnings and profits under Regulations section 1.1441-3(c)(2)(ii)(A) or 1.1474-6(c)(2)(ii), **and** it paid over the underwithheld tax by March 15 of the subsequent year. In certain cases, the regulations allow withholding agents to make deposits in the year subsequent to the year of payment (without penalty). In these cases, the withholding agent reports the liability associated with the payment on Line 59 of the Form 1042. For example, regulated investment companies (RICs), real estate investment trusts (REITs), or Personal Holding Companies (PHC) that declared dividends in October, November, or December under sections 852(b)(7), 857 (b)(9), or 563(b), and paid the dividends no later than March 15 of the subsequent year, should report the additional tax liability related to the dividends on line 59.

- (3) The penalty calculation rate is:

- 2% of the underpayment if 1 to 5 days late
- 5% of the underpayment if 6 to 15 days late
- 10% of the underpayment if 16 or more days late
- 10% for deposits made at an unauthorized financial institution, paid directly to the IRS, or paid with the tax return
- 10% for amounts subject to electronic deposit requirements but not deposited using EFTPS

Note: The penalty is increased to 15% if the balance of tax is not paid within 10 days after the IRS issues the first delinquency notice demanding payment. See IRM 20.1.4.14.4, Penalty Indicator Codes (PIC) (15 Percent Rate).

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- (4) Taxpayers can self compute the penalty (except the 15% penalty) and enter the amount on Form 1042, Line 71. The Form instructions provide the percentages to be used to calculate this penalty as listed above. Do not abate, unless a request is subsequently made by the taxpayer. See the Caution below.

Caution: Verify that the penalty amount was not self assessed for an incorrect lower amount. Command Code FTDPN can be used to verify the correct penalty. If the penalty per FTDPN is higher and not within tolerance, assess the difference.

Note: This option is no longer available beginning with tax year 2011. If a withholding agent does include interest or penalties on its Form 1042, such amounts should only be reported on the bottom margin of the form and should not be included in the balance due on line 69.

- (5) Accounts Management work is worked by the International Department in the Cincinnati Accounts Management Center (CAMC) and the Ogden Accounts Management Center (OAMC).

Note: If a FTD Penalty on a 2007 or prior year return is received and there is an entry on line 66, see *IRM 21.8.2.12.6.1*, Form 1042 FTD Penalty Resulting From Line 66 Entry, in the archives for procedures.

- (6) Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, contains information that the taxpayer can use for additional reference.

21.8.2.12.7
(04-28-2017)
**Exemptions from
Chapter 3 or 4
Withholding**

- (1) A withholding agent must withhold income tax at the statutory rate or lower treaty rate, unless one of the following conditions are met:
 - Income is exempt by treaty.
 - Income is exempt by an IRC section.
 - Income is considered foreign source.
 - Income is considered “effectively connected with a U.S. trade or business.”
 - The foreign individual or entity is considered a resident of the United States for income tax purposes.
- (2) All exempt or reduced withholding must be based on the applicable alien withholding certificate (W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, or W-8CE) or a statement signed under the penalties of perjury attesting to the recipient’s country of residence for income tax purposes. See *IRM 21.8.2.18*, Withholding Certificates.
- (3) The W-8 series documents were modified in 2014 as part of the implementation of the Foreign Account Tax Compliance Act (FATCA). See *IRM 21.8.2.18.1*, Form W-8, Certificate of Foreign Status, for a chart that shows the forms that became obsolete and their replacements.

21.8.2.12.8
(10-01-2023)
**Amended Returns -
Form 1042**

- (1) Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, is an income tax return used to report amounts subject to withholding under chapter 3 (sections 1441-1443) and amounts withheld under chapter 4 that are withholdable payments (sections 1471-1474). The form is also used to report withholding on specified federal procurement payments under section 5000C, certain payments subject to tax under section 877A, and certain distributions made under sections 1445 and 1446.
 - a. The withheld amounts are paid to IRS and do not belong to the withholding agent if they consist entirely of funds withheld from the nonresident alien or entity.
 - b. For deposit rules, see *IRM 21.8.2.12.4* and for deposit due dates, see Exhibit 20.1.4-8, Form 1042 Deposit Requirements For All Periods, in *IRM 20.1.4*, Penalty Handbook - Failure to Deposit Penalty.
 - c. Tax decreases are examination criteria. See *IRM 21.8.2.2.12*.
- (2) Most requests for adjustments on Form 1042 occur when payers withhold tax at the wrong rate, or due to recipient documentation delays, or from recipients exempt from taxation, either under treaty provisions or for reasons described in IRC 1441 and IRC 1442. In most cases the overwithholding is discovered after the payer has sent a Form 1042-S showing the withholding to the payee.

- (3) Follow general guidelines in IRM 21 and specific adjustment procedures in IRM 21.7.9, BMF Duplicate Filing Conditions, to resolve the “-A” freeze unless the entity is a Qualified Intermediary (QI), in which case apply those specific procedures contained in Qualified Intermediary Agreements (QI). See IRM 21.8.2.12.10. For failure to deposit penalties, see IRM 21.8.2.12.6
- (4) The same criteria are used to decide the validity of issues raised by the taxpayer and must be submitted as an amended Form 1042 (the “Amended Return” at the top of the Form 1042 is checked) for adjustment or abatement. Form 843, Claims, and correspondence are not allowed.
- (5) When claims are received without enough information to determine if the special procedural criteria listed below have been met, correspond with the taxpayer. See IRM 21.8.2.12.9, Processing Claim Adjustments for Form 1042.
- (6) Refunds by the IRS to the withholding agent or payer can only be done if the conditions set forth in IRC 1464, IRC 1474, and IRC 6414 are met. A non-qualified intermediary (NQI) may not claim a collective refund on behalf of their accounts holders, see IRM 21.8.2.12.10.1, for situations in which certain QI withholding agents can claim collective refunds on behalf of their account holders, partners, owners, or beneficiaries. The following is a list of situations where refunds of amounts claimed are acceptable. See IRM 21.8.2.2.12, for types of Form 1042 claims and issues to forward to Exam for classification.
 - a. Error was made only in the amounts deposited (the excess was never withheld from ANY payee):

Example: The withholding agent only withheld \$300 tax from various payees as documented on its Form 1042-S, but mistakenly deposited \$350. The \$50 error can be refunded to the withholding agent, since the withholding agent is the actual owner of the erroneous amount.
 - b. The amount was actually withheld, but discovered before the original Forms 1042-S are filed.

Example: In the simplest case, the withholding agent withholds, and the error is discovered prior to the last deposit. The withholding agent may treat the amount as erroneously withheld, repay the beneficial owner, and reduce the tax liability on the Form 1042 for the period in which the repayment was made (before the earlier of the date on which the associated Form 1042-S is filed or the due date for such form). The withholding agent may claim a credit (not a refund) to carry forward to the subsequent year and then reimburse itself by reducing the amount of a deposit prior to the end of the subsequent year.
- (7) Overpayments discovered after the Form 1042-S information return has been filed (March 15) can be claimed only by the recipient on an income tax return (Form 1040-NR or Form 1120-F) with the credit substantiated by attaching a Form 1042-S. Box 7b must not have been checked for any applicable claim to be considered for a given year. Box 7b is checked to indicate the withholding is NOT being remitted to the IRS. In the subsequent calendar year, the U.S. Withholding Agent may need to remit some of the escrowed amounts from the prior year and file a second Form 1042-S for each such recipient using Income

Code 50 and report the ultimately determined amount of withholding due. After this, the NRA recipient could file a claim on Form 1040-NR or Form 1120-F for any excess withholding.

- (8) If a complete package is received, but the error was discovered after the close

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- (9) Follow the procedures in the following table for processing amended 1042-S forms (submitted with or without Form 1042):

If	Then
Withholding agent is making adjustments for prior or current years to the amount of tax actually withheld and deposited by the withholding agent resulting in a tax decrease	Reject and advise, using a Letter 916C, that an income tax return must be filed by the payee to claim the overwithheld amount. Input TC 290.00, Blocking Series 18 or 15 for cases worked in CII.
The change to Form 1042 is for the correction of a math error only in the liability reported on the original return, or to correct errors in ownership	Allow (Form 1042 must be attached). Send original/amended 1042-S forms to Ogden Submission Processing Campus at: Mailing Address , Internal Revenue Service, Ogden Submission Processing Campus Code & Edit, M/S 6110 Ogden, UT 84409 or Physical Address , Internal Revenue Service Ogden Submission Processing Campus 1973 N. Rulon White Blvd. M/S 6110 Ogden, UT 84404
Change accepted by Examination	Adjust the Form 1042. Input the adjustment (TC 29X) with Reference Code 011.

If	Then
An amended Form 1042 return is received showing an underpayment or under withholding resulting in a tax increase	<p>The withholding agent is liable for the entire tax and interest from the due date. Assess the additional tax. Apply penalties. See IRM 20.1.4.21.3, Amended or Supplemental Return (Tax Decrease or Non-interest-free Tax Increase), for additional information.</p> <p>Caution: If an additional payment is not on the account, research IDRS for corresponding payment that may have posted to a different module than the current tax period, a different tax liability or for a TC 650 for an amount greater than zero, which may indicate a misapplied payment. If an additional payment is located and it has not already been refunded, transfer using CC ADD/ADC 24 or ADD/ADC 34.</p>

Reminder: The amount of tax withheld on income for foreign persons under sections 1441 through 1446, are chapter 3 taxes. The amounts of tax withheld on withholdable payments under sections 1471 and 1472 are chapter 4 taxes. Accordingly, to the extent that an overpayment arises from those taxes being deducted, withheld and reported on Form 1042, the overpayment can only be refunded to the foreign person. Therefore, the 180-day period applies. See IRM 21.8.2.9.5.1, 180-day interest-free Period for Chapter 3 Withholding.

Note: With the large amounts of gross income now being reported, there may not be enough space to enter the full amount for Reference Code 011 on REQ54. Enter as much as the system allows and initiate additional TC 290.00, Hold Code 3, Reference Code 011 REQ54 adjustments until the total of these adjustments reflect the full amount needed.

- (10) Amended/corrected 1042-S forms are sometimes submitted with the amended Form 1042. In this case, the corrected 1042-S form is regarded as a supporting schedule for adjustments. If the corrected 1042-S form is with the amended Form 1042, attach copies of the 1042-S forms to the adjustment document. Send the original corrected/amended 1042-S forms to:

Mailing Address, Internal Revenue Service
Ogden Submission Processing Campus
Code & Edit, M/S 6110
Ogden, UT 84409
or **Physical Address**, Internal Revenue Service
Ogden Submission Processing Campus
1973 N. Rulon White Blvd. M/S 6110
Ogden, UT 84404

- (11) TRNS 193 notices are generated for all duplicate (multiple) return conditions processed through pipeline.

Exception: Returns that by-pass Submission Processing are not numbered and do not create TRNS 193 notices. Therefore, follow the procedures in IRM 21.7.9.3.1, Amended/Corrected/Adjusted Returns that By-Pass Submission Processing.

21.8.2.12.9
(10-01-2023)
**Processing Claim
Adjustments for Form
1042**

- (1) An adjustment to the Form 1042 account is made using MFT 12 and the appropriate Blocking Series. See IRM 21.5.1.5.3, CIS Source Documentation, and Document 6209, IRS Processing Codes and Information, for the appropriate Blocking Series.
- (2) An adjustment to the gross income paid (item reference number 011) can be done at any time.
- (3) However, no tax liability or withheld amount decrease adjustment can be made to the withholding tax after the due date of the Form 1042, unless special criteria exists. See IRM 21.8.2.12.8, Amended Returns - Form 1042.

Note: Use IDRS to ensure each individual recipient's account **does not** contain a TC 766 credit for the same amount of the withholding agent's amended return decrease.

- (4) When a claim for tax decrease is received, verify that the withholding agent has submitted substantiation.
 - a. If the withholding agent has submitted substantiation, request the original return, secure research on the withholding agent and each Form 1042-S recipient, and forward the case to Examination Classification.

Exception: Do not forward to Examination Classification if the case has already been approved by LB&I.

- b. If the withholding agent did not provide substantiation with the claim for tax decrease, input a TC 290 .00, Blocking Series 18 or 15 for cases worked in CII, and send Letter 916C rejecting the claim using paragraphs E and K.
- (5) When a withholding agent replies to the Letter 916C by submitting substantiation for the Form 1042 tax decrease:
 1. Request the original return and the claim we were unable to consider (Blocking Series 18 or 15 for cases worked in CII).
 2. Secure research on the withholding agent and each Form 1042-S recipient to see if they filed for a refund of the same withholding, and

3. Forward the case to Examination Classification with all research. See IRM 21.8.2.2.12.
- (6) IRC 5000C now imposes a 2% excise tax on foreign persons payable through withholding by federal agencies on government foreign procurement payments. The requirement to report and pay this tax began in 2011.
- (7) This excise tax is reportable on Line 64d (Line 71 for TY 2011-2013) of Form 1042; this amount should be reported on the ROFTL. Only entities with an Employment Code (EC) "F" present on CC ENMOD are required to pay this excise tax. See IRM 3.21.110.1.1, Background, IRM 3.22.110.24.18, Field 0764D - Form 1042 Excise Tax Amount, and IRM 3.13.222.81, Unpostable Code (UPC) 331 Reason Code (RC) 7, for additional information.
- (8) Masterfile has been programmed to identify line 64d entries (Line 71 for TY 2011-2013) as reference item 198.
- (9) If an amended return is received correcting line 64d (Line 71 for TY 2011-2013) of Form 1042, follow all general adjustment guidelines. Use REQ 54 to input TC 290 with reference code 198 to make the correction. If the correction results in a decrease, follow all CAT-A guidelines, use TC 291 and reference code 198 with a (-) minus to input the decrease.

Exception: If the EC is not "F," then do not consider the amended return. Send Letter 916C with the following fill-in paragraph: We are unable to process your amended return for the tax period(s) shown above. Our records indicate you are not required to report the two-percent excise tax on federal procurement payments to a foreign person or foreign entity.

21.8.2.12.10
(10-01-2023)
**Qualified Intermediary
Agreements (QI)**

- (1) Under Treas. Reg. § 1.1441-1(e)(5), certain entities can enter into agreements with the IRS to become Qualified Intermediaries (QIs). Qualified Intermediaries can be:
 - Foreign financial institutions (e.g., banks, brokerage houses), other than a U.S. branch of such institution
 - Foreign branches of U.S. financial institutions or U.S. clearing organizations
 - Foreign clearing organizations
 - Non-financial foreign entities acting as intermediaries

Note: For chapter 4 purposes, a QI must be a participating foreign financial institution (PFFI), a registered deemed-compliant FFI, an FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA, or, through TY 2016, a limited FFI. In certain instances, a certified-deemed compliant FFI, a central bank of issue, or a foreign branch of a financial institution may also be a QI. See Rev. Proc. 20122-43 for further information.

- (2) A foreign partnership or trust cannot become a QI. However, a foreign partnership, or a foreign simple or grantor trust, can enter into a Withholding Foreign Partnership (WP) or Withholding Foreign Trust (WT) agreement with the IRS under Treas. Reg. § 1.1441-5(c)(2) and (e)(5)(V). See Rev. Proc. 2017-21 for agreement and application procedures. A partnership or trust that has entered into a WP or WT agreement assumes chapter 3 and 4 responsibilities with respect to its partners, owners, or beneficiaries (as applicable).

- (3) The benefits of becoming a Qualified Intermediary include:
- Maintaining confidentiality of non U.S. customers by providing withholding rate information to U.S. custodians on a pooled basis
 - Simplified information reporting procedures
 - Use of collective refund procedures so customers do not have to file refund claims individually
- (4) Refer taxpayers, who question how or where to apply for QI status, to Rev. Proc. 2022-43 which give guidance for entering into a QI Agreement.
- (5) There is a web site established for Qualified Intermediaries on <https://www.irs.gov/businesses/corporations/qualified-intermediary-system>. Additional information can also be found in Publication 515.

Caution: Taxpayers may incorrectly use a Qualified Intermediary (QI) Number to file returns or make deposits or payments. The EINs for Qualified Inter-

ers need to be aware of this when resolving payment tracers and duplicate filing conditions. Contact with the taxpayer may be necessary to determine the correct EINs that should have been used. Do not reinput a return under a different EIN when the QI number is involved. Have the taxpayer submit a signed return using the correct EIN and have it processed. Adjust the other account accordingly, after applying guidelines for examination criteria.

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 voicemail. (See IRM 10.5.1.6.7.2, Answering Machine or Voicemail.)

- (6) If taxpayers question the time frame for approval of QI status, advise them that a QI EIN in the range mentioned above will be issued upon receipt of the SS-4 application. Acceptance of a QI application currently takes approximately 30 days for approval and will be issued from the New York office. If there is a question on the QI status, ENMOD can be researched to see if the application was rejected. Entity will be notified to update ENMOD if the number is being revoked. See IRM 21.7.13, Assigning Employer Identification Numbers (EINs).
- (7) Withholding Foreign Trusts and Foreign Partnerships can find procedures in Rev. Proc. 2017-21.
- (8) A QI agreement generally is based in part on a Treasury Department Certification that the country has effective rules and/or procedures for providing tax information to the U.S. Treasury and the IRS regarding know-your-customer (KYC) rules as a vital component of adequate self-regulation. The IRS generally does not extend the QI system to any country that does not have acceptable KYC rules.
- (9) The following link is to a list of countries that have submitted approved KYC rules: <http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>. This website is updated regularly.
- (10) If the EIN is in the range noted in paragraph (5) above and the INTERMEDIARY IND on the BRTVU is 1, the entity is a Qualified Intermediary. If the

indicator is “2,” the entity is a NON-QI. This indicator comes from the top portion of Form 1042 below the address stating “Check if you are a QI/ Withholding foreign partnership or trust.” If these conditions are present, the taxpayer is a Qualified Intermediary and there may be a line 67 entry.

- (11) If an unnumbered Form 1042 is received without a QI EIN, but the QI box is checked, send it back to the taxpayer with an explanation of the requirements.

21.8.2.12.10.1
(10-01-2023)

Refund Adjustments for Over-Withholding by Qualified Intermediaries (QI's), Withholding Foreign Partners (WP's) and Withholding Foreign Trusts (WT's)

- (1) Qualified Intermediaries, Withholding Foreign Partnerships, Withholding Foreign Trusts, and, for purposes of chapter 4 taxes only, a Participating Foreign Financial Institution (PFFI) or Model 1 Foreign Financial Institution (Model 1 FFI) can request collective refunds on behalf of their account holders, partners, owners, or beneficiaries (as applicable) for amounts withheld under chapters 3 and 4. Specific procedures are contained in Rev. Procs. 2022-43 and 2017-21 and in Regulations section 1.1471-4(h).
- (2) This credit withheld is claimed on Form 1042 and shows up as an overpayment on lines 70a and 70b.

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. This number identifies a QI, WP, or WT. Alternatively, a PFFI or Reporting Model 1 FFI can be identified by checking their Chapter 4 Status Code reported on Form 1042 (code should be between 05 and 09).

- (4) A filer claiming a line 63b credit on an original return can have it refunded (without pre-examination approval) only if they are one of the entities listed in (1) above. Liability decreases on amended returns require examination approval. See IRM 21.8.2.2.12.
- (5) Any withholding agent that has been withheld on by an upstream withholding agent can claim credit for this upstream withholding at source by stating it on line 67 of its own Form 1042 and attaching the Forms 1042-S it has received. There is a possibility that a non-QI, non -WP and non-WT can list a credit on line 67. If this occurs on an amended Form 1042, it is possible that during initial processing, the line 67 entry may not have been accepted. A math error notice generates, and the tax due is recomputed.
- (6) If an amended return is received after the disallowance, or if it was missed in initial processing, the non-QI's (or non-WP or non-WT) line 67 entry can be allowed up to the amount of the tax (TC 150 or Line 64e). The filing withholding agent must provide documentation (Forms 1042-S) that the tax was withheld by a withholding agent upstream from this withholding agent to substantiate the credit.

Note: If there are other credits (e.g., electronic deposits, or subsequent payments), these amounts may be requested and allowed for refund, but only after Examination approval.

21.8.2.12.10.1.1
(10-01-2021)

Adjustments for Over-Withholding on a QI by a Withholding Agent

- (1) This subsection provides background information; it does not contain adjustment procedures. Like other non U. S. payees, before the first Form 1042-S is issued, when the withholding agent has over-withheld under chapter 3 or 4, a Qualified Intermediary (QI) may request that the withholding agent make an adjustment for amounts paid to the QI by applying either the reimbursement procedure or the setoff procedure.

Note: Only a QI, WP, or WT (and PFFIs and Reporting Model 1 FFIs for amounts attributable to chapter 4 taxes) can request refund of all or part of line 63b amounts over-withheld. See IRM 21.8.2.12.10.1.4, Credit or Refund Procedures for Over-Withholding by a Qualified Intermediary on an Amended Return. Other entities cannot get a refund from a line 63b entry.

- The reimbursement procedure requested by the QI must occur prior to the due date (without regard to extensions) for the upstream withholding agent to file Form 1042 and Form 1042-S or the date the Form 1042-S is actually filed with the IRS. The withholding agent repays the QI any overwithheld amounts and reimburses itself by reducing any deposits made before the end of the subsequent tax year. If the repayment to the QI occurs in the subsequent tax year (prior to the earlier of the filing of the associated Form 1042-S or the due date for such form), the withholding agent indicates the amount of the repayment in Box 11 of Form 1042-S. The withholding agent can claim a credit for the amount it has repaid the QI and can use it to offset its liability in the subsequent year.

Note: This type of adjustment appears on the IRS records on the Form 1042 filed by the upstream withholding agent and the Form 1042-S that the withholding agent provided to the QI as payee. Only the proper amount of upstream withholding will be reported by the QI on Form 1042 when the QI's Form 1042 is filed.

- The setoff procedure allows the withholding agent to repay the QI by permitted under-withholding in the subsequent year. That is, the withholding agent applies the credit amount over-withheld in Year 1 against any other amount that would be subject to chapter 3 or 4 withholding on income paid by the withholding agent to the QI in Year 2. The entire adjustment must be completed before the earlier of the due date for the withholding agent to file Form 1042-S for the calendar year (without regard to extensions) or the date that the Form 1042-S is actually filed with the IRS.

21.8.2.12.10.1.2
(05-27-2015)

**Adjustments For
Over-Withholding by a
Qualified Intermediary
on its Accounts**

- (1) This subsection provides background information; it does not contain adjustment procedures. A Qualified Intermediary (QI) may make an adjustment for amounts paid to its account holders that it has over-withheld under chapter 3 or 4 withholding by applying either the reimbursement or setoff procedures within the time period prescribed for those procedures.

Note: These are different from adjustments for NRA over-withholding by a non-QI withholding agent.

- (2) The reimbursement procedure requires that the QI may repay its account holders an amount over-withheld. The QI then reimburses itself by reducing the amount of a subsequent tax deposit. An amount over-withheld may be applied to reduce a deposit in the following calendar year only if:
 - The QI states on a Form 1042-S the amount of tax withheld and the amount of any actual repayment. The Form 1042-S is issued to a reporting pool or, if applicable, to the account holder of the income. The document must be filed by March 15, **and**
 - The QI states on a Form 1042 that the filing of the Form 1042 constitutes a claim for credit (**not refund**) in accordance with the Treas. Reg. § 1.6414-1. The document must be filed by March 15.

- (3) The setoff procedure allows the QI repay its account holders by applying the amount over-withheld in Year 1 against any amount which otherwise would be subject to chapter 3 or 4 withholding from a payment made by a QI to the account holder in Year 2 before the earlier of March 15 of the calendar year or the date that the Form 1042-S is actually filed with the IRS. The QI completes Forms 1042-S to the reporting pools showing the corrected lower liability (computed from gross income and correct tax rate) and the correct withholding amount in Year 1. The Forms 1042-S to the reporting pools for Year 2 show the correct liability and the correct withholding amount in each pool. The QI's Form 1042 in Year 1 shows a credit due to overdepositing in Year 1 that it can use in Year 2 to offset liability in Year 2 due to the permitted underdepositing.

21.8.2.12.10.1.3
(10-01-2014)
**Repayment of Backup
Withholding by a QI**

- (1) If a Qualified Intermediary (QI) erroneously withholds, as defined under Treas. Reg. § 31.6413(a)-3, an amount under IRC 3406 from an account holder, the QI may refund the amount erroneously withheld as provided in Treas. Reg. § 31.6413(a)-3.
- (2) The withholding agent can adjust the repayment of backup withholding by using the reimbursement or setoff procedures. See IRM 21.8.2.12.10.1.1, Adjustments for Over-Withholding on a QI by a Withholding Agent.

21.8.2.12.10.1.4
(10-01-2017)
**Credit or Refund
Procedures for
Over-Withholding by a
Qualified Intermediary
on an Amended Return**

- (1) Over-withholding by a QI on amounts subject to NRA withholding, paid to a Qualified Intermediary's account holders during a calendar year that is discovered after March 15 (and the amount has not been recovered under the reimbursement or setoff procedures explained above), can be requested by a QI on its Form 1042 if **ALL** of the following conditions are met:
- The QI must **not** have issued 1042-S forms to the account holders that received the payment that was subject to over-withholding.
 - The QI must submit together with its amended return, on which it claims a credit or refund, a statement of the reason for the over-withholding.
 - The QI must submit together with its amended return, on which it claims a credit or refund, a statement that it has repaid or will repay the amount of over-withholding to the appropriate account holders prior to filing the claim for credit or refund.
 - The QI must retain a record showing that it repaid the account holders the amount of the over-withholding.
- (2) Correspond if any of the above information cannot be verified and/or the statements are not provided.
- (3) If all of the above information is provided, send the package to Examination Classification. See IRM 21.8.2.2.12.
- (4) If Examination Classification accepts the issue, allow the adjustment on ADJ54 with a TC 291 and reference code 011.

Reminder: The amount of tax withheld on income for foreign persons under sections 1441 through 1446 are chapter 3 taxes. Accordingly, to the extent that an overpayment arises from those taxes being deducted, withheld and reported on Form 1042, the 180-day period applies. See IRM 21.8.2.9.5.1, 180-day interest-free Period for Chapter 3 Withholding.

21.8.2.12.10.2
(10-01-2017)
**Adjustments for NRA
Under-Withholding
Before Form 1042 is
Filed**

- (1) This subsection provides background information; it does not contain adjustment procedures. If a Qualified Intermediary (QI) knows that an amount should have been withheld under chapter 3 or 4 withholding from a previous payment to an account holder but was not withheld, the QI may:
 - Either withhold from future payments made to the same account holder, or
 - Satisfy the tax from property that it holds in custody for the account holder or property over which it has control. For example, stocks, bonds etc.
- (2) The additional withholding or satisfaction of the tax owed may only be made before the due date of the Form 1042 (not including extensions) for the calendar year in which the under-withholding occurred. If the additional withholding occurs in the year subsequent to the year of payment, the withholding agent will report the additional liability on line 59 of the ROFTL and report the additional withholding on line 63c(2).
- (3) QI's responsibilities are met if it informs a withholding agent, from which it received the payment, of the under-withholding and the withholding agent satisfies the under-withholding.

21.8.2.12.10.2.1
(10-01-2014)
**NRA Under-Withholding
After Form 1042 is Filed**

- (1) If, after a Form 1042 has been filed for a calendar year, the QI, or the QI's external auditor, or the IRS, determines that the QI under-withheld, the QI must file an amended Form 1042 to report and pay the under-withheld tax.
- (2) Increase the tax with TC 290 and Reference Code TC 011.
Note: The QI is responsible to pay the under-withheld tax, the interest due, and any applicable penalties resulting from the amended return adjustment.
- (3) If the required amended return is not filed, the IRS has authority to make such return under IRC 6020.
- (4) This procedure also applies if a QI number was issued based on the SS-4 filing, then after the QI application was reviewed, it was determined not to grant QI status and a QI Form 1042 had already been filed.

21.8.2.12.10.2.2
(05-27-2015)
**Special Rule Regarding
Failure to Deposit
Penalties**

- (1) QI filers who report a line 67 entry only, must show the liability on the ROFTL as occurring on the last day of the year. This should suppress the FTD penalty. If not, and adjusting line 67 with a TC 766, input a TC 181 to abate the penalty. Use Penalty Reason Code (PRC) 045.

21.8.2.12.10.3
(10-01-2024)
**Amended Form 1042
Returns with Line 67
Changes**

- (1) The line 67 (credit for amounts withheld by other withholding agents) entry from Form 1042 is reflected on IDRS as TC 766 with a CRN 330 (Form 1042-S) and/or CRN 333 (Amended Form 1042-S) and is for amounts withheld by other withholding agents that pertain to the total net liability reported on Form 1042, lines 64e and 64c (total net tax liability).
- (2) An Intermediary is a person who acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether that other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.

- A Qualified Intermediary (QI) is an intermediary that entered into a withholding agreement with the IRS. Withholding Foreign Partnerships and Withholding Foreign Trusts have also entered into withholding agreements with the IRS. These entities are recognized by their EINs. All are
 - A Qualified Securities Lender is usually a QI as well.
 - A Non-Qualified Intermediary (NQI) is any intermediary that is not a U.S. person and that is not a QI. Most NQIs do not need to file Form 1042 because they pass all required documentation to an upstream (lower tier) withholding agent so that the withholding agent can withhold from and report to the NQI's account holders.
- (3) Most requests for adjustments occur when payers withhold tax at rates that are higher than required when the beneficial owners are fully documented. That is, the recipients finally document themselves as either exempt from taxation, or benefit from treaty provisions or for other reasons described in IRC 1441 or IRC 1442.
- (4) Adjustments to line 67 entries are permitted by both QIs and NQIs. However, a refund of line 67 credits can only be made to a QI.
- (5) Certain documentation/statements must be provided before allowing an amendment to a line 67 credit that was claimed on an original return.

Example: To support the credit withholding, copies of Form 1042-S must be supplied, and the withholding verified. Check to ensure box 7b on Form 1042-S is not checked.

- (6) An amended Form 1042 return can be filed with additional withholding shown on additional information returns to increase the **credit** originally claimed on line 67 without increasing the tax amount. Follow procedures in Paragraph (7) when a refund is requested by a QI.
- (7) The following substantiation must be provided when an adjustment is requested for line 67 after the due date of the return:
- A signed amended Form 1042
 - The reason for requesting the adjustment
 - A copy of the original, voided original and corrected Forms 1042-S. The amounts in Box 8 should total to the line 67 credit. Even if provided, allow only credits that can be verified as having been received by the IRS using one of the following
 - CC IRPTR with a Definer "L" and Document Code "02," which displays Form 1042-S credits
 - CC IRPTR with a Definer "O" and Document Code "02," which displays Form 1042-S credits
 - CC IRPTR with a Definer "I" and Document Code "02," which displays all Forms 1042-S issued by a withholding agent
 - CC IRPTR with a Definer **U** and Document Code **02**, which displays all Forms 1042-S issued by a withholding agent

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- The recipient's name (Box 13a) on the Form 1042-S must be the same as the filer name on the Form 1042, **and** the Recipient Ch. 3 Status Code (Box 13f) on Form 1042-S must be 09, or 11 to 13 **or**
 - The Intermediary or flow-through entity's name (Box 15d) must be the same as the filer name on the Form 1042 **and** the Recipient Ch. 3 Status Code (Box 13f) cannot be 09, or 11 to 13.
- (8) Correspond or call the taxpayer to request the proper documentation and/or substantiation of the credit if the full amount claimed cannot be verified on CC IRPTR or E-TRAK.
 - (9) If a **decrease in tax** is requested, and the proper documentation has been submitted, send to Examination Classification prior to allowing. See IRM 21.8.2.2.12.
 - (10) If the issue is accepted by Classification, make the adjustment (if tax is affected, use TC 29X). If the line 67 credit is affected, use TC 766 CRN 330/333 to allow or increase credit. TC 767 CRN 330/333 is used to reverse all or part of a previous credit.
 - (11) The amount of tax withheld on income for foreign persons under sections 1441 through 1446 are Chapter 3 taxes. The amount of tax withheld on withholdable payments to foreign entities under sections 1471 and 1472 are chapter 4 taxes. Accordingly, to the extent that an overpayment arises from these taxes being deducted, withheld and reported on Form 1042, the 180-day interest-free period applies. See IRM 21.8.2.9.5.1, 180-day interest-free Period for Chapter 3 and Chapter 4 Withholding.

21.8.2.12.11
(10-01-2018)

Loose Forms 1042-S

- (1) Send loose, timely filed original (March 15 due date) copy(s) A of Form 1042-S to Ogden Code and Edit for processing.

Exception: DO NOT forward Copy A of Form 1042-S if it is attached to Form 1120-F.

- (2) Process late-filed original copy(s) A of Form 1042-S documents as follows:
 - a. IMF tax examiners forward these type cases to Ogden BMF International for research.
 - b. Cincinnati and/or Ogden BMF International tax examiners research for the Form 1042 return.
- (3) BMF/International tax examiners must use the following chart when researching for the Form 1042 return.

If	Then
A return is located	Associate Copy A of Form 1042-S with the return's corresponding DLN.

If	Then
No return is located	Suspend the case for 45 days and correspond with the Withholding Agent for the original Form 1042 return.

- (4) If an amended Copy A of the Form 1042-S is received in the Accounts Management area, correspond with the withholding agent to inquire whether this amended Form 1042-S indicates that an adjustment is necessary on their Form 1042 account.
- (5) Accounts Management International Units must use the following chart for handling responses from the Withholding Agent.

If	Then
A response is received from the Withholding Agent	An adjustment is necessary on their Form 1042 account. The withholding agent must include a copy of the amended Form 1042 return with their reply and the statement of why the adjustment is necessary. If sending to Exam, send all documentation with the package.
There is no reply to this correspondence	Associate the amended Form 1042-S with the original Form 1042 return.

- (6) When copy A of Form 1042-S is attached to a dummy Form 1042 return, the tax examiners must research for the DLN of the original Form 1042 return.
- When a DLN is found, associate the dummy with that DLN.
 - When a DLN is not found, process the dummy Form 1042 as an original return.
- (7) Associate all loose/corrected copies B, C or D of the Form 1042-S with the recipient's tax return, if on file.
- When no return is located, the tax examiner must correspond with the recipient by returning the Form 1042-S and advising them that they need to file an income tax return if they are attempting to obtain a refund of any taxes withheld.
 - If the recipient is attempting to obtain a refund of over-withheld tax, they must file Form 1120-F if it is a corporation, or Form 1040-NR if an individual (or other income tax return), along with their Form 1042-S.
- (8) Return loose copy(s) E of the Form 1042-S to the Withholding Agents for their records. Close the control bases.
- (9) Forward 1042-S forms received that are marked "Additions to Mag Tape" to Code and Edit for processing as original documents.

- (10) 1042-S forms marked "Corrections to Mag Tape" are considered amended 1042-S forms and are processed as indicated in (4) above.

- (11) Send all original corrected/amended 1042-S forms to:

Mailing Address, Internal Revenue Service
Ogden Submission Processing Campus
Code & Edit M/S 6110
Ogden, UT 84409
or **Physical Address**, Internal Revenue Service
Ogden Submission Processing Campus
1973 N. Rulon White Blvd. M/S 6110
Ogden, UT 84404

21.8.2.12.12
(10-01-2007)

**Withholding at Source
Refund Requests from
Exempt Organizations
and Private Foundations**

- (1) Return claims for refund of withholding at source received from Exempt Organizations and Private Foundations, with Form 1042-S, advising the taxpayer to file either Form 990-T or Form 990-PF as appropriate.
- (2) A Form 1042-S is required before sending the claim to Ogden Campus Examination.

21.8.2.12.13
(10-01-2023)

**Central Withholding
Agreements**

- (1) Refer general questions concerning Central Withholding Agreements (CWAs) to the CWA program mailbox at: *CWA.Program@irs.gov* (questions should not be account-related or include any personal information such as Taxpayer Identification Number, Social Security Number, or address). The following is background information on the program.
- (2) Generally, IRC 1441(a) requires that withholding agents withhold 30 percent of the gross income of nonresident alien entertainers and athletes performing personal services or participating in athletic events in the United States. However, they may be able to enter into withholding agreements with the IRS for reduced withholding provided certain conditions are met.

Note: A withholding agent cannot reduce taxes withheld to less than the anticipated amount of income tax liability.

- (3) A Central Withholding Agreement (CWA) is an agreement between a nonresident alien athlete or entertainer, a designated withholding agent, and an authorized representative of the IRS. The agreement is for a specific tour or series of events and the withholding is computed at graduated rates and is based on the budget provided and net profit estimates approved by the IRS. NRAs applying for a CWA must submit the information contained in Form 13930, Instructions on How to Apply for a Central Withholding Agreement, and must meet CWA eligibility requirements. For more information on CWA eligibility requirements, refer to IRM 4.64.1.10.
- (4) CWAs must be sent at least 45 days before the first CWA event to the following address:

Central Withholding Agreement Program
Internal Revenue Service
850 Trafalgar Ct, Ste 200
Maitland, FL 32751-4153
- (5) The IRS will respond to Form 13930 submissions within 10 business days of receipt.

- (6) Effective October 1, 2018, nonresident alien (NRA) entertainers and athletes requesting a CWA using Form 13930 must have year to date gross tour income of at least \$10,000 per applicant (refer to next paragraph for NRAs with gross income below \$10,000).
- (7) Effective October 7, 2019, NRA entertainers and athletes with gross income of less than \$10,000 per person (per application) may request a simplified CWA. NRAs applying for a simplified CWA must submit the information contained in Form 13930-A, Application for Central Withholding Agreement Less than \$10,000.
- (8) Withholding under a simplified CWA is computed at graduated rates and is based on gross income estimates. No expenses are allowed under a simplified CWA.
- (9) Simplified CWAs must be submitted using Form 13930-A with the estimated withholding payment and all required documents at least 45 days before the first CWA event through *www.pay.gov*. The withholding payment submitted through *pay.gov* is applied to the withholding agent's Form 1042 account for the year indicated on *pay.gov* at the time of submission. If the application is rejected, the payment cannot be refunded to the withholding agent until the Form 1042 reflecting an overpayment is filed for that year.
- (10) The IRS will respond to Form 13930-A submissions within 4 weeks of receipt. Form 13930-A applications missing any required information will be rejected. If the application is rejected, the IRS will issue Letter 4288, No Central Withholding Agreement (CWA).
- (11) NRAs requesting CWAs under either Form 13930 or Form 13930-A must have filed and paid (or made payment arrangements) for all previous U.S. taxes, and must agree to timely file Form 1040-NR. The designated withholding agent under either Form 13930 or 13930-A will be required to file Form 1042 and Form 1042-S for each year in which income is paid to the NRA covered by the withholding agreement and issue Form 1042-S to each NRA athlete or entertainer affected by the agreement.
- (12) Additional information about the CWA program can be found on *irs.gov* at <http://www.irs.gov/Individuals/International-Taxpayers/Central-Withholding-Agreements>.

21.8.2.13
(10-01-2022)

**Exchange of Information
With Treaty Countries,
Form OECD**

- (1) Form OECD (Organization of Economic Cooperation & Development) is used to exchange information with the member treaty countries/states.
- (2) The information for the Form OECD comes from Form 1042-S filings.
- (3) Withholding agents file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, with the accompanying Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, reporting income paid and tax withheld at source to nonresident aliens and/or foreign corporations.
- (4) Once OECD forms are generated, they are exchanged electronically with the Competent Authorities in the various treaty countries.
- (5) This process is completely automated.

21.8.2.14
(10-01-2021)
**Withholding Tax on
Foreign Partners - Form
8804**

- (1) Form 8804, Form 8805, and Form 8813 are used to pay and report only the §1446 withholding tax that is based on effectively connected taxable income allocated to foreign partners, without regard to distribution.
- (2) Form 8804, Annual Return for Partnership Withholding Tax (Section 1446), is processed to the Business Master File under MFT 08. The form is processed at the Ogden Submission Processing Campus.
- (3) For information only: (1) and (2) apply to non publicly traded partnerships. Publicly traded partnerships withhold on distributions made, using Forms 1042 and Forms 1042-S. See Treas. Reg. 1.1446-4(c).

21.8.2.14.1
(10-01-2023)
**Applicable Forms - W/H
Tax on Foreign Partners**

- (1) The total withholding tax liability of the partnership for its tax year is reported on Form 8804, Annual Return for Partnership Withholding Tax (Section 1446).
- (2) Form 8805, Foreign Partner's Information Statement of § 1446 Withholding Tax, is used to show the amount of effectively connected taxable income and the withholding tax attributable to each foreign partner for the partnership's tax year. The partnership also provides additional information on the Schedules K-1 and, starting for tax year 2021/processing year 2022, K-3 (Form 1065) to the partner regarding the components making up the amount of effectively connected taxable income reported so that the partner may prepare its tax return. If the foreign partner is a foreign trust or estate, the foreign trust or estate must provide a copy of the Form 8805 furnished by the partnership to each of its beneficiaries. In addition, the foreign trust or estate must complete Schedule T, lines 11-13 of Form 8805, 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 Forms(s) 8805 it receives and copies of the Form(s) 8805 it must furnish to its beneficiaries with the Schedule(s) T completed.
 - A separate Form 8805 must be filed for and provided to each foreign partner.
 - A copy of each Form 8805 must be attached to the Form 8804 when filed.
- (3) The foreign partner must attach Form 8805 to its return in order to claim a credit on Form 1040-NR, Form 1120-F, or, if the partner is itself a partnership, Form 8804.
- (4) Any U.S. person erroneously made subject to the withholding tax would also receive Form 8805 from a partnership and must attach the form to its income tax return to obtain credit.
- (5) If a foreign partnership (upper-tier partnership) that is a partner in another partnership (lower-tier partnership) that has withheld and paid over amounts under IRC 1446, the upper-tier partnership may claim a credit for the tax withheld by the lower-tier partnership as though it were an amount paid by the upper-tier partnership for purposes of §1446. Accordingly, the upper-tier partnership must complete and file Form 8804 and Form 8805 as appropriate to satisfy its §1446 withholding tax obligation, include in determining its withholding obligation its allocable share of effectively connected taxable income from the lower tier partnership, and report the amount of tax withheld on their behalf to its partners. An upper-tier partnership that has had §1446 withholding tax payments made on its behalf by a lower-tier partnership should receive a copy of Form 1042-S or Form 8805 from the lower-tier partnership.

- (6) Form 8813, Partnership Withholding Tax Payment Voucher (§1446), is used to transmit installment payments to the IRS.
- (7) If a discrepancy exists between the amounts shown on the Form 8804 and the posted IDRS data, resolve the matter at the Campus level. Where appropriate,

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- (8) For tax periods beginning after December 31, 2015, the due date for filing Form 8804 and for paying any amount due with the return is generally the 15th day of the 3rd month after the close of the partnership's tax year. However, with respect to partnerships described in §1.6081-5(a)(1), Form 8804 is not due until the extended due date for Form 1065 as prescribed by §1.6081-5(a). Partnerships may file Form 7004 to request an extension of time to file Form 8804, until the 15th day of the 9th month after the close of the partnership's taxable year. Filing Form 7004 does not extend the time to pay.

Note: For prior year returns, the due date for filing Form 8804 for taxable years beginning before January 1, 2016, was the 4th month after the close of the partnership's taxable year.

- (9) Generally effectively connected taxable income (ECTI) allocated to a foreign partner is subject to withholding at 21% for corporate partners and 37% for non-corporate partners.
 - However, a partnership is permitted to consider the highest rate of tax applicable to a particular type of income or gain allocable to a partner (e.g., for these types of income allocable to individual partners: 20% for long-term capital gains (15% for partnership taxable years beginning before 2014), 25% for unrecaptured section 1250 gain, and 28% for collectibles gain under section 1(h)), to the extent of a partner's allocable share of such income or gain.
 - If the application of the preferential rate depends upon the corporate or non-corporate status of the person reporting the income or gain, a partnership may consider the highest rate of tax applicable to a particular type of income or gain only if the necessary documentation has been provided to the partnership under §1.1446-1 to establish the corporate or non-corporate status of the partner required to pay tax on the income or gain.
 - Refer to IRM 21.8.2.12.7 for the documentation certificates. See e.g., §1.1446-1(c)(2) (for documentation certificates), §1.1446-1(c)(3) (presumption of foreign status in absence of documentation) and §1.1446-5(c)(2) (requirement to pay 1446 tax at highest of rates in section 1446(b) where a lower-tier partnership cannot reliably associate income with a partner of the upper-tier partnership).

21.8.2.14.2
(10-01-2021)
**Form 8804 Estimated
Tax Penalty**

- (1) Tax due on Form 8804, Annual Return for Partnership Withholding Tax (§ 1446), is required to be paid as estimated tax following essentially the same rules as those existing for corporations, except as modified by § 1.1446-3. For specific information regarding the estimated tax requirements and the penalty computation, see the Form 8804 Schedule A instructions.

Note: Requests for abatement or reduction of estimated tax penalties on Form 8804 filings prior to the release of the revised form were made using Form

2220. The estimated payments are due the 15th day of the 4th, 6th, 9th and 12th months of the partnership's tax year.

- (2) The following are the requirements that a partnership must have met in order to qualify for the prior year safe harbor:
- The partnership information return (Form 1065) for the prior year must have been filed on time (including extensions).
 - The prior taxable year must have been a full year comprising 12 months.
 - The effectively connected taxable income (ECTI) for the prior year must have been at least 50% of ECTI for the current year.
 - The average of the total of estimated tax installments paid by the due date of any installment must be at least 25% of prior year tax computed without regard to the adjustments allowed under § 1.1446-6.

Example: If the prior year ended 12/31/2020, prior year tax would be computed by finding the sum of Form 8804, line 4a times .21, plus line 4e times .37, plus line 4i times .28, plus line 4m times .25, plus line 4q times .20.

- (3) Programming to identify taxpayers who have met the "prior year safe harbor" requirements is not yet in place. If the necessary information is not available via cc BRTVU or via cc TRDBV, it may be necessary to request the return for the prior year to determine if the requirements have been met, and the penalty should be removed.
- (4) The partnership may elect to use the annualized income installment method, or the adjusted seasonal method in lieu of the prior year safe harbor method. If the taxpayer elects to use the prior year safe harbor method, that method must be used for all installments, with one exception: If, in an installment period following the first installment, the partnership determines that current year ECTI will exceed twice prior year ECTI, the partnership is permitted to change its installment method at that time to the annualization method.
- (5) There is no provision for the estimated tax penalty under IRC 6655 to divide the withholding credit equally among the required installments as exists in IRC 6654(g) (relating to individuals, trusts, and estates). Since the penalty for Form 8804 is assessed under IRC 6655 in conjunction with Treas. Reg. 1.1446-3, the computer will not re-compute the ES penalty for Form 8804 when TC 766 withholding credit is applied to an account.

Note: This situation does not apply to TC 660 estimated tax payments.

- (6) Without data on when tax was actually paid, Master File cannot accurately compute the ES penalty when withholding credit is claimed.
- (7) Advise partnerships who question the assessment of an estimated tax penalty that they must file Form 8804, Schedule A, if they claimed withholding credit on their return, and they do not meet the requirements for the prior year tax "safe harbor." For more information on the "safe harbor" requirements, see paragraphs (2) and (3) above.
- (8) These estimated tax penalties must be addressed manually if a TC 766 credit is being added to an account and there is a TC 176 present. Adjust account using TC 290 .00 with a TC 17X.

21.8.2.14.3
(10-01-2023)
**Processing Amended
Form 8804 and TRNS
193 Notices**

- (9) A CP 234 generates when the computer computation of the estimated tax penalty (TC 176) differs from the amount computed by the taxpayer (TC 170). Process CP 234 notices generated on Form 8804 returns using procedures in IRM 21.7.11.4.8, CP 234 - Processing Potential ES Penalty Notices.

- (1) Use the following instructions to supplement the general guidelines for processing TRNS 193 notices found in IRM 21.7.9, BMF Duplicate Filing Conditions.
- (2) Verify the entity data on the TRNS 193 notice with the entity data on the return and input any necessary changes or corrections.

Note: The entity data on the account was established on Master File as a result of the Form 1065 filing requirement.

- (3) If the duplicate filing appears to be a “true duplicate ,” verify via CC BMFOLR or BRTVU that the taxable income is the same as reported on the original return before inputting a TC 290 for .00 to release the -A freeze.

Reminder: Resolve any misapplied or subsequent payment application issues as necessary. See IRM 21.5.8, Credit Transfers.

- (4) Input Form 8804 tax increases with a TC 290 for the amount of the tax increase with the appropriate Blocking Series. See IRM 21.5.1.5.3, CIS Source Documentation, and Document 6209, IRS Processing Codes and Information, for the appropriate Blocking Series.
- (5) **A partnership may not file an amended Form 8804 and Form(s) 8805 to claim a refund for any amount of tax shown on a Form 8805 issued to a foreign partner as tax paid on the partner’s behalf.** See Regulations §1.1446-3(d)(2)(iv). These claims should be disallowed. For information on disallowance procedures, see IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures.

Note: A partnership may file an amended Form 8804 to reduce the tax as long as the reduced tax is not less than the total tax reported as withheld reported on all Forms 8805 provided to its partners. **Example 1:** Partnership files Form 8804 and 8805 erroneously reporting \$5,000 tax withheld by the partnership. However, it provides the foreign partner a Form 8805 correctly reporting \$500 withholding. The partnership can file amended Forms 8804 and 8805 to reduce the liability to \$500. **Example 2:** Partnership files Form 8804 reporting \$6,000 tax, but files Form 8805 (and provides Form 8805 to payee) reporting only \$5,000 tax. If the tax on Form 8805 is correct, the partnership can file a corrected Form 8804 reducing tax to \$5,000. If the tax on Form 8804 is correct, the partnership should file (and provide to the payee) a corrected Form 8805.

- (6) Refer to the following table if the listed Forms are attached to the Form 8804:

If	Then
Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Copy A ONLY	Refer to local Maildex for routing to data input area.
Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Copy B ONLY	Leave attached.
Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Copy C or D ONLY	Return to Taxpayer.
Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Copy E ONLY	Return to Withholding Agent.
Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns	If the extension is for a different period, route to Receipt and Control for processing.
Form 8804 Schedule A, Penalty for Underpayment of Estimated § 1446 Tax by Partnerships	Verify with estimated tax penalty posted on module and adjust if necessary.
Form 8804-C, Certificate of Partner-Level Items to Reduce § 1446 Withholding	Detach and route Form 8804-C to: Internal Revenue Service Examination Branch BLN 4-E08.142 2970 Market Street. Philadelphia, PA 19104
Form 8804-W, Installment Payments of IRC 1446 Tax for Partnerships	Leave attached to Form 8804.
Treas. Reg. § 1.1446-6 Notation Withholding Certificate or any associated reasonable cause request	Route to: Internal Revenue Service Examination Branch BLN 4-E08.142 2970 Market Street. Philadelphia, PA 19104
Form(s) 8805 are attached, and they are not in substantiation of any credits claimed on Form 8804	After working the TRNS 193, detach and route Form(s) 8805 to M/S 6110 for processing to the International Database/IRMF.
Form(s) 8805 are attached and they support withholding claimed on Form 8804	Do not detach the Form 8805. These types of Form 8805 reflect the foreign partnership entity data on the left side of the Form 8805 and can be verified on the FIRPTA database.

If	Then
Form 8288-A or Form 8288-C is attached to the Form 8804	The credit must be verified on the FIRPTA database.

Note: For attachments not listed, refer to Exhibit 3.11.154-16, Routing Guide for Attachments.

- (7) When allowing withholding credit claimed on Form 8804 and Form 1042-S, use the appropriate Credit Reference Number (CRN) (331, 332, etc.). See Document 6209.

Reminder: Withholding credits claimed on Form 8804 and Form 1042-S are considered Chapter 3 Withholding Credits and are subject to the 180-day interest-free period. See IRM 21.8.2.9.5.1, 180-day interest-free Period for Chapter 3 Withholding.

Note: When issuing a manual refund from a Form 8804 account, use Line Number 15.

21.8.2.14.4
(10-01-2020)
**Form 8804-C §1.1446-6
Certifications**

- (1) Partnerships are instructed to attach withholding certificates Form 8804-C, filed under Reg. §1.1446-6 that support the reduced §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. Partnerships must file these items even if the certificate(s) reduce the §1446 withholding to zero. Route any loose withholding certificates, or those attached to a Form 8804, to the Low Income Housing Team at the Philadelphia Campus: 2970 Market Street, Mail Stop 4-E08.142, Philadelphia, PA 19104.

21.8.2.14.5
(10-01-2021)
**Claims for Credit of IRC
§ 1446 Withholding Tax
on Foreign Partners**

- (1) When a taxpayer claims credit for IRC 1446 withholding (Form 8805) on amended Form 1040-NR, Form 1120-F, etc., and Form 8805 is attached:
- Verify the credit from Line 10 of Form 8805. Also verify the name of the partner and TIN/ITIN on the Form 8805 with the TIN/ITIN or name provided on the Form 1040-NR, 1120-F, etc.
 - Verify the name and TIN/ITIN. Allow credits that can be verified using CC IRPTR and/or INTLWEBAPPS without further research. The taxpayer must submit the Form 8805 to receive the credit.
- #
- CC IRPTR and/or INTLWEBAPPS.
- For IMF, input a TC 290.00, Credit Reference Number (CRN) 331, Reason Code 069 and adjust the tax if necessary.
 - For BMF Form 1120-F, allow the credit with and adjust the tax if necessary. For Form 8804, use CRN 331.

Reminder: These credits are considered Chapter 3 Withholding Credits and are subject to the 180-day interest-free period. See IRM 21.8.2.9.5.1, 180-day interest-free Period for Chapter 3 Withholding.

- (2) If the name of the partner or the TIN/ITIN of the partner (or both) provided on Form 8805 does not match the information on the U.S. tax return of the partner, correspond with the taxpayer for the information before allowing the credit amount shown.
- (3) If this credit is claimed on either the Form 1040-NR or Form 1120-F, and Form 8805 is not attached, correspond with the taxpayer for the information before allowing the credit amount shown.
- (4) If the taxpayer fails to supply Form 8805, or fails to supply information that clarifies who is the appropriate partner entitled to the credit, reject the claim for credit using a Letter 916C.

21.8.2.15
(12-20-2021)
**Form 1040-NR, U.S.
Nonresident Alien
Income Tax Return**

- (1) A foreign estate or trust must use a Form 1040-NR, U.S. Nonresident Alien Income Tax Return, to report income tax.
- (2) Correspondence or amended returns submitted by a fiduciary of a foreign estate or trust are worked by the Cincinnati Accounts Management Center (CAMC) NMF team. Forward any correspondence or amended returns to Stop 6444G ATTN: Team 403. For additional information on processing Form 1040-NR Fiduciary returns, see IRM 21.7.12.7.1, Fiduciary Filed Form 1040-NR, U.S. Nonresident Alien Income Tax Return.

21.8.2.15.1
(10-01-2019)
**Form 1041-QFT, U.S.
Income Tax Return for
Qualified Funeral Trusts**

- (1) The trustee of a trust that elected to be taxed as a qualified funeral trust (QFT) uses Form 1041-QFT to report its income, deductions, gains, losses, etc., and income tax liability of the QFT.
- (2) Kansas City Submission Processing Campus (KCSPC) processes, as BMF, Form 1041-QFT submitted by domestic taxpayers. Adjustment procedures are found in IRM 21.7.4.4.1.1.4, Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts.
- (3) Ogden Submission Processing Campus (OSPC) processes Form 1041-QFT submitted by international taxpayers. Adjustment procedures are the same as for domestic filers. See IRM 21.7.4.4.1.1.4, Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts.
- (4) Form 1041-QFT shows on IDRS TXMOD as MFT 05, tax class 2, document code 39, and on ENMOD, the Filing Requirement Code (FRC) is 1041-9 for both Domestic and International filers.
- (5) Calendar year returns are due on April 15 regardless of the address of the taxpayer. International taxpayers are **not** given a two month extension to file.

21.8.2.16
(10-01-2022)
**Form 1065, U.S. Return
of Partnership Income**

- (1) Form 1065 is an annual return which is used to report each partner's share of the income, losses, expenses, and operations of a partnership. Each partner is issued a Schedule K-1, which reflects that partner's allocable share of partnership items.
- (2) Form 1065 is an information return.
- (3) For Form 1065 due dates, see IRM 21.7.4.4.2.3, Form 1065 Return Due Dates.

- (4) Form 1065 may be subject to a penalty under IRC 6698 for failure to file. Prior to 2022, the penalty was assessed as either failure to file (TC 160/166) or for failure to provide required information (TC 240/246). Beginning in 2022, the penalty is assessed as a TC 240/246 with a PRN 722 for failure to file and with a PRN 723 for failure to file a complete return. After December 31, 2021, TC 16X will no longer be used to assess IRC 6698 penalties. The penalty is charged for each person who was a partner at any time during the year, using IRN 851 and for each month or part of a month after the return due date that the failure continued using IRN 852. For applicable penalty rates, see IRM 20.1.2.4.2, Penalty Computation. For detailed information about these penalties, including penalty relief, see IRM 20.1.2.4, Failure to File a Partnership Return - IRC 6698.

Note: Reasonable Cause consideration applies to Form 1065 penalties.

- (5) For additional information on Form 1065, refer to Publication 541 and for specific procedures refer to IRM 21.7.4.4.2, Form 1065, U.S. Return of Partnership Income.
- (6) Refer international callers with questions regarding waiver requests by large partnerships required to file electronically to the non-toll-free number, 01-512-416-7750.

21.8.2.16.1
(10-01-2023)
CP 282 - Form 1065

- (1) The CP 282 was developed to notify taxpayers of possible additional filing requirements related to the partnership's foreign partner(s).
- (2) When Form 1065, Schedule B, Question 14 on tax year 2018 forms and subsequent (question 16 on prior year forms), is answered "yes," this notice is generated.
- (3) The additional filing requirement is related to IRC 1446(a) which requires the partnership to report and pay a withholding tax to the IRS when the partnership had taxable income effectively connected with the conduct of a trade or business **within** the United States that is allocated to a foreign partner.
- (4) If the partnership withholds under IRC 1446(a) it is required to file:
- Form 8804, Annual Return for Partnership Withholding Tax (§ 1446)
 - Form 8805, Foreign Partner's Information Statement of § 1446 Withholding Tax, and
 - Form 8813, Partnership Withholding Tax Payment Voucher (§ 1446)
- (5) The Underpayment of Estimated Section 1446(a) Tax for Partnerships penalty and/or interest may be assessed if the partnership does not comply with the IRC 1446 reporting and withholding tax requirements. Interest on the failure to file penalty for Form 8804 (assessed per IRC 6651) starts on the assessment date (23C date).
- (6) Final and temporary IRC 1446(a) regulations were published on May 18, 2005. The final and temporary regulations are effective for partnership taxable years beginning after May 18, 2005. However, a partnership may elect to apply the final regulations to partnership years beginning after December 31, 2004, by attaching a statement to Form 8804 indicating that the partnership is making the election under regulation § 1.1446-7. A partnership may apply the temporary regulations to partnership years beginning after December 31, 2004

by electing to apply the final regulations and electing under Treas. Reg. § 1.1446-6(f) to apply the temporary regulations.

Note: An election under §1.1446-6 or §1.1446-7 is not required to be attached to returns for tax periods 200605 and later.

- (7) Treas. Reg. § 1.1446-6T was finalized on April 29, 2008. The regulations are effective for partnership taxable years ending after December 31, 2007. The final regulations have a transition rule providing that any certificate submitted on or before July 28, 2008, that met the requirements of the temporary regulation, is not defective solely because it does not meet the requirements of the final regulations. However, any certificate (including any updated certificates and status reports) submitted, or required to be submitted after July 28, 2008, must comply with the requirements of the final regulations and be submitted using Form 8804-C.
- (8) A sample of a CP 282 Notice can be found on the Notice Gatekeeper Web site at <http://gatekeeper.web.irs.gov>. See IRM 21.7.4.4.2.11, CP 282 Notice, Notification of Possible Additional Partnership Filing Requirements (Withholding Tax on Foreign Partners), for specific procedures.

21.8.2.17
(10-01-2020)
**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 with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations with respect to foreign financial assets.
- (2) Because circumstances of taxpayers owning or controlling foreign financial assets vary widely, the IRS is currently making available the unique compliance option of the Streamlined Filing Compliance Procedures.
- (3) An earlier version of the Streamlined Filing Compliance Procedures was made available beginning September 2012. However, the IRS significantly expanded the procedures effective July 1, 2014 to accommodate taxpayers that did not need the protection from criminal prosecution offered by the Offshore Voluntary Disclosure Program and that acted non-willfully. For further information refer to *Streamlined Filing Compliance Procedures* on irs.gov.
- (4) 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 will not be eligible to use these procedures. See specific instructions in the subsections 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 subsections below for tax accounts with CI activity.
- (5) The Streamlined Filing Compliance Procedures (SFCP) may not be used to seek the abatement of previously assessed penalties. Penalty assessments made on previously filed returns will not be abated solely on the filing of a SFCP submission. Example: Taxpayer A files their 2019 Form 1040 late, and the Service assessed penalties for failure to file and failure to pay. Taxpayer later files amended returns through the SFCP, including an amended return for tax year 2019. The filing of the amended return for tax year 2019 through the SFCP in no way affects the previously assessed penalties and does not constitute reasonable cause for the previously assessed penalties.

- (6) Taxpayers filing under SFCP must include a certification, signed under penalty of perjury. There are two separate certifications. One is Form 14653, Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures, and the other is Form 14654, Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures.
- (7) The following subsections provide procedural guidance for Accounts Management assistants to process amended returns filed under Streamlined Filing Compliance Procedures.

21.8.2.17.1
(10-01-2017)
**Streamlined Foreign
Offshore Procedures
(SFO)**

- (1) 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 Streamlined Filing Compliance Procedure (SFCP) 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 if:
 - The individual did not have a U.S. abode and
 - The individual was physically outside the United States for at least 330 full days.
- (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 7701(b)(3). For more information on the substantial presence test, see Pub 519, U.S. Tax Guide for Aliens.
- (3) Under the SFCP 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 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, failure-to-pay, and estimated tax penalties if the taxpayer meets the eligibility requirements below:

Note: Original delinquent returns will be processed similarly in Submission Processing.

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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	A U.S. tax return has been filed previously	<p>1) Submit a complete and accurate amended 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 amended return 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, and
- whether or not they relied on a professional advisor, the nature of the advisor’s engagement and responsibilities

Note: There are no actions for AM to take regarding this paragraph. This is information only.

21.8.2.17.1.1
(10-01-2018)
**Adjusting Streamlined
Foreign Offshore
Accounts**

- (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 (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 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 has been filed previously, filers will submit a package containing amended returns, together with the required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 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 amended returns, 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 original and amended returns, SFO filers must submit a signed certification (Form 14653). The certification includes, among other things, the following:
 - Representations that the taxpayer or taxpayers are eligible for SFO
 - Listing of the tax years and amounts owed for each year (including interest)
 - Representation that the taxpayer has filed all required FBARs
 - A narrative explaining the specific reasons for the failure to report all income, pay all tax, and submit all required information returns including FBARs
- (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 they are incomplete SP will correspond with the taxpayer to perfect the submissions. SP will attach an "AM Streamlined 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 in order to perfect SFCP packages.
- (5) LB&I will review the submissions for statute considerations. LB&I will complete the "AM Streamlined Coversheet" and attach it to the package notating their statute recommendations regarding open statutes and statute extensions.
- (6) Delinquent original returns will be processed in SP.
- (7) Amended returns 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 additional years should have been submitted. As long as 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, and2. The taxpayer has 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 fourth “Then” box below for tax decreases.</p>	<p>The certification is complete. Follow the instructions in Paragraph 10 below.</p>
<p>Submission Processing has previously corresponded with the taxpayer for missing/incomplete information and received the necessary information, per the AM Streamlined Worksheet</p>	<p>The certification is complete. Follow the instructions in Paragraph 10 below.</p>
<p>Submission Processing has previously corresponded with the taxpayer for missing/incomplete information and received no reply, per the AM Streamlined 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 appropriate 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 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 amended return. Do not restrict the failure to file, failure to pay, or estimated tax 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 sent post assessment and is a “No Reply.” Enter CII notes indicating the case was

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(10) Accounts Management will perform the following actions prior to adjusting accounts under the SFCP:

- 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 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.
The response from LB&I is to process as streamlined	Follow the procedures in paragraph 11 below. Note: After processing the amended return(s), follow all LB&I provided guidance as to whether the package needs to be forwarded to the group, based on the AIMS data.
The response from LB&I is to NOT process as streamlined	<ul style="list-style-type: none"> Treat the case like a normal amended return. Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code (AC) 178. Note: After processing the amended return(s), follow all LB&I provided guidance as to whether the package needs to be forwarded to the group, based on the AIMS data.

(11) To complete adjustments on amended returns filed under the SFCP:

- 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 has been programmed to allow AC 178.
- 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 appropriate credit freeze codes to ensure no erroneous refunds occur.
- 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 appropriate posting delay codes on the adjustment(s) to ensure the adjustment does not post before the payments are posted correctly.

4. Allow the adjustment notice to generate. Do not correspond with the taxpayer(s) because they are advised on IRS.gov that they may receive a balance due notice or a refund if the tax or interest is not calculated correctly.)

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21.8.2.17.2
(10-01-2021)
**Streamlined Domestic
Offshore Procedures
(SDO)**

- (1) As noted in 21.8.2.17(4) above, individual U.S. taxpayers, or estates of individual U.S. taxpayers are eligible to use the Streamlined Filing Compliance Procedures 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 3 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., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621) with respect to the foreign financial asset.
 - The failures above resulted from non-willful conduct.
- (2) Under the SFCP 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 3 years in the covered period will file amended 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. Eligible filers will also calculate a Title 26 miscellaneous offshore penalty equal to 5 percent of the highest aggregate balance/value of the taxpayer's foreign financial assets that are 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 *Streamlined Filing Compliance Procedures* on [irs.gov](https://www.irs.gov).

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- (3) Amended returns submitted through these procedures will not be subject to the failure-to-file, failure-to-pay, and estimated tax penalties if the taxpayer meets the eligibility requirements below:

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 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 amended return 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 all required FBARs have been filed.</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 or not 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. For certain Canadian retirement plans, Form 8891 is obsolete as of December 31, 2014 per Rev. Proc. 2014-55.

Note: There are no actions for AM to take regarding this paragraph. This is information only.

21.8.2.17.2.1
(10-01-2021)
**Adjusting Streamlined
Domestic Offshore
Accounts**

- (1) Filers using SDO will submit a package to a specific mailbox in Submission Processing in Austin. The filing package will contain complete and accurate amended returns for each of the most recent 3 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., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621) even if these information returns would

normally not be submitted had the taxpayer filed a complete and accurate original return. Taxpayers may NOT file delinquent original returns under these procedures.

Note: Filers are instructed to write, "Streamlined Domestic Offshore" in red at the top of the first page of each amended return.

- (2) In addition to amended returns, SDO filers must also submit a statement on the 14654, 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 have now been 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 Streamlined Coversheet" and attach it to the package notating their statute recommendations regarding open statutes and statute extensions.
- (4) Amended returns will be scanned into CII for Accounts Management processing and assigned to a designated IDRS number for subsequent assignment to CSR's.
- (5) One CSR must work all related cases.
- (6) Accounts Management will be responsible for reviewing the packages to ensure the necessary certifications are attached and complete. If they are 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 additional years should have been submitted. As long as 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 has 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 “Then” box below for tax decreases.</p>	<p>The certification is complete. Follow the instructions in Paragraph 8 below.</p>
<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 below for tax decreases.</p>	<p>Call or correspond with the taxpayer. If corresponding, issue 178C , using the appropriate 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 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 amended return. Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code (AC) 178. <p>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.</p> <ul style="list-style-type: none"> • After making the assessment on no response cases, securely e-mail the TIN to sent post assessment and is a “No Reply.” Enter CII notes indicating the case was

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(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 streamlined. 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 SFO in the subject line of the e-mail message.
The response from LB&I is to process as streamlined	Follow the procedures in paragraph 9 below. Note: After processing the amended return(s), follow all LB&I provided guidance as to whether the package needs to be forwarded to the group, based on the AIMS data.
The response from LB&I is to NOT process as streamlined	<ul style="list-style-type: none"> • Treat the case like a normal amended return. • Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code (AC) 178. Note: After processing the amended return(s), follow all LB&I provided guidance as to whether the package needs to be forwarded to the group, based on the AIMS data.

(9) To complete adjustments amended returns 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 has been programmed to allow AC 178.
2. Ensure the payments are allocated correctly among the affected tax years (including the MFT 13 civil penalty module) according to the calculations made on the taxpayer certification. If not, follow normal credit transfer procedures using appropriate credit freeze codes to ensure no erroneous refunds occur.
3. 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 appropriate posting delay codes on the adjustment(s) to ensure the adjustment does not post before the payments are posted correctly.

4. Assess the 5 percent miscellaneous penalty on MFT 13 on the most recent tax year for which an amended Form 1041 was submitted. Assess the penalty based on the taxpayer's calculation. Input TC 240 with blocking series 52 and Penalty Reference Number (PRN) 708.
5. Allow the adjustment notices to generate. Do not correspond with the taxpayer(s) because they are advised on IRS.gov that they may receive a balance due notice or a refund if the tax or interest is not calculated correctly.

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21.8.2.18
(10-01-2022)

Withholding Certificates

- (1) Several withholding certificates are available and must be filed with the applicable form and filed with a withholding agent if exemption or reduced rates are being claimed under IRC 1441, IRC 1442, IRC 1443 or IRC 1446 or if entitlement to an exemption from withholding under IRC 1471 or IRC 1472 is being claimed. These certificates are prepared solely by the taxpayer and are not a determination by the Service.
- (2) Some of the forms that were used previously were obsolete and were replaced with a form in the W-8 series in 2001. In addition, most forms in the W-8 series were updated in 2014, 2016, 2017, and 2021.
- (3) Additional information and the purpose for each is contained in the following subsections.

21.8.2.18.1
(10-01-2017)

Form W-8, Certificate of Foreign Status

- (1) In 2001, the Form W-8 series documents replaced the forms in paragraph (3) below. Most of the W-8 series documents were again modified in 2014 as part of the implementation of the Foreign Account Tax Compliance Act (FATCA) to include documentation and certification requirements applicable under FATCA. In 2016 and 2017, several of the W-8 series documents were modified to reflect changes to the FATCA regulations.
- (2) In 2014, the previous Form W-8BEN was divided into two forms, W-8BEN for individuals and W-8BEN-E for entities.
- (3) The chart below shows the forms that became obsolete in 2001 and their replacements.

Obsolete Form	Form W-8 Series
W-8, Certificate of Foreign Status	Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)
Form 1001, Ownership, Exemption, or Reduced Rate Certificate	Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)
Form 4224, Exemption from Withholding of Tax Income Effectively Connected with the Conduct of Business in U.S.	Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States
Form 8709, Exemption From Withholding on Investment Income of Foreign Governments	Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting
	Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting
	Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits Note: This was a new form effective in 2009, and it did not replace a prior form

- (4) **CAUTION:** When the nonresident alien files a claim for erroneous backup withholding:
 - a. Return the claim to the taxpayer, and
 - b. Advise the taxpayer to file the appropriate tax Form (1040-NR Individual, 1120-F Corporation) with a copy of the Form 1099 or Form 1042-S attached.

21.8.2.18.2

(10-01-2017)

Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), and Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)

- (1) The Forms W-8BEN and W-8BEN-E are used by individuals and entities, respectively, to establish their foreign status (and, for entities, also their chapter 4 status) and may be used to document themselves as account holders of a foreign financial institution for chapter 4 purposes.
- (2) 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 or foreign entity recipient must provide Form W-8BEN or Form W-8BEN-E to the withholding agent in order to claim a reduced rate of, or exemption from, withholding under a United States tax treaty.
- (3) If an individual taxpayer submits a loose Form W-8BEN or any W-8 series document, return it to the individual. The taxpayer must provide the form to their withholding agent/financial institution. Form W-8BEN should not be sent to the Service.
- (4) Associate loose Form W-8 series documents sent in by business taxpayers with their withholding tax return (i.e., Form 1042).

21.8.2.18.3

(10-01-2023)

Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States

- (1) The Form W-8ECI is used by foreign persons who are beneficial owners of U.S. source income that is, or is deemed to be, effectively connected with the conduct of a trade or business in the United States. Such effectively connected income is eligible for an exemption from withholding under chapter 3 and chapter 4. Effectively connected income generally requires that the foreign person be engaged in a trade or business in the U.S., which usually includes when the foreign person performs personal services in the U.S. In addition, certain types of “fixed or determinable annual or periodic income” (e.g., interest, dividends and rents) can be effectively connected income, including when the income is associated with assets used in or held for use in the conduct of a U.S. trade or business or when the activities of the U.S. trade or business are a material factor in the realization of the income (or when otherwise prescribed in the Code).
- (2) Income that is “effectively connected,” which is earned other than through a partnership, may be exempt from Chapters 3 and 4 withholding only if the non-resident alien is materially involved in the operation of the trade or business, as opposed to merely being a passive investor.
- (3) Foreign persons are generally subject to U.S. tax at a 30% rate on income they receive from U.S. sources, however, IRC 1441, IRC 1442, IRC 1471 and IRC 1472 do not apply to the following types of income when they are, or are deemed to be, effectively connected with the conduct of a trade or business in the United States and are included in the foreign person's gross income for the taxable year. The types of income are:
 - Personal service income
 - Income subject to withholding under IRC 1445 (disposition of U.S. real property interests),
 - Income subject to withholding under IRC 1446 (foreign partner's share of effectively connected income), and
 - Income subject to withholding under IRC 1446(f)(1) (disposition of interest in partnership engaged in the conduct of a U.S. trade or business)

Note: Withholding may be required under other sections of the Code (e.g., wage withholding).

- (4) A foreign person is defined as a:
- Nonresident alien individual
 - Foreign corporation
 - Foreign partnership
 - Foreign trust
 - Foreign estate, or
 - Any other person that is not a U.S. person
- (5) The Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States, is used by foreign persons to:
- Establish that they are a foreign person
 - Claim that they are the beneficial owner of the income for which Form W-8ECI is being provided and
 - Claim that the income is effectively connected with the conduct of a trade or business in the United States
- (6) The Form W-8ECI is not filed with the IRS. It must be filed with, and maintained by, the withholding agent when a recipient considers their "effectively connected income" exempt from withholding. Return loose forms to the preparer of the form.

21.8.2.18.4
(10-01-2017)
**Form W-8EXP,
Certificate of Foreign
Government or Other
Foreign Organization for
United States Tax
Withholding and
Reporting**

- (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 bank of issue, foreign tax-exempt organizations, foreign private foundations, or the government of a U.S. territory is generally exempt from Chapter 3 and 4 withholding, if the income is not derived from a commercial activity or received from or by a controlled commercial entity. However, gross investment income of a foreign private foundation is subject to withholding under IRC 1443(b) at a rate of 4%.
- (2) Foreign governments, international organizations foreign central bank of issue, foreign tax-exempt organizations, foreign private foundations, or the government of a U.S. territory must file Form W-8EXP with the withholding agent to:
- Establish that they are a foreign person
 - Claim that they are the beneficial owner of the income for which Form W-8EXP is being filed, and
 - Claim a reduced rate of, or exemption from, withholding

21.8.2.18.5
(10-01-2023)
**Form W-8IMY, Certificate
of Foreign Intermediary,
Foreign Flow-Through
Entity, or Certain U.S.
Branches for United
States Tax Withholding
and Reporting**

- (1) Under chapter 3, foreign persons are generally subject to U.S. tax at a 30% 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 to have been made whether it is directly to the beneficial owner or to another person, such as an intermediary, agent, trustee, executor, or partnership, for the benefit of the beneficial owner.
 - (4) Form W-8IMY must be provided to a withholding agent by:
 - A foreign person, or a foreign branch of a U.S. person, to establish that it is a qualified intermediary that is not acting for its own account, to represent that it has provided or will provide a withholding statement (if required), or, if applicable, to represent that it has assumed primary withholding responsibility under chapters 3 and 4, excluding IRC 1444 and 1445, (and/or primary Form 1099 reporting and backup withholding responsibility).
 - A foreign person to establish that it is a non-qualified intermediary that is not acting for its own account, to certify to its chapter 4 status (if required), to certify that it reports U.S. accounts under chapter 4 (if required), and to indicate if applicable that it is using the form to transmit withholding certificates and/or documentary evidence and has provided or will provide a withholding statement as required.
- 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 § 1.1441-1(b)(2)(iv)(A) with respect to any payments associated with the Form W-8IMY, or (2) to transmit the documentation of the persons for whom it receives a payment and has provided, or will provide, a withholding statement, as required, and to certify it is applying the rules described in § 1.1471-4(d)(2)(iii)(C) when receiving a withholdable payment (for payments after June 30, 2017).
 - A foreign partnership or foreign simple or grantor trust to represent that it is either a withholding foreign partnership or withholding foreign trust and to certify its chapter 4 status (if required).
 - A foreign partnership or foreign simple or grantor trust to establish that it is a non withholding foreign partnership or non-withholding foreign trust, to certify to its chapter 4 status (if required) and to represent that the income is not effectively connected income, 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.
 - Prior to January 1, 2018 a qualified securities lender (QSL) certifying that it is acting as a QSL with respect to U.S. source substitute dividends pursuant to a securities lending transaction.
 - A foreign partnership or foreign grantor trust to establish that it is a partner in a partnership and is allocated effectively connected taxable income and 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 for purposes of IRC 1446.

- A foreign partnership to establish that it is the transferor of an amount realized from the transfer of a partnership interest for purposes of section 1446(f)(1) 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)(1) on the transfer.
- A flow through entity, including a foreign reverse hybrid entity, transmitting withholding certificates and/or documentary evidence to claim treaty benefits on behalf of its owners, to certify to its chapter 4 status (if required), and to certify that it has provided or will provide a withholding statement as required.
- A non participating FFI (NPFFI) acting as an intermediary or that is a flow-through entity transmitting a withholding statement and withholding certificates and/or other documentation for exempt beneficial owners for a withholdable payment (effective for 2014).
- A foreign intermediary or flow-through entity not receiving withholdable payments or reportable amounts that holds accounts with a PFFI or registered deemed-compliant FFI solely for purposes of documenting its chapter 4 status (effective for 2014). 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 person, or a foreign branch of a U.S. person, to establish that it is a QI acting as a QDD or assuming primary withholding responsibility with respect to payments of substitute interest, as permitted by the QI agreement.
- 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 § 1.1441-1(b)(2)(iv)(A) with respect to any payments associated with the Form W-8IMY, or (2) to certify that it is transmitting documentation of the persons for whom it receives a payment and has provided, or will provide, a withholding statement, as required.

- (5) Form W-8IMY must be provided to the withholding agent or payer before income is paid or credited on behalf of the beneficial owner. Form W-8IMY should not be sent to the Service.

Note: Failure to provide a Form W-8IMY, or failure to provide necessary documentation and withholding statements, may lead to withholding at a 30% rate, the backup withholding rate, or the applicable tax under IRC 1446.

21.8.2.18.6
(10-01-2017)

**Form W-8CE, Notice of
Expatriation and Waiver
of Treaty Benefits**

- (1) Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits, is used to notify a payer that a covered expatriate individual is subject to special tax rules under IRC 877A.
- (2) Covered expatriates are required to give Form W-8CE to the payer if they had any of the following items on the day before their expatriation date (as identified in boxes 1-4 on Form W-8CE):
- Eligible deferred compensation item

- Ineligible deferred compensation item
- Specified tax deferred account
- Interest in a nongrantor trust

- (3) The Form W-8CE must be filed on the earlier of (a) the day before the first distribution on or after the expatriation date or (b) 30 days after the expatriation date for each specified tax deferred account, item of deferred compensation, or interest in a nongrantor trust. The form is given to each payer of the identified income and is not filed with IRS. The Form 8854, Initial and Annual Expatriation Information Statement, is the corresponding form filed with the Service.

Note: Covered expatriates who expatriated after June 16, 2008 must file a Form 8854, Initial and Annual Expatriation Information Statement, with the Service by attaching it to their income tax returns (Form 1040 or Form 1040-NR) for the year that includes their expatriation date. Covered expatriates who reported an eligible deferred compensation item or an interest in a nongrantor trust on a Form 8854 filed in a previous year must file Form 8854 annually to certify that no distributions have been received or to report the distributions received.

21.8.2.18.7
(10-01-2015)
**Form 8233, Exemption
From Withholding on
Compensation for
Independent (and
Certain Dependent)
Personal Services of a
Nonresident Alien
Individual**

- (1) If income is for independent personal services, or from dependent personal services by nonresident alien individuals, the recipient must file Form 8233 with the withholding agent to claim reduced or exempt withholding, when the recipient is eligible. Use the following chart to determine if Form 8233 should be used by nonresident alien individuals:

If	Then
Receiving compensation for independent personal services performed in the United States	Use Form 8233 to claim a tax treaty withholding exemption for part or all of that compensation and/or to claim the daily personal exemption amount.
Receiving compensation for dependent personal services performed in the United States	Use Form 8233 to claim a tax treaty withholding exemption for part or all of that compensation. Note: Do not use Form 8233 to claim the daily personal exemption amount.
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** used if the taxpayer is a beneficial owner who is:

If	Then
Receiving compensation for dependent personal services performed in the United States, 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 is not receiving any personal services income from the same withholding agent	Form W-8BEN or, if elected by the withholding agent, Form W-4 is 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.

- (3) The Form 8233 is processed at the Philadelphia Accounts Management Campus. Processing procedures for this form are located in IRM 21.8.6, Exemptions from U.S. Withholding (Form 8233).
- (4) Withholding agents keep a copy of Form 8233 for their records, give a copy to the nonresident alien, and attach a copy to Form 1042.

21.8.2.18.8
(10-01-2017)

**Form W-9, Request for
Taxpayer Identification
Number and
Certification**

- (1) In 2001 Form W-9, Request for Taxpayer Identification Number and Certification, replaced Form 1078, Certificate of Alien Claiming Residence in the United States, to comply with the new regulations under Chapter 3 (IRC 1441-1446) and related sections of the Internal Revenue Code.
- (2) A person who is required to file an information return with the IRS must obtain a correct Taxpayer Identification Number (TIN) to report:
 - 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
- (3) The form is used by a U.S. person (including a resident alien) to give their correct TIN to a requester, when applicable, to:
 - Certify that the TIN is correct (or to show that the taxpayer is waiting for a number to be issued)
 - Certify that the person providing the form is exempt from FATCA reporting (for purposes of certain FFIs requesting the form)
 - 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

- (4) Due to regulatory changes, Form W-9 serves several functions:
- Vehicle for U.S. persons to report Taxpayer Identification Numbers (ITINs) to certain withholding agents
 - Vehicle for informing withholding agent that the payee is a U.S. person
 - Vehicle for certain resident aliens to claim tax treaty exemptions

21.8.2.19
(01-05-2018)
**Information Reporting
Under IRC § 6048 and
IRC § 6039F**

- (1) The Small Business Job Protection Act of '96 (SBJPA) expanded information reporting under IRC 6048 for:
- U.S. persons who make transfers to foreign trusts, and
 - U.S. owners of foreign trusts
- (2) The SBJPA also added:
- Reporting requirements for the U.S. beneficiaries receiving direct or indirect distributions from foreign trusts (IRC 6048(c)), and
 - Revised civil penalty procedures
- (3) U.S. persons treated as owners of a foreign trust under IRC 671 through IRC 679 ("U.S. owner(s)" are responsible for ensuring that the foreign trust annually furnishes the IRS prescribed information to:
- The U.S. owner(s), and
 - U.S. beneficiaries
- (4) U.S. owners also are responsible for ensuring that the foreign trust files an annual return on Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner (Under § 6048(b)), containing a full and complete accounting of all:
- Trust activities
 - Trust operations, and
 - Other relevant information
- (5) The Hiring Incentives to Restore Employment (HIRE) Act of 2010 confirmed that U.S. owners of foreign trusts must file Form 3520 and complete Part II of Form 3520 even if there were no transactions with the foreign trust in that particular year, and even if they are not required to complete Part I or Part III with respect to the foreign trust.
- (6) The SBJPA also created reporting requirements under Section 6039F for US persons that receive large gifts (including bequests) from foreign persons.

21.8.2.19.1
(10-01-2022)
**Penalties Assessed
Under § 6677 and §
6039F- Form 3520 &
Form 3520-A**

- (1) Accounts Management has been approved to work Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, & Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner (Under § 6048(b)), related to civil penalty adjustments (CP 15 & CP 215) and duplicate filing conditions (TRNS 193).
- (2) Initial penalties are assessed under § 6677 of the Internal Revenue Code when a TRNS 223 generates. A penalty may be assessed for each tax year in which the Form 3520 and/or 3520-A was not timely filed with the required information.

Note: For more information on penalties assessed under § 6677 refer to IRM 20.1.9, International Penalties.

- (3) **For notices and returns required to be filed before January 1, 2010**, the initial penalty for failure to complete and timely file Part I and/or Part III of Form 3520 is 35% of the gross reportable amount transferred to (Form 3520 page 2; total line 13), or distributed from, the foreign trust (Form 3520 Page 4, total of lines 24 and 25), and/or 5% of the gross value of the portion of the foreign trust's assets at the close of the year treated as owned by the U. S. person (Form 3520-A Page 3, total line 9). The initial and continuation penalties may not exceed the gross reportable amount.
- (4) **For notices and returns required to be filed after December 31, 2009**, the initial penalty for failure to complete and timely file Part I and/or Part III of Form 3520 generally is the **greater** of \$10,000 or 35% of the gross reportable amount, which is either the amount that was transferred to the foreign trust (Form 3520 page 2, total line 13) or the amount received from the foreign trust (Form 3520 Page 4, line 27). The initial penalty for failure to file Form 3520-A generally is the **greater** of \$10,000 or 5% of the gross value of the portion of the foreign trust's assets at the close of the year treated as owned by the U.S. owner (Form 3520-A line 9 of the Foreign Grantor Trust Owner Statement received from the foreign trust). The initial and continuation penalties may not exceed the gross reportable amount.
- (5) The penalty under Section 6039F for failure to complete and timely file Part IV of Form 3520 to report foreign gifts is equal to 5% of the amount of such foreign gifts for each month or part of a month the return is late (not to exceed 25%). In addition, the IRS may determine the tax consequences of the receipt of such gifts.
- (6) Per Period of Limitations IRC 6501(c)(8): The time for assessment of any tax with respect to a period to which the information required to be reported on, as relevant here, Form 3520 and 3520-A relates does not expire before 3 years after the date on which the information is furnished. This applies to Part I and Part III of Form 3520 and Form 3520-A.

21.8.2.19.2
(10-01-2024)

Form 3520 & Applicable Penalties

- (1) A U.S. person must file Form 3520 to report certain trust activities and transactions with foreign trusts such as:
 - The creation of a foreign trust by a U.S. person
 - A direct or indirect transfer of any money or property to a foreign trust by a U.S. person
 - The death of a U.S. person, if such person was treated as an owner of a foreign trust, and reporting any portion of a foreign trust that was included in the decedent's estate
 - A direct or indirect distribution from a foreign trust received by a U.S. person
 - A U.S. person, regardless of whether such a person has an interest in a foreign trust, must use the Form 3520 to report the receipt of certain large gifts or bequests from foreign persons
 - A U.S. person treated as an owner of a foreign trust, without regard to when the trust was created, or whether there were any transactions involving the foreign trust in the current year

Exception: **Rev. Rul.** 2013-14 provides that Fideicomiso or Mexican Land Trust arrangements, as described in this ruling, are not trusts within the meaning of § 301.7701-4(a). Meaning, a Mexican land trust arrangement that allows a U.S. citizen or entity to hold residential real property in some restricted areas of Mexico through an agreement with a Mexican bank isn't a trust under Treas. Reg. Section 301.7701-4(a) because the bank's only duties are to hold and transfer the property's legal title.

- (2) This form is required of any U.S. person who, directly or indirectly transfers property to a foreign trust, whether or not the trust has one or more U.S. beneficiaries. An Individual, Partnership, Corporation, Trust or Estate may be required to file this return.

Note: Form 3520 has four parts that relate to different requirements for filing Form 3520. See IRM 20.1.9, International Penalties, for more information. A separate Form 3520 must be filed for transactions with each foreign trust.

- (3) This form is also required of any U.S. person who received gifts from a non-resident alien or foreign estate greater than \$100,000 or from foreign corporations or partnerships greater than \$10,000 (adjusted for inflation) during the calendar year.
- (4) Rev. Proc. 2020-17, dated March 16, 2020, provides a retroactive exemption from the information reporting requirements under section 6048 of the Internal Revenue Code for certain U.S. citizen and resident individuals (U.S. individuals) with respect to their transactions with, and ownership of, certain tax-favored foreign retirement trusts and certain tax-favored foreign nonretirement savings trusts. Only eligible individuals (generally U.S. individuals who have been compliant with respect to their income tax obligations related to such trusts) may rely on this revenue procedure. Eligible individuals should complete Form 843 and must include an explanation of eligibility on Line 7. Follow the procedures below to work these claims:

IF	AND	THEN
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		<div>1. Link Form 843 to the related Form 3520 and/or Form 3520-A if found.</div>
		<div>Reminder: Select paragraphs d and g and any other paragraphs as needed</div>
		<div>Reminder: Select paragraphs d and g and any other paragraphs as needed</div>

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		<p>Reminder: Select paragraphs d and g and any other paragraphs as needed</p>	# # # # # # # # #
		<p>Reminder: Select paragraphs d and g and any other paragraphs as needed</p>	# # # # # # # # # # #
		<ol style="list-style-type: none"> 1. Send Letter 1382C, select paragraph X. 2. Suspend case for 45 days awaiting explanation. 3. Send Letter 916C, select paragraph F, if there is no response after 45 days OR response is incomplete. 	# # # # # #

		Abate the penalty using Penalty Reason Code (PRC) 044.	# # # # # #
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- (5) **Processing:** The Form 3520 is processed at the Ogden Submission Processing Campus (OSPC) under MFT 68, to the Business Master File (BMF):
- If the filer is an entity, the return is processed using the entity’s EIN.
 - If the filer is an individual, the return is processed using the individual’s SSN followed by a “V” (if valid) or “W” (if invalid), the same way Forms 706 are processed.
- (6) **Report Plan Number (RPN):** This is a three-digit number shown on the tax module of Form 3520, MFT 68, on the first line of CC TXMOD in the **RPT** field. This number generates from Line 2b(1) (Employer Identification Number) and consists of the last three digits of that EIN. If line 2b(1) is blank or contains a number other than an EIN, a default of “520” is shown. This field was created to capture multiple Forms 3520 filed by the same US person who may have transactions and/or ownership of multiple foreign trusts.

Example: TXMODA98-XXXX123 68 201812 RPT>123

- (7) **Due Date For Tax Years Ending Before 01-01-2017:** In general, for tax year ending before 2017, the due date for a U.S. person to file a Form 3520 is the same as the due date for income tax returns (1040 Series, 1041 Series, 1065 & 1120 Series), including extensions. Most taxpayers are required to file some type of income tax return and the Form 3520 is generally due on the date that the income tax return is due, including extensions. In the case of a Form 3520 filed with respect to a U.S. decedent, Form 3520 is due on the date that Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is due (including extensions), or would be due if the estate were required to file a return even if the executor of a decedent’s estate made the special election under section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation act of 2010. Thus, the due date may vary. All required attachments must be submitted with Form 3520 for it to be considered a complete return.

Note: Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns, cannot be used to request an extension on Form 3520. However, if the income tax return has an extended due date, the Form 3520 is due on the same extended due date.

- (8) **Due Date For Tax Years Ending After 12-31-2016:** In general, for tax years beginning after 2016, the due date for a U.S. person to file a Form 3520 is the 15th day of the 4th month following the end of the U.S. person’s tax year. If the U.S. person lives outside of the United States and Puerto Rico the U.S. person’s Form 3520 is due on the 15th day of the 6th month following the end of U.S. persons tax year. If a U.S. person is granted an extension of time to file an income tax return (1040 Series, 1041 Series, 1065 & 1120 Series), the

due date for filing Form 3520 is the 15th day of the 10th month following the end of the U.S. person's tax year. In the case of a Form 3520 filed with respect to a U.S. decedent, for tax years beginning after 2016 Form 3520 is due the 15th day of the 4th month following the end of the decedent's last tax year. If the U.S. person's estate is also required to file a Form 3520, the estate will have to file by the 15th day of the 4th month following the end of the estate's tax year, just like any other U.S. person. All required attachments must be submitted with Form 3520 for it to be considered a complete return.

Reminder: For tax years 2019 and 2020 the due dates were postponed to July 15, 2020 and May 17, 2021, respectively.

- (9) **Civil Penalties:** When a TRNS 223 generates, the Form 3520 is reviewed for potential civil penalties. If an assessment is made, penalties will be made on the U.S. filer's account (TIN listed on line 1b of the Form 3520), under MFT 13 if TIN is an EIN or MFT 55 if TIN is an SSN, with the appropriate civil penalty reference number (PRN), TC 240 and Blocking Series 52. When a penalty is assessed for Part I and/or Part III PRN 659 is used. A CP 215 or CP 15 is generated to the taxpayer upon assessment of the civil penalty. If a penalty is assessed for Part I and Part III separate adjustments are input using the same PRN.

Exception: Close TRNS 223 notices "No Action" on tax periods 201901 through 202012 per Notice 2022-36, if the return is filed on or before September 30, 2022. For additional information, see IRM 20.1.1.3.3.2.2, Administrative Waiver – Penalty Relief for Certain

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taxpayer fails to report or timely file the required information on Form 3520

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notice TRNS 223 is generated to pull the Form 3520 from Files. The TRNS 223 notice is scanned to CII and assigned. A scanned copy of Form 3520 (if located) is associated with the TRNS 223. AM will process TRNS 223 notices by reviewing the Form 3520 for potential civil penalties using procedures in the **IF AND THEN** table in Paragraph (11) below. If it is determined a penalty should be assessed use procedures in Paragraph (15) below.

Exception: If Streamlined Foreign Offshore or Streamline Domestic Offshore is written across the top of Form 3520 AND an Austin received date is present, research the taxpayer's income tax return(s) (MFT 30) for a Transaction Code (TC) 971 with an Action Code (AC) 178. If TC 971 AC 178 is found do not assess a penalty. If TC 971 AC 178 is not found the Planning & Analysis analyst must contact LB&I to determine if certification was submitted.

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Note: If Form 3520 is not available in CII, research IDRS to determine if Form 3520 was filed timely and follow procedures below:

If	And	Then
Form 3520 was received timely (i.e., TC 460 is found on MFT 68)	Form 3520 was received by the extended due date	Close the TRNS 223 "No Action"
Form 3520 was received late (i.e., TC 460 is not found on MFT 68) "OR" Form 3520 was not received by the extended due date	The information in Paragraph (11) below is available on IDRS	Assess the penalty(ies) according to the instructions in Paragraph (15) below
Form 3520 was received late (i.e., TC 460 is not found on MFT 68) "OR" Form 3520 was not received by the extended due date	The information in Paragraph (11) below is not available on IDRS	<p>Request the return from Files using CC ESTABD (notate in the remarks field "second request").</p> <p>Caution: Only request the return if Files has had time to pull the return. See IRM 3.5.61.8.4.2(3), CP 36 series notices, CP 170/CP 170A, CP 193/CP 193A, CP 223 and CP 293 (Duplicate Filing Conditions), for additional information on when Files pulls the return.</p> <p>If the return is charged out to another area attempt to contact the area to secure the return. If the return cannot be secured input another request as "Special Search" using Form 2275, Records Request, Charge and Recharge. If Files is unable to secure the return after the "Special Search" request, close the TRNS 223 "No Action".</p> <p>Note: If the return is secured follow the procedures in Paragraph (11) below.</p>

(11) Follow the table below to determine if a civil penalty should be assessed:

If	And	Then
A Correspondence Action Sheet is attached to Form 3520	Form 3520 was received timely (i.e., TC 460 is found on MFT 68) AND the Form 3520 was received by the extended due date	Close the TRNS 223 No Action
A Correspondence Action Sheet is attached to Form 3520	Form 3520 was filed late (i.e., TC 460 is not found on MFT 68) OR the Form 3520 was not received by the extended due date	Assess a penalty according to the instructions in Paragraph (15) below
A Correspondence Action Sheet is not attached to Form 3520		Assess a penalty according to the instructions in Paragraph (14) below

Note: The manager of the employee processing a TRNS 223 must review any manual assessment of a penalty on a Form 3520 account resulting from the processing of a TRNS 223. Authorization for the assessment will be notated in CII.

- (12) **Assessment of Penalties For Tax Periods 201901 through 202012 Filed On or Before September 30, 2022:** Notice 2022-36, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, was issued August 24, 2022. This notice provides administrative relief from failure to file (FTF) penalties regarding Form 3520 for taxable periods 201901 through 202012 that are filed on or before September 30, 2022. Any penalty assessed should be abated under the authority of this notice, there is no requirement to provide a written abatement request or signature under penalties of perjury. Use TC 241 and the applicable PRN, with RC 062 and 046 when a manual penalty relief adjustment is needed. For additional information, see IRM 20.1.1.3.3.2.2, Administrative Waiver – Penalty Relief for Certain Taxpayers Filing 2019 and 2020 Returns.

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[illegible]

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- (15) Use the information below to assess the initial penalty/penalties for late filed Form 3520. The penalty is based on the applicable box(es) the taxpayer checks on Form 3520, Page 1, “AND/OR” the information completed in Part I and/or Part III.

Note: A Form 3520 penalty computation tool has been approved by LB&I and is available for AM employees to use when calculating these penalties.

- If the first box is checked “AND/OR” Part I (Lines 5a through Line 14) has any completed information, assess a penalty (TC 240 PRN 659) equal to the “greater” of \$10,000 or 35% of the total amount reported on Page 2, Line 11b, the total of column (iv), and Line 13, the total of Column (i). If there is no amount on Lines 11b(iv) and 13(i), assess

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Note: The initial penalty for failure to file Form 3520 Part I generally is the “greater” of \$10,000 or 35% of the gross reportable amount. The gross reportable amount for Form 3520, Part I is the gross value of property involved in the creation of a foreign trust or the transfer of property to a foreign trust (including a transfer by reason of death) (Form 3520 Page 2, Lines 11b(iv) and 13(i)). The aggregate penalty assessed with respect to Form 3520 Part I cannot exceed the gross reportable amount (Form 3520, Page 2, Lines 11b(iv) and 13(i)).

Caution: If there is no amount listed on Lines 11b(iv) and 13(i) of the Form 3520, then assess the \$10,000 penalty. If the taxpayer later provides the information for Lines 11b(iv) and 13(i) abate the penalty, if it should have been limited, using the procedures in Paragraph (14) below.

- If the third box is checked “AND/OR” Part III (Lines 24 through Line 27 and Lines 29 through Lines 53) has any completed information, assess a penalty (TC 240 PRN 659) equal to the “greater” of \$10,000 or 35% of the amount reported on Page 4, Line 27. If there is no amount on

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Note: The initial penalty for failure to file Form 3520 Part III generally is the “greater” of \$10,000 or 35% of the gross reportable amount. The gross reportable amount for Form 3520, Part III is the gross amount of distributions received from a foreign trust (Form 3520 Page 4, line 27). The aggregate penalty assessed with respect to Form 3520 Part III cannot exceed the gross reportable amount (Form 3520, Page 4, Line 27).

Caution: If there is no amount listed on Line 27 of the Form 3520, then assess the \$10,000 penalty. If the taxpayer later provides the

information for Line 27 abate the penalty, if it should have been limited, using the procedures in Paragraph (14) below.

(16) Abatement Procedures - Paper and phone abatement requests for both BMF and IMF modules are worked by the BMF International units.

- If the taxpayer can demonstrate the failure to comply was due to reasonable cause and not willful neglect, and the request contains a declaration made under the penalties of perjury, then abate the penalty. A taxpayer does not have reasonable cause merely because a foreign country imposes a civil or criminal penalty on the trustee (or other person) for disclosing the required information (§ 6677(d)). Also, refusal on the part of a foreign trustee to provide information for any other reason, including difficulty in producing the required information or provisions in the trust instrument that prevent the disclosure of required information, is not considered reasonable cause.

Note: Reasonable cause penalty abatements must be reviewed and approved by a manager prior to removing the penalty. After review, the workleader/manager will add a CII case note documenting approval.

- Proof of an approved extension of time to file an income tax return must be considered if Form 3520 was filed within the approved extension period (Form 4868). Check MFT 68 and/or the income tax module as applicable for timely filing or the presence of a posted or unposted TC 460. Abate penalty if extended due date shown is equal to or greater than the filing date.

Reminder: This is not reasonable cause; therefore, the taxpayer's request does not have to contain a declaration made under the penalties of perjury nor reviewed and approved by a manager, remove the penalty with PRC 027.

- To abate, adjust the MFT 13 (BMF account numbers) or 55 (IMF account numbers) module with a 290 .00, Blocking Series 52, and the appropriate PRN with minus (–) after the abatement amount. As a result, transaction TC 241 generates on the Master File.

Reminder: Notice 2022-36 provides administrative relief for taxable periods 201901 through 202012, see Paragraph 12 above.

Note: Forward all requests for abatement of Examination assessed penalties, including Form 843 claims, to the area that assessed the penalty.

(17) Non-Abatement Procedures:

- Advise taxpayer if research shows Form 3520 was filed late and give the specifics. Make sure the income tax return due date is checked to determine timely filing of the Form 3520.
- Allow the taxpayer to submit additional information for consideration of penalty abatement (i.e., copy of approved income tax return extension, certified mail receipt, reasonable cause statement).
- If additional information is not accepted, deny the request. Input 290 .00, with the appropriate PRN for .00, Blocking Series 98/99, Reason Code 062, and Hold Code 3. Advise the taxpayer of their penalty appeals rights using an IDRS Letter 854C.

- If a Form 843 claim is received and is being denied, follow normal penalty denial procedures.

21.8.2.19.3
(10-01-2024)

**Form 3520-A &
Applicable Penalties**

- (1) A foreign trust must annually file a Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (Under section 6048(b)), when a U.S. person is treated as an owner of any portion of the foreign trust under sections 671 through 679. Form 3520-A includes a Foreign Grantor Trust Owner Statement and a Foreign Grantor Trust Beneficiary Statement on pages 3 through 5.

Exception: **Rev. Rul.** 2013-14 provides that Fideicomiso or Mexican Land Trust arrangements, as described in this ruling, are not trusts within the meaning of § 301.7701-4(a). See IRM 21.8.2.19.2 for additional information.

- (2) In order to avoid penalties associated with the failure to timely file Form 3520-A, the U.S. owner must ensure that their foreign trust timely files Form 3520-A, or the U.S. owner must file a substitute Form 3520-A with their timely-filed Form 3520. If there are multiple Foreign Grantor Trust Owners or U.S. Beneficiaries, there may be several Foreign Grantor Trust Owner Statements/ or Foreign Grantor Trust Beneficiary Statements that must be provided.
- (3) Rev. Proc. 2020-17, dated March 16, 2020, provides a retroactive exemption from the information reporting requirements under section 6048 of the Internal Revenue Code for certain U.S. citizen and resident individuals (U.S. individuals) with respect to their transactions with, and ownership of, certain tax-favored foreign retirement trusts and certain tax-favored foreign nonretirement savings trusts. Only eligible individuals (generally U.S. individuals who have been compliant with respect to their income tax obligations related to such trusts) may rely on this revenue procedure. Eligible individuals should complete Form 843 and must include an explanation of eligibility on Line 7. Follow the procedures in IRM 21.8.2.19.2, Form 3520 & Applicable Penalties, above to work these claims.
- (4) **Processing:** The Form 3520-A is processed at the Ogden Submission Processing Campus (OSPC) on the Business Master File (BMF) under MFT 42. Filing is done using the trust's EIN.
- (5) **Due Date:** This form is due the 15th day of the 3rd month (e.g., calendar year 2021 is due 3/15/22) following the end of the Trust's tax year or 6-month extended due date (e.g., calendar year 2021 extended due date of 9/15/22) if the trust files for an extension (Form 7004).
- (6) **Civil Penalties:** When a Form 3520-A is filed after the return due date (post-marked after the 15th day of the 3rd month from the end of the trust's tax year), or when the U.S. owner fails to timely file a substitute Form 3520-A with their timely filed (including extensions) Form 3520, a campus notice TRNS 223 is generated to pull the return from Files. The TRNS 223 notice is sent to Accounts Management for penalty determination with the return attached if it is located in Files. A TRNS 223 requires the tax examiner to determine if a penalty must be manually calculated and assessed for the failure to file (FTF) Civil Penalty Reference Number (PRN) 660 using the **U.S. owner's** TIN listed on Line 6b, Page 3 of Form 3520-A under either MFT 13 (BMF, if EIN), or MFT 55 (IMF, if SSN) with TC 290 .00, Blocking Series 52, PRN 660, and TC 971 AC 868 to include the XREF-EIN of the foreign trust from Line 1b, Page 1 of Form 3520-A. The penalty assessment will post as a TC 240. The manager of

an employee processing a TRNS 223 must review any manual assessment of a Form 3520-A penalty resulting from the processing of a TRNS 223 per § 6751(b)(1). Authorization for the assessment will be notated in CII.

Exception: Close TRNS 223 notices “No Action” on tax periods 201901 through 202012 per Notice 2022-36, if the return is filed on or before September 30, 2022. For additional information, see IRM 20.1.1.3.3.2.2, Administrative Waiver – Penalty Relief for Certain Taxpayers Filing 2019 and 2020 Returns.

U.S. owner fails to ensure that a Form 3520-A is timely filed, including by filing

TRNS 223 is generated to pull the Form 3520-A from Files. The TRNS 223 notice is scanned to CII and assigned. A scanned copy of Form 3520-A (if located) is associated with the TRNS 223. AM will process TRNS 223 notices by reviewing the Form 3520-A for potential civil penalties using procedures in the “IF AND THEN” table in Paragraph (8) below.

Exception: If Streamlined Foreign Offshore or Streamline Domestic Offshore is written across the top of Form 3520-A AND an Austin received date is present, research the taxpayer’s income tax return(s) (MFT 30) for a Transaction Code (TC) 971 with an Action Code (AC) 178. If TC 971 AC 178 is found do not assess a penalty. If TC 971 AC 178 is not found the Planning & Analysis analyst must contact LB&I to determine if certification was submitted.

Note: If Form 3520-A is not available in CII, research IDRS to determine if Form 3520-A (including a substitute Form 3520-A attached to the U.S. owner’s Form 3520) was filed timely and follow procedures below:

If	And	Then
Form 3520-A was received timely (i.e., TC 460 is found on MFT 42)	Form 3520-A was received by the extended due date	Close the TRNS 223 “No Action”

If	And	Then
Form 3520-A was received late (i.e., TC 460 is not found on MFT 42)“OR” Form 3520-A was not received by the extended due date		<p>Request the return from Files using CC ESTABD (notate in the remarks field “second request”).</p> <p>Caution: Only request the return if Files has had time to pull the return. See IRM 3.5.61.8.4.2(3), CP 36 series notices, CP 170/CP 170A, CP 193/CP 193A, CP 223 and CP 293 (Duplicate Filing Conditions), for additional information on when Files pulls the return.</p> <p>If the return is charged out to another area attempt to contact the area to secure the return. If the return cannot be secured input another request as “Special Search” using Form 2275, Records Request, Charge and Recharge. If Files is unable to secure the return after the “Special Search” request, close the TRNS 223 “No Action”.</p> <p>Note: If the return is secured follow the procedures in Paragraph (8) below.</p>

- (8) AM will follow the table below to determine if a civil penalty should be assessed. If it is determined a penalty should be assessed manually calculate and assess a penalty. The initial penalty for failure to file Form 3520-A generally is the **greater** of \$10,000 or 5% of the gross reportable amount. The gross reportable amount for Form 3520-A is the gross value of the portion of the foreign trust’s assets at the close of the year treated as owned by each U.S. owner (Form 3520-A, Page 3 – Foreign Grantor Trust Owner Statement, line 9). The aggregate penalty assessed with respect to Form 3520-A cannot exceed the gross reportable amount (Form 3520-A, Page 3 - Foreign Grantor Trust Owner Statement, Line 9).

Note: If Form 3520-A has more than one Page 3 assess a penalty accordingly for each U.S. owner.

Caution: If Line 9 of the Form 3520-A - Foreign Grantor Trust Owner Statement, is blank then assess the \$10,000 penalty. If the taxpayer later provides the information for Line 9 abate the penalty, if it should have been limited,

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If	And	Then
A Correspondence Action Sheet is attached to Form 3520-A	Form 3520-A was received timely (i.e., TC 460 is found on MFT 42)“AND” the Form 3520-A was received by the extended due date	Close the TRNS 223 “No Action”
A Correspondence Action Sheet is attached to Form 3520-A	Form 3520-A was filed late (i.e., TC 460 is not found on MFT 42)“OR” the Form 3520-A was not received by the extended due date	Assess a penalty Note: Do not assess a penalty if a substitute Form 3520-A was filed (identified by an Action Trail “D-3520” notated on the first page near the bottom left corner of the Form 3520-A) and there is proof the Form 3520 was filed timely (i.e., TC 460 is found on MFT 68)
A Correspondence Action Sheet is not attached to Form 3520-A		Assess a penalty Note: Do not assess a penalty if a substitute Form 3520-A was filed (identified by an Action Trail “D-3520” notated on the first page near the bottom left corner of the Form 3520-A) and there is proof the Form 3520 was filed timely (i.e., TC 460 is found on MFT 68)

Exception: If the foreign trust does not file or timely file Form 3520-A, but the U.S. owner completes and attaches a substitute Form 3520-A for the foreign trust to the U.S. owner’s timely filed Form 3520 (including extensions) in accordance with the instructions for Form 3520, the U.S. owner will not be subject to the penalty for failure to timely file Form 3520-A.

- (9) **Assessment of Penalties For Tax Periods 201901 through 202012 Filed On or Before September 30, 2022:** Notice 2022-36, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, was issued August 24, 2022. This notice provides administrative relief from failure to file (FTF) penalties regarding Form 3520-A for taxable periods 201901 through 202012 that are filed on or before September 30, 2022. Any penalty assessed should be abated under the authority of this notice, there is no requirement to provide a written abatement request or signature under penalties of perjury. Use TC 241 and the applicable PRN, with RC 062 and 046 when a manual penalty

[illegible]

[illegible]

[illegible]

- (12) Abatement Procedures - Paper and phone abatement requests for both BMF and IMF modules are worked by the BMF International units.
- If the taxpayer can demonstrate the failure to comply was due to reasonable cause and not willful neglect, and the request contains a declaration made under the penalties of perjury, then abate the penalty.

Reminder: Reasonable cause penalty abatements must be reviewed and approved by a manager prior to removing the penalty. After review, the workleader/manager will add a CII case note documenting approval.

Note: A taxpayer does not have reasonable cause merely because a foreign country imposes a civil or criminal penalty on the trustee (or other person) for disclosing the required information (§ 6677(d)). Also, refusal on the part of a foreign trustee to provide information for any other reason, including difficulty in producing the required information or provisions in the trust instrument that prevent the disclosure of required information, is not considered reasonable cause.

- Proof of an approved extension of time to file Form 3520-A must be considered if Form 3520-A was filed within the approved extension period (Form 7004). Check MFT 42 under the TIN of the Foreign Trust for the presence of a posted or unposted TC 460. Abate penalty if extended due date shown is equal to or greater than the filing date.

Reminder: This is not reasonable cause; therefore, the taxpayer's request does not have to contain a declaration made under the penalties of perjury nor reviewed and approved by a manager, remove the penalty with PRC 027.

- If it is a substitute Form 3520-A, proof of an approved extension (Form 4868 or 7004) of time to file the Form 3520 (which the substitute Form 3520-A was attached) must be considered if Form 3520 was filed within the approved extension period.

Reminder: This is not reasonable cause; therefore, the taxpayer's request does not have to contain a declaration made under the penalties of perjury nor reviewed and approved by a manager, remove the penalty with PRC 027.

- To abate, adjust the MFT 13 (BMF account numbers) or 55 (IMF account numbers) module with a 290 .00 Blocking Series 52, and PRN 660 with a minus (–) after the abatement amount. As a result, transaction TC 241 generates on the Master File.

Reminder: Notice 2022-36 provides administrative relief for taxable periods 201901 through 202012, see Paragraph 9 above.

Note: Forward all requests for abatement of Examination assessed penalties, including Form 843 claims, to the area that assessed the penalty.

(13) Non-Abatement Procedures:

- Advise taxpayer if research shows Form 3520-A was filed late and give the specifics.
- Allow the taxpayer to submit additional information for consideration of penalty abatement (i.e., copy of approved extension, certified mail receipt, reasonable cause statement).
- If additional information is not accepted, deny the request. Input 290 .00, PRN 660 for .00, Blocking Series 98/99, Reason Code 062, and Hold Code 3. Advise the taxpayer of their penalty appeals rights using IDRS Letter 854C.

- If a Form 843 claim is received and is being denied, follow normal penalty denial procedures.

21.8.2.19.4
(10-01-2024)
**Form 3520 & Form
3520-A Possible
Duplicate Filing
Conditions (TRNS 193)**

- (1) If a duplicate filing condition exists, a TRNS 193 generates. Although these returns are for information only and tax is not assessed on them, research is necessary to determine if a manual computation of the civil penalty is necessary. A civil penalty is assessed against the U.S. owner's TIN data located on Form 3520/3520-A. Check all MFTs, EINs, SSNs, and SSNs with **V** or **W** for the U.S. person or trust to see if a penalty has already been assessed, or if an extension (TC 460) was processed.
- (2) If the original Form 3520/3520-A was filed timely, release the **A** freeze with a TC 290 .00 using Blocking Series 15 under MFT 68 or 42 as applicable.
- (3) If the original Form 3520/3520-A was filed late, compare the original and TRNS 193 return to determine if a manual computation of the civil penalty is necessary.
 - If a manual computation of the civil penalty is necessary, adjust or assess the civil penalty **and** release the **A** freeze with a TC 290 .00 under MFT 68 or 42 as applicable. See IRM 21.8.2.19.2 or IRM 21.8.2.19.3 for computation procedures.
 - If a manual computation of the civil penalty is not necessary, release the "A" freeze with TC 290 .00 under MFT 68 or 42 as applicable.

21.8.2.20
(10-01-2022)
**Form 5471 - Information
Return of U.S. Persons
With Respect to Certain
Foreign Corporations**

- (1) Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, is required to be filed by certain U.S. citizens and residents who are officers, directors, or shareholders in certain foreign corporations to report their international activities.
- (2) Form 5471 is a six page document that includes Schedules A, B, C, F, G, and I. There are also nine separate Form 5471 Schedules connected with this Form - Schedules E, G-1, H, I-1, J, M, O, P, Q and R.
- (3) The form and schedules are used to satisfy the reporting requirements of IRC 6038 and IRC 6046, and related Treasury regulations.
- (4) Form 5471, along with its schedules is filed as an attachment to the appropriate income tax return filed by the taxpayer.
- (5) Form 5471 and the related Schedules E, H, I-1, J, M, O, P, Q and R can be filed electronically, after receiving IRS approval, by submitting Form 9041, Application/Registration for Electronic/Magnetic Media Filing of Business Returns.
- (6) The due date of the Form 5471 is the same as that of the related income tax return.
- (7) An extension of time to file the income tax return is an extension of time to file Form 5471.
- (8) Taxpayers are instructed to attach Form(s) 5471 to their income tax return and to file both by the due date for that income tax return. Attach any loose forms to the appropriate income tax return. If the income tax return cannot be located

or has not been filed, send the loose Form 5471(s) to the following Mail Stop and close the case on IDRS:
Attn: Ogden PIN Unit - MS 6112

21.8.2.20.1
(03-26-2018)
Form 5471 Penalties

- (1) Failure to timely file Form 5471 and the appropriate schedule(s) can result in civil penalties under IRC 6038. See IRM 20.1.9.3, IRC 6038—Information Reporting With Respect to Foreign Corporations and Partnerships. The penalties are assessed on civil penalty modules with Penalty Reference Numbers 599, 623, and 712. These reference numbers are located in Document 6209.
- (2) Form 5471 penalties assessed by Area Office Examination are manually assessed with Penalty Reference Number (PRN) 623 using Document Code 47 or 54. Only Examination can recommend reconsideration of this penalty when it is assessed by Exam.
- (3) Beginning in 2010, Master File systemically assesses IRC 6038 penalties on Form 5471 returns attached to late-filed Form 1120 series returns. The assessments contain a TC 240 for amounts in multiples of \$10,000, Document Code 54, Tax Class 3, **PRN 599**, and 00 as the first two digits of the Blocking Series.

Exception: In 2009 only, Master File systemically assessed IRC 6038 penalties on Form 5471 returns attached to late-filed Form 1120 series returns. The assessments contain a TC 240 for amounts in multiples of \$10,000, Document Code 54, Tax Class 3, **PRN 623**, and 00 as the first two digits of the Blocking Series.

- (4) Beginning in 2014, Master File systemically assesses IRC 6038 penalties on Form 5471 returns attached to late-filed Form 1065 returns. The assessments contain a TC 240 for amounts in multiples of \$10,000, Document Code 54, Tax Class 2, **PRN 712**, and 00 as the first two digits of the Blocking Series.
- (5) BMF International Units at the Ogden and Cincinnati Accounts Management Centers process requests for relief of these systemically assessed Form 5471 FTF initial penalties. See IRM 21.8.2.20.2.
- (6) Forward all requests for abatement of continuation penalties or Examination assessed initial penalties, including any Form 843 claims, to the area that assessed the penalty.

21.8.2.20.2
(10-01-2024)
Form 5471 Penalties Systemically Assessed from Late-Filed Form 1120 Series or Form 1065

- (1) Beginning in 2009, Master File systemically assesses IRC 6038 initial penalties on Form 5471 returns that are attached to late-filed Form 1120 series returns. The initial penalty amount is \$10,000 for each attached Form 5471 and is assessed on a civil penalty module (MFT 13) as a TC 240 with Penalty Reference Number (PRN) 623 for 2009 or PRN 599 for 2010 and subsequent years. The systemically assessed initial penalties will post as a TC 240 for amounts in multiples of \$10,000, Document Code 54, Tax Class 3, PRN 599, and 00 as the first two digits of the Blocking Series. The assessment will result in a CP 215 notice being issued to the taxpayer.

Caution: Penalties manually assessed by Examination will have a Document Code 47 and generally contain a TC 300 but may be assessed using Document Code 54 without a TC 300. Accounts Management **WILL NOT** consider

penalty abatement requests on Examination assessed penalties. Examination will consider all requests for Exam assessed 5471 FTF or late-filed initial and continuation penalties.

- (2) Beginning in 2014, Master File systemically assesses IRC 6038 initial penalties on Form 5471 returns that are attached to late-filed Form 1065 returns. The initial penalty amount is \$10,000 for each attached Form 5471 and is assessed on a civil penalty module (MFT 13) as a TC 240 with PRN 712. The systemically assessed initial penalties will post as a TC 240 for amounts in multiples of \$10,000, Document Code 54, Tax Class 2, PRN 712, and 00 as the first two digits of the Blocking Series. The assessment will result in a CP 215 notice being issued to the taxpayer.

Reminder: Penalties manually assessed by Examination will have a Document Code 47 and generally contain a TC 300 but may be assessed using Document Code 54 without a TC 300. Accounts Management **WILL NOT** consider penalty abatement requests on Examination assessed penalties. Examination will consider all requests for Exam assessed 5471 FTF or late-filed initial and continuation penalties.

- (3) On August 24, 2022 Notice 2022-36, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, was issued. This notice provides administrative relief from systemically assessed failure to file (FTF) penalties regarding Form 5471 for taxable periods 201901 through 202012 that are filed on or before September 30, 2022. This relief is applied systemically to Form 5471 modules, where applicable. Use TC 241 and the applicable PRN, with RC 062 and 046 if a manual penalty relief adjustment is needed. A written abatement request or signature under penalties of perjury is not required. For additional information, see IRM 20.1.1.3.3.2.2, Administrative Waiver – Penalty Relief for Certain Taxpayers Filing 2019 and 2020 Returns.
- (4) OAMC and CAMC will continue to consider Form 1120 series and Form 1065 Failure to File (FTF) penalty abatement requests. However, OAMC and CAMC International units will consider requests for abatement of both the FTF Form 1120 series/Form 1065 and the systemic penalty for FTF Forms 5471. Therefore, refer requests for abatement of both to the OAMC or CAMC International Department per local reassignment procedures.

Caution: Do not address the Form 1120 series or Form 1065 FTF penalty unless the taxpayer is also requesting abatement of that penalty.

Note: Reasonable cause Form 5471 FTF penalty abatements must be reviewed and approved by a manager prior to removing the penalty. After review, the workleader/manager will add a CII case note documenting approval.

- (5) Advise callers requesting reasonable cause relief of the Form 5471 initial penalty to submit their request in writing to Internal Revenue Service, 1973 Rulon White Blvd., Mail Stop 6552, Ogden, Utah 84404. See IRM 21.5.3.4.16.7, Identifying Frivolous Returns/Correspondence and Responding to Frivolous Arguments, for additional information.
- (6) The International Department will generally abate/deny the Form 5471 initial penalty consistent with the determination made on the “related Form 1120 or Form 1065.”

Note: Beginning with tax periods 201601, a Form 5471 penalty will post to the same tax period as the tax period of the “related Form 1120 or Form 1065.”

Example: If a taxpayer files Form 1120 for tax year ending March 31, 2016 (201603) the penalty will post with a tax period of 201603.

Reminder: For tax periods 201512 and prior, a Form 5471 penalty posted to a calendar year tax period regardless of the tax period of the “related Form 1120 or Form 1065.”

Example: If a taxpayer filed Form 1120 for tax year ending, March 31, 2015 (201503), the penalty posted with a tax period of 201512.

- (7) A determination to abate the FTF penalty on the “related Form 1120 or Form 1065” does not automatically result in an abatement of the Form 5471 penalty. Once the determination has been made on the “related Form 1120 or Form 1065” **AND** all required returns are posted to Master File follow procedures in the “If And Then” table below to determine if the Form 5471 initial penalty can be abated:

Note: If the taxpayer is requesting reasonable cause continue to Exhibit 21.8.2-1, Failure to File or Late-Filed Form 5471 - Decision Tree, to determine whether to abate the Form 5471 initial penalty for reasonable cause.

Reminder: Advise callers requesting reasonable cause relief of the Form 5471 initial penalty to submit their request in writing to Internal Revenue Service, see paragraph (5) above. However, if callers are not requesting reasonable cause relief follow the procedures in the “If And Then” table below to research and determine if the penalty can be removed over the phone.

If	And	Then
<p>The taxpayer believes an extension was requested</p> <p>Note: The extension to file (TC 460) should be recorded on the “related Form 1120 or Form 1065”</p>	<p>The extension to file is not reflected on the account or the extension to file posted to Master File after the penalty was assessed</p>	<p>Follow procedures in IRM 20.1.2.2.3.1.1, Extension of Time to File Not Found.</p> <p>Reminder: See IRM 20.1.1.3.4, Correction of Service Error, and Exhibit 20.1.1-2, Penalty Reason Code Chart, for additional information and the appropriate Penalty Reason Code (PRC) to use if abating the penalty.</p> <p>Note: Beginning January 1, 2016 if an extension (TC 460) posts after the “related Form 1120 or Form 1065” posts, Masterfile will generate a TC 290/241 to systemically reverse the Form 5471 penalty.</p>

If	And	Then
The taxpayer is claiming a specific provision or an IRS error		Follow normal procedures in IRM 20.1, Penalty Handbook. Example: See IRM 20.1.2.1.7, Short Years.
The “related Form 1120 or Form 1065” FTF penalty wasn’t assessed (i.e., no tax or fully paid)	No Form 5471 penalties (MFT 13) have been assessed (PRN 599, 623, or 712) in any of the prior three periods AND no “related Form 1120 or Form 1065” returns have been filed late in any of the prior three periods AND the “related Form 1120 or Form 1065” meets FTA criteria. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA), to determine if FTA criteria is met	Abate the penalty with PRC 018.
The “related Form 1120 or Form 1065” FTF penalty wasn’t assessed (i.e., no tax or fully paid)	Form 5471 penalties (MFT 13) have been assessed (PRN 599, 623, or 712) in any of the prior three periods OR a “related Form 1120 or Form 1065” return has been filed late in any of the prior three periods OR a “related Form 1120 or Form 1065” does not meet FTA criteria. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA), to determine if FTA criteria is met	Continue to Exhibit 21.8.2-1, Failure to File or Late-Filed Form 5471 - Decision Tree, to determine whether to abate the Form 5471 initial penalty for reasonable cause.
The “related Form 1120 or Form 1065” FTF penalty was abated with a PRC other than PRC 018		Abate the penalty using the same PRC that was used to abate the penalty on the “related Form 1120 or Form 1065.” Follow procedures in IRM 20.1.9.3.5(3), Reasonable Cause.

If	And	Then
The “related Form 1120 or Form 1065” FTF penalty was abated with PRC 018	No Form 5471 penalties (MFT 13) have been assessed (PRN 599, 623, or 712) in any of the prior three periods AND no “related Form 1120 or Form 1065” returns have been filed late in any of the prior three periods	Abate the penalty with PRC 018.
The “related Form 1120 or Form 1065” FTF penalty was abated with PRC 018	Form 5471 penalties (MFT 13) have been assessed (PRN 599, 623, or 712) in any of the prior three periods OR a “related Form 1120 or Form 1065” return has been filed late in any of the prior three periods	Continue to Exhibit 21.8.2-1, Failure to File or Late-Filed Form 5471 - Decision Tree, to determine whether to abate the Form 5471 initial penalty for reasonable cause.
The “related Form 1120 or Form 1065” FTF penalty is denied		Continue to Exhibit 21.8.2-1, Failure to File or Late-Filed Form 5471 - Decision Tree, to determine whether to abate the Form 5471 initial penalty for reasonable cause.
Not all required returns are posted to Master File (BMFOL)		Contact the corporation or partnership regarding the status of the missing returns.
The corporation or partnership indicates they have filed the returns after their request for abatement.		Suspend the request until all the necessary returns have posted to master file. Refer to IRM 21.3.3.5.1.1, Suspense Time Frames.
The corporation or partnership a. cannot be contacted, b. does not respond, c. has not filed the missing returns		Follow no consideration procedures. Advise the corporation or partnership that the abatement request cannot be considered until the missing returns have been filed. Refer to IRM 21.5.3.4.6.3, No Consideration Procedures.

- (8) The initial penalty for FTF Form 5471 should be abated when reasonable cause for the failure to file exists. See Exhibit 21.8.2-1, Failure to File or Late-Filed Form 5471 - Decision Tree, to determine whether or not reasonable cause exists. Follow the table below to abate/waive or deny the penalty.

Reminder: To show that reasonable cause exists, the person required to report such information must be in compliance with all open reporting years (not on extension) and “must make an affirmative showing of all facts alleged as reasonable cause for such failure in a written statement con-

taining a declaration that it is made under the penalties of perjury.” See IRM 20.1.9.3.5, Reasonable Cause, for additional information.

If	Then
The Decision Tree determination is to: <ul style="list-style-type: none"> Abate/Waive 	Input TC 290 .00 and appropriate PRN (599 or 712) with a minus (-) after the abatement amount. Use Blocking Series 52, Reason Code 062 and the appropriate 4th position PRC.
The Decision Tree determination is to: <ul style="list-style-type: none"> Deny 	Input TC 290 .00 with appropriate PRN (599 or 712) for .00. Use Blocking Series 98, Reason Code 062, Hold Code 3, and send Letter 854C.

Note: International must enter a CII case note if the penalty is being abated or denied for reasonable cause (using the **Decision Tree**), to notate which question(s), in which section(s) of the Decision Tree, led to the decision to abate or deny the reasonable cause request.

Caution: If the caller does not otherwise have reasonable cause, but contends that the penalty is for a wrong period, and as such the penalty should be abated, **AND** the caller has a “related Form 1120 or Form 1065” with a fiscal year that ends within the calendar year listed on the penalty notice, advise the caller to refer to page 2 of the civil penalty notice for an explanation of how the penalty applies to fiscal year filers. **CONCLUSION:** The penalty should **NOT** be abated for this reason.

21.8.2.21
(04-29-2024)
Form 5472 - Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business

- (1) Reporting corporations use Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, to provide required information under IRC 6038A and IRC 6038C for reportable transactions that occur during the tax year with a foreign or domestic related party.
- (2) Form 5472 is a multi-page document that consists of several parts. A separate Form 5472 is required for each related party with which the reporting corporation had any reportable transaction during the taxable year.
- (3) Form 5472 is used to satisfy the reporting requirements of IRC 6038A, IRC 6038C and related regulations.
- (4) Form 5472 is filed as an attachment to the U.S. corporation income tax return by the due date of that return, including extensions. For tax years ending before December 24, 2014, if the reporting corporation’s income tax return is not timely filed, Form 5472 nonetheless must be timely filed at the Campus where the return is due. When the income tax return is ultimately filed, a copy of Form 5472 must be attached. See IRM 20.1.9.5.1, Reporting and Filing Requirements, for additional information. For tax years ending after December 23, 2014, Form 5472 cannot be filed separately from a reporting corporation’s

income tax return. A separately filed Form 5472 will not be accepted as timely filed. Thus, for tax years ending after December 23, 2014, Form 5472 must be filed in all cases only with the reporting corporation's income tax return for the tax year by the due date (including extensions) of the return in order to avoid a penalty, assuming reasonable cause does not exist to excuse the failure to timely file.

- (5) Attach any loose forms to the appropriate corporation income tax return. If the return cannot be located or has not been filed, send the loose Form 5472(s) to the following Mail Stop and close the case on IDRS:
Attn: Ogden PIN Unit - MS 6112

21.8.2.21.1
(10-01-2019)
Form 5472 Penalties

- (1) Failure to file Form 5472 can result in civil penalties under IRC 6038A(d) and IRC 6038C(c). See IRM 20.1.9.5, IRC 6038A(d) – Information Reporting for Certain Foreign-Owned Corporations, and IRM 20.1.9.8, IRC 6038C— Information With Respect to Foreign Corporations Engaged in U.S. Business.
- (2) Form 5472 penalties assessed by Area Office Examination are manually assessed with Penalty Reference Number (PRN) 625 using Document Code 47 or 54. Only Examination can recommend reconsideration of this penalty when it is assessed by Exam.
- (3) Beginning in 2013, Master File systemically assesses IRC 6038A penalties on Form 5472 returns attached to late-filed Form 1120 series returns. The assessments contain a TC 240 for amounts in multiples of \$10,000 (\$25,000 for tax years beginning on January 1, 2018 and later), Document Code 54, Tax Class 3, **PRN 711**, and 00 as the first two digits of the Blocking Series.
- (4) BMF international units at the Ogden and Cincinnati Accounts Management Centers process requests for relief of these systemically assessed Form 5472 FTF initial penalties. See IRM 21.8.2.21.2.
- (5) Forward all requests for abatement of continuation penalties or Examination assessed initial penalties, including Form 843 claims, to the area that assessed the penalty.

21.8.2.21.2
(10-01-2024)
**Form 5472 Penalties
Systemically Assessed
from Late-Filed Form
1120 Series**

- (1) Beginning in 2013, Master File systemically assesses IRC 6038A initial penalties on Form 5472 returns that are attached to late-filed Form 1120 series returns. The initial penalty amount is \$10,000 (\$25,000 for tax years beginning on January 1, 2018 and later) for each attached Form 5472 and is assessed on a civil penalty module (MFT 13) as a TC 240 with Penalty Reference Number 711. The systemically assessed initial penalties will post as a TC 240 for amounts in multiples of \$10,000 (\$25,000 for tax years beginning on January 1, 2018 and later), Document Code 54, Tax Class 3, PRN 711, and 00 as the first two digits of the Blocking Series. The assessment will result in a CP 215 notice being issued to the taxpayer.

Caution: Penalties manually assessed by Examination will have a Document Code 47 and generally contain a TC 300 but may be assessed using Document Code 54 without a TC 300. Accounts Management **WILL NOT** consider penalty abatement requests on Examination assessed penalties. Examination will consider all requests for Exam assessed 5472 FTF or late-filed initial and continuation penalties.

- (2) On August 24, 2022 Notice 2022-36, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, was issued. This notice provides administrative relief from systemically assessed failure to file (FTF) penalties regarding Form 5472 for taxable periods 201901 through 202012 that are filed on or before September 30, 2022. This relief is applied systemically to Form 5472 modules, where applicable. Use TC 241 and the applicable PRN, with RC 062 and 046 if a manual penalty relief adjustment is needed. A written abatement request or signature under penalties of perjury is not required. For additional information, see IRM 20.1.1.3.3.2.2, Administrative Waiver – Penalty Relief for Certain Taxpayers Filing 2019 and 2020 Returns.
- (3) OAMC and CAMC will continue to consider Form 1120 series Failure to File (FTF) penalty abatement requests. However, OAMC and CAMC International units will consider requests for abatement of both the FTF Form 1120 series and the systemic penalty for FTF Form 5472. Therefore, refer requests for abatement of both to the OAMC or CAMC International Department per local reassignment procedures.

Caution: Do not address the Form 1120 series FTF penalty unless the taxpayer is also requesting abatement of that penalty.

Note: Reasonable cause Form 5472 FTF penalty abatements must be reviewed and approved by a manager prior to removing the penalty. After review, the workleader/manager will add a CII case note documenting approval.

- (4) Advise callers requesting reasonable cause relief of the Form 5472 initial penalty to submit their request in writing to Internal Revenue Service, 1973 Rulon White Blvd., Mail Stop 6552, Ogden, Utah 84404. See IRM 21.5.3.4.16.7, Identifying Frivolous Returns/Correspondence and Responding to Frivolous Arguments, for additional information.
- (5) The International Departments will generally abate/deny the Form 5472 initial penalty consistent with the determination made on the “related Form 1120.”

Note: Beginning with tax periods 201601, a Form 5472 penalty will post to the same tax period as the tax period of the “related Form 1120.”

Example: If a taxpayer files Form 1120 for tax year ending March 31, 2016 (201603) the penalty will post with a tax period of 201603.

Reminder: For tax periods 201512 and prior, a Form 5472 penalty posted to a calendar year tax period regardless of the tax period of the “related Form 1120.”

Example: If a taxpayer filed Form 1120 for tax year ending, March 31, 2015 (201503), the penalty posted with a tax period of 201512.

- (6) A determination to abate the FTF penalty on the “related Form 1120” does not automatically result in an abatement of the Form 5472 penalty. Once the determination has been made on the “related Form 1120” **AND** all required returns are posted to Master File follow procedures in the “If And Then” table below to determine if the Form 5472 initial penalty can be abated:

Note: If the taxpayer is requesting reasonable cause continue to Exhibit 21.8.2-2,

Failure to File or Late-Filed Form 5472 - Decision Tree, to determine whether to abate the Form 5472 initial penalty for reasonable cause.

Reminder: Advise callers requesting reasonable cause relief of the Form 5472 initial penalty to submit their request in writing to Internal Revenue Service, see paragraph (4) above. However, if callers are not requesting reasonable cause relief follow the procedures in the “If And Then” table below to research and determine if the penalty can be removed over the phone.

If	And	Then
<p>The taxpayer believes an extension was requested</p> <p>Note: The extension to file (TC 460) should be recorded on the “related Form 1120”</p>	<p>The extension to file is not reflected on the account or the extension to file posted to Master File after the penalty was assessed</p>	<p>Follow procedures in IRM 20.1.2.2.3.1.1, Extension of Time to File Not Found.</p> <p>Reminder: See IRM 20.1.1.3.4, Correction of Service Error, and Exhibit 20.1.1-2, Penalty Reason Code Chart, for additional information and the appropriate Penalty Reason Code (PRC) to use if abating the penalty.</p> <p>Note: Beginning January 1, 2016 if an extension (TC 460) posts after the “related Form 1120” posts, Masterfile will generate a TC 290/241 to systemically reverse the Form 5472 penalty.</p>
<p>The taxpayer is claiming a specific provision or an IRS error</p>		<p>Follow normal procedures in IRM 20.1, Penalty Handbook.</p> <p>Example: See IRM 20.1.2.2.7, Short Years.</p>
<p>The “related Form 1120” FTF penalty wasn’t assessed (i.e., no tax or fully paid)</p>	<p>No Form 5472 penalties (MFT 13) have been assessed (PRN 711 or 625) in any of the prior three periods</p> <p>AND</p> <p>no “related Form 1120” returns have been filed late in any of the prior three periods</p> <p>AND</p> <p>the “related Form 1120” meets FTA criteria. See IRM 20.1.1.3.3.2.1, First Time Abate, to determine if FTA criteria is met</p>	<p>Abate the penalty with PRC 018.</p>

If	And	Then
The “related Form 1120” FTF penalty wasn’t assessed (i.e., no tax or fully paid)	Form 5472 penalties (MFT 13) have been assessed (PRN 711 or 625) in any of the prior three periods OR a “related Form 1120” return has been filed late in any of the prior three periods OR a “related Form 1120” does not meet FTA criteria. See IRM 20.1.1.3.3.2.1, First Time Abate, to determine if FTA criteria is met	Continue to Exhibit 21.8.2-2, Failure to File or Late-Filed Form 5472 - Decision Tree, to determine whether to abate the Form 5472 initial penalty for reasonable cause.
The “related Form 1120” FTF penalty was abated with a PRC other than PRC 018		Abate the penalty using the same PRC that was used to abate the penalty on the “related Form 1120.” Follow procedures in IRM 20.1.9.3.5(3), Reasonable Cause.
The “related Form 1120” FTF penalty was abated with PRC 018	No Form 5472 penalties (MFT 13) have been assessed (PRN 711 or 625) in any of the prior three periods AND no “related Form 1120” returns have been filed late in any of the prior three periods	Abate the penalty with PRC 018.
The “related Form 1120” FTF penalty was abated with PRC 018	Form 5472 penalties (MFT 13) have been assessed (PRN 711 or 625) in any of the prior three periods OR a “related Form 1120” return has been filed late in any of the prior three periods	Continue to Exhibit 21.8.2-2, Failure to File or Late-Filed Form 5472 - Decision Tree, to determine whether to abate the Form 5472 initial penalty for reasonable cause.
The “related Form 1120” FTF penalty is denied		Continue to Exhibit 21.8.2-2, Failure to File or Late-Filed Form 5472 - Decision Tree, to determine whether to abate the Form 5472 initial penalty for reasonable cause.
Not all required returns are posted to Master File (BMFOL)		Contact the corporation regarding the status of the missing returns.
The corporation indicates they have filed the returns after their request for abatement		Suspend the request until all the necessary returns have posted to master file. Refer to IRM 21.3.3.5.1.1, Suspense Time Frames.

If	And	Then
The corporation a. cannot be contacted, b. does not respond, c. has not filed the missing returns		Follow no consideration procedures. Advise the corporation that the abatement request cannot be considered until the missing returns have been filed. Refer to IRM 21.5.3.4.6.3, No Consideration Procedures.

- (7) The initial penalty for FTF Form 5472 should be abated when reasonable cause for the failure to file exists. See Exhibit 21.8.2-2, Failure to File or Late-Filed Form 5472 - Decision Tree, to determine whether or not reasonable cause exists. Follow the table below to abate/waive or deny the penalty.

Reminder: To show that reasonable cause exists, the reporting corporation must be in compliance with all open reporting years (not on extension) and “must make an affirmative showing of all facts alleged as reasonable cause for such failure in a written statement containing a declaration that it is made under the penalties of perjury.” See IRM 20.1.9.5.5, Reasonable Cause, for additional information.

If	Then
The Decision Tree determination is to: • Abate/Waive	Input TC 290 .00 and appropriate PRN 711 with a minus (-) after the abatement amount. Use Blocking Series 52, Reason Code 062 and the appropriate 4th position PRC.
The Decision Tree determination is to: • Deny	Input TC 290 .00 with appropriate PRN 711 for .00. Use Blocking Series 98, Reason Code 062, Hold Code 3, and send Letter 854C.

Note: International must enter a CII case note if the penalty is being abated or denied for reasonable cause (using the **Decision Tree**), to notate which question(s), in which section(s) of the Decision Tree, led to the decision to abate or deny the reasonable cause request.

Caution: If the caller does not otherwise have reasonable cause, but contends that the penalty is for a wrong period, and as such the penalty should be abated, **AND** the caller has a “related Form 1120” with a fiscal year that ends within the calendar year listed on the penalty notice, advise the caller to refer to page 2 of the civil penalty notice for an explanation of how the penalty applies to fiscal year filers. **CONCLUSION:** The penalty should **NOT** be abated for this reason.

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Exhibit 21.8.2-1 (10-01-2022)

Failure to File or Late-Filed Form 5471 - Decision Tree

Failure to File or Late-Filed Form 5471 - Decision Tree

1) Did taxpayer receive reasonable cause or First Time Abate for failure to timely file Form 1120 series or Form 1065?

If	Then
a) Yes	Follow procedures in IRM 21.8.2.20.2, Form 5471 Penalties Systemically Assessed from Late-Filed Form 1120 Series or Form 1065.
b) No	Continue

2) Is the taxpayer's request based on a frivolous position?

If	Then
a) Yes	Deny
b) No	Continue

3) Is the taxpayer claiming they are first time filer and were unaware of the filing requirements?

Caution: Do not confuse this with the first time abate applicable to the primary return.

Note: Ordinary business care and prudence requires the taxpayer to determine their tax obligations when establishing a business in a foreign country.

If	Then
a) Yes	Deny
b) No	Continue

4) Is the taxpayer requesting that the penalty be waived because of financial problems?

If	Then
a) Yes	Deny
b) If taxpayer refers to IRC 7811 or Taxpayer Advocate Service (TAS)	Follow procedures in IRM 21.8.2.2.7, Referrals to the Taxpayer Advocate Service (TAS).
c) No	Continue

5) Is the taxpayer claiming that the return was filed late because the transactions, laws or business structure was complicated?

Exhibit 21.8.2-1 (Cont. 1) (10-01-2022)**Failure to File or Late-Filed Form 5471 - Decision Tree**

If	Then
a) Yes	Deny
b) No	Continue

6) Is the taxpayer claiming that because the corporation was involved in multiple layers of ownership, it prevented them from filing timely?

If	Then
a) Yes	Deny
b) No	Continue

7) Is the taxpayer claiming that the return was filed late because of difficulty of obtaining foreign information?

If	Then
a) Yes	Deny
b) No	Continue

8) Is the taxpayer asserting that a Form 5471 is not required to be filed for the foreign corporation?

If	Then
a) Yes	Refer to Exam Note: Use PRC 023 if Exam did not otherwise specify another reason for abating the penalty. Refer to IRM 20.1.1.3.2.2.5, Erroneous Advice or Reliance.
b) No	Continue

(9) International will use the following procedures to evaluate all reasonable cause requests, regardless of the Master file status, for initial penalties that are systemically assessed.

Note: There are a few **Categories** below that are not reasonable cause abatement. These **Categories** are noted as such.

Categories

IRM Reference 20.1	Abatement Penalty Reason Code	
REASON	1st position	4th position

Exhibit 21.8.2-1 (Cont. 2) (10-01-2022)

Failure to File or Late-Filed Form 5471 - Decision Tree

IRM Reference 20.1	Abatement Penalty Reason Code	
10 ASSESSMENT ERROR		045 (Not RC)
11 BANKRUPTCY	062	030
12 CASUALTY or DISASTER	062	025
13 DEATH, SERIOUS ILLNESS, OR ABSENCE	062	026
14 EXTENSION	062	030
15 IGNORANCE OF THE LAW	062	030
16 IRS ERROR		045 (Not RC)
17 MAIL PROBLEMS	062	022
18 OVDI, OVDP, or FAQ 18	065 for IMF only	043 (Not RC)
19 RECORDS UNOBTAINABLE	062	025
20 RELIANCE	062	022

10 Assessment Error

A) What type of assessment error?

If	Then
1) Wasn't given credit for an extension	Go To EXTENSION
2) Claims the return was mailed timely	Go To MAIL PROBLEM

B) Does research show any errors in the computation?

If	Then
1) Yes	Abate/Waive (Not RC)
2) No	Deny (Explain computation)

11 Bankruptcy

A) When did the taxpayer file for bankruptcy?

Enter date

B) Is there a -V freeze (Bankruptcy) on the module?

Exhibit 21.8.2-1 (Cont. 3) (10-01-2022)**Failure to File or Late-Filed Form 5471 - Decision Tree**

If	Then
1) Yes	Continue
2) No	Continue

C) Was the bankruptcy filed after the return due date, including extensions?

If	Then
1) Yes	Deny
2) No	Continue

D) Was the penalty assessed after the bankruptcy?

If	Then
1) Yes	Continue
2) No	Continue

E) Identify type of bankruptcy _____

F) What documentation is provided to confirm the bankruptcy?

If	Then
1) Taxpayer is operating under protection of court	Deny
2) Documentation available	Deny
3) Lack of complete documentation	Deny

12 Casualty or Disaster (sudden or unexpected event)

A) What kind of casualty or disaster occurred?

If	Then
1) A disaster recognized by FEMA	Continue
2) Officially declared local disaster, but not FEMA	Continue
3) Fire	Continue
4) Theft	Continue
5) Flood, wind or water damage	Continue
6) Vandalism	Continue

Exhibit 21.8.2-1 (Cont. 4) (10-01-2022)

Failure to File or Late-Filed Form 5471 - Decision Tree

If	Then
7) An accident	Continue
8) Some other casualty	Deny

B) When did the casualty/disaster begin? _____ Continue

C) When did the casualty/disaster end? _____ Continue

D) What was destroyed or lost?

If	Then
1) Necessary tax records were destroyed or stolen	Continue
2) The taxpayer's place of business was destroyed	Continue
3) Some other property was destroyed	Deny
4) The casualty caused personal injury	Deny
5) Other	Deny

E) What documentation is provided to confirm the casualty?

If	Then
1) Insurance claim or report, police or fire report, newspaper clippings or official/verifiable documentation	Continue
2) Lack of complete official/verifiable documentation	Deny

F) Did the casualty/disaster begin after the return due date, including extension(s)?

If	Then
1) Yes	Deny
2) No	Continue

G) Did the taxpayer file return, or required forms, within a reasonable time after the disaster ended?

If	Then
1) Yes	Abate/Waive
2) No	Deny

Exhibit 21.8.2-1 (Cont. 5) (10-01-2022)**Failure to File or Late-Filed Form 5471 - Decision Tree****13 Death, Serious Illness, Or Absence**

A) Who was absent?

If	Then
1) The person having sole authority to file the return	Continue
2) A member of the immediate family of the person having sole authority to file the return	Continue
3) CPA or Accountant	Deny
4) Employee	Deny
5) Other Person	Deny

B) What was the nature of the absence?

If	Then
1) Death	Continue
2) Serious Illness	Continue
3) Unavoidable and documented absence	Continue
4) Other	Deny

C) What documentation is provided to confirm the absence?

If	Then
1) Insurance claim or report, police or fire report, newspaper clippings, letter or bill from doctor or hospital, or official/verifiable documentation	Continue
2) Lack of complete official/verifiable documentation	Deny

D) When did the absence begin? _____ Continue

E) When did the absence end? _____ Continue

F) Did the absence begin after the return due date, including extension(s)?

If	Then
1) Yes	Deny

Exhibit 21.8.2-1 (Cont. 6) (10-01-2022)**Failure to File or Late-Filed Form 5471 - Decision Tree**

If	Then
2) No	Continue

G) Did the taxpayer file return, or required forms, within a reasonable time (usually two weeks) after the absence ended?

If	Then
1) Yes	Abate/Waive
2) No	Deny

14 Extension

Reminder: Continue **only if** taxpayer is claiming reasonable cause. See IRM 20.1.2.2.3.1.1, Extension of Time to File Not Found, and Exhibit IRM 20.1.1-2, Penalty Reason Code Chart, for additional information on reasonable cause and Penalty Reason Code (PRC) 030.

A) What claim does the taxpayer make about the extension?

If	Then
1) Requested first extension of time to file (FTF)	Continue
2) First extension lost in mail	Continue
3) Forgot to request an extension (FTF)	Deny
4) Believed 3rd party filed (FTF)	Deny
5) Other	Deny

B) What documentation of the 1st extension request did the taxpayer provide?

If	Then
1) Copy of a valid first extension request	Continue
2) Lack of complete documentation	Deny

C) Was the Form 5471 filed by the extended due date?

If	Then
1) Yes	Abate/Waive Reminder: Use PRC 030 for reasonable cause.

Exhibit 21.8.2-1 (Cont. 7) (10-01-2022)**Failure to File or Late-Filed Form 5471 - Decision Tree**

If	Then
2) No	Deny

15 Ignorance Of The Law

A) Why was the taxpayer ignorant of filing requirements?

If	Then
1) U.S. resident investor	Deny
2) Resided outside of U.S. with no U.S. tax representation	Deny

B) Of what does the taxpayer claim ignorance?

If	Then
1) Did not understand filing requirements	Continue
2) CPA / Attorney ignorance	Deny

C) Did the taxpayer receive tax help from a U.S., or International, experienced tax professional?

If	Then
1) Yes	Go To RELIANCE
2) No	Deny

16 IRS - Error

A) What was the nature of the IRS error?

If	Then
1) Error in an IRS publication	Continue to (D)
2) IRS employee gave incorrect technical advice or IRS advised taxpayer not to file during compliance activity	Continue
3) IRS incorrectly processed TP's return	Continue to (E), directly below

B) When was the advice received?

Exhibit 21.8.2-1 (Cont. 8) (10-01-2022)

Failure to File or Late-Filed Form 5471 - Decision Tree

If	Then
1) Before the return was filed	Continue
2) After the return was filed	Deny

C) What documentation of written or oral advice is provided?

If	Then
1) Documentation does not support the claim	Deny
2) Taxpayer's request & IRS response support claim (i.e., proof taxpayer provided relevant information to IRS, proof IRS addressed question, but was wrong, Name or ID of employee who gave the advice)	Continue to IRM 20.1.1.3.3.4, Advice, and IRM 20.1.1.3.3.4.1, Written Advice From the IRS or IRM 20.1.1.3.3.4.2, Oral Advice From IRS, for penalty relief consideration due to erroneous written or oral advice from IRS.
3) Copy only of taxpayer's request	Deny
4) Copy only of IRS response	Deny
5) Lack of complete documentation	Deny

D) If a publication number is provided by the taxpayer, what was the publication number and publication date the taxpayer relied on? Was the IRS publication in error?

If	Then
1) Yes, pub indicated no return or form required	Abate/Waive (Not RC)
2) No, in fact, the pub is factually correct	Deny

E) Was the return processed incorrectly or transcribed in error?

If	Then
1) Yes	Abate/Waive
2) No	Deny

17 Mail - Problem

Reminder: Continue **only if** taxpayer is claiming reasonable cause.
See IRM 20.1.1.3.2.2, Ordinary Business Care and Prudence, for additional information.

A) What was the nature of the mail problem?

Exhibit 21.8.2-1 (Cont. 9) (10-01-2022)**Failure to File or Late-Filed Form 5471 - Decision Tree**

If	Then
1) Form sent to other tax agency	Continue
2) Properly addressed, but insufficient postage	Continue
3) Form lost in mail	Continue
4) Form delayed in mail	Continue
5) TP claims error by the postal service	Continue
6) First extension request lost in the mail	Continue
7) Second extension request lost in the mail	Go To EXTENSION

B) What documentation did the taxpayer provide?

If	Then
1) Proof of timely mailed certified letter	Continue
2) Proof of timely mailing and of U.S. postal error	Continue
3) Lack of complete documentation	Deny

C) Was the Form 5471 filed by the extended due date?

If	Then
1) Postmark shows return was mailed timely (U.S.)	Abate/Waive Reminder: Not reasonable cause use PRC 027.
2) Taxpayer's claim not supported	Deny

18 OVDI, OVDP, or FAQ 18

A) Does the taxpayer have any underreported tax liabilities? Has the taxpayer been contacted regarding an income tax examination? Has the taxpayer submitted delinquent Form(s) 5471 with an amended return requesting a change to income or tax liability? Was the taxpayer's related income tax return delinquent? See *Offshore Voluntary Disclosure Program FAQs*, for questions and answers regarding FAQ 18.

Exhibit 21.8.2-1 (Cont. 10) (10-01-2022)
Failure to File or Late-Filed Form 5471 - Decision Tree

If	And	Then
1) Yes to any of the four questions in Paragraph (A) directly above	<p>The taxpayer submitted the request before July 1, 2014.</p> <p>Note: Penalty relief under former FAQ 18 ended on June 30, 2014. If the taxpayer submitted the request on or after July 1, 2014, evaluate the reasonable cause request and abate or deny based on the Decision Tree. If the request does not meet reasonable cause, then deny and send Letter 854C with the following fill-in paragraph: "Your request for penalty abatement has been denied because you did not sufficiently establish reasonable cause pursuant to Treasury Regulation 1.6038-2(k)(3)."</p>	<p>Deny and send Letter 854C with the following fill-in paragraph: Your request for penalty abatement has been denied because you did not fully meet the requirements of "FAQ 18" of the 2012 Offshore Voluntary Disclosure Initiative (OVDI). "OVDI" is only available for taxpayers that had previously reported and paid tax on all their taxable income. Delinquent Form(s) 5471 must have been accompanied with an amended tax return showing no change to taxable income or tax liability.</p> <p>Exception: Abate the penalty if the taxpayer provides a copy of a preliminary acceptance or acceptance letter into "OVDI."</p>
2) No	The taxpayer submitted the request before July 1, 2014.	Abate/Waive (Not RC)

19 Records Unobtainable

A) Did the taxpayer file and receive an approved extension(s)?

If	Then
1) Yes	Continue
2) No	Deny

B) From whom was the taxpayer unable to obtain the records?

If	Then
1) CPA or Accountant	Continue
2) Financial Advisor	Continue

Exhibit 21.8.2-1 (Cont. 11) (10-01-2022)**Failure to File or Late-Filed Form 5471 - Decision Tree**

If	Then
3) Attorney	Continue
4) Tax Preparer	Continue
5) Responsible Officer / Partner	Continue
6) Court	Continue
7) Someone else	Deny

C) Why was the taxpayer unable to obtain the records from person in #B?

If	Then
1) The person went out of business	Continue
2) The person refused to provide the records	Deny
3) A disagreement about payment for services	Deny

D) Did the taxpayer's representative go out of business after the return due date?

If	Then
1) Yes	Deny
2) No	Continue

E) What documentation did the taxpayer provide?

If	Then
1) Proof of death, illness, or business closing, insurance claim or report, police or fire report, newspaper clippings or official/verifiable documentation	Continue
2) Lack of official/verifiable documentation	Deny

F) What steps did the taxpayer take to secure the records?

G) What date did the records become available?

Enter Date:

H) Did the taxpayer file return, or required forms, within 90 days of Records Unobtainable #G (Date records became available)?

Exhibit 21.8.2-1 (Cont. 12) (10-01-2022)

Failure to File or Late-Filed Form 5471 - Decision Tree

If	Then
1) Yes	Abate/Waive
2) No	Deny

20 Reliance (on others)

Reminder: See IRM 20.1.1.3.2.2.5, Erroneous Advice or Reliance, if not reasonable cause.

A) Who did the taxpayer rely on?

If	Then
1) Responsible Officer / Partner	Continue
2) CPA or Accountant	Continue
3) Attorney	Continue
4) IRS Employee	Go To IRS-ERROR
5) Bookkeeper	Deny
6) Person assisting in establishment of Foreign Corporation	Deny
7) Information in a tax plan or promotion	Deny
8) Financial advisor	Deny
9) Business associate	Deny
10) Someone Else	Deny

B) When did the taxpayer notify the advisor of the foreign corporation?

Enter Date:

C) Is the date in Reliance #B prior to the return due date, including extension(s)?

If	Then
1) Yes	Continue
2) No	Deny

D) When was the taxpayer given the incorrect information?

Exhibit 21.8.2-1 (Cont. 13) (10-01-2022)**Failure to File or Late-Filed Form 5471 - Decision Tree**

Enter Date:

E) What was the nature of the reliance?

If	Then
1) Person said taxpayer did not need to file	Continue
2) Person handled everything	Continue
3) Person was too busy to take timely action	Deny
4) Person lost or wouldn't return records	Go To RECORDS-UNOBTAINABLE
5) Other	Deny

F) What documentation is available?

If	Then
1) Shows representative advised that taxpayer not liable	Continue
2) Shows representative professionally qualified to handle taxes	Continue
3) Copies of promotional material	Continue
4) Shows TP provided representative with records prior to RDD	Continue
5) Lack of complete documentation	Deny

G) Was the taxpayer's reliance unreasonable?

If	Then
1) The reliance involved avoidance of substantial income	Deny
2) The reliance was based on frivolous positions	Deny
3) The taxpayer substantially changed filing patterns	Deny
4) The taxpayer did not take reasonable steps to investigate	Deny
5) The taxpayer did not request a 2nd opinion	Deny

Exhibit 21.8.2-2 (10-01-2022)

Failure to File or Late-Filed Form 5472 - Decision Tree

Failure to File or Late-Filed Form 5472 - Decision Tree

1) Did taxpayer receive reasonable cause or First Time Abate for failure to timely file Form 1120 series?

If	Then
a) Yes	Follow procedures in IRM 21.8.2.21.2, Form 5472 Penalties Systemically Assessed from Late-Filed Form 1120 Series.
b) No	Continue

#

2) Is the taxpayer's request based on a frivolous position?

If	Then
a) Yes	Deny
b) No	Continue

3) Is the taxpayer claiming they were unaware of the Form 5472 filing requirements?

Caution: Do not confuse this with the first-time-abate applicable to the primary return.

Note: Ordinary business care and prudence requires the taxpayer to determine their tax obligations when establishing a business in a foreign country.

If	Then
a) Yes	Deny
b) No	Continue

4) Is the taxpayer requesting that the penalty be waived because of financial problems?

Exhibit 21.8.2-2 (Cont. 1) (10-01-2022)**Failure to File or Late-Filed Form 5472 - Decision Tree**

If	Then
a) Yes	Deny
b) If taxpayer refers to IRC 7811 or Taxpayer Advocate Service (TAS)	Follow procedures in IRM 21.8.2.2.7, Referrals to the Taxpayer Advocate Service (TAS).
c) No	Continue

5) Is the taxpayer claiming that the return was filed late because the transactions, laws or business structure was complicated?

If	Then
a) Yes	Deny
b) No	Continue

6) Is the taxpayer claiming that because the corporation was involved in multiple layers of ownership, it prevented them from filing timely?

If	Then
a) Ye	Deny
b) No	Continue

7) Is the taxpayer claiming that the return was filed late because of difficulty of obtaining foreign information?

If	Then
a) Yes	Deny
b) No	Continue

8) Is the taxpayer asserting that a Form 5472 is not required to be filed for the domestic corporation?

If	Then
a) Yes	Refer to Exam Note: Use PRC 023 if Exam did not otherwise specify another reason for abating the penalty. Refer to IRM 20.1.1.3.2.2.5, Erroneous Advice or Reliance.
b) No	Continue

Exhibit 21.8.2-2 (Cont. 2) (10-01-2022)

Failure to File or Late-Filed Form 5472 - Decision Tree

(9) International will use the following procedures to evaluate all reasonable cause requests, regardless of the Master file status, for initial penalties that are systemically assessed.

Note: There are a few **Categories** below that are not reasonable cause abatement. These **Categories** are noted as such.

Categories		
------------	--	--

IRM Reference 20.1	Abatement Penalty Reason Code	
	1st position	4th position
10 ASSESSMENT ERROR		045 (Not RC)
11 BANKRUPTCY	062	030
12 CASUALTY or DISASTER	062	025
13 DEATH, SERIOUS ILLNESS, OR ABSENCE	062	026
14 EXTENSION	062	030
15 IGNORANCE OF THE LAW	062	030
16 IRS ERROR		045 (Not RC)
17 MAIL PROBLEMS	062	022
18 OVDI, OVDP, and FAQ 18	065 for IMF only	043 (Not RC)
19 RECORDS UNOBTAINABLE	062	025
20 RELIANCE	062	022

10 Assessment Error

A) What type of assessment error?

If	Then
1) Wasn't given credit for an extension	Go To EXTENSION
2) Claims the return was mailed timely	Go To MAIL PROBLEM

B) Does research show any errors in the computation?

If	Then
1) Yes	Abate/Waive (Not RC)
2) No	Deny (Explain computation)

Exhibit 21.8.2-2 (Cont. 3) (10-01-2022)**Failure to File or Late-Filed Form 5472 - Decision Tree****11 Bankruptcy**

A) When did the taxpayer file for bankruptcy?

Enter date

B) Is there a -V freeze (Bankruptcy) on the module?

If	Then
1) Yes	Continue
2) No	Continue

C) Was the bankruptcy filed after the return due date, including extensions?

If	Then
1) Yes	Deny
2) No	Continue

D) Was the penalty assessed after the bankruptcy?

If	Then
1) Yes	Continue
2) No	Continue

E) Identify type of bankruptcy _____

F) What documentation is provided to confirm the bankruptcy?

If	Then
1) Taxpayer is operating under protection of court	Deny
2) Documentation available	Deny
3) Lack of complete documentation	Deny

12 Casualty or Disaster (sudden or unexpected event)

A) What kind of casualty or disaster occurred?

Exhibit 21.8.2-2 (Cont. 4) (10-01-2022)

Failure to File or Late-Filed Form 5472 - Decision Tree

If	Then
1) A disaster recognized by FEMA	Continue
2) Officially declared local disaster, but not FEMA	Continue
3) Fire	Continue
4) Theft	Continue
5) Flood, wind or water damage	Continue
6) Vandalism	Continue
7) An accident	Continue
8) Some other casualty	Deny

B) When did the casualty/disaster begin? _____ Continue

C) When did the casualty/disaster end? _____ Continue

D) What was destroyed or lost?

If	Then
1) Necessary tax records were destroyed or stolen	Continue
2) The taxpayer's place of business was destroyed	Continue
3) Some other property was destroyed	Deny
4) The casualty caused personal injury	Deny
5) Other	Deny

E) What documentation is provided to confirm the casualty?

If	Then
1) Insurance claim or report, police or fire report, newspaper clippings or official/verifiable documentation	Continue
2) Lack of complete official/verifiable documentation	Deny

F) Did the casualty/disaster begin after the return due date, including extension(s)?

If	Then
1) Yes	Deny
2) No	Continue

Exhibit 21.8.2-2 (Cont. 5) (10-01-2022)**Failure to File or Late-Filed Form 5472 - Decision Tree**

G) Did the taxpayer file return, or required forms, within a reasonable time after the disaster ended?

If	Then
1) Yes	Abate/Waive
2) No	Deny

13 Death, Serious Illness, Or Absence
--

A) Who was absent?

If	Then
1) The person having sole authority to file the return	Continue
2) A member of the immediate family of the person having sole authority to file the return	Continue
3) CPA or Accountant	Deny
4) Employee	Deny
5) Other Person	Deny

B) What was the nature of the absence?

If	Then
1) Death	Continue
2) Serious Illness	Continue
3) Unavoidable and documented absence	Continue
4) Other	Deny

C) What documentation is provided to confirm the absence?

If	Then
1) Insurance claim or report, police or fire report, newspaper clippings, letter or bill from doctor or hospital, or official/verifiable documentation	Continue
2) Lack of complete official/verifiable documentation	Deny

D) When did the absence begin? _____ Continue

Exhibit 21.8.2-2 (Cont. 6) (10-01-2022)

Failure to File or Late-Filed Form 5472 - Decision Tree

E) When did the absence end? _____Continue

F) Did the absence begin after the return due date, including extension(s)?

If	Then
1) Yes	Deny
2) No	Continue

G) Did the taxpayer file return, or required forms, within a reasonable time (usually two weeks) after the absence ended?

If	Then
1) Yes	Abate/Waive
2) No	Deny

14 Extension

Reminder: Continue **only if** taxpayer is claiming reasonable cause. See IRM 20.1.2.2.3.1.1, Extension of Time to File Not Found, and Exhibit IRM 20.1.1-2, Penalty Reason Code Chart, for additional information on reasonable cause and Penalty Reason Code (PRC) 030.

A) What claim does the taxpayer make about the extension?

If	Then
1) Requested first extension of time to file (FTF)	Continue
2) First extension lost in mail	Continue
3) Forgot to request an extension (FTF)	Deny
4) Believed 3rd party filed (FTF)	Deny
5) Other	Deny

B) What documentation of the 1st extension request did the taxpayer provide?

If	Then
1) Copy of a valid first extension request	Continue
2) Lack of complete documentation	Deny

C) Was the Form 5472 filed by the extended due date?

Exhibit 21.8.2-2 (Cont. 7) (10-01-2022)**Failure to File or Late-Filed Form 5472 - Decision Tree**

If	Then
1) Yes	Abate/Waive Reminder: Use PRC 030 for reasonable cause.
2) No	Deny

15 Ignorance Of The Law

A) Why was the taxpayer ignorant of filing requirements?

If	Then
1) U.S. resident investor	Deny
2) Resided outside of U.S. with no U.S. tax representation	Deny

B) Of what does the taxpayer claim ignorance?

If	Then
1) Did not understand filing requirements	Continue
2) CPA / Attorney ignorance	Deny

C) Did the taxpayer receive tax help from a U.S., or International, experienced tax professional?

If	Then
1) Yes	Go To RELIANCE
2) No	Deny

16 IRS - Error

A) What was the nature of the IRS error?

If	Then
1) Error in an IRS publication	Continue to (D)
2) IRS employee gave incorrect technical advice or IRS advised taxpayer not to file during compliance activity	Continue

Exhibit 21.8.2-2 (Cont. 8) (10-01-2022)

Failure to File or Late-Filed Form 5472 - Decision Tree

If	Then
3) IRS incorrectly processed TP's return	Continue to (E), directly below

B) When was the advice received?

If	Then
1) Before the return was filed	Continue
2) After the return was filed	Deny

C) What documentation of written or oral advice is provided?

If	Then
1) Documentation does not support the claim	Deny
2) Taxpayer's request & IRS response support claim (i.e., proof taxpayer provided relevant information to IRS, proof IRS addressed question, but was wrong, Name or ID of employee who gave the advice)	Continue to IRM 20.1.1.3.3.4, Advice, and IRM 20.1.1.3.3.4.1, Written Advice From the IRS or IRM 20.1.1.3.3.4.2, Oral Advice From IRS, for penalty relief consideration due to erroneous written or oral advice from IRS.
3) Copy only of taxpayer's request	Deny
4) Copy only of IRS response	Deny
5) Lack of complete documentation	Deny

D) If a publication number is provided by the taxpayer, what was the publication number and publication date the taxpayer relied on? Was the IRS publication in error?

If	Then
1) Yes, pub indicated no return or form required	Abate/Waive (Not RC)
2) No, in fact, the pub is factually correct	Deny

E) Was the return processed incorrectly or transcribed in error?

If	Then
1) Yes	Abate/Waive
2) No	Deny

Exhibit 21.8.2-2 (Cont. 9) (10-01-2022)**Failure to File or Late-Filed Form 5472 - Decision Tree****17 Mail - Problem**

Reminder: Continue **only if** taxpayer is claiming reasonable cause.

See IRM 20.1.1.3.2.2, Ordinary Business Care and Prudence, for additional information.

A) What was the nature of the mail problem?

If	Then
1) Form sent to other tax agency	Continue
2) Properly addressed, but insufficient postage	Continue
3) Form lost in mail	Continue
4) Form delayed in mail	Continue
5) TP claims error by the postal service	Continue
6) First extension request lost in the mail	Continue
7) Second extension request lost in the mail	Go To EXTENSION

B) What documentation did the taxpayer provide?

If	Then
1) Proof of timely mailed certified letter	Continue
2) Proof of timely mailing and of U.S. postal error	Continue
3) Lack of complete documentation	Deny

C) Was the Form 5472 filed by the extended due date?

If	Then
1) Postmark shows return was mailed timely (U.S.)	Abate/Waive Reminder: Not reasonable cause use PRC 027.
2) Taxpayer's claim not supported	Deny

18 OVDI, OVDP, or FAQ 18

A) Does the taxpayer have any underreported tax liabilities? Has the taxpayer been contacted regarding an income tax examination? Has the taxpayer submitted delinquent Form(s) 5472 with an amended return requesting a change to income or tax liability? Was the taxpayer's related income tax return delinquent? See *Offshore Voluntary Disclosure Program FAQs*, for questions and answers regarding FAQ 18.

Exhibit 21.8.2-2 (Cont. 10) (10-01-2022)
Failure to File or Late-Filed Form 5472 - Decision Tree

If	And	Then
1) Yes to any of the four questions in Paragraph (A) directly above	<p>The taxpayer submitted the request before July 1, 2014.</p> <p>Note: Penalty relief under former FAQ 18 ended on June 30, 2014. If the taxpayer submitted the request on or after July 1, 2014, evaluate the reasonable cause request and abate or deny based on the Decision Tree. If the request does not meet reasonable cause, then deny and send Letter 854C with the following fill-in paragraph: Your request for penalty abatement has been denied because you did not sufficiently establish reasonable cause pursuant to Treasury Regulation 1.6038-2(k)(3).</p>	<p>Deny and send Letter 854C with the following fill-in paragraph: Your request for penalty abatement has been denied because you did not fully meet the requirements of "FAQ 18" of the 2012 Offshore Voluntary Disclosure Initiative (OVDI). "OVDI" is only available for taxpayers that had previously reported and paid tax on all their taxable income. Delinquent Form(s) 5472 must have been accompanied with an amended tax return showing no change to taxable income or tax liability.</p> <p>Exception: Abate the penalty if the taxpayer provides a copy of a preliminary acceptance or acceptance letter into "OVDI."</p>
2) No	The taxpayer submitted the request before July 1, 2014.	Abate/Waive (Not RC)

19 Records Unobtainable

A) Did the taxpayer file and receive an approved extension(s)?

If	Then
1) Yes	Continue
2) No	Deny

B) From whom was the taxpayer unable to obtain the records?

If	Then
1) CPA or Accountant	Continue
2) Financial Advisor	Continue
3) Attorney	Continue

Exhibit 21.8.2-2 (Cont. 11) (10-01-2022)**Failure to File or Late-Filed Form 5472 - Decision Tree**

If	Then
4) Tax Preparer	Continue
5) Responsible Officer / Partner	Continue
6) Court	Continue
7) Someone else	Deny

C) Why was the taxpayer unable to obtain the records from person in #B?

If	Then
1) The person went out of business	Continue
2) The person refused to provide the records	Deny
3) A disagreement about payment for services	Deny

D) Did the taxpayer's representative go out of business after the return due date?

If	Then
1) Yes	Deny
2) No	Continue

E) What documentation did the taxpayer provide?

If	Then
1) Proof of death, illness, or business closing, insurance claim or report, police or fire report, newspaper clippings or official/verifiable documentation	Continue
2) Lack of official/verifiable documentation	Deny

F) What steps did the taxpayer take to secure the records?

G) What date did the records become available?

Enter Date:

H) Did the taxpayer file return, or required forms, within 90 days of Records Unobtainable #G (Date records became available)?

Exhibit 21.8.2-2 (Cont. 12) (10-01-2022)**Failure to File or Late-Filed Form 5472 - Decision Tree**

If	Then
1) Yes	Abate/Waive
2) No	Deny

20 Reliance (on others)

Reminder: See IRM 20.1.1.3.2.2.5, Erroneous Advice or Reliance, if not reasonable cause.

A) Who did the taxpayer rely on?

If	Then
1) Responsible Officer / Partner	Continue
2) CPA or Accountant	Continue
3) Attorney	Continue
4) IRS Employee	Go To IRS-ERROR
5) Bookkeeper	Deny
6) Person assisting in establishment of Foreign Corporation	Deny
7) Information in a tax plan or promotion	Deny
8) Financial advisor	Deny
9) Business associate	Deny
10) Someone Else	Deny

B) When did the taxpayer notify the advisor of the foreign corporation?

Enter Date:

C) Is the date in Reliance #B prior to the return due date, including extension(s)?

If	Then
1) Yes	Continue
2) No	Deny

D) When was the taxpayer given the incorrect information?

Exhibit 21.8.2-2 (Cont. 13) (10-01-2022)**Failure to File or Late-Filed Form 5472 - Decision Tree**

Enter Date:

E) What was the nature of the reliance?

If	Then
1) Person said taxpayer did not need to file	Continue
2) Person handled everything	Continue
3) Person was too busy to take timely action	Deny
4) Person lost or wouldn't return records	Go To RECORDS-UNOBTAINABLE
5) Other	Deny

F) What documentation is available?

If	Then
1) Shows representative advised that taxpayer not liable	Continue
2) Shows representative professionally qualified to handle taxes	Continue
3) Copies of promotional material	Continue
4) Shows TP provided representative with records prior to RDD	Continue
5) Lack of complete documentation	Deny

G) Was the taxpayer's reliance unreasonable?

If	Then
1) The reliance involved avoidance of substantial income	Deny
2) The reliance was based on frivolous positions	Deny
3) The taxpayer substantially changed filing patterns	Deny
4) The taxpayer did not take reasonable steps to investigate	Deny
5) The taxpayer did not request a 2nd opinion	Deny