



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.8.10

APRIL 20, 2018

EFFECTIVE DATE

(04-20-2018)

PURPOSE

- (1) This transmits revised IRM 4.8.10, *Technical Services, Notice of Employment Tax Determination Under IRC 7436*.

MATERIAL CHANGES

- (1) This transmittal reissues existing procedures which outline detailed instructions for the preparation, issuance and suspense of notice of employment tax determination under IRC 7436. Minor editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary. The Section Title has been updated to *Notice of Employment Tax Determination Under IRC 7436*. Other significant changes are as follows:

| Reference | Description of Change |
|------------------|--|
| Throughout IRM | Changed Notice of Deficiency of Worker Classification (NDWC) to Letter 3523. |
| IRM 4.8.10.1 | Inserted new section for Internal Controls as required by IRM 1.11.2. |
| IRM 4.8.10.3 | Revised to update procedures to incorporate new Tables 3 and 4. |
| IRM 4.8.10.4.2 | Added Form 943 to be compared with BMFOLU. |
| IRM 4.8.10.4.3 | Revised to reflect all items for consideration in ensuring the correct technical conclusions are made. |
| IRM 4.8.10.4.5 | Revised paragraph (4) to clarify application of IRC 3509. |
| IRM 4.8.10.4.6 | Added NOTE to paragraph (d) to use Letter 5153 for unagreed cases with insufficient time to appeal and added current IRC 6020 (b) references. updated information for the Classification Settlement Program (CSP). |
| IRM 4.8.10.5 | Updated to reflect new letters and titles specific to Employment Tax cases. |
| IRM 4.8.10.5.1 | Clarified location of taxpayer name and address on Letter 3523. |
| IRM 4.8.10.5.3 | Updated to reflect Letter 3523 and include Tables 3 and 4. |
| IRM 4.8.10.5.3.2 | Updated language to insert into a new section to outline the procedures for Table 2. |
| IRM 4.8.10.5.3.3 | Revised section to reflect procedures for Tables 3 and 4. |
| IRM 4.8.10.5.4 | Added Form 943 and Form 944 to paragraph (3) to be included with Form 2504-T. |
| IRM 4.8.10.5.5.1 | Added paragraph (4) to outline the various types of adjustments to be identified on Form 4666. |
| IRM 4.8.10.5.5.2 | Added paragraph (4) to outline the various types of adjustments to be identified on Form 4667. |

| Reference | Description of Change |
|------------------|--|
| IRM 4.8.10.5.5.3 | Added paragraph (9) to outline the various types of adjustments to be identified on Form 4668. |

EFFECT ON OTHER DOCUMENTS

IRM 4.8.10 dated 07/31/2012 is superseded.

AUDIENCE

Small Business/Self-Employed (SB/SE) Technical Services Employees

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4.8.10

Notice of Employment Tax Determination Under IRC 7436

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4.8.10.1
(04-20-2018)
**Program Scope and
Objectives**

- (1) *Purpose.* This section provides instructions for preparation of the Letter 3523, *Notice of Employment Tax Determination Under IRC 7436*. This section applies to both field and office cases.
- (2) *Audience.* these procedures apply to Technical Services employees assigned to inventory involving employment tax issues.
- (3) *Policy Owner.* The Technical Services office is under Examination Operations, Field Examination.
- (4) *Program Owner.* Technical Services is the program office responsible for preparing and issue Letter 3523 for cases involving employment tax issues.
- (5) *Contact Information.* To recommend changes or make any other suggestions to this IRM section, e-mail the author.
- (6) *Program Goals.* These procedures provide for the accurate and timely actions taken to prepare and issue Letter 3523.

4.8.10.1.1
(04-20-2018)
Background

- (1) Some employment tax cases include both IRC 7436 issues and non-IRC 7436 issues. Therefore, basic information concerning the 30 day letter process is included to distinguish between the two types of cases. Many of the procedures for Letter 3523 are identical or similar to those used to prepare statutory notices of deficiency contained in IRM 4.8.9, *Statutory Notices of Deficiency*.
- (2) IRM 4.23.10, *Report Writing Guide for Employment Tax Examinations*, and IRM 4.23.22, *Unagreed Employment Tax Case Procedures*, provides guidance for writing employment tax examination reports and unagreed case procedures and must be consulted when specific questions arise concerning cases involving IRC 7436 issues.
- (3) The Letter 3523 gives taxpayers the opportunity and instructions to seek Tax Court review. It also includes a schedule listing the workers the Service has determined must be classified as employees and employees who received additional wages determined to be IRC 7436 wage issues. The Letter 3523 shows each kind of tax with its proposed employment tax adjustment by taxable period.

4.8.10.1.2
(04-20-2018)
Authority

- (1) The Commissioner is authorized to issue a Letter 3523 pursuant to IRC 7436(a).
- (2) See Servicewide Delegation Order 4-26 in IRM 1.2.43.24, *Delegation Order 4-26 (formerly DO-251)*, for the officials delegated by the Commissioner to sign and issue a Letter 3523.
- (3) As it relates to Technical Services, the Technical Services Territory Manager (TSTM) is delegated to sign and issue a Letter 3523. The TSTM may further delegate this authority by memorandum to specific individuals within his/her functional area.
- (4) IRC 7436(a) requires that the determination(s) involve an actual controversy and that the determination(s) be made as part of an examination.

4.8.10.1.3
(04-20-2018)
Responsibilities

- (1) The Service will issue a Letter 3523 only after the Service has determined **either**.
 - That the taxpayer is not entitled to relief under section 530 of the Revenue Act of 1978 or
 - That one or more individuals performing services for the taxpayer are employees for purposes of any tax imposed by Subtitle C.
- (2) For assistance in the preparation of Tables 1 and 2 of Letter 3523 (whichever is applicable), the examiners will prepare a list of workers as defined in IRM 4.23.22.11.1(5), *General Overview of Section 7436 Procedures* and IRM 4.23.22.1.1(6). In addition, examiners must prepare a work copy draft of Tables 3 and 4 to assist Technical Services in the preparation of Letter 3523. See IRM 4.23.22.1.1(6).
- (3) Reviewers will review the case file, prepare the final Letter 3523 and attachments, and sign the notice. Tax examiners issue the Letter 3523 with attachments.

4.8.10.1.4
(04-20-2018)
Acronyms

- (1) The table lists commonly used acronyms and their definitions:

| Acronym | Definition |
|--------------------|--|
| AD | Area Director |
| AIMS | Audit Information Management System |
| ASED | Assessment statute expiration date |
| AUSA | Assistant United States Attorney |
| BOD | Business Operating Division |
| CCP | Centralized Case Processing |
| CSP | Classification Settlement Program |
| Duplicate Original | Originally signed Letter 3523 sent by certified or registered mail |
| ERCS | Examination Returns Control System |
| FICA | Federal Insurance Contributions Act |
| FTF | Failure to File |
| FTP | Failure to Pay |
| FUTA | Federal Unemployment Tax Act |
| GM | Group Manager |
| IDRS | Integrated Data Retrieval System |
| IRP | Information Return Processing |
| PS | Postal Service |
| PSP | Planning and Special Programs |

| Acronym | Definition |
|---------|--------------------------------|
| RAR | Revenue Agent Report |
| RGS | Report Generation Software |
| RRTA | Railroad Retirement Tax Act |
| SNOD | Statutory Notice of Deficiency |
| TAS | Taxpayer Advocate Service |
| TM | Territory Manager |
| TS | Technical Services |

4.8.10.2
(04-20-2018)
IRC 7436

- (1) IRC 7436 provides that taxpayers may seek Tax Court review of certain employment tax determinations made in connection with an audit.
- (2) IRC 7436 allows the Tax Court to review employment tax determinations involving:
 - a. Classification of the taxpayer's workers as employees.
 - b. The taxpayer's entitlement to relief under section 530 of the Revenue Act of 1978.
 - c. The proper amount of employment tax under such determination.

4.8.10.2.1
(04-20-2018)
**Issues to Which IRC
7436 Apply**

- (1) IRC 7436(a) provides that for purposes of Subtitle C, the Tax Court has jurisdiction to:
 - a. Review the Service's determination that one or more individuals performing services for the taxpayer are employees.
 - b. Review the Service's determination that the taxpayer is not entitled to treatment under section 530(a) of the Revenue Act of 1978 with respect to those individuals.
 - c. Determine the proper amount of employment tax under the above determinations.
- (2) The employment taxes imposed by Subtitle C are:
 - a. Federal Insurance Contributions Act (FICA) taxes (IRC 3101 through IRC 3128),
 - b. Railroad Retirement Tax Act (RRTA) taxes (IRC 3201 through IRC 3232),
 - c. Federal Unemployment Tax Act (FUTA) taxes (IRC 3301 through IRC 3311),
 - d. The collection of income tax at source on wages (IRC 3401 through IRC 3406).
- (3) "Employment tax" under the statutory language includes the additions to tax and penalties provided by Chapter 68 Subchapter A (but not B) of IRC 6651 through IRC 6665. Thus, the Tax Court has jurisdiction to calculate the proper amount of additions to tax and penalties that relate to the employment tax imposed by Subtitle C with respect to determinations of worker classification and relief under section 530 of the Revenue Act of 1978.

4.8.10.2.2
(04-20-2018)
**Issues to Which IRC
7436 Does Not Apply**

- (1) IRC 7436(a) does not provide the Tax Court with jurisdiction to review any employment tax determinations other than those listed in the statute as noted in IRM 4.8.10.2.1(1) above.
- (2) IRC 7436 also does not apply to employment status issues not arising under Subtitle C, such as the classification of individuals for purposes of pension plan coverage or the proper treatment of individual income tax deductions.
- (3) Since IRC 7436(a) only confers jurisdiction on the Tax Court to review determinations that are made as part of an examination, other Service determinations of employment status (including those that are made in the context of private letter rulings, technical advice memoranda, or Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*) that are not made as part of an examination, are not subject to review by the Tax Court.

4.8.10.3
(04-20-2018)
30 Day Letters

- (1) Usually, a 30 day letter is issued to a taxpayer before a Letter 3523 can be issued. If the taxpayer does not respond to the 30 day letter, Letter 3523 will usually be issued within sixty days after the expiration of the 30 day period.
- (2) IRM 4.23.10 is the Report Writing Guide for Employment Taxes. IRM 4.23.22 is the Unagreed Case Procedures for Employment Tax.
- (3) Under IRM 4.23.22.6, *30 Day Letters: Unagreed Case Procedures*, separate 30 day letters are issued when both IRC 7436 and non-IRC 7436 issues are present. Letter 950-C, *Employment Tax 30 Day Letter - Tax Court (TC)*, *IRS 7436 Issues*, will contain the IRC 7436 issues and Letter 950-D, *Employment Tax 30 Day Letter*, will contain the non-IRC 7436 issues.
- (4) Similarly, IRM 4.23.10.12 (2), *Preparation of the Employment Tax Report*, provides that if an examination involves both IRC 7436 and non-IRC 7436 issues, separate reports will be prepared. Form 4666, *Summary of Employment Tax Examination*, Form 4667, *Examination Changes - Federal Unemployment Tax*, and Form 4668, *Employment Tax Examination Changes Report*, will be noted whether the adjustments are "Non-7436 Adjustment", "7436 Adjustments (Worker Classification Issues)", or "7436 Adjustments (Wage Issues)". A checkbox is included on the report forms for these categories of adjustments. Examiners must prepare separate report forms for each of the categories of adjustments even if the adjustments can be included on the same agreement form. This will prevent any taxpayer confusion regarding the computation of tax for the separate issues.
- (5) Reports consist of the following forms:
 - a. Form 2504, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436)*, or Form 2504-S, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436; Worker Classification or Section 530 Issues Not Addressed in this Exam)*, for non-IRC 7436 issues or Form 2504-T, *Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436)*, for IRC 7436 issues,
 - b. Form 4666, *Summary of Employment Tax Examination*,
 - c. Form 4667, *Examination Changes - Federal Unemployment Tax*,

- d. Form 4668, *Employment Tax Examination Changes Report* or Form 4668-C, *Employment Tax Examination Changes Report - Railroad*, and
- e. Form 886-A, *Explanation of Items*, for explanation of adjustments or equivalent.

- (6) If a taxpayer does not file a protest letter seeking review by Appeals, the proposed tax involving the IRC 7436 issues will not be assessed. Instead, upon default of the 30 day period, a Letter 3523 must be issued to the taxpayer. The Letter 3523 suspends the period of limitation only for the employment taxes dependent on the IRC 7436 issues. For purposes of suspending the period of limitation **only**, any applicable backup withholding with respect to workers included in the reclassification (that are ultimately determined not to be employees) is considered dependent upon the worker classification issue. See IRM 4.23.22.11.1 (11)(b), *General Overview of Section 7436 Procedures*.
- (7) If there are adjustments for both IRC 7436 issues and non-IRC 7436 issues and the taxpayer does not file a protest letter for the non-IRC 7436 issues, the examination group must process a partial assessment for the non-IRC 7436 tax and penalties before transferring the case to Technical Services for preparation of the Letter 3523 on the IRC 7436 issues.

4.8.10.4 (04-20-2018) **Case Review Prior to Preparing Letter 3523**

- (1) All cases requiring a Letter 3523 must have a limited review of the unagreed issues and procedural requirements as described in paragraph (2) below. The case should be able to withstand the scrutiny of Appeals and potential litigation in Tax Court.
- (2) The scope of the case review must be sufficient to ensure:
 - Correct technical conclusions,
 - Proper consideration and computation of penalties,
 - Accurate computation of the tax deficiency,
 - Proper completion of all procedural requirements,
 - Proper managerial involvement, and
 - Proper protection of taxpayer rights.
- (3) Reviewers must determine if the case is sufficiently developed to support the IRC 7436 issues proposed to be adjusted. When feasible, the reviewer should correct error(s) in the case instead of returning it to the examiner.
- (4) If a case contains an error, Technical Services will revise the report, if possible, and prepare the Letter 3523 package so that it best supports the examiner's intent. The Letter 3523 package includes three computation statements (i.e., reports):
 - a. Form 4666, *Summary of Employment Tax Examination*,
 - b. Form 4667, *Examination Changes - Federal Unemployment Tax*, and
 - c. Form 4668, *Employment Tax Examination Changes Report*.

At the same time, it is the duty and responsibility of reviewers to ensure the taxpayer's rights are protected during all stages of the examination process.

- (5) Reviewers should be aware of cycle time. IRM 4.8.2.6, *Cycle Time*, allows up to 45 days to review field cases and 15 days for office audit cases. Reviewers should document their time and activity on Form 9984, *Examining Officer's Activity Record*.

4.8.10.4.1
(07-31-2012)

**Preliminary
Administrative Items
Needed for Case Review**

- (1) When the case is received, the contents of the case file should be reviewed to ensure:
- All returns are controlled on Audit Information Management System (AIMS) and Examination Records Control System (ERCS).
 - The returns reflected on ERCS are included in the case file and no other returns are included.
 - The case is in Status Code 25, Review Type 38, and Suspense Code 544.
 - The 30 day letter was sent to the taxpayer, if sufficient time remained on the ASER.
 - The period of limitation is correctly reflected on AIMS/ERCS.
 - Form 895, *Notice of Statute Expiration*, is properly completed, if required.

Note: Reviewers must check the ASER on Form 895 against the information data retrieval system (IDRS), the stamped received date, and mailing envelope. Do not rely on the statements on Form 895 or IDRS. Reviewers must check these items personally, to ensure the information is correctly reflected.

If Form 895 is correct, the reviewer will initial it. If Form 895 is not correct, the reviewer will update the information, initial the change, prepare Form 5348, *AIMS/ERCS Update*, and submit Form 5348 with the case to the manager for approval.

4.8.10.4.2
(04-20-2018)
IDRS Prints

- (1) Obtain **current** IDRS prints to verify the following information about the case:
- AMDISA to verify the applicable years are on AIMS;
 - INOLES to verify the taxpayer's name(s) and address(es);
 - CFINK to determine if a valid power of attorney is on file;
 - BMFOLT to verify the amount of tax per return (or as previously adjusted), as well as to verify any possible duplicate return postings and pertinent freeze codes;
- Note:** If returns were filed, the reviewer will check the TC 150 and all TC 30X/29X amounts to ensure that all applicable amounts are considered, not just the original tax as filed.
- BMFOLA to identify any previous adjustments that may have been made to the return and to verify the amount and source of the adjustments;
 - BMFOLR to verify the amount of taxable wages per return;
 - BMFOLU to compare the totals per Form 941, *Employer's Quarterly Federal Tax Return*, and/or Form 944, *Employer's ANNUAL Federal Tax Return*, and Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*, to Forms W-2 filed;
 - PMFOL and/or IRPTRI to verify whether Forms 1099-MISC, *Miscellaneous Income*, and Form W-2 were filed; and

- Information Return Processing (IRP) Transcript, if available, for the TIN of the key taxpayer (individual, corporate, etc.) to verify address information.

4.8.10.4.3
(04-20-2018)
**Correct Technical
Conclusions**

- (1) Technical review of the issues will be made to determine whether the applicable law, regulations, and rulings have been correctly applied.
- (2) The review of the case will include the determination that:
 - a. The the issues are IRC 7436 issues (either worker classification issues or IRC 7436 wage issues).
 - b. For worker classification issues, the taxpayer is not entitled to relief under section 530(a) of the Revenue Act of 1978 with respect to individuals being reclassified as employees and the reasons the taxpayer does not qualify for relief (IRM 4.23.5.2, *Section 530 of the Revenue Act of 1978*).
 - c. For IRC 7436 wage issues, section 530 is not applicable to the issue and, in the alternative, that the taxpayer is not entitled to relief in the event it is determined that section 530 is applicable to the IRC 7436 wage issues.
 - d. The proper amount of employment tax under the above determinations, including the proper use of IRC 3509 rates (IRM 4.23.8, *Determining Employment Tax Liability*).
- (3) For worker classification issues, reviewers will review the case file to ensure the position presented is supported in the workpapers. The case file must include facts, supported by documentary evidence where possible, of:
 - a. The categories of workers.
 - b. Their basic job duties, identifying the behavioral and financial control factors present in the case. Any available agreements between the parties, such as work contracts, should also be included in the case file, if available.
 - c. An analysis of the behavioral control, financial control, and the relationship of the worker and the firm. (See IRM 4.23.5, *Technical Guidelines for Employment Tax Issues*).
- (4) Documents that must routinely be part of the case file include:
 - a. A copy of information returns (e.g., Form 1099-MISC, Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*, Form W-2, Form W-3, *Transmittal of Wage and Tax Statements*) issued by the taxpayer to workers at issue (at a minimum, transcripts must be in the case file reflecting whether Form 1099-MISC and Form W-2 were filed).
 - b. A copy of prior period Forms W-2 issued to categories of reclassified workers (or to named reclassified workers), if available.
 - c. A copy of **filed** employment tax returns
 - d. A copy of income tax returns (especially where the employment tax examination was a result of an income tax examination).

Note: This is not applicable to Large Business and International (LB&I) examination case files.

- e. A copy of relevant materials from the income tax examination file if the case resulted from an income tax referral.

Note: This is not applicable to LB&I examination case files.

- f. A copy of applicable pages of the general ledgers.
- g. A copy of service agreements (e.g., "independent contractor agreements").
- h. A copy of lease agreements with workers.
- i. A copy of any evidence of payments to the workers.
- j. A copy of interview notes.
- k. A copy of relevant client contracts.

- (5) Since income tax case files often are separated from employment tax cases, it is imperative that all documents and information in any related income tax file that are relevant to the employment tax case be duplicated and placed in the employment tax file.

4.8.10.4.4
(04-20-2018)
**Proper Consideration
and Computation of
Penalties**

- (1) All appropriate penalties must be asserted and computed correctly.
- (2) The penalty lead sheet must comment on the assertion or non-assertion of applicable penalties, including reasonable cause situations.
- (3) The case file must include a copy of the group manager's written approval for the assertion of any penalty other than failure to file (FTF) and failure to pay (FTP). If the case file does not contain the written approval, the reviewer will secure such written approval prior to issuing the Letter 3523.
- (4) A complete discussion regarding penalties for employment tax cases can be found in IRM 4.23.9, *Employment Tax Penalty and Fraud Procedures*.

4.8.10.4.5
(04-20-2018)
**Accurate Computation
of Proposed
Employment Tax
Adjustments - Reduced
and Full Rates**

- (1) Employment tax examiners have specialized software to prepare the reports for employment tax examinations. If errors are found in the employment tax reports, the reviewer may need to coordinate with the examiner to secure revised reports.
- (2) If the reviewer needs to secure revised reports from the examiner, the reviewer may want to request the electronic files (Excel, Word, Adobe, etc.) used by the examiner to generate the reports. However, a disk with the examiner's workpapers and report must be included with the case file. This will allow the reviewer to make any minor corrections, such as minimal rounding corrections, that may be necessary to ensure all reports reconcile.
- (3) The reviewer must ensure the report reflects the correct amount of adjustments, which agree with the lead sheet and supporting workpapers. For more details on determining the correct amount of employment tax liability, refer to IRM 4.23.8.
- (4) IRC 3509 rates apply only to worker classification adjustments that would be set forth in Tables 1 and 3 of the Letter 3523. IRC 3509 rates are not applicable in IRC 7436 wage adjustments cases and the rates must not be used to determine the adjustments set forth in Tables 2 and 4. See IRM 4.23.5.2.1, *Classification of Employment Tax Issues*, for guidance on when employment tax issues are considered wage or worker classification issues. Also, see IRM 4.23.5.2, *IRC 7436 Issues*, for guidance on when issues are considered IRC 7436 issues.

4.8.10.4.6
(04-20-2018)

Proper Completion of All Procedural Requirements

- (1) Reviewers must ensure procedural items are properly completed by the examiner:
 - a. Form 5344, *Examination Closing Record*, must be properly completed and attached to the appropriate returns. See IRM 4.8.10.4.6.1 below for additional details on Form 5344.
 - b. Form 3198, *Special Handling Notice for Examination Case Processing*, is properly attached to the case folder and appropriately marked as an employment tax case.
 - c. Form 9984, *Examining Officer's Activity Record*, is properly completed and documents all activity, including actions taken by the reviewer.
 - d. A 30 day letter was issued and suspended at the group level to allow the taxpayer time to file an adequate protest, if sufficient time remained on the period of limitations.

Note: Letter 5153 must be used by examiners to transmit the report to the taxpayer for unagreed cases that do not have sufficient time on the ASED to go to Appeals.
 - e. For non-filer cases, the file includes Form 13496-A, *IRC Section 6020(b) Certifications for Employment Tax Returns*, and appropriate attachments for each substitute for return (SFR) period. If the reviewer makes any changes to the proposed adjustments report, the reviewer must complete a new IRC 6020(b) package and sign a new Form 13496. See IRM 4.23.12.3.3(3), *IRC 6020(b) Procedures for SFR Employment Tax Cases*.
 - f. For cases involving both IRC 7436 and non-IRC 7436 issues in which the taxpayer did not file a protest or is not eligible for Appeals for the non-IRC 7436 issues, a partial assessment was processed by the examiner prior to forwarding the case to Technical Services for issuance of the Letter 3523 for the IRC 7436 issues.
- (2) Ensure classification settlement program (IRM 4.23.6, *Classification Settlement Program (CSP)*), was offered, if applicable. CSP is only available in certain worker classification cases, and is not available in IRC 7436 wage adjustment cases. CSP offers must be made in all worker classification cases where timely Forms 1099 were filed, unless one of the exclusions in IRM 4.23.6.8, *Cases Excluded from CSP*, is applicable. All worker classification cases must:
 - Comment on CSP (including a statement in the workpapers that CSP was considered)
 - Comment on whether or not an offer was made
 - Comment on what type of offer was made, if any, and whySee IRM 4.23.6.11 (1).
- (3) If a taxpayer is eligible, CSP offers must be made prior to issuing a Letter 3523. If a CSP was not offered, the reviewer must contact the examiner to determine the reason why. If appropriate, the examiner must be requested to contact the taxpayer and offer the CSP.

4.8.10.4.6.1
(07-31-2012)
Form 5344

- (1) Currently, the Audit Information Management System (AIMS) website and the IRM indicate certain fields on Form 5344 are not required to be completed by examiners. However, these directions are intended for income tax examiners. Report Generation Software (RGS) is a program used for income tax that will populate certain fields on closing documents, making the completion of certain

fields on the Form 5344 unnecessary for income tax examiners. Due to the difference in report writing availability, there are different expectations for employment tax examiners.

- (2) The following fields on Form 5344 will be completed by the employment tax examiner when closing a case:
- a. P7 - 18 - TIN (self-explanatory)
 - b. P21 - 22 - MFT (self-explanatory)
 - c. P24 - 29 - Tax Period (self-explanatory)
 - d. P31 - 34 and NAME - Name Control and Name must match what is on the INOLE and ERCS Control
 - e. P38 - 40 - Block Number
 - * If closing off an Original or SFR - entry will be 00X
 - * If closing off a BRTVU, TRDBV, or ELF return - entry will be 30X
 - f. Item 02 - Penalty Reason Code
 - * Needed when abating penalties or when not asserting penalties that are otherwise applicable (e.g., reasonable cause, etc.)
 - g. Item 07 - Hold Code
 - * Enter a "2" when the statute for refund is barred
 - h. Item 11 - Interest Free Date
 - * If the taxpayer qualifies for interest free, then this block must be completed with the date the agreement was received
 - * There must be a corresponding TC 308 in Item 12
 - i. Item 12 - Tax Penalty and Interest Adjustment
 - * TC 300: Taxes not subject to Interest Free, Form 4668 (941) Line 13, Form 4667 (940) Line 8
 - * TC 308: Taxes that are subject to Interest Free, must have corresponding date in Item 11, Form 4668 Line 13
 - * TC 160: IRC 6651 Failure to File Penalty (a) (1) ONLY - The amounts from the Form 4668 / Form 4667 will include both FTF and FTP. The examiner MUST separate the amounts and enter only the FTF portion of the penalty. Form 5318, *Penalties for Failure to File Tax Return and Pay Tax*, may be used to accomplish this. Form 4668 (941) Line 14, Form 4667 (940) Line 9.
 - * TC 180: IRC 6656 Penalty, Form 4668 (941) Line 15, Form 4667 (940) Line 9
 - * TC 270: Enter only when FTP is NOT being assessed, will always be zero
 - j. Item 13 - Disposal Code
 - * DC 01 - No change with adjustment, delinquent returns accepted as filed, claims disallowed in full
 - * DC 02 - No change
 - * DC 03 - Agreed prior to issuance of 30 day letter
 - * DC 04 - Agreed after issuance of 30 day letter
 - * DC 07 - Cases being closed to Appeals
 - * DC 08 - Unagreed cases not going to Appeals
 - k. Item 15 - Credit and Tax Computation Adjustments
 - * Do not complete for cases going to Appeals
 - * Do not complete for no change cases
 - * TC 111 Form 4668 (941) Line 11
 - * TC 112 Form 4668 (941) Line 10

Note: The total of the TC 111 and TC 112 entries must equal the TC 300 or TC 308 entry in Item 12 to the penny.

- * TC 004 Form 4668 (941) Line 1
- * TC 073 Form 4668 (941) Line 1
- * TC 079 if necessary will always be "0"
- * TC 680 Accuracy Penalty, if any
- * This entry for the 940 will depend on the two letter state abbreviation

Note: TXX (XX = two letter state code) Form 4667 Line 8 - this amount must equal the TC 300 amount in Item 12 to the penny.
WXX (XX = two letter state code) Form 4667 Line 2

- l. Item 16 - Appeals Office Code
 - * Complete only for cases going to Appeals.
 - * Code will depend on where the cases are sent for Appeals hearings.
- m. Item 18 - Unagreed amount Appealed/Petitions - dollars only
 - * Complete only for cases going to Appeals.
 - * Amount must be the unagreed portion of tax and credits, less any pre-payments.
- n. Item 28 - Examiner's Time
 - * This must equal the amount of time reflected on ERCS for each return.
- o. Item 30 - Examination Technique Code
 - * 1 = Office Examination
 - * 2 = Correspondence Examination
 - * 3 = Field Examination
 - * 6 = No Reply
 - * 7 = Defaulted/Undeliverable
- p. Item 31 - Examiner's Grade (self-explanatory)
- q. Item 32 - Grade of Case
 - * Examiner will generally use their grade
 - * This entry must be validated by the manager and changed if appropriate.
 - * "R" will be entered at the end of the number for any quarter that is not the Key case. If an older revision of Form 5344 is used, circle the "R" when appropriate.
- r. Item 33 - Examiner Name (self-explanatory)
- s. Item 37 - Delinquent Return - Applies only if the secured delinquent return is processed under Delinquent Return procedures directly to the campus
 - * Enter "T" for the key quarter
 - * Enter "R" for any subsequent quarter(s)
- t. Item 39 - Disclosure Code
 - * Used for agreed cases when a copy of the return is disclosed to the state.
 - * This code is unique to the examiner's state.
- u. Item 405 - 408 - Related Return Information
 - * This must be the information from the key case return. For the key case, there must be a "P" in Item 408. The related quarters must have an "S" entered.
 - * If there is an "S" in this entry, there must be an "R" after grade of case in Item 32.
- v. Item 411 - Payment Code (self-explanatory)
- w. Item 412 - Installment Agreement Code (self-explanatory)
- x. Item 418 - 3121(q) Amount
 - * Enter for TIP examinations

4.8.10.4.7
(04-20-2018)

**Proper Protection of the
Taxpayer's Rights**

- (1) Reviewers must ensure the taxpayer's rights have been protected by considering:
 - a. Power of attorney (POA) requirements,
 - b. Confidential privileges - Accountant/client privilege,
 - c. Notification of Appeal rights,
 - d. Consideration of collectibility,
 - e. Confidentiality of taxpayer information/privacy requirements,
 - f. Unauthorized access (UNAX) requirements, and
 - g. Third-party contact requirements.
 - h. Taxpayer Bill of Rights
- (2) Reviewers must also ensure that the case is transferred to Appeals if a protest was received. If a taxpayer files a timely protest, the case must be sent to Appeals before a Letter 3523 is issued unless the taxpayer is not eligible for Appeals.

4.8.10.5
(04-20-2018)

Preparing Letter 3523

- (1) The Letter 3523 is a legal determination that is presumptively correct.
- (2) The issuance of a Letter 3523 is the beginning of potential litigation. Tax Court Rule 34(b)(8) requires that the petition must include a copy of the Letter 3523 plus the accompanying statements material to the issues being petitioned. Thus, if a case goes to the Tax Court, the explanatory paragraphs become a part of the basic pleadings for the Commissioner. They set the pattern upon which the Government's case may be tried and therefore, care must be exercised in the preparation of the explanations for the determination of the asserted liability.
- (3) The Letter 3523 package consists of:
 - a. A letter explaining the purpose of the notice; the tax period(s) involved; the names of the workers; the amount of employment tax, additions to tax and/or penalties; and the taxpayer's options, as well as how to exercise the options.
 - b. A waiver to allow the taxpayer to agree to the additional tax liability and applicable penalties, if asserted.
 - c. A summary of the employment tax examination (Form 4666).
 - d. A computation statement (i.e., report) for Federal Unemployment Tax (Form 4667).
 - e. A computation statement (i.e., report) for other employment tax changes (Form 4668).
 - f. Any schedules with explanations of the proposed assessment.
 - g. Pub 3953, *Questions and Answers About Tax Court and the Notice of Employment Tax Determination Under IRC section 7436*.
- (4) Reviewers must ensure that examiners use the correct forms listed on the Letter 3523 as enclosures. It is important to provide the correct forms when issuing the Letter 3523, since the waivers are distinct for IRC 7436 issues (e.g., Form 2504-T rather than Form 2504 or Form 2504-S).
- (5) Non-IRC 7436 issues must not be included in the Letter 3523. If the examination includes both IRC 7436 and non-IRC 7436 issues, the case file must include separate reports for each. If separate reports are not included (e.g., if the file includes one report that includes both IRC 7436 and non-IRC 7436 issues), the case must be returned to the examiner to follow the guidelines contained in IRM 4.23.22.6.

4.8.10.5.1
(04-20-2018)

Taxpayer Name

- (1) The taxpayer's name and address appear on the first page of the Letter 3523. It is extremely important that the taxpayer is correctly identified.

Caution: Even minor typographical errors in the name or address may affect the validity of a Letter 3523.

- (2) For corporations, use the name of the corporation as shown on the corporate seal. If unavailable, use the name shown on the tax return. In corporate reorganizations, include both the current and the former name. Similarly, if the corporation changed its name since filing the return, identify the corporation on the letter, schedules and attachments as "ABC Corporation, formerly known as XYZ Corporation."
- (3) For sole proprietorships, use the "doing business as" name, if applicable, as well as the individual's name.

Example: John Doe, Doing Business As Doe's Construction

- (4) For disregarded entities (e.g., single member LLC filing on Schedule C), use the business name.

Example: Doe's Construction, LLC

- (5) When in doubt, use the IDRS command code BMFOLE and/or NAMEE(S) for the business TIN for verification.

4.8.10.5.2
(04-20-2018)

Taxpayer Address

- (1) The mailing address for the Letter 3523 must be the taxpayer's last known address.

4.8.10.5.2.1
(07-31-2012)

Last Known Address

- (1) Rev. Proc. 2010-16, IRB 2010-1 CT 664 defines "last known address" as the address on the most recently filed and properly processed tax return unless the taxpayer has clearly and concisely notified the Service of a change of address. The Service may also update the taxpayer's address of record with a new address obtained from the United States Postal Service's (USPS) National Change of Address database (NCOA database) in accordance with Treas. Reg. 301.6212-2. The NCOA database is sent to the IRS on a weekly basis at which time master file is updated with any changes.
- (2) If there is any doubt as to what the last known address is, additional duplicate original Letters 3523 must be sent by certified or registered mail to each known address.

4.8.10.5.2.2
(07-31-2012)

**Clear and Concise
Notification**

- (1) A statement signed by the taxpayer informing the Service to change the address of record is considered clear and concise notification. The statement must also contain the taxpayer's full name, signature, old address, and social security number and/or employer identification number.
- (2) Form 8822, *Change of Address*, may be used to make the change.
- (3) Correspondence sent by the Service that solicits or requires a response from the taxpayer that is returned to the Service by the taxpayer with corrected

taxpayer address information constitutes clear and concise notification of a change of address (even if the taxpayer's signature is not on the correspondence).

- (4) Standing alone, a new address reflected on any of the following will not constitute clear and concise notification of a new address and, therefore, should not be used to change an address of record:
 - a. The letterhead of taxpayer correspondence,
 - b. The return envelope,
 - c. The taxpayer's remittance form, or
 - d. Post Office notice (other than by means of United States Postal Service's National Change of Address database).

Note: Although the address of record must not be updated as a result of these new addresses, duplicate original Letters 3523 must be sent to these addresses.

4.8.10.5.2.3
(07-31-2012)
Elements of a New Address

- (1) The following are elements of a new, complete address:
 - Number and street (or post office (P.O.) box number)
 - Apartment or suite number, if applicable
 - City or town, state and zip code
- (2) There must be no abbreviations in the taxpayer's address, except for the two-letter state code. However, if the last known address reflected on the last filed and properly processed tax return contains abbreviations, then that address (with abbreviations) may be used. If notices are sent to foreign countries, the name of the country must not be abbreviated.

4.8.10.5.2.4
(07-31-2012)
New Addresses Secured by Telephone or Interview

- (1) Address changes to perfect an error in the existing address may only be made based on the taxpayer's oral statement (e.g., telephone or walk-in contact). These changes must be provided to the Service employee who initiated the contact after receipt of an account or adjustment request from the taxpayer.
- (2) Authentication of the caller's identity using the criteria in IRM 21.1.3.2.3, *Required Taxpayer Authentication*, and IRM 21.1.3.2.4, *Additional Taxpayer Authentication*, is required before making changes to the taxpayer's address of record.
- (3) Any request solely for an address change, other than for perfection or in connection with an open account or adjustment request, must be in writing.

4.8.10.5.2.5
(07-31-2012)
Establishing the "Last Known Address"

- (1) The following steps must be taken to determine the taxpayer's "last known address":
 - a. Search IDRS for the most recently filed tax return and other information using appropriate CFOL and IDRS command codes including INOLES, SPARQ, IRPTRO, BMFOLE, ENMODA.
 - b. Search under both the business TIN and the individual SSN, if applicable.
 - c. Search the case file for "clear and concise" notification since the date of the last filed return.

- d. Scrutinize the power of attorney for a different address. Compare the signed dates found on the power of attorney to those found on the most current filed return.
- e. If there is any indication of an alternative address, send a duplicate original Letter 3523 to that address by certified or registered mail.

4.8.10.5.2.6
(04-20-2018)
Power of Attorney

- (1) If a power of attorney address is the taxpayer's last known address, the Letter 3523 must be addressed as follows:
Doe's Construction
In care of Power of Attorney's Name
Power of Attorney Address

Note: This subsection does not refer to the copy of the Letter 3523 that is sent to the Power of Attorney. See IRM 4.8.10.8.1, *Power of Attorney*.

4.8.10.5.3
(04-20-2018)
**Preparation of Letter
3523**

- (1) Letter 3523 is the notice used in employment tax cases involving IRC 7436 issues. The most current version of the letter must be used.
- (2) IRM 4.23.22.11.1 requires the group examiner to prepare and include a list of workers for use in Table 1 and/or Table 2 of Letter 3523. Table 1 of the Letter 3523 lists reclassified workers by job description or category. Table 2 lists workers who were treated as employees by the employer/taxpayer for whom additional wages was paid. Additionally, the examiner will prepare a draft copy of Table 3 and/or Table 4 to assist the reviewer in preparation of Letter 3523. Tables 3 and 4 contain the adjustments and the penalties related to the workers listed in Tables 1 and 2, respectively. The reviewer will prepare the final Letter 3523 based on the information for the tables included by the examiner.
- (3) The reviewer must not date the Letter 3523 letter. The date will be added when the Letter 3523 is issued.
- (4) The Letter 3523 must include the name, telephone number, and the unique identifying number of the person to contact.

Note: This person must clearly identify himself/herself using his/her name and employee identification number when answering a specific taxpayer inquiry.

- (5) The "Last Date to Petition Tax Court" date must not be inserted by the reviewer. This date will be added when the Letter 3523 is issued.
- (6) The Letter 3523 must advise taxpayers of their right to contact the local office of the Taxpayer Advocate and must provide the location and telephone number of the appropriate office. Section 11 of Pub 3953, *Questions and Answers About Tax Court and the Notice of Employment Tax Determination Under IRC Section 7436*, fulfills this purpose.

4.8.10.5.3.1
(04-20-2018)
**Listing of Reclassified
Workers - Table 1**

- (1) Reclassified workers must be named, if known, in Table 1 of Letter 3523, with the appropriate periods identified. The workers must be readily identified on a listing completed by the examiner. If there is confusion among similarly named individuals, examiners must provide the job description of the workers and make sure they explain what steps were taken to obtain the names and, if they

are unavailable, the reason they are unavailable. Examples of identifying information include the shift worked, the specific job performed, etc. **The use of social security numbers for identification of workers is not allowed on the Letter 3523.**

Caution: The use of corporate entity names in lieu of the names of the worker is improper in Table 1.

- (2) Examiners will indicate with a mark (e.g., a check mark or an "X") the quarters each worker is being reclassified. **Dollar amounts are not to be listed in Table 1.**
- (3) If the names of the specific workers are not known, the workers must be named by job category or job description in Table 1 of Letter 3523.

Example: If workers were paid in cash and no name-specific payment log is available, Table 1 might include three worker categories, such as roofers, roofing assistants, and crew leaders. The same Letter 3523 may also include a named worker, such as the corporate president/sole shareholder. However, Letter 3523 must **not** include worker social security numbers.

- (4) Table 1 of Letter 3523 must be as specific as the case facts allow.
- (5) Do not use job categories such as "workers paid in cash" or "workers pursuant to information maintained by the taxpayer" for numerous reasons, including application of rates under IRC 3509, application of section 530 of the Revenue Act of 1978 (section 530), and establishing basic case development before the court.
- (6) If there are more workers than can fit in Table 1, an attachment may be used to reproduce Table 1. The attachment must be clearly identified at the top as "Table 1 Attachment to the Letter." Table 1 of Letter 3523 must reference the attachment by inserting "See Table 1 Attachment to the Letter."

4.8.10.5.3.2
(04-20-2018)
**Listing of Workers With
IRC 7436 Wage Issues -
Table 2**

- (1) Workers who were treated as employees by the taxpayer and received additional compensation determined to be a IRC 7436 wage issue are listed in Table 2 of Letter 3523. If known, the names of each worker are listed along with identifying information (such as job description, the shift worked, or the specific job performed) if there could be confusion among similarly named individuals. If individual names are not known, examiners must document in the case file the steps taken to obtain the names and the reason why the names were not available. The use of social security numbers for identification of workers is not allowed on the Letter 3523.
- (2) Examiners will indicate with a mark (e.g., a check mark or an "X") the quarters each worker is being reclassified. **Dollar amounts are not to be listed in Table 2.**
- (3) Generally, the names of the workers listed in Table 2 must be known since these workers were treated as employees by the taxpayer and were issued Forms W-2. However, if the names of the specific workers are not known, the workers must be named by job category in Table 2 of Letter 3523.

Example: If workers received a taxable fringe benefit that was excluded from wages where the taxpayer raises a Section 530 argument (IRC 7436 wage issue) and no name-specific payment log is available, Table 2 might include three worker categories, such as roofers, roofing assistants, and crew leaders. The same Letter 3523 may also include a named worker, such as the corporate president/sole shareholder. However, Letter 3523 must **not** include worker social security numbers.

- (4) Table 2 of Letter 3523 must be as specific as the case facts allow.
- (5) Do not use job categories such as “workers paid in cash” or “workers pursuant to information maintained by the taxpayer” must not be used with reasons including application of rates under IRC 3509, application of Section 530 of the Revenue Act of 1978 (Section 530), and establishing basic case development before the court.
- (6) If there are more workers than can fit in Table 2, an attachment may be used to reproduce Table 2. The attachment must be clearly identified at the top as “Table 2 Attachment to the Letter.” Table 2 of Letter 3523 must reference the attachment by inserting “See Table 2 Attachment to the Letter”.

4.8.10.5.3.3
(04-20-2018)
**Amount of
Underpayment and
Penalties for
Reclassified Workers -
Tables 3 and Table 4**

- (1) Tables 3 and 4 of Letter 3523, must include the Service’s calculation of the proper amount of employment tax, additions to tax, and/or penalties that arise from the adjustments related to the workers listed in Tables 1 and 2. Examiners will include a “working copy” draft of Tables 3 and 4 of Letter 3523.
- (2) The information about the proposed employment tax assessment must be moved from the reports (Form 4667 and/or Form 4668) to Tables 3 and 4 of Letter 3523.
- (3) The amounts must be organized by type of employment tax rather than by type of return and listed separately for each quarter:
 - FICA
 - Income tax withholding
 - FUTA
- (4) The total FUTA tax will be reported in the December 31 tax period.
- (5) For substitute for return cases, the failure to file penalty (FTF) under IRC 6651(a)(1) and the failure to pay penalty (FTP) under IRC 6651(a)(2) are applicable. If the FTP has not reached the maximum (i.e., less than 50 months), an attachment to the letter must be completed with an explanation that the penalty will continue to accrue until paid. This statement should be similar to that included with regular statutory notices of deficiency. See IRM 4.8.9.16.2.5, *Substitute for Return IRC Section 6651(g)*, for penalty explanations used with notices of deficiency.
- (6) A copy of Form 4666, Form 4667, and Form 4668 must be attached to Letter 3523 to explain which rates were used in calculating the employment taxes.

4.8.10.5.4
(04-20-2018)
Waiver Preparation

- (1) Form 2504-T, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436)*, must be included as an attachment to Letter 3523 to provide taxpayers with an opportunity to agree to the proposed employment tax adjustment administratively.
- (2) Form 2504-T contains the statement that allows taxpayers to waive restrictions on assessments under IRC 7436(d) and IRC 6213(a).
- (3) Form 2504-T must contain the following:
 - Name, address, and EIN of the taxpayer exactly as they appear on the Letter 3523.
 - Summary of the employment tax liability carried over from Form 4666.
 - Entries for Form 940, Form 941, Form 943, and Form 944 are placed on separate lines. Only entries for additional tax and penalties are shown.
- (4) The "Kind of Tax" and "Internal Revenue Code Section" are completed as follows:
 - a. Form 940 - FUTA IRC 3301
 - b. Form 941 - FICA and Federal Income Tax Withholding (FITW) IRC 3101, IRC 3111, and IRC 3402
 - c. Form 943
 - d. Form 944

4.8.10.5.5
(04-20-2018)
Computation Statements

- (1) The amount of wages paid to reclassified employees and/or IRC 7436 wage issue adjustments and the corresponding employment taxes must be clearly and consistently stated.
- (2) The Letter 3523 includes three computation statements (i.e., reports):
 - a. Form 4666, *Summary of Employment Tax Examination*,
 - b. Form 4667, *Examination Changes - Federal Unemployment Tax*, and
 - c. Form 4668, *Employment Tax Examination Changes Report*.
- (3) Generally, all three reports will be included with the Letter 3523. These reports are prepared by the examiner and included in the case file before the case closes from the group. If no changes are needed, it is not necessary to prepare new reports.

4.8.10.5.5.1
(04-20-2018)
Preparation Instructions for Form 4666, Summary of Employment Tax Examination

- (1) Date of Report - enter the date the report is completed.
- (2) Type of Report - check the applicable box.
- (3) Unagreed or Agreed - check the applicable box.
- (4) Non-IRC 7436 adjustments, IRC 7436 adjustments (worker classification issues), IRC 7436 adjustments (wage issues) - check the applicable box. Since Letter 3523 only includes IRC 7436 adjustments, the non-IRC 7436 adjustments box must never be checked. If Letter 3523 includes both worker classification and IRC 7436 wage issues, both the IRC 7436 adjustments (worker classification issues) and IRC 7436 adjustments (wage issues) boxes must be checked.

- (5) Calendar Year (Column a) - for annual returns, list calendar years examined. For quarterly returns, list only the year if all its quarters result in a change. When a combination of change and no-change occurs in one year's examination, show the year followed by the quarters, grouping the changes on one line and the no-changes on another line.
- (6) Return Form Number (Column b) - self-explanatory
- (7) Delinquent Tax, Increase(Decrease) in Tax (Column c) - enter the total amounts on line 5 of Forms 4668 and/or on line 8 of Form 4667.
- (8) Penalty (Column d) - enter the applicable code sections and the total amount of penalties from line 11 of Forms 4668 and/or line 9 of Forms 4667.
- (9) Total (Column d) - enter the sum of Columns c and d for each line.
- (10) Other Information - enter: "This does not constitute an income tax examination." Also, enter such items as statements regarding revised or corrected reports, delinquency, information regarding penalties, explanation of adjustments, etc.

4.8.10.5.5.2 (04-20-2018)

Preparation Instructions Form 4667, Examination Changes - Federal Unemployment Tax

- (1) Date of Report - enter the date the report is completed.
- (2) Type of Report - check the applicable box.
- (3) Agreed or Unagreed - check the applicable box.
- (4) Non-IRC 7436 adjustments, IRC 7436 adjustments (worker classification issues), IRC 7436 adjustments (wage issues) - check the applicable box. Since Letter 3523 only includes IRC 7436 adjustments, the non-IRC 7436 adjustments box must never be checked. If Letter 3523 includes both worker classification and IRC 7436 wage issues, separate Forms 4667 must be prepared for each type of adjustment.
- (5) Line 4 - enter applicable rate from Form 940.
- (6) Line 9 - enter IRC section number if other than IRC 6651 or IRC 6656.
- (7) Line 10 - use a separate column for each state and experience rate period.
- (8) Line 11 - use a separate column for each state and experience rate period and enter calendar year if the taxpayer does not have an experience rate or where the experience rate is constant throughout the year.
- (9) Line 12 - enter the experience rate as determined by the state. If the experience rate exceeds 5.4%, enter 5.4%.
- (10) Line 13 - enter taxable FUTA wages as corrected in the examination. This must be the same as line 3.
- (11) Line 14 - enter the amount of wages subject to state tax that has been reported to the state. This will include the amount reported on the original return to the state plus any additional wages subsequently reported for which the taxpayer has received a statement from the state acknowledging the additional wages reported. The taxpayer must be given 30 days to obtain such

statement from the state. If the taxpayer's experience rate is 0%, enter the wages that would have been subject to state unemployment tax if the 0% rate had not been granted.

- (12) Line 15 - enter 5.4%. Line 24 will be the same percentage.
- (13) Line 19 - Use the Worksheet for Credit Computation found in the instructions to the Form 940 to correctly compute the allowable credits if some of the taxable FUTA wages were excluded from state unemployment tax OR if any state unemployment tax was paid late.
- (14) Line 18 - enter contributions timely paid.
- (15) Line 21 - for any state to which the credit reduction is applicable, enter the rate from Form 940 for the year under examination.
- (16) Other Information - include such items as statements regarding revised or corrected reports, delinquency, explanation of adjustments, information regarding penalties, etc.

4.8.10.5.5.3
(04-20-2018)
**Specific Item and Line
Instructions for
Completing Form 4668,
Employment Tax
Examination Changes
Report**

- (1) Return form number - enter 941, 943, 944, or Schedule H.
 - (2) Name and address of employer - self explanatory.
 - (3) Employer identification number - self explanatory.
 - (4) Calendar year - self explanatory.
 - (5) Total tax plus penalty or (decrease) in tax - enter the total amount of lines 13 through 16.
 - (6) Last quarter of this examination - enter the last quarter of the latest calendar year being examined.
- Note:** If multiple years are being examined, the same entry would appear on each Form 4668.
- (7) Examination discussed with - self explanatory.
 - (8) Agreed or unagreed - check the applicable box.
 - (9) Non-IRC 7436 adjustments, IRC 7436 adjustments (worker classification issues) IRC 7436 adjustments (wage issues) - check the applicable box. Since Letter 3523 only includes IRC 7436 adjustments, the non-IRC 7436 adjustments box must never be checked. If Letter 3523 includes both worker classification and IRC 7436 wage issues, separate Forms 4668 must be prepared for each type of adjustment.
 - (10) Line 1 - Enter the combined employer/employee social security and medicare rates (IRC 3101 and IRC 3111) in Column a and the amount of the wages adjustment in Columns b through e.
 - (11) Line 2 - Enter the applicable social security and medicare rates under IRC 3509(a) in Column a and the amount of wage adjustment in Columns b through e.

- (12) Line 3 - Enter the applicable social security and medicare rates under IRC 3509(b) in Column a and the amount of wage adjustment in Columns b through e.
- (13) Line 4 - Enter the applicable social security and medicare rates (IRC 3101 and IRC 3111, if applicable) in Column a and the amount of the adjustment in Columns b through e.
- (14) Line 5 - Enter the applicable income tax withholding rate in Column a and the amount of the wage adjustment in Columns b through e.
- (15) Line 6 - Enter the applicable income tax withholding rate(s) under IRC 3509 in Column a and the amount of the wage adjustment in Columns b through e.
- (16) Line 7 - Enter the applicable rate in Column a and the amount of the payments subject to backup withholding in Columns b through e.
- (17) Line 8 - Use for any adjustment that does not affect an employee's social security or medicare wages.
- (18) Line 9 - Use for any adjustment that does not affect an employee's income tax withholding wages.
 - a. Enter any income tax withholding computed by the taxpayer for the examiner under IRC 3402(b) or IRC 3402(c) on unreported supplemental wages. (This can be abated under IRC 3402(d)).
 - b. Enter any income tax withholding actually deducted and withheld but not reported to the Service. (This is not subject to IRC 3402(d)).
- (19) Line 10 - Compute the social security and medicare taxes for lines 1, 2, 3, or 4 and adjustment for any amounts on line 8.
- (20) Line 11 - Compute the income tax withholding for lines 5 or 6, and adjust for any amounts on line 9.
- (21) Line 13 - Enter the total of lines 10, 11 and 12.
- (22) Line 14 - Enter the amount of penalty under IRC 6651.
- (23) Line 15 - Enter the amount of penalty under IRC 6656.
- (24) Line 16 - Enter IRC section number in space provided for any other penalty and the amount of the penalty in Columns b through e.
- (25) Line 17 - Enter the maximum amount of tax subject to the provisions of IRC 3402(d). If not applicable enter "None". The tax from line 6 (IRC 3509) and any portion of line 9 that is not subject to IRC 3402(d) cannot be abated.

Note: The amount subject to IRC 3402(d) abatement listed in Line 17 INCLUDES amounts allowed by the examiner as part of the examination when using the two-step process described in IRM 4.23.10.16.2, *Examination Procedures for IRC 3402(d) Relief*. If the examiner does not use the two-step assessment process and instead nets the tax due, line 17 must reflect the remaining amount of tax available for abatement.

- (26) Enter the calendar year and the number of employees in the spaces provided in the statement regarding filing Form W-2c. Complete the mailing address.

4.8.10.5.6
(04-20-2018)
**Explanation of
Adjustments**

- (1) As noted previously, the Tax Court has jurisdiction to:
- Review the Service's determination that one or more individuals performing services for the taxpayer are employees,
 - Review the Service's determination that the taxpayer is not entitled to relief under section 530(a) of the Revenue Act of 1978 with respect to those individuals, and
 - Determine the proper amount of employment tax under the above determinations.
- (2) The 30 day letter must contain an explanation of the IRC 7436 issues and the consideration of section 530(a) relief. The Form 886-A (or equivalent) used for the explanation with the 30 day letter must **not** be included with Letter 3523.

4.8.10.5.7
(07-31-2012)
**"Duplicate Original"
Letter 3523 Defined**

- (1) "Duplicate original" Letter 3523, a term used through this text, means an originally signed Letter 3523, that is sent by certified or registered mail. The "duplicate" Letter 3523 may reflect a different address for the taxpayer than the original Letter 3523.
- (2) The Letter 3523 and Form 2504-T (waiver) must show the same name and address and thus, both of these will be originally prepared for each duplicate original. All other forms and attachments may be copies.

4.8.10.6
(04-20-2018)
**Before Issuing the Letter
3523**

- (1) To ensure the accuracy of Letter 3523, a final check of the Letter 3523 will be conducted once the Letter 3523 is prepared but before it is issued to ensure it is legally sufficient.
- (2) This double check of the Letter 3523 is limited to:
- The accuracy of the taxpayer's name, taxpayer identification number (TIN), and address on the letter and the waiver.
 - The proper consideration of the taxpayer's last known address, including the use of multiple addresses, if appropriate.
 - The identification of workers in Table 1 and/or 2.
 - The inclusion of adjustments for compensation paid to corporate officers, as appropriate.
 - The use of the correct forms related to IRC 7436 issues.
 - Verification of the tax per Table 3 and/or Table 4.

4.8.10.6.1
(04-20-2018)
**Mandatory Area Counsel
Review**

- (1) The cases subject to mandatory Counsel review are as follows:
- Burden of proof* - Where the Service will have the burden of proof regarding any issue contained in Letter 3523, such as asserting the civil fraud penalty under IRC 6663 or the fraudulent failure to file penalty under IRC 6651(f).
 - 530 reasonable basis* - Where the taxpayer has met the substantive and reporting consistency requirements of section 530 of the Revenue Act of 1978 ("section 530"), and the disagreement revolves around whether the taxpayer has a reasonable basis.

- c. *Predecessor/successor* - Where the case involves treatment of workers as employees by a predecessor organization and that treatment is being imputed to the current taxpayer as its successor for section 530 purposes.
- d. *\$1,000,000* - Where the proposed amount of employment taxes plus penalties total \$1,000,000 or more for all periods combined.
- e. *Three party arrangements* - Where the case involves a three party arrangement in which workers provide services to one party but are paid by another, regardless of which entity is receiving the notice. Temporary employment agencies and professional employer organizations (PEOs) are common examples of this arrangement. While these cases may be difficult to identify upon review of draft notice, often the taxpayer's name (or the third party's name in the case where the notice is being sent to the client but the file indicates a third party arrangement was involved) will include the word "leasing," "staffing," "personnel," or "temporary."
- f. *Partnerships* - Where the case involves reclassifying workers the taxpayer treated as partners in a partnership, including a limited liability company (LLC).
- g. *Criminal* - Where the civil case is related to a criminal case.
- h. *International* - Where the case involves workers performing services outside of the United States or where Letter 3523 is issued to a taxpayer not located in the United States.
- i. *Governments* - Where Letter 3523 will be issued to a taxpayer that is a government entity, including an indian tribal government.
- j. *Projects* - Where Letter 3523 is issued as part of a project, including any project with an Issue Management Team (IMT) or Emerging Issue Team project. For example, notices issued as part of the Offshore Employee Leasing (OEL) IMT project.

4.8.10.6.1.1
(04-20-2018)
**Area Counsel
Recommendations**

- (1) If Area Counsel suggests changes to the proposed Letter 3523, the following actions will be taken:
 - a. Area Counsel will provide written directions and guidance on how to perfect Letter 3523, if necessary.
 - b. The reviewer will consider Area Counsel's proposed changes and modify Letter 3523 as directed, if in agreement.
 - c. If the reviewer disagrees with Area Counsel's recommendations, the reviewer will discuss the case with his/her group manager. The Technical Services group manager will then discuss the case with the Area Counsel attorney to resolve the disagreement.
 - d. To override Area Counsel's advice, the case file must include a memorandum from the Area Director outlining the reason(s) for not following Area Counsel's recommendations.
- (2) All written communications to/from Area Counsel must be kept in the case file.

4.8.10.6.1.2
(04-20-2018)

**Area Counsel Review
Time Frames**

- (1) Letter 3523 subject to mandatory review must be submitted to Area Counsel with at least 60 days remaining on the ASER. If less than 60 days remain, the Technical Services group manager will call the appropriate Area Counsel to advise him/her of the imminent statute case and to coordinate the case review. The case must be hand delivered, if possible. If hand delivery is not possible, the case will be sent via express mail.
- (2) Area Counsel will return the case to the Technical Services reviewer within 45 days of receipt. The reviewer will follow-up on any case that has been pending in Area Counsel for more than 45 days and document the results on the reviewer's activity record.

4.8.10.6.1.3
(04-20-2018)

**Submitting Cases to
Area Counsel**

- (1) Prepare Form 3210, *Document Transmittal*, and a cover memo to transmit a case to Area Counsel for review of the Letter 3523. The memo will include the following:
 - a. The taxpayer's name and taxpayer identification number,
 - b. The tax period(s) involved,
 - c. The earliest period of limitations date,
 - d. The reason for review of the Letter 3523
 - e. The reviewer's name and contact telephone number,
 - f. The identification of any related cases being submitted for information or related review, and
 - g. Any other information the reviewer feels will assist Counsel in the review of the case.
- (2) The reviewer must clearly mark the case "priority handling" for any imminent statute.
- (3) The reviewer must ensure the case is updated to Review Type 42 and Suspense Code 542 on ERCS to indicate the case is with Area Counsel for review.

4.8.10.7
(04-20-2018)

**Signing and Dating the
Letter 3523**

- (1) IRC 7436 requires the Secretary (of the Treasury) to issue Letter 3523 by certified or registered mail.

4.8.10.7.1
(04-20-2018)

Signing Letter 3523

- (1) As it relates to Technical Services, the Technical Services Territory Manager (TSTM) is delegated to sign and issue a Letter 3523. The TSTM may further delegate this authority to specific individuals within his/her functional area. This is accomplished by way of memorandum, which must be updated periodically for changes in staffing.
- (2) Delegation Order 4-26 in IRM 1.2.43.24, *Delegation Order 4-26 (formerly DO-251)*, delegates authority to sign Letter 3523 to other Service officials.
- (3) Delegated individuals may sign Letter 3523 in any of the following ways:
 - a. Manually sign the name of the specified official followed by the initials of the delegated signing official.
 - b. Imprint the specified official's signature using a signature stamp followed by the initials of the delegated signing official.
 - c. Add the initials of the delegated signing official to the machine-imprinted, specified official's signature.

- d. The specified official may personally sign or imprint his/her signature and title using a signature stamp.
- e. For Letters 3523 produced at correspondence production services print sites, imprint the specified official's signature and title using a machine-imprinting process.

Note: "Signing official" must always be a delegated official pursuant to Delegation Order 4-26. "Specified official" must always be a delegated official pursuant to Delegation Order 4-26 but may, and generally would be, above the organizational level of the "signing official". The "specified official's signature" is the signature of the individual designated by the particular function (e.g., TSTM), which is issuing Letter 3523, by having his/her signature reflected on Letter 3523 as the issuing official.

- (4) Signature stamps are locally procured with only the delegated officials having access. Proper security procedures must be used to prevent unauthorized use.

4.8.10.7.2
(04-20-2018)
Dating Letter 3523

- (1) Two dates are included on the Letter 3523:
 - a. The date the letter is issued - This is the same date the letter is mailed to the taxpayer. See IRM 4.8.10.8.2, *Records of Mailing*, below.
 - b. The last date to petition Tax Court - This date is 90 days after the notice is issued (150 days if the taxpayer is located outside the United States). See Exhibit 4.8.10-1 for details of how to compute this date.
- (2) The reviewer preparing Letter 3523 does not complete either of these dates. Both are completed by the person who mails Letter 3523.

4.8.10.8
(04-20-2018)
Disposition of Copies

- (1) Letter 3523 will generally be prepared in duplicate.
 - a. The original, including all statements and attachments, is sent to the taxpayer by certified mail or registered mail if mailed to a person outside the United States.
 - b. A copy is kept in the case file as evidence that Letter 3523 was sent to the taxpayer. See *Pietanza v. Commissioner*, 92 T.C. 729 (1989). The case file is then suspended by the issuing office pending its ultimate disposition.

4.8.10.8.1
(04-20-2018)
Power of Attorney

- (1) If a Form 2848, *Power of Attorney and Declaration of Representative*, is received by Technical Services, the reviewer must check the representative's status as described in IRM 4.11.55.1.2.2, *POA Not Authorized to Practice Before the IRS*.
- (2) If a taxpayer is represented by a duly authorized power of attorney, a copy of Letter 3523 mailed to the taxpayer will be sent to the representative by regular mail. Letter 937, *Transmittal for Power of Attorney*, is used as the cover letter to transmit the copy of Letter 3523. The enclosure section of the letter must indicate Letter 3523.
- (3) If the power of attorney does not cover all periods in Letter 3523, Letter 3523 must not be sent to the representative. Instead, Letter 4368-A, *Statutory Notice*

Not Sent to Representative - Tax Periods Not Specified - Employment Tax, must be included with the taxpayer's Letter 3523. Letter 4368-A advises the taxpayer why a copy of Letter 3523 was **not** sent to the representative identified on Form 2848. If Form 2848 does not include all periods and a subsequent Form 2848 is submitted by the representative, the subsequent form must be signed by the taxpayer.

- (4) Document the case activity record (Form 9984 or equivalent) for any actions taken regarding the power of attorney that may appear to be in conflict with the Form 2848 instructions, including but not limited to:
 - If a copy of Letter 3523 is not sent to the representative because the Form 2848 does not cover all years included in the notice.
 - If a copy (not the original) of Letter 3523 is sent to the representative but the Form 2848 (pre-March 2004 revision) specifies the original is to be sent to the representative.

4.8.10.8.1.1
(04-20-2018)
**Unenrolled Return
Preparer**

- (1) Under Circular 230, *Regulations Governing Practice before the Internal Revenue Service*, and Treas. Reg. 601.502(b)(5)(iii), an unenrolled return preparer may only represent a taxpayer in the examination process for the tax year or period covered by returns the unenrolled return preparer prepared. An unenrolled return preparer may not represent a taxpayer beyond the examination process.
- (2) A copy of Letter 3523 cannot be sent to an unenrolled return preparer, even if authorized to receive such notice, since they cannot represent the taxpayer beyond the examination process.
- (3) Letter 4369 - A, *Letter 3523 Not Sent to Representative - Limitations to Practice Before the IRS*, will be sent to the taxpayer with the Letter 3523 to notify him/her that a copy of Letter 3523 was not sent to the unenrolled return preparer.

4.8.10.8.2
(04-20-2018)
Records of Mailing

- (1) Each Technical Services Territory Manager must maintain a record of the dates the notices were mailed since:
 - The validity of Letter 3523 could be challenged by the taxpayer.
 - If the Letter 3523 is sent by certified or registered mail, the Tax Court does not have jurisdiction over a case in which the taxpayer files a petition after the 90th day (150th day, if the Letter 3523 is addressed to a taxpayer outside the United States) or, if later, the date shown on Letter 3523 as the last day to file the petition.
 - The Commissioner has the burden of proof in establishing the date of mailing of the Letter 3523.
- (2) The record of certified and registered mailing is maintained on PS Form 3877, *Firm Mailing Book for Accountable Mail*, together with the certified/registered mail numbers, which are supplied by the United States Postal Service.
 - a. Across the first line of each form, type the following or use a stamp to imprint: "Letter 3523, for the tax periods indicated, have been sent to the following taxpayers:"
 - b. The certified/registered mail number is entered along with the name and address of the addressee. Multiple addresses are entered separately.

- c. In the "Remarks" column, enter the tax periods to which the notice is applicable.
- d. The designated employee will stamp the front of the notice envelope with:
Certified Mail No.
Or
Registered Mail No.
- e. The certified/registered number will be entered next to the stamp on the envelope.
- f. The notices and the PS Form 3877 are taken to the Post Office. The Post Office employee will compare the count and numbers used with the envelope notices.
- g. The Service employee will indicate delivery to the Post Office by signing and dating PS Form 3877 as part of the permanent record of mailing. The Post Office employee will insert the postmark on the PS Form 3877.
- h. The receipted forms will be numbered consecutively and retained in separate folders for a period of 10 years. These receipted forms are kept with the receipted forms for statutory notices of deficiency but must never be commingled with any other mailing records.

4.8.10.8.3
(04-20-2018)
**Consequences of an
Incorrectly Mailed Letter
3523**

- (1) If Letter 3523 is incorrectly addressed and/or mailed:
 - a. The taxpayer may raise a challenge that Letter 3523 does not conform with statutory requirements.
 - b. Letter 3523 may be held to be invalid if not mailed to the last known address or if it is not mailed by certified or registered mail, as required. Furthermore, Letter 3523 that is mailed outside the United States by certified mail rather than registered mail may also be held to be invalid.
 - c. If Letter 3523 is invalid and the ASER has expired so that no valid Letter 3523 can be issued, any assessment based on Letter 3523 cannot be made and, if made, must be abated.

4.8.10.9
(04-20-2018)
**Letter 3523 Suspense
Files**

- (1) Letter 3523 cases are suspended 105 days (165 days for taxpayers outside the U.S.) to await taxpayer correspondence, agreement, or notification of a petition with the U.S. Tax Court. The suspense period is comprised of 90 days (150 days for taxpayers outside the U.S.) plus an additional 15 days to determine if a petition was filed with the U.S. Tax Court.
- (2) When a case is received for suspense, the proper ERCS codes must be input. The status code will be updated to Status Code 24, ERCS Review Type 38, and ERCS Suspense Type 538.
- (3) Each case file will be marked with either the issue date or the default date of Letter 3523.
- (4) The case files are then filed by issue date or default date. Within these dates, the cases are filed either alphabetically by taxpayer name or numerically in TIN order. All related returns must remain together filed under the primary entity name or TIN.
- (5) On a monthly basis, the suspense inventory must be reconciled to ensure all returns are where they should be. This can be accomplished through the use of the Inventory Listing Report or the Status Report in ERCS.

- (6) The Inventory Listing Report can generate a complete inventory list, including returns assigned to employees. This report can also generate a partial inventory list of overage cases based on the number of days since the date in review.
- (7) The Status Report generates a list of returns in a single user entered status code. The report can be generated for any review status code, including Status Code 24.

4.8.10.9.1
(04-20-2018)
**Updating the
Assessment Statute
Expiration Date**

- (1) Upon issuance of Letter 3523, a case is updated to Status Code 24 and the period of limitations is recomputed to reflect the maximum tack on time permitted by law for assessment (i.e., as if the notice defaults - 90 or 150 days, plus 60 days for processing). Generally, Exhibit 4.8.10-2, *Defaulted 90 Day Letter Without Form 872-A or SS-10 Consent*, should be used as a guide to recompute the assessment period of limitations. Form 5348 should be prepared to update the recomputed ASED.
- (2) If an agreement is received before the end of the 90 Day (150 Day) period, the ASED should be recomputed a second time. Agreed cases should be a high priority item and closed as soon as possible to avoid having a barred ASED. Exhibit 4.8.10-2, *Agreement Cases with/without Form 872 or SS-10 Consent*, (whichever is applicable) should be used as guidance to recompute the final ASED. Form 5348 should be prepared to update the recomputed ASED.
- (3) If a case is petitioned, the ASED should remain as the updated ASED noted in paragraph 1 above. Under no circumstances will the ASED for a petitioned case be updated back to the original ASED.

4.8.10.9.2
(04-20-2018)
Statute Controls

- (1) The Statute Expiration Reports in ERCS allows the user to print statute expiration notices and create reports to check for pending statutes. Two reports included within the Statute Expiration Reports are:
 - a. Pending Statute Report - Returns are included on this report if the ASED expires within the user entered number of days.
 - b. 895 Report - Returns are included on this report if the ASED expires within the specific number of days set by SB/SE or LB&I. For Technical Services users, the number of days must be in the range 180 to 400. The same number is used in determining if a Form 895 should be generated.
- (2) The Pending Statute Report lists returns with numeric ASED expiration date falling within a variable number of days as entered by the user. This report is useful in calling attention to returns with short ASEDs and determining if a Form 895 should be issued. The report also has a section containing a summary of employees with returns with short statutes.
- (3) The 895 Report generates a listing of returns in review statuses which meet any of the following criteria:
 - The ASED date expires within the number of days determined by the area office or by LB&I,
 - The ASED date is an alpha date (e.g. 04CC2009),
 - The ASED date is a Form 872-A, *Special Consent to Extend the Time to Assess Tax*,
 - The ASED date has already expired, or

- A Form 895 has been issued for the return.

Note: ERCS includes a return on the 895 Report based on the actual ASED date if the ASED is numeric. This means if the ASED has been extended, the extended date is used to determine if the return should be on the report. If the ASED has been changed but not approved, the earlier of the prior ASED or the current ASED is used.

- (4) Technical Services should review the Pending Statute Report on a weekly basis during peak times (January through April) and bi-weekly during the rest of the year. Suspense personnel should ensure that all cases with Letters 3523 are properly in Status Code 24 and have updated ASEDs, as previously discussed.
- (5) Identify and monitor as a "Statute Case" as follows:

| If less than 120 days left on | Then the case is a "Statute Case" and |
|---|---|
| original ASED prior to issuance of Letter 3523, | it must have Letter 3523 issued on or before the original ASED. |
| revised ASED after issuance of Letter 3523 | it must be assessed on or before the revised ASED. |

4.8.10.9.2.1 (04-20-2018) AIMS Table 4.0

- (1) AIMS 4.0 Table is generated monthly and provides:
 - a. A report a list of all returns by status for which the period of limitations will expire in 180 days or less.
 - b. A listing of returns with expired ASEDs.
- (2) Each Technical Services group, including Letter 3523 suspense unit, is expected to reconcile the 4.0 Table with the ERCS Statute Pending Report on a monthly basis. The group should:
 - a. Run the ERCS Statute Pending report and the 895 report on the AIMS Cycle cut-off date (Doc. 6036).
 - b. Work the Table 4.0 report within 10 days of receipt. Once the table is worked, it should be signed and dated by both the manager and the employee designated to work the table.
- (3) Instructions for working the 4.0 Table are contained in IRM 4.4.27.5.1.1, *Procedures for Working Statute Control Report*. At a minimum, the following should be completed:
 - Research the listing on AIMS to eliminate those accounts which have been closed or transferred out.
 - Compare AIMS and ERCS. If AIMS and ERCS do not match, the location of the physical case should be determined and the status code should be updated on the appropriate system.
 - Place a "C" in front of the taxpayer's name if a case has been closed.
 - Place a "T" in front of the taxpayer's name if a case has been transferred,
 - Notify the manager having custody of cases of the early ASED date.

- Identify and verify first ASEDs expiring within 30 days.
- Locate the return/case file for each account appearing for the first time. Place an “R” in front of the taxpayer’s name to indicate that the return has been located.
- Follow established missing return or case file procedures if research shows that the return or case file is missing.
- Perform monthly managerial review of ASED controls after staff reconciliation.
- Sign and date 4.0 Table **in red**. The manager and the employee designated to work the 4.0 Table are both required to sign.
- Retain the table for two years.

Reminder: All corrections and notations on the 4.0 Table must be in **red**.

4.8.10.9.3
(04-20-2018)
Taxpayer Contact

- (1) While the case is in suspense, the taxpayer may:
 - a. Make telephone contact
 - b. Send in correspondence
 - c. Submit additional information
 - d. Request reconsideration
 - e. Appear in person for further discussion
- (2) Any communication with the taxpayer regarding Letter 3523 must clearly state that reconsideration of the case will in no way serve to suspend or extend the 90 day or 150 day period in which a petition may be filed with the United States Tax Court.
- (3) If the taxpayer’s representative calls or comes in to discuss the taxpayer’s account, a valid Power of Attorney (POA) or Tax Information Authorization must be in the file or no information may be furnished. A request may be made to the taxpayer to obtain a completed POA. Without a POA on file, a general explanation of Letter 3523 procedures may be provided.
- (4) It is imperative that all contacts with the taxpayer or power of attorney be documented on the reviewer’s activity record.

4.8.10.9.3.1
(04-20-2018)
Telephone Contact

- (1) When telephone contact is made, the designated contact person will:
 - a. Obtain the taxpayer’s name, TIN, and issue date of the notice,
 - b. Pull the case file,
 - c. Answer routine questions, and
 - d. Refer technical questions to the designated Letter 3523 reviewer.
- (2) Inform the taxpayer that Letter 3523 gives them three options:
 - a. The right to petition the United States Tax Court,
 - b. The right to contact the Taxpayer Advocate Office, and
 - c. The right to agree with the tax deficiency by signing the waiver.
- (3) If the taxpayer does not agree, but does want to stop the continuation of interest, he/she may make a deposit under IRC 6603. Revenue Procedure 2005-18, IRB 2005-13, provides that the payment must be accompanied by a written statement designating the remittance as a deposit (known as a “IRC section 6603 Deposit”).

- (4) It is imperative that all telephone contacts are documented in the case history, and a copy of any written documentation received is placed in the case file.

4.8.10.9.3.2
(04-20-2018)
**Correspondence
Received**

- (1) When correspondence is received, the designated contact person will:
 - a. Date stamp the correspondence,
 - b. Pull the case file, and
 - c. Route the case to the designated Letter 3523 reviewer for technical review.
- (2) Letter 556-A, *Acknowledgement of Protests, Correspondence and Requests for Interviews - Employment Tax*, is to be used to acknowledge receipt of the correspondence if the taxpayer is not contacted by telephone.
- (3) The taxpayer must be clearly informed that reconsideration of the case will not suspend or extend the period for filing a petition with the U.S. Tax Court.
- (4) The reviewer may determine that the case must be sent back to the originating examination group for consideration of additional information.
- (5) If the case is returned to the group, follow the procedures outlined in IRM 4.8.10.9.3.4 below.

Note: Any time a case is pulled from the notice suspense file and transferred to a reviewer, the employee code on ERCS is updated. This is an important step in order to keep track of all cases. The case is still maintained in Status Code 24 unless or until it is forwarded out of Technical Services. If the case is returned to the group it is sent back in Status Code 12 and a “dummy” file is prepared to enable the 90 day suspense personnel to monitor the case for either default or petition.

- (6) All contacts and actions taken on the case after Letter 3523 is issued must be recorded in the case file.

4.8.10.9.3.3
(04-20-2018)
**Additional Information
or Appointment
Requested**

- (1) When the taxpayer submits additional information or requests an appointment, the designated contact person will:
 - a. Route the case back to the designated Letter 3523 reviewer to determine the appropriate course of action,
 - b. Annotate the date, action taken, and who initiated the action on both the control card and the ASER control card files, and
 - c. Update the appropriate ERCS employee code when the case is sent out of the 90 day Suspense area.
- (2) All 90 day cases must be returned to the 90 day suspense area for final disposition.

| IF | THEN |
|------------------------|---|
| Agreement received, | <ol style="list-style-type: none"> 1. Close all notice controls, 2. Update ASED, and 3. Forward for assessment. |
| No agreement received, | <ol style="list-style-type: none"> 1. Suspend awaiting default, 2. Follow default procedures if default date has passed, and 3. Follow petition procedures if a petition is filed. |

4.8.10.9.3.4
(04-20-2018)

Case Returned to the Group

- (1) If the designated Letter 3523 reviewer determines that a case must be returned to the group for consideration of the correspondence and/or information received, the reviewer will prepare a Form 3990, *Reviewer's Report*, to transmit the case to the group. The Form 3990 must instruct the group to return the case to Technical Services as soon as their reconsideration is complete or prior to the default date. The Form 3990 must also instruct the group that the taxpayer must be informed during each contact (both verbal and written) that reconsideration does not suspend or extend the time to file a petition with the United States Tax Court.
- (2) Because the ASED has already been updated to reflect the maximum assessment date (based on a default), the group must be cautioned about the ASED, particularly for those cases for which Letter 3523 was issued with little time remaining on the normal ASED.
- (3) The Form 3990 must include a detailed explanation of the ASED shown on the AIMS/ERCS system. The following sample paragraphs may be used for this purpose:

"Letter 3523 issued to the taxpayer is enclosed in the file for your information. **Please do not disturb, destroy, or alter Letter 3523.** It must remain on the front of the case file when the case is closed from the group after the reconsideration. Refer to IRM 4.10.8.7.1, *90-Day Pre-Assessment Cases*, for the applicable procedures to follow for the audit reconsideration.

CAUTION REGARDING THE ASSESSMENT STATUTE: If the taxpayer neither agrees nor petitions the Tax Court by the last date to file a petition shown on Letter 3523 in the case file, then the last day for assessment of the additional tax shown on Letter 3523 is MM-DD-YYYY. AIMS/ERCS has already been updated to reflect this date.

If the taxpayer signs an agreement prior to the last day to file a petition shown on Letter 3523, then the 90 or 150 day period stops and the ASED is suspended from the date Letter 3523 was issued until the date the agreement is received by the Service plus an additional 60 days for the assessment to be processed. Therefore, if the taxpayer signs an agreement form during the audit reconsideration, it is important to return the case promptly to Technical Services so the assessment can be made prior to the expiration of the suspended period of limitations. See Exhibit 4.8.10-2 for additional information."

- (4) After the Form 3990 is prepared, the case file and Reviewer's Report should be given to the Group Manager for signature.

- (5) Once the manager approves the Reviewer's Report, the case should be given to the notice suspense unit for preparation of a "dummy file". This file is used as a back-up in the event it becomes necessary to make an immediate assessment and is filed in the suspense files. The file should include:
 - a. A copy of the tax return,
 - b. A complete copy of Letter 3523,
 - c. A copy of the most recent Form 5344, and
 - d. A copy of the Reviewer's Report transmitting the case back to the group.
- (6) Once the group has completed work on the case, it should be returned directly to the reviewer. The Letter 3523 reviewer is responsible for notifying the taxpayer of the final outcome of the reconsideration via Letter 555-A, *Reconsideration After Statutory Notice - Employment Tax*, or Letter 645-A, *No Change - After Letter 3523 Issued*.
- (7) The reviewer will then return the case to the notice suspense unit to either close the case if agreed or no-changed, or to continue suspending the case if the 90 day (150 day) suspense period has not expired. The notice suspense unit will destroy the dummy file when the original case file has been returned, ensuring that Letter 3523 still remains with the case file.

4.8.10.9.3.5 (04-20-2018)

Taxpayer Requests Transfer of 90 Day Letter Case

- (1) If the taxpayer requests transfer of a Letter 3523 to another area, the area that issued Letter 3523 may transfer the case.
- (2) Associate the correspondence with the case file and forward the file to designated Letter 3523 reviewer to approve and provide instructions.
- (3) Technical Services staff will update ERCS for the transfer per the reviewer's instructions and mail the case via Form 3210, *Document Transmittal*.

4.8.10.10 (04-20-2018)

Undeliverable Letter 3523

- (1) Letter 3523 forwarded by certified mail and returned by the U.S. Postal Service because the addressee has moved and left no forwarding address, is considered undeliverable.
- (2) Letter 3523 returned by the U.S. Postal Service stamped "unclaimed" or "refused" is generally not considered undeliverable. These cases will be referred to the designated technical person.
- (3) Any time Letter 3523 is returned undeliverable or unclaimed, a determination of the taxpayer's correct address will be made. Documentation of the research is required to be maintained in the case file.
- (4) The following procedures are performed for undeliverable Letters 3523. Also, see IRM 4.10.2.7.2.1, *Undeliverable Initial Contact Letters*.
 - a. Date stamp the returned envelope and associate the undeliverable Letter 3523 with the case file.
 - b. Check the envelope for a change of address annotated by the U.S. Postal Service.
 - c. Check all addresses on all Letters 3523 issued. Often, multiple duplicate original Letters 3523 were issued to more than one address.
 - d. Check the telephone and/or city directory addresses to confirm the address.

- e. Research for a new address using in-house address information and outside locator services.
- f. Print INOLES and check the file to determine that Letter 3523 was correctly addressed to the last known address of the taxpayer. If the INOLES address is the same as the one used on the Letter 3523, a copy of the INOLES should be stapled to the bottom of the top page of the letter and the case should be returned to the notice suspense unit. If the INOLES address or the address from research in (b) through (e) above is different than the one used on the Letter 3523, the case should be returned to the designated Letter 3523 reviewer to determine if the letter should be reissued.

(5) The following procedures are performed for unclaimed or refused Letters 3523:

- a. Date stamp the return envelope and associate the unclaimed or refused mail with the case file.
- b. Check the envelope for a change of address annotated by the U.S. Postal Service.
- c. Print INOLES and recheck the file to determine that the letter was correctly sent to the last known address of the taxpayer.
- d. Print a copy of the INOLES and staple it to the bottom of the top page of the letter and return the case to suspense if the address is the same on the INOLES as the notice.
- e. Return the case to the designated reviewer for re-issuance if the address is different on INOLES and the address was updated before the issuance of Letter 3523. If sufficient time does not remain on the period of limitations to reissue Letter 3523, then upon expiration of the suspense period, the proposed adjustments will be assessed by default (absent a petition or an agreement).

(6) Based on the information secured using the above process steps, either reissue the notice, as specified below, or allow it to default.

4.8.10.10.1
(07-31-2012)

**Internal Address
Information**

- (1) Review the AIMS Weekly Update Report for possible address changes. Codes 18 and 19 show new addresses updated to Master File.
- (2) Request CFOL and IDRS research on both the business TIN and the individual SSN (for unincorporated businesses) using command codes INOLES, SPARQ, IRPTRO, BMFOLE/IMFOLE, ENMODA, and TELER (taxpayer's telephone number) to call the taxpayer to obtain a corrected address.
- (3) Contact Collection (Insolvency function) if the taxpayer is in bankruptcy.

4.8.10.10.2
(04-20-2018)

New Address Found

- (1) If a new address is obtained that was changed on IDRS prior to the issuance of the original Letter 3523 and there is sufficient time remaining on the regular ASER, Letter 3523 must be reissued by certified or registered mail. The period in which the taxpayer may petition the Tax Court starts with the date the new Letter 3523 is mailed.
- (2) If a new address is obtained that was changed on IDRS subsequent to the issuance of the original Letter 3523, Letter 3523 must be re-mailed.
 - a. The envelope in which the letter was originally mailed and Letter 3523 itself must be closed with the case file.

- b. The envelope, letter, and research performed will be part of Letter 3523. This documentation will establish that the Service complied with the law and mailed the notice by certified or registered mail to the taxpayer's last known address.

4.8.10.10.3
(04-20-2018)
**Unable to Locate
Taxpayer**

- (1) The address on Master File will be considered the taxpayer's last known address if the taxpayer cannot be located or a new address is not provided or verified by the taxpayer. If research shows no later address, the envelope in which Letter 3523 was originally mailed and Letter 3523 will be securely stapled in the taxpayer's file as evidence that the Letter 3523 was sent by certified or registered mail to the taxpayer's last known address. However, the case must not be defaulted until the 105 day or 165 day suspense period has ended.

4.8.10.11
(04-20-2018)
**Protests Received After
Issuance of the Letter
3523**

- (1) If a protest is received, the designated Letter 3523 reviewer will review the protest to determine if it is sufficient. The reviewer will also coordinate with the Appeals office to determine if Appeals will accept the case file for consideration given that a Letter 3523 has already been issued. This is particularly important for cases with less than 180 days remaining on the ASER. See IRM 4.10.8.11, *Unagreed Case Procedures: (SB/SE Field and Office Examiners only)*.
- (2) For other correspondence, the designated reviewer will determine what necessary action must be taken, if any, and will communicate this determination to the taxpayer and/or representative.

4.8.10.11.1
(04-20-2018)
**Delinquent Return
Secured**

- (1) If the taxpayer in a non-filer case provides a completed tax return after Letter 3523 is issued, treat the return as "substantial documentation" and follow normal examination reconsideration procedures. This applies whether or not an assessment has been made (TC 290 or 300), unless a petition has been filed with the Tax Court.
- (2) If a petition has been filed with the Tax Court, the delinquent return will be transmitted to the appropriate Appeals Office that serves the Area making the determination of the tax liability.
- (3) The period of limitations must be updated to correctly reflect the receipt of the delinquent return.

4.8.10.12
(04-20-2018)
**United States Tax Court
Petition Filed**

- (1) A petition is a taxpayer's request to the Tax Court for a redetermination of the determinations set forth in the Letter 3523. A petition for a Letter 3523 must be filed within 90 days (150 days if addressed to a person outside the United States) of the date Letter 3523 was issued, if mailed by certified or registered mail.
- (2) A docketed case is a tax case assigned a docket number in the U.S. Tax court.
- (3) Taxpayers may elect to have their case conducted under the Court's simplified small tax case or **S** case procedures. Trials in small tax cases are generally less formal and result in speedier disposition. However, decisions entered pursuant to small tax case procedures cannot be appealed. Taxpayers may elect small tax case procedures for tax disputes involving \$50,000 or less (including tax and penalties) for any one taxable period.

- (4) A regular case is any case where the petitioner does not affirmatively request small tax case procedures and any case where the court removes the S designation.
- (5) Technical Services notice suspense units are responsible for monitoring the docket list to determine if a petition is filed in response to a Letter 3523. If a petition is filed, the case must be located, processed for closing and transmitted to Appeals within ten (10) calendar days of the receipt of the docket list.

4.8.10.12.1
(04-20-2018)
**Petition Mailed to IRS
Office**

- (1) Occasionally, the taxpayer or representative mails a petition to the IRS, specifically to the office that issued Letter 3523 (e.g., Technical Services), rather than to the U.S. Tax Court.
- (2) If the petition is received before the expiration of the 90 day (150 day) period, the petition must be mailed by Technical Services to the Tax Court using regular mail that is postmarked on or before the 90 day period expires. The petition must be sent under cover of transmittal Letter 4370-A, *Petition Transmittal to the US Tax Court*, to the Tax Court. The taxpayer must be sent Letter 4371-A, *Petition Forwarded to the Tax Court*, to inform him/her the petition was forwarded.
- (3) If Technical Services receives the petition past the 90 day (150 day) period (even if the petitioner's envelope is postmarked before the 90th or 150th day) or it cannot be postmarked by the IRS prior to the expiration of the 90 day (150 day) period, Technical Services will return the petition to the taxpayer indicating that the document was mistakenly mailed to the wrong address. Letter 4372-A, *Petition Returned to the Taxpayer*, is used for this purpose.

Example: If Technical Services receives a petition on the 90th (150th) day, but by the time it is processed through the clerical staff, the 90th (150th) day has passed, the petition will be returned to the taxpayer.

- (4) Technical Services must not forward a petition to the Tax Court if the 90 day (150 day) period has already expired.

4.8.10.12.2
(07-31-2012)
Importance of Timing

- (1) The United States Tax Court requires the filing of an "answer" by the Commissioner of Internal Revenue in response to petitions in all docketed cases.
- (2) Employees responsible for monitoring the docket list must be aware of and take all necessary actions to ensure Counsel receives docketed case files with sufficient time remaining to meet the due date established by the U.S. Tax Court to answer the petition.
- (3) The "answer due date", or the time within which the petition must be answered, is set by the Tax Court at sixty (60) days from the date the petition is served on the IRS. The answer due date for small tax case petitions is the same as it is for regular tax case petitions.
- (4) Counsel needs time to prepare its answer, therefore Appeals must ensure the cases are received in Counsel no later than twenty (20) days prior to the answer due date.
- (5) In order to meet these time frames, it is imperative that Technical Services employees timely identify, locate and process petitioned cases to the appropriate Appeals office.

4.8.10.12.3
(07-31-2012)
**Identifying Petitioned
Cases**

- (1) The docket list is a list of cases docketed by the U.S. Tax Court.
- (2) Once a petition is received by the Tax Court, it is given a number, processed and then served on the IRS.

4.8.10.12.3.1
(04-20-2018)
**Tax Litigation Counsel
Automated Tracking
System**

- (1) After the Tax Court serves the taxpayer's petition(s) to the Commissioner, the docket list is established by the Docket and Records Branch, Legal Processing Division, in the Office of the Associate Chief Counsel (Procedures and Administration) directly on the Tax Litigation Counsel Automated Tracking System (TLCATS). Once entered on TLCATS, the petitions and files are mailed to the assigned Appeals offices. Additionally, a hard copy of the list is e-mailed as an attachment to employees in the various operating divisions/functions who are members of an e-mail distribution list maintained by Counsel.
- (2) The hardcopy docket list shows:
 - Docket list number
 - Date list prepared by Counsel
 - Date petitions served on IRS
 - Docket number for each case
 - Letter 3523 date
 - Taxpayer(s) name, address, and TIN(s)
 - Years petitioned
 - Postmark date
 - Source of Letter 3523, if known (office that issued)
 - Appeals office
 - Area Counsel office
- (3) In addition to creating and distributing the hardcopy docket list by e-mail, Counsel also posts the docket list as a file to a server.
- (4) The hardcopy docket list is one method of identifying taxpayers who have filed petitions to the U.S. Tax Court.
- (5) One advantage of the hardcopy docket list is the speed of delivery. The docket list is usually generated within one or two business days of when the petitions are received. Since the list is then disseminated via e-mail to the users on the distribution list, it is received no more than three (3) business days from the petition's receipt.
- (6) One disadvantage of the hardcopy docket list is that the list includes the petitions for all Areas and are in docket number order only. Therefore, all users get the same listing and must go through each page to locate the petitions for the cases they control or need to locate.
- (7) For more detailed information concerning TLCATS, refer to IRM 30.7.1, *Management Systems; Information Systems*.

4.8.10.12.3.2
(07-31-2012)
**Docketed Information
Management System**

- (1) The Docketed Information Management System (DIMS) is an automated Appeals program similar to the docket list.
- (2) Appeals downloads the docket list file from the server and posts it on its automated system, DIMS, a sub-system of the Appeals Centralized Database System (ACDS).

- (3) The DIMS system is available to both Appeals and non-Appeals employees responsible for issuing and monitoring notices or letters containing Tax Court rights. Access to DIMS is obtained through the Online 5081 process.
- (4) The DIMS system listing is another method of identifying taxpayers who have filed petitions to the U.S. Tax Court.
- (5) One advantage of the DIMS system over the hardcopy docket list is that users are able to print either the entire list or sort the list so that it contains only the cases they control or need to locate.
- (6) One disadvantage of the DIMS system is that it is produced after the hardcopy docket list.
- (7) For more detailed information concerning DIMS, refer to IRM 8.4.1, *Appeals Docketed Cases, Procedures for Processing and Settling Docketed Cases*.

4.8.10.12.3.3
(07-31-2012)

U.S. Tax Court Website

- (1) The last method of identifying docketed cases is through the U.S. Tax Court website (<http://www.ustaxcourt.gov>). This method is used for 90 day (150 day) cases that are not otherwise identified as petitioned on the hardcopy docket list or the DIMS list. These cases would be defaulted and processed for assessment. Before the cases are closed to Centralized Case Processing, each defaulted taxpayer is checked against the taxpayer database on the Tax Court website.
- (2) On the website's home page, select the tab titled "Docket Inquiry."
- (3) The Docket Inquiry screen allows the user to search by docket number, individual party name, or corporate name keyword. Since this method is used primarily as a safe guard for defaulted cases, the docket number is usually not known.
- (4) The Docket Inquiry page also has a Docket Inquiry Help link that will provide information on how to use the search functions. The help resource does not provide a topical search database. It merely provides general information on how to use each of the three search functions.
- (5) The Individual Party Name search page asks for the taxpayer's last name, first name, middle initial, and state code.
- (6) The Corporate Name Keyword asks for at least one keyword. The page also includes a link to a list of excluded keywords that cannot be used in the keyword search.
- (7) Docket records are available on the website for cases filed on or after May 1, 1986. The docket entries are updated Monday through Friday at approximately 6:00 p.m.
- (8) The advantage to this method is that it ensures the most diligent search possible and helps to prevent a situation in which Technical Services must re-establish a closed case because a petitioned taxpayer is untimely identified.
- (9) The disadvantage to this method is that it requires a direct search by taxpayer name, and each individual taxpayer must be searched separately.

4.8.10.12.4
(07-31-2012)
**Processing Petitioned
Cases**

- (1) Technical Services Notice Suspense Unit personnel are expected to use the DIMS generated docket list to pull up docketed case lists in numerical (and consequently, chronological) order. DIMS is the preferred method because users can sort the list so that it contains only the cases they control or need to locate. This, in turn, reduces the overall time needed to identify petitioned taxpayers.
 - a. While the use of DIMS is required, Technical Services personnel may also use the hardcopy docket list and/or the Tax Court website.
 - b. Using multiple methods to identify petitioned taxpayers increases Technical Services' ability to identify all petitioned cases. This helps prevent the need to re-establish prematurely closed cases where Technical Services was notified of the petitions after the cases defaulted.
- (2) Upon retrieval, the docket list will be date stamped.
- (3) Determine the taxpayer(s) who have filed petitions. Perform research on all taxpayers containing the unique office code, as well as those with "unknown" office codes.
- (4) The "unknown" cases are taxpayers without a pre-determined Area office code. Research should be conducted to determine which office these taxpayers are assigned to.
- (5) Within ten (10) calendar days of receiving the docket list, the cases must be located, processed for closing and transmitted through Technical Services to the Office of Appeals.
 - a. Notice Suspense Unit personnel will locate the case file, close out all controls, and forward the case file to the appropriate office. The docket list will be annotated to indicate the specific action taken on the case and the date.
 - b. If a case has been transferred to another area, notify that area or the transfer, and give them the date the petition was filed, the name of the petitioner, and the year(s) involved. A copy of the docket list page identifying the taxpayer and the tax year(s) should be forwarded to the area where the case was transferred.
 - c. If it is determined that the case is physically located in another area or campus, telephone the office having physical possession of the case to inform them that the taxpayer has petitioned the Tax Court. The docket list number and petition date must be provided.
- (6) After closing the case, it must be forwarded immediately to Appeals (hand carried whenever possible) to obtain immediate acknowledgement of the transmittal, via Form 3210.
- (7) At the end of each month, the Form 3210 tickler file will be reviewed and follow-up actions must be taken on any Form 3210 for which Part 4 has been outstanding for 30 days or more. This is done to determine whether the cases were received by Appeals and/or to determine why Part 4s were not returned.
- (8) When the Appeals acknowledgment copy is received, destroy the tickler file copy and replace it with the Appeals acknowledgment copy. The Appeals acknowledgment copy will be kept for one year from the date of receipt.

4.8.10.12.5
(07-31-2012)

Unlocatable Case Files

- (1) If the case cannot be physically located within three days of receipt of the docket list, prepare Form 5348, *AIMS/ERCS Update (Examination Update)*, to input Freeze Code "Q" on AIMS. Any area attempting to update the status of the "Q" freeze coded case will forward the case to Technical Services' suspense file area upon notification of the freeze code. When the case is located, reverse the "Q" freeze code via a Form 5348.

4.8.10.12.6
(04-20-2018)

Status 90 Cases

- (1) Occasionally, a case appearing on the docket list has already been defaulted, tax assessed and closed out to the Campus file area. AIMS research will indicate Status Code 90. If this occurs, Technical Services is responsible for preparing Form 3177, *Notice of Action for Entry on Master File*, to input CC STAUP (15 cycles) to prevent the issuance of balance due notices to the taxpayer.
- (2) When a docketed case that is in AIMS Status Code 90 is identified, a current printout of a full AMDISA or TXMOD must be secured. This printout will be attached to a copy of the appropriate page of the docket list and will be forwarded to Appeals via Form 3210. Appeals will also be notified that the STAUP has been input to stop the notices. APPEALS WILL BE RESPONSIBLE FOR MONITORING THE STAUP TO INCREASE/DECREASE THE NOTICE SUPPRESSION TIME FRAME AND FOR RETRIEVAL OF THE CASE FILE FROM CAMPUS.
- (3) Examination must build a file that will include:
 - a. Full AMDISA and TXMOD prints of all docketed tax periods;
 - b. A copy of the page in the docket list identifying the taxpayer, tax periods, docket number and Appeals Office;
 - c. Photocopy of the closed control card showing the date Letter 3523 was issued; and
 - d. Form 5348 requesting CC AMSTUR, Status Code 24.
- (4) If no data is available, the file will include:
 - a. TXMOD and/or MFTRA print of the docketed tax periods which verify the TIN and reflects an examination closure,
 - b. Record of CC AM 424 request to create an AIMS database, and
 - c. A copy of the page on the docket list identifying the taxpayer, tax periods, docket number, and Appeals Office.
- (5) The file will be sent to the closing function for suspense until 40 days before the Status Code 90 date.
- (6) At the end of the 40-day period, the closing function will:
 - a. Re-establish the case using Form 5348, CC AMSTUR,
 - b. Prepare Form 5344, *Examination Closing Record*, to close the return to Appeals. Since the examination results contain the now unagreed to assessment, an amount of \$1 must be entered in Item 18 to prevent a duplication of examination results.
 - c. Route the AIMS print, verifying Appeals status, to Appeals for association with the file.
 - d. APPEALS WILL REQUEST ABATEMENT OF THE ASSESSMENT.

4.8.10.13
(04-20-2018)
Defaulted Notices

- (1) It is the responsibility of Technical Services to take the necessary actions to ensure the assessment of the underpayment on any defaulted Letter 3523 is made within the statutory period for assessment.
- (2) If the taxpayer does not petition the Tax Court or agree to the underpayment within 90 days (150 if addressed to a person outside the United States), the case is considered to be defaulted. The underpayment is to be assessed immediately after the requisite number of days (105 or 165) have passed from the date of the issuance of Letter 3523.
- (3) Assessment of the underpayment on any defaulted case must be made within the statutory period. Per Treas. Reg. 301.6503(a)-1, the period of limitation on assessment and collection of any deficiency (or in this case, proposed assessment on Letter 3523) is suspended for 90 days (150 days, if addressed to a person outside the United States) after the mailing of a notice of such deficiency (or in this case, Letter 3523) plus an additional 60 days thereafter. Do not count Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day.
- (4) Close out all controls and forward the defaulted case for closure to Centralized Case Processing (CCP) in Status Code 51.

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Exhibit 4.8.10-1 (04-20-2018)

Computation of Last Day to File a Petition with United States Tax Court and Computation of Default Date

Computation of Last Day to File a Petition with United States Tax Court

| Description | Julian Date | Calendar Date |
|--|-------------|---------------|
| Letter 3523 Issued | | |
| Plus 90/150 days | + _____ | + _____ |
| for 90/150 day letter | | |
| Equals Last Day to File a | | |
| Petition with Tax Court | | |
| | ===== | ===== |
| Note: Saturday, Sunday or a legal holiday in the District of Columbia is not counted as the last day. | | |

Computation of Default Date

| Description | Julian Date | Calendar Date |
|----------------------------------|-------------|---------------|
| Letter 3523 Issued | | |
| Plus 90 (150) days | | |
| for 90 day letter | + | + |
| Plus 15 days for Notification of | | |
| Tax Court Petition | + _____ | + _____ |
| Equals Default Date | ===== | ===== |

Caution: Letter 3523 MUST be sent by certified or registered mail for the information in the exhibit to be correct.

Exhibit 4.8.10-2 (04-20-2018)**Assessment Statutes:****Agreed Case Without Form 872-A or SS—10 Consent****Agreed Case With Form 872-A or SS-10 Consent****Defaulted 90 Day Letter Without Form 872-A or SS-10 Consent****Defaulted 90 Day Letter With Form 872-A or SS-10 Consent**

Agreed Case Without Form 872-A or SS-10 Consent: If the taxpayer agrees to the tax before the end of the 90 days, then the ASED is extended by the number of days suspended plus 60 days.

| Description | Julian Date | Calendar Date |
|---|--------------|---------------|
| Date Agreement is received | 80 | March 21 |
| Minus date 90/150 day letter is issued | – 15 | January 15 |
| Equals number of days suspended from assessing | 65 | |
| Plus 60 days to assess | + 60 | + 60 |
| Equals number of days to add to original ASED | 125 | |
| Julian date of original ASED, including any Form 872 or SS-10 extension | + 105 | April 15 |
| Julian date of corrected ASED | 230 ===== | August 18 |

Agreed Case With Form 872-A or SS-10 Consent: A Letter 3523 terminates any additional extension of time granted by Form 872-A or SS-10. If the taxpayer agrees, the ASED date is extended for 60 days from the agreement received date. This is allowed by law to process the assessment.

| Description | Julian Date | Calendar Date |
|-------------------------------|-------------|---------------|
| 1. Date Agreement is received | 194 | July 13 |
| 2. Plus 60 days to assess | + 60 | + 60 |
| 3. Equals Extended ASED | 254 | September 11 |
| | | |
| | | |

Defaulted 90 Day Letter Without Form 872-A or SS-10 Consent: If the taxpayer does not petition the Tax Court or agree to the tax assessment by signing a waiver, the case is closed as unagreed. The tax can then be assessed because the taxpayer has defaulted (i.e., has not responded to Letter 3523 (90/150 Day Letter) by agreeing to the assessment or petitioning the Tax Court). The ASED will be extended for the 90/150 days the case was suspended plus 60 days allowed by law to process the assessment.

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Exhibit 4.8.10-2 (Cont. 1) (04-20-2018)

Assessment Statutes:

Agreed Case Without Form 872-A or SS—10 Consent

Agreed Case With Form 872-A or SS-10 Consent

Defaulted 90 Day Letter Without Form 872-A or SS-10 Consent

Defaulted 90 Day Letter With Form 872-A or SS-10 Consent

| Description | Julian Date | | Calendar Date | |
|--------------------------------------|-------------|----------|---------------|----------|
| Original ASED date | 105 | | April 15 | |
| Plus 90 (150) days for 90 day letter | + 90 | (or 150) | + 90 | (or 150) |
| Plus 60 days to assess | + 60 | | + 60 | |
| Equals extended ASED | 255 | | September 12 | |

Defaulted 90 Day Letter With Form 872-A or SS-10 Consent: The issuance of Letter 3523 terminates any additional extension of time granted by Form 872-A or SS-10. If the notice defaults, the ASED date is extended for the 90/150 days the case was suspended plus 60 days allowed by law to process the assessment.

| Description | Julian Date | | Calendar Date | |
|--------------------------------------|-------------|----------|---------------|----------|
| Date 90 (150) Day Letter issued | 105 | | April 22 | |
| Plus 90 (150) days for 90 day letter | + 90 | (or 150) | + 90 | (or 150) |
| Plus 60 days to assess | + 60 | | + 60 | |
| Equals extended ASED | 255 | | September 19 | |

