



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.12.1

OCTOBER 5, 2010

## PURPOSE

- (1) This transmits revised IRM 4.12.1, *Nonfiled Returns, Nonfiled Returns*.

## BACKGROUND

- (1) This IRM details examination procedures for handling nonfiled returns.

## MATERIAL CHANGES

- (1) The chapter title has been modified to remove the term “handbook.”
- (2) This IRM has been revised throughout to provide clarifications, technical and procedural updates, website and reference updates, and a more in-depth discussions on nonfiler topics. These modifications have resulted in the renumbering of several sections. Listed in the table below are the significant changes:

IRM Reference	Description of Changes
IRM 4.12.1.5.1 IRM 4.12.1.5.6 IRM 4.12.1.5.6.1	Added new content regarding pre-contact analysis and renumbered remaining sections.
IRM 4.12.1.6 IRM 4.12.1.6.1 IRM 4.12.1.6.2	Added new content to provide additional guidance on income probes and renumbered remaining sections.
IRM 4.12.1.7 IRM 4.12.1.7.1 IRM 4.12.1.7.2	Added new content to address fraud considerations and renumbered remaining sections.
IRM 4.12.1.10 IRM 4.12.1.10.1	Add new content to address processing secured delinquent refund returns and renumbered remaining sections.
IRM 4.12.1.11 IRM 4.12.1.11.1 IRM 4.12.1.11.2 IRM 4.12.1.11.3 IRM 4.12.1.11.4	Added new content to provide additional guidance regarding penalties on nonfiled returns and renumbered remaining sections.
IRM 4.12.1.12	Added new content to provide additional guidance regarding preparer penalties.
IRM 4.12.1.13	Added new content regarding return filing checks for other returns required to be filed and renumbered the remaining sections.
IRM 4.12.1.18	Added new content regarding Form 5471 and renumbered the remaining sections.
IRM 4.12.1.23	Added new content to provide information regarding High Income Nonfiler (HINF) cases.

IRM Reference	Description of Changes
IRM 4.12.1.24	Added new content to address the married filing joint election.
IRM 4.12.1.25	Added new content to provide additional information regarding No show/No response Non-filer cases.
IRM 4.12.1.26	Added new section to provide additional information regarding activity codes that should be used.
IRM 4.12.1.27	Added new section providing additional information on how to close delinquent returns from the group.
IRM 4.12.1.28	Added new section to address collection of tax.
Old 4.12.1.5.4	Removed this section regarding Unincorporated Business Property IRC 761A no longer applicable.
Old 4.12.1.5.6.1	This content regarding jurisdiction of international returns was moved to new IRM 4.12.1.17.
Old 4.12.1.5.11	Removed this section regarding Coordinated Examination Program (CEP) because it is no longer applicable.
Old 4.12.1.12	Removed this section and added this content into 4.12.1.11.4.

**EFFECT ON OTHER DOCUMENTS**

IRM 4.12.1 dated (07-01-2001) is superseded.

**AUDIENCE**

SB/SE Compliance

**EFFECTIVE DATE**

(10-05-2010)

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4.12.1

Nonfiled Returns

## Table of Contents

- 4.12.1.1 Overview
- 4.12.1.2 Source of Cases
- 4.12.1.3 Enforcement Period
  - 4.12.1.3.1 Management Approval
- 4.12.1.4 Discovery of Nonfiling
- 4.12.1.5 Pre-Contact Analysis
  - 4.12.1.5.1 Contacting the Taxpayer
  - 4.12.1.5.2 IDRS Research
  - 4.12.1.5.3 Collectibility Considerations
  - 4.12.1.5.4 Statute Considerations
  - 4.12.1.5.5 Establishing AIMS Control
  - 4.12.1.5.6 Locating the Taxpayer
    - 4.12.1.5.6.1 Third-Party Contacts
- 4.12.1.6 Income Probes (Nonfilers)
  - 4.12.1.6.1 Minimum Income Probes on Nonfilers
  - 4.12.1.6.2 Forms 8300 and Currency Transaction Reports
- 4.12.1.7 Fraud Considerations
  - 4.12.1.7.1 Fraud Indicators Present
  - 4.12.1.7.2 Affirmative Acts (Firm Indication) of Fraud
    - 4.12.1.7.2.1 Indications of Fraud Absent
- 4.12.1.8 Preparation of the Return(s)
  - 4.12.1.8.1 SFR TC 150 Posted
  - 4.12.1.8.2 IRC 6020(a)
    - 4.12.1.8.2.1 IRC 6020(b)
  - 4.12.1.8.3 Establishment on Masterfile
  - 4.12.1.8.4 Substitute for Return
- 4.12.1.9 Examination of a Secured Delinquent Return
  - 4.12.1.9.1 Additional Examination Techniques
- 4.12.1.10 Refund Returns- SFR TC 150 Posted
  - 4.12.1.10.1 Claim Case
    - 4.12.1.10.1.1 Claims for Refunds where a SFR TC 150 has not posted
  - 4.12.1.10.2 Delinquent Returns Received after Statutory Notice Issued
  - 4.12.1.10.3 Delinquent Return Secured-with Reported Tax or Reasonable Cause in Question
  - 4.12.1.10.4 No Return Secured- Agreed Closure IRC 6020(a)

- 
- 4.12.1.10.5 No Return Secured - Unagreed Closure
  - 4.12.1.10.6 No Return Secured - Refund Years
  - 4.12.1.10.7 No Return Secured - No Filing Requirement/Little or No Tax Due
  - 4.12.1.10.8 No Return Secured - Year(s) Outside Enforcement Period
  - 4.12.1.11 Penalties on Nonfilers
    - 4.12.1.11.1 Minimum Failure to File - IRC 6651(a)
      - 4.12.1.11.1.1 Failure to File a Tax Return - IRC 6651(a)(1)
      - 4.12.1.11.1.2 Fraudulent Failure to File - IRC 6651(f)
      - 4.12.1.11.1.3 Estimated Tax Penalty
    - 4.12.1.11.2 IRC 6020(b) Certification for a Substitute for Return
    - 4.12.1.11.3 Failure to Pay Certification on BMF SFRs
    - 4.12.1.11.4 Penalty Abatements and Re-assessments
  - 4.12.1.12 Preparer Penalties and Delinquent Returns
  - 4.12.1.13 Other Nonfiled Returns
  - 4.12.1.14 Information Report
  - 4.12.1.15 Failure to File Certain Information Returns (Other than TE/GE) or Furnish Certain Statements
  - 4.12.1.16 Nonfiled Returns Involving Related Cases/Spin-Offs
    - 4.12.1.16.1 Delinquent Corporation, S-Corporation and Officers/Shareholders returns
    - 4.12.1.16.2 Delinquent Partnership Returns
    - 4.12.1.16.3 Partnership Substitute for Return (SFR)
  - 4.12.1.17 Delinquent International Returns
  - 4.12.1.18 Failure To File - Form 5471 General Information
  - 4.12.1.19 Delinquent Employment Tax Returns
  - 4.12.1.20 Delinquent Excise Tax Returns
  - 4.12.1.21 Delinquent Estate and Gift Tax Returns
  - 4.12.1.22 Delinquent Tax Exempt and Government Entities Returns
  - 4.12.1.23 High Income Non-Filer (HINF)
  - 4.12.1.24 Married Filing Joint Election for Nonfiler cases
  - 4.12.1.25 No show/No response on Non-filer cases
    - 4.12.1.25.1 Unreported income - Information Returns
    - 4.12.1.25.2 Estimated Business Expenses
    - 4.12.1.25.3 Itemized Personal Deductions
  - 4.12.1.26 Activity Codes and SFR's
  - 4.12.1.27 When a Case Is Closed From the Group
  - 4.12.1.28 Collection of Tax
  - 4.12.1.29 References - Substitute and Delinquent Returns

4.12.1.1  
(10-05-2010)  
**Overview**

- (1) This section discusses the procedures involved in handling nonfiled returns.
- (2) Substitute for return (SFR) and delinquent return procedures were developed to deal with taxpayers who do not file required tax returns.
- (3) The purpose of the procedures is to assess the correct tax liability by either:
  - a. Securing a valid voluntary tax return from the taxpayer (**delinquent return**), or
  - b. If securing a return is not possible, computing tax, interest, and penalties based upon information submitted by payers, or based on other available information (**SFR**).

4.12.1.2  
(10-05-2010)  
**Source of Cases**

- (1) Examiners encounter nonfilers in several ways. For example,
  - From related cases/spin-off examinations
  - As project cases
  - As referrals from other functions

4.12.1.3  
(10-05-2010)  
**Enforcement Period**

- (1) Policy Statement 5-133 (P-5-133), IRM 1.2.14.1.18, *Delinquent returns—enforcement of filing requirements*, discusses delinquent returns and the enforcement filing requirements. The enforcement period is not to be more than six years. However, the extent to which delinquency procedures will be enforced will depend upon the facts and circumstances of each case, and by reference to factors ensuring evenhanded administration of staffing and other Service resources. Enforcement for longer or shorter periods may be used when consideration has been given to:
  - a. The taxpayer's prior history of noncompliance.
  - b. The existence of income from illegal sources.
  - c. The effect upon voluntary compliance.
  - d. The anticipated revenue in relation to the time and effort, required to determine tax due.
  - e. Any special circumstances existing in the case of a particular taxpayer, class of taxpayer, or industry, or which may be peculiar to the class of tax involved.

4.12.1.3.1  
(10-05-2010)  
**Management Approval**

- (1) Management approval is necessary if the enforcement activity is less than or exceeds the six-year period. Document the case file by:
  - a. Outlining the facts of the case; and
  - b. Detailing the reasons on Lead Sheet 130, *Multi-year and Related Returns Lead Sheet*, why enforcement for the longer or shorter period is recommended. (Deviating from P-5-133). If warranted, attach supporting workpapers.
- (2) Group manager approval is not needed if the nonfiler voluntarily files returns beyond the established enforcement period.

4.12.1.4  
(10-05-2010)  
**Discovery of Nonfiling**

- (1) When examiners discover during any examination that a taxpayer has failed to file required federal tax returns, they will, before soliciting any returns:
  - a. Determine the taxable periods for which the taxpayer was required to file returns.

- b. Ascertain the reasons why the taxpayer failed to file the required returns.
- c. Determine whether any indications of fraud exist. See IRM 25.1.2.3, *Indicators of Fraud*.
- d. Perform IDRS research under both the primary and secondary TIN, if applicable. See IRM 4.12.1.5.2, *IDRS Research*.
- e. IRM 4.10.5.2.6, *Returns Not Filed*, provides guidance on what steps must be taken when an examiner finds that a return has not been filed.

4.12.1.5  
(10-05-2010)  
**Pre-Contact Analysis**

- (1) Prior to contacting the taxpayer, certain steps should be taken to aid in the planning and completion of a quality examination.
- (2) See IRM 4.10.2.6, *Pre-Contact Planning of Examination Activities*, for guidance on pre-contact planning of examination activities.

4.12.1.5.1  
(10-05-2010)  
**Contacting the Taxpayer**

- (1) Examiners should follow the guidance in IRM 4.10.2.7, *Initial Contact: Overview*, to make initial contact with the taxpayer.
- (2) If a new address is secured, examiners should update address information using procedures outlined in IRM 4.10.2.7.2, *Locating the Taxpayer*.
- (3) When correspondence has been returned and a new address is secured, examiners should send correspondence to the new address and restart the response time.
- (4) If more than one address is secured and the examiner cannot determine the correct address, send correspondence to the identified addresses.
- (5) See IRM 4.12.1.5.6, *Locating the Taxpayer*.

4.12.1.5.2  
(10-05-2010)  
**IDRS Research**

- (1) Confirm that no return has been filed for the years assigned by using IDRS command codes IMFOL (I and T) and INOLE (X and S) or TXMODA.  
  
**Example:** If you used an IMFOL I, you would check for the posting of an SFR Transaction Code (TC) 150. On your IMFOL I you will see TC 150 - 0 and the letters "SUBST 4".
- (2) Both the primary and secondary Social Security Numbers (SSNs) should be searched for prior filings and for pending assessment activity.
- (3) See IRM 4.4.9.2.2, *Transcripts/IDRS*, through IRM 4.4.9.2.2.1, *Dummy Present on MF*, for guidance on reading transcripts on nonfiler cases.

4.12.1.5.3  
(10-05-2010)  
**Collectibility Considerations**

- (1) Examiners are expected to consider collectibility during the pre-contact phase as a factor in determining whether to pursue the filing of a tax return. See IRM 4.10.2.4.3, *Collectibility*, and IRM 4.20.2.2, *General Collectibility Considerations*.
- (2) Use Disposal Code (DC) 32 to survey the account if a SFR TC 150 is posted to the account. See IRM 4.20.2.5(3), *Non-filers*.

4.12.1.5.4  
(10-05-2010)  
**Statute Considerations**

- (1) The assessment statute for a secured delinquent return is limited to three years, from the date the return was filed, despite the taxpayer's fraudulent failure to file a tax return prior to the submission of the delinquent return. After the delinquent return is filed, other exceptions to the normal 3-year period for assessment may apply such as the 6-year assessment statute under IRC 6501(e) or the unlimited period for assessment as a result of a false or fraudulent return statute under IRC 6501(c)(1). See IRM 25.6.1.9.5.3, *25% Omission* and IRM 25.6.1.9.5.2, *Fraudulent Return*.
- (2) The execution of a substitute for return does not trigger the running of the assessment or collection statutes. See IRM 25.6.1.9.4.5, *Substitute for Return (SFR)*.
- (3) An SFR carries an alpha statute "EE" until the taxpayer files a return.

4.12.1.5.5  
(10-05-2010)  
**Establishing AIMS Control**

- (1) The nonfiled tax returns should be established on AIMS as soon as it is known that an examination will take place or that time will be applied. Form 5345-D, *Examination Request-ERCS (Examination Returns Control System) Users*, should be used to request establishment of the return.
- (2) See IRM 4.4.9.4.1, *Form 5345, Examination Request*, for establishing a nonfiler directly onto ERCS and AIMS.
- (3) If the taxpayer does not have a TIN or refuses to secure one, a NMF account should be established using Form 5354, *Examination Request Non-Master File*. See IRM 4.4.9.4.2, *AIMS Control When TP does not have a TIN*.

**Note:** The IRS is allowing businesses to obtain Employer Identification Numbers (EINs) directly from the IRS website, via telephone, mail, or fax. Visit <http://www.irs.gov/businesses/small/article/0,,id=98350,00.html> for directions provided on how to obtain an EIN.

4.12.1.5.6  
(10-05-2010)  
**Locating the Taxpayer**

- (1) IRM 4.10.2.7.2, *Locating the Taxpayer*, and subsequent subsections provides detailed instructions on how to locate a taxpayer, and the mandatory steps that must be taken for cases involving unlocatable taxpayers.

4.12.1.5.6.1  
(10-05-2010)  
**Third-Party Contacts**

- (1) Due to the nature of nonfiler cases and the impact of IRC 6201(d) and IRC 7491 it is anticipated that third-party contacts may be warranted to confirm income sources reflected on the IRP or more current address information.
- (2) Publication 1, *Your Rights as a Taxpayer*, is used to provide the taxpayer with advance notification that IRS may contact third parties regarding the determination or collection of their tax liability in accordance with IRC 7602(c), *Notice of Contact of Third Parties*.
- (3) Additional information concerning third-party contacts is provided in IRM 4.11.57, *Examining Officers Guide - Third Party Contacts*.

4.12.1.6  
(10-05-2010)  
**Income Probes (Nonfilers)**

- (1) If the examiner secures delinquent returns during the examination process, those returns are subject to the same minimum requirements for examination of income as timely filed returns. See IRM 4.10.4.3, *Minimum Requirement for Examination of Income*, and IRM 4.10.4.5, *In-Depth Examinations of Income*.



- (2) In determining income on a nonfiler case, the examiner should be aware of the impact of IRC 6201(d) and IRC 7491.
  - a. IRC 6201(d) was enacted to address perceived problems with respect to determinations of unreported income based on information returns (IRP documents). IRC 6201(d) creates a legal requirement to contact third parties to verify income where the taxpayer reasonably disputes the income and fully cooperated with the IRS. If the taxpayer does not respond or raises a frivolous dispute, the taxpayer has not made a reasonable dispute; there is no legal requirement for further verification with third parties, and an income adjustment based on the IRP document is appropriate.
  - b. IRC 7491(a) was enacted because Congress perceived taxpayers were at a disadvantage when forced to litigate with the Service. At the examination level, the taxpayer still has the same burden of proof to supply adequate documentation and statutory authority for their position. When going to court, the burden still does not shift to Government if taxpayer fails to provide credible evidence.
- (3) See also IRM 4.10.4.3.5, *Minimum Income Probes: Delinquently Filed Returns and Nonfiled Returns*.

**Note:** Examiners should never determine income solely from statistical data.

4.12.1.6.1  
(10-05-2010)  
**Minimum Income Probes  
on Nonfilers**

- (1) See IRM 4.10.4.3.2, *Minimum Income Probes: "Nonbusiness" Returns*, for a discussion on examiner responsibilities of analyzing all IRP information to ensure that all other business or investment activities are considered.
- (2) See IRM 4.10.4.3.5(4), *Minimum Income Probes: Delinquently Filed Returns and Nonfiled Returns*, for a discussion of SFRs filed on behalf of a nonfiler under IRC 6020(b) and when reconstruction and examination of income is required on nonfilers.
- (3) See IRM 4.10.4.4.1, *Material Understatements and Managerial Involvement*, for unreported income.

4.12.1.6.2  
(10-05-2010)  
**Forms 8300 and  
Currency Transaction  
Reports**

- (1) For information concerning the minimum requirements with respect to required filing checks for Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business* see IRM 4.10.5.9, *Forms 8300 Report of Cash Payments Over \$10,000 Received in a Trade or Business and Currency Transaction Reports (CTR's)*. If problems are noted see IRM 4.26.10, *IRM 4.26.11 Bank Secrecy Act - Form 8300 History and Law, Bank Secrecy Act - Form 8300/IRC 6050I Examiner Responsibilities*, and IRM 4.26.12, *Bank Secrecy Act - Examination Techniques for Form 8300 Industries*, for detailed information about Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*. Examiners discovering serious Form 8300 violations should consider a referral to the Bank Secrecy Act (BSA) program in Fraud/BSA in SB/SE. The referral should be made to the Form 8300 specialist in BSA's WISDM Division. Contact information can be found on MySB/SE under Fraud/BSA using the 8300 link.
- (2) Title 31 forms are not part of required filing checks for income tax examiners. Forms such as *FinCEN Form 104, Currency Transaction Report (CTR)*, and *FinCEN Form 103, Currency Transaction Report for Casinos (CTR-C)*, are



examined separately as part of the BSA program. Examiners working Title 26 examinations must not inquire about Title 31 forms, except as noted below.

- (3) *TD F 90-22.1, Report of Foreign Bank and Financial Accounts*, (FBAR), though not part of required filing checks, may be examined by Title 26 examiners after a related statute determination has been made and a Related Statute Memorandum signed by the examiner's Territory Manager. Until that point, Title 26 examiners may not inquire about FBAR filings. See IRM 4.26.17, *Report of Foreign Bank and Financial Accounts (FBAR) Procedures*, for FBAR case procedures. See IRM 4.26.17.2, *FBAR Procedures Starting the Case - Related Statute Memorandum*, for related statute procedures.
- (4) Title 26 examiners may accept and process delinquent CTR and FBAR forms if offered by the taxpayer, but should not solicit them, except in the case of an authorized FBAR examination. See IRM 4.26.8.4, *Delinquent BSA Forms*, for delinquent Title 31 return acquisition procedures.

4.12.1.7  
(10-05-2010)  
**Fraud Considerations**

- (1) The examiner should be alert to potential tax fraud indicators when reviewing case information.
- (2) When indicators (signs) of fraud are uncovered, the examiner will initiate a discussion with their group manager. If the group manager concurs that there are indicators of fraud warranting fraud development, the examiner will contact the fraud technical advisor (FTA) assigned to that area. See IRM 25.1.2.2, *Fraud Development Procedures*.
- (3) The FTA will assist in identifying affirmative acts of fraud and in developing an investigative plan of action. The FTA will also help determine whether or not a criminal referral should be made. Developing a fraud case is a matter of progressing from the indicators of fraud, to affirmative acts of fraud, where the taxpayer deliberately took action to evade a tax.
- (4) See the SB/SE National Fraud Program website <http://sbseservicewide.web.irs.gov/Fraud/default.aspx> for additional information.
- (5) Examiners should establish all the facts when considering a referral to the Office of Professional Responsibility (OPR) in cases involving tax professionals failing to file tax returns. The examiner will make a referral to the Office of Professional Responsibility if the non-filer is a tax practitioner (attorney, certified public accountant, enrolled agent, or enrolled actuary). See IRM 4.19.10.6.2, *Office of Professional Responsibility*.
- (6) See also *Circular 230*, section 10.51 *Incompetence and Disreputable Conduct*, for preparers of tax returns and disreputable conduct.
- (7) If the taxpayer furnishes delinquent returns to the examiner, or indicates the intention to file delinquent returns, the examiner should always consider the factors outlined in IRM 25.1.2, *Recognizing and Developing Fraud*.

4.12.1.7.1  
(10-05-2010)  
**Fraud Indicators Present**

- (1) IRM 25.1.7, *Fraud Handbook - Failure to File*, provides sources of information in developing the issue of fraud on a failure to file a return case.
- (2) IRM 25.1.7.2, *Pre-screening Non-filers*, provides a listing of indicators to consider in determining the presence of fraud.
- (3) In cases where fraud indicators are present, the examiner should **NOT**:

- Solicit tax returns from the taxpayer
- Volunteer advice to the taxpayer
- Discuss referral possibilities with the taxpayer

- (4) Complete Form 11661, *Fraud Development Recommendation - Examination*.
- (5) IRM 25.1.7.4, *Development of Fraud*, provides guidance on developing a fraud case for a nonfiler.
- (6) IRM 25.1.7.6, *Secured Delinquent Returns (DEL RET)*, further discusses fraud considerations when securing delinquent returns and covers what examiners should consider when referring secured delinquent returns having a substantial understatement of income and/or substantial overstated deductions to Criminal Investigation (CI) for consideration. If it is determined that the substantial understatement of income and/or substantial overstated deductions are fraudulent and criminal criteria are met, the group manager and the FTA should become involved as discussed in IRM 25.1.7.5, *Criminal Referral*.

4.12.1.7.2  
(10-05-2010)  
**Affirmative Acts (Firm Indication) of Fraud**

- (1) Where there is a firm indication of fraud, the preparation and submission of an SFR will be postponed.
- (2) See IRM 25.1.7, *Fraud Handbook - Failure to File*, on how to proceed.

4.12.1.7.2.1  
(10-05-2010)  
**Indications of Fraud Absent**

- (1) If it is determined that indications of fraud are not present:
  - a. Advise the taxpayer of the requirement to file all delinquent returns without regard to the number of years or taxable periods involved.
  - b. Interview the taxpayer to gather information on his/her ability to pay and on the filing of delinquent returns.
  - c. Advise the taxpayer to deliver the returns promptly to the examiner along with a written statement explaining why they did not timely comply with filing requirements. It is important for the examiner to request a written statement from the taxpayer explaining any discrepancies, reasons for non-filing, and reasons which the taxpayer believes would establish reasonable cause for penalty relief. See IRM 20.1.1.3.1, *Unsigned or Oral Requests for Penalty Relief*, for guidance on written versus verbal requests for penalty relief.

**Note:** Each year stands alone; therefore, the taxpayer must establish reasonable cause for each and every year under consideration.

4.12.1.8  
(10-05-2010)  
**Preparation of the Return(s)**

- (1) When a taxpayer is advised to file all required delinquent returns but refuses to file, or states an inability to file all of the returns determine the extent to which the filing requirements should be enforced using the criteria in P-5-133 and prepare the return(s).

4.12.1.8.1  
(10-05-2010)  
**SFR TC 150 Posted**

- (1) Do not submit a delinquent or substitute return if TC 150 has posted or a SFR TC 150 has posted.
  - a. TC 150 posting with no taxability followed by a TC 240 posting for \$500 (W-4 penalty) indicates that the Campus has posted a dummy return.
  - b. If a TC 150 has posted, any adjustments must be made as subsequent adjustments (i.e. TC 300).

4.12.1.8.2  
(10-05-2010)  
**IRC 6020(a)**

- (1) If the taxpayer will consent to disclose all information necessary for the preparation of the return(s), IRC 6020(a) states, "... the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person." This does not include the taxpayer signing a waiver of restriction on assessment (e.g., Form 4549, *Income Tax Examination Changes*, or Form 870, *Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment*), which does not constitute a return under IRC 6020(a).
- (2) Delinquency penalties are applicable. See IRM 20.1.2, *Failure To File/Failure To Pay Penalties*.

4.12.1.8.2.1  
(10-05-2010)  
**IRC 6020(b)**

- (1) IRC 6020(b) states, "If any person fails to make any return required by any Internal Revenue Law or regulation made there under at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise."
  - a. IRC 6020(b)(2) states, "Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes."
  - b. This is an SFR.
  - c. See IRM 20.1.2, *Failure To File/Failure To Pay Penalties*, to determine applicable penalties.

4.12.1.8.3  
(10-05-2010)  
**Establishment on  
Masterfile**

- (1) To establish an SFR on Master File, follow the procedures in IRM 4.4.9.6, *Substitute for Return*.

4.12.1.8.4  
(10-05-2010)  
**Substitute for Return**

- (1) When it has been determined that a taxpayer is liable for filing a return, and upon due notice from the Service fails to do so, an SFR will be prepared by Examination.
  - a. Examination uses this procedure to establish an account and examine the records of a taxpayer when the taxpayer refuses or is unable to file and information received indicates that a return should be filed.
  - b. The examiner will follow the steps outlined IRM 4.12.1.5.2 *IDRS Research*, to confirm no return has been filed.
  - c. An SFR, in and of itself, does not constitute a return under IRC 6020(b). For the purpose of asserting the Failure to Pay Penalty, additional steps should be taken before submitting the SFR package. See IRM 20.1.2.1.4, *Substitute for Return — IRC section 6651(g)*

4.12.1.9  
(10-05-2010)  
**Examination of a  
Secured Delinquent  
Return**

- (1) When a delinquent return is secured, the examiner will generally examine the taxpayer's records to determine the accuracy of the return unless:
  - a. It is impracticable to do so (based on necessary time, research, etc.)
  - b. Under Required Filing Check procedures, it is not warranted. See IRM 4.10.5.2.7, *No Examination Warranted*.

- 4.12.1.9.1  
(10-05-2010)  
**Additional Examination Techniques**
- (1) During the examination of a nonfiler, sampling techniques should be considered to determine if the recipients of payments made by the nonfiler filed returns reporting the payments:
- Compensation to officers, wages and salaries, payments to individuals, etc. should be sampled and traced to Form 1099, *U. S. Information Return*, and/or Form W-2, *Wage and Tax Statement*, filed.
  - Files for Form 1099 and other information reports and Form W-2 should be sampled.
  - Master File research should be conducted for individuals who did not receive either a Form 1099 or a Form W-2 to determine if returns have been filed.
  - Invoices for cash payments to businesses should be sampled and Master File research should be conducted to determine if a return has been filed for the entity.
  - See IRM 4.10.5.2.3, *Assessing Audit Potential: Area of Expertise*, for guidance regarding when the examiner should pick up a return. See IRM 4.10.8.14, *Examination Information Reports-Form 5346*, for guidance regarding when a Form 5346, *Examination Information Reports*, should be prepared and submitted to PSP.
- 4.12.1.10  
(10-05-2010)  
**Refund Returns- SFR TC 150 Posted**
- (1) If more than one delinquent return has been secured and one or more of the delinquent returns shows a refund, special procedures apply if the returns are accepted as filed. The processing of the returns must be cycled to process the balance due returns first. See IRM 4.4.9.7.3.2, *Forward to Centralized Case Processing (CCP)*.
- 4.12.1.10.1  
(10-05-2010)  
**Claim Case**
- (1) If the delinquent return secured (with a SFR TC 150) shows a refund, a decision must be made by the examiner, based upon case file information, whether to hold the refund and audit the secured return. If the examiner determines that an audit of the secured return is warranted, then this becomes a claim case.
- (2) Claim procedures:
- The Form 3198, *Special Handling Notice for Examination Case Processing*, for the partial assessment of the secured return should state "Claim Case: Hold Refund" - enter a "2" in item 7 (Hold Codes) of the Form 5344, *Examination Closing Record*, to stop master file notices and to prevent excess credits from refunding. See also IRM 4.4.9.7, *Delinquent Return Received After SFR TC 150 Posted at Master File*.
  - Claims procedures must be followed in cases where a refund was held and the refund was partially or fully disallowed.
  - The starting point for the tax liability will be the tax shown on the secured delinquent return.
  - The audit report will reflect additional tax assessments, changes to pre-payment credits, and applicable penalties.
- 4.12.1.10.1.1  
(10-05-2010)  
**Claims for Refunds where a SFR TC 150 has not posted**
- (1) If you receive several delinquent returns AND accept them as filed, process the delinquent returns showing a balance due before processing those claiming a refund.
- See IRM 4.4.9.5, *Delinquent Return Secured - No TC 150 Posted*, for nonfiler cases with an SFR TC 150 not posted.
  - See IRM 4.4.9.7, for nonfiler cases with an SFR TC 150 posted.

4.12.1.10.2  
(10-05-2010)

**Delinquent Returns  
Received after Statutory  
Notice Issued**

- (1) Situations where the nonfiler submits a delinquent return after the statutory notice of deficiency has been issued should be handled as follows:
  1. If the Service accepts the figures shown on the return as substantially correct, the amount on the return should be assessed and the case closed. A revised report supplementing the notice of deficiency does not need to be issued even if the amount of tax shown on the return differs from the amount on the notice.
  2. If the Service does not accept the figures on the return as substantially correct, the amount of tax on the return should be immediately assessed as a partial agreement and a revised report supplementing the notice of deficiency should be sent to the nonfiler.
  3. See IRM 4.8.9.19.2.2, *Delinquent Return Secured*, for specific instructions see IRM 4.8.9.20.1, *Communications with Taxpayers*, and IRM 4.8.9.20.2, *Agreement Secured*.

4.12.1.10.3  
(10-05-2010)

**Delinquent Return  
Secured-with Reported  
Tax or Reasonable  
Cause in Question**

- (1) If the SFR TC 150 procedures are used, partial assessments will need to be made in situations where the secured delinquent return is in question and the examination cannot be closed within seven days of receipt as per IRM 4.4.9.7.4, *Delinquent Return Secured after TC 150 SFR Posted, With Audit Potential - Process Partial Assessment Procedures*. In addition, if the nonfiler is appealing the delinquency penalties on the basis of reasonable cause, partial assessment for the tax will also need to be made.
- (2) IRM 4.4.9.7.4.1, through IRM 4.4.9.7.4.3.4 for step by step processing instructions on partial assessments.
- (3) After CCP makes the assessment, they will return Form 5344 to the group stamped "Request Completed." This form should be maintained in the case file. See IRM 4.4.9.7.4.3.4.

4.12.1.10.4  
(10-05-2010)

**No Return Secured-  
Agreed Closure IRC  
6020(a)**

- (1) If the nonfiler does not provide a delinquent return, all adjustments, tax, and penalties will be proposed on an income tax change report Form 4549. If the nonfiler signs this report agreeing to the deficiency, process as an agreed closing. The signed report does **not** constitute a return under IRC 6020(a) or any IRC section.
  - a. Form 3198 will be attached to the case with notation "IRC 6020(a) Return" and close the case with the applicable Disposal Code.
  - b. If a "SFR TC 150" has not been processed follow procedures in IRM 4.4.9.6, *Substitute for Return*, to create the SFR TC 150 on Master File.

4.12.1.10.5  
(10-05-2010)

**No Return Secured -  
Unagreed Closure**

- (1) If a nonfiler is unable to provide a delinquent return, all adjustments, tax, and penalties will be proposed on Form 4549.
- (2) If this nonfiler does not agree with the proposed assessment, the case will be closed as an unagreed case.
- (3) If the nonfiler does not respond to our actions and continues to be uncooperative;
  - a. Managerial involvement should be obtained prior to issuance of a 30 day letter;
  - b. After consulting with the manager, the examiner will prepare and send the 30 day letter which includes an unagreed income tax change report reflecting all adjustments, tax, and penalties.

**Note:** See IRM 4.10.8.11, *Unagreed Case Procedures: Preliminary (30-Day) Letters*, for the three frequently used 30-day letters by SB/SE Examination area offices. Also see IRM 4.10.8.11.4, *Form Letters*. The issuance of Letter 3391, *30-Day Nonfiler Letter*, allows the taxpayer 30 days to request Appeals consideration of their case.

- (4) The nonfiler can request a hearing with the Office of Appeals to review the proposed deficiency during closing and after receipt of 30-day letter.
- (5) If the nonfiler requests an Appeals hearing, the case file will be closed to Technical Services in status 21 on ERCS. See IRM 4.4.5.4, *Non-Docketed Cases*, for group procedures on how to close protested cases to their local Tech Services office for routing to Appeals.
- (6) If the nonfiler does not request an Appeals hearing in response to the 30 day letter, then the 90-day letters will need to be issued by Technical Services.

#### 4.12.1.10.6

(10-05-2010)

#### **No Return Secured - Refund Years**

- (1) A statutory notice of deficiency should not be issued for years where the nonfiler refuses to file a return or sign a report of Income Tax Examination Changes if the known information indicates the nonfiler is due a refund for that year.
  - 1. Known information should include consideration of external sources (comparative year analyses, third-party information, statistical data), to insure that the potential refund year reflects the nonfiler's substantially correct taxable income. In these cases the examiner should issue Letter 2770, *Nonfiler Refund Invitation Letter*, advising the nonfiler to file a return/claim for the refund year. This letter should be sent at the same time the 30-day letter is issued for any deficiency years.
- (2) If the nonfiler does not submit a delinquent return within 30 days, close the case.
- (3) If the refund year has been established on AIMS, prepare Form 3198 to inform Exam Centralized Case Processing to close the case for the year using DC 41.
- (4) Close any tax deficiency years using Statutory Notice of Deficiency procedures.

#### 4.12.1.10.7

(10-05-2010)

#### **No Return Secured - No Filing Requirement/Little or No Tax Due**

- (1) There may be instances of an assigned nonfiler case where it is determined that the nonfiler has no filing requirement or the tax liability cannot be determined.
  - a. Form 3198 is to be notated, "No return filed, Taxpayer not liable this period or little or no tax due."
  - b. If the case is fully established on AIMS, close using DC 36, *No Return Filed*.
  - c. If there is only a 424 skeletal record on AIMS, delete the skeletal AIMS record with command AM424D using Form 10904, *Request for Record Deletion from AIMS*.
  - d. Group manager approval of the closure is required on Form 5351, *Examination Non-Examined Closings*.
  - e. If the nonfiler case includes some years where returns are secured and other years where a return is not due, all workpapers are to be placed in



the case file for the most current year with a deficiency where a return was secured. Each case file must be notated as to which year contains the workpapers.

- f. See also IRM 4.4.21.2, *AIMS/Processing Handbook - Non-Examined Closings/Deleting AIMS Records*, for guidance on closing codes.

4.12.1.10.8  
(10-05-2010)  
**No Return Secured -  
Year(s) Outside  
Enforcement Period**

- (1) If the account is only a TC 424 skeletal record on AIMS, close the year(s) outside the enforcement period on AIMS using DC 36, No Return Filed or CC AM424D.
- (2) If a delinquent return was not secured, Form 3198 is to be notated "No Return Filed - Outside Enforcement Period."
  - a. File any workpapers in the case file for the years in which returns were secured.
  - b. Complete a Form 3177, *Notice of Action for Entry on Master File*.
  - c. Use the TIN and Tax Period for the year that will contain the workpapers. This will be of assistance if the workpapers are needed at a later date.

**Example:** Example: Only the 200912 return was secured. The 200712 and 200812 would be closed using a DC 36. The examiner will submit a Form 3177 for 2007 and 2008 and enter the tax period of 200912 on the Form 3177 as being the location of the workpapers.

- d. Fax Form 3177 to CCP for input of a TC 971 action code (AC) 057.

4.12.1.11  
(10-05-2010)  
**Penalties on Nonfilers**

- (1) The penalties discussed below may apply in nonfiler situations.
- (2) Examiners securing delinquent returns will solicit any explanation the taxpayer may provide on the Failure to File and Failure to Pay penalty determinations. See IRM 20.1.2.1.7, *Assessment/Abatement Procedure*.

4.12.1.11.1  
(10-05-2010)  
**Minimum Failure to File -  
IRC 6651(a)**

- (1) The minimum failure to file (MFTF) penalty applies to any failure to file a tax return required under Chapter 1 of the Code (IRC sections 1 through 1400). See IRM 20.1.2.2, *Minimum Failure to File - IRC 6651(a)*.

4.12.1.11.1.1  
(10-05-2010)  
**Failure to File a Tax  
Return - IRC 6651(a)(1)**

- (1) IRC 6651(a)(1) imposes a penalty for failure to file a tax return by the date prescribed (including extensions), unless it is shown that the failure is due to reasonable cause and not due to willful neglect. See IRM 20.1.2.3, *Failure to File a Tax Return - IRC section 6651(a)(1)*.
- (2) Also see IRM 20.1.1.3, *Criteria for Relief from Penalties*, for a discussion of penalty relief.

4.12.1.11.1.2  
(10-05-2010)  
**Fraudulent Failure to  
File - IRC 6651(f)**

- (1) The fraudulent failure to file (FFTF) penalty under IRC 6651(f) increases the FTF penalty under IRC 6651(a)(1) from 5% a month to 15% a month, and the maximum penalty from 25% to 75%. See IRM 20.1.2.7, *Fraudulent Failure to File — IRC section 6651(f)*.
- (2) IRM 25.1.7.1, *Overview*, is used by technical personnel in the identification, development and referral of potential fraud cases to CI.



**Note:** To ensure case facts support fraud and because the assessment of a FFTF penalty attributable to the amount originally shown on a return is not reviewable by the Tax Court, all 30-day letters proposing a FFTF penalty on a deficiency must be reviewed and approved by Area Counsel prior to issuance. See IRM 20.1.2.7(7), *Fraudulent Failure to File — IRC section 6651(f)*.

4.12.1.11.1.3  
(10-05-2010)

**Estimated Tax Penalty**

- (1) IRM 20.1.3, *Estimated Tax Penalties*, discusses the Estimated Tax penalties outlined in the IRC for both individual taxpayers (IRC 6654) and corporate taxpayers (IRC 6655).
- (2) Taxpayers who do not have sufficient amounts withheld, and who fail to make estimated tax payments as required by law, may be assessed a penalty for underpayment of estimated tax.
- (3) See also IRM 20.1.3.2.1.7.2, *Substitute for Return*, for a discussion on when the estimated tax penalty will be included in a notice of deficiency.

4.12.1.11.2  
(10-05-2010)

**IRC 6020(b) Certification for a Substitute for Return**

- (1) The failure to file penalty under IRC 6651(a)(1) should be applied in substitute for return (SFR) examinations involving a failure to file the tax return in addition to the failure to pay penalty under IRC 6651(a)(2)
- (2) In order to overcome procedural problems surfaced in several court cases, Chief Counsel approved procedures which should be followed to ensure the application of the failure to pay penalty is upheld by the courts.
- (3) The substitute for return procedures now includes the preparation and certification of the IRC 6020(b) package at the time the 30-day letter is issued.
- (4) Lead Sheets replaced the Form 886-A, *Explanation of Items*. However, since the Certification document specifically refers to the Form 886-A, as part of the package, the examiner should include a Form 886-A with the taxpayer's name, year, etc. and in the body, refer to the "Attached Explanation of Adjustments."
- (5) See IRM 20.1.2.1.4(8), *Substitute for Return — IRC section 6651(g)*, for the procedures to ensure FTP penalties on IMF and BMF SFRs are sustained in tax court.

**Note:** The mere filing of a substitute for return (SFR), a "dummy" return to establish the account module does not qualify as a return under IRC 6020(b). See *Michael A. Cabirac v. Commissioner*, 120 T.C. No. 10.

4.12.1.11.3  
(10-05-2010)

**Failure to Pay Certification on BMF SFRs**

- (1) For a BMF SFR initiated after May 31, 2005, the same FTP penalty certification requirements will apply. Completion of the Form 13496, *IRC 6020(b) Certification*, is required with a SFR case file in order that the failure-to-pay penalty under IRC 6651(a)(2) will be sustained in court.

4.12.1.11.4  
(10-05-2010)

**Penalty Abatements and Re-assessments**

- (1) IRM 20.1.1.3, *Criteria for Relief from Penalties*, provides guidance for determining if the taxpayer meets the criteria that will allow relief from a penalty.
  - a. Refer to IRM 20.1, *Penalty Handbook - Introduction and Penalty Relief*, regarding acceptable reasonable causes for failure to file and to pay tax.
  - b. See IRM 20.1.2.1.7, *Assessment/Abatement Procedures*, for a discussion on Assessment/Abatement Procedures.

4.12.1.12  
(10-05-2010)  
**Preparer Penalties and  
Delinquent Returns**

- (1) When examiners secure delinquent returns or claims, and determine that a paid preparer has not complied with the provisions of IRC 6695 for:
  - a. Signing a prepared income tax return or claim or
  - b. For failing to place his/her Taxpayer Identification Number (TIN) on the prepared return or claim, or
  - c. For failing to provide the taxpayer with a completed copy of the prepared return or claimassertion of a penalty will be considered.
- (2) The examiner who secures the delinquent return or claim will be responsible for requesting the assertion of these penalties. See IRM 20.1.6, *Preparer, Promoter Penalties*.

4.12.1.13  
(10-05-2010)  
**Other Nonfiled Returns**

- (1) Required Filing Checks consist of the analysis of the taxpayer's prior and subsequent year returns, as well as related returns and unfiled returns.
- (2) When warranted, the scope of the examination should be expanded to include considering the audit of related filed returns and the securing of unfiled related returns. Examiners are to verify that all returns within the taxpayer's responsibility have been filed.

Example: Required filings of a corporate and officer/shareholder returns, partnership returns, employment taxes, excise returns, estate and gift tax returns, and information returns.

- (3) To decrease taxpayer burden, the examiner should use internal sources of information to complete required filing checks, including the use of:
  - Corporate Files on Line (CFOL)
  - Compliance Data Environment (CDE)
- (4) See IRM 4.10.5, *Required Filing Checks*.
- (5) The results of the Required Filing Checks analysis should be documented in the case file (i.e., description of the returns reviewed and the results of such review).

4.12.1.14  
(10-05-2010)  
**Information Report**

- (1) If the examiner does not examine a secured delinquent return, but believes such return warrants examination, the examiner should:
  - a. Complete Form 5346 and staple to the back of the return, extending one inch above the top.
  - b. Identify the return for classification after the return is processed.
  - c. The examiner should indicate on the form the reasons why the return should be examined.
  - d. The Form 5346 should be approved by the manager before forwarding to PSP.
  - e. If the examiner determines that another return filed or to be filed by the same or another taxpayer should be examined, the necessary information will be developed and submitted with Form 5346.
- (2) When attempting to secure any delinquent return and the type of return is such that it is beyond the examiner's area of expertise, the examiner should:

- a. Use the specialist referral system (SRS) to obtain assistance on issues (i.e. issues pertaining to the delinquent return situation or International returns).
  - b. Discuss the case with the particular specialty group in a local office.
  - c. Submit an information report to PSP (Form 5346 or Form 3449, *Referral Report*, whichever is applicable). See IRM 4.10.8.14, *Examination Information Reports - Form 5346*, for specific instructions.
  - d. Research the applicable IRM for the specialty to determine what procedures that specialty may have with regard to delinquent returns (e.g., IRM 4.23.12, *Employment Tax - Delinquent Return Procedures*).
- (3) The specialist referral system (SRS) automates the referral request process and examiners can generate a referral request or seek informal advice online. Using the SRS, you can generate referrals for a computer audit specialist (CAS); economist; employee plans; employment tax (LB&I); employment tax (SB/SE); employment tax (TE/GE); engineering; excise; exempt organizations; federal, state and local government; financial products; Indian tribal government; international; and tax-exempt bonds.
  - (4) If the taxpayer is uncooperative and does not provide the examiner with the delinquent return(s), examiners should consider SFR procedures, with managerial approval. If the return is not in the examiner's area of expertise, Form 5346 should be prepared and submitted to the examiner's manager for approval.

4.12.1.15  
(10-05-2010)  
**Failure to File Certain  
Information Returns  
(Other than TE/GE) or  
Furnish Certain  
Statements**

- (1) The examiner may find that a nonfiler failed to file information returns or furnish certain statements.
- (2) The examiner will request all delinquent forms regardless of the number of years involved but enforcement should follow P-5-133 guidelines.
  - a. Penalties will be recommended absent reasonable cause.
  - b. If delinquent information returns are not filed, an information report should be filed where practical or a spin off examination conducted.
- (3) Appropriate penalties for failure to file should be imposed for all years for which delinquent information returns are secured, within the guidelines of IRM 20.1, *Penalty Handbook*. If there are no indications of fraud, the examiner will, if practical, secure the delinquent forms which the taxpayer failed to file, regardless of years involved. See IRM 4.10.5.6.2, *Information Return Penalties*.

4.12.1.16  
(10-05-2010)  
**Nonfiled Returns  
Involving Related  
Cases/Spin-Offs**

- (1) During the course of an audit, an examiner may find that a related taxpayer has failed to file a required tax return. The examiner should check for unfiled returns and pursue the securing of returns where warranted.

4.12.1.16.1  
(10-05-2010)  
**Delinquent Corporation,  
S-Corporation and  
Officers/Shareholders  
returns**

- (1) Examiners auditing corporate returns should inspect the returns of the officers and shareholders and request Master File transcripts in order to ensure return filing.
- (2) IRC 6699 imposes a Failure to File penalty on an S corporation that fails to file a timely return or provide the information required on Form 1120-S, *U.S. Income Tax Return for an S Corporation*. A deficiency does not need to exist in order to impose this penalty. Although most S corporations are not taxable

returns, if the return is delinquent and is a taxable entity, the delinquency penalty under IRC 6651(a) which imposes a penalty to balance due returns also applies. See also IRM 21.7.4.4.4.11.2.8, *Failure to File S Corporation Return Penalty*, and, IRM 20.1.2.10, *Failure to File S Corporation Return – IRC section 6699*.

4.12.1.16.2  
(10-05-2010)  
**Delinquent Partnership  
Returns**

- (1) As an additional resource, see IRM 4.35.2, *Audit Techniques for Business Returns*.

4.12.1.16.3  
(10-05-2010)  
**Partnership Substitute  
for Return (SFR)**

- (1) Where a partnership is required to file a return and fails to do so, and/or fails to file a delinquent return when requested, an “SFR” is filed.
- (2) If related returns (i.e., individual, employment tax, and excise tax returns) have not been filed as required, the examiner will also need to secure these returns as part of their return filing checks. See IRM 4.10.5.2.6.1, *Non-filers: Related Cases and Spin-Offs*.
- (3) IRC 6698 imposes a Failure to File penalty on a partnership that fails to file a timely or complete return as required by IRC 6031. Also see IRM 20.1.2.9, *Failure to File Partnership Return — IRC 6698*.

4.12.1.17  
(10-05-2010)  
**Delinquent International  
Returns**

- (1) If during an examination, a delinquent International return is discovered, the examiner will attempt to secure the delinquent return.
- (2) If the taxpayer refuses to file the delinquent return or if a substantial amount of time will be spent to secure the return:
  - a. Forward Form 5346 to the PSP International.
  - b. The examiner should also advise on Form 5346 if the taxpayer contends he/she is not legally liable for filing the return and whether such liability is an issue.
- (3) The taxpayer should also be advised that penalties may apply to any U.S. person for failure to timely file complete and accurate International information returns required by specific IRC sections. See IRM 20.1.9, *Penalty Handbook - International Penalties*, for a discussion on International return penalties
- (4) If the return is secured, it should be filed with the appropriate Submissions Processing Center for BMF returns under existing procedures in IRM 4.4.9, *AIMS Processing - Delinquent and Substitute for Return Processing*.
- (5) If necessary, the examiner should consider using the specialist referral system (SRS) to request formal or informal assistance with the securing of delinquent International returns. See also IRM 4.60.6, *International Procedures - International Referral Criteria and Procedures*.
- (6) See IRM 4.10.5.7, *Information Returns and Forms Involving Foreign Entities*, for additional discussions on International Returns and required filing checks.

4.12.1.18  
(10-05-2010)  
**Failure To File - Form 5471 General Information**

- (1) Treas. Reg. 1.6038-2 requires that, Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, be filed by certain US persons, who are officers, directors, or shareholders of certain foreign corporations. Under IRC 6038 and Treas. Reg. 1.6038-2, a penalty is imposed for failure to timely file a complete and accurate Form 5471 by U.S. persons possessing more than 50 percent of the total combined voting power of all classes of all shares of stock, or the total value of all shares of stock.
- (2) The penalty can be waived if reasonable cause exists. The penalty applies to each Form 5471 that was required to be filed. The Form 5471 is required to be filed on the same date as the related income tax return. See IRM 20.1.9.3, *IRC Section 6038 – Information Reporting for Foreign Corporations and Partnerships*, *IRC 6038 – Information Reporting for Foreign Corporations and Partnerships*, and IRM 20.1.9.4, *IRC section 6038(c) – Reduction of Foreign Tax Credit*, for a discussion on penalties for failing to timely file a complete and accurate Form 5471.
- (3) Analysis of the related income tax modules will be needed for required dates and extensions of time for filing.

4.12.1.19  
(10-05-2010)  
**Delinquent Employment Tax Returns**

- (1) During a field or office examination of an income tax return of a business taxpayer, the examiner will inspect CFOL information of each withholding tax return filed up to and including the last quarter for which a withholding tax return was due.
  - a. Withholding taxes include employment taxes such as FICA, RRTA, FWT and FUTA as well as back-up withholding and withholding on income paid to foreign persons and withholding on gambling winnings.
  - b. Withholding also includes the tax imposed on a buyer or other transferee (withholding agent) when a U.S. real property interest is acquired from a foreign person.
- (2) If the required tax returns have not been filed, the examiner should follow the substitute for return and/or delinquency procedures.
- (3) The examiner may discover that business owners or officers showed a prior knowledge of filing requirements and a pattern of non-filing and failing to make deposits. The examiner should be looking for indications that the principal owner/officer had knowledge of legal tax obligations and business acumen.
- (4) The examiner should also perform any historical research on the entity and any entity Officers, and, should be vigilante for individuals or business entities that secure an Employer Identification Number (EIN), yet never filed income tax or employment tax returns.
- (5) A nonfiler, whether a self employed individual or corporation, may show an inconsistent history of filing Forms 941, *Employer's Quarterly Federal Tax Return*, for several years. Initially, the corporation may have used a payroll service, so federal tax deposits, employment tax returns and Forms W-2, *Wage and Tax Statement* were filed timely for the quarters that were reported. However, the examiner may be faced with requesting missing quarters and receive returns with zero balances.

4.12.1.20  
(10-05-2010)  
**Delinquent Excise Tax  
Returns**

- (6) Fraud can be found in a wide variety of industries. However, the one area of tax law that touches all industries is employment tax. Examiners should be vigilante for potential fraud and make a referral for employment tax fraud when appropriate.
- (1) During an examination or when securing delinquent non-business or business returns, an examiner may determine that the taxpayer is delinquent in filing excise tax return.
- (2) If the taxpayer has failed to file a required excise tax return, the examiner will follow the Delinquency or SFR procedures as applicable. returns.
- (3) Contact should be made with an area excise group for assistance on where to send secured delinquent excise tax returns.
- (4) The examiner should also consider making a referral using the SRS found on the SB/SE Exam website. This system is often used to obtain assistance from an excise specialist when attempting to secure delinquent excise returns or to make a formal referral.
- (5) All excise tax returns will be sent to the appropriate campus for processing. See IRM 4.24.11.9, *Centralized Processing of Substitutes for Return and Delinquent Returns*, for processing instructions of delinquent excise returns.
- (6) The required filing checks instructions in IRM 4.10.5, *Examination of Returns - Required Filing Checks*, are applicable to excise tax examinations as follows:
- During the examination of any excise tax return, the examiner will determine if the taxpayer has filed all other federal returns required to be filed; and
  - This responsibility extends to other types of excise tax returns and other abstracts that are reportable on Form 720, *Quarterly Federal Excise Tax Return*.
- (7) The Excise Tax website at <http://sbse.web.irs.gov/EX/default.htm> was created to provide information concerning the policy, operation and administration of excise taxes. By using the keyword "Excise" in the search box on these various web pages, you will find guidance for the Excise Tax programs and various tax abstracts; locate excise territory and group managers throughout the country, and links to other websites with useful information.

4.12.1.21  
(10-05-2010)  
**Delinquent Estate and  
Gift Tax Returns**

- (1) Nonfiler cases may uncover estate and gift tax issues, and the examiner may find gifts were made and returns were due but not filed. The examiner should request the donor or the executor of the estate to prepare and submit the returns covering the unreported gifts.
- (2) While no tax liability may be involved if gifts are split between the spouses, it may still be important to secure returns for two reasons:
- Use of additional unified credit may generate a gift tax liability for either spouse in future years, or
  - The additional taxable gifts may increase the total taxable interests on the estate return of a deceased donor.
- (3) If a gift tax return is solicited and the executor refuses to file said return, an SFR should be prepared and processed using the SFR procedures.



- (4) The examiner should also consider seeking assistance from an estate and gift group when attempting to secure delinquent estate and gift returns or to identify the type of referral.
- 4.12.1.22**  
(10-05-2010)  
**Delinquent Tax Exempt and Government Entities Returns**
- (1) If a delinquent return within the jurisdiction of the Tax Exempt and Government Entities (TE/GE) operating division is discovered, the examiner will attempt to secure the return.
- (2) If the taxpayer refuses to file the delinquent return, or if a substantial amount of time will be required to secure the return:
- The delinquency investigation will be forwarded to the TE/GE for possible examination;
  - Use Form 5346 or Form 5666, *TE/GE Referral Information Report*, for returns of exempt organizations;
  - Use Form 4632, *Employee Plan Referral*, for returns of employee plans.
- (3) When attempting to secure delinquent employee plan or exempt organization returns, consult with TE/GE. For example, Form 5500, *Annual Return/Report of Employee Benefit Plan*, is filed with the Department of Labor. Exempt organization returns are filed with the Campus.
- (4) See IRM 4.72, *Employee Plans Technical Guidelines*, IRM 4.75, *Exempt Organizations Examination Procedures*, and the TE/GE website located at <http://tege.web.irs.gov/templates/TE/GEHome.asp> for procedures on delinquent and SFR.
- (5) The examiner should also consider making a referral using the SRS at <https://srs.web.irs.gov/Default.asp>. This system is often used to obtain assistance from a TE/GE specialist when attempting to secure delinquent TE/GE returns or to make a formal referral.
- 4.12.1.23**  
(10-05-2010)  
**High Income Non-Filer (HINF)**
- (1) All High Income Non-Filer (HINF) Strategy cases will have a source code (SC) of 25.
- (2) HINF Project Codes (PCs) are primarily:
- PC 0434 - HINF identified by the risk based model
  - PC 0435 - HINF identified by field information report/referral
- (3) If the scope of the nonfiler examination is expanded to include unfiled prior and/or subsequent year returns or related returns, the examiner should establish AIMS controls using the project code of the original/key case and the appropriate source code:
- SC 12 - delinquent return DIF related
  - SC 44 - delinquent return non-DIF related (including prior and subsequent year pick-ups)
- (4) If a fraud technical advisor (FTA) recommends that the nonfiler case be placed in fraud development status via Form 11661, *Fraud Development Recommendation - Examination*, the examiner will update the case on AIMS to SC 17. If the case is subsequently referred to CI (Criminal Investigation) and accepted for criminal investigation, the examiner will update the case on AIMS to SC 18.



4.12.1.24  
(10-05-2010)  
**Married Filing Joint  
Election for Nonfiler  
cases**

- (1) For nonfiler cases, IRM 4.10.8, *Examination of Returns - Report Writing*, provides the steps to ensure that for purposes of the election to file a joint return, a valid election has been made.
- (2) When attempting to secure delinquent returns, if an examiner obtains cooperation from the delinquent taxpayers, the examiner should ask the taxpayer to provide return(s) signed by both husband and wife if they want to make the married filing joint election.
- (3) If the delinquent taxpayers are unable to submit a completed and signed return, the examiner may prepare a return for their signatures. In either case, when a signed return is secured, the examiner will still need to prepare an RAR to close any case assigned on AIMS that has an SFR TC 150 and input a TC 97X with an AC 282 to establish that an original return was secured. See IRM 4.4.9, *AIMS Processing - Delinquent and Substitute for Return Processing*.
- (4) The amounts from the secured return may be used to prepare the RAR. The RAR will have to be prepared in order to post the tax with a TC 300 and close the case. In the other information section of the RAR, the examiner must annotate the date the return was secured, and that the return amounts have been considered in the report (RAR).
- (5) If the Examiner determines that the secured return warrants examination or that claimed income or deductions on the submitted return warrant adjustment, the examiner may incorporate those adjustments on the RAR.
- (6) See IRM 4.4.9, *AIMS Processing - Delinquent and Substitute for Return Processing*, for additional processing instructions.
- (7) Waivers of restriction on assessment Form 4549 and Form 870 do not constitute returns for purposes of the election to file a joint return under IRC 6013 because these documents do not purport to be returns and do not contain a jurat with a penalties of perjury clause. See Rev. Rul. 2005-59. Therefore, if the taxpayer does not file a return or the examiner does not prepare a return from information provided by the taxpayer on the return forms prescribed for filing which the taxpayer signs, the taxpayer is unable to elect joint return filing status.

**Note:** Revenue Ruling 74-203 has been revoked.

- (8) IRC 6020 authorizes the Secretary to prepare a return for a taxpayer who fails to make and file a return if the taxpayer discloses all information necessary for the preparation of the return. If the taxpayer signs the return prepared by the Secretary, the return may be received as the taxpayer's return.
- (9) If a taxpayer fails to make a return, or makes a false or fraudulent return, IRC 6020(b) authorizes the Secretary to make a return from his own knowledge and from such information as he can obtain through testimony or other sources.
- (10) IRC 6065 requires that a return "shall contain or be verified by a written declaration that it is made under the penalties of perjury."
- (11) Joint return filing status under IRC 6013(a) is predicated on the husband and wife making an election and intending to file a joint return. Accordingly, the Service may not elect joint filing status on behalf of taxpayers in a return it

prepares and signs under the authority of IRC 6020(b). See *Millsap v. Commissioner*, 91 T.C. 926 (1988), acq. in result, 1991–2 C.B. 1 (filing status used by IRS in preparing return under IRC 6020(b) does not bind taxpayers in later deficiency proceeding).

- (12) If married taxpayers fail to execute a joint return, the examiner will have to close the case using a filing status other than married filing joint. Generally, these taxpayers' filing status will be married filing separate. Based on facts and circumstances, the examiner will need to determine if a return is required to be filed by one or both spouses.
- (13) In the event that taxpayers provide a signed MFJ return, the examiner should ensure that any previously filed 1040 by either party is reversed (account is zeroed out) if there are not statute problems in accordance with IRC 6013(b). The examiner can find guidance on how to prepare the reversal in IRM 4.4.6.2, *Separate to Joint Return*. See IRM 4.4.6, *Conversion of Returns*, for actions required of examiner to reverse prior posting (return or SFR).

**Reminder:** The examiner must document in Workpaper #130, *Multi-Year and Related Returns Lead Sheet*, actions required per IRM 4.4.6. This documentation should include any supporting IDRS research performed.

4.12.1.25  
(10-05-2010)  
**No show/No response  
on Non-filer cases**

- (1) This subsection provides guidance to examiners on no show/no response for nonfiler cases, and when payor information documents such as Form W-2 and Form 1099 should be verified, including when examiners should use estimated expenses in determining unreported taxable income.

4.12.1.25.1  
(10-05-2010)  
**Unreported income -  
Information Returns**

- (1) In unreported income cases based on Information Returns Program (IRP) information, there is a legal requirement pursuant to IRC 6201(d) to contact third parties to verify income items only where the taxpayer reasonably disputes the income and has fully cooperated with the Service.
- (2) If a taxpayer does not respond to the examiner's attempt to initiate the examination and/or respond to the examiner's report of adjustments, then another attempt should be made to contact the taxpayer. If the taxpayer does not respond or raises a frivolous dispute (wages are not income, etc.), the taxpayer has not reasonably disputed the receipt of income reported on the IRP document. Under those circumstances, there is no legal requirement for further verification with third parties and an income adjustment in the amount reflected on the IRP document is appropriate.
- (3) Verification with third parties must be made where IRP information is relied upon to support the fraud penalty or where the taxpayer disputes the IRP income information. Verification with third parties should also be made in no show/no response cases where there is an inconsistency noted in the file that would cause the examiner to question the validity of the IRP information. For example, verification should be attempted if there is some obvious inconsistency in the IRP information (such as Form 1099 or Form W-2) that appears to be out of line in dollar amount from previous years, or there is some aspect of the Form W-2 or Form 1099 that is unusual on its face (such as Form W-2 or Form 1099 income that is completely inconsistent with the known profession or occupation of the taxpayer).

- (4) In cases involving large dollar income items (i.e. Form 1099-MISC, *Miscellaneous Income*, amounts greater than \$100,000), examiners in consultation with their manager, should use their professional judgment in deciding whether (given the circumstances of the case) to verify IRP information.
- 4.12.1.25.2  
(10-05-2010)  
**Estimated Business Expenses**
- (1) In no show/no response cases and in cases where nonfilers provide no substantiation of business expenses, the Service has no legal requirement to estimate expenses, including cost of goods sold. If the examiner has actual taxpayer information regarding expenses, then taxpayer specific information (not industry averages) should be used to determine expenses.
- (2) If the taxpayer does not have specific substantiation of the costs incurred for the year in issue, but has substantiation for the expenses in another year and establishes that the nature of the business remained the same, examiners should consider those substantiated expenses in estimating expenses for the year under examination. In no show/no response cases in which the sale of securities is an issue and in cases where the taxpayer does not substantiate stock basis, the Service has no legal requirement to obtain basis information from third-party sources, despite the fact that the total proceeds of stock sales are included in income.
- 4.12.1.25.3  
(10-05-2010)  
**Itemized Personal Deductions**
- (1) For nonfilers, interest expenses found on Form 1098, *Mortgage Interest Statement*, (IRP information) and other deductions including “known” real estate tax, should not be allowed as itemized deductions, unless the taxpayer submits a signed return electing to itemize deductions. Only the standard deduction should be allowed since itemized deductions are “an election” by the taxpayer and are elected on the return.
- 4.12.1.26  
(10-05-2010)  
**Activity Codes and SFR’s**
- (1) Accurate AIMS Activity Codes are an important part of internal control and administration. Examination employees are responsible for ensuring the accuracy of the AIMS data base.
- (2) Generally, the activity code is based on the return as filed and should not be updated except in cases involving “SFR”. With SFRs, since no return was filed, the opening activity code (depending on local procedures), is either a default code or a guesstimate of the correct code.
- (3) The default or guesstimated activity code must be updated based on the figures on the secured delinquent return or RAR, before the case leaves the group.
- (4) See IRM 4.4.1, *Introduction*, and IRM Exhibit 4.4.1-1 for specific instructions on the processing of cases and AIMS updates. See also IRM 4.4.34, *Updating/Correcting AIMS Data Base*, for instructions and use of Form 5348, *AIMS/ERCS Update (Examination Update)*, and Form 5349, *Examination Correction Request*, which are used when making AIMS updates.
- 4.12.1.27  
(10-05-2010)  
**When a Case Is Closed From the Group**
- (1) Follow the procedures in IRM 4.4.9, *Delinquent and Substitute for Return Processing*, for closing a case from the group.
- a. If a delinquent return is secured where no SFR TC 150 is posted, the examiner should follow the procedures outlined in IRM 4.4.9.5, *Delinquent Return Secured - No TC 150 Posted*.

- b. If all efforts have been exhausted to secure a return from the taxpayer, the examiner should follow the procedures outlined in IRM 4.4.9.6, *Substitute for Return*.
- c. If a delinquent return is received by the examiner after a SFR TC 150 posted at Master File, the examiner should follow the procedures outlined in IRM 4.4.9.7, *Delinquent Return Received After SFR TC 150 Posted at Master File*.
- d. For delinquent returns secured after the SFR TC 150 posted, and the return is accepted as filed, the examiner should follow the procedures outlined in IRM 4.4.9.7.3, *Delinquent Return Secured after SFR TC 150 Posted - Accepted as Filed Procedures*.
- e. For delinquent returns secured after the SFR TC 150 posted, and the return has audit potential, follow procedures outlined in IRM 4.4.9.7.4, *Delinquent Return Secured after TC 150 SFR Posted, With Audit Potential - Process Partial Assessment Procedures*. Partial Assessment procedures apply.
- f. For delinquent returns secured after TC 150 with partial assessment processed (additional adjustments required or no additional adjustments required). Examiners should follow procedures outlined in IRM 4.4.9.7.5, *Delinquent Return Secured after TC 150 SFR, With Audit Potential - Final Closing Package (Partial Assessment Processed)*.

4.12.1.28  
(10-05-2010)  
**Collection of Tax**

- (1) The examiner should request payment for an agreed deficiency or secured delinquent return with a balance due.
- (2) If an examiner does not secure full payment or an installment agreement from the taxpayer, a referral to Collection is mandatory for agreed unpaid cases over \$100,000 and should be considered and for agreed unpaid cases up to \$100,000. See IRM 4.20.3.4, *Coordination with Collection*.
- (3) Form 9440, *Taxpayer Levy Source and Contact Information*, should be completed and included in the case file in all unpaid cases (agreed and unagreed).
- (4) Examiners' responsibilities are outlined in IRM 4.20.1.2, *Examination Collectibility - General Collectibility Procedures, Examiner's Responsibilities*.

4.12.1.29  
(10-05-2010)  
**References - Substitute and Delinquent Returns**

- (1) References - substitute and delinquent returns
  - Policy Statement 5-133 (P-5-133), IRM 1.2.14.1.18, *Policy Statement 5-133, - Delinquent Returns - Enforcement of Filing Requirements*
  - IRC 6020 - Returns Prepared for or Executed by Secretary
  - IRC 6511, *Limits on Credit or Refund*
  - IRM 1.2.44.5, *Delegation Order 182 (Rev. 7)*, (Authority to Execute Returns)
  - IRM 4.4.9, *Delinquent and Substitute for Return Processing*
  - IRM 4.10.4, - *Examination of Income*
  - IRM 4.10.8, *Report Writing*
  - IRM 4.10.12, *Frivolous Returns*
  - IRM 4.11.57, *Third Party Contacts*
  - IRM 4.19.17, *Liability Determination - Non-Filer Program*
  - IRM 4.35, *Partnership and S Corporations*
  - IRM 4.60.6, *International Referral Criteria and Procedures*
  - IRM 20.1, *Penalty Handbook*

- IRM 25.1.7 - Failure to File
- SB/SE National Fraud Program website at *<http://sbse-service-wide.web.irs.gov/Fraud/default.aspx>* and MySB/SEExam Fraud website at *<http://mysbse.web.irs.gov/exam/tip/fraud/default.aspx>*.

