



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.23.10

JUNE 1, 2023

EFFECTIVE DATE

(06-01-2023)

PURPOSE

- (1) This transmits revised IRM 4.23.10, Employment Tax, Report Writing Guide for Employment Tax Examinations.

MATERIAL CHANGES

- (1) IRM 4.23.10.1.2(2) - Updated website and IRM reference.
- (2) IRM 4.23.10.1.3 - Added that Chief, Employment Tax Examination, is responsible for ensuring examiners follow the guidance included in this IRM.
- (3) IRM 4.23.10.1.4 - Changed quality review to National Quality (NQ) and Embedded Quality (EQ).
- (4) IRM 4.23.10.1.6- Added information on Taxpayer Advocate Service (TAS) resources and added updated Taxpayer Bill of Rights (TBOR) content.
- (5) IRM 4.23.10.2 - Split paragraph (6) based on content and added paragraph (7).
- (6) IRM 4.23.10.2.1- New subsection Documenting the Form 9984, Examining Officer's Activity Record.
- (7) IRM 4.23.10.4.(7) - Revised paragraph due to the addition of IRM 4.23.10.4.2, Additional Uses of Letter 1024-T.
- (8) IRM 4.23.10.4.2 - New Subsection: Additional Uses of Letter 1024-T.
- (9) IRM 4.23.10.5(2) - Letter 3381 no longer sent by CCP.
- (10) IRM 4.23.10.6(2) -Letter 3382 no longer sent by CCP.
- (11) IRM 4.23.10.7 - Deleted reference to IRM 4.10.8.13, Unagreed Case Procedures: Preliminary (30-Day) Letters (LB&I Examiners only), as it merged content into IRM 4.10.8.12, Unagreed Case Procedures.
- (12) IRM 4.23.10.9 - Revised paragraphs (1) and (2) with additional references.
- (13) IRM 4.23.10.10.1 - Corrected to reflect the revision of IRM 4.4.10, Audit Information Management System (AIMS) - Validity and Consistency, Employment/Excise Tax Adjustment effected November 29, 2022.
- (14) IRM 4.23.10.10.3(5) - Revised to instructs examiners to establish expanded returns using status code 10.
- (15) IRM 4.23.10.10.4(1) - Revised to instructs examiners to establish expanded returns using status code 10.
- (16) IRM 4.23.10.10.4(7) - Added an example of the language to be included on Form 4666 for all agreed reports.
- (17) IRM 4.23.10.10.6 - Revised to reflect Electronic Case Files Initiative (ECFI).

- (18) IRM 4.23.10.10.9 - Revised paragraph (7) and added paragraph (8). Added paragraph (11) for examiners to include their name, group number, and Business Operating Division information.
- (19) IRM 4.23.10.10.9.1 - Added paragraph (3) for examiners to include their name, group number, and Business Operating Division information.
- (20) IRM 4.23.10.10.9.2 - Revised paragraph (6) and added paragraph (7). Added paragraph (9) for examiners to include their name, group number, and Business Operating Division information.
- (21) IRM 4.23.10.10.11(2) - Added additional instruction to clarify the use of the Form 5701 and 886-A.
- (22) IRM 4.23.10.11(1) - Split information into 2 paragraphs. All following paragraphs in the section were renumbered.
- (23) IRM 4.23.10.12(4) - Added Note addressing the reduction of the electronic-filing threshold for information returns required to be filed on or after January 1, 2024 due to the issuance of final Treas. Reg. 301.6011-2(b)(2) and 301.6011-2(b)(4)(i).
- (24) IRM 4.23.10.12.1 - Revised the annotation language.
- (25) IRM 4.23.10.13(5) - Updated paragraph by changing “waiver” to “Form 2504” and “completed” to “signed”.
- (26) IRM 4.23.10.14.2 - New title: Employment Tax Procedures for Agreed Unpaid Cases with Liabilities over \$100,000. Revised collection instructions and provided cross-references to IRM 4.20.1 and IRM 4.20.1.3.4, Coordinate with Collection, for procedures for agreed BMF cases with unpaid liabilities in excess of \$100,000. Revised paragraph (5) for the proper name and reference number of lead sheet.
- (27) IRM 4.23.10.15.2.1 - Clarified the instructions to complete Form 3177.
- (28) IRM 4.23.10.15.2.1.1 - New Subsection: Completion of Form 5344. Split content from previous subsection.
- (29) IRM 4.23.10.15.3 - Clarified that IRC 3102(f)(3) abatement is available when using IRC 3509.
- (30) IRM 4.23.10.16.1(3) - Split information into 2 paragraphs. All following paragraphs in the section were renumbered.
- (31) IRM 4.23.10.19.2 - Added paragraph (1) that the procedures below apply only to paper case file assembly. All other paragraphs are renumbered. Paragraph (5) (formerly paragraph (4)) revised to reflect ECFI, which no longer requires closing letters to be sent by CCP.
- (32) IRM 4.23.10.19.3 - New title: EOE and FSL/ET Case File Assembly
- (33) Exhibit 4.23.10-1 - Revised to reflect IGM SBSE 04-0922-0064.
- (34) Exhibit 4.23.10-2 - Additional instructions to clarify the completion of Form 4667.
- (35) Exhibit 4.23.10-3. Updated name to Form 4668, Employment Tax Examination Changes Report. Additional instructions were added to clarify the completion of Form 4668 and incorporated changes for latest revision of Form 4668.
- (36) Exhibit 4.23.10-4 - Additional instructions added to clarify the completion of Form 4668-B.
- (37) Exhibit 4.23.10-5 - Updated name to Form 4668-C, Employment Tax Examination Changes Report - Railroad. Revised to reflect the latest revision of Form 4668-C. Additional instructions were added to clarify the completion of Form 4668-C.

- (38) Exhibit 4.23.10-6 - Additional instructions were added to clarify the completion of Form 2504.
- (39) Exhibit 4.23.10-7 - Additional instructions were added to clarify the completion of Form 2504-S.
- (40) Exhibit 4.23.10-8 - Additional instruction were added instructions to clarify the completion of Form 2504-T.
- (41) Exhibit 4.23.10-9 - New exhibit: Type of Tax or Credit and Code Section for Form 2504, 2504-S, and 2504-T.
- (42) Exhibit 4.23.10-10 - Formerly Exhibit 4.23.10-9.
- (43) Exhibit 4.23.10-11 - Formerly Exhibit 4.23.10-10. Exhibit was updated to reference more current years and change Form 1099-MISC to Form 1099-NEC.
- (44) Exhibit 4.23.10-12 - Formerly Exhibit 4.23.10-11.
- (45) Editorial, procedural, and technical changes have been made throughout this section.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.23.10, dated June 29, 2020. This section incorporates the following Interim Guidance Memorandums:

SBSE-04-0721-0036, Documentation of the Examining Officer's Activity Record (EOAR) for Gaps in Audit Activity, dated July 1, 2021.

SBSE-04-1221-0056, Revision of Deviation for Resumption of Speciality Exam Compliance Activities Due to Extended COVID-19 Impact, dated December 9, 2021.

SBSE-04-0122-0004, Temporary Guidance on Additional Use of Letter 1024-T, dated January 27, 2022.

SBSE-04-0922-0064, Interim Guidance for Report Writing for COVID-19 Credits and Worker Classification, dated September 26, 2022.

AUDIENCE

This section contains instructions and guidelines for Large Business & International (LB&I), Tax Exempt/Governmental Entities (TE/GE), and Small Business/Self Employed (SB/SE) employees dealing with employment tax issues.

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4.23.10

Report Writing Guide for Employment Tax Examinations

Table of Contents

4.23.10.1 Program Scope and Objectives

4.23.10.1.1 Background

4.23.10.1.2 Authority

4.23.10.1.3 Responsibilities

4.23.10.1.4 Program Objectives and Review

4.23.10.1.4.1 Program Reports

4.23.10.1.5 Acronyms

4.23.10.1.6 Related Resources

4.23.10.2 General Case Closing Guidelines and Time Frames

4.23.10.2.1 Documenting the Form 9984, Examining Officer's Activity Record

4.23.10.3 Survey of Employment Tax Return Before Assignment

4.23.10.4 Survey of Employment Tax Return After Assignment

4.23.10.4.1 Paperless Survey of SFR Employment Tax Returns

4.23.10.4.2 Additional Uses of Letter 1024-T

4.23.10.5 Notification Letters in No-Change or No-Liability Cases

4.23.10.6 Notification Letters in Agreed Cases

4.23.10.7 Unagreed Cases and 30-Day Letters

4.23.10.8 Form W-2 Procedures for Agreed Worker Classification Cases

4.23.10.8.1 Non-CSP Procedures

4.23.10.8.2 CSP Procedures

4.23.10.9 Technical Review of Reports

4.23.10.10 Preparation of the Employment Tax Examination Report

4.23.10.10.1 Railroad Retirement Tax Act (RRTA) Examination Reports

4.23.10.10.1.1 RRTA Examination Reports For RRTA Conversion Cases

4.23.10.10.2 Employment Tax Claim Report

4.23.10.10.3 Employment Tax No-Change Report

4.23.10.10.3.1 No-Change Reports for Section 530 Eligible Taxpayers

4.23.10.10.4 Employment Tax Change Report

4.23.10.10.4.1 Revised and Corrected Reports

4.23.10.10.5 Household Employment Taxes

4.23.10.10.5.1 Schedule H Resources

4.23.10.10.6 Form 4665

4.23.10.10.7 Form 4666

4.23.10.10.8 Form 4667

4.23.10.10.9 Form 4668

-
- 4.23.10.10.9.1 Form 4668-B
 - 4.23.10.10.9.2 Form 4668-C
 - 4.23.10.10.10 Form 2504, Form 2504-S, and Form 2504-T
 - 4.23.10.10.11 Explanation of Adjustments: Form 886-A, Form 5701, and Employment Tax Lead Sheet (ETLS) Copies
 - 4.23.10.11 Credit for FUTA Tax in Examination
 - 4.23.10.11.1 IRC 6020(b) Returns for FUTA
 - 4.23.10.12 Securing Form W-2 or W-2c
 - 4.23.10.12.1 Conversion of Worker Status
 - 4.23.10.13 Procedures at Conclusion of Examination
 - 4.23.10.14 Agreed Employment Tax Reports
 - 4.23.10.14.1 Fax Agreements
 - 4.23.10.14.2 Employment Tax Procedures for Agreed Unpaid Cases with Liabilities over \$100,000
 - 4.23.10.15 Partially Agreed Cases
 - 4.23.10.15.1 Partial Assessment/Quick Assessment Processing
 - 4.23.10.15.2 Examination Procedures for IRC 3402(d) and IRC 3102(f)(3) Relief
 - 4.23.10.15.2.1 Modified Partial Assessment Instructions
 - 4.23.10.15.2.1.1 Completion of the Form 5344
 - 4.23.10.15.3 Examination Report Forms for IRC 3402(d) and IRC 3102(f)(3) Abatements
 - 4.23.10.15.3.1 Form 4666: Abatement
 - 4.23.10.15.3.2 Form 4668: Income Tax Abatement
 - 4.23.10.15.3.3 Form 4668 and Form 4668-C: Additional Medicare Tax Abatement
 - 4.23.10.15.3.4 Form 4668-B: Abatement
 - 4.23.10.15.3.5 Form 2504 Series: Abatement
 - 4.23.10.16 Unagreed Employment Tax - Examination Reports
 - 4.23.10.16.1 Preparing Explanation of Adjustments
 - 4.23.10.16.2 Unagreed Employment Tax Report Forms
 - 4.23.10.16.3 Alternative and Whipsaw Positions in Unagreed Cases
 - 4.23.10.16.3.1 Procedures for an Alternative Position in an Unagreed Case
 - 4.23.10.16.3.2 Backup Withholding in Worker Reclassification Exams
 - 4.23.10.17 General Procedures for Adjusting the Employee Share of FICA/RRTA Taxes Including Additional Medicare Tax (AdMT) for Form 1040
 - 4.23.10.17.1 Procedures for Adjusting the Employee Share of FICA/RRTA Taxes Including Additional Medicare Tax (AdMT) on Form 1040 - Reclassification from Self-Employed to Employee
 - 4.23.10.17.2 Procedures for Adjusting the Employee Share of FICA/RRTA Taxes Including Additional Medicare Tax (AdMT) on Form 1040 - Worker is an Employee
 - 4.23.10.17.3 Procedures for Processing Employee Share of FICA/RRTA Taxes Including Additional Medicare Tax (AdMT) on Wages Paid by an Employer on Form 1040 in Unagreed Cases

-
- 4.23.10.17.3.1 Partial Assessment/Quick Assessment Processing for Form 1040 relating to Employment Taxes - Non-Deficiency Procedures
 - 4.23.10.17.4 Procedures for Adjusting Additional Medicare Tax (AdMT) - Form 1040
 - 4.23.10.17.4.1 Deficiency Procedures for AdMT on SE Income
 - 4.23.10.17.4.2 Non-Deficiency Procedures for AdMT for Form 1040
 - 4.23.10.17.4.3 Coordination of AdMT for Both Deficiency Procedures and Non-Deficiency Procedures
 - 4.23.10.17.5 Coordination of AdMT with RRTA
 - 4.23.10.18 Procedures for Employee Tax Adjustment on Tip Income Not Reported to Employer
 - 4.23.10.19 Assembly of Employment Tax Case File Folder
 - 4.23.10.19.1 Assembly of Employment Tax Case File Folder - LB&I Cases
 - 4.23.10.19.2 Assembly of Employment Tax Case File Folder - SB/SE
 - 4.23.10.19.3 EOE and FSL/ET Case File Assembly
 - 4.23.10.20 Form 5344/Form 5599 - Additional Entries for Completion of Employment Tax Closures
- Exhibits
- 4.23.10-1 Form 4666, Summary of Employment Tax Examination
 - 4.23.10-2 Form 4667, Examination Changes—Federal Unemployment Tax
 - 4.23.10-3 Form 4668, Employment Tax Examination Changes Report
 - 4.23.10-4 Form 4668-B, Report of Examination of Withheld Federal Income Tax
 - 4.23.10-5 Form 4668-C, Employment Tax Examination Changes Report - Railroad
 - 4.23.10-6 Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436)
 - 4.23.10-7 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)
 - 4.23.10-8 Form 2504—T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436)
 - 4.23.10-9 Type of Tax or Credit and Code Section for Form 2504, 2504-S, and 2504-T
 - 4.23.10-10 Filing Instructions For Reclassified Workers
 - 4.23.10-11 Form 886—A Format for Employee vs. Independent Contractor Adjustment
 - 4.23.10-12 Case Closing Decision Matrix

4.23.10.1
(06-01-2023)
Program Scope and Objectives

- (1) **Purpose:** IRM 4.23.10 provides instruction on employment tax report-writing. The objective of the material is to:
 - a. Minimize time-consuming research for instructions on preparing reports,
 - b. Minimize the number of cases returned by reviewers for correction of errors or omitted information,
 - c. Ensure the use of correct forms,
 - d. Promote uniformity, and
 - e. Provide time frames for processing agreed and unagreed employment tax cases.
- (2) **Scope:** This IRM, Report Writing Guide for Employment Tax Examinations, is for all examiners conducting examinations of employment tax returns.
- (3) **Audience:** This section contains instructions and guidelines for all Large Business & International (LB&I), Tax Exempt/Government Entities (TE/GE), and Small Business/Self-Employed (SB/SE) employees dealing with employment tax issues.
- (4) **Policy Owner:** Director, Specialty Exam Policy of the Small Business/ Self-Employed Division.
- (5) **Program Owner:** Program Manager - Employment Tax Policy. The mission of Employment Tax Policy is to establish effective policies and procedures, to support compliance with employment tax laws.
- (6) **Primary Stakeholders:**
 - Employment Tax - Workload Selection and Delivery (SE: S:DCE:HQ:ECS:S:ETEGCS:EWSD)
 - Specialty Examination - Employment Tax (SE:S:DCE:E:SE:ET)
 - Specialty Exam Policy, Employment Tax Policy (SE:S:D-CE:E:HQ:SEP:EMTP)
 - Tax Exempt/Governmental Entities (SE:T)
 - Exempt Organizations and Government Entities (SE:T:EOGE)
 - Federal, State & Local/Employment Tax (SE:T:EOGE:GE:FSL/ET)
 - Large Business and International (SE:LB)

4.23.10.1.1
(05-21-2018)
Background

- (1) This section provides instructions for preparation of examination reports covering employment tax examinations. It also discusses certain related procedures that are necessary both to have an efficient report writing system and to reduce examination time applied to a case.
- (2) IRM 4.23.10 applies to all employment tax examinations whether conducted by field or office examiners.
- (3) The examination report is the record of the examiner's findings and recommendations regarding the investigation of a taxpayer's liability for tax. It is the document from which reviewers may determine whether the examiner has properly developed the case and has correctly applied the law, regulations, and so on, to the facts to a particular case. Also, it may become the evidence on which the Government relies in a court case. Since the taxpayer ordinarily receives a copy of the report, it serves as a formal presentation to the taxpayer of the findings and recommendations of the examiner.

- (4) Preparation of an examination report is a very important part of the examiner's duties. The examination report should be clear, concise, and to the point. All adjustments must be properly explained and supported by appropriate references to the applicable laws, regulations, court decisions, rulings, and so on, on which the examiner based their findings.
- (5) Under no circumstances should a change report of employment tax adjustments be incorporated into an audit report covering income tax adjustments.
- (6) Additional guidelines can be found in IRM 4.10.8, Examination of Returns - Report Writing.

4.23.10.1.2
(06-01-2023)
Authority

- (1) Employment tax provisions are found at Internal Revenue Code Subtitle C:
 - Chapter 21, Federal Insurance Contributions Act (FICA),
 - Chapter 22, Railroad Retirement Tax Act (RRTA),
 - Chapter 23, Federal Unemployment Tax Act (FUTA),
 - Chapter 24, Federal Income Tax Withholding (FITW), and
 - Chapter 25, General Provisions relating to employment taxes and collection of income taxes at source.
- (2) The Employment Tax Program is governed by Policy Statements and other internal guidance that apply to all IRS personnel regardless of operating division. The Policy Statements found in IRM 1.2.1, Servicewide Policies and Authorities, Servicewide Policy Statements, apply to all employment tax issues and examinations. Examiners should review these Policy Statements to properly perform their examination duties.
- (3) A website, Search Servicewide Delegation Orders, located at <http://irm.web.irs.gov/imd/del/search.aspx> provides a searchable list of Servicewide Delegation Orders issued by the Commissioner of the Internal Revenue, or on their behalf by either of the deputy commissioners. Delegation Orders pertaining to each IRS business process can be found in IRM 1.2.2, Servicewide Policies and Authorities, Servicewide Delegations of Authority.
- (4) IRM 4.23 provides servicewide instructions for all operating divisions with employees involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions. By providing one source of authority for all operating divisions, the IRS greatly reduces philosophical and procedural inconsistencies.

4.23.10.1.3
(06-01-2023)
Responsibilities

- (1) Director, Specialty Exam Policy, is responsible for the procedures and updates addressed in this IRM.
- (2) Director, Examination Specialty Tax, is the executive responsible for examination operational compliance.
- (3) Chief, Employment Tax Examination, is responsible for ensuring examiners follow the guidance included in this IRM.

4.23.10.1.4
(06-01-2023)
Program Objectives and Review

- (1) Program Goals: The processes and procedures provided in this IRM are consistent with the objectives or goals for Employment Tax - Examination that are addressed in IRM 1.1.16.5.3.3, Employment Tax Examination and Employment Tax Policy, found in IRM 1.1.16.5.5.2.2, Employment Tax Policy.

- (2) Program Effectiveness: Program goals are measured with Employment Tax National Quality (NQ) and Embedded Quality (EQ) Performance Reports that monitor whether quality attributes are applied uniformly and consistently.
- (3) Annual Review: Program Manager of Employment Tax Policy is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.

4.23.10.1.4.1 (05-21-2018) Program Reports

- (1) Program Reports: Information regarding the reporting of program objectives are included on, but not limited to, the following reports submitted to the Director, Examination Specialty Tax:
 - Headquarters Examination Monthly Briefing,
 - Program Manager Monthly Briefing,
 - Examination Operational Review, and
 - Business Performance Reviews.
- (2) Quarterly Business Performance Review (BPR) provides updates on the status of the Whistleblower claims in Operating Division SME status.

4.23.10.1.5 (06-29-2020) Acronyms

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

Acronym	Definition
ACA	Affordable Care Act
AdMT	Additional Medicare Tax
AIMS	Audit Information Management System
ARP	American Rescue Plan
BMF	Business Master File
BOD	Business Operating Division
BWH	Backup Withholding
CARES	Coronavirus Aid, Relief, and Economic Security Act
CCP	Centralized Case Processing
CIC	Coordinated Industry Case
CSP	Classification Settlement Program
DC	Disposal Code
EIN	Employer Identification Number
EO	Exempt Organization
EOE	Exempt Organization Examination
ERC	Employee Retention Credit

Acronym	Definition
ERCS	Examination Returns Control System
ESS	Examinations Special Support
ETER	Employment Tax Examiner's Report
ETLS	Employment Tax Lead Sheet
ET-WSD	Employment Tax - Workload Selection and Delivery unit
EUP	Employee User Portal
FFCRA	Families First Coronavirus Response Act
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FSL/ET	Federal, State & Local / Employment Tax
FTD	Failure to Deposit
FTS	Fast Track Settlement
FUTA	Federal Unemployment Tax Act
HCSR	Home Care Service Recipients
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRN	Item Reference Number
LB&I	Large Business & International
LCC	Large Corporate Compliance Program
MFT	Master File Tax
NOPA	Notice of Proposed Adjustment
OPR	Office of Professional Responsibility
PBC	Primary Business Code
PMTA	Program Manager Technical Assistance
QLITC	Qualified Low Income Taxpayer Clinic

Acronym	Definition
RCCMS	Reporting Compliance Case Management System
RGS	Report Generation Software
RRB	Railroad Retirement Board
RRTA	Railroad Retirement Tax Act
SAA	Survey After Assignment
SBA	Survey Before Assignment
SB/SE	Small Business/Self-Employed
SECA	Self-Employment Contributions Act
SE Income	Self-Employment Income
S&FL	Sick and Family Leave
SFR	Substitute for Return
SME	Subject Matter Expert
SNOD	Statutory Notice of Deficiency
SRS	Specialist Referral System
SSA	Social Security Administration
STCP	Student Tax Clinic Program
SUTA	State Unemployment Tax
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TCO	Tax Compliance Officers
TE/GE	Tax Exempt/Government Entities
TIN	Taxpayer Identification Number
TSS	Temporary Staffing Service

4.23.10.1.6
(06-01-2023)

Related Resources

- (1) The following table lists the primary sources of guidance:

Source	Title	Description of Guidance
IRM 4.23	Employment Tax IRM	IRM sections, the majority owned by SB/SE Specialty Exam Policy, provides servicewide instructions for employees of all operating divisions involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.

(2) Other helpful information sources include:

- The SB/SE Knowledge Management home page for Employment Taxes: <https://portal.ds.irsnet.gov/sites/vl014/pages/default.aspx>.
- The Specialist Referral System home page: <https://srs.web.irs.gov/>.
- A list of SB/SE Employment Tax Policy Analysts, including their contact information and program assignments, is found at *Employment Tax Policy Contacts*.
- The web site “Exam Case Procedures” at <https://portal.ds.irsnet.gov/sites/vl014/pages/home.aspx?bookshelf=Exam%20Case%20Procedures> contains information relating to employment tax case procedures.

(3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3). For additional information about the TBOR, see www.irs.gov/taxpayer-bill-of-rights or <https://irssource.web.irs.gov/SitePages/TaxpayerBillOfRights.aspx>.

(4) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS, led by the National Taxpayer Advocate. Its job is to protect taxpayers’ rights by striving to ensure that every taxpayer is treated fairly and knows and understands their rights under the TBOR. TAS offers free help to taxpayers, including when taxpayers face financial difficulties due to an IRS problem, when they are unable to resolve tax problems they have not been able to resolve on their own, or when they need assistance to address an IRS system, process, or procedure that is not functioning as it should. TAS has at least one taxpayer advocate office located in every state, the District of Columbia, and Puerto Rico.

(5) Examiners should consider the disclosure and privacy provisions when preparing agreed and unagreed case reports. For further information, see the

Privacy, Government Liaison and Disclosure (PGLD) maintained knowledge base at <https://portal.ds.irsnet.gov/sites/vl003/pages/default.aspx>.

4.23.10.2
(06-01-2023)
General Case Closing Guidelines and Time Frames

(1) Employment Tax cases can be closed:

- Surveyed
- No-change
- Agreed
- Partially agreed
- Unagreed for IRS Independent Office of Appeals (Appeals)
- Unagreed (not requiring a letter 3523 or Appeals)
- Unagreed for the issuance of a Letter 3523, Notice of Employment Tax Determination Under IRC Section 7436

Many employment tax cases can involve single or multiple-type closures depending on the issues involved. The following paragraphs ((2) through (6)) provides general closing guidelines on where cases are closed depending on the type of closure required.

- (2) SB/SE employment tax groups should send electronically via email regular agreed cases, unagreed (not requiring a letter 3523 or Appeals) , no-change cases, and surveyed cases directly to Cincinnati Centralized Case Processing (CCP). TE/GE Exempt Organization Examinations (EOE) and Federal, State, Local / Employment Tax (FSL/ET) will send these cases to their respective EO closing unit for processing and closure. Groups other than SB/SE Employment Tax and TE/GE should send these cases to their respective CCP closing units.
- (3) SB/SE employment tax groups should send unagreed cases requiring the issuance of Letter 3523 or appealed cases directly to Technical Services in Cincinnati. TE/GE EOE and FSL/ET will follow the guidance in IRM 4.75.16.6, Cases Subject to Mandatory Review, to determine if the case is sent to Mandatory Review or sent to the EO closing unit.
- (4) Cases that involve multiple types of dispositions described in paragraph (1) above have unique closing procedures, as Technical Services will only accept cases with a valid Appeals request or for issuance of Letter 3523. Two types of cases require special closing procedures:
1. **Partial Assessments:** These are cases where an interim assessment must be made prior to closing to either CCP or Technical Services. Partial assessments are required when there are different types of dispositions affecting the **same** tax period. Generally, once the partial assessment is made by CCP, the entire case file will be closed to either CCP or Technical Services depending on the type of closure involved (agreed/unagreed, appealed or Letter 3523). See IRM 4.23.10.15, Partially Agreed Cases, and IRM 4.23.10.15.1, Partial Assessment/Quick Assessment Processing, for partial assessment procedures.
 2. **Separate Closures:** These are closures where final assessments must be processed to different locations. These closures are required when the case file includes different types of dispositions affecting **different** tax periods (each quarterly Form 941 is considered a different tax period). When a separate closure is required, the examiner will create two case files.

See Exhibit 4.23.10-12, Case Closing Decision Matrix, to determine when partial assessments or separate closures are required for employment tax cases.

(5) **Procedures for Separate Closures:**

When a separate closure is required, the examiner will create a separate case file from the primary case file and include:
a. Tax returns with adjustments that are agreed, unagreed (not requiring a Letter 3523 or Appeals), or no-change
b. Form 5344, Examination Closing Record, for the adjusted returns,
c. A report reflecting the agreed/ unagreed assessment or the no-change, and
d. Form 3198, Special Handling Notice for Examination Case Processing, with the appropriate information based on the disposition of the included returns. In the "Other" section, note: "These returns are being closed for final assessment. The workpapers remain with the primary case for tax period(s) XXXX, closed to Technical Services for the issuance of Letter 3523 (or to be routed to Appeals)."

The separate case file is then closed to CCP for final assessment and closure using the appropriate Disposal Code for the tax periods included.

The primary case file will include:
a. The remaining unagreed returns with the appropriate Form(s) 5344,
b. The unagreed report and valid Appeals request (if appropriate),
c. All workpapers,
d. Form 3198 with the appropriate information completed based on the disposition of the included returns. In the "Other" section, note: "The [agreed/unagreed/ no change] returns for the tax period(s) YYYY have been closed in a separate file to CCP for immediate assessment."

The primary case file is then closed to Technical Services for issuance of Letter 3523 or to be sent to Appeals (Status "21" and appropriate disposal code).

(6) Generally, cases should be closed from the group according to the National Standard Time Frames found in Attribute 510, Time Span (Timeliness) in IRM Exhibit 4.2.8-1, National Standard Time Frames for Case Action. However, the Employment Tax Program developed additional specific case-closing time frames:

- a. Agreed cases (except for those with unpaid proposed assessments of \$100,000 and greater) and no-change cases will be closed from the group within 20 calendar days. The 20 days start with the date the agreed report is received or the date the no-change status is communi-

cated to the taxpayer and ends the date the case is closed from the group. To help meet this time frame, examiners have 10 days to close the case to their manager and the manager has 10 days to close the case from the group. These cases will be updated to status "51" and sent to CCP. See IRM 4.23.10.14, Agreed Employment Tax Reports, for additional procedures for closing agreed cases and IRM 4.23.10.10.3, Employment Tax No-Change Report.

- b. Agreed cases with unpaid proposed assessments of \$100,000 and greater will be closed within four calendar days after the agreed report is received. These cases must be flagged on the Form 3198 in the "Expedite Processing" section of page 1.

Note: The \$100,000 limit is the amount of the total assessment.

- c. All unagreed cases will be closed within 20 calendar days from the earlier of the default date of the 30-day letter or the date a request for an Appeals conference is received from the taxpayer.

Note: TE/GE EO will send cases to their respective EO closing unit or EO Technical Services Unit for processing within the time-frames established in IRM 4.75.10.2, Definitions.

- (7) Both examiner and manager must document their closing actions on Form 9984, including reasons for not meeting the time frames.

Note: For additional procedures on unagreed cases see IRM 4.23.10.16, Unagreed Employment Tax - Examination Reports.

4.23.10.2.1 (06-01-2023) Documenting the Form 9984, Examining Officer's Activity Record

- (1) The national standard time frames facilitate timely audit resolution. Cases with gaps in audit activity outside of these time frames should be the exception rather than the rule.

Note: National standard time frames can be found in IRM Exhibit 4.2.8-1, National Standard Time Frames for Case Action.

- (2) Attribute 510 measures whether the time span for phases of the case is appropriate for the actions taken, and the Exam Quality Job Aid for these attributes contains the IRM time frames for case actions to ensure cases are worked in the most efficient manner. More information on the time standards is available here:

- *General Employment Tax Embedded Quality Job Aid for Revenue Agents and Revenue Officer Examiners*
- *Large Case Employment Tax Embedded Quality Job Aid for Revenue Agents (pdf)*
- *ET TCO Job Aid for Embedded Quality Rev May 2022 (pdf)*

4.23.10.3 (05-21-2018) Survey of Employment Tax Return Before Assignment

- (1) An employment tax case can be closed "Survey Before Assignment" (SBA) if it is disposed of without communication with the taxpayer or representative and before assignment to an examiner. Employees will carry out this duty in accordance with Policy Statement 1-236, "Fairness and Integrity in Enforcement Selection." See IRM 1.2.1.2.36.

- (2) Group managers should survey returns before assignment if no examination is warranted or if the number of returns assigned to the group exceeds the number that can be examined and processed within the examination cycles. This authority extends to employment tax referrals of returns created under the authority of IRC 6020(b) - Substitute for Return (SFR).
- (3) The SBA can be used on original returns, SFRs, or copies of returns. Procedures will vary depending on the type of return. See IRM 4.23.10.4.1, Paperless Survey of SFR Employment Tax Return, for survey procedures used for SFR returns closed by Primary Business Code (PBC) 212 examiners (SB/SE Employment Tax).

Note: Other Business Operating Divisions (BODs) should follow their established non-examined closure procedures for non-filers.

- (4) Disposal Code (DC) "31" is used for all filed returns closed as SBA.
- (5) Form 2503, Survey – Excise or Employment Tax, must be completed for all SBA cases except for SFR closures covered in IRM 4.23.10.4.1, Paperless Survey of SFR Employment Tax Return.
- (6) The SBA process cannot be used if there is an unresolved Transaction Code (TC) 976/977 or a credit balance on the tax module. These cases must be examined and closed using an examined disposal code to allow the return to properly close.

4.23.10.4
(06-01-2023)
**Survey of Employment
Tax Return After
Assignment**

- (1) An employment tax case will be closed "Survey After Assignment" (SAA) if, after analyzing the employment tax return and without interviewing the taxpayer or representative or reviewing any records, the examiner believes that an examination of the return would result in no material change in tax liability. Employees will carry out this duty in accordance with Policy Statement 1-236, "Fairness and Integrity in Enforcement Selection." See IRM 1.2.1.2.36.
- (2) SAA can be used on original returns, SFRs, or copies of returns. Procedures will vary depending on the type of return. See IRM 4.23.10.4.1, Paperless Survey of SFR Employment Tax Return, for survey procedures used for SFR returns closed by PBC 212 examiners.

Note: Other BODs should follow their established non-examined closure procedures for non-filers.

- (3) DC "32" is used for all filed returns closed as SAA.
- (4) Form 2503, must be completed for all SAA cases except for SFR closures covered in IRM 4.23.10.4.1, Paperless Survey of SFR Employment Tax Return. The manager will review the Form 2503 and approve by signing in Block 15, "Approved by."
- (5) In the case where a return is received from another area and the other area only made the initial contact with the taxpayer (without commencement of the examination and/or inspection of the books and records), the receiving area may apply the SAA procedures if the return does not warrant examination. Letter 1024-T, Employment Tax Return Accepted as Filed, is used to notify the taxpayer. For additional uses of Letter 1024-T, see IRM 4.23.10.4.2, Additional Uses of Letter 1024-T. The group manager will sign and mail the Letter 1024-T

to the taxpayer and representative, if applicable. The case can then be closed following the appropriate survey after assignment procedures.

- (6) The SAA process cannot be used if there is an unresolved TC 976/977 or credit balance on the tax module (for example, “-A” freeze). Claims may be surveyed (allowed) but closed with DC 34.
- (7) Procedures for the survey of claims are found in IRM 4.23.13, Employment Tax - Adjusted Returns, Abatements, and Claims.

4.23.10.4.1 (05-21-2018)

Paperless Survey of SFR Employment Tax Returns

- (1) SFRs established under IRC 6020(b) procedures always use the paperless survey process for cases closed by employment tax examiners in PBC 212. Examiners in other areas should use their established procedures for non-examined closures on non-filed returns. The following disposal codes are available for use by PBC 212 examiners closing SFR cases under these procedures:
 - DC “36”: No Return Filed – Taxpayer not liable – Little/No Tax due. Can also be used if the SFR return is not going to be examined because the return is out of cycle.
 - DC “37”: Taxpayer Previously Filed.
 - DC “40”: No Return Filed – Unable to locate taxpayer.
- (2) Form 5351, Examination Non-Examined Closing, or Form 5596, TE/GE Non-Examined Closings, is completed. To complete Form 5351:
 - a. Use only one Master File Tax (MFT) code per Form 5351.
 - b. More than one disposal code is allowed per Form 5351.
 - c. The manager signs the “Approved by” box and enters the current date.
 - d. Use either the taxpayer audit label or fill-in the taxpayer name, TIN, MFT, and tax period.
 - e. Enter the disposal code in the lower left of the label area below “Status” or write “DC ____” in the lower left corner of the block.
- (3) The manager’s signature and date on Form 5351 is in lieu of the survey stamp. Form 3198 is not required on these non-examined closures.
- (4) The Forms 5351 and 3210 are faxed to CCP. See CCP Exam EFax Numbers at <https://portal.ds.irsnet.gov/sites/vl051/Lists/ExamCentralizedCaseProcessingCCP/DispItemForm.aspx?ID=8>.

Note: TE/GE groups will forward forms to the EO Examinations Closing Unit for processing in accordance with IRM 4.75.16.7.6, 100 Percent Paperless Closure.

- (5) Indian Tribal Government (ITG) specialists send the Form 5596, to the Austin, TX office.
- (6) Form 2503 is not required with the SFR paperless survey process; the disposal code provides an explanation as to why the return was surveyed.

4.23.10.4.2
(06-01-2023)

**Additional Uses of Letter
1024-T**

- (1) Letter 1024-T is sent to notify the recipient that their employment tax return was reviewed and accepted as originally filed.
- (2) Letter 1024-T has a "Show Selectable Paragraph Pages" button at the top. Examiners should use this button to select the paragraph(s) most appropriate for the taxpayer's situation.
- (3) To provide better communication to the taxpayer the letter may be used in the following situations:
 - a. A return is assigned to an examiner and, contact has been made with a taxpayer (but prior to inspection of the books and records), and the examiner determines that an examination is not warranted.
 - b. A non-filed return is assigned to the examiner and, contact has been made with the taxpayer (but prior to inspection of the books and records), and the examiner determines that employment tax returns are not due or were filed under another Employer Identification Number (EIN).
- (4) The letter may be used when a taxpayer provides a delinquent return during an examination that is:
 - a. Accepted as filed and processed within seven days of receipt. Additional information on delinquent return processing procedures can be found in IRM 4.23.12, Delinquent Return Procedures.
 - b. Processed as a partial assessment with no additional tax assessment. Additional information on delinquent return processing procedures can be found in IRM 4.23.12, Delinquent Return Procedures.
- (5) Returns being closed using Letter 1024-T under IRM 4.23.10.4.2(4) above should be closed agreed and not as a no change.

4.23.10.5
(06-01-2023)

**Notification Letters in
No-Change or
No-Liability Cases**

- (1) In every examined no-change employment tax case not involving a claim for refund, the examiner will provide a copy of the no-change report to both the taxpayer and the taxpayer's representative (if Form 2848, Power of Attorney and Declaration of Representative, authorizes the representative to receive notices and communications). This report is transmitted using Letter 3401-A, Employment Tax No Change Transmittal Letter, signed by the examiner. This transmittal letter advises the taxpayer that a no-change is proposed but is subject to review by the Chief, Employment Tax, or other functional designee. Upon approval, a final no-change letter will be issued to the taxpayer and representative, if applicable.
- (2) The final no-change closing Letter 3381, No-Change Letter for Employment Taxes, will be prepared and provided by the examiner as follows:
 - a. Mark the appropriate box on Form 3198 that states "No letter required to be sent by CCP."
 - b. List either the examiner or manager as the contact person.
 - c. The manager reviews the case file and signs and dates the letter.
 - d. Upon notification from the group manager that the case has been closed, a copy of the Letter 3381 will be provided to both the taxpayer and the taxpayer's authorized representative.
 - e. The Form 9984 will be updated by the examiner to document the letter and date sent and to whom.

- (3) If a complementary no-change letter is deemed appropriate in a particular case, a specially composed letter will be prepared in lieu of Letter 3401-A. The manager **must** approve all nonstandard letters. See IRM 4.10.1.2.2.2, Employee Contact Information, for guidance for manually generated correspondence by an employee working tax related issues.
- (4) Occasionally, it is necessary to send a no-change letter to a taxpayer who elected to take credit of an overpayment discovered by an examiner on a subsequent return. See IRM 4.23.8.6.2, Specific Instructions - FICA Overpayments in Examinations. In such a case, a footnote to that effect should be inserted on the bottom of the no-change notification letter.
- (5) A no-change examination report will be furnished to the taxpayer in all no-change cases on Form 4666, Summary of Employment Tax Examination. If mailed, the report is transmitted with Letter 3401-A, and a copy of the report and letter will be sent to the representative, if applicable.
- (6) A no-change examination report will also be furnished to the taxpayer on Form 4666 in cases where there are adjustments to unreported tips and no adjustments for other issues. The report is transmitted with Letter 4840, Unreported Tips and No Change for Other Examined Issues, along with the pre-notice to Section 3121(q) Notice and Demand. For additional information, see IRM 4.23.7.7.3, Report Writing Procedures for Tip Examinations.
- (7) Refer to IRM 4.23.10.10.3, Employment Tax No-Change Report, and IRM 4.23.10.10.3.1, No-Change Reports for Section 530 Eligible Taxpayers, for special employment tax report writing procedures relating to no-change examination cases.

4.23.10.6 (06-01-2023) **Notification Letters in Agreed Cases**

- (1) There are three agreement forms:
 - a. Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436),
 - b. 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), and
 - c. Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax an Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436).

In agreed employment tax cases, the examiner will prepare and furnish the taxpayer with a copy of the report at the conclusion of the examination. If the additional tax was not paid and the taxpayer is eligible for an interest-free adjustment, the examiner will explain that interest will be due from the date the signed agreement form was received by the IRS until full payment is made. Refer to IRM 4.23.8.3.1, Interest-Free Audit Adjustment for more information. If the report is transmitted by mail, Letter 4121-E, Employment Tax Report Transmittal Letter, may be used. Letter 4121-E is signed by the examiner and allows the examiner to make a selection of Form 2504, 2504-S, or 2504-T, and also includes a drop-down box in the "Enclosures" section to select the appropriate waiver(s). Any nonstandard report transmittal letter composed by the examiner must be approved by the manager.

- (2) A closing Letter 3382, Notification Letter - Agreed Employment Tax Change Cases, will be prepared and provided by the examiner as follows:
 - a. Mark the appropriate box on Form 3198 that states "No letter required to be sent by CCP."
 - b. The manager reviews the case file and signs and dates the letter.
 - c. List either the examiner or manager as the contact person.
 - d. Upon notification from the group manager the case has been closed a copy of the Letter 3382 will be provided to both the taxpayer and the taxpayer's authorized representative.
 - e. The Form 9984 will be updated by the examiner to document the letter and date sent and to whom.
- (3) Letter 1002, Notification Letter for Agreed Audit Changes for Partnerships and S Corporation (non-TEFRA) Cases, may be used instead of Letter 3382 in all cases where full payment was received at the time the examination was closed. Since this letter does not make any reference to payment options, it is only appropriate when there is no balance due at the time the case is closed.

4.23.10.7
(06-01-2023)
**Unagreed Cases and
30-Day Letters**

- (1) Primary guidance and procedures for unagreed employment tax cases and 30-day letters can be found at IRM 4.23.22, Employment Tax, Unagreed Employment Tax Case Procedures. Additional resources are located at IRM 4.10.8.12, Unagreed Case Procedures.

4.23.10.8
(06-29-2020)
**Form W-2 Procedures
for Agreed Worker
Classification Cases**

- (1) In an agreed examination of a worker reclassification issue, an examiner may or may not need to solicit Forms W-2, Wage and Tax Statement, depending on whether a Classification Settlement Program (CSP) agreement is entered into.
 - For non-CSP procedures, see IRM 4.23.10.8.1.
 - For CSP procedures, see IRM 4.23.10.8.2.
 - For delinquent Form W-2 procedures, see IRM 4.23.8.10, Delinquent Forms W-2/W-2c.

4.23.10.8.1
(05-21-2018)
Non-CSP Procedures

- (1) In agreed worker reclassification cases **not** subject to the CSP procedures in IRM 4.23.6, Classification Settlement Program (CSP), the examiner will advise the employer to prepare Forms W-2 for the converted worker(s). See IRM 4.23.8.10.1, Delinquent Forms W-2/W-2c Secured By Examiner Due to Exam Adjustments, for procedures on delinquent Forms W-2 secured by the examiner. IRM 4.23.8.10.2, Delinquent Forms W-2/W-2c Not Secured by Examiner, addresses procedures when the delinquent returns are not secured.
- (2) In addition, it is recommended that the examiner request the employer to notify all affected worker(s) of the determination, so as not to deprive them of any state or other regulatory agencies legal benefits afforded to an employee. The examiner will document the employer's response to this request in the workpapers.
- (3) The examiner will provide the employer with copies of Notice 989, Commonly Asked Questions When IRS Determines Your Worker Status is **Employee**, for use in the employee notification process. See Exhibit 4.23.10-10, Filing Instructions for Reclassified Workers, for an example of a letter the **employer** could issue to employees.

Note: Exhibit 4.23.10-10 is for illustration purposes only. This type of notification letter is for use **only** by the employer. A notification letter is **not** issued by the IRS.

4.23.10.8.2
(05-21-2018)
CSP Procedures

- (1) For cases subject to the CSP procedures, workers are not treated as employees until the prospective date identified in the CSP agreement. Thus, delinquent Forms W-2 are not required and are not to be solicited by the examiner or filed by the employer in a CSP case. However, the employer should request Forms W-4 from the “new” employees effective with the start of the CSP agreement.

4.23.10.9
(06-01-2023)
Technical Review of Reports

- (1) Technical review of examinations completed by examiners to determine whether the applicable law, regulations, and rulings have been applied correctly are conducted by national quality reviewers in Field and Specialty Exam Quality (FSEQ). Any trends identified will be brought to the attention of the examiner’s manager. Refer to IRM 4.2.8, Examining Process, General Examining Procedures, Guidelines for SB/SE National Quality Review.
- (2) If a case file is sent back after review, the examiner uses Form 886-A, Explanation of Items, to answer questions presented by the reviewer or express agreement or disagreement with the technical reviewer’s suggested corrections. For additional information for returning cases to the field see IRM 4.2.8.9.1, Specialty Exam Case Return Criteria.
- (3) The examiner’s manager or designee completes a limited review of the cases not selected for mandatory review to ensure against obvious omissions and oversights. The limited review includes:
 - Checking the case file for proper assembly,
 - Assuring that all necessary forms are in the file and properly signed,
 - Confirming periods of statutory limitations for assessment,
 - Verifying the validity of the power of attorney, and
 - Ensuring no other obvious omissions.

4.23.10.10
(05-21-2018)
Preparation of the Employment Tax Examination Report

- (1) If an examination involves only one type of issue, either IRC 7436 or non-IRC 7436, a single report is normally prepared for concurrent examinations of more than one type of employment tax (for example, Form 940, Employer’s Annual Federal Unemployment (FUTA) Tax Return, and Form 941, Employer’s QUARTERLY Federal Tax Return). Form 4666 will be used to summarize the total examination results. Form 4667, Examination Changes - Federal Unemployment Tax, Form 4668, Employment Tax Examination Changes Report, Form 4668-B, Report of Examination of Withheld Federal Income Tax, and Form 4668-C, Employment Tax Examination Changes Report - Railroad, will also be prepared, as necessary.
- (2) If an examination involves both IRC 7436 and non-IRC 7436 issues, separate reports are prepared. Each Form 4666, 4667, 4668, 4668-B, and 4668-C will be noted whether the adjustments are “Non-7436 Adjustments,” “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 to prevent any taxpayer confusion regarding the computation of tax for the separate issues.

- (3) If any barred periods are involved, this must be indicated on the Form 4668. A copy of the Form 4668 applicable to FICA wages will be placed in the case file and forwarded to the Campus Receipt and Control Branch. The copy must be legible for transcription and microfilming.
- (4) If all employment tax returns examined result in a no-change, the procedures in IRM 4.23.10.5, Notification Letters in No-Change or No-Liability Cases, and IRM 4.23.10.10.3, Employment Tax No-Change Report, will be followed. If an examination results in a change in tax liability for one type of tax and no-change to another type, follow the procedures in IRM 4.23.10.10.3(9).
- (5) When an examination results in an agreement to the findings on one type of tax and no agreement on another, separate reports are prepared. See IRM 4.23.10.15, Partially Agreed Cases.

4.23.10.10.1
(06-01-2023)

Railroad Retirement Tax Act (RRTA) Examination Reports

- (1) The report writing instructions for FICA tax examinations, including Additional Medicare Tax, generally apply to RRTA tax examinations.
- (2) Report writing instructions for Form 4668-C are found in IRM 4.23.10.10.9.2, Form 4668-C, and Exhibit 4.23.10-5, Form 4668-C, Employment Tax Examination Changes Report - Railroad.
- (3) If RRTA and income tax withholding are both adjusted by the examination, separate forms, Form 4668-C and 4668, are prepared for each type of tax, as income tax withholding is reported quarterly on Form 941 and the RRTA tax liability is reported annually on Form CT-1, Employer's Annual Railroad Retirement Tax Return, by railroad employers to pay Tier 1 and Tier 2 taxes as provided by IRC 3201 and IRC 3231. In addition, Form CT-2, Employee Representative's Quarterly Railroad Tax Return, is a quarterly return filed by employee representatives to pay Tier 1 and Tier 2 taxes as provided in IRC 3211 and IRC 3212. Examinations of Form CT-2 are also reflected on Form 4668-C. See IRM 4.23.10.10.9.2, Form 4668-C, for additional information.
- (4) Item Reference Number (IRN) "070" is necessary for adjusting the total of railroad retirement tax (including Additional Medicare Tax for calendar years beginning after December 31, 2012). Line 16 of Form 4668-C identifies the total RRTA wage adjustment as "070" for Form CT-1 examinations only. This IRN is also entered on Item 15, "Credit and Tax Computation Adjustments," of Form 5344. See IRM 21.7.2.6.5.1, Form CT-1 Tax Adjustments.
- (5) The case file will include a memorandum to the Railroad Retirement Board (RRB) stating each employee's name and SSN, the name of the railroad employer, and the increase or decrease in the amount of compensation subject to RRTA for each employee. Due to disclosure concerns, do not include references to income tax withholding, FICA wage, or FICA tax adjustments in the memorandum.
- (6) All agreed railroad employment tax examination cases will be flagged on Form 3198 in the "Special Features" section under "Other Instructions" with the following statement: "Railroad Retirement Board Case, Special Disclosure Action Required." IRC 6103(l)(1)(C) authorizes disclosure of federal tax returns and return information to the RRB for administering the RRTA. Also, additional

instructions should be provided to enable CCP to accurately process the case in the "Letter Instructions for CCP / Other Instructions" section, with the following statement:

"Forward copies of Form 4668-C, Form 886-A (or copies of the issue lead sheets, if applicable), and RRB Memorandum to RRB."

- (7) Upon closing an employment tax case involving a railroad, the examiner should include an additional copy of the report in the file, clearly marked as an RRB referral. The RRB referral will consist **only** of those items pertinent to RRTA taxes, that is :

- RRB Memorandum,
- Form 4668-C,
- Forms 886-A and/or issue lead sheets that relate to each adjustment reflected on the Form 4668-C, and
- Attachments that are pertinent to RRTA taxes.

Note: For additional information see IRM 4.4.10.2, Adjustments to Railroad Retirement Tax Act (RRTA) - CCP Responsibility.

- (8) Questions involving railroad employment taxes should be directed to the SB/SE Employment Tax Policy Analyst assigned to Railroad Employer issues. Additional information for railroads is available on the Knowledge Management website under Transportation at <https://portal.ds.irsnet.gov/sites/vl025/lists/railroad/landingview.aspx> including the Railroad Retirement Tax Act Desk Guide.

4.23.10.10.1.1 (06-29-2020) **RRTA Examination Reports For RRTA Conversion Cases**

- (1) In addition to the instructions above in IRM 4.23.10.10.1, in RRTA examinations involving the conversion of an employee from FICA coverage to RRTA coverage, the examiner will advise the taxpayer to file a protective claim under IRC 3503 and the regulations thereunder. No action should be taken on these claims until all administrative and judicial proceedings are resolved. See IRM 4.23.8.6.1, Special Rules Relating to FICA and RRTA Taxes, and IRM 4.23.8.6.1.1, Processing and Submission of Forms for FICA and RRTA Adjustments, for additional procedures on RRTA conversion cases.

4.23.10.10.2 (05-21-2018) **Employment Tax Claim Report**

- (1) Examiners will prepare reports for cases in which claims are allowed in-full or in-part under the same procedures prescribed for other cases. Include a statement regarding the disposition of the claim in the "Other Information" section of Form 4666 and attach Form 4667, 4668, 4668-B, and/or 4668-C , and/or to identify the tax adjustments.
- (2) Refer to IRM 4.23.13, Employment Tax - Adjusted Returns, Abatements and Claims, for instructions.

4.23.10.10.3 (06-01-2023) **Employment Tax No-Change Report**

- (1) If all employment tax returns/periods examined result in no change, the no-change report will be issued using Form 4666 and the appropriate closing letters. See IRM 4.23.10.5, Notification Letters in No-Change or No-Liability Cases. In Employee Plans/Exempt Organizations (EP/EO) examinations, the examiner will also enter the no-change disposal code on Form 5772, EP/EO Workpaper Summary.

- (2) All no-change reports should include the caveat on the Form 4666: "This examination report is subject to the approval of the (appropriate designee):" Examples of the appropriate designee include:
- Chief, Employment Tax SB/SE
 - SB/SE Area Director
 - Appropriate Director, LB&I or TE/GE
 - Program Manager, TE/GE, Indian Tribal Governments
- (3) If the examination **did not address worker classification issues**, the following disclaimer must be entered on the Form 4666: **"The examination of your employment tax returns as reflected on this report did not include an examination for employment tax purposes of whether any individuals should be treated as employees of the taxpayer."**
- (4) If the examination addressed worker classification issues for some classes of workers and not for others and those workers were determined not to be employees, the following disclaimers must be entered on Form 4666 to specify which classes of workers that were examined:
- a. **"The examination of your employment tax returns as reflected on this report included an examination for employment tax purposes whether certain classes of workers should be treated as employees. The following classes of workers were determined not to be employees: [list classes of workers examined]."**
 - b. If no other classes of workers were examined, add **"No classes of workers other than those listed above were included in this examination."**
- Note:** If the taxpayer was entitled to section 530 relief with respect to the workers examined see IRM 4.23.10.10.3.1(2), No-Change Reports for Section 530 Eligible Taxpayers, for the appropriate disclaimer language.
- Note:** If worker classification issues are examined for only some classes and result in a no change, failing to list the classes of workers examined could result in the taxpayer being eligible for the prior audit safe haven in subsequent years for all classes of workers, even those not examined.
- (5) In examinations, examiners should control all four quarters of Form 941 when an examination covers the entire year. This applies even if the case results in a no-change, as this will more accurately reflect the audit work conducted. In some cases, the fourth quarter return for each calendar year examined may initially be controlled. Controls on prior/subsequent or related quarters should be requested using status code 10 as soon as it is determined they will be included as part of the exam. This will ensure that proper inventory controls are in place and prevent delays when the case is ready for closure from the group.
- (6) When a Form 941 examination for less than a calendar year results in a no-change, no-change only those quarters examined. Explain in the workpapers the reason for not examining the other quarters in the calendar year.
- (7) The taxpayer will be issued a no-change report on Form 4666 indicating the period(s) and return form(s) examined and closed as no-change.

- (8) Guidelines for notification letters to the taxpayer and the taxpayer's representative in no-change cases are found in IRM 4.23.10.5, Notification Letters in No-Change or No-Liability Cases.
- (9) IRM 4.23.10.5, Notification Letters in No-Change or No-Liability Cases, procedures will not be used for an examination if there are issues involving both change and no-change results for the various returns examined in a calendar year examination or multiple year examination. Rather, the no-change results will be included with the change results in a single examination report:
 - a. Form 4666 is used.
 - b. The no-change results are reported in the summary section of Form 4666 by entering the period and return form number, writing "No-Change" in the tax column and entering a dash in the page column.

Note: The Employment Tax Examiner's Report (ETER) must be unprotected to manually enter the dash.
 - c. Form 4667, 4668, 4668-B, or 4668-C will **not** be completed for the no-changed periods.
- (10) When a taxpayer's employment tax returns are examined concurrently with other returns (income tax returns or TE/GE returns such as Form 990, Return of Organization Exempt from Income Tax) and the employment tax examination results in a no-change, a statement to that effect will be included in the income tax or TE/GE examination workpapers. The statement must identify the employment tax returns examined and indicate briefly the extent of the examination.

4.23.10.10.3.1
(06-01-2023)

No-Change Reports for Section 530 Eligible Taxpayers

- (1) The question of whether a business is eligible for section 530 relief must be addressed first in every worker classification case. See IRM 4.23.8.2, Introduction, and IRM 4.23.5.3, Section 530 of the Revenue Act of 1978. If the business is eligible for section 530 relief with regard to a certain worker occupation, the examiner will discontinue the examination with regard to the qualified occupation. This discontinuance means that the worker status has not been determined as to whether the occupational category is that of employee or non-employee.
- (2) If an examination was limited to just the issue of the occupation covered by section 530 and the examination is closed as a no-change, Form 4666 must include the following statement as to the description of the worker classification that qualifies for section 530 relief and the reason section 530 applies for that classification:
 - a. **"The examination of your employment tax returns as reflected on this report included an examination for employment tax purposes whether certain individuals should be treated as employees. The examination concluded that you are entitled to section 530 relief with respect to the following classes of workers due to [judicial precedent, prior audit, industry practice, other reasonable basis: [list classes of workers for which the taxpayer was determined to be entitled to section 530 relief]."**
 - b. If no other classes of workers were examined, add **"No classes of workers other than those listed above were included in this examination."**

- (3) If the examination also includes other issues, those issues will be completed prior to a report being issued - whether no-change or change. However, the statement described in paragraph (2) above shall be included on Form 4666.

4.23.10.10.4
(06-01-2023)
**Employment Tax Change
Report**

- (1) In examinations, examiners should control all four quarters of Form 941 when an examination covers the entire year. This will more accurately reflect the audit work conducted. In some cases, the fourth quarter return for each calendar year examined may initially be controlled. Controls on prior/ subsequent or related quarters should be requested using status code 10 as soon as it is determined they will be included as part of the exam. This will ensure that proper inventory controls are in place and prevent delays when the case is ready for closure from the group.
- (2) The restriction on assessment in IRC 7436 created the requirement for a separate agreement form, Form 2504-T. This form is used for soliciting agreement for issues relating to IRC 7436 issues. Exhibit 4.23.10-8, Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), has instructions on completion of the form.
- (3) Form 2504, is the agreement form used in three situations:

- a. In employment tax examinations where any worker classification issue was examined and accepted and other non-IRC 7436 issues are adjusted, for example, fringe benefits. The non-IRC 7436 issues are reflected on the Form 2504, and the identity of the worker job classification accepted in the exam must be notated in the "Other Information" section of the Form 4666.
- b. In employment tax examinations where the worker classification adjustment is adjusted and reflected on Form 2504-T and there are other non-IRC 7436 issues. The non-IRC 7436 adjustments should be reflected on a separate Form 2504.

Note: See Exhibit 4.23.10-6, Form 2504 - Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436).

- c. When adjusting the employee share of FICA taxes, including Additional Medicare Tax. See IRM 4.23.10.17, General Procedures for Adjusting the Employee Share of FICA/ RRTA Taxes including Additional Medicare Tax.
- (4) Form 2504-S is used when non-IRC 7436 audit issues are examined and adjusted and the examination did **not** address issues with regard to employee classification and worker status. The form contains the following disclaimer statement: **"The examination of your employment tax returns as reflected on this agreement did not include an examination for employment tax purposes of whether any individuals should be treated as employees."**
- See Exhibit 4.23.10-7, 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).
 - See IRM 4.23.10.10.10, Form 2504, Form 2504-S, and Form 2504-T, for additional information.

- (5) Examiners may encounter situations in which there are IRC 7436 and non-IRC 7436 issues in an examination. Separate Form 4666, 4667, 4668, 4668-B and 4668-C and agreement Form 2504-T and 2504 or 2504-S **MUST BE** prepared if both IRC 7436 and non-IRC 7436 issues are present. Examiners may encounter situations in which there are a combination of agreed and unagreed adjustments involving IRC 7436 and non-IRC 7436 issues.

Note: Form 2504-T may include only IRC 7436 wages issues where worker classification issues were not examined and the proposed adjustments are only for wage issues (either or both IRC 7436 and non-IRC 7436). Therefore, Form 2504-S can be used in conjunction with Form 2504-T.

- (6) When agreement is reached with the taxpayer, the examiner prepares and furnishes an examination report (Form 4666, 4667, 4668, 4668-B, 4668-C, 2504, 2504-S and/or 2504-T) to the taxpayer at the closing conference. A copy will also be given to the taxpayer's representative if provided for by a power of attorney Form 2848. The taxpayer and representative will be provided final notice by Letter 3382 after the case has cleared technical review.

Note: Letter 1002, can be used if the tax is paid in full.

- (7) All agreed reports are to include the following caveat on Form 4666 **This examination report is subject to the approval of the (appropriate designee)**. Examples include:
- Chief, Employment Tax SB/SE
 - SB/SE Area Director
 - Appropriate Director, LB&I or TE/GE
 - Program Manager, TE/GE, Indian Tribal Governments
- (8) As the reason(s) for adjustment(s) are explained at the conclusion of the examination, a written explanation is not required unless it is deemed necessary by the examiner. A written explanation will be furnished if specifically requested by the taxpayer or the representative and for all unagreed examination issues.
- (9) When an examination results in an agreement to the findings on one type of tax or issue and no agreement on another, separate reports are prepared. See IRM 4.23.10.15.1, Partial Assessment / Quick Assessment Processing, for instructions.
- (10) When income tax withholding is computed without using IRC 3509, the examiner will advise the taxpayer of their rights under IRC 3402(d) and furnish a supply of Forms 4669, Statement of Payments Received, and a Form 4670, Request for Relief of Payment of Certain Withholding Taxes.
- a. Form 4669 is provided for the taxpayer/employer to secure statements from payees and employees that the income tax on the payments in question has been satisfied.
 - b. Form 4670 is used to summarize and transmit Forms 4669 to the Campus processing center and to request relief from payment under IRC 3402(d).

Note: IRC 3402(d) does not apply when only IRC 3509 rates are used or the income tax was actually deducted and withheld but not reported

to the IRS. In these situations, Form 4668, Line 12, "Maximum Tax available for abatement under IRC 3402(d)," should be labeled "NONE."

- (11) Employer requests under IRC 3402(d) for relief from the payment of income tax withholding or backup withholding can be handled by either the campuses or the examiner. The examiner has the authority to accept the Forms 4669/4670 for income tax withholding adjustment under IRC 3402(d). See IRM 4.23.8.4.3, Procedures for Granting Relief Under IRC 3402(d) and/or IRC 3102(f)(3) by Examiners, for additional instructions on granting relief under IRC 3402(d). If the examiner does not receive Forms 4669/4670 from the employer by the time the case is closed, the taxpayer will be instructed to wait until a notice of assessment is received before submitting Forms 4669/4670 to the address identified in the instructions for Form 4670 abatement.
- (12) Employer requests under IRC 3102(f)(3) for relief from the payment of Additional Medicare Tax (AdMT) can be handled by either the campus or the examiner. The examiner has the authority to accept the Forms 4669/4670 for AdMT withholding adjustment under IRC 3102(f)(3). See IRM 4.23.8.4.3, Procedures for Granting Relief Under IRC 3402(d) and/or IRC 3102(f)(3) by Examiners, for additional instructions on granting relief under IRC 3102(f)(3). If the examiner does not receive Forms 4669/4670 from the employer by the time the case is closed, the taxpayer will be instructed to wait until a notice of assessment is received before submitting Forms 4669/4670 to the address identified in the instructions for Form 4670 abatement.
- (13) For further information on the partial assessment procedures and report writing for IRC 3402(d) and/or IRC 3102(f)(3) examinations involving field abatements, see:
 - IRM 4.23.10.15.2, Examination Procedures for IRC 3402(d) and IRC 3102(f)(3) Relief, and
 - IRM 4.23.10.15.3, Examination Report Forms for IRC 3402(d) and IRC 3102(f)(3) Abatements.

4.23.10.10.4.1
(05-21-2018)

**Revised and Corrected
Reports**

- (1) If an error was made in computing the deficiency, over-assessment, or penalty shown on a Form 2504, where agreement was previously obtained, it is not necessary to obtain a new Form 2504 if the correction of the error is in favor of the taxpayer. In such case, the correct deficiency or penalty should be assessed or the correct overassessment scheduled for refund. An explanation of the correction should be made in the examination report to the taxpayer.
- (2) If the signed waiver and the error is **not** in the taxpayer's favor and the correction of an error against the taxpayer is minor in amount, the case will be processed for the amount of the deficiency, overassessment or penalty shown by the original waiver and a suitable explanation will be included in the examination report to the taxpayer. Refer to IRM 4.10.8.14, Corrected Reports, for additional information.
- (3) If an erroneous report was furnished to the taxpayer, a corrected report must be furnished. If the taxpayer does not agree with the corrected report, prepare a report under unagreed case procedures. When there is a corrected report, agreed or unagreed, the examiner will enter in the **Other Information** section of Form 4666, "This corrected report supersedes report dated ____" and annotate at the top of the report form "CORRECTED REPORT." The original

report will remain in the case file. The examiner will draw a line through each page of the report and clearly note "Corrected Report issued MM/DD/YYYY."

- (4) If additional information is received that changes the original report, prepare a revised examination report. On the revised report, adjust the amounts as shown on the original tax return. It is not necessary to prepare a revised report showing the amount "as previously adjusted." The tax report should be noted as "Revised Report" at the top of the form and the statement, "This revised report supersedes report dated _____," in the "Other Information" section of Form 4666. (Receipt of Forms 4669/4670 or proof of payment of State Unemployment Tax Act (SUTA) taxes are examples where revised reports are used.) The original report will remain in the case file. The examiner will draw a line through each page of the report and clearly note "Revised Report issued MM/DD/YYYY."

4.23.10.10.5
(05-21-2018)

**Household Employment
Taxes**

- (1) Special requirements apply to household employers with domestic employees under IRC 3510 and IRC 3121:
 - Household employers generally must report and pay FICA taxes (including Additional Medicare Tax), FUTA tax, and any withheld income tax on a calendar year basis.
 - Household employers are not liable for FICA taxes with respect to any household employee to whom the employer pays "cash wages" of less than the minimum dollar threshold during the year.
 - Household employees under the age of 18 at any time during the year are exempt from FICA taxes, unless household work is the employee's principal occupation. This exemption does not apply to FUTA tax.
- (2) Household employers generally report FICA taxes, FUTA tax, and any withheld income tax with respect to household employees on Schedule H, Household Employment Taxes, which is filed with the employer's individual income tax return.
- (3) Household employers who file Schedule H must pay FICA taxes, FUTA tax, and any withheld income tax by the due date for their individual income tax returns, not including any extensions, for the applicable year. An employer may be subject to a penalty for the underpayment of estimated tax if the employer did not pay enough income and household employment taxes during the year. The employer for purposes of Schedule H is whoever applied for the EIN on Form SS-4, Application for Employer Identification Number. If the income tax return is a joint return, only one taxpayer can be the employer of record on Schedule H, and this should be the same taxpayer who obtained the EIN. The employer is responsible for filing Forms W-2 and W-3, Transmittal of Wages and Tax Statements, for the household employee(s).
- (4) Employers that have both household employees and other employees who are not household employees may choose either of two options for reporting employment taxes, including any withheld income tax, with respect to the household employees. These employers may either:
 - a. Report FICA taxes, FUTA tax, and any income tax withholding for household employees annually on Schedule H, and report FICA taxes, FUTA tax, and any income tax withholding for other employees on Form 941/944 and 940, or

- b. Report FICA taxes and any income tax withholding for all employees (household employees and other employees) quarterly on Form 941 (or annually on Form 944, Employer's ANNUAL Federal Tax Return) and report FUTA taxes annually for all employees on Form 940, and pay or deposit FICA taxes, FUTA tax, and any withheld income tax for the household employees along with the employment taxes for the other employees, together with filing Form W-2 for the household employees with the other employees' Forms W-2 and Form W-3
- (5) For FICA, FUTA, and income tax withholding purposes, an administrator or executor of an estate who maintains a private home for the decedent's family, or a trustee that maintains a home as a private home for a beneficiary of the trust, is a household employer of any employee that performs domestic services in the home.
 - (6) Home care service recipients (HCSR) are individuals enrolled in government programs under which they receive health care and personal attendant care that usually constitute domestic services for employment tax purposes. They are generally the employer of the home care service providers for employment tax purposes. A HCSR may designate an agent under IRC 3504 to perform acts required of them as an employer. Generally, IRC 3504 agents for HCSRs file aggregate Form 941, attaching Schedule R (Form 941), to report FICA taxes and withheld income taxes, and file aggregate Form 940, attaching Schedule R (Form 940), to report FUTA taxes. See Rev. Proc. 2013-39, 2013-52 IRB 830 for special rules that apply to state and local government agencies that act as agent for HCSRs.
 - (7) If the "cash wages" paid to any household employee by a household employer is more than the dollar threshold in a calendar year, all of the "cash wages" paid to that employee are subject to FICA taxes. The dollar threshold is adjusted annually for inflation. Refer to Schedule H and Publication 926, Household Employer's Tax Guide, for the current year thresholds and additional information.
 - (8) The threshold for FUTA "cash wages" is not adjusted annually. Unlike the FICA threshold, the FUTA threshold is based on total "cash wages" paid by the employer to all domestic employees. A household employer must file a FUTA tax return only if cash wages of \$1,000 or more was paid in any calendar quarter in current year, or the previous calendar year, for household work. Thus, if in a calendar quarter an employer pays \$500 each to a baby sitter and a housekeeper, FUTA taxes are due on wages paid to all household employees this year and next year. **Because different criteria apply, it is possible to be liable for FUTA but not FICA tax for a domestic employee, or vice versa.**
 - (9) IRC 3510 does not transform the taxes withheld and paid by household employers from employment to income taxes, it merely changes the manner of reporting and collection. Therefore, any employment tax audit adjustments should **not** be reflected on report Form 4549, Report of Income Tax Examination Changes. Examiners use employment tax report forms (Form 4666, 4667, 4668, 2504, 2504-S, and/or 2504-T) for adjustments of employment taxes for household employees. Adjustments to the annual Schedule H are made in the fourth quarter of these forms. If no Schedule H is included with the employer's filed income tax return, the statute of limitations for assessment of employment taxes has not started.

- (10) All Schedule H examinations must be controlled on AIMS and ERCS using MFT 30. If the taxpayer did not file Form 1040, U.S. Individual Tax Return, a substitute for return (SFR) must be filed to process the Schedule H adjustment. As employment tax changes, adjustments to Schedule H are not included in a statutory notice of deficiency (SNOD).
- (11) When a Schedule H adjustment is made, Form 3198 is attached to the case file with the following notation in Other Instructions: **“Schedule H Adjustment – Forms 4666, 4667, 4668 and [insert appropriate Form 2504 type] enclosed for the primary/secondary (whichever applies) taxpayer.”** It is important to designate the primary or secondary taxpayer as the employer for joint filers, since this determines the reference numbers used in accurately completing Form 5344.
- (12) Schedule H employers may be eligible for the relief provisions of section 530, the relief provisions of IRC 3509, the relief provisions under IRC 3402(d) and/or IRC 3102(f)(3), and the special procedures of IRC 7436 if the applicable requirements are met. See IRM 4.23.22, Employment Tax, Unagreed Employment Tax Case Procedures, and IRM 4.23.5.3, Section 530 of the Revenue Act of 1978, for additional information.

4.23.10.10.5.1
(05-21-2018)
Schedule H Resources

- (1) Processing and examination instructions relating to Schedule H are contained in a number of IRM sections, including:
 - IRM 4.10.8.14.11, Adjustment to Schedule H - Household Employment Taxes
 - IRM 21.7.2.4.11, Household Employment Taxes
 - IRM 21.7.3.4.14, Schedule H Federal Unemployment Tax Act (FUTA) Erroneously Reported
 - IRM 21.7.4.4.1.11, Social Security Domestic Employment Reform Act and BMF Schedules H
 - IRM 25.6.1.9.4.3, Forms Reporting More Than One Item of Tax
 - Document 6209, IRS Processing Codes and Information
 - IRM 25.6.23-3, Instructions for Updating the Statute on AIMS
- (2) REMINDER: Schedule H examinations are employment tax examinations, and require examiners to follow employment tax procedures for claims processing and statute controls. Additional information can be found at:
 - IRM 4.23.13, Employment Tax - Adjusted Returns, Abatements and Claims
 - IRM 4.23.14, Employment Tax - Statute Control and Extension

4.23.10.10.6
(06-01-2023)
Form 4665

- (1) Form 4665, Report Transmittal, is used in unagreed cases. It is not required in agreed cases but may be used if deemed necessary by the examiner.
- (2) Form 4665 summarizes the unagreed issues, if necessary, and indicates whether the taxpayer was offered the opportunity to discuss the unagreed issues with a manager.
- (3) Rev. Proc. 2012-18 provides the following guidance on any transmittal to Appeals in section 2.03(4)(b) “Transmittal:” “The transmittal memorandum, a T-Letter, or any similar document that the originating function uses to transmit the administrative file (transmittal) should not include statements or comments

intended to influence Appeals decision-making process. This includes recommendations concerning what Appeals should consider and how Appeals should resolve the case. In contrast, it is permissible to include in the transmittal a neutral list of unagreed issues, without discussion, and to indicate which ones, if any, are coordinated issues.”

- (4) If the transmittal includes the type of statements or comments described in the second sentence of Rev. Proc. 2012-18 section 2.03(4)(b) or includes other prohibited communications in a document that is either placed in the administrative file as a transmittal or uploaded to the administrative electronic file in conjunction with preparing the case for transmission to Appeals, the document must be shared by the originating function with the taxpayer/representative at the time that the administrative file is sent to Appeals.

4.23.10.10.7
(06-01-2023)
Form 4666

- (1) Form 4666 is used as a cover and reference sheet and summarizes the adjustments to FICA taxes, RRTA, income tax withholding, and FUTA. It also summarizes adjustments to tax credits and penalties.
- (2) Form 4666 is the first page of the report and will be numbered “1 of xx”. Form 4667, 4668, 4668-B, and 4668-C will also be numbered and the numbers shown in column (g) of Form 4666.
- (3) See Exhibit 4.23.10-1, Form 4666, Summary of Employment Tax Examination, for specific instructions for completing Form 4666. The form is used in all employment tax reports:
 - Covering more than one type of employment tax.
 - Involving claims for refund.
 - Reporting both change and no-change examination results.
 - Covering multiple year examinations.
 - Requiring its use for the sake of clarity because of the size or content of the report.

- (4) If a worker classification issue was examined and the workers were determined to be independent contractors (or non-employees) or section 530 relief was granted, a statement must be included on the Form 4666 noting the job category accepted. Section 530(e)(2)(A) limits the prior audit safe haven for audits commenced after December 31, 1996, that included an examination for employment tax purposes of the status of the category of workers at issue or of a substantially similar category of workers.

Also, if no worker job classification was examined, a statement to that effect should be included. See IRM 4.23.10.10.3, Employment Tax No-Change Report and IRM 4.23.10.10.3.1, No-Change Reports for Section 530 Eligible Taxpayers.

4.23.10.10.8
(06-29-2020)
Form 4667

- (1) Form 4667 is the basic report form for examinations of Form 940. Form 4667 summarizes the examination changes made to the taxpayer’s FUTA liability.
- (2) Examiners must indicate whether the adjustments are “Non-7436 Adjustments,” “7436 Adjustments (Worker Classification Issue),” or “7436 Adjustments (Wage Issue)” by checking the appropriate box at the top portion of Form 4667. Examiners must prepare separate report forms for each of the above categories of adjustments even if the adjustments can be included on the same agreement form (for example, Form 2504, 2504-S, or 2504-T).

Note: Examiners should verify that the total tax computed for the two separate reports is equal to the tax computed using one comprehensive report. The individual state credits and state wage bases may result in overstatement or understatement of FUTA tax when computed using more than one report.

- (3) See Exhibit 4.23.10-2, Form 4667, Examination Changes - Federal Unemployment Tax, for specific instructions for completing Form 4667. They are self-explanatory except for the following:
- a. Line 14 - Enter the state taxable payroll as corrected in the examination.
 - b. Line 18 - The amount on Line 18 also depends on whether the taxpayer pays the additional required contributions to the state timely. Form 940-B, Request for Verification of Credit Information Shown on Form 940, may be used to obtain the state certification for contributions and the determination of timeliness. For amounts not previously reported on Form 940, the employer must certify that no part of any payment made to a state unemployment fund claimed as a credit was, or will be, deducted from the payments made to employees. See statement example in IRM 4.23.10.11(5).

Note: Always complete the bottom section of the form.

4.23.10.10.9
(06-01-2023)
Form 4668

- (1) Form 4668 is the basic report form for examinations of Form 941, Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, Form 944, and Schedule H. It is used for additional tax, overassessment, or delinquent tax proposals. See Exhibit 4.23.10-3, Form 4668, Employment Tax Examination Changes Report, for specific instructions.
- (2) Form 4668 reports adjustments to total wages/tips, withholding taxes, and various credits and computes the additional tax, applicable penalties and interest. These adjustments are allocated either quarterly or annually based on the required return.
- (3) Use separate Form 4668 for each calendar year or portion of a calendar year examined for each return examined. In addition, multiple Forms 4668 may be necessary for each period if IRC 7436 and non-IRC 7436 issues are present, or if there is a partial agreement.
- (4) Form 943 is used to report FICA wages (including wages subject to Additional Medicare Tax withholding) and any income tax withholding. Examinations of Form 943 are conducted under MFT Code 11 and Activity Code 467. Since Form 943 is an annual return, only column (e), 4th quarter of Form 4668, should be completed to show the increase or decrease in FICA wages (including wages subject to Additional Medicare Tax withholding) and income tax withholding.
- (5) Form 944 is designed to allow the smallest employers (those whose annual liability for social security, Medicare, Additional Medicare tax, and withheld federal income taxes is expected to be \$1,000 or less) to file and pay these taxes once a year instead of every quarter. Examinations of Form 944 are conducted under MFT Code 14 and Activity Code 462. Since Form 944 is an annual return, only column (e), 4th quarter of Form 4668, should be completed to show the increase or decrease in FICA wages (including wages subject to

Additional Medicare Tax withholding) and income tax withholding. For additional information on Form 944 examinations, see IRM 4.23.8.14, Form 944 Examinations and Filing Requirements.

- (6) Examiners must indicate whether the adjustments are “Non-7436 Adjustments,” “7436 Adjustments (Worker Classification Issue),” or “7436 Adjustments (Wage Issue)” by checking the appropriate box at the top portion of Form 4668. Examiners must prepare separate report forms for each of the above categories of adjustments even if the adjustments can be included on the same agreement form (for example, Form 2504, 2504-S, or 2504-T).
- (7) Forms W-2 or Forms W-2c, Corrected Wage and Tax Statement, must be filed with the SSA and furnished to employees for adjustments affecting the wages reported in boxes 1, 3, or 5 for Form W-2 except for worker classification adjustments for which a CSP agreement was secured. See IRM 4.23.10.8.2, CSP Procedures. Insert the number of employees requiring a Form W-2 or W-2c to be filed and furnished in the information section at the bottom of Form 4668. Enter the last day for filing and furnishing Form W-2/W-2c and Form W-3/W-3c in the applicable space.

Note: Do not include the paragraph for filing and furnishing Form W-2/W-2c if the **only** adjustment is to the Paid Sick and Family Leave Credits, the Employee Retention Credit, the COBRA premium assistance credit, or the Research Credit.

- (8) For adjustments to the Paid Sick and Family Leave Credits, Forms W-2c must be furnished to the affected employees to correct the amount reported in box 14. Form 4668 must include a paragraph for furnishing Forms W-2c, separate from the previous paragraph for filing and furnishing Forms W-2/W-2c. Insert the number of employees requiring a Form W-2c to be furnished in the information section at the bottom of Form 4668.
- (9) If the examiner secures original or delinquent Forms W-2 during the examination, refer to IRM 4.23.8.10, Delinquent Forms W-2/W-2c, for mailing and processing instructions.
- (10) If the Forms W-2 are not secured prior to closing, the employer should be instructed to file the forms in accordance with the SSA website. If e-filing, instruct the employer to visit the SSA’s website at www.socialsecurity.gov/employer. If the employer is filing paper returns, file with the SSA at the appropriate address in the “General Instructions for Forms W-2 and W-3, (Including Forms W-2AS, W-2CM, W-2GU, W-2VI, W-3SS, W-2c, and W-3c)”.

Note: For LB&I and TE/GE, consult your respective operating procedures.

- (11) The examiner’s name, group number, and BOD information must be included on the Form 4668.

4.23.10.10.9.1
(06-01-2023)
Form 4668-B

- (1) Form 945, Return of Withheld Federal Income Tax, is an return with a due date of January 31st, and is used for non-payroll income tax withholding. Non-payroll items include:
 - Pensions
 - Annuities and IRA’s
 - Military retirement

- Gambling winnings
- Indian gaming profits
- Backup withholding

- (2) Adjustments of backup withholding and income tax withholding reportable on Form 945 are reflected on Form 4668-B. Examination of Form 945 is conducted under MFT Code "16" and Activity Code 463.
- (3) The examiner's name, group number, and BOD information must be included on the Form 4668-B.
- (4) For specific instructions for completing Form 4668-B, see Exhibit 4.23.10-4, Form 4668-B, Report of Examination of Withheld Federal Income Tax.

4.23.10.10.9.2 (06-01-2023) **Form 4668-C**

- (1) Form 4668-C is the basic report form for examinations for Railroad Retirement Tax Act (RRTA) adjustments on Form CT-1 and Form CT-2. It is used for additional tax, overassessment, or delinquent tax proposals. See Exhibit 4.23.10-5, Form 4668-C, Employment Tax Examination Changes Report - Railroad, for specific instructions for completing Form 4668-C.
- (2) Form 4668-C reports adjustments to total compensation, sick pay, tips, and various credits, and computes the additional taxes and penalties. These adjustments are allocated either quarterly or annually, based on the required return, to compute applicable penalties and interest.
- (3) Item Reference Number (IRN) "070" is necessary for adjusting the total of railroad retirement tax (including Additional Medicare Tax for calendar years beginning after December 31, 2012). Line 16 of Form 4668-C identifies the total wage adjustment as "070" for Form CT-1 examinations only. This IRN is also entered on Item 15, "Credit and Tax Computation Adjustments," of Form 5344. See IRM 21.7.2.6.5.1, Form CT-1 Tax Adjustments.
- (4) Use separate Form 4668-C for each calendar year or portion of a calendar year examined for each return examined.
- (5) Multiple Forms 4668-C may be necessary if IRC 7436 and non-IRC 7436 issues are present or if there is a partial agreement in a tax period. Examiners must indicate whether the adjustments are "Non-7436 Adjustments", "7436 Adjustments (Worker Classification Issue)", or "7436 Adjustments (Wage Issue)" by checking the appropriate box at the top portion of Form 4668-C. Examiners must prepare separate report forms for each of the above categories of adjustments even if the adjustments can be included on the same agreement form (for example,, Form 2504, 2504-S, or 2504-T).
- (6) Forms W-2 or W-2c must be filed with SSA and furnished to employees for Form CT-1 examination adjustments affecting the wages reported in boxes 1, 3, or 5 of Form W-2, except for worker classification adjustment for which a CSP agreement was secured. See IRM 4.23.10.8.2, CSP Procedures. Insert the number of employees requiring a Form W-2 or Form W-2c to be filed and furnished in the information section at the bottom of Form 4668-C. Enter the last day for filing and furnishing Forms W-2/W-2c and Forms W-3/W-3c in the applicable space.

Note: Do not include the paragraph for filing and furnishing Forms W-2/W-2c if the **only** adjustment is to the Sick and Family Leave Credits, the Employee Retention Credit, the COBRA premium assistance credit, or the Research Credit.

- (7) For adjustments to the Paid Sick and Family Leave Credits, Forms W-2c must be furnished to the affected employees to correct the amount reported in box 14. Form 4668-C must include a paragraph for furnishing Forms W-2c, separate from the previous paragraph for filing and furnishing Forms W-2/W-2c. Insert the number of employees requiring a Form W-2c to be furnished in the information section at the bottom of Form 4668-C.
- (8) If the examiner secures original or delinquent Forms W-2 during the examination, refer to IRM 4.23.8.10, Delinquent Forms W-2/W-2c, for mailing and processing instructions. If the Forms W-2 are not secured prior to closing, the examiner will refer to IRM 4.23.8.10.2, Delinquent Forms W-2/W-2c Not Secured by Examiner, for preparation of a tickler file.
- (9) The examiner's name, group number, and BOD information must be included on the Form 4668-C.
- (10) For additional information, see IRM 21.7.2.6, CT-1, CT-2 Railroad Tax Returns, and following subsections.

4.23.10.10.10
(05-21-2018)

**Form 2504, Form 2504-S,
and Form 2504-T**

- (1) Form 2504 and 2504-S are the agreement forms for an employment tax examination or the portion of an employment tax examination, involving non-IRC 7436 issues. These summarize the total tax adjustments and penalties. No-change periods are not reflected on either Form 2504 or 2504-S. Instructions for completing Form 2504 are in Exhibit 4.23.10-6, Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436). Instructions for Form 2504-S are in Exhibit 4.23.10-7, 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 Not Addressed in this Exam).
 - Form 2504 is used for taxes related to adjustments to non-IRC 7436 issues where a worker classification issue was also part of the examination, whether or not the examination of worker status resulted in reclassification. See Exhibit 4.23.10-6. Any adjustments from worker classification or section 530 or any other IRC 7436 issues will be reflected on Form 2504-T.
 - Form 2504 is also used for the assessment of the employee share of FICA. See IRM 4.23.10.17, General Procedures for Adjusting the Employee Share of FICA/RRTA Taxes including Additional Medicare Tax (AdMT).
 - Form 2504-S is used for adjustments to non-IRC 7436 issues when the examination did **not** include an examination for employment tax purposes of any worker classification issue. See Exhibit 4.23.10-7. Any adjustments from IRC 7436 wage issues will be reflected on Form 2504-T.
- (2) Form 2504-T is the agreement form used for taxes related to adjustments for the portion of an employment tax examination involving IRC 7436 issues of worker classification and section 530, as well as wage issues determined to be

IRC 7436 issues. See Exhibit 4.23.10-8, Form 2504–T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), for instructions on completing Form 2504-T.

- (3) Taxpayers should be requested to sign the agreement form. The examiner should furnish the taxpayer with a signed copy of the agreement form. Taxpayers must be informed that signing Forms 2504, 2504-S, and/or 2504–T requires them to prepare and file Form W-2 or W-2c for employee wage issues.

Note: Forms W-2 are **not** to be filed for CSP cases. See IRM 4.23.10.8.2, CSP Procedures, and IRM 4.23.6, Classification Settlement Program (CSP).

4.23.10.10.11
(06-01-2023)
**Explanation of
Adjustments: Form
886–A, Form 5701, and
Employment Tax Lead
Sheet (ETLS) Copies**

- (1) Form 886-A is used when written explanations of adjustments are required. Exhibit 4.23.10-11, Form 886–A Format for Employee vs. Independent Contractor Adjustment, contains an illustration of the recommended format for a worker classification adjustment.
- (2) In lieu of Form 886-A, a copy of the examiner’s Employment Tax Lead Sheets (ETLS) relating to each adjusted issue may be attached to the examination report. The copy of each issue lead sheet used as an attachment to the examination report should be modified to remove extraneous information (for example, work paper cross-referencing, audit steps that were not employed during the audit, and so on) that would not be useful to the taxpayer or representative.
- (3) Form 5701, Notice of Proposed Adjustment (NOPA), is used to summarize proposed adjustments and is used as a coversheet for Form 886-A for large cases. Form 5701 and 886-A are attached to the final audit report. See IRM 4.23.4.5.6, Form 5701 - Notice of Proposed Adjustment.

4.23.10.11
(06-29-2020)
**Credit for FUTA Tax in
Examination**

- (1) IRC 3302(a) allows for credits against the FUTA tax for payment of state unemployment taxes (SUTA) if the taxpayer:
 1. Reports the additional tax to the state,
 2. Provides proof of payment of the state taxes due, and
 3. Certifies that no part of any payment made to a state unemployment fund claimed as a credit was, or will be, deducted from the payments made to employees signed under penalties of perjury.
- (2) The following procedures apply in these cases:
 - a. The burden of proof of payment is on the taxpayer.
 - b. The taxpayer should be notified as soon as correct figures are available to facilitate closing of the case. Allow the taxpayer 30 days to obtain proof of payment and certify that no part of any payment made to state unemployment fund claimed as a credit was, or will be, deducted from the payments made to employees signed under penalties of perjury. See (6) below.
 - c. If the taxpayer fails to furnish proof of payment within 30 days and will not agree to the gross FUTA tax, the examiner should close the case as unagreed. However, a reasonable approach should be followed if it is

obvious that proof of payment and employer certification signed under penalties of perjury will be submitted within a few days after the 30-day period.

- (3) IRC 3302(a)(3) states that if the taxpayer pays the state contribution late, only 90 percent of the credit that would have been allowed if the contributions had been timely will offset the Federal tax. The payment to the state must be confirmed by receiving proof of payment from the taxpayer or by contacting the state before the 90 percent offset is allowed. Payments to the state as a result of wage adjustments from an employment tax examination are considered late.
- (4) Follow the instructions for Form 4667 at Exhibit 4.23.10-2, Form 4667, Examination Changes—Federal Unemployment Tax, to compute the allowable credits for late payments. Examiners may also use the “Worksheet for Credit Computation” found in the instructions to the Form 940 to correctly compute the allowable credits. See IRM 4.23.10.10.8, Form 4667, and IRM 4.23.8.7, Federal Unemployment Tax, for further information.
- (5) To obtain the state certification to verify whether payments are made, timely or otherwise, Form 940-B may be used. This link <http://serp.enterprise.irs.gov/databases/who-where.dr/state-940-certification-contacts.html> lists the State Labor Department Form 940 Certification Contacts and is found on the Who/Where page of Servicewide Electronic Research Program (SERP).
- (6) Per the regulations, the employer is **not** allowed any kind of credit unless they sign a sworn penalty of perjury statement certifying that no part of any payment made to state unemployment fund claimed as a credit was, or will be, deducted from payments made to employees, such as the one contained on the Form 940. This statement is incorporated into the perjury statement on the Form 940; a similar statement must be submitted by the employer in an audit.

Example: Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and that no part of any payment made to a state unemployment fund claimed as a credit was, or is to be, deducted from the payments made to employees. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

4.23.10.11.1
(06-29-2020)
IRC 6020(b) Returns for FUTA

- (1) An IRC 6020(b) return does **not** meet the requirements for allowing the credit for state unemployment contributions. When preparing a 6020(b) return, the IRS does not have an employer certification under penalties perjury statement, which means that the taxpayer does not meet the regulatory requirements for claiming the credit solely through a 6020(b) return. See IRM 4.23.10.11(5).
- (2) The IRS must have a signed statement from the taxpayer, not just the third-party reporting from the state or other third party. Two requirements must be met under the regulations:
 1. Under Treas. Reg. 31.3302(a)-3(a), **the state** must certify to the amount of payments made into the state unemployment fund, and
 2. Under Treas. Reg. 31.3302(a)-3(b), **the employer** must certify that no part of any payment made by the employer into the state unemployment fund was deducted or is to be deducted from the remuneration of individuals in the employer’s employ.

4.23.10.12
(06-01-2023)
Securing Form W-2 or W-2c

- (1) Form W-2 and/or Form W-2c, Corrected Wage and Tax Statement, should be solicited by the examiner in agreed cases involving employees for non-CSP issues. Non-CSP issues include all wage issues and any worker classification issue where the taxpayer is not eligible for CSP. See 4.23.6.8, Cases Excluded from CSP, for entire listing. The employer will be instructed to prepare Form W-2 or W-2c, whichever applies, to report the amount of wage adjustment for each employee affected by the employment tax examination.

Note: For CSP cases, see IRM 4.23.6, Classification Settlement Program (CSP).

- (2) Employers will be requested to submit these statements to the examiner using the appropriate cover document, Form W-3 and/or Form W-3c, Transmittal of Corrected Wage and Tax Statements. Unless income taxes were withheld from the employees' wages, no income tax related to the employment tax examination should be reported on these statements. As the examination is not correcting any income tax amounts withheld, the box for Federal income tax withholding should be blank for both "Previously Reported" and "Corrected Information" amounts on the Form W-2, and W-2c, and related transmittals. See General Instructions for Forms W-2 and W-3.
 - a. The employer should be given a reasonable period of time (in other words 30 days) to prepare these wage statements.
 - b. If the names of the workers are unknown, the examiner should not solicit Forms W-2 from the taxpayer. The examiner should advise the taxpayer that they may receive a notice from the SSA in the future due to the tax assessed not matching the Forms W-2 filed and they should respond with a copy of their audit report.
- (3) When the employee FICA is **paid** by the employer, the employee receives credit for the employee FICA tax and the employer is instructed under the regulations under IRC 6205 how to collect the employee FICA tax from the employee. Corrections should be made by the employer to the corrected wages on Form W-2 and/or Form W-2c in box 1, "Wages, tips other compensation", box 3, "Social security wages", and box 5, "Medicare wages and tips". Additional employee FICA tax paid by the employer should be reported in box 4, "Social security tax withheld", and box 6, "Medicare tax withheld", as applicable.

Note: Boxes 2 and 4 are left blank if the employee FICA is **not** paid by the employer, or if IRC 3509 rates are used.

Note: See PMTA 2018-15 dated June 25, 2018, titled "Gross Up of Employment Taxes During Examination" for additional information.

- (4) If the forms are secured, reconcile the FICA wages on Form W-3 and Form W-3c to the FICA wages on Form 4668 and resolve any discrepancies with the taxpayer.
 - a. Annotate in red, "Delinquent Wage Statements Secured By Examination (or TE/GE) - Penalty Considered" across the bottom of Form W-3. This will alert the SSA that the IRS has taken appropriate action concerning the assertion of penalties under IRC 6721 and IRC 6722.

- b. Send the Forms W-2/W-3 and/or W-2c/W-3c to the SSA via Form 3210. See IRM 4.23.8.10, Delinquent Forms W-2/W-2c, for the applicable address or refer to the SSA website, Employer W-2 Filing Instructions & Information, at <http://www.ssa.gov/employer/>.
- c. Make the annotation "Wage Statements Secured By Examiner" on Form 4668 in the block regarding the filing of Forms W-2/W-2c and in the other instructions section of Form 3198, Form 3198-A, or Form 9231, Collection - Employment Tax Examination Handling/Routing Instructions.
- d. Corrected or delinquent Form W-2/W-2c of 250 or more are required to be filed on electronic media.

Caution: For information returns required to be filed on or after January 1, 2024, the final regulations reduce the 250 return threshold enacted in prior regulations to generally require electronic filing by filers of 10 or more returns in a calendar year (Treas. Reg. 301.6011-2(b)(2)). The regulations require filers to aggregate almost all information return types covered by the regulation to determine whether a filer meets the 10-return threshold and is required to e-file their information returns (Treas. Reg. 301.6011-2(b)(4)(i)).

- (5) If circumstances prevent the employer from filing the required Form W-2/W-2c by the time the audit is completed, the examiner will inform the employer to file all returns directly with the SSA.
Refer to IRM 4.23.8.10.2, Delinquent Form W-2/W-2c Not Secured by Examiner, for additional instructions.
- (6) For information concerning requirements for electronic filing, see the "General Instructions for Forms W-2 and W-3."

4.23.10.12.1
(06-01-2023)
Conversion of Worker Status

- (1) The examiner will identify cases in which the issue on Form 4668 is the conversion of workers from independent contractor (or non-employee) status to employee status. Annotate "Reclassification - Employee Status" in the special instructions section of Form 3198, Form 3198-A, or the "other" section of Form 9231. This procedure will assist the support operation in identifying any Form W-2/W-2c if they are subsequently filed by the employer with the SSA.

4.23.10.13
(06-01-2023)
Procedures at Conclusion of Examination

- (1) At the conclusion of the examination, discuss findings with the taxpayer. Explain the government's position in a convincing and professional manner. The objective is to obtain the greatest possible number of agreements without sacrificing the quality or integrity of examination determinations, which follows Policy Statement 4-40, "Early agreement primary objective". Refer to IRM 1.2.1.5.16.
- (2) The closing conference will be productive if the taxpayer and representative are kept informed of the issues throughout the examination. This includes reviewing in detail with the taxpayer and representative any Form 5701 or Form 886-A issued before the closing conference (if applicable).
- (3) Determine if any information return penalties are applicable regardless of whether the forms are obtained during the examination or the taxpayer is permitted a delayed submission. See IRM 4.23.9, Employment Tax - Employment Tax Penalty, Fraud, and Identification Theft Procedures. If there is no reason for waiver of the penalties, propose and process the penalty package

at the same time as the examination package. See IRM 4.23.8.11, Information Return Penalty Case File, for instructions on the penalty package.

- (4) Solicit payment for deficiencies if an agreement is indicated. See IRM 4.23.11, Employment Tax - Prompt Action in Deficiency and Overassessment Cases, for instructions on prompt action in deficiency and over-assessment cases.
- (5) A Form 2504, 2504-S, or 2504-T will be accepted only when it discloses the date of calendar quarters involved, the return form number, the amount of the deficiency, over-assessment or penalties if any, and is properly signed by the taxpayer or taxpayer's representative. Under no circumstances will a Form 2504, which has been signed by the taxpayer, be altered by IRS personnel; nor will the taxpayer be requested to execute a blank Form 2504. A Form 2504 is considered a valid claim for refund when a taxpayer agrees to an overassessment determined by the IRS. The date of receipt of the executed Form 2504 will be indicated in the upper right corner of the form. See IRM 4.23.10.14, Agreed Employment Tax Reports, for instructions on processing these cases.

4.23.10.14
(06-29-2020)
Agreed Employment Tax Reports

- (1) An examiner is required to prepare Form 9440, Taxpayer Levy Source and Contact Information in all unpaid agreed and unagreed case files. This includes all employment tax cases that remain unpaid at the time of final closure from the group. If no additional levy sources are identified, the Form 9440 is not required. However examiners must document the case file following guidance in IRM 4.20.1.2(8).

Note: See IRM 4.23.11.2.1, Employment Tax Early Payment Program, for instructions on completing Form 9440.

Note: Tax Examiners in Employment Tax Examination are exempt from completing this form.

- (2) Agreed Form 940 examination; additional tax or over-assessment cases, including changed delinquent return cases:
 - a. Prepare report on Form 4666 and 4667.
 - b. A separate Form 4667 is required for each tax period. In addition, IRC 7436 (Worker Classification Issues), IRC 7436 (Wage Issues), and non-IRC 7436 issues are to be separated.
 - c. Secure agreement on Form 2504, 2504-S, and/or 2504-T. (There may be more than one waiver required.)
 - d. Furnish a copy of the report to the taxpayer.

Note: See IRM 4.23.8.7.5, Federal Unemployment Tax Return Processing Procedures.

- (3) Agreed Form 940 examination; substitute for return (SFR) case:
 - a. Follow SFR procedures. See IRM 4.23.12.4, Controlling and Processing Delinquent and Substitute for Returns in Employment Tax and following sections.
 - b. Prepare report on Form 4666 and 4667.

- c. A separate Form 4667 is required for each tax period. In addition, IRC 7436 (Worker Classification Issues), IRC 7436 (Wage Issues), and non-IRC 7436 issues are prepared separately.
 - d. Secure agreement on Form 2504, 2504-S, and/or 2504-T. (More than one waiver may be required.)
 - e. A copy of the audit report must be furnished to the taxpayer when an SFR case is closed agreed based on the signatures on secured delinquent returns. Penalties and post-assessment appeal rights must be discussed with the taxpayer.
- (4) Agreed Form 941, 943, 945, CT-1 and CT-2 examinations; additional tax cases, including changed delinquent return cases:
 - a. Prepare report on Form 4666 and applicable Form 4668, 4668-B, and/or 4668-C.
 - b. Separate Forms 4668 are required for each tax year and return type. In addition, IRC 7436 and non-IRC 7436 issues are to be addressed separately. Form 4668-B is used for Form 945 examinations. Form 4668-C is used for CT-1 and CT-2 examinations.
 - c. Secure agreement on Form 2504, 2504-S, and/or 2504-T. (More than one waiver may be required.)
 - d. Furnish copy of report to taxpayer.
- (5) Agreed Form 941, 943, 945, CT-1 and CT-2 examinations; over-assessment cases, including changed delinquent return cases:
 - a. Follow the procedures in IRM 4.23.8.6.2, Specific Instructions - FICA Overpayments in Examinations, and IRM 4.23.8.8, Computing Income Tax Withholding.
 - b. Form 4666 and applicable Form 4668, 4668-B, and/or 4668-C are used for report writing.
 - c. Furnish copy of report to taxpayer.
- (6) Agreed Form 941, 943, 945, CT-1 and CT-2 examinations; SFR cases:
 - a. Follow SFR procedures. See IRM 4.23.12.4, Controlling and Processing Delinquent and Substitute for Returns in Employment Tax and following sections.
 - b. Prepare Form 4666 and Form 4668, 4668-B, and/or 4668-C.
 - c. Separate Forms 4668 are required for each tax year and return type. In addition, IRC 7436 (Worker Classification Issues), IRC 7436 (Wage Issues), and non-IRC 7436 issues are prepared separately. Form 4668-B is used for Form 945 examinations. Form 4668-C is used for Form CT-1 and CT-2 examinations.
 - d. Secure agreement on Form 2504, 2504-S, and/or 2504-T. More than one waiver may be required.
 - e. A copy of the audit report can be furnished to the taxpayer when an SFR case is closed agreed based on the signatures on secured delinquent returns. Penalties and post-assessment appeal rights must be discussed with the taxpayer.
- (7) Separate reports **MUST BE** prepared for IRC 7436 and non-IRC 7436 issues. If an examination has both issues, one set of Forms 4666, 4667, 4668, and 4668-B will be noted whether the adjustments are "Non-7436 Adjustments", "7436 Adjustments (Worker Classification Issues)", or "7436 Adjustments (Wage Issues)." A checkbox is included on the report forms for these categories.

ries 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 help the taxpayer better understand the adjustments and tax computation of the separate issues.

4.23.10.14.1
(06-29-2020)
Fax Agreements

- (1) Effective November 19, 2015 in a memo issued by the Deputy Commissioner for Services and Enforcement, the policy for use of fax and signature stamps (fax policy) was revised to eliminate the dollar ceiling for acceptance of consents to assess additional tax and taxpayer closing agreements by fax.
- (2) Specifically, consents to assess additional tax (Forms 2504, 2504-T, 2504-S, 870, and others) can be accepted by fax if taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the consent by fax.
- (3) The fax policy was clarified October 29, 2019 in a memo from the Deputy Commissioner for Services and Enforcement to clarify that the term faxed signatures in the "Policy for Use of Fax" should be construed to include electronic images of scanned original signatures transmitted by Enterprise Electronic Facsimile (EEFAX) or e-mail.

4.23.10.14.2
(06-01-2023)
Employment Tax Procedures for Agreed Unpaid Cases with Liabilities over \$100,000

- (1) IRM 4.20.1.2, Pre-Contact and Fact Finding - Determining the Scope, describes collectibility considerations and processing procedures in the pre-contact and fact finding phases of the examination.
- (2) IRM 4.20.1.3.4, Coordinate with Collection, provides procedures for agreed BMF cases with unpaid liabilities in excess of \$100,000.
- (3) A referral is **mandatory** for agreed cases with total unpaid liabilities over \$100,000. See IRM 4.20.1.3.4, Coordinate with Collection, and IRM 4.20.1.4.2, Examiner Responsibilities.

Note: A "case" for employment tax purposes consists of all employment tax forms included in the taxpayer case file under examination, (for example,, Forms 940, 941, and other related returns). Related entities picked up as part of the package audit are considered separate cases. See also IRM 4.23.11.2.1, Employment Tax Early Payment Program.

- (4) When a case meets the criteria above:
 - The employment tax examiner will discuss the case with their manager,
 - Initiate a collection referral using the Specialist Referral System (SRS), and
 - Provide available financial information secured from the taxpayer during the audit via a separate, encrypted e-mail to the Collection Area Coordinator.
- (5) The examiner will document these actions in the Form 9984 and in the payment section of Lead Sheet 105-2, Pre-Audit Plan Work Paper, which is part of the SB/SE Employment Tax Lead Sheets (ETLS).
- (6) The local Collection office will proceed with the appropriate action to ensure prompt assessment, and proceed with the necessary collection actions.

4.23.10.15
(05-21-2018)
Partially Agreed Cases

- (1) Taxpayers who disagree with any of the proposed adjustments will be informed of their right to discuss the proposal with the examiner's manager. Taxpayers will also be informed of formal appeal rights.
- (2) When agreement is reached with the taxpayer on one or more issues and other issues remain unagreed, the following procedures will be followed:
 - a. Prepare two sets of Form 4666, 4667, 4668, 4668-B, 4668-C, 2504, 2504-S, and/or 2504-T and the appropriate explanation of adjustments. See IRM 4.23.10.10.11, Explanation of Adjustments: Form 886-A, Form 5701 and Employment Tax Lead Sheet (ETLS) Copies. One set will show the amount of tax for the agreed issues and will be clearly identified as a "Partial Agreement." The other set will show the amount of tax for the unagreed issues. Secure the taxpayer's signature on the Form 2504, 2504-S, and/or 2504-T that cover the agreed issues.
 - b. If both IRC 7436 and non-IRC 7436 issues are involved, there may be multiple sets of agreed and unagreed reports. See IRM 4.23.10.10.4.
 - c. Consolidate the agreed IRC 7436 and agreed non-IRC 7436 reports for assessment.
 - d. Forward the partial agreement(s) to Centralized Case Processing (CCP) for assessment. See IRM 4.23.10.15.1, Partial Assessment / Quick Assessment Processing.
 - e. Follow the procedures for unagreed IRC 7436 and non-IRC 7436 issues.
 - f. Explain the details of the agreed and unagreed issues on Form 4665.
 - g. Upon closing, forward both sets of reports in the same case file. Form 3198, 3198-A, or 9231 will note that the case is partially agreed.

Note: If there is partial agreement of IRC 7436 issues a separate file should be prepared for the unagreed IRC 7436 issues. For example, the taxpayer agrees that certain worker categories are employees but does not agree that other worker categories are employees.
- (3) See IRM 4.23.10.7, Unagreed Cases and 30-Day Letters, and IRM 4.23.22, Employment Tax, Unagreed Employment Tax Case Procedures, if the taxpayer does not agree to the proposed adjustments after expiration of the 30-day letter.

4.23.10.15.1
(06-29-2020)
**Partial
Assessment/Quick
Assessment Processing**

- (1) A streamlined process for cases requiring expedited assessments is available for:
 - Partial agreements,
 - Quick assessments (See IRM 4.23.11.10, Quick Assessments), and
 - No-response cases involving both section 7436 and non-IRC 7436 issues. This situation is present when the non-IRC 7436 issue is to be assessed immediately and the IRC 7436 issue is forwarded for issuance of Letter 3523.

Note: For partial assessments in non-deficiency cases for Form 1040 examinations, see IRM 4.23.10.17.3.1, Partial Assessment/Quick Assessment Processing for Form 1040 relating to Employment Taxes - Non-Deficiency Procedures.

- (2) **Expedited process procedure:** Prepare a fax cover sheet for transmittal with all relevant information, including identification of all parties, the forms attached, and the number of pages. The fax will consist of:

- Fax cover sheet,
- Completed Form 3198 with the “Partial Assessment” box checked,
- Form 2504, 2504-S, and/or 2504-T signed by the taxpayer for partially agreed cases,
- Completed report including applicable Form 4666, 4667, 4668, 4668-B, and 4668-C supporting the waiver in agreed cases, or the tax to be assessed for unagreed cases,
- Copy of the front page of the return (or BRTVU transcript) and BMFOLT transcript, and
- Form 5344 for each period to be assessed. Complete the form as necessary. For partial assessments, the examiner will only complete the left portion of the Form 5344 and include the appropriate disposal code (agreed “03” or unagreed “08”).

Notify CCP by phone that assessment information is being faxed and to identify the fax recipient. CCP Exam EFax information is found at <https://portal.ds.irsnet.gov/sites/vl051/Lists/ExamCentralizedCaseProcessingCCP/DispItemForm.aspx?ID=8>.

- (3) CCP will make the partial/quick assessment within a few days and fax the originator copies of Form 5344 marked “Request Completed” and BMFOLT’s showing the pending assessments for association with the case file.

Note: If the case involved both IRC 7436 issues and non-IRC 7436 issues, after assessment by CCP for the non-IRC 7436 issues, the entire case including both issues will be forwarded to Technical Services for the processing of the IRC 7436 issues.

- (4) Forms 5344 must be completed in their entirety when the case is ready for final closure from the group. For periods where there is no additional assessment due to the processing of the partial assessment, enter a TC 300 with a zero amount. The final disposal code is based on the final case resolution (Disposal Code (DC) “02” if no additional assessments are proposed; DC “03”/“04” agreed or DC “07”/“08” unagreed or appealed).
- (5) Additional instructions for Form 5344 for partial assessments are found in IRM 4.4.12, AIMS/Processing Handbook, Examined Closings, Surveyed Claims, and Partial Assessments.
- (6) TE/GE examiners should refer to their own procedures for their respective organizations.

4.23.10.15.2
(06-29-2020)

Examination Procedures for IRC 3402(d) and IRC 3102(f)(3) Relief

- (1) This section applies only to examinations where abatement procedures under IRC 3402(d) or IRC 3102(f)(3) apply. To properly assess:
 - Income taxes under IRC 3402,
 - Backup withholding under IRC 3406, or
 - Additional Medicare Tax under IRC 3101(b)(2), (including RRTA),

examiners will follow a modified Partial Assessment procedure when penalties are to be assessed. This generates an initial billing notice for the gross tax amounts shown on Form 2504, plus applicable interest and penalties, prior to the case being processed for closing. The taxpayer subsequently receives a

second notice containing the abatements allowed in the examination upon final processing of the Forms 4669 by Centralized Case Processing (CCP) at case closing.

Note: IRC 3402(d) and IRC 3102(f)(3) abatements do not apply to social security and Medicare taxes.

Exception: EO documents and cases will be forwarded to EO Examinations Closing Unit for processing.

- (2) This modified Partial Assessment is a two-step process which ensures the gross amount of tax, penalty, and interest are computed and assessed and that the IRC 3402(d) and/or IRC 3102(f)(3) abatement performed by CCP at case closing only recomputes the income tax and/or Additional Medicare Tax portion of the examination; ensuring no reduction of penalties and interest computed on the gross tax.

Note: If the examination does **not** propose penalties and the interest-free provisions of IRC 6205 are allowed, this two-step process is **not** to be used. The examiner will compute the tax due on Form 4668, 4668-B, or 4668-C based on the net payment adjustment using the accepted amounts from the secured Forms 4669. The amount on Line 12 and/or Line 13 of Form 4668, or Line 20 of Form 4668-B, or the abatement section on Form 4668-C, will reflect the remaining amount of tax available for abatement after the examination allowance.

Note: The two-step process of assessing the gross tax prior to the allowable abatement is only used to ensure the penalty and interest amounts generated from the examination are computed on the gross tax amount in penalty situations.

- (3) The examiner should discuss the two-step process with the taxpayer using the statement included on the Form 4666. See IRM 4.23.10.15.3, Examination Report Forms for IRC 3402(d) and IRC 3102(f)(3) Abatements. This should alleviate taxpayer concerns that the Forms 4669 were not properly processed upon receipt of the first notice.

Note: To avoid delays between the issuance of the two taxpayer notices, the Partial Assessment procedures should be performed prior to final group closing procedures. Upon receipt of confirmation from CCP of processing, the case can be closed from the group.

4.23.10.15.2.1
(06-01-2023)

**Modified Partial
Assessment Instructions**

- (1) Contact the appropriate CCP campus to inform them that the assessment document will be sent. CCP EFax information can be found at <https://portal.ds.irsnet.gov/sites/vl051/Lists/ExamCentralizedCaseProcessingCCP/DispItemForm.aspx?ID=8>.
- (2) Prepare a fax cover sheet for transmittal with all relevant information, including identification of all parties, the forms attached, and the number of pages. The fax consists of:
1. Fax cover sheet,
 2. Completed Form 3198 with the "Partial Assessment" box checked,
 3. Appropriate Form 2504, 2504-S, and/or 2504-T signed by the taxpayer,

4. Completed agreed report including Form 4666, 4667, 4668, 4668-B, and/or 4668-C supporting the waiver, and
5. Form 5344 for each period to be assessed (Form 5599, TE/GE Examined Closing Record, for TE/GE). Complete the form as shown in IRM 4.23.10.15.2.1.1, Completion of the Form 5344.
6. When penalties are applied, complete Form 3177, Notice of Action for Entry on Master File.

Form 3177
TC 470 with no closing code
Posting Delay Code "2"
List all applicable tax periods Note: Only one form is required if all tax periods are listed

CCP will fax verification of the assessment to the originator.

Note: Examiners must close the case immediately upon receipt of the faxed Form 3177 verification from CCP. Timely processing of these cases is imperative, as a delay between receiving the CCP fax and closing the case interrupts the process and may result in the taxpayer receiving a bill for tax that was to have been abated through the examination process.

4.23.10.15.2.1.1
(06-01-2023)

Completion of the Form 5344

- (1) Initial Form 5344 instructions, (Form 5599):
 - Label the initial Form 5344; "PARTIAL ASSESSMENT - GROSS TAX & PENALTIES."
 - Only the left side of Page 1 of the initial Form 5344 is completed – examiners do not need to complete Items 16 through 43 or attach Page 2 of this initial Form 5344. The appropriate disposal code (DC) must be entered.
 - **All adjustments** for the examination, including any other employment tax issues other than the IRC 3402(d) items and/or IRC 3102(f)(3) (fringe benefits, IRC 3509, and so on), are included on this initial Form 5344.
 - **ITEM 11:** Entry required if TC 308 is entered in Item 12.
 - **ITEM 12:** Include gross tax amount as TC 300 (or TC 308 if Interest-free). Also enter any applicable penalties.
 - **ITEM 15:** Include all reference codes and amounts corresponding to the entire examination assessment.
- (2) Upon completion of the partial assessment, CCP will:
 - a. Stamp the initial Form 5344 "Request Completed."
 - b. Fax a copy back to the originator for association with the case file to show that the assessment was completed within five business days.
- (3) Upon verification of the partial assessment, continue with final closing of the case from the examination group. The second Form 5344 must be entirely

completed. Enter the amount of abatement based on Forms 4669 allowed in examination as a TC "301" or TC "309" in Item 12, and the corresponding entries in Item 15.

(4) Final Form 5344 Instructions (Form 5599):

- Label the second Form 5344 - "FINAL CLOSURE - F4669 ABATEMENT."
- Complete both the left and right sides of Form 5344, including Page 2, per normal closing procedures.
- The **only** adjustments to be reflected on the left side of Page 1 are the IRC 3402(d) and/or IRC 3102(f)(3) abatement adjustments allowed in the examination.
- **ITEM 11:** Complete if TC 309 is entered in Item 12.
- **ITEM 12:** Include the abated tax amount as TC 301 (or 309 if Interest-free).
- **ITEM 15:** Include corresponding reference amounts for the IRC 3406 backup withholding abatement, IRC 3402 income tax withholding abatement, and/or IRC 3102(f)(3) Additional Medicare Tax abatement portion.

4.23.10.15.3
(06-01-2023)

**Examination Report
Forms for IRC 3402(d)
and IRC 3102(f)(3)
Abatements**

(1) The following instructions apply for report writing using the two-step process.

Note: IRC 3402(d) abatements **are not** available for worker reclassification issues computed using IRC 3509.

Note: IRC 3102(f)(3) abatements **are** available for worker reclassification issues computed using IRC 3509.

4.23.10.15.3.1
(06-29-2020)

Form 4666: Abatement

(1) The following notification should be included on Form 4666 to explain the two-step notice processing to the taxpayer, if applicable:

- "This report reflects the agreed total income tax withholding under IRC 3402 (including applicable assessments of IRC 3406, Backup Withholding) (and/or Additional Medicare Tax withholding under IRC 3102(f)), without consideration of any abatements provided by the taxpayer on Forms 4669, Statement of Payments Received."
- "Forms 4669 have been provided by the taxpayer to abate all or part of the total tax assessment per the abatement procedures of IRC 3402(d) for income tax or backup withholding (and/or IRC 3102(f)(3) for Additional Medicare Tax.) A credit for this tax abatement is shown as a credit memo on the Form 2504 agreement. A listing of all payments and the abatements allowed in the examination are attached to this report."
- "To accurately reflect the examination results, the Service Center will mail two notices to the taxpayer:"
- "1. The first notice will show total tax and penalties due without regard to the Forms 4669 solicited in the examination."
- "2. The second notice will be issued 4 to 6 weeks later reflecting the net tax due after the Form 4669 abatements are processed."

4.23.10.15.3.2
(06-29-2020)

Form 4668: Income Tax Abatement

- (1) For Form 941 examinations involving income tax subject to abatement, Line 12 of Form 4668, "Maximum tax available for abatement under IRC 3402(d)," should identify the total income tax available for use as an income tax credit by quarter. Both the maximum available IRC 3402(d) credit and the IRC 3402(d) credits allowed in the examination from the payees' Forms 4669 should be identified by quarter on the payee spreadsheet. The total IRC 3402(d) credit allowed for the year should match the IRC 3402(d) quarterly credit amounts listed in the "Memo" section of the applicable Form 2504.
- (2) The taxpayer/employer is liable for the gross amount of penalties assessed as a result of the examination. Penalties are not decreased when the income tax withholding is abated. Where penalties are involved, Line 5 of the examination report Form 4668 will continue to reflect the gross liability for all taxes without regard to this adjustment procedure. Penalties on Lines 7 through 10 will also be computed on the proposed taxes combined with any increase or decrease of credits on Line 6.

Reminder: Failure To Deposit (FTD) penalties are only computed on taxes actually withheld or on taxes which the employer had the obligation to remit. See Rev. Rul. 75-191.

4.23.10.15.3.3
(06-29-2020)

Form 4668 and Form 4668-C: Additional Medicare Tax Abatement

- (1) For Form 941 examinations involving Additional Medicare Tax subject to abatement, Line 13 of Form 4668, "Maximum tax available for abatement under IRC 3102(f)(3)," should identify the tax available for use as an Additional Medicare Tax credit by quarter. Both the maximum available IRC 3102(f)(3) credit and the IRC 3102(f)(3) credits allowed in the examination from the payees' Forms 4669 should be identified by quarter on the payee spreadsheet. The total IRC 3102(f)(3) credit allowed for the year should match the IRC 3102(f)(3) quarterly credit amounts listed in the "Memo" section of the applicable Form 2504.
- (2) For Form CT-1 examinations involving Additional Medicare Tax subject to abatement, Line 22 of Form 4668-C, "Maximum tax available for abatement under IRC 3102(f)(3)," should identify the tax available for use as an Additional Medicare Tax credit. Both the maximum available IRC 3102(f)(3) credit and the IRC 3102(f)(3) credits allowed in the examination from the payees' Form 4669 should be identified on the payee spreadsheet. The total IRC 3102(f)(3) credit allowed for the year should match the IRC 3102(f)(3) credit amount listed in the "Memo" section of the applicable Form 2504.
- (3) The taxpayer/employer is liable for the gross amount of penalties assessed as a result of the examination. Penalties are **not** decreased when the Additional Medicare Tax withholding is abated. Where penalties are involved, the examination report (Form 4668, Line 5 or Form 4668-C, Line 16) will continue to reflect the gross liability for all taxes without regard to this adjustment procedure. Penalties will also be computed on the amount of proposed taxes combined with any increase or decrease of credits.

Note: Reminder: FTD penalties are only computed on taxes actually withheld or on taxes which the employer had the obligation to remit. See Rev. Rul. 75-191.

4.23.10.15.3.4
(06-29-2020)

Form 4668-B: Abatement

- (1) For Form 945 examinations, Line 20 of Form 4668-B, "Maximum tax available for abatement under IRC 3402(d)," should identify the total available credits for withholding tax for the year. Both the maximum available credit and the IRC 3402(d) credits allowed in the examination from the payees' Forms 4669 should be identified on the payee spreadsheet. The total IRC 3402(d) credit allowed for the year should match the IRC 3402(d) credit amounts listed in the "Memo" section of the applicable Form 2504.
- (2) The taxpayer is liable for the gross amount of penalties assessed as a result of the examination. Penalties are not decreased when the tax withholding is abated. Where penalties are involved, Line 14 of the examination report, Form 4668-B, will continue to reflect the gross liability for all taxes without regard to this adjustment procedure. Penalties on Lines 15 through 18 will be computed on the gross amount of proposed taxes.

4.23.10.15.3.5
(06-29-2020)

**Form 2504 Series:
Abatement**

- (1) The Form 2504 used in the examination will reflect the gross tax examination results on the first line of the form in the "Adjustment to Tax, Credits and Penalties" section.
- (2) The amount **accepted** for abatement will be included on the first line of the "Memo: Abatement amount under IRC 3402(d) and/or IRC 3102(f)(3) - See explanation on Form 4666" section located at the bottom of the Form 2504. There are four entries for each tax period:
 1. The applicable tax period of the abatement,
 2. The return form number of the abatement,
 3. The IRC section, and
 4. The abatement credit amount.

Note: This section of the form is to inform the taxpayer that Forms 4669 for that total have been accepted.

- (3) The IRC 3402(d) and/or IRC 3102(f)(3) amount should **NOT** be shown in the "Adjustment to Tax, Credits and Penalties" section or used to compute a net amount. The taxpayer is agreeing to the gross tax assessment shown in the "Amount of Tax" section prior to any abatement.
- (4) Examiners are reminded to use the correct version of the three Forms 2504 available. If the IRC 3402(d) and/or IRC 3102(f)(3) abatement applies to IRC 7436 issues, use the Form 2504-T.
- (5) For examinations that did not involve an examination of worker classification, (for example,, Form 945 for Backup Withholding), Form 2504-S or Form 2504-T should be used, depending on whether the issues are IRC 7436 or non-IRC 7436 issues.

4.23.10.16
(05-21-2018)

**Unagreed Employment
Tax - Examination
Reports**

- (1) When the examiner and the taxpayer can not reach an agreement, a report consisting of Form 4666, 4667, 4668, 4668-B, 4668-C, 2504, 2504-S, and/or 2504-T, and an explanation of adjustments will be prepared. Separate reports **MUST BE** prepared for IRC 7436 and non-IRC 7436 issues. These reports are issued to the taxpayer with a 30-day letter. Follow the instructions for issuing a 30-day letter. See IRM 4.23.22.6, 30-Day Letters: Unagreed Case Procedures.
- (2) The final merits of a case may be judged by individuals far removed from the office of origin. An audit package with proposed adjustments is not complete

without a narrative statement (Explanation of Adjustments), which fully justifies all changes for which agreement has not been secured.

- (3) Form 4665 should be used in unagreed cases to provide a summary of unagreed issues. Information contained in this form should complement and not repeat information in the report and workpapers.
- (4) In the case of a taxpayer protest where issues are raised outside the original examination, prepare a supplemental "Explanation of Adjustments". See IRM 4.23.10.16.3, Alternative and Whipsaw Positions in Unagreed Cases.
- (5) If the taxpayer's protest for a non-IRC 7436 issue raises a worker classification and/or section 530 argument, the issue would be treated as an IRC 7436 issue. See IRM 4.23.22.11, Special Procedures for Letter 3523 under IRC 7436. The issue and associated adjustments will be moved to forms appropriate for IRC 7436 issues.
- (6) An examiner is required to prepare Form 9440 in all unpaid agreed and unagreed case files. This includes all employment tax cases that remain unpaid at the time of final closure from the group.

4.23.10.16.1
(05-21-2018)

Preparing Explanation of Adjustments

- (1) The key to sustaining an examiner's adjustment is the narrative in the explanation of adjustments. See IRM 4.23.10.10.11, Explanation of Adjustments: Form 886-A, Form 5701, and Employment Tax Lead Sheet (ETLS) Copies. These narratives should be prepared for each unagreed issue and any alternative issue proposal. See Exhibit 4.23.10-11, Form 886-A, Format for Employee vs. Independent Contractor Adjustment, for example.
- (2) The narrative should be divided into five parts, with modifications as needed for specific cases. The five parts are:
 1. Issues
 2. Facts
 3. Law
 4. Taxpayer's position
 5. Service's position

In addition to these five required elements, if a penalty is assessed or an alternative tax computation for a worker reclassification issue is computed, the penalties and basis for assessment are also included in the explanation.

- (3) **Issues:** The issue(s) involved in a case (for example, reclassification, backup withholding, unreported remuneration, and so on) will be listed and their relevance to the case explained. For worker classification cases, the explanation should address:
 - a. Section 530: All of the requirements of section 530 **must** be discussed in worker classification cases, even if the examiner determines that the taxpayer fails one of the requirements before developing the other requirements. Explain whether the consistency and reporting requirements were met and whether the taxpayer demonstrated a reasonable basis for not treating the worker(s) as employee(s). See IRM 4.23.5.3, Section 530 of the Revenue Act of 1978, and subsequent subsections for additional information.

- b. Identify the three categories of evidence (Behavioral Control, Financial Control, and Relationship of the Parties). All evidence should be weighed to determine whether a worker is a common law employee based on the nature of the business under examination.
 - c. If more than one category of workers is involved, a separate explanation of the common law rules and section 530 should be made for each category.
 - d. For corporate officers, the common law standard is not applicable. See IRM 4.23.5.7.3, Corporate Officers, for additional information.
 - e. For statutory employees, discuss the specific tests for the category of statutory employee. See IRM 4.23.5.7.4, Statutory Employees, for additional information.
 - f. IRC 3509 rates: State which rate is used to compute the proposed tax and explain why that rate is used. If IRC 3509 rates are not used due to intentional disregard, explain why and provide the facts to support the position that the taxpayer intentionally disregarded the rules to deduct and withhold employment taxes.
 - g. CSP: State whether a CSP offer was made and the result.
- (4) For IRC 7436 wage issues, the explanation should address:
- a. **Section 530:** The examiner must explain that section 530 is not applicable because this is a wage issue. The examiner must also explain whether the statutory requirements were met if section 530 were applicable to the issue. Although the examiner must explain the Service's position that section 530 is not applicable to the wage issue, the examiner must still address the merits of section 530 as an alternative argument in case the Tax Court decides that section 530 is applicable to that wage issue.
- Note:** Although a taxpayer will rarely meet the requirements of section 530 on the merits with respect to a wage issue subject to IRC 7436, it is possible that the taxpayer could meet the three requirements. **In such a case, since the primary position is that the taxpayer is not entitled to relief because section 530 is not applicable to a wage issue, the employment tax adjustment would still be made.**
- b. **Wage v. Worker Classification Issue:** Explain why the issue is a wage issue and not a worker classification issue.
 - c. **IRC 3509 rates:** State that IRC 3509 rates are not applicable to wage issues.
 - d. **CSP:** State that CSP is not applicable since this is a wage issue.
- (5) **Facts:** Address the business background and the taxpayer's operations in general. In developing and presenting evidence, secure and document information in the workpapers to make it easy to identify the nature of the evidence and the location (for example, a document or a witness). Include facts and documentary references supporting the amount of wages determined. All facts should be included in the facts section even if they need to be repeated when explaining the IRS's position later in the Form 886-A. Conclusions and opinions should not be included in the facts section. Facts should be stated objectively.
- (6) **Law:** Cite relevant court cases, revenue rulings, revenue procedures and other compelling sources. The relationship of sources cited to the subject case must

be clearly established. Citations should be written out and include an explanation of the law when appropriate. Examiners should not simply list a Code section or Revenue Ruling number.

- (7) **Taxpayer's Position:** If known, the taxpayer's position regarding all issues, including section 530, will be stated objectively. Include all legal or other citations relied upon in support of the taxpayer's position.
- (8) **Service's Position:** This is a summation of the position taken by the examiner and explanation how the law applies to the facts. The examiner will address the taxpayer's position point by point. Specific reference will be made to information developed through on-site observation of the business premises, third-party interviews, interviews with the taxpayer, answers to common law questions, statutory authority, or other legal resources and any other relevant sources to support the IRS's position.
- (9) **Tax Computation:** The tax computation rate must be explained in worker classification cases. If IRC 3509(a) or IRC 3509(b) rates are not used, a full explanation is required. In addition, a statement on the application and computation of CSP should be included.
- (10) **Penalty:** If proposed, explain the reasons for penalty proposal(s) and address any reasonable cause factors. Also, include the computation or spreadsheet used.

4.23.10.16.2 (05-21-2018) **Unagreed Employment Tax Report Forms**

- (1) Unagreed Form 940 examination and additional tax or over-assessment cases, including changed delinquent return cases:
 - a. Prepare Form 4667.
 - b. Prepare separate Form 4667 for each tax period.
 - c. Prepare explanation of adjustments.
 - d. Provide a copy of the report to both the taxpayer and the taxpayer's representative with the 30-day letter.
- (2) Unagreed Form 940 examination and substitute for return (SFR) cases:
 - a. Follow SFR procedures. See IRM 4.23.12.4, Controlling and Processing Delinquent and Substitute for Returns in Employment Tax and following sections.
 - b. Prepare Form 4667.
 - c. Prepare separate Form 4667 for each tax period.
 - d. Prepare explanation of adjustments.
 - e. Provide a copy of the report to both the taxpayer and the taxpayer's representative with the 30-day letter.
- (3) Unagreed Form 941, 943, 944, 945, CT-1, and CT-2 examinations and additional tax cases, including changed delinquent return cases:
 - a. Prepare applicable Form 4668, 4668-B, and/or 4668-C.
 - b. Prepare separate Form 4668, 4668-B, and/or 4668-C for each tax year.
 - c. Prepare explanation of adjustments.
 - d. Provide a copy of the report to both the taxpayer and the taxpayer's representative with the 30-day letter.

- (4) Unagreed Form 941, 943, 944, 945, CT-1 and CT-2 examinations and over-assessment cases:
 - a. Follow the procedures in IRM 4.23.8.6.2, Specific Instructions - FICA Overpayments.
 - b. IRM 4.23.8.8.1, Income Tax Withholding Overpayments - Current Year.
- (5) Unagreed Form 941, 943, 944, 945, CT-1 and CT-2 examinations and SFR cases:
 - a. Follow SFR procedures. See IRM 4.23.12.4, Controlling and Processing Delinquent and Substitute for Returns in Employment Tax and following sections.
 - b. Prepare applicable Form 4668, 4668-B, and/or 4668-C.
 - c. Prepare separate Form 4668, 4668-B, and/or 4668-C for each tax year.
 - d. Prepare explanation of adjustments.
 - e. Provide a copy of the report to both the taxpayer and the taxpayer's representative with the 30-day letter.
- (6) Prepare separate unagreed reports for IRC 7436 and non-IRC 7436 issues. See IRM 4.23.10.10.3.1, Employment Tax Change Report.
- (7) The explanation of adjustments will follow the format described in IRM 4.23.10.16.1, Preparing Explanation of Adjustments, above.
- (8) Follow the procedures for issuance of the 30-day letter for unagreed cases. See IRM 4.23.10.16, Unagreed Employment Tax – Examination Reports. See IRM 4.23.10.7, Unagreed Cases and 30-Day Letters.
- (9) Taxpayer and their representative will receive a copy of the unagreed employment tax reports with the 30-day letter.

4.23.10.16.3
(05-21-2018)

**Alternative and Whipsaw
Positions in Unagreed
Cases**

- (1) Rev. Proc. 99-28 section 2.03(6) defines the term “whipsaw” as a situation produced when the government is subjected to conflicting claims of different taxpayers. A potential whipsaw situation exists when there is a transaction between two parties and differing characteristics of transactions will benefit one and hurt the other for tax purposes.
- (2) Examples of potential whipsaw issues in employment tax include:
 - The identification of the employer when two different taxpayers are contesting responsibility for withholding taxes. This may arise in prevailing wage audits, between the common-law employer and a third-party who may actually distribute the payments.
 - An audit of a temporary staffing service (TSS): TSS treats workers as independent contractors. Examiner proposes to reclassify as employees. TSS argues that workers are employees of their client. Examiner issues an examination report for worker reclassification on both the TSS and client.
- (3) For additional information on whipsaw issues and examples, see IRM 4.10.13.5, Adjustments Between Correlative U.S. Taxpayers to Achieve Consistent Tax Treatment (a/k/a Whipsaw Issues), and IRM 4.10.7.4.9, Whipsaw (a/k/a correlative adjustments).
- (4) An alternative position for an issue in an unagreed case is a secondary position that the IRS may ultimately rely on if the primary position cannot be

upheld. An alternative position is recommended in unagreed cases due to the fact that Appeals will not raise new issues. See IRM 1.2.1.9.2, Policy Statement 8-2 (rev. 1) (formerly P-8-49), "New issues not to be raised by Appeals." It is the responsibility of Examination to identify all potential issues during the audit.

- (5) There may be more than one alternative position. Therefore, the examiner must outline all alternative positions with regard to the contested issue that may be applicable in case the primary position is not sustained. See IRM 4.10.8.12.5, Alternative Positions.

- (6) Examples of potential alternative positions in employment tax include:

- Backup withholding versus worker reclassification
- Statutory employee versus common law employee
- Assertion of penalties. The negligence penalty is the standard alternative position when asserting the fraud penalty. See IRM 4.10.8.12.5.1, Reports for Alternative Positions (SB/SE Field and Office Examiners only).

4.23.10.16.3.1 (05-21-2018) **Procedures for an Alternative Position in an Unagreed Case**

- (1) An alternative position may be proposed for an unagreed case to strengthen the IRS's position in Appeals. The primary reason for the examination adjustment should be written as the primary position. The secondary reason for the adjustment will usually address a different set of law and arguments supporting the adjustment made and is called the alternative position.
- (2) When proposing an alternative position or approach in an unagreed civil case, the alternative position or approach must be discussed with the taxpayer or the authorized representative and be presented in the portion of the report sent to the taxpayer. This includes any additional basis or reasons for the proposed adjustment.
- (3) An alternative position or approach is presented on a Form 4668 with a separate explanation of adjustments: Form 886-A, Form 5701, or a redacted Employment Tax Lead Sheet (ETLS) workpaper. If the alternative position results in a different tax computation, an alternative computation of tax is prepared.
- (4) Form 4668 and the explanation of items for the alternative position should be marked "ALTERNATIVE ISSUES" on the top of each page and inserted in the report of examination behind the report forms relating to the primary position.
- (5) In all unagreed cases where alternative positions are raised, separate reports will be prepared for both the primary and alternative positions. Attach the alternative position behind the primary position. Each report will include an explanation of adjustments containing detailed explanations of the issues, facts, law, taxpayer's position, and the Service's conclusions.

4.23.10.16.3.2 (06-29-2020) **Backup Withholding in Worker Reclassification Exams**

- (1) Backup withholding is a strong secondary position in a worker reclassification case in which:
 - The employer did not file required Forms 1099 and did not receive TINs from the workers,
 - The Forms 1099 did not include a valid TINs, or

- The firm did not solicit and receive TINs from the workers when reaching the threshold for backup withholding.

Note: See IRM 4.23.8.13, Backup Withholding, for additional information.

Reminder: A TIN is invalid if the number provided is less than 9 digits, more than 9 digits or includes an alpha character in the number.

If the primary position of worker reclassification is not upheld in Appeals for these types of payments, the examination should also have backup withholding as a secondary issue.

(2) The issue is a hybrid of the alternative and whipsaw positions;

1. It is an alternative position and not a whipsaw issue in that it does not affect two different taxpayers.
2. However, it is a whipsaw issue in that it affects two different tax returns - Form 941 and Form 945.

This necessitates two different reports and waivers - Form 2504 and 2504-T. It also requires controlling two different tax returns.

(3) For unagreed reports involving both IRC 7436 and non-IRC 7436 issues, see IRM 4.23.22.11.1, General Overview of Section 7436 Procedures, and IRM 4.23.22.6, 30-Day Letters: Unagreed Case Procedures.

4.23.10.17
(06-29-2020)

**General Procedures for
Adjusting the Employee
Share of FICA/RRTA
Taxes Including
Additional Medicare Tax
(AdMT) for Form 1040**

(1) There will be instances when only the Form 1040 for an individual is examined for employment tax purposes This can include:

- a. A worker is reclassified from independent contractor to employee based on an SS-8 determination or other information,
- b. A firm is protected from liability of employment taxes due to section 530 relief, but separately, the worker is determined to be an employee of the firm,
- c. An employer is subject to an employment tax audit and workers are reclassified without a CSP using IRC 3509(a) or IRC 3509(b) (no employee FICA tax withheld) and the employer issues a delinquent Form W-2 to the worker,
- d. An employer is subject to an employment tax audit for issues other than worker reclassification (for example, fringe benefits) and an adjustment is made to an employee's wage amount which does **not** exceed the employer's AdMT withholding limit, but the Form 1040 exceeds the Form 1040 AdMT liability limit, or
- e. Other employment tax assessments for FICA, RRTA, and/or AdMT are required to be made to a worker's Form 1040.

Note: For situations involving AdMT where the worker is **not** an employee but is self-employed, see IRM 4.23.10.17.4, Procedures for Adjusting Additional Medicare Tax (AdMT) - Form 1040. For situations involving an individual's 1040 liability for AdMT on wages paid by an employer (which are assessable without use of deficiency procedures), see IRM 4.23.10.17.4.2, Non-Deficiency Procedures for AdMT for Form 1040.

(2) In all the above situations in (1), an analysis must be made as to the procedures to follow in order to properly assess AdMT, FICA, and/or SE Tax.

Note: Examiners must ensure that the employment tax adjustments for FICA/RRTA and AdMT on wages paid by an employer are not reflected on the Form 4549, but are included on a Form 2504. It may be necessary to manually-prepare both forms if the Report Generation Software (RGS) does not reflect the proper adjustments.

Note: The proper report-writing for AdMT is dependent on whether the earnings are from self-employment income (SE Income - subject to deficiency procedures) or wages paid by an employer (not subject to deficiency procedures).

(3) Form 2504 will be prepared as follows:

- a. **Tax Period Ended:** Use the tax period of the Form 1040 in the “MM/DD/YYYY” format (for example, 12/31/2019)
- b. **Return Form Number:** Form 1040
- c. **Kind of Tax:** “Employee Share of Social Security and Medicare Taxes - IRC 3101”, “Employee Share of Railroad Retirement Tax Act - IRC 3201”, and/or “Additional Medicare Tax - IRC 3101(b)(2)”
- d. **Amount of Tax:** Show the correct amount as reflected in the computation of tax
- e. **Penalty:** Enter code section, title, and amount of each applicable penalty

Note: See IRM 4.23.10.10.10, Form 2504, Form 2504-S, and Form 2504-T, for additional information.

Note: Information on the statute date of AdMT is available in IRM 4.23.14.2.2, Additional Medicare Tax (AdMT) under IRC 3101(b)(2) and subsequent subsections.

(4) **Amounts Subject to Additional Medicare Tax (AdMT):** For tax years beginning after December 31, 2012, a 0.9% AdMT applies to Medicare wages, Railroad Retirement Tax Act (RRTA) compensation, and SE Income above a threshold amount. Form 8959, Additional Medicare Tax, may be helpful in determining the amount of AdMT. Medicare wages and SE Income are combined to determine if income exceeds the threshold. A self-employment loss should not be considered for purposes of this tax. RRTA compensation is separately compared to the threshold.

Filing Status	Threshold Amount
Married filing jointly	\$250,000
Married filing separately	\$125,000
Single, Head of Household, Qualifying widow(er) with dependent child	\$200,000

(5) In the case of an employee who is married filing jointly, an adjustment for AdMT on wages paid by an employer which is includable on Form 2504 is signed by both filers if the report relates to a couple’s joint income tax return.

4.23.10.17.1
(06-29-2020)
**Procedures for
Adjusting the Employee
Share of FICA/RRTA
Taxes Including
Additional Medicare Tax
(AdMT) on Form 1040 -
Reclassification from
Self-Employed to
Employee**

- (1) When a worker provides the income tax examiner with sufficient evidence that the services he/she performed for someone else (individual, partnership, corporation, and so on) were that of an employee rather than a non-employee, yet he/she was treated as a non-employee (for example, Form 1099), the examiner should correct the worker's return (for example, Form 1040) to eliminate the self-employed status and correct for the employee share of FICA/RRTA and AdMT taxes.
 - a. For determinations made by the SS-8 Units: Sufficient evidence will include a determination letter from the SS-8 Unit determining the worker to be an employee. By filing a Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, and identifying the worker's name, the worker has agreed to the IRS disclosing their name to the employer in the context of rendering the Form SS-8 determination.
 - b. Field examiners may use the questions found in the Form SS-8 in making the determination. However, the form should **NOT** be given to the taxpayer for completion. The examiner will make a determination and document the evidence in the workpapers. The audit report will include an explanation of adjustments outlining the determinative factors. See IRM 4.23.10.10.11, Explanation of Adjustments: Form 886-A, Form 5701, and Employment Tax Lead Sheet (ETLS) Copies.
- (2) For employee adjustments to FICA in a Form 1040 examination, the income tax report (for example, Form 4549) will contain an explanation of the adjustment to FICA taxes and/or AdMT on wages paid by an employer in the "Other Information" section of the income tax report:

Example: In connection with the examination of your income tax return (Form 1040) for the year(s)_____, an adjustment is reflected on Form 2504 for the employee share of FICA taxes. FICA taxes are composed of the old-age, survivors, and disability insurance taxes (also known as social security tax, IRC 3101(a)), the hospital insurance tax (also known as Medicare tax, IRC 3101(b)(1)), and the AdMT IRC 3101(b)(2)). See the computation accompanying this report.

Note: Form 8919, Uncollected Social Security and Medicare Tax on Wages, is helpful in computing this adjustment. In addition, Form 8959 may be helpful in determining the amount of Additional Medicare Tax.

- (3) For employee adjustments to RRTA on Form 1040, the income tax report (in other words Form 4549) will contain an explanation of the adjustment to RRTA taxes in the "Other Information" section of the income tax report:

Example: In connection with the examination of your income tax return (Form 1040) for the year(s)_____, an adjustment is reflected on Form 2504 for the employee share of RRTA taxes. RRTA taxes are composed Tier 1 and Tier 2 taxes, and includes AdMT (IRC 3101(b)(2)). See the computation accompanying this report.

Note: Form 8959 may be helpful in determining the amount of Additional Medicare Tax.

- (4) To ensure proper processing of the adjustment for employee share of FICA/ RRTA taxes, Form 3198 must be prepared and included with the case file. Check "Other Instructions" in the "Special Features" section. For FICA tax adjustments, enter "Computation of FICA taxes enclosed (and Form 8959, if Form 8959 is applicable)." For RRTA adjustments, enter "Computation of RRTA taxes enclosed (and Form 8959, if Form 8959 is applicable)."
- (5) Any SE Income/SE Tax Adjustment Information is forwarded to the Social Security Administration (SSA) electronically. The Form 3198 must indicate the SE Income/SE Tax Adjustment figures for primary and/or secondary taxpayer. The computer-generated page of the Revenue Agent Report (RAR) must be attached to the Form 5344 that contains the reference number information entered in Item 15 of the Form 5344.
 - a. The net increase or decrease to the SE Income of the primary taxpayer is Reference Number 878. Enter the SE Income adjustment multiplied by 0.9235. The amount entered with Reference Number 878 must not bring the taxpayer's total SE Income over the maximum amount subject to social security tax, taking into consideration any wages and RRTA compensation paid to the taxpayer that calendar year. Reference Number 889 is required with Reference Number 878.
 - b. The net increase or decrease to the SE Income of the secondary taxpayer is Reference Number 879. Enter the SE Income adjustment multiplied by 0.9235. The amount entered with Reference Number 879 must not bring the taxpayer's total SE Income over the maximum amount subject to social security tax, taking into consideration any wages and RRTA compensation paid to the taxpayer that calendar year. Reference Number 889 is required with Reference Number 879.
 - c. The net increase or decrease for the primary taxpayer that is subject to Medicare tax is Reference Number 895.
 - d. The net increase or decrease for the secondary taxpayer that is subject to Medicare tax is Reference Number 896.
 - e. The net increase or decrease to the total self-employment tax is Reference Number 889. If both taxpayers on a joint return have self-employment tax adjustments, combine the net increase or decrease of both and enter only one amount.
 - f. The net increase or decrease to the AdMT on SE Income for the income tax return is reference number 863 for wages/SE Income.
 - g. The net increase or decrease to the AdMT on SE Income for the income tax return is reference number 864 for RRTA compensation.
 - h. The net increase or decrease to the AdMT withholding is credit reference number 806 (807 for decrease).

Note: Enter Reason Code "136" on the Reason Code tab.

4.23.10.17.2
(06-29-2020)

**Procedures for
Adjusting the Employee
Share of FICA/RRTA
Taxes Including
Additional Medicare Tax
(AdMT) on Form 1040 -
Worker is an Employee**

- (1) If a worker is determined to be an employee but due to section 530 the employer is not liable to withhold any employment taxes, including the employee share of social security and Medicare Taxes, RRTA, and/or AdMT on wages paid by an employer, the worker remains liable for these employee taxes.
- (2) If a worker received a Form W-2 from an employer as a result of a worker status determination, the worker is liable for the employee share of FICA/RRTA taxes, including AdMT, unless the employer paid the employee share of FICA/RRTA taxes including AdMT that the employer should have withheld from the employee.

Note: A worker status determination under IRC 3509(a) or (b) assesses the employer share of FICA and employee FICA at a reduced rates, but the employee does not get credit for the reduced FICA. Also, there is no employer share of AdMT.

- (3) If a worker received a Form W-2 from an employer as a result of a worker status determination and the employer paid the employee share of FICA/RRTA taxes (including AdMT that the employer should have withheld from the employee), any subsequent changes to AdMT on Form 1040 would be subject to deficiency procedures. See IRM 4.23.10.17.4 for additional information.

- (4) For adjustments to the employee share of FICA and AdMT on wages paid by an employer, the income tax report (for example, Form 4549) will contain an explanation of the adjustment to FICA taxes in the "Other Information" section of the income tax report:

"In connection with the examination of your income tax return (Form 1040) for the year(s)_____, an adjustment is reflected on Form 2504 for the employee share of FICA taxes. FICA taxes are composed of the old-age, survivors, and disability insurance taxes (also known as social security tax, IRC 3101(a)), the hospital insurance tax (also known as Medicare tax, IRC 3101(b)), and the AdMT (IRC 3101(b)(2)). See the computation accompanying this report."

Note: Form 8919 is helpful in computing this adjustment. In addition, Form 8959, Additional Medicare Tax, may be helpful in determining the amount of Additional Medicare Tax.

- (5) For adjustments to the employee share of RRTA and AdMT on wages paid by an employer, the income tax report (for example, Form 4549) will contain an explanation of the adjustment to RRTA taxes in the "Other Information" section of the income tax report:

"In connection with the examination of your income tax return (Form 1040) for the year(s)_____, an adjustment is reflected on Form 2504 for the employee share of RRTA taxes. RRTA taxes are composed Tier 1 and Tier 2 taxes, and includes AdMT (IRC 3101(b)(2)). See the computation accompanying this report."

Note: Form 8959 may be helpful in determining the amount of AdMT. A separate computation of the component parts of RRTA are also required.

- (6) To ensure proper processing of the adjustment for employee share of FICA/RRTA taxes including AdMT on wages paid by an employer, Form 3198 must be prepared and included with the case file. Check the "Other Instructions" box

in the Special Features section and insert "Tax Computation enclosed (and Form 8959, if applicable)." For RRTA adjustments, enter "Tax Computation enclosed (and Form 8959, if applicable)."

- (7) The Form 3198 must indicate the tax adjustment figures for primary and/or secondary taxpayer. The computer generated page of the RAR must be attached to the Form 5344 that contains the reference number information entered in Item 15 of the Form 5344.
- (8) For additional procedures on report writing and computation, including the preparation of Form 2504, see IRM 4.23.10.17 and following subsections.

4.23.10.17.3
(06-29-2020)

**Procedures for
Processing Employee
Share of FICA/RRTA
Taxes Including
Additional Medicare Tax
(AdMT) on Wages Paid
by an Employer on Form
1040 in Unagreed Cases**

- (1) When an income tax examination is unagreed and includes an adjustment for the employee share of FICA/RRTA taxes (including an adjustment to AdMT on wages paid by an employer), a taxpayer may request Appeals consideration for the income tax adjustment, as well as the adjustment(s) to FICA/RRTA/AdMT taxes on wages paid by an employer. If the income tax case is being closed for a Statutory Notice of Deficiency (SNOD) or to Appeals **(in situations where the FICA/RRTA/AdMT on wages paid by an employer adjustment was agreed to or not part of the appeal request)**, the FICA/RRTA/AdMT on wages paid by an employer adjustment must be closed as a partial assessment to CCP. Once the partial assessment for FICA/RRTA/AdMT on wages paid by an employer has been completed by CCP, the income tax case will either be closed to Technical Services for the issuance of a SNOD or forwarded on to Appeals. See IRM 4.4.10.3, Processing Employee Share of FICA - CCP Responsibility

Reminder: The AdMT in (1) is **not** based on SE Income; AdMT computed on SE Income is subject to deficiency procedures.

- (2) Since the FICA and RRTA taxes are not income taxes, they are not subject to deficiency procedures and cannot be included on a SNOD. However, AdMT can be either subject to deficiency procedures or excluded from deficiency procedures.
 - AdMT imposed under IRC 1401(b)(2) on SE Income is subject to deficiency procedures.
 - AdMT imposed under IRC 3101(b)(2) and IRC 3111(b) on wages paid by an employer is **not** subject to deficiency procedures.

When a statutory notice is issued, any adjustments made to the employee share of FICA and RRTA taxes are processed as a partial assessment. Adjustments made to AdMT need to be identified as to the source of the income; SE Income adjustments are reported on the SNOD, wages paid by an employer are included with the partial adjustment.

If unagreed and not going to Appeals: (pre-docketed)	AdMT Issue: From Employer	AdMT Issue: S/E Income	Income Tax Issue
Income Tax Issues (Form 4549)	N/A	N/A	SNOD
AdMT	Partial Assessment	SNOD	N/A

If unagreed and going to Appeals: (pre-docketed)	AdMT Issue: From Employer	AdMT Issue: S/E Income	Income Tax Issue
Income Tax Issues (Form 4549)	N/A	N/A	SNOD not needed - directly to Appeals
AdMT	No Partial Assessment - directly to Appeals	SNOD not needed - directly to Appeals	N/A

Note: In situations where AdMT is the result of income from both employer and SE Income, the treatment of the AdMT may need to be bifurcated based on the above.

- (3) A partial assessment should be closed using Disposal Code (DC) "08" without an agreement date. DC "08" should be used since the 30-day interest-free period is not applicable to employee FICA, RRTA, and AdMT under IRC 3101 and 3111. All partial assessment information should be faxed to the appropriate CCP campus. For additional information, refer to:

- IRM 4.23.10.15.1, Partial Assessment/Quick Assessment Processing,
- IRM 4.10.8.14.10, Adjustment for Employee FICA Tax, and
- IRM 4.4.12.2.8 Additional Information.
- CCP website at *Quick Prompt and Partial Assessments - CCP*
- RGS Issue Reference Guide (Form 1040) a: *RGS Issue Reference Guides (1040 and 1120)*

4.23.10.17.3.1
(06-29-2020)

**Partial
Assessment/Quick
Assessment Processing
for Form 1040 relating to
Employment Taxes -
Non-Deficiency
Procedures**

- (1) A streamlined process for cases requiring expedited assessments is available for the assessment of employment taxes for Form 1040 examinations involving:
 - Partial agreements, and
 - Quick assessments. See IRM 4.23.11.10, Quick Assessments
- (2) **Expedited process procedure:** Prepare a fax cover sheet for transmittal with all relevant information, including identification of all parties, the forms attached, and the number of pages. The fax will consist of:
 - Fax cover sheet,
 - Completed Form 3198 with the "Partial Assessment" box checked,
 - Form 2504 signed by the taxpayer for partially agreed cases or unsigned for unagreed cases (**Note:** For AdMT on wages paid by an employer, Form 2504),
 - Completed report including applicable Form 4666, Form 4668 and supporting the waiver in agreed cases, or the tax to be assessed for unagreed cases,
 - Copy of the front page of the return (or RTVUE transcript) and IMFOLT transcript, (**Note:** For partial assessment of AdMT on wages paid by an employer only, include a copy of the Form 8959)
 - Form 5344 for each period to be assessed. Complete the form as necessary. For partial assessments, the examiner will only complete the left portion of the Form 5344 and include the appropriate disposal code (agreed "03" or unagreed "08").

If possible, contact CCP by phone to alert them that assessment information is being faxed and to identify the fax recipient. CCP EFax information is found at <https://portal.ds.irsnet.gov/sites/vl051/Lists/ExamCentralizedCaseProcessingCCP/DispItemForm.aspx?ID=8>.
- (3) Form 5344 will need to be manually prepared. On Form 5344, enter:
 - Line 12: TC 300 = AdMT to be assessed PLUS any AdMT on SE Income
 - Line 15: Reference # 863, Additional Medicare Tax on Medicare wages PLUS any AdMT on SE Income
 - Line 15: Any additional codes needed to process, including 864, 873, 874, 878, 879, and so on
 - Valid reference numbers are found in Document 6209, "IRS Processing Codes and Information", section 8C-3, "Item Adjustment Codes & Credit Reference Numbers" at <http://serp.enterprise.irs.gov/content/6209/section-8c-3.html>.
- (4) CCP will make the partial/quick assessment within two weeks and fax or e-mail the originator copies of Form 5344 marked "Request Completed" and IMFOLT showing the pending assessments for association with the case file.
- (5) The examiner should access TXMODA to verify a pending transaction of the AdMT amount.
- (6) Forms 5344 must be completed in their entirety when the case is ready for final closure from the group. For periods where there is no additional assessment due to the processing of the partial assessment, enter a TC 300 with a

zero amount. The final disposal code is based on the final case resolution (Disposal Code (DC) "02" if no additional assessments are proposed; DC "03"/"04" agreed or DC "07"/"08" unagreed or appealed).

- (7) Additional instructions for Form 5344 for partial assessments are found in IRM 4.4.12, AIMS/Processing Handbook, Examined Closings, Surveyed Claims, and Partial Assessments.
- (8) TE/GE examiners should refer to their own procedures for their respective organizations.

4.23.10.17.4
(06-29-2020)
**Procedures for
Adjusting Additional
Medicare Tax (AdMT) -
Form 1040**

- (1) Individual liability for AdMT on wages paid by an employer can differ from the amount of AdMT withheld by an employer because individual AdMT liability is calculated based on Form 1040 filing status (for example, joint). Employers are required to withhold AdMT from wages they pay to an individual in excess of \$200,000 in a calendar year, **without regard to the individual's filing status or other income received by the individual or the individual's spouse.** Refer to Treas. Reg. 31.3102-4(a).
- (2) Thus, any additional liability for AdMT on Form 1040 must be analyzed to determine whether the liability is based on SE Income or on wages paid by an employer. This difference affects the procedures that must be followed prior to assessment (deficiency procedures prior to assessment or assessment without deficiency procedures).
- (3) This difference also affects how the statute of limitations is extended using either Form 872, Consent to Extend the Time to Assess Tax or Form SS-10, Consent to Extend the Time to Assess Employment Taxes. See IRM 4.23.14.2, Period of Limitation for Assessment, and following sections for additional information.

4.23.10.17.4.1
(06-29-2020)
**Deficiency Procedures
for AdMT on SE Income**

- (1) In situations for self-employed workers requiring adjustments to the AdMT for SE Income, IRC 1401 imposes social security and Medicare taxes on SE Income of every individual at the same combined employer and employee rates applicable under the FICA.
- (2) The Affordable Care Act (ACA) added IRC 1401(b)(2), which imposes an additional Medicare tax (AdMT) of 0.9 percent on SE Income for any taxable year beginning after December 31, 2012, which is in excess of certain threshold amounts. As with AdMT on wages paid by an employer under FICA, the threshold amounts for an individual to be subject to AdMT under the Self-Employment Contributions Act (SECA) are determined by the individual's filing status. Like the AdMT on wages paid by an employer under the FICA, the threshold amounts under IRC 1401(b)(2)(A) are \$250,000 in the case of a joint return, \$125,000 in the case of a married taxpayer filing a separate return, and \$200,000 in any other case.
- (3) AdMT imposed on SE Income under IRC 1401(b)(2) is subject to the deficiency procedures under IRC 6211 to IRC 6213 because it is an income tax imposed under subtitle A of the Code. See IRC 6211(a), (limiting the term "deficiency" to "income, estate, and gift taxes imposed under subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44").
- (4) IRC 6213 provides that when there is a deficiency in tax under IRC 6211(a), including for the AdMT on SE Tax imposed under IRC 1401(b)(2), the IRS

must issue a notice of deficiency prior to assessing the tax. See IRC 6213(a): (“No assessment of a deficiency in respect of any tax imposed by subtitle A or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until the expiration of such 90-day or 150-period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.”)

- (5) IRC 6211(a) defines “deficiency” as the amount by which the tax imposed exceeds the amount shown by the taxpayer on the return, plus the amounts previously assessed as a deficiency, over the amount of any rebates. Any assessment of AdMT under IRC 1401(b)(2) made in violation of the restrictions on assessment under IRC 6213 is improper and should be abated.
- (6) AdMT imposed on SE Income under a deficiency procedure is reflected on Form 4549.

4.23.10.17.4.2
(06-29-2020)
**Non-Deficiency
Procedures for AdMT for
Form 1040**

- (1) The individual's liability for AdMT on wages paid by an employer under FICA is determined based on total wages received by the individual (and the individual's spouse for joint filers) over a threshold amount that varies based on filing status (\$250,000 for married filing jointly, \$125,000 for married filing separately, and \$200,000 for all other filing statuses).
- (2) For this reason, while an employer reports its AdMT **withholding** on employee wages on its employment tax return, individual employees report and pay their total AdMT liability on their individual (or jointly filed) tax return (typically, Form 1040) using Form 8959, Additional Medicare Tax. See Treas. Reg. 31.6011(a)-1(g). Any AdMT withholding that the individual's (or joint filers') employer(s) withheld from wages is credited to the individual on the individual's tax return.

4.23.10.17.4.3
(06-29-2020)
**Coordination of AdMT
for Both Deficiency
Procedures and
Non-Deficiency
Procedures**

- (1) If a taxpayer is subject to AdMT liability under both IRC 1401(b)(2) on SE Income and IRC 3101(b)(2) on wages paid by an employer and fails to report the amounts of such tax liability on the income tax return, only the AdMT imposed under IRC 1401(b)(2) on SE Income should be included in a notice of deficiency; the tax imposed under IRC 3101(b)(2) on wages paid by an employer is not subject to deficiency procedures. However, the AdMT imposed under IRC 3101(b)(2) should be assessed as the tax is not subject to the restrictions on assessment under IRC 6213(a). In such a case, a taxpayer may receive a statutory notice of deficiency for the AdMT imposed on SE Income under IRC 1401(b)(2) and a notice of assessment of the AdMT imposed under IRC 3101(b)(2) on wages paid by an employer.
- (2) Treas. Reg. 1.1401-1(d)(2)(ii) provides the following examples on how to compute AdMT for both SE Income and wages paid by an employer during the same taxable year:
 - **Example 3.** C, a single filer, has \$145,000 in self-employment income and \$130,000 in wages. C's wages are not in excess of \$200,000 so C's employer did not withhold Additional Medicare Tax. However, the \$130,000 of wages reduces the self-employment income threshold to \$70,000 (\$200,000 threshold minus the \$130,000 of wages). C is liable

to pay Additional Medicare Tax on \$75,000 of self-employment income (\$145,000 in self-employment income minus the reduced threshold of \$70,000).

- **Example 4.** E, who is married and files a joint return, has \$140,000 in self-employment income. F, E's spouse, has \$130,000 in wages. F's wages are not in excess of \$200,000 so F's employer did not withhold Additional Medicare Tax. However, the \$130,000 of F's wages reduces E's self-employment income threshold to \$120,000 (\$250,000 threshold minus the \$130,000 of wages). E and F are liable to pay Additional Medicare Tax on \$20,000 of E's self-employment income (\$140,000 in self-employment income minus the reduced threshold of \$120,000).
- **Example 5.** D, who is married and files married filing separately, has \$150,000 in self-employment income and \$200,000 in wages. D's wages are not in excess of \$200,000 so D's employer did not withhold Additional Medicare Tax. However, the \$200,000 of wages reduces the self-employment income threshold to \$0 (\$125,000 threshold minus the \$200,000 of wages). D is liable to pay Additional Medicare Tax on \$75,000 of wages (\$200,000 in wages minus the \$125,000 threshold for a married filing separately return) and on \$150,000 of self-employment income (\$150,000 in self-employment income minus the reduced threshold of \$0).

4.23.10.17.5
(06-29-2020)
**Coordination of AdMT
with RRTA**

- (1) There is no provision for the coordination with AdMT on RRTA compensation, nor is there a provision for coordination between AdMT on FICA wages and AdMT on RRTA compensation. Thus, AdMT is always applied separately to RRTA compensation in situations where individuals or joint filers have compensation subject to RRTA in addition to wages subject to FICA and/or SE Income. See Form 8959, Additional Medicare Tax, for assistance in computation.

4.23.10.18
(05-21-2018)
**Procedures for
Employee Tax
Adjustment on Tip
Income Not Reported to
Employer**

- (1) An adjustment is warranted if an employee's cash tips total \$20 or more in a month while working for any one employer and the employee did not report all such tip income to their employer. Agreement to the adjustment is solicited on Form 2504.
- (2) When a tip income adjustment is made to a filed tax return or a delinquent return is secured after a "Dummy TC 150" has posted, the information is forwarded to SSA electronically. A Form 3198 (Form 3198-A for TE/GE) must be included with the case file indicating the Tip Income/Tax Adjustment figures. A computer generated page of the Employment Tax Examiner's Report (ETER) containing the reference number information should be attached to the Form 5344 (Form 5599 for TE/GE), or the correct figures entered in Item 15 of the Form 5344.
 - a. Adjustment to primary unreported tip income - Reference Number 891.
 - b. Adjustment to secondary unreported tip income - Reference Number 892.
 - c. Amount of unreported tip income adjustment for both the primary and secondary taxpayer that is subject to Additional Medicare Tax - Reference Number 863
 - d. Amount of unreported tip income adjustment for the primary taxpayer that is subject to Medicare tax - Reference Number 898.
 - e. Amount of unreported tip income adjustment for the secondary taxpayer that is subject to Medicare tax - Reference Number 899.

Note: See IRM 21.6.4.4.14.5, Form 4137, Social Security and Medicare Tax on Unreported Tip Income, Adjustments, and IRM 21.6.4.4.18, Additional Medicare Tax.

- (3) If a tip income adjustment is made to a delinquent return secured after a “Dummy TC 150” has posted, a Form 885–T, Adjustment of Social Security Tax on Tip Income Not Reported to Employer, must be completed because it is used to forward the information to SSA.
- (4) To ensure proper processing of the adjustment for employee share of FICA, (including AdMT on wages paid by an employer), Form 3198 must be prepared and attached to the case file. Check “Other” in the Special Handling Section and insert “Additional employee FICA (and AdMT on tip income) enclosed.”

4.23.10.19
(06-01-2023)
**Assembly of
Employment Tax Case
File Folder**

- (1) Case file assembly depends on the type of case being closed. In addition, there are some forms that are not common that may have to be attached or placed in a case file. Refer to appropriate SharePoint sites for additional information. SharePoint sites include:
 - For SB/SE employment tax cases, see case closing job aids at <https://portal.ds.irsnet.gov/sites/vl014/lists/caseclosingjobaids/landingview.aspx>.
 - For LB&I, refer to Case File Administration on the Knowledge Base at <https://portal.ds.irsnet.gov/sites/vl051/lists/casefileadmin/landingview.aspx>.

4.23.10.19.1
(06-01-2023)
**Assembly of
Employment Tax Case
File Folder - LB&I Cases**

- (1) In general, LB&I employment tax case file assembly instructions:

Note: All IRM references to the Coordinated Industry Case (CIC) program also refer to the Large Corporate Compliance program (LCC). LCC program replaces the CIC program and covers compliance oversight for LB&I's largest corporate taxpayers. See IRM 21.7.1.4.11.1, Large Corporate Compliance Program (LCC) Replaces Coordinated Industry Cases (CIC) and Field Contact Guidance.

 - a. For LCC Program cases, electronic employment tax audit workpapers and related forms (for example, copy of audit reports and attachments, Form 4764 - Examination Plan Series work papers, Form 9984, relevant workpapers, risk analysis, NOPAs, and so on) must be uploaded to IMS. See IRM 4.23.4.4.6, Other IMS Issues, File Size, File Limitations and Encryption Policy, for IMS file size and file type limitations.
 - b. For Industry Cases (IC) cases, all relevant documents and workpapers must be included with the case file.
 - c. All employment tax returns (filed by the same entity) can be included in one case file. The returns need to be identified on Form 3198.
- (2) LB&I Workpaper Assembly:
 - a. Form 4764 Series, LB&I Examination Plan.
 - b. Form 9984, Examining Officer's Activity Record.
 - c. Form 4764-B, LB&I Examination Plan, Part III - Examination Procedures Section.

- d. Workpapers and miscellaneous documents. In multiple year cases, include the workpapers in the most current year of the examination and notate all Forms 3198 as to the location.
- (3) See IRM 4.23.10.19.2, Assembly of Employment Tax Case File Folder - SB/SE, for guidance on required closed case assembly, forms and letters beyond those specifically mentioned in this section.

4.23.10.19.2
(06-01-2023)
**Assembly of
Employment Tax Case
File Folder - SB/SE**

- (1) The following procedures apply only to paper case file assembly.
 - (2) Tax returns are assembled in case files by year and type of return.
 - (3) Attach the following to the face of the folder:
 - a. Form 895, Notice of Statute Expiration, Part 2 (if statute involved).
 - b. Form 3198, Special Handling Notice. (In multiple year cases, include the workpapers in the most current year of the examination and notate all Forms 3198 as to their location).
 - c. Form 10329, Transmittal Sheet for Related Cases.
 - (4) Attach the following to the inside of the folder (stapled to left side):
 - a. Form 9440, Taxpayer Levy Source and Contact Information.
 - b. Copy of Command Code AMCLS, AMDISA, or AM424 print. Form 2363, Master File Entity Change (change of Name/Address).
 - c. Form 5345-D, Examination Request - ERCS Users.
 - d. Form 5346, Examination Information Report.
 - e. Form 5348, AIMS/ERCS Update (Examination Update).
 - f. Form 5349, Examination Correction Request.
 - g. Copy of the report for the state agency is emailed directly to Employment Tax Workload Selection and Delivery (ET-WSD) unit at *SBSE ET WSD Case Closing Packages with the subject **Closed Case – QETP Information for State Examination**. See IRM 4.23.2.4, Federal/State Exchanges, for additional information.
- Note:** Examiners in General Program can use the RGS generic workcenter for employment tax cases. See IRM 4.10.15.9, Generic Workcenter and IRM 4.10.15.10.2, Examined Closures (Generic Workcenter).
- (5) Forms and documents to be included in the case file:
 - a. Case closing letters to be mailed to the taxpayer and their authorized representative.
 - b. Waiver and Acceptance Form, as applicable:

Form	Title
Form 2504	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436).

Form	Title
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).
Form 2504-T	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax Adjustments Subject to IRC 7436).
Form 2297	Waiver of Statutory Notification of Claim Disallowance.
Form 3363	Acceptance of Proposed Disallowance of Claim for Refund or Credit.
Form 906	Closing Agreement on Final Determination Covering Specific Matters.

- c. Form 4665, Report Transmittal, (for unagreed or partially agreed cases).
- d. Taxpayer's protest and correspondence in unagreed cases including the 30-day letter package and rebuttal, if appropriate.
- e. Examination report, including:

Form	Title and Notes
Form 4666	Summary of Employment Tax Examination (numbered).
Form 4667	Examination Changes — Federal Unemployment Tax (numbered).
Form 4668	Employment Tax Examination Changes. Attach the listing of employees who should receive wage statements Form W-2/W-2c from the taxpayer, per IRM 4.23.8.10.2, Delinquent Forms W-2/W-2c Not Secured by Examiner.
Form 4668-B	Report of Examination of Withheld Federal Income Tax (numbered).
Form 4668-C	Employment Tax Examination Changes Report - Railroad. Attach the listing of employees who should receive wage statements Form W-2/W-2c from the taxpayer, per IRM 4.23.8.10.2, Delinquent Forms W-2/W-2c Not Secured by Examiner.
Form 5701	Notice of Proposed Adjustment (LB&I).
Form 886-A	Explanation of Items or and attachment to describe the report adjustments (pages numbered).

- f. Employment Tax Returns (original, copy, BRTVU, TRDBV, or SFR). See (5) below for additional detail.

- g. Workpaper assembly. See (6) below.

Note: Form 886-A, 4666, 4667, 4668, 4668-B, and 4668-C will be stapled together. Form 4318, Examination Workpapers Index, Form 9984, and other numbered workpapers will be stapled together.

- (6) Forms and documents to be attached to the tax return, Substitute for Return, TRDBV, or BRTVU:

- a. Stapled to front of the first page:

Form	Title
Form 2503	Survey After Assignment - Excise or Employment Tax.
Form 5344	Examination Closing Record
Form 3244-A	Payment Posting Voucher - Examination

- b. Stapled to the reverse of the first page:

Form	Title
Form 2848	Power of Attorney and Declaration of Representative
Form SS-10	Consent to Extend the Time to Assess Employment Taxes copies of Letter 907, Request to Extend Assessment Statute and Letter 928, Request to Extend Statute - Follow-up(if applicable)

- c. Attached to the last page of return: Amended returns/Claims.
d. Attached to last page, facing out: TXMODA. TXMODA should be dated within 30 days of closure.

- (7) Workpaper Assembly

- a. SBSE Assembly - ETLs:

Assembly of ETLs cases
Form 4318, Examination Workpapers Index.
Form 9984, Examining Officer's Activity Record.
Other numbered work papers. (In multiple year cases, include the workpapers in the most current year of the examination, and notate all Forms 3198 as to the location.)

- (8) See IRM Exhibit 4.4.1-2, Case Assembly, and IRM 4.10.9.9, Case File Assembly for Closing, for additional information.

4.23.10.19.3
(06-01-2023)
**EOE and FSL/ET Case
File Assembly**

- (1) EOE and FSL/ET examiners should consult their operating procedures in IRM 4.75.16, Case Closing Procedures, for case file assembly instructions and the use of Report Compliance Case Management System.

4.23.10.20
(06-29-2020)
**Form 5344/Form 5599 -
Additional Entries for
Completion of
Employment Tax
Closures**

- (1) The completion of Form 5344 for all employment tax examinations will follow the instructions found in IRM 4.4.12, AIMS/Processing Handbook, Examined Closings, Surveyed Claims, and Partial Assessments. For TE/GE, use Form 5599 and follow the instructions in IRM 4.5.2, TE/GE AIMS Manual - TE/GE Examined and Non-Examined Closures. The following additional items apply:
- (2) The following entries are mandatory for all employment tax examinations:
 - a. Item 11: Interest Computation Date, when a TC 308 interest free adjustment is present in item 12
 - b. Item 12: Tax, Penalty, and Interest Adjustments
 - c. Item 13: Disposal Code
 - d. Item 15: Credit and Tax Computation Adjustments
 - e. Item 39: Disclosure Code
 - f. Item 418: 3121(q) Amount - Enter for Tip Examinations
- (3) To aid examiners in completing Item 39, please see the disclosure code list at Exhibit 11.3.37-4, State Agency Codes, in IRM 11.3.37, Disclosure of Official Information - Recordkeeping and Accounting for Disclosures.

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Exhibit 4.23.10-1 (06-01-2023)**Form 4666, Summary of Employment Tax Examination*****Preparation Instructions Form 4666, Summary of Employment Tax Examination*****Line by line preparation instructions for Form 4666**

(1) Name and Address of Employer: Self-explanatory.

(2) Employer Identification Number: Self-explanatory.

(3) Date of Report: Enter date report is completed.

(4) Unagreed or Agreed: Check applicable box.

(5) Non-7436 adjustments, 7436 adjustments (worker classification issues), or 7436 adjustments (wage issues): Check applicable box.

Reminder: Non-7436 adjustments and 7436 adjustments cannot be included on the same Form 4666. However, 7436 adjustments (worker classification issues) and 7436 adjustments (wage issues) should be included on the same Form 4666. For more information on non-7436 adjustment and 7436 adjustments, see IRM 4.23.5.2.2, IRC 7436 Issues.

(6) Calendar Year (column (a)): For annual returns, list calendar year examined. For quarterly returns, list the year only if all its quarters have the same result - a change or a no-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.

Reminder: Multiple calendar years can be included on one Form 4666.

(7) Return Form Number (column (b)): Self-explanatory.

(8) Delinquent Tax, Increase (Decrease) in Tax (column (c)): Enter the total amounts from Line 4 of Form 4668, Line 14 of Form 4668-B, Line 16 of Form 4668-C, and/or Line 8 of Form 4667.

(9) Increase (Decrease) in Allowed Credits (column (d)): Enter the total amounts from Line 5 of Form 4668, or Line 17 of Form 4668-C.

(10) Penalty (column (e)): Enter the applicable Code sections and the identified amount of the specific penalties: Line 9 of Form 4667; Lines 6, 7, 8, and 9 of Form 4668; Lines 15, 16, 17, and 18 of Form 4668-B; Lines 18, 19, 20, and 21 of Form 4668-C. A summary total of applicable penalties can also be used.

(11) Total Adjustment and Penalties (column (f)): Enter the sum of columns (c) and (e), less column (d), for each line.

Reminder: An increase in credits will reduce the total adjustment.

(12) Page Number (column (g)): Enter the page number of the report (Form 4667, 4668, 4668-B, or 4668-C) the amount for each line was taken from.

(13) Other Information:

In the space for other information, enter specific paragraphs below based on the specific issues examined.

On all Form 4666:

"This does not constitute an income tax examination."

Exhibit 4.23.10-1 (Cont. 1) (06-01-2023)**Form 4666, Summary of Employment Tax Examination****Line by line preparation instructions for Form 4666**

On all no-change and agreed reports, a caveat of acceptance by the appropriate official is to be included. See IRM 4.23.10.10.3(2) and IRM 4.23.10.10.4(7).

“This examination report is subject to the approval of the (appropriate designee):”

If worker classification was not examined:

“The examination of your employment tax returns as reflected on this report did not include an examination for employment tax purposes of whether any individuals should be treated as employees.”

If worker classification was examined:

“The examination of your employment tax returns as reflected on this report included an examination for employment tax purposes whether certain classes of workers should be treated as employees.”

Add the appropriate paragraph below based on the results of the worker classification examination. More than one paragraph may apply if multiple classes of workers were examined with different results.

If the workers were determined not to be employees (where it was determined that the taxpayer did not qualify for section 530 relief and a full determination of the status of the workers was made):

“The examination concluded that the following classes of workers should not be treated as employees: [list class(es) of workers determined not to be employees]”

If it was determined the taxpayer qualified for section 530 relief for the class(es) of workers examined (no determination of the status of the workers was made):

“The examination concluded that you are entitled to section 530 relief with respect to the following classes of workers due to [list specific reasonable basis determined to be applicable: judicial precedent, prior audit, industry practice, other reasonable basis]: [list classes of workers for which the taxpayer was determined to be entitled to section 530 relief]”

If the workers were determined to be employees:

“The examination concluded that the following classes of workers should be treated as employees: [list class(es) of workers determined to be employees]”

Add:

“No classes of workers other than those listed above were included in this examination.”

If interest-free provisions of IRC 6205 are applicable:

“Some adjustments reflected are eligible for interest-free treatment on the underpayment. Any taxes must be paid at the time of signing Form [enter applicable agreement form: 2504-T/2504/2504-S] in order to receive interest-free treatment on the underpayment. For those eligible to receive interest-free treatment on the underpayment, interest will begin to accrue on any unpaid balance on the day after the agreement date until the tax is paid in full. This provision does not apply to Form 940.”

Exhibit 4.23.10-1 (Cont. 2) (06-01-2023)
Form 4666, Summary of Employment Tax Examination

Line by line preparation instructions for Form 4666

If FITW or BWH is being abated using the 2-step process in IRM 4.23.8.4.3, Procedures for Relief Under IRC 3402(d) and/or IRC 3102(f)(3) in Examination:

“This report reflects the agreed total income tax withholding under IRC 3402 (including applicable assessments of IRC 3406, Backup Withholding) (and/or Additional Medicare Tax withholding under IRC 3102(f)), without consideration of any abatements provided by the taxpayer on Forms 4669, Statement of Payments Received. Forms 4669 have been provided by the taxpayer to abate all or part of the total tax assessment per the abatement procedures of IRC 3402(d) for income tax or backup withholding (and/or IRC 3102(f)(3) for Additional Medicare Tax.) A credit for this tax abatement is shown as a credit memo on the Form 2504 agreement. A listing of all payments and the abatements allowed in the examination are attached to this report. To accurately reflect the examination results, the Service Center will mail two notices to the taxpayer:

- 1. The first notice will show total tax and penalties due without regard to the Forms 4669 solicited in the examination.**
- 2. The second notice will be issued 4 to 6 weeks later reflecting the net tax due after the Form 4669 abatements are processed.”**

Note: For a revised or corrected report language refer to IRM 4.23.10.10.4.1, Revised or Corrected Reports.

Note: For an amended or corrected return (Form 94X-X) language refer to IRM 4.23.13.3.5, Form 4666.

Exhibit 4.23.10-2 (06-01-2023)**Form 4667, Examination Changes—Federal Unemployment Tax*****Preparation Instructions Form 4667, Examination Changes—Federal Unemployment Tax*****Line by line preparation instructions for Form 4667**

(1) Calendar Year: Enter the calendar year.

Reminder: Only one calendar year can be included on Form 4667.

(2) Name and Address of Employer: Self-explanatory.

(3) Employer Identification Number: Self-explanatory.

(4) Date of Report: Enter date report is completed.

(5) Agreed or Unagreed: Check applicable box.

(6) Non-7436 adjustments, 7436 adjustments (worker classification issues), or 7436 adjustments (wage issues): Check applicable box.

Reminder: Separate Form 4667 must be prepared for non-7436 adjustments, 7436 adjustments (worker classification issues) and 7436 adjustments (wage issues). For more information on non-7436 adjustment and 7436 adjustments, see IRM 4.23.5.2.2, IRC 7436 Issues.

(7) Line 1. Enter the amount of FUTA wages reported on Form 940 or previously corrected.

(8) Line 2. Enter the increase/(decrease) in FUTA wages based on audit adjustments.

(9) Line 3. Enter the sum of Lines 1 and 2.

(10) Line 4. Enter applicable FUTA rate (6% for 2012 to 2022) from Form 940. Multiply Line 3 by the FUTA rate and enter on Line 4.

(11) Line 5. Enter the SUTA credit from Line 33.

(12) Line 6. Enter the corrected FUTA tax (Line 4 minus Line 5).

(13) Line 7. Enter the FUTA tax reported on Form 940 or previously corrected.

(14) Line 8. Enter the FUTA tax adjustment (Line 6 minus Line 7).

(15) Line 9. Enter IRC section number if other than IRC 6651 or IRC 6656. Enter the amount for each penalty next to the IRC section number. Enter the total penalties in the right-hand column.

(16) Lines 10 and 11. Use a separate column for each state and experience rate period. On Line 11, enter calendar year where taxpayer does not have an experience rate or where experience rate is constant throughout the year.

(17) Line 12. Enter the experience rate as determined by the state. If the experience rate exceeds 5.4%, enter 5.4%.

(18) Line 13. Enter taxable FUTA wages as corrected in the examination. This should be the same as Line 3.

Note: If more than one state is involved, the total of all columns in Line 13 should equal Line 3.

Exhibit 4.23.10-2 (Cont. 1) (06-01-2023)**Form 4667, Examination Changes—Federal Unemployment Tax****Line by line preparation instructions for Form 4667**

(19) 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 and for which the taxpayer has certified, under penalties of perjury, that no part of any payment made to state unemployment fund claimed as a credit was, or will be, deducted from payments made to employees. See IRM 4.23.10.11(5). The taxpayer should be given 30 days to obtain such statement from the state and provide the certification statement under penalties of perjury. 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.

(20) Line 15. Enter 5.4%. Line 22 will be the same percentage. Multiply the amount(s) on Line 14 by 5.4%.

(21) Line 16. Enter the SUTA payable to each state. Multiply the wage amounts on Line 14 by the experience rate on Line 12.

(22) Line 17. Enter the amount of the additional credit (Line 15 minus Line 16), but not less than zero.

(23) Line 18. Enter SUTA contributions timely paid.

(24) Line 19. Enter SUTA contributions paid late.

(25) Line 20. For any state to which the credit reduction is applicable, enter the rate from Schedule A, Form 940 for the year under examination.

(26) Line 21. Enter the amount of the credit reduction. Multiply the lesser of Line 13 or 14 by the credit reduction rate on Line 20.

(27) Lines 22 to 33. Combine the amounts for each state from Lines 10 to 21.

(28) Bottom of Form. Include such items as statements regarding revised or corrected reports, delinquency, explanation of adjustments, information regarding penalties, and so on at the bottom of the form.

Exhibit 4.23.10-3 (06-01-2023)**Form 4668, Employment Tax Examination Changes Report*****Specific Item and Line Instructions for Completing Form 4668*****Line by line preparation instructions for Form 4668**

(1) Return form number: Enter Form 941, Form 943, Form 944, or Schedule H.

(2) Name and address of employer: Self-explanatory.

(3) Employer identification number: Self-explanatory.

(4) Calendar year: Self-explanatory.

Reminder: Only one calendar year can be included on Form 4668.

(5) Total tax plus penalty, or (decrease) in tax: Enter the total amount of Lines 4 and 10.

(6) Total increase or (decrease) in credits: Enter the total amount of Line 5.

(7) 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.

(8) Examination discussed with (name and title): Self-explanatory.

(9) Agreed or unagreed: Check applicable block.

(10) Non-7436 adjustments, 7436 adjustments (worker classification issues), or 7436 adjustments (wage issues): Check applicable box.

Reminder: Separate Form 4668 must be prepared for non-7436 adjustments, 7436 adjustments (worker classification issues), and 7436 adjustments (wage issues). For more information on non-7436 adjustments and 7436 adjustments, see IRM 4.23.5.2.2, IRC 7436 Issues.

(11) Line 1. Enter the social security and Medicare taxes from Schedule of Adjustments, Line 12.

Note: For Lines 1 through 12 on Page 1: For Form 941 adjustments, amounts are entered in columns (b) through (e) for the appropriate quarter. For Form 943, 944, and Schedule H adjustments, amounts are entered in column (e).

(12) Line 2. Enter the social security and Medicare taxes attributable to IRC 3121(q) from Schedule of Adjustments, Line 13.

(13) Line 3. Enter the total income tax withholding from Schedule of Adjustments, Line 20.

(14) Line 4. Enter the delinquent tax or total tax increase (decrease) (sum of Lines 1, 2, and 3).

(15) Line 5. Enter the net increase (decrease) in credits from Schedule of Adjustments, Line 34.

(16) Line 6. Enter the amount of penalty under IRC 6651(a)(1).

(17) Line 7. Enter the amount of penalty under IRC 6651(a)(2).

(18) Line 8. Enter the amount of penalty under IRC 6656.

(19) Line 9. Enter IRC section number in space provided for any other penalty and the amount of the penalty.

Exhibit 4.23.10-3 (Cont. 1) (06-01-2023)**Form 4668, Employment Tax Examination Changes Report****Line by line preparation instructions for Form 4668**

(20) Line 10. Enter sum of penalties in Lines 6, 7, 8, and 9.

(21) Line 11. Enter the maximum amount of tax subject to the provisions of IRC 3402(d). If not applicable, enter "None." Tax from Lines 15 and 16 on Schedule of Adjustments (IRC 3509), and any portion of Lines 17 and 18 from the Schedule of Adjustments that is not subject to IRC 3402(d), are not subject to abatement.

Note: The amount subject to IRC 3402(d) abatement listed in Line 11 INCLUDES amounts allowed by the examiner as part of the exam when using the two-step process described in IRM 4.23.10.15.2, Examination Procedures for IRC 3402(d) and/or IRC 3102(f)(3) Relief. If the examiner does not use the two-step assessment process and instead nets the tax due, Line 11 should reflect the remaining amount of tax available for abatement. See IRM 4.23.8.4, IRC 3402(d) - Relief for Employer When Employees Have Paid Income Tax on Wages.

(22) Line 12. Enter the maximum amount of tax subject to the provisions of IRC 3102(f)(3). If not applicable, enter "None." Any portion of Line 10 or 11 from the Schedule of Adjustments that is not subject to IRC section 3102(f)(3), are not subject to abatement.

Note: The amount subject to IRC 3102(f)(3) abatement listed in Line 12 INCLUDES amounts allowed by the examiner as part of the exam when using the two-step process described in IRM 4.23.10.15.2, Examination Procedures for IRC 3402(d) and/or IRC 3102(f)(3) Relief. If the examiner does not use the two-step assessment process and instead nets the tax due, Line 12 should reflect the remaining amount of tax available for abatement. See IRM 4.23.8.4.1, IRC 3102(f)(3) - Relief for Employer When Employees Have Paid Additional Medicare Tax on Wages.

(23) In the space below Line 12, examiners will need to insert paragraphs notifying the taxpayer to file and/or furnish Forms W-2/W-2c, if applicable. Enter the calendar year and the number of employees in the spaces provided in the statement regarding filing Form W-2 and/or W-2c. The calendar year to enter is the next **January 31** date. For example, if the Form 4668 is prepared on June 1, 2022, the date to enter is "January 31, 2023."

Selectable Paragraph 1: Use this paragraph if adjustments are made to the amount of wages reportable in boxes 1, 3, or 5. Do not use this paragraph for worker classification adjustments where a Classification Settlement Program (CSP) agreement was executed. Do not use this paragraph if the **only** adjustment is to the Sick and Family Leave Credits, the Employee Retention Credit, the COBRA premium assistance credit, or the Research Credit.

Furnish Form W-2 (Wage and Tax Statement) or Form W-2c (Corrected Wage and Tax Statement) on or before January 31, _____ to each of the _____ employees whose wages are adjusted by this report. File Forms W-2 with Form W-3 (Transmittal of Wage and Tax Statements) or Forms W-2c with Form W-3c (Transmittal of Corrected Wage and Tax Statements) on or before January 31, _____ with the Social Security Administration (SSA).

IRC 6721 and 6722 provide penalties for failure to file and failure to furnish information returns. You must file the information returns electronically if you are required to file 250 or more returns. To obtain specifications for e-filing your returns, visit the SSA's website www.ssa.gov/employer. If filing paper returns, file with the SSA at the appropriate address in the General Instructions for Forms W-2 and W-3 (Including Forms W-2AS, W-2CM, W-2GU, W-2VI, W-3SS, W-2c, and W-3c).

Exhibit 4.23.10-3 (Cont. 2) (06-01-2023)**Form 4668, Employment Tax Examination Changes Report****Line by line preparation instructions for Form 4668**

Selectable Paragraph 2: Use this paragraph if adjustments are made to qualified wages for the Sick and Family Leave Credit. This paragraph can be used in conjunction with Paragraph 1 if adjustments are also made to wages reportable on Form W-2 or W-2c.

You must either furnish a Form W-2c (Corrected Wage and Tax Statement) or provide a corrected statement on or before January 31, _____ to each of the _____ employees correcting the erroneous amount of sick leave wages and family leave wages reported in Box 14. However, you should not file Form W-2c with the SSA solely to correct the amount in Box 14. IRC 6722 provides penalties for failure to furnish information returns.

Note: If the Forms W-2/W-2c are secured by the examiner at the conclusion of the audit, the following notation, **Wage Statements Secured by Examiner**, should be made in the block regarding the filing of Forms W-2/W-2c and in the **other** instructions section of the attached Form 3198.

Page 2 3, and 4 - Line Instructions "Schedule of Adjustments"**Adjustment to Social Security, Medicare and Additional Medicare Wages and Tax**

(1) Line 1. Enter the applicable social security and Medicare tax rates (IRC 3101 and IRC 3111) in column (a) and the amount of the wages adjustment in columns (b) through (e). Generally, the applicable rates will be the combined employer/employee social security rate and employer/employee Medicare rate. Line 1 is divided into two parts. The applicable social security rate and wage adjustments are entered on the top half of Line 1. The applicable Medicare rate and wage adjustments are entered on the bottom half of Line 1.

Note: For Lines 1 through 46 on Pages 2, 3, and 4: Wage adjustments amounts are entered in columns (b) through (e) for Form 941 adjustments. For Form 943, Form 944, and Schedule H, amounts are entered in column (e).

(2) Line 2. Enter the applicable social security tax rate in column (a) and the amount of the qualified sick leave wage adjustment subject to tax under IRC 3101(a) (for leave taken after 3/31/2020 and before 4/1/2021) in columns (b) through (e).

Exhibit 4.23.10-3 (Cont. 3) (06-01-2023) Form 4668, Employment Tax Examination Changes Report

Line by line preparation instructions for Form 4668

(3) Line 3. Enter the applicable social security tax rate in column (a) and the amount of the qualified family leave wage adjustment subject to tax under IRC 3101(a) (for leave taken after 3/31/2020 and before 4/1/2021) in columns (b) through (e).

Note: Adjusting the amount of qualified sick and family leave wages needs to be entered in two parts because the reference codes need to be corrected.

For decreases to the amount of qualified sick and family leave wages (disallowance of the credit):

- a. Enter a decrease in wages on Form 4668, Page 2, Line 2 or 3 (depending on whether the wages are sick leave wages or family leave wages) with an applicable rate of 6.2 percent.
- b. Enter an increase in wages on Form 4668, Page 2, Line 1 for reference code 004 with an applicable rate of 12.4 percent.

The net effect of these two adjustments is to assess the employer share of social security tax (for example, 6.2 percent) on the wages. However, the adjustments must be entered in two parts due to the different reference codes for qualified sick and family leave wages and regular wages.

For increases to the amount of qualified sick and family leave wages (allowance of the credit):

- a. Enter an increase in wages on Form 4668, Page 2, Line 2 or 3 (depending on whether the wages are sick leave wages or family leave wages) with an applicable rate of 6.2 percent.
- b. Enter a decrease in wages on Form 4668, Page 2, Line 1 for reference code 004 with an applicable rate of 12.4 percent.

The net effect of these two adjustments is to refund the employer share of social security tax (for example, 6.2 percent) on the wages. However, the adjustments must be entered in two parts due to the different reference codes for qualified sick and family leave wages and regular wages.

Entries on Lines 2 and 3 are not applicable to leave taken after March 31, 2021, and before October 1, 2021.

(4) Line 4. Enter the combined employer/employee applicable social security and Medicare tax rates under IRC 3509(a) in column (a) and the amount of wage adjustment in columns (b) through (e). Line 4 is divided into two parts. The applicable social security rate and wage adjustments are entered on the top half of Line 4. The applicable Medicare rate and wage adjustments are entered on the bottom half of Line 4.

(5) Line 5. Enter the combined employer/employee applicable social security and Medicare rates under IRC 3509(b) in column (a) and the amount of wage adjustment in columns (b) through (e). Line 5 is divided into two parts. The applicable social security rate and wage adjustments are entered on the top half of Line 5. The applicable Medicare rate and wage adjustments are entered on the bottom half of Line 5.

(6) Line 6. Enter the applicable social security and Medicare rates (IRC 3101 and IRC 3111 for tip adjustments in column (a) and the amount of the wage adjustment in columns (b) through (e).

(7). Line 7. Enter the applicable Additional Medicare Tax rate in column (a) and the amount of wage and/or tip adjustment subject to tax under IRC 3101(b)(2) in columns (b) through (e).

(8) Line 8. Enter the applicable tax rate for the Additional Medicare Tax and IRC 3509(a) adjustment in column (a) and the amount of wage and/or tip adjustment subject to tax under IRC 3101(b)(2) in columns (b) through (e).

(9) Line 9. Enter the applicable tax rate for the Additional Medicare Tax and IRC 3509(b) adjustment in column (a) and the amount of wage and/or tip adjustment subject to tax under IRC 3101(b)(2) in columns (b) through (e).

Exhibit 4.23.10-3 (Cont. 4) (06-01-2023)**Form 4668, Employment Tax Examination Changes Report****Line by line preparation instructions for Form 4668**

(10) Line 10. Enter any other adjustment to social security or Medicare wages that does not fit into the categories on Lines 1 through 9, with the appropriate rate entered in column (a).

(11) Line 11. Enter any adjustment to social security and Medicare tax in columns (b) through (e) that is not dependent on a specific percentage.

(12) Line 12. Compute the total social security and Medicare taxes for Lines 1 through 10 plus adjustment amounts on Line 11 (the sum of Lines 1 through 10 times the tax rates plus Line 11). Enter these totals on Page 1 Line 1.

(13) Line 13. Enter the tax adjustment for tips under IRC 3121(q). Reference Code 114 is only available for tax years beginning with 2011 for current quarter assessments for tips under IRC 3121(q). Enter these totals on Page 1, Line 2.

Adjustment to Wages and Tax for Income Tax Withholding

(14) Line 14. Enter the applicable income tax withholding rate in column (a) and the amount of the wage adjustment in columns (b) through (e). The split line allows examiners to enter two different rates or use one of the lines to enter wages where tax was actually withheld but not reported on Form 941, 943 or 944. When using for wages where the tax was actually withheld, the tax would be entered on Line 18.

(15) Line 15. Enter the applicable income tax withholding rate under IRC 3509(a) in column (a) and the amount of the wage adjustment in columns (b) through (e).

(16) Line 16. Enter the applicable income tax withholding rate under IRC 3509(b) in column (a) and the amount of the wage adjustment in columns (b) through (e).

(17) Line 17. For any additional wage amount subject to income tax withholding that does not fit on Lines 14, 15, or 16, enter the tax rate in column (a) and amount of the wage adjustments in columns (b) through (e). Enter any income tax withholding computed by the taxpayer for the examiner under IRC 3402(b) or IRC 3402(c). This amount may be subject to abatement under IRC 3402(d).

(18) Line 18. Enter federal income tax withheld, but not previously reported, such as when working a CAWR case, in columns (b) through (e).

(19) Line 19. Enter any other adjustment to federal income tax withheld in columns (b) through (e).

(20) Line 20. Compute the total income tax withholding. It is the sum of Lines 14 through 17 times the rates plus Lines 18 and 19. Enter these totals on Page 1, Line 3.

Adjustment to Credits Against the Tax

(21) Line 21. Enter the increase (decrease) in the non-refundable portion for employee retention credits in columns (b) through (e).

(22) Line 22. Enter the increase (decrease) in the non-refundable portion of the credit for qualified sick and family leave wages for leave taken after 3/31/2020 and before 4/1/2021 in columns (b) through (e).

(23) Line 23. Enter the increase (decrease) in the non-refundable portion of the credit for qualified sick and family leave wages for leave taken after 3/31/2021 and before 10/1/2021 in columns (b) through (e).

(24) Line 24. Enter the increase (decrease) in the non-refundable portion of the COBRA premium assistance credit in columns (b) through (e).

Exhibit 4.23.10-3 (Cont. 5) (06-01-2023) Form 4668, Employment Tax Examination Changes Report

Line by line preparation instructions for Form 4668

- (25) Line 25. Enter the increase (decrease) in the qualified small business payroll tax credit for increasing research activities in columns (b) through (e).
- (26) Line 26. Enter the increase (decrease) to any other non-refundable credits in columns (b) through (e).
- (27) Line 27. Enter the total of net increase (decrease) in the non-refundable credits (sum of Lines 21 through 26 in columns (b) through (e)).
- (28) Line 28. Enter the increase (decrease) in the refundable portion for employee retention credits in columns (b) through (e).
- (29) Line 29. Enter the increase (decrease) in the refundable portion of the credit for qualified sick and family leave wages for leave taken after 3/31/2020 and before 4/1/2021 in columns (b) through (e).
- (30) Line 30. Enter the increase (decrease) in the refundable portion of the credit for qualified sick and family leave wages for leave taken after 3/31/2021 and before 10/1/2021 in columns (b) through (e).
- (31) Line 31. Enter the increase (decrease) in the refundable portion of the COBRA premium assistance credit in columns (b) through (e).
- (32) Line 32. Enter the Increase (decrease) to any other refundable credits in columns (b) through (e).
- (33) Line 33. Enter the total of the refundable credits (sum of Lines 28 through 32) in columns (b) through (e).
- (34) Line 34. Enter the net increase (decrease) in credits (sum of Lines 27 and 33) in columns (b) through (e). Enter these totals on Page 1, Line 5.

Additional Information About the Adjustment to Credits

- (35) Line 35. Enter the increase (decrease) in qualified wages paid after 3/12/2020 and before 4/1/2020 for employee retention credit in column (c).
- (36) Line 36. Enter the increase (decrease) in qualified wages paid after 3/31/2020 for employee retention credit in columns (b) through (e).
- (37) Line 37. Enter the increase (decrease) in qualified health plan expenses allocable to qualified employee retention wages paid after 3/12/2020 and before 4/1/2020 in column (c).
- (38) Line 38. Enter the increase (decrease) in qualified health plan expenses allocable to qualified employee retention wages paid after 3/31/2020 in columns (b) through (e).
- (39) Line 39. Enter the increase (decrease) in qualified sick leave wages for leave taken after 3/31/2021 and before 10/1/2021 in columns (b) through (e).
- (40) Line 40. Enter the increase (decrease) in qualified health plan expenses allocable to qualified sick leave wages for leave taken after 3/31/2020 and before 4/1/2021 in columns (b) through (e).
- (41) Line 41. Enter the increase (decrease) in qualified health plan expenses allocable to qualified sick leave wages for leave taken after 3/31/2021 and before 10/1/2021 in columns (b) through (e).
- (42) Line 42. Enter the increase (decrease) in amounts under certain collectively bargained agreements allocable to qualified sick leave wages for leave taken after 3/31/2021 and before 10/1/2021 in columns (b) through (e).

Exhibit 4.23.10-3 (Cont. 6) (06-01-2023)**Form 4668, Employment Tax Examination Changes Report****Line by line preparation instructions for Form 4668**

(43) Line 43. Enter the increase (decrease) in qualified family leave wages for leave taken after 3/31/2021 and before 10/1/2021 in columns (b) through (e).

(44) Line 44. Enter the increase (decrease) in qualified health plan expenses allocable to qualified family leave wages for leave taken after 3/31/2020 and before 4/1/2021 in columns (b) through (e).

(45) Line 45. Enter the increase (decrease) in qualified health plan expenses allocable to qualified family leave wages for leave taken after 3/31/2021 and before 10/1/2021 in columns (b) through (e).

(46) Line 46. Enter the increase (decrease) in amounts under certain collectively bargained agreements allocable to qualified family leave wages for leave taken after 3/31/2021 and before 10/1/2021 in columns (b) through (e).

Exhibit 4.23.10-4 (06-01-2023)**Form 4668-B, Report of Examination of Withheld Federal Income Tax*****Specific Item and Line Instructions for Completing Form 4668-B*****Line by line preparation instructions for Form 4668-B**

- (1) Return form number: Enter Form 945.
- (2) Name and Address of Taxpayer: Self-explanatory.
- (3) Employer identification number: Self-explanatory.
- (4) Calendar year: Self-explanatory.

Reminder: Only one calendar year can be included on Form 4668-B.

- (5) Total tax plus penalty, or (decrease) in tax: Enter the total amount of lines 14 and 19.
- (6) Examination discussed with (Name and title): Self-explanatory.
- (7) Agreed or unagreed: Check applicable block.

Line Instructions**Lines 1 through 8 are used for adjustments subject to federal income tax withholding under IRC 3402(o) through 3402(r) and IRC 3405**

- (8) Lines 1 through 5. Enter the description of payments subject to tax, the applicable code section, applicable tax rate, the amount of payments, and compute the tax and enter in (e).
- (9) Line 6. Enter the non-wage taxes withheld but not reported.
- (10) Line 7. Enter any other adjustments to non-wage withholding.
- (11) Line 8. Enter the total of Lines 1 through 7.

Lines 9 through 13 are used for adjustments subject to backup withholding under IRC 3406 .

- (12) Lines 9 and 10. Enter payments subject to IRC 3406 backup withholding, the applicable tax rate, and compute the tax. Two lines are available to enter the payments subject to backup withholding in the event two different rates are applicable for the year. When only one backup withholding rate is applicable for the year, entries should be made on only one line
- (13) Line 11. Enter backup withholding taxes withheld but not reported.
- (14) Line 12. Enter any other adjustments to backup withholding.
- (15) Line 13. Enter the total adjustment to backup withholding, sum of Lines 9 through 12.

Lines 14 through 20 show a summary of adjustments to taxes and penalties

- (16) Line 14. Enter the total of taxes due, Line 8(e) plus Line 13(e).
- (17) Lines 15 through 18. Enter applicable penalties. Enter IRC section for penalties entered on Line 18.
- (18) Line 19. Enter the Total Penalties, sum of Lines 15 through 18.

Exhibit 4.23.10-4 (Cont. 1) (06-01-2023)**Form 4668-B, Report of Examination of Withheld Federal Income Tax****Line by line preparation instructions for Form 4668-B**

(19) Line 20. Maximum tax available for abatement under IRC 3402(d). Enter the maximum amount of tax subject to the provisions of IRC 3402(d). If not applicable, enter "None."

Note: The amount subject to IRC 3402(d) abatement listed in Line 12 **includes** amounts allowed by the examiner as part of the exam when using the two-step process described in IRM 4.23.10.15.2, Examination Procedures for IRC 3402(d) and/or IRC 3102(f)(3) Relief.

If the examiner does not use the two-step assessment process and instead nets the tax due, Line 12 should reflect the remaining amount of tax available for abatement.

Exhibit 4.23.10-5 (06-01-2023)**Form 4668-C, Employment Tax Examination Changes Report - Railroad*****Specific Item and Line Instructions for Completing Form 4668-C*****Line by line preparation instructions for Form 4668-C**

- (1) Return form number: Enter Form CT-1 or Form CT-2.
- (2) Name of employer: Self-explanatory.
- (3) Address of taxpayer: Self-explanatory.
- (4) EIN/SSN: Self-explanatory.
- (5) Calendar Year: Self-explanatory. For Form CT-2, fill in the quarterly period. Prepare a separate Form 4668-C for each quarterly Form CT-2.
- (6) Total tax plus penalty, or (decrease) in tax: Enter the total amount of Lines 16 and 22(c).
- (7) Increase or (decrease) in credits: Enter amount from Line 17(c).
- (8) Last period of the examination: Enter the latest calendar year being examined for Form CT-1 examinations. Enter the latest calendar quarter being examined for Form CT-2 examinations.
- (9) Examination discussed with (name and title): Self-explanatory.
- (10) Agreed or Unagreed: Check applicable block.
- (11) This Form 4668-C contains (check only one box): Check applicable box.

Reminder: Separate Form 4668-C must be prepared for non-7436 adjustments, 7436 adjustments (worker classification issues), and 7436 adjustments (wage issues). For more information on non- 7436 adjustments and 7436 adjustments, see IRM 4.23.5.2.2, IRC 7436 Issues.

Note: For Lines 1 through 21 on Page 1: For Column (a), enter the applicable tax rate and/or penalty rate for the tax period under examination. These rates may differ by year. Enter the compensation attributable to each tax in Column (b) (for Lines 1 to 12) or enter the total tax attributable to each penalty in Column (b) (for Lines 18 to 21). Enter the total tax, credit, or penalty in Column (c).

- (12) Line 1. Enter the applicable rate and compensation (other than tips and sick pay) subject to Tier 1 Employer Tax.
- (13) Line 2. Enter the applicable rate and compensation (other than tips and sick pay) subject to Tier 1 Employer Medicare Tax.
- (14) Line 3. Enter the applicable rate and compensation (other than tips) subject to Tier 2 Employer Tax.
- (15) Line 4. Enter the applicable rate and compensation, including tips reported (but excluding sick pay) subject to Tier 1 Employee Tax.
- (16) Line 5. Enter the applicable rate and compensation, including tips reported (but excluding sick pay) subject to Tier 1 Employee Medicare Tax.
- (17) Line 6. Enter the applicable rate and compensation including tips reported (but excluding sick pay) subject to Tier 1 Employee Additional Medicare Tax.

Exhibit 4.23.10-5 (Cont. 1) (06-01-2023)**Form 4668-C, Employment Tax Examination Changes Report - Railroad****Line by line preparation instructions for Form 4668-C**

(18) Line 7. Enter the applicable rate and compensation including tips reported subject to Tier 2 Employee Tax.

(198) Lines 8 to 12. Enter the applicable rates and any sick pay payments during the year that are subject to Tier 1 taxes, Tier 1 Medicare taxes, and Tier 1 Employee Additional Medicare Tax withholding in the Compensation column (b).

(20) Line 13(c). Enter the sum of taxes from Lines 1(c) through 12(c).

(21) Line 14(c). Enter any adjustments to employer and employee railroad retirement taxes based on compensation. Line 14 is used for a fraction-of-cents adjustment, credits for overpayments of penalty or interest paid on tax for earlier years, and any uncollected Tier 1 Employee tax, Tier 1 Employee Medicare tax, Tier 1 Employee Additional Medicare tax, and Tier 2 Employee tax on tips. See "Instructions For Form CT-1" for further information. Provide a separate written explanation of the nature of the amount(s) and computation(s).

(22) Line 15. Enter any other adjustments to taxes. Describe the adjustments briefly, and provide a separate written explanation of the nature of the amount(s) and computation(s).

(23) Line 16(c). Enter the total railroad retirement taxes based on compensation (Line 13(c) adjusted by Lines 14(c) and 15(c)). **For Form CT-1 examinations, enter IRS reference code "070". Include this information on Line 15 of Form 5344.**

(24) Line 17. Enter net increase (decrease) in credits (from Schedule of Adjustments, Line 13).

(25) Lines 18 to 21. Enter applicable penalties. Enter IRC section for penalties on Line 21. Enter applicable penalty rate in Column (a) and amount subject to penalty in Column (b). Compute the penalty and enter in Column (c).

(26) Line 22. Enter the Total Penalties, sum of Lines 18 through 21.

(27) Line 23. Enter the maximum amount of tax subject to the provisions of IRC 3102(f)(3). If not applicable, enter "None."

Note: The amount subject to IRC 3102(f)(3) abatement listed in Line 23 **includes** amounts allowed by the examiner as part of the exam when using the two-step process described in IRM 4.23.10.15.2, Examination Procedures for IRC 3402(d) and/or IRC 3102(f)(3) Relief. If the examiner does not use the two-step assessment process and instead nets the tax due, Line 23 should reflect the remaining amount of tax available for abatement. See IRM 4.23.8.4.1, IRC 3102(f)(3) - Relief for Employer When Employees Have Paid Additional Medicare Tax on Wages.

Page 2 Line Instructions "Schedule of Adjustments"**Adjustment to Credits Against the Tax**

(1) Line 1. Enter the increase (decrease) in the non-refundable portion for employee retention credits.

(2) Line 2. Enter the increase (decrease) in the non-refundable portion of credit for qualified sick and family leave compensation for leave taken after 3/31/2020 and before 4/1/2021.

(3) Line 3. Enter the increase (decrease) in non-refundable portion of the credit for qualified sick and family leave compensation for leave taken after 3/31/2021 and before 10/1/2021.

Exhibit 4.23.10-5 (Cont. 2) (06-01-2023)**Form 4668-C, Employment Tax Examination Changes Report - Railroad****Line by line preparation instructions for Form 4668-C**

- (4) Line 4. Enter the increase (decrease) in the non-refundable portion for of the COBRA premium assistance credit.
- (5) Line 5. Enter the increase (decrease) to any other non-refundable credits.
- (6) Line 6. Enter the total increase (decrease) in non-refundable credits (sum of Lines 1 to 5).
- (7) Line 7. Enter the increase (decrease) in the refundable portion for employee retention credits.
- (8) Line 8. Enter the increase (decrease) in the refundable portion of credit for sick and family leave compensation for leave taken after 3/31/2020 and before 4/1/2021.
- (9) Line 9. Enter the increase (decrease) in the refundable portion of the credit for qualified sick and family leave compensation for leave taken after 3/31/2021 and before 10/1/2021.
- (10) Line 10. Enter the increase (decrease) in the refundable portion of the COBRA premium assistance credit.
- (11) Line 11. Enter the increase (decrease) to any other refundable credits.
- (12) Line 12. Enter the total increase (decrease) in refundable credits (sum of Lines 7 to 11).
- (13) Line 13. Enter the net increase (decrease) in credits (sum of Lines 6 and 12).

Additional Information About the Adjustment to Credits

- (14) Line 14. Enter the increase (decrease) in qualified compensation for the employee retention credit.
- (15) Line 15. Enter the increase (decrease) in qualified health plan expenses allocable to employee retention compensation.
- (16) Line 16. Enter the increase (decrease) in qualified sick leave compensation for leave taken after 3/31/2020 and before 4/1/2021.
- (17) Line 17. Enter the increase (decrease) in qualified sick leave compensation for leave taken after 3/31/2021 and before 10/1/2021.
- (18) Line 18. Enter the increase (decrease) in qualified health plan expenses allocable to qualified sick leave compensation for leave taken after 3/31/2020 and before 4/1/2021.
- (19) Line 19. Enter the increase (decrease) in qualified health plan expenses allocable to qualified sick leave compensation for leave taken after 3/31/2021 and before 10/1/2021.
- (20) Line 20. Enter the increase (decrease) in amounts under certain collectively bargained agreements allocable to qualified sick leave compensation for leave taken after 3/31/2021 and before 10/1/2021.
- (21) Line 21. Enter the increase (decrease) in qualified family leave compensation for leave taken after 3/31/2020 and before 4/1/2021.
- (22) Line 22. Enter the increase (decrease) in qualified family leave compensation for leave taken after 3/31/2021 and before 10/1/2021.
- (23) Line 23. Enter the increase (decrease) in qualified health plan expenses allocable to qualified family leave compensation for leave taken after 3/31/2020 and before 4/1/2021.

Exhibit 4.23.10-5 (Cont. 3) (06-01-2023)**Form 4668-C, Employment Tax Examination Changes Report - Railroad****Line by line preparation instructions for Form 4668-C**

(24) Line 24. Enter the increase (decrease) in qualified health plan expenses allocable to qualified family leave compensation for leave taken after 3/31/2021 and before 10/1/2021.

(25) Line 25. Enter the increase (decrease) in amounts under certain collectively bargained agreements allocable to qualified sick leave compensation for leave taken after 3/31/2021 and before 10/1/2021.

Exhibit 4.23.10-6 (06-01-2023)**Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436)*****Instructions for Completion of Form 2504*****Line by line preparation instructions for Form 2504**

Form 2504 without the IRC 7436 waiver and worker classification disclaimer statement is used for taxes related to adjustments to the non-IRC 7436 portion of an employment tax examination where a worker classification issue was also part of the examination, whether or not the examination of worker status resulted in reclassification. If any workers were determined to be independent contractors, identify the job classification that was determined to be independent contractors in a statement on the Form 4666. See IRM 4.23.10.10.3(4), Employment Tax No-Change Report. If the taxpayer was determined to be eligible for section 530 relief with respect to a class of workers, identify the job classification to which section 530 applies in a statement on the Form 4666. See IRM 4.23.10.10.3.1(2), No-Change Reports for Section 530 Eligible Taxpayers.

If any workers were reclassified as employees, use Form 2504-T to report additional tax due to the change in worker status.

In addition, Form 2504 without the IRC 7436 waiver statement is to be used for the assessment of the employee share of FICA/RRTA. See IRM 4.23.10.17, General Procedures for Adjusting the Employee Share of FICA/RRTA Taxes Including Additional Medicare Tax.

Preparation of the Form 2504 is generally self-explanatory, with much of the information being carried over from the Form 4666. Entries for Form 940, 941, 943, 944, 945, CT-1 and CT-2 are placed on separate lines. Entries for additional tax and penalties, or entries for a decrease of tax and penalties, or entries for the increase and/or decrease of credits, are shown on Form 2504. No-change periods are reflected on Form 4666 only.

Note: For IRC 3402(d) and IRC 3102(f)(3) adjustments, see IRM 4.23.8.4, IRC 3402(d) - Relief for Employer When Employees Have Paid Income Tax on Wage. Also see IRM 4.23.10.15.1, Partial Assessment/Quick Assessment Processing, and IRM 4.23.10.15.3, Examination Procedures for IRC 3402(d) and IRC 3102(f)(3) Relief. IRM 4.23.10.15.2, Examination Report Forms for IRC 3402(d) and IRC 3102(f)(3) Abatements, contains detailed instructions on the Form 2504 credit memo entries.

Instructions

- (1) Taxpayer(s) name: Self-explanatory.
- (2) D/B/A: Enter the name under which the taxpayer does business, if applicable.
- (3) SSN/EIN: Self-explanatory.
- (4) Address of taxpayer(s) (number, street): Self-explanatory.
- (5) City/Town: Self-explanatory.
- (6) State: Self-explanatory.
- (7) Zip code: Self-explanatory.

Exhibit 4.23.10-6 (Cont. 1) (06-01-2023)**Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436)****Line by line preparation instructions for Form 2504**

(8) Tax period ended: Enter the tax periods being adjusted as follows:

- a. For Form 940, 943, 944, 945, and CT-1, the tax period is entered as the calendar year, for example, 2021. If Form 2504 includes multiple calendar years, enter each calendar year on separate lines.
- b. For Form 941 and CT-2, the tax period is entered as calendar quarters, for example, 03/31/2021–12/31/2021. If Form 2504 includes calendar quarters for multiple years, enter each group of calendar quarters on separate lines.

(9) Return Form Number: Self-explanatory.

(10) Kind of Tax and Internal Revenue Code Section: Enter the type of tax and applicable Code section based on the type of return and specific tax being assessed as shown in the chart in Exhibit 4.23.10-9, Type of Tax or Credit and Code Section for Forms 2504, 2504-S, and 2504-T.

(11) Amount of Tax: Self-explanatory.

(12) Credit Increase (Decrease): Self-explanatory.

(13) Penalty: Self-explanatory.

(14) Total: Enter the total of the columns for **Amount of Tax**, **Credit Increase (Decrease)**, and **Penalty**.

(15) Memo: Abatement amount under IRC 3402(d) and/or IRC 3102(f)(3) - See explanation on Form 4666: - Enter the tax period, the form number, the applicable IRC section, and the amount allowed for IRC 3402(d) or IRC 3102(f)(3) abatement.

Exhibit 4.23.10-7 (06-01-2023)

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)

Instructions for Completion of Form 2504-S

Line by line preparation instructions for Form 2504-S

Form 2504-S with the worker classification disclaimer statement is used when the examination did not address worker classification issues and includes the following statement:

The examination of your employment tax returns as reflected on this report did not include an examination for employment tax purposes of whether any individuals should be treated as employees.

Preparation of the Form 2504-S is generally self-explanatory, with much of the information being carried over from the Form 4666. Entries for Form 940, 941, 943, 944, 945, CT-1 and CT-2 are placed on separate lines. Entries for additional tax and penalties, or entries for a decrease of tax and penalties, or entries for the increase and/or decrease of credits, are shown on Form 2504-S. No-change periods are reflected on Form 4666 only.

Note: For IRC 3402(d) and IRC 3102(f)(3) adjustments, see IRM 4.23.8.4, IRC 3402(d) - Relief for Employer When Employees Have Paid Income Tax on Wage, and following. Also see IRM 4.23.10.15.1, Partial Assessment/Quick Assessment Processing, and IRM 4.23.10.15.2 Examination Procedures for IRC 3402(d) and IRC 3102(f)(3) Relief. IRM 4.23.10.15.3, Examination Report Forms for IRC 3402(d) and IRC 3102(f)(3) Abatements, contains detailed instructions on the Form 2504 credit memo entries.

Instructions

- (1) Taxpayer(s) name: Self-explanatory.
- (2) D/B/A: Enter the name under which the taxpayer does business, if applicable.
- (3) SSN/EIN: Self-explanatory
- (4) Address of taxpayer(s) (number, street): Self-explanatory.
- (5) City/Town: Self-explanatory.
- (6) State: Self-explanatory.
- (7) Zip code: Self-explanatory.
- (8) Tax period ended: Enter the tax period being adjusted as follows:
 - a. For Form 940, 943, 944, 945, and CT-1, the tax period is entered as the calendar year, for example, 2021. If Form 2504-S includes multiple calendar years, enter each calendar year on separate lines.
 - b. For Form 941 and CT-2, the tax period is entered as calendar quarters, for example, 03/31/2021-12/31/2021. If Form 2504-S includes calendar quarters for multiple years, enter each calendar quarters on separate lines.
- (9) Return Form Number: Self-explanatory.
- (10) Kind of Tax and Internal Revenue Code Section: Enter the type of tax and applicable Code section based on the type of return and specific tax being assessed as shown in the chart in Exhibit 4.23.10-9, Type of Tax or Credit and Code Section for Form 2504, 2504-S, and 2504-T.

Exhibit 4.23.10-7 (Cont. 1) (06-01-2023)**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)****Line by line preparation instructions for Form 2504-S**

(11) Amount of Tax: Self-explanatory.

(12) Credit Increase (Decrease): Self-explanatory.

(13) Penalty: Self-explanatory.

(14) Total: Enter the total of the columns for **Amount of Tax**, **Credit Increase (Decrease)**, and **Penalty**.

(15) Memo: Abatement amount under IRC 3402(d) and/or IRC 3102(f)(3) - See explanation on Form 4666: Enter the tax period, the form number, the applicable IRC section, and the amount allowed for IRC 3402(d) or IRC 3102(f)(3) abatement.

Exhibit 4.23.10-8 (06-01-2023)**Form 2504–T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436)*****Instructions for Completion of Form 2504–T*****Line by line preparation instructions for Form 2504–T**

In every case for which IRC 7436 adjustments are proposed, Form 2504–T must be used. Form 2504–T includes the language for taxpayers to waive the restrictions on assessment under IRC 7436(d) and IRC 6213(a).

IRC 7436 adjustments are generally worker classification adjustments but can include certain wage adjustments. For more information on IRC 7436 adjustments, see IRM 4.23.5.2.2, IRC 7436 Issues. If no change was made to the status of any classes of workers examined due to the workers determined not to be employees or section 530 relief, information must be included on Form 4666 regarding the classes of workers examined. If any workers were determined to be independent contractors, identify the job classification that was determined to be independent contractors in a statement on the Form 4666. See IRM 4.23.10.10.3(4), Employment Tax No-Change Report. If the taxpayer was determined to be eligible for section 530 relief with respect to a class of workers, identify the job classification to which section 530 applies in a statement on the Form 4666. See IRM 4.23.10.10.3.1(2), No-Change Reports for Section 530 Eligible Taxpayers.

Preparation of the Form 2504–T is generally self-explanatory with much of the information being carried over from the Form 4666. Entries for Forms 940, 941, 943, 944, 945, CT-1, and CT-2 are placed on separate lines. Entries for additional tax and penalties, or entries for a decrease of tax and penalties, or entries for the increase and/or decrease of credits, are shown on Form 2504–T. No-change periods are reflected on Form 4666 only.

Note: For IRC 3402(d) and IRC 3102(f)(3) adjustments, see IRM 4.23.8.4, IRC 3402(d) - Relief for Employer When Employees Have Paid Income Tax on Wages. Also see IRM 4.23.10.15.1, Partial Assessment/Quick Assessment Processing, and IRM 4.23.10.15.2, Examination Procedures for IRC 3402(d) and IRC 3102(f)(3) Relief. IRM 4.23.10.15.3, Examination Report Forms for IRC 3402(d) and IRC 3102(f)(3) Abatements, contains detailed instructions on the Form 2504 credit memo entries.

Instructions

- (1) Taxpayer(s) name: Self-explanatory.
- (2) D/B/A: Enter the name under which the taxpayer does business, if applicable.
- (3) SSN/EIN: Self-explanatory
- (4) Address of taxpayer(s) (number, street): Self-explanatory.
- (5) City/Town: Self-explanatory.
- (6) State: Self-explanatory.
- (7) Zip code: Self-explanatory.

Exhibit 4.23.10-8 (Cont. 1) (06-01-2023)**Form 2504–T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436)****Line by line preparation instructions for Form 2504-T**

(8) Taxpayer period ended: Enter the tax periods being adjusted as follows:

- a. For annual Form 940, 943, 944, and CT-1, the tax period is entered as the calendar year, for example, 2021. If Form 2504-T includes multiple calendar years, enter each calendar year on separate lines.
- b. For Form 941 and CT-2, the tax period is entered as calendar quarters, for example, 03/31/2021 –12/31/2021. If Form 2504-T includes calendar quarters for multiple years, enter each group of calendar quarters on separate lines.

(9) Return Form Number: Self-explanatory.

(10) Kind of Tax and Internal Revenue Code Section: Enter the type of tax and applicable Code section based on the type of return and specific tax being assessed as shown in the chart in Exhibit 4.23.10-9, Type of Tax or Credit and Code Section for Form 2504, 2504-S, and 2504-T.

(11) Amount of Tax: Self-explanatory.

(12) Credit Increase (Decrease): As none of the credits applicable to employment tax returns are IRC 7436 issues, this item will be left blank for Form 2504-T.

(13) Penalty: Self-explanatory.

(14) Total: Enter the total of the columns for **Amount of Tax**, **Credit Increase (Decrease)**, and **Penalty**.

(15) Memo: Abatement amount under IRC 3402(d) and/or IRC 3102(f)(3)- See explanation on Form 4666: Enter the tax period, the form number, the applicable IRC section, and the amount allowed for IRC 3402(d) or IRC 3102(f)(3) abatement.

Exhibit 4.23.10-9 (06-01-2023)

Type of Tax or Credit and Code Section for Form 2504, 2504-S, and 2504-T

Form	Type of Tax or Credit	Code Section	Reason for Use
941/944/943	FICA	IRC 3101 & 3111	Use for adjustments to both employer & employee FICA.
941/944/943	FICA, FITW	IRC 3509(a) & 3111	Use for adjustments when IRC 3509(a) rates are applied.
941/944/943	FICA, FITW	IRC 3509(b) & 3111	Use for adjustments when IRC 3509(b) rates are applied.
941/944/943	FITW	IRC 3402	Use for adjustments to federal income tax withholding when IRC 3509(a) or (b) rates are not used.
941/944/943	FICA Tips	IRC 3121(q)	Use for adjustments to unreported tips.
941/944/943	Payroll Tax Research Credit	IRC 41(h)	Use for adjustments to the payroll tax research credit.
941/944/943	CARES ERC	No Code section	Use for adjustments to employee retention credit for wages paid after 3/12/2020 and before 7/1/2021.
941/944/943	ARP ERC	IRC 3134	Use for adjustments to employee retention credit for wages paid 7/1/2021 – 12/31/2021.
941/944/943	FFCRA Credit	No Code section	Use for adjustments to sick and family medical leave act credits for wages paid for leave taken 4/1/2020 - 3/31/2021.
941/944/943	ARP S&L Credit	IRC 3131, 3132, 3133	Use for adjustments to sick leave credit for wages paid for leave taken 4/1/2021 – 9/30/2021.
941/944/943	ARP COBRA Credit	IRC 6432	Use for adjustments to premium assistance COBRA benefit credits for coverage during the period from 4/1/2021 through 9/30/2021.
940	FUTA	IRC 3301	Use for adjustments to FUTA.
945	BWH	IRC 3406	Use for adjustments to backup withholding.
945	FITW	IRC 3402	Use for adjustments to income tax withholding for voluntary withholding agreements.
945	FITW	IRC 3402	Use for adjustments to income tax withholding for gambling winnings.

Exhibit 4.23.10-9 (Cont. 1) (06-01-2023)**Type of Tax or Credit and Code Section for Form 2504, 2504-S, and 2504-T**

Form	Type of Tax or Credit	Code Section	Reason for Use
945	FITW	IRC 3405	Use for adjustments to income tax withholding for pensions, annuities, and deferred income.
945	FITW	IRC 4999	Use for adjustments to income tax withholding excess parachute payments.
945	FITW	IRC 3402	Use for adjustments to income tax withholding for Indian casino profits.
945	FITW	IRC 3402	Use for adjustments to income tax withholding unemployment benefits, annuities or sick pay.
CT-1	RRTA	IRC 3201 & 3221	Use for adjustments to RRTA
CT-1	CARES ERC	No Code section	Use for adjustments to employee retention credit for wages paid after 3/12/2020 and before 7/1/2021.
CT-1	CARES/ARP ERC	IRC 3134	Use for adjustments to employee retention credit for wages paid 7/1/2021 – 12/31/2021.
CT-1	FFCRA Credit	No Code section	Use for adjustments to sick and family medical leave act credits for wages paid for leave taken 4/1/2020 - 3/31/2021.
CT-1	ARP S&L Credit	IRC 3131, 3132, 3133	Use for adjustments to sick leave credit for wages paid for leave taken 4/1/2021 – 9/30/2021.
CT-1	ARP COBRA Credit	IRC 6432	Use for adjustments to premium assistance COBRA benefit credits for coverage during the period from 4/1/2021 through 9/30/2021.

Exhibit 4.23.10-10 (06-01-2023)**Filing Instructions For Reclassified Workers**

COMPANY NAME: _____ **TAX PERIODS**
: _____

The Internal Revenue Service has determined that you are an employee of the company named above, rather than an independent contractor. Because employees are treated differently than independent contractors for tax purposes, the IRS asked the company to give you this notice about changes you may need to make on your Federal Tax Return for the years involved.

As a worker treated as an independent contractor, you should have received Form 1099-MISC reflecting payments from this company. You should have included this income on Schedule C and Schedule SE and paid self-employment tax.

Since it has been determined that you were actually an employee, the company is required to give you a Form W-2 for the years involved. Payments reported on Form W-2 are not subject to self-employment tax but are subject to social security tax and Medicare taxes. Any business expenses you claimed on Schedule C should be moved to Schedule A as an itemized deduction. You may then claim any business expenses allowed for an employee as miscellaneous deductions. In addition, employees are not entitled to claim any Keogh retirement plan deductions. Therefore, if you claimed these deductions they should be removed from your return.

As a result of the change to your employment status, you may be due a refund or you may owe additional tax. You must now amend your tax return by filing Form 1040X, Amended U.S. Individual Income Tax Return, and attaching Form 8919, Uncollected Social Security and Medicare Tax on Wages, for each tax year involved. Form 8919 is used to report wages when a worker's status has been changed from self-employed (or independent contractor) to that of an employee. Using Form 8919, compute the correct social security and Medicare taxes on the wages reported to you resulting from the worker classification.

Generally, the statute of limitations for giving you a refund or assessing additional tax is three years from the time the return was filed or two years after the date the tax was paid, whichever is later.

The IRS will be contacting you if you had previously filed a protective claim to keep the statute of limitations open, and bring closure to your case.

The attached Notice 989, Commonly Asked Questions When IRS Determines Your Work Status is **Employee**, will answer some of the questions you may have about your responsibilities.

If you have any questions about these instructions, please call or visit your local IRS office.

Attachment:
Notice 989

Exhibit 4.23.10-11 (06-01-2023)**Form 886–A Format for Employee vs. Independent Contractor Adjustment****Sample Form 886-A for Employee vs. Independent Contractor Adjustment****Issue:**

1. Whether the taxpayer qualifies for relief under section 530 of the Revenue Act of 1978.
2. Whether or not service providers were employees under the usual common law rules for federal employment tax purposes and therefore subject to Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and federal income tax withholding.
3. Whether the taxpayer is entitled to lower rates provided by IRC 3509.
4. Whether a Classification Settlement Program offer is applicable for computation of employment taxes at a reduced level.

Facts:

X Corporation is a family-run and owned business that processes and packages oyster and crab meat. Mr. XYZ, his wife, and their two children are the sole shareholders in the company. Mr. XYZ has operated the company since 2010. Mrs. XYZ, the office manager, and their children, assist Mr. XYZ with the administrative functions of the business. X Corporation employed enough workers to perform the usual tasks of its industry. However, at peak times X Corporation would contract out for additional workers to shuck oysters and pick crabmeat. These contract workers are treated as independent contractors and enter into a written contract with X Corporation to be paid on a fixed fee per pound of meat shucked or picked. The contract workers are not guaranteed a minimum level of compensation. The terms of the contract require the contract workers to perform their services for X Corporation on a full-time basis but do not specify the number of hours to work. X Corporation retains the right to discharge the contract workers for any violations of the contract terms. The contract workers are free to terminate their relationship with X Corporation at any time and for any reason. The contract workers do not receive any employee type benefits such as a pension, health insurance, or paid vacation days. The written agreements are identical for all contract workers.

X Corporation also has a permanent workforce of 25 workers who are treated as employees. The permanent workforce is paid on an hourly basis. All workers (permanent or contract) performed similar jobs as oyster shucker or crab picker. The permanent workers were on the payroll and had proper amounts of FICA and income tax withheld from their wages. X Corporation issued Forms 1099-NEC to the contract workers who were treated as independent contractors. X Corporation refused to agree with the proposed federal employment tax adjustments claiming the contract workers were not employees for federal tax purposes. X Corporation contends that it is treating the contract workers as independent contractors in the same manner as its chief competitors. The corporation contends that it is following a "long-standing recognized practice" of a significant segment of the industry in which it is engaged. Therefore, the corporation argues it is entitled to relief under Section 530 of the Revenue Act of 1978.

Law:

Section 530(e)(1) of the Revenue Act of 1978, as amended, clarifies that the first step in any case involving whether the business has the employment tax obligations of an employer with respect to workers is determining whether the business meets the requirements of section 530. If so, the business will not have an employment tax liability with respect to the workers at issue.

Exhibit 4.23.10-11 (Cont. 1) (06-01-2023)**Form 886-A Format for Employee vs. Independent Contractor Adjustment****Sample Form 886-A for Employee vs. Independent Contractor Adjustment**

Section 530(a)(1) provides, in part, that if, for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, then for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee, unless the taxpayer had no reasonable basis for not treating the individual as an employee.

This relief applies only if both of the following consistency rules are satisfied: 1) all federal tax returns (including information returns) required to be filed by the taxpayer are timely filed on a basis consistent with the taxpayer's treatment of the individual as not being an employee ("reporting consistency"), and 2) the taxpayer (and any predecessor) has not treated any individual holding a substantially similar position as an employee for purposes of employment taxes for periods beginning after December 31, 1977 ("substantive consistency rule").

Section 530(a)(2) sets forth three safe havens in determining whether a taxpayer has a reasonable basis for not treating an individual as an employee. They are reasonable reliance on: (A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer; (B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or (C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged. A business which fails to meet any of three safe havens may nevertheless be entitled to relief, if the business can demonstrate, in some other manner, any other reasonable basis for not treating the worker as an employee.

IRC 3121(d)(2) provides that the term "employee" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee. See also IRC 3401(c) and 3306(i).

The question of whether an individual is an independent contractor or employee is one of facts to be determined upon consideration of the facts and application of the law and regulations in a particular case. With certain limited statutory exceptions, the classification of particular workers or classes of workers as employees or independent contractors, for purposes of federal employment taxes, must be made under common law rules. Guides for determining the existence of a worker's status are found in three substantially similar sections of the Employment Tax Regulations; namely Treas. Reg. 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1 relating to the FICA, the FUTA, and federal income tax withholding on wages at source, respectively.

Treas. Reg. 31.3121(d)-1(c)(2) provides that generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the results to be accomplished by the work, but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done, but also as to how it shall be done. In this connection, it is not necessary that the employer actually control or direct the manner in which services are performed; it is sufficient if he or she has the right to do so. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished and not as to the means and methods for accomplishing the result, he or she is an independent contractor. Similar language is found in Treas. Reg. 31.3306(i)-1(b) and 31.3401(c)-1(b).

Exhibit 4.23.10-11 (Cont. 2) (06-01-2023)**Form 886–A Format for Employee vs. Independent Contractor Adjustment****Sample Form 886-A for Employee vs. Independent Contractor Adjustment**

In determining whether an individual is an employee under the common law rules, a number of factors have been identified as indicating whether sufficient control is present to establish an employer–employee relationship. These factors have been developed based on an examination of cases and rulings considering whether an individual is an employee. The degree of importance of each factor varies depending on the occupation and the factual context in which services are performed. See *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318 (1992) and *Weber v. Commissioner of Internal Revenue*, 103 T.C. 378 (1994), aff'd 60 F.3d 1104 (4th Cir. 1995). See also *Breaux and Daigle, Inc. v. U.S.*, 900 F.2d 49 (5th Cir. 1990). Also see Rev. Rul. 87–41, 1987–1 C.B. 296.

Treas. Reg. 31.3121(d)–1(a)(3) provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, co-adventurer, agent, independent contractor, or the like. Similar language is found in Treas. Reg. 31.3306(i)–1(d) and 31.3401(c)–1(c).

Because there are elements of controls as well as autonomy in all cases, regardless of whether an employment relationship or an independent contractor relationship exists, all evidence of both control and lack of control or autonomy must be evaluated in determining whether there is a sufficient degree of control to establish an employment relationship. In doing so, one must examine the relationship of the worker and the business. Facts which illustrate whether there is a right to direct or control how the worker performs the specific tasks for which he or she is hired, whether there is a right to direct or control how the business aspects of the worker's activities are conducted, and how the parties perceive their relationship provide evidence of the degree of control and autonomy.

IRC 3509 provides that if an employer fails to deduct and withhold any tax under chapter 24 (income tax withholding) or subchapter A of Chapter 21 (employee share of FICA) with respect to any employee by reason of treating an employee as not being an employee, the employer's liability is 1.5 percent of the employee's wages plus 20 percent of the employee's share of the FICA tax. The employer's liability is doubled in cases where the employer failed to meet the reporting requirements of IRC 6041(a) or 6051 consistent with the treatment of the employees as independent contractors.

IRC 3509(c) provides that the reduced rates of IRC 3509 do not apply in cases of an employer's intentional disregard of the requirement to deduct and withhold such tax.

IRC 3509(d)(1)(C) provides that if the amount of liability for tax is determined under IRC 3509, then IRC 3402(d) (regarding credit for tax paid by the worker) and 6521 (regarding offset for payment of SECA tax) do not apply. IRC 3509(d)(2) provides that IRC 3509 rates do not apply where the employer withholds income tax but not FICA.

IRC 3509(d)(3) provides that IRC 3509 does not apply to an individual described in IRC 3121(d)(3), Statutory employee.

DISCUSSION OF LAW—SECTION 530**Taxpayer's Position:**

X Corporation argues that it is entitled to employment tax relief under section 530 with respect to the contract workers because: 1) per section 530, it was a common practice in the seafood industry to treat seasonal workers as independent contractors instead of employees and 2) the workers were not employees under the usual common law rules but were independent contractors.

Government's Position:

Exhibit 4.23.10-11 (Cont. 3) (06-01-2023)**Form 886-A Format for Employee vs. Independent Contractor Adjustment****Sample Form 886-A for Employee vs. Independent Contractor Adjustment**

Section 530 provides for the termination of the employer's (not worker's) federal employment tax liability if the requirements of section 530 are met. If the business meets the requirements of section 530 with respect to a category of workers, it is generally not necessary to determine whether the workers are independent contractors or employees.

To qualify for relief under section 530, X Corporation must first have filed all required returns (including information returns) on a timely basis with respect to each worker and treated all workers in similar positions (jobs) the same. X Corporation had five workers during 2019, 2020, and 2021 that were treated as independent contractors. Forms 1099-NEC were timely filed for all the contract workers.

Second, the treatment of a worker as an independent contractor must be consistent with the treatment by the taxpayer (or the predecessor) of any individual holding a substantially similar position (section 530 (a)(3)). The taxpayer cannot change the treatment of a service provider from employee to a contractor if their position is substantially similar. A substantially similar position exists if the job functions, duties, responsibilities, the party controlling those functions, and the exercise of those duties and responsibilities are substantially similar. The permanent workers performing similar jobs were treated as employees. These workers (employees) had worked for X Corporation for more than five years and were paid a salary tied to hours worked. In addition, some of the contract workers had worked for X Corporation on a seasonal basis for more than five years. All shuckers and pickers including the contract workers performed the same services. The only differences between the service providers were their compensation arrangements. Thus, X Corporation has failed the consistency test under section 530.

Third, the taxpayer must have had a reasonable basis for not treating an individual as an employee to qualify for relief under section 530. The statute provides three non-exclusive methods for showing a reasonable basis. X Corporation contends there is a "long-standing industry practice" for not treating the contract workers as employees. X Corporation has not provided any evidence to establish the recognized practice of a significant segment of the industry. It is the taxpayer's responsibility to present evidence in the form of affidavits, depositions, or other similar evidence to establish the long-standing industry practice and its reasonable reliance on that practice. Thus, X Corporation has not shown it is entitled to relief under the reasonable basis test of section 530.

DISCUSSION OF LAW-COMMON LAW RULES**Taxpayer's Position:**

In support of its contention that contract workers are independent contractors, X Corporation points to the absence of evidence of actual control and the impermanent nature of the working relationship. X Corporation did not provide any contract worker with any minimum guaranteed income, any sick leave or any employee benefits. The workers were free to determine when and for how long they performed their services. It offers no supervision in the manner in which a worker is to perform the task nor does it train workers to perform the task. The workers are entitled to work whenever they wish, can come and go as they please, take breaks whenever they desire, are not required to come to work on a daily basis, can refuse to do any job, and can work for other competitors.

Government's Position

Exhibit 4.23.10-11 (Cont. 4) (06-01-2023)**Form 886–A Format for Employee vs. Independent Contractor Adjustment****Sample Form 886-A for Employee vs. Independent Contractor Adjustment**

In determining whether an individual is an employee or an independent contractor under the common law rules, there are several factors which have been developed to indicate whether there is sufficient control to establish an employer/employee relationship. Although no one factor is definitive on its own, collectively the factors define the extent of an employer's control over the time and manner in which a worker performs. This control test is fundamental in establishing a worker's status. Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties.

Behavioral Control

Factors which illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the work is a simple task, only requiring the opening, cutting, and removal of the meat from the shell. In this case, the workers did not receive any training or instruction on how to perform the task. X Corporation did not supervise the process but inspected the oyster and crab meat quality when the meat was submitted for packing. The nature of the work is such that little supervision is necessary. The "minimal skill required" to efficiently perform the task argues against an independent contractor status.

Financial Control

Factors which illustrate whether there is a right to direct and control the financial aspects of the worker's business include significant investment, unreimbursed expenses, making services available to the relevant market, the method of payment, and the opportunity for profit or loss. In this case, the contract workers furnished their own tools, worked when they wished, and worked for others at will. They were not paid on an hourly basis, but rather per pound of meat picked at a nonnegotiable price. However, because they are paid by the per pound of the meat picked rather than on a time basis, it is to their economic advantage to work rapidly and efficiently. Though the faster they pick or shuck, the more they earn, the workers cannot earn a profit in the usual sense of that word. The workers also did not incur any significant investment. These facts indicate an employee-employer relationship. However, the workers were paid on a per pound basis, which is indicative of independent contractor status. Thus, these factors are essentially offsetting.

Relationship of the Parties

Factors which illustrate how the parties perceive their relationship include the intent of the parties, as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the workers entered into written contracts designating them as independent contractors. No federal income tax or social security and Medicare taxes were withheld from amounts paid to the workers and no employee-type benefits were provided by X Corporation. Their earnings were reported on Form 1099–NEC as nonemployee compensation. These factors indicate the workers could be independent contractors.

However, the right of a business to discharge its workers is often indicative of an employment relationship. In this case, the workers had the right to end their relationship with X Corporation at any time without incurring liability. X Corporation also had the right to discharge the workers. X Corporation could ask a worker not to return if the worker consistently had too much fat or shell in the meat he produced. This right to discharge a worker is a factor indicating that the worker is an employee. But the worker had the right to end his or her relationship with X Corporation at any time without incurring liability which indicates an employer-employee relationship. Therefore, this factor is not indicative of an employment relationship as either employees or independent contractors.

Exhibit 4.23.10-11 (Cont. 5) (06-01-2023)**Form 886-A Format for Employee vs. Independent Contractor Adjustment****Sample Form 886-A for Employee vs. Independent Contractor Adjustment**

The permanency of the relationship is another factor to consider. If a business engages a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence of the intent to create an employment relationship. X Corporation had long-term relationships with the workers. Many of the workers are regular and have worked for X Corporation for several years. Thus, the duration of the relationship between X Corporation and the workers supports a finding that the workers were employees. However, a long-term relationship may exist between a business and either an employee or an independent contractor.

Whether the services performed by the workers are part of the regular business of the taxpayer or its predecessor is another factor to consider. In this case, X Corporation is engaged in processing and packing seafood. The success and continuation of the business depend on the seasonal workers. If no worker arrives to pick crabs or oysters, X Corporation would suffer a financial loss. The nature of the work also requires the workers to perform such services on the employer's premises. Thus, the work performed by the workers is an integral part of X Corporation's business operations.

In evaluating the factors in this case, it is clear that X Corporation retained significant control over the contract workers. The only significant difference between the contract workers and the permanent workers is their payment of compensation and employee benefits. Either worker (contract or permanent) could be hired or fired by X Corporation for the same reason. The workers performed their services at X Corporation's premises. The work did not require any special skill. The workers had a continuous relationship with X Corporation as opposed to single transaction. The workers were able to work as much or as little as they chose. Only one factor suggests an independent contractor status, which clearly does not create a genuine issue. Payment per pound indicates an independent contractor. However, the workers had no opportunity to gain or lose except from the work of their hands.

Accordingly, the examiner concludes that the contract workers were employees.

DISCUSSION OF LAW-SECTION 3509

IRC 3509 applies where section 530 relief is not available and gives reduced rates for federal income tax withholding and the employee share of FICA where an employer failed to deduct employment taxes by reason of treating such employee(s) as an independent contractor. The tax computation under IRC 3509 is mandatory in all reclassification cases. The taxpayer cannot waive IRC 3509 when its conditions are met. However, it is not available where the employer intentionally disregards the requirement to deduct and withhold employment taxes.

Taxpayer's Position:

X Corporation claims to have a reasonable basis for treating the workers as independent contractors based on the common law. Forms 1099-NEC were timely filed. Therefore, it is entitled to IRC 3509 reduced rates.

Government's Position:

Exhibit 4.23.10-11 (Cont. 6) (06-01-2023)**Form 886-A Format for Employee vs. Independent Contractor Adjustment****Sample Form 886-A for Employee vs. Independent Contractor Adjustment**

The facts weigh heavily in favor of treatment as employees. X Corporation's own treatment of the permanent workforce points toward an employee classification. X Corporation's permanent workforce that held similar jobs was treated as employees. X Corporation believes that because its workers agreed to be independent contractors, therefore they were independent contractors. There is no evidence of a standard in this industry that treats temporary pickers and shuckers as independent contractors. X Corporation has neither presented evidence it had a reasonable basis nor that it relied upon that evidence. These facts indicate that the taxpayer intentionally disregarded the requirement to deduct and withhold income tax and employee FICA. Therefore, X Corporation does not qualify for the IRC 3509 rates.

Conclusion:

X Corporation does not qualify for relief under section 530 of the Revenue Act of 1978. Although the required information returns were timely filed, X Corporation has not shown (1) consistent treatment of workers as independent contractors and (2) reasonable basis for not treating its workers as employees. X Corporation has treated its permanent workforce as employees. These employees held similar jobs or duties as the contract workers. Thus, there is an inconsistent treatment of workers. X Corporation has not shown it is entitled to section 530 relief.

Further, X Corporation did not have a "reasonable basis" for treating its contract workers as independent contractors. Section 530 relief will not be available if X Corporation fails the safe haven provisions for establishing a reasonable basis. X Corporation argued that it had satisfied the "long-standing industry practice" provision. Based upon the foregoing findings of fact and conclusions of law, there is no evidence to support X Corporation's claim of "industry practice." Accordingly, X Corporation has not shown reasonable reliance on a safe haven sufficient to qualify for relief from employment taxes under section 530.

The contract workers are common law employees of X Corporation, as its treatment of contract workers as independent contractors is not reasonable under the usual common law rules. X Corporation had the right to fire the workers, schedule their work, set their hours, supervise their work and set their method of payment. In the general sense of an independent contractor, the workers could not realize a profit or incur a loss as a result of their services. They had a very small investment in the tools and equipment that they used. Furthermore, a continuing relationship did exist although work was performed at frequently irregular intervals. The services provided were an integral part of X Corporation's business. The contract workers are employees of X Corporation for federal employment tax purposes. X Corporation is liable for the FUTA tax, the employer's and employees' share of FICA tax and income tax withholding. Under IRC 3509(c), because the taxpayer intentionally disregarded the requirement to deduct and withhold income tax and the employee share of FICA tax, X Corporation is not entitled to the reduced rates provided by IRC 3509. Thus, the employment tax liabilities are proposed at full rates.

Although the taxpayer is not entitled to relief under section 530, because the taxpayer had a colorable argument, a Classification Settlement Program (CSP) offer was made. The taxpayer rejected the offer at the examination level.

Exhibit 4.23.10-12 (06-01-2023)

Case Closing Decision Matrix

Type of Closure	Partial Assessment	Separate Case File	Case Disposition
All returns (closed agreed, unagreed, or no-change) not requiring the issuance of Letter 3523 or Appeals	No	No	Entire file - CCP
Returns involve a mix of agreed and unagreed issues on SAME tax returns where unagreed issues require Letter 3523 or Appeals	Yes	No	Partial - CCP Entire Case File – Technical Services once partial assessment is made
Returns involving a mix of agreed, unagreed or no-change issues on SEPARATE tax returns where unagreed issues require Letter 3523 or Appeals	Maybe Note: If some of the agreed/unagreed issues are the same tax period/return	Yes	Partial, if required – CCP Agreed, unagreed or no-change tax periods/returns not requiring Letter 3523 or Appeals – CCP Unagreed tax periods/returns requiring Letter 3523 or Appeals – Technical Services
All returns involve unagreed issues requiring issuance of Letter 3523 or Appeals	No	No	Entire Case File – Technical Services

