

IRM PROCEDURAL UPDATE

DATE: 09/17/2025

NUMBER: sbse-04-0925-3599

SUBJECT: Timely Filing for Purposes of the Reporting Consistency Test

AFFECTED IRM(s)/SUBSECTION(s): 4.23.5

CHANGE(s):

IRM 4.23.5.1.5 - New subsection added titled "Program Controls" to document the reviews and quality assurance activities associated with the Employment Tax Program and to be consistent with IRM 1.11.2.2.4, Address Management and Internal Controls. All subsequent subsections have been renumbered.

(1) All information management systems have safeguard measures in place that address key components of Information Technology (IT) security requirements to restrict access to sensitive data.

(2) The ET program has established a separation of duties of certain users' roles:

- Policy and procedures – Employment Tax Policy is within SB/SE Specialty Policy,
- Case selection – Employment Tax – Workload Selection and Delivery is within SB/SE Examination Case Selection, and
- Quality and review - Embedded Quality is within SB/SE Exam Quality and Technical Support.

(3) The Issue Management System (IMS) is required to be used during employment tax examinations by ET examiners assigned to Specialty – ET Operations.

(4) ET examiners will use the Employment Tax Lead Sheets (ETLS) developed specifically for employment tax cases.

(5) ET examiners working ET Large Cases will use Large Case Lead Sheets (LCLS). LCLS are developed specifically for large case employment tax cases. ET examiners working ET Large Cases will follow workpaper preparation, specific examination techniques, and case closing procedures unique to these types of examinations.

(6) The Specialty Employment Tax Application (SETA) is a web-based application that ET examiners use in ET examinations to generate most of the documents needed to prepare an examination report and close their examination.

IRM 4.23.5.1.7(2) - Updated paragraph (2) for clarity and replaced URL/web address to internal sites with a hyperlink.

(2) Helpful information sources include:

- SB/SE Employment Tax Small Business Knowledge Base provides guidance, resources and information for ET examiners to aid in raising, developing, and resolving employment tax issues.
- Specialist Referral System can be used by any employee, regardless of operating division. In addition to requesting assistance or a referral, SRS may be used to submit informal questions or to request a consultation with an employment tax specialist to discuss employment tax potential in an examination.
- Contacts, Tools, and Training provides contact information and program assignments for SB/SE ET Policy Analysts and SB/SE ET group contacts and areas of coverage.
- The Whistleblower Office administers the IRS Whistleblower Program for claims identifying suspected non-compliance by taxpayers.

IRM 4.23.5.1.7(3) - Updated paragraph (3) for clarity and replaced URL/web address to internal sites with a hyperlink.

(3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the IRC, 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) . For additional information about the TBOR, see Pub 5170, Taxpayer Bill of Rights, or Taxpayer Bill of Rights.

IRM 4.23.5.1.7(5) - Updated paragraph (5) for clarity and replaced URL/web address to internal sites with a hyperlink.

(5) IRS employees are required to protect the privacy of sensitive but unclassified (SBU) data for taxpayers and personnel, including personally identifiable information (PII), such as federal tax information (FTI), tax return, financial, and employment information regardless of format. For further information, see the Privacy, Government Liaison and Disclosure (PGLD) maintained knowledge base homepage.

IRM 4.23.5.1.7(6) - Added paragraph (6) regarding the Office of Servicewide Penalties (OSP) with a cross-reference to OSP Knowledge Base. All subsequent paragraphs were renumbered.

(6) Overall responsibility for civil penalty programs is assigned to the Office of Servicewide Penalties (OSP). OSP is charged with coordinating policy and procedures concerning the civil penalty program administration, ensuring consistency with the penalty policy statement, reviewing and analyzing penalty information, researching penalty effectiveness on compliance trends, and determining appropriate action necessary to promote voluntary compliance. For further understanding of the civil penalty program and penalty relief, refer to the Penalties Knowledge Base Homepage.

IRM 4.23.5.3(2) - Revised reference, Rev. Proc. 2025-10, 2025-4 I.R.B. 492 which modifies and supersedes Rev. Proc. 85-18, 1985-1 CB 518.

(2) If a taxpayer is relieved of liability under section 530(a)(1) of the Act, any liability for interest or penalties attributable to that liability is forgiven automatically. This relief from interest and penalties applies whether charged directly against the taxpayer or personally against a corporate taxpayer's officers. See Rev. Proc. 2025-10, 2025-4 I.R.B. 492.

IRM 4.23.5.3(5) - Revised reference, Rev. Proc. 2025-10 which modifies and supersedes Rev. Proc. 85-18.

(5) Section 530 relief can apply with respect to any employees defined in IRC 3121(d), IRC 3306(i), and IRC 3401(c). See section 3.02 of Rev. Proc. 2025-10.

IRM 4.23.5.3.3.1(2) - Added paragraph (2) to provide a definition of "timely filing" for purposes of the reporting consistency test. The definition is from Rev. Proc. 2025-10. All subsequent paragraph were renumber.

(2) For purposes of the reporting consistency test, "timely filed" means an information return filed prior to the start of an employment tax examination, even if filed after the due date of the information return. Information returns filed after the start of an employment tax examination are not timely filed thus the reporting consistency test of section 530 is not met and the taxpayer is not eligible for a CSP. See Rev. Proc. 2025-10 footnote 14 and IRM 4.23.6.5, *Role of the Examiner*.

IRM 4.23.5.3.3.1(3) - Revised the content of paragraph (3) to be consistent with Rev. Proc 2025-10.

(3) Reporting consistency must be satisfied on a period-by-period basis. A taxpayer that filed information returns for one period but that did not file information returns for

a prior or subsequent period may satisfy the reporting consistency requirement only for the period for which it filed information returns. See Rev. Proc. 2025-10 section 4.03.

IRM 4.23.5.3.3.1(5) - Revised the content of paragraph (5) to be consistent with Rev. Proc 2025-10.

(5) A taxpayer will not fail the reporting consistency requirement if the taxpayer, in good faith, mistakenly files the wrong type of information return or, if the return demonstrates a good faith attempt to accurately report the amount paid, reports an inaccurate amount paid. Moreover, a taxpayer will not fail the reporting consistency requirement if the taxpayer was not required to file an information return because, for example, the taxpayer paid the individual less than the threshold amount required to file a Form 1099. See Rev. Proc. 2025-10 section 4.05.

IRM 4.23.5.3.3.2(1) - Revised reference, Rev. Proc. 2025-10 which modifies and supersedes Rev. Proc. 85-18.

(1) The taxpayer (or a predecessor) must not have treated the worker, or any worker holding a substantially similar position, as an employee for any period after 1977. Rev. Proc. 2025-10, section 3.03, provides guidelines for determining whether a taxpayer treated an individual as an employee for a period of time.

IRM 4.23.5.3.4(3) - Revised reference, Rev. Proc. 2025-10 which modifies and supersedes Rev. Proc. 85-18.

(3) The workers determined to be employees in paragraph (1) remain liable for the employee share of FICA tax with respect to all wages received. See Rev. Proc. 2025-10, section 8.02, and Treas. Reg. 31.3102-1(c). See also Rev. Rul. 86-111, 1986-2 C.B. 176.

IRM 4.23.5.3.4.1(1) - Clarified that Social Security Administration has jurisdiction over the application of section 218 agreements. Removed two IRM references that no longer exists.

(1) Workers covered under a Section 218 agreement are employees for purposes of FICA. See IRC 3121(d)(4). This classification is not made under rules found in the IRC or the regulations; the classification is made by the Social Security Act. The Social Security Administration has jurisdiction over determining the scope and application of the Section 218 agreements and has jurisdiction over interpretations of

these agreements. See IRM 4.70.12.3.10.4, General Guidance Related to State and Local Government Entities.

IRM 4.23.5.3.4.1(3) - Moved guidance and instruction on section 530 relief to paragraph (4).

IRM 4.23.5.3.4.1(4) - Paragraph (4) was revised to discuss the section 530 relief for both types of employees - covered by Section 218 agreement and those that are not. Section 530 relief is available to both types of employees of a state and local government if the requirements are otherwise met. Add a reference to Chief Counsel Advice 202038010, Not Employees Under Section 530 of 1978 Revenue Act.

(4) Section 530 relief is available to state and local government taxpayers for workers performing services included under a Section 218 agreement and those workers not covered by a Section 218 agreement for both income tax withholding and FICA tax purposes if the requirements are otherwise met for both Federal Income Tax Withholding (FITW) and Federal Insurance Contributions Act (FICA) tax.

Note: For a discussion on section 530 relief available to state and local government taxpayers for workers performing services included under a Section 218 agreement refer to Chief Counsel Advice 202038010, Not Employees Under Section 530 of 1978 Revenue Act.

IRM 4.23.5.3.4.1 - Removed paragraph (5) due to the issuance of Chief Counsel Advice 202038010.

IRM 4.23.5.16.1.1(6) - In the table of paragraph (6) added a description to Proposed Treas. Reg. 1.409A-4 and Final Treas. Reg. 1.409A that were previously "Blank."

(6) Beginning with Notice 2005-1, the Treasury Department and IRS published extensive guidance on IRC 409A including both transition relief and substantive requirements. The transition relief provided to taxpayers expired on December 31, 2008. In reverse chronological order, the guidance is as follows:

Guidance Issued	Description
Notice 2010-80	Modification to the relief and guidance on corrections of certain failures of a NQDC plan to comply with IRC 409A

Guidance Issued	Description
Rev. Rul. 2010-27	Guidance on what constitutes an unforeseeable emergency under IRC 457(b) and IRC 409A,
Notice 2010-6	Relief and guidance on corrections of certain failures of a NQDC plan to comply with IRC 409A
Notice 2009-92	Guidance on the application of IRC 409A(a) to changes to NQDC plans to comply with an Advisory Opinion of the Office of the Special Master for TARP Executive Compensation
Notice 2009-49	Guidance under IRC 409A(a)(2)(A)(v) on certain transactions pursuant to the Emergency Economic Stabilization Act of 2008
Notice 2008-113	Relief and guidance on corrections of certain failures of a NQDC plan to comply with IRC 409A(a) in operation
Proposed Treas. Reg. 1.409A-4	Provides guidance on calculating the amount includible in income under section 409A(a) when a nonqualified deferred compensation plan violates the rules.
Notice 2007-100	Transition relief and guidance on corrections of certain failures of a NQDC plan to comply with IRC 409A(a) in operation
Notice 2007-86	Notice of additional 2008 transition relief under IRC 409A
Notice 2007-78	Transition relief and additional guidance on the application of IRC 409A to NQDC plans
Final Treas. Regs. 1.409A	Provides guidance on non-qualified deferred compensation (NQDC) plans, including definitions, rules for deferral elections, and payment timing and forms.
Notice 2007-34	Guidance regarding the application of IRC 409A to split dollar life insurance arrangements
Announcement 2007-18	Announcement establishing a compliance resolution program
Notice 2006-79	Interim guidance
Notice 2006-4	Interim guidance on the application of IRC 409A to stock rights issued by non-public companies
Notice 2005-1	Initial transactional guidance, relief, and reasonable good faith interpretation of the statute standard pending further guidance

IRM 4.23.5.24.4 - Removed paragraph (4) since the link in the paragraph is broken and can not be fixed.

IRM 4.23.5.24.5(1) - Added Project Code 0550 to paragraph (1) to differentiate claims.

(1) Project Code 0545 and 0550 have been assigned to returns selected for audits of the credits.

Editorial changes were made throughout the IRM. Reviewed and updated Signature name, plain language, grammar, spelling, punctuation, IRM references, legal citations, and broken links.