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**From:**

**Sent:** Thursday, February 07, 2019 12:09:32 PM

**To:** [REDACTED]

**Cc:**

**Bcc:**

**Subject:** Lost Form 900

Please give me a call about whether computer entries on an account may indicate a Form 900 was processed and accepted.

In general, the fact that the Service no longer has a physical copy isn't fatal if it has "reliable secondary evidence" that proves a document existed. As noted in the IRS Practice & Procedure treatise, "Because a tax collection waiver can make collection action taken long after a tax assessment legal, the very existence of a waiver can sometimes be an issue. The Service may use circumstantial evidence to prove the existence of a waiver, even when the original is lost or destroyed. See United States v. Conry, 631 F2d 599 (9th Cir. 1980); United States v. McGaughey, 977 F2d 1067, 1071-1074 (7th Cir. 1992) (secondary evidence was received by fact that original form was missing)." IRS Practice & Procedure, Saltzman & Book, ¶ 5.07, *The Statute Of Limitations On Collection* (October 2018) at FN 586 under ¶ 5.07[2] *Period Extended by Agreement*. Also, these case are cited in Randle v. United States, 2000 WL 1739314, 88 AFTR2d 2001-6812, 2000-2 USTC ¶ 50,715 (CD Cal. 2000. In Randle the Service established the existence and validity of limitations period waivers executed via offers in compromise through the "Offer in Compromise on File" entries on the transcripts for those years and an employee's declaration attesting to the Service's procedures in processing offers in compromise and entering data regarding offers into its computer records. The court cited the above cases at \*10 while recognizing in FN 18 that an original is not required and other evidence of the contents of a writing is admissible "if all originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith." Fed.R.Evid. 1004(1).

Thanks,