



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.23.13

JULY 1, 2024

EFFECTIVE DATE

(07-01-2024)

PURPOSE

- (1) This transmits revised IRM 4.23.13, Employment Tax - Adjusted Returns, Abatements and Claims.

MATERIAL CHANGES

- (1) This IRM was revised to reflect the following material changes:

Subsection	Material Change
IRM 4.23.13.1.1	Added new paragraph (1) for clarification. Subsequent paragraphs were adjusted to incorporate the new paragraph. Moved information from paragraph (2) to new subsection 4.23.13.1.6. Moved Note to paragraph (3).
IRM 4.23.13.1.2	Content was updated in paragraph (3) on where to search for delegation orders issued by the Commissioner of the Internal Revenue.
IRM 4.23.13.1.6	Added subsection titled "Terms" to a list of terms and their definitions. Subsequent subsections were adjusted to incorporate the new subsection.
IRM 4.23.13.1.7	Added IRM 21.7.2 and IRM 4.70.17 as references in paragraph (1). Updated content in paragraph (3) Taxpayer Bill of Rights (TBOR), paragraph (4) Taxpayer Advocate Service (TAS), and paragraph (5) disclosure and privacy provisions. Added paragraph (6) that provided the overall responsibility for civil penalty programs is assigned to Office of Servicewide Penalties (OSP). Added paragraph (7) that provides primary resources for TE/GE examiners.
IRM 4.23.13.1.8	Added subsection titled Program Controls to document the reviews and quality assurance activities associated with the Employment Tax Program.
IRM 4.23.13.2	Added paragraph (2) and (3) to emphasis that claims for refund are priority work and if received during an examination must be included in the examination.
IRM 4.23.13.2.1	Revised paragraph (2) items (b) and (c) for clarification. Revised the content in paragraph (3) for clarification.

Subsection	Material Change
IRM 4.23.13.2.2	Revised content of paragraph (1) for clarification. Moved content of paragraph (1) to new paragraphs (2) and (3) and renumbering all succeeding paragraphs. Added new paragraph (4) discussing the 90 day rule for adjusted returns. Added new paragraph (5) by moving content of paragraph (1) "Note" and revised content for clarification. Revised content of paragraph (6) for clarification. Added content paragraph (8) to explain statutes when a Form 94x-X is presented for an underpayment. Revised paragraph (10) for clarification. Added new paragraph (11) to explain actions to take on cases with less than 425 days on the statute. Paragraphs (6) and (7) were moved to a new IRM subsection 4.23.13.2.2.1.
IRM 4.23.13.2.2.1	Added subsection by inserting paragraphs (6) and (7) from IRM 4.23.13.2.2 creating paragraphs (2) and (3). Added new paragraph (1) that states Independent Office of Appeals will accept "AA" alpha statute cases.
IRM 4.23.13.2.2.2	Added subsection providing guidance for certain COVID-19 credits that have a 5 year statute instead of the normal 3 year statute.
IRM 4.23.13.2.2.3	Added subsection providing guidance for working claims that have been resolved (whether the taxpayer received the refund or it was applied to another balance).
IRM 4.23.13.2.3	Added a Note to paragraph (4) that the source code will not change if a claim is received during an open examination.
IRM 4.23.13.3	Revised content for clarification.
IRM 4.23.13.3.1	Added paragraph (2) for clarification.
IRM 4.23.13.3.1.1	Revised title for clarification. Modified paragraph (1) item (e) for clarification. Modified paragraph (2) to clarify instructions.
IRM 4.23.13.3.1.1.1	Added subsection title "Withdrawn Claims for Refunds" to provide instruction.
IRM 4.23.13.3.1.2	Revised title for clarification. Revised paragraph (1) to clarify content and requirements. Removed Forms 4667 and 4668 from the list of forms since they are not required for a "no change" report. Added Note for TE/GE employees.
IRM 4.23.13.3.1.3	Revised title for clarification. Revised paragraph (1) to clarify content and requirements. Added Note for TE/GE employees.
IRM 4.23.13.3.2	Revised title for clarification. Added paragraph (2) for clarification.
IRM 4.23.13.3.2.1	Revised title for clarification. Revised paragraph (1) to clarify content and requirements. Added Note for TE/GE employees.
IRM 4.23.13.3.2.2	Revised title for clarification. Revised paragraph (1) to clarify content and requirements. Added Note for TE/GE employees.
IRM 4.23.13.3.3	Revised title for clarification. Revised paragraph (1) to clarify content and requirements.

Subsection	Material Change
IRM 4.23.13.3.3.1	Revised title for clarification. Revised paragraph (4) to include electronic case closure procedures and remove paper closing procedures. Replaced TE/GE procedures with a reference to IRM 4.70.17.5.
IRM 4.23.13.3.3.2	Revised title for clarification. Added Note to Paragraph (1) that included a reference for TE/GE examiners. Revised paragraphs (2) and (3) to include electronic case closure procedures and remove paper closing procedures. Modified paragraph (4) to Include a reference for TE/GE employees.
IRM 4.23.13.3.3.3	Added subsection titled "Claim for Refund Allowed in Full with Additional Tax Adjustment" to provide instruction and clarification.
IRM 4.23.13.3.4	Modified title to "Form 2297" and moved paragraphs (4), (5), and (6) to new subsection 4.23.13.3.5 paragraphs (1), (2), and (3). Modified paragraph (3) to provide guidance for only if no appeals request was received. Moved paragraphs (4), (5), and (6) to new subsection 4.23.13.3.5. Added new paragraph (4) to provide guidance for only if an appeals request was received.
IRM 4.23.13.3.5	Added subsection titled "Form 3363". Subsequent subsections were adjusted to incorporate the new subsection. Paragraphs (1), (2), and (3) came from IRM 4.23.13.3.4 paragraphs (4), (5), and (6).
IRM 4.23.13.3.6	Information was moved from paragraph (2) to create a new paragraph (3). Subsequent paragraphs were adjusted to incorporate the new paragraph. Modified paragraph (4) for clarification and include references. Added new guidance for TE/GE examiners since they no longer use Form 3198-A.
IRM 4.23.13.4	Modified paragraphs (1), (2), and (3) to clarify instructions.
IRM 4.23.13.4.1.4	Added paragraph (2) that request for abatement is not a claim for refund.
IRM 4.23.13.4.2	Modified paragraph (1) to clarify instructions. Move content of the Note in paragraph (2) into paragraph (2).
IRM 4.23.13.5	Modified paragraph (3) to correctly state if the Appeals officer settled and closed a case using Form 2504-AD the claim and case file will not be forwarded directly to Appeals.
IRM 4.23.13.6	Modified the content in paragraph (2) item c and paragraph (4) for clarification. Modified paragraph (6) by adding conditions that would allow a case to be sent to Appeals that was previously considered by Appeals.

Subsection	Material Change
IRM 4.23.13.7	Modified paragraph (1) by inserting reminder for TE/GE examiners to refer to IRM 4.70.17.6.7 for guidance. Revised paragraph (3) for clarify. Revised paragraph (4) to incorporate guidance provided in IGM SBSE-04-0722-0048, <i>Emailing documents to Employment Tax -Workload Selection and Delivery</i> , issued July 15, 2022. Revised paragraph (4) items (2) and (3) to incorporate guidance provided in IGM TEGE-04-0222-0006, Elimination of requirement to post Form 3198-A as a separate workpaper in RCCMS Office Documents folder, dated February 23, 2022 and IGM TEGE-04- 0322-0009, <i>Interim Guidance on Fully Electronic (100% Paperless) Cases</i> , dated March 15, 2022, that eliminated Form 5599.
IRM 4.23.13.10	Added content to paragraph (11) for clarification.
Exhibit 4.23.13-3	Added new exhibit that provides instructions to complete Form 2297.
Exhibit 4.23.13-4	Added new exhibit that provides instructions to complete Form 3363.

- (2) Exhibit 4.23.13-3, *FAQs on Form 941-X Claims*, was moved to the SB/SE Employment Tax Small Business Knowledge Base Homepage. Go to the “Refund Abatement Cases” chapter in the “Exam Guidance Procedures” book.
- (3) Editorial changes made throughout the IRM for clarity. Reviewed and updated grammar, plain language, titles, IRM references, IRS organization, organization terminology, and reorganized content.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.23.13, dated August 5, 2020. This section incorporates Interim Guidance Memoranda SBSE-04-0722-0048, *Emailing documents to Employment Tax -Workload Selection and Delivery*, issued July 15, 2022.

AUDIENCE

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

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4.23.13

Adjusted Returns, Abatements and Claims

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- 4.23.13-3 Instructions for Completing Form 2297
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4.23.13.1
(08-05-2020)
Program Scope and Objectives

- (1) **Purpose:** This section provides guidelines on employment tax adjusted returns, abatements and claims.
- (2) **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 adjusted returns, abatements, and claims.
- (3) **Policy Owner:** Director, Specialty Examination Policy of the Small Business/Self-Employed Division.
- (4) **Program Owner:** Program Manager - Employment Tax Policy.
- (5) **Primary Stakeholders:**
 - Employment Tax – Workload Selection and Delivery (SE:S:D-CE:E:HQ:ECS:S:ETEGCS:EWSD)
 - Specialty Examination - Employment Tax (SE:S:DCE:E:SE:ET)
 - Examination - Specialty Policy, Employment Tax Policy (SE:S:D-CE:E:HQ:SEP:EMTP)
 - Tax Exempt/Governmental Entities (TE/GE)
 - Large Business and International (LB&I)
 - The Independent Office of Appeals (Appeals)

4.23.13.1.1
(07-01-2024)
Background

- (1) This IRM provides an overview of the responsibilities that examiners should understand and apply in the performance of their duties in conducting examinations of employment tax claims, abatements, and audit reconsiderations.
- (2) The examiner must determine what type of request the taxpayer has made to properly examine, close, and process the case. The following are the types of requests addressed in this IRM:
 - Claim for Refund
 - Request for Abatement
 - Audit Reconsideration Request
 - Adjusted Return
- (3) “X” forms must be used for adjusted returns, claims for refund, requests for abatement and audit reconsideration requests. These forms correspond and relate line-by-line to the employment tax return they are correcting and to the tax period in which the error occurred. The “X” forms affect:
 - Form 941, *Employer’s QUARTERLY Federal Tax Return*,
 - Form 943, *Employer’s Annual Tax Return for Agricultural Employees*
 - Form 944, *Employer’s ANNUAL Federal Tax Return*
 - Form 945, *Annual Return of Withheld Federal Income Tax*, and
 - Form CT-1, *Employer’s Annual Railroad Retirement Tax Return*.

Note: All references to Form 94x-X include Form CT-1X. The **x** denotes the last digit of the employment tax form, and could refer to Form 941, Form 943, Form 944 or Form 945.
- (4) There is no “X” form for the Form 940, *Employer’s Annual Federal Unemployment (FUTA) Tax Return*. An employer amending a Form 940 for a previous year, will use that previous year’s Form 940 marking the amended box.

Example: The employer will use the 2023 Form 940 (marking the amended box) to amend a return that they previously filed for 2023.

- (5) Classification of most Forms 94x-X for examination is conducted at the Campus. However, while conducting an open examination, an examiner may receive a Form 94x-X from the taxpayer.
- (6) Forms 94x-X allow the taxpayer to file either an “adjusted employment tax return” (box 1) or “claim” (box 2). While the taxpayer’s selection between the two blocks does not affect how the case is worked by the examiner, it does affect the final processing of the case. Returns with the “adjusted employment tax return” block marked generally will not result in a refund issued to the taxpayer. Any credit balance resulting from the exam or processing of the return **must** be moved to the period in which the “X” adjusted return was filed. Any credit balance transfer will be completed using a Form 3870, *Request for Adjustment*, when preparing the examination closing documents.
- (7) Taxpayers will use Form 843, *Claim For Refund and Request for Abatement*, for requesting abatement of assessed penalties and interest.

4.23.13.1.2 (07-01-2024)

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, *Service-wide Policies and Authorities*, apply to all employment tax issues and examinations. Examiners should review these Policy Statements to properly perform their examination duties.
- (3) A website, Search Service-wide Delegation Orders, located at <https://irm.web.irs.gov/imd/del/search.aspx> provides a searchable list of Service-wide 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, *Service-wide Delegations of Authority*.
- (4) IRM 4.23 provides Service-wide 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.

4.23.13.1.3 (08-05-2020)

Responsibilities

- (1) Director, Specialty Examination Policy is responsible for the procedures and updates addressed in this IRM.
- (2) Director, Specialty Examination is the executive responsible for examination operational compliance.

4.23.13.1.4
(08-05-2020)

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 for Employment Tax Policy, found in IRM 1.1.16.5.2.2, *Employment Tax Policy*.
- (2) Program Effectiveness: Program goals are measured with Employment Tax Embedded Quality Performance Reports that monitor whether quality attributes are applied uniformly and consistently.
- (3) Annual Review: Employment Tax Policy - Program Manager, is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.

4.23.13.1.5
(07-01-2024)

Acronyms

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

Acronym	Definition
AARS	Appeals Account Resolution
ACDS	Appeals Centralized Database System
ACM	Appeals Case Memo
AdMT	Additional Medicare Tax
Appeals	Independent Office of Appeals
BUWH	Backup Withholding
BMF	Business Master File
CAR	Case Activity Record
CCP	Centralized Case Processing
DC	Disposal Code
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FTD	Failure to Deposit
FUTA	Federal Unemployment Tax Act
IMS	Issue Management System
IRC	Internal Revenue Code
LB&I	Large Business & International
MFT	Master File Tax
RBP	Revenue Base Protection
RSED	Refund Statute Expiration Date
SB/SE	Small Business/Self-Employed
TBOR	Taxpayer Bill of Rights

Acronym	Definition
TE/GE	Tax Exempt/Government Entities

4.23.13.1.6
(07-01-2024)

(1) General terms and definitions:

Terms

Term	Definition
Abatement	An abatement is a request where the IRS assessed the tax but the taxpayer has not paid. It is not a claim for refund because it does not include a request for credit or refund of an overpayment.
Additional Adjustment	An additional adjustment is when a claim for refund is examined and adjustment (increase in tax) to the original Form 94X is proposed.
Adjusted Return	An adjusted return is a request to correct a previously filed Form 94x. The correction can be either an overpayment of tax (taxpayer is due a credit) or underpayment of tax (taxpayer owes additional tax). Adjusted returns can not result in a refund issued to the taxpayer.
Administrative Error	An administrative error is only a transposition or basic math error, such as addition, subtraction and multiplication computations. For example, the amount reported on Form 941, line 3 (Federal income tax withheld from wages, tips, and other compensation), does not agree with the amount the employer withheld from an employee's wages. For additional examples refer to IRM 21.7.2.4.6.3.1, <i>Administrative Errors</i> .
Amended Return	Any subsequent return which changes information submitted on the original filed return.
Audit Reconsideration	An audit reconsideration is either a claim for refund (tax paid) or request for abatement of assessment (tax unpaid) made due to an examination. An audit reconsideration may be a request for abatement, but not all requests for abatement are audit reconsiderations. The purpose of the audit reconsideration is to examine information that was not considered in a previously completed audit.
Claim for Refund	A claim is a request for a refund or credit of an overpayment of amounts already assessed and paid.
Offsetting Adjustment	An offsetting adjustment is an adjustment having an opposite tax effect. For example, an adjustment increasing tax "offsets" the amount requested in a claim for refund.

4.23.13.1.7
(07-01-2024)

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

Related Resources

Source	Title	Description of Guidance
IRM 4.23	Employment Tax IRM	IRM sections owned by SB/SE Examination - Specialty 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.
IRM 4.10.11	Examination of Returns, Claims for Refund and Requests for Abatement	This IRM provides general technical and procedural guidance for examinations and report writing specific to claims for refund and requests for abatement (that are not audit re-considerations).
IRM 4.70.17	TE/GE Examinations, Claims and Abatements	IRM section owned by TE/GE. This IRM section provides examination procedures to assist TE/GE examiners process claims, abatements, and examination re-considerations.
IRM 21.7.2	Business Tax Returns and Non-Master File Accounts, Employment and Railroad Tax Returns	IRM section owned by Taxpayer Services, Accounts Management. This section contains general information and procedures for correcting data recorded on Business Master File (BMF) accounts for employment tax returns and railroad retirement tax returns.
IRM 25.21.4	Affordable Care Act - IRC 6056 Non-Filer and IRC 4980H Compliance Process	IRM section owned by SB/SE Examination - Specialty Policy. This section contains instructions and guidelines for all Small Business/Self Employed (SB/SE) employees dealing with IRC 6056 and IRC 4980H.

(2) Other helpful information sources include:

- The SB/SE Employment Tax Small Business Knowledge Base home page is located at <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB014>. The SB/SE Employment Tax Small Business Knowledge Base book titled "Exam Guidance Procedures" has a chapter titled "Refund Abatement Cases" with additional information on employment tax adjusted returns, abatements and claims.
- The Specialist Referral System home page: <https://srs.web.irs.gov/>.

- A list of SB/SE Employment Tax Policy Analysts, their contact information and program assignments, are found at *Employment Tax Policy Contacts*.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the IRC, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. For additional information about the TBOR see IRC 7803(a)(3), <https://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, that helps taxpayers and protects taxpayer rights. TAS offers free help to taxpayers when a tax problem is causing a financial difficulty, when they've tried and been unable to resolve their issue with the IRS, or when they believe an IRS system, process, or procedure just isn't working as it should. TAS strives to ensure that every taxpayer is treated fairly and knows and understands their rights under the TBOR. TAS has at least one taxpayer advocate office located in every state, the District of Columbia, and Puerto Rico.
 - (5) Employment tax 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) knowledge base at *Disclosure and Privacy Knowledge Base Homepage* (<https://irsgov.sharepoint.com/sites/ETD-KMT-KB003>).
 - (6) Overall responsibility for civil penalty programs is assigned to the Office of Servicewide Penalties (OSP). OSP is charged with coordinating policy and procedures concerning the civil penalty program administration, ensuring consistency with the penalty policy statement, reviewing and analyzing penalty information, researching penalty effectiveness on compliance trends, and determining appropriate action necessary to promote voluntary compliance. For further understanding of the civil penalty program and penalty relief, refer to the *Penalties Knowledge Base Homepage* (<https://irsgov.sharepoint.com/sites/ETD-KMT-KB015>).
 - (7) TE/GE employees must refer to IRM 4.70.13, *Executing the Examination*, IRM 4.70.14, *Resolving the Examination*, and IRM 4.70.17, *Claims and Abatements*, for guidance and procedures for TE/GE employment tax examinations.

4.23.13.1.8
(07-01-2024)

Program Controls

- (1) All information management systems have safeguard measures in place that address key components of Information Technology (IT) security requirements to restrict access to sensitive data.
- (2) The Employment Tax program has established a separation of duties of users' roles-
 - Policy and procedures – Employment Tax Policy is within SB/SE Specialty Exam Policy
 - Case selection – Employment Tax – Workload Selection and Delivery is within SB/SE Examination Case Selection
 - Examination - Employment Tax Examination is within SB/SE Specialty Exam
 - Quality and review - Embedded Quality is within SB/SE Field and Specialty Exam Quality

- (3) The Issue Management System (IMS) is required to be used during employment tax examinations by examiners assigned to Specialty – Employment Tax Operations.
- (4) Unless instructed otherwise, examiners will use the Employment Tax Lead Sheets (ETLS) developed specifically for employment tax cases.
- (5) SB/SE ET examiners working ET Large Cases will use Large Case Lead Sheets (LCLS). LCLS are developed specifically for large case employment tax cases. Examiners working ET Large Cases will follow workpaper preparation, specific audit techniques, and case closing procedures unique to these types of audits.

4.23.13.2

(07-01-2024)

Pre-Contact Analysis of Form 94x-X: Overview

- (1) To determine the type of taxpayer request as described in IRM 4.23.13.1.1, *Background*, request a current transcript of the module(s) indicated on the Form 94x-X:
 - If the request involves an abatement of a previous examination assessment that does not allege any overpayment, treat the request as an audit reconsideration. If the case has been closed, the examiner may request the original case file.
 - If the request involves an abatement of tax that was not made as part of an examination (no TC30X or TC29X on module) and does not allege any overpayment, treat the request as a request for abatement.
 - If the claim alleges an overpayment of a liability, regardless of how the liability was assessed, the Form 94x-X will be treated as an adjusted return or claim for refund.

Note: The Form 94x-X could be a claim for refund or an adjusted return even if not in zero balance.

- (2) Examiners should start the pre-contact analysis on claim for refund cases within 30 days of receipt. If the IRS does not act on a claim for refund within six months from the filing date of the claim, the taxpayer is permitted to file a refund suit. Therefore, claims are considered priority work. For additional examiner's responsibilities refer to IRM 4.10.11.2.3, *Claims for Refund - Overview of Examiner's Responsibilities*.
- (3) When a claim for refund is filed for a tax period open for examination and that request has not been previously acted on, examiners must expand the scope to consider the claim for refund issues.

4.23.13.2.1

(07-01-2024)

Pre-Contact Analysis: Requirements for Refunding Employer and Employee FICA and FITW

- (1) Generally, the employer has a duty to first "adjust" the employee portion of FICA and RRTA taxes as a condition of receiving a refund for the employer and employee portions of FICA. See *Atlantic Department Stores, Inc. v. United States*, 557 F.2d 957 (2d Cir. 1977). See also Rev. Proc. 81-69, 1981-2 C.B. 726 and Rev. Rul. 81-310, 1981-2 C.B. 241.
- (2) An employer may receive a refund of the employee portion of FICA taxes collected in a year prior to the year in which the refund claim is made only if the taxpayer obtains employee consents or repays/reimburses the employee. Examiners must:

- a. Review Form 94x-X, Part 1, to determine whether the employer wants to correct a previously filed Form 941 using the adjustment process (box 1) or the claim process (box 2). Only one box may be checked.
- b. If the Form 94x-X is an adjusted return, review checkboxes 4a, b, and c to determine whether written statements that the employees have not claimed a refund of the employee FICA are required. If required, the examiner will secure copies from the employer and review them to ensure compliance.
- c. If the Form 94x-X is for a claim for refund or claim for abatement, review checkboxes 5a, b, c, and d to determine whether consents or written statements from employees are required. If required, the examiner will secure copies from the employer and review them to ensure compliance.
- d. Verify with the employer whether they have already filed Forms W-2 and/or Forms W-2c. Take the following actions-

If the employer	Then
Filed Forms W-2/W-2c	Document the filing date in the workpapers
Has not already filed Forms W-2/W-2c	Tell the employer that they must be filed by the last day of January of the following year.
Filed the original Forms W-2 correctly	No Forms W-2c are needed. Document this in the workpapers.

- (3) An employer may correct federal income tax withholding (FITW), backup withholding (BUWH), and Additional Medicare Tax (AdMT) withholding only if the error is discovered in the same calendar year the employer paid wages and repaid or reimbursed the employee the amount of withholding. FITW, BUWH, and AdMT **cannot** be corrected after the close of the calendar year unless the issue constitutes an administrative error. This is true even if FITW, BUWH, or AdMT was erroneously withheld. The claim process can be used for refunds of FITW, BUWH, and AdMT for the prior calendar year only to the extent the amount of the FITW, BUWH, and AdMT overpayment was not actually deducted and withheld from a payee (which would be an administrative error). If a prior year error was a non-administrative error, the employer may correct only the wages and tips subject to FITW or AdMT withholding.
- (4) An employee can claim a refund of any FITW or AdMT that the employer over-withheld on Form 1040, *U.S. Individual Income Tax Return* (or Form 1040-X, *Amended U.S. Individual Income Tax Return*, if the employee already filed Form 1040).

Note: See IRM 4.23.13.10, *Repayments, Reimbursements and Employee Consents*, for additional information on procedural requirements for an employer to receive a refund of the employer and employee portions of FICA tax and any FITW.

4.23.13.2.2
(07-01-2024)
**Statute of Limitation
Considerations**

- (1) A Form 94x-X for an overpayment of tax, must be filed by the taxpayer within the Refund Statute Expiration Date (RSED). The RSED expires three years from the time the original return was filed or two years from the time the tax was paid, whichever period expires later.
- (2) Filing a Form 941x-X does not extend the statute of limitations.
- (3) If a taxpayer files an adjusted employment tax return (marked box 1 of the Form 94x-X) within 90 days of the expiration of the period of limitations on credit or refund (RSED), the adjustment request must be converted to a claim for refund. See Treas. Reg. 31.6413(a)-2(d)(2), Rev. Rul. 2009-39, 2009-52, I.R.B. 951, and IRM 21.7.2.4.6.5, *90 Day — Claim*.
- (4) If the Form 94x-X is an abatement, the RSED **does not** apply.
- (5) If the Form 94x-X is not filed within the RSED it is not timely filed, see IRM 4.23.13.3.1.1, *Full Disallowance of Claim for Refund without Audit Development* for disposition.
- (6) If Form 941x-X was not filed within the three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. See IRC 6511(b)(2)(B).
- (7) A Form 94x-X for an underpayment of tax, follow the Assessment Statute Expiration Date (ASED) of the original filed 94X return.
 - a. The general rule is that the assessment of tax must be made within three years after the return is filed.

Reminder: Employment tax returns reporting FICA tax or FITW for any period ending with or within a calendar year filed before April 15 of the succeeding calendar year are “deemed filed” on April 15 of such succeeding calendar year. See IRC 6501(b)(2) and IRC 6513(c).

- b. Examiners must check the transcript for the original date of filing, and if warranted, take steps to protect the statute date for assessment.
- (8) Examiners are to document the case file that they determined whether the Form 94x-X was timely filed.
- (9) If protecting the statute, use normal audit statute procedures to secure SS-10, *Consent to Extend the Time to Assess Employment Taxes*. See IRM 4.23.14, *Statute Control and Extension*. If not protecting the statute for assessment, written approval must be obtained from the group manager and kept in the case file.
- (10) Appeals will not accept claims with additional or offsetting adjustments unless there is at least 365 days on the ASED when the case is received in Appeals. For purposes of Employment Tax case processing examiners must allow at least 365 days plus:
 - a. 30 days for the taxpayer to response to Letter 5376, *Full or Partial Claim Disallowance Letter-Employment Tax*, and
 - b. An additional 30 days to review the protest, prepare a rebuttal, and close, ship, and process the case through Technical Services before being sent to Appeals.
- (11) Examiners disallowing a claim for refund either in full or in part with an additional adjustment and less than 425 days remaining on the ASED, examiners

will follow IRM 4.23.22.7, *Unagreed Case Procedures – Insufficient Time Remaining on Statute of Limitations*, and IRM 4.8.10.4.6, *Proper Completion of Procedure Requirements*.

4.23.13.2.2.1
(07-01-2024)
Alpha Statute “AA”

- (1) Alpha Code “AA” holds open the statute date up to the amount of the claim, thus the Independent Office of Appeals (Appeals) will accept a claim for refund with an “AA” alpha statute.
- (2) Alpha Statute “AA” **is only used** when:
 - a. The taxpayer does not sign Form SS-10,
 - b. There are less than 180 days remaining on the statute date, and
 - c. The examiner has determined there are no additional issues warranting examination and the examiner is not taking steps to protect the statute date of assessment.

Caution: If a taxpayer files a claim with netted (offsetting) amounts, the statute date should **not** reflect “AA”.

Reminder: Inspect the amended return for adjustments which result in tax increases, which warrant protecting the statute of limitations. For these situations, the “AA” statute would **not** be used.

Note: If there are more than 180 days on the normal statute the statute date **cannot** be updated to “AA.” To close the case to Technical Services (and Appeals) the examiner must notate on Form 3210, *Document Transmittal*, that this is a claim with more than 180 days on the statute so Tech Services (and Appeals) does not return the case.

- (3) Claim for refund or adjust return previously allowed is no longer a claim for refund or adjusted return. The Alpha Statute “AA” may **not** be used.

4.23.13.2.2.2
(07-01-2024)
**Statute of Limitations for
Certain COVID-19
Credits**

- (1) The American Rescue Plan (ARP) allows for a five-year statute of limitations for the following credits in the following applicable quarters:

COVID-19 Credit	2nd Quarter 2021	3rd Quarter 2021	4th Quarter 2021
Employee Retention Credit	No	Yes	Yes
COBRA Premium Assistance Credit	Yes	Yes	Yes

- (2) For these applicable quarters and for these credits only, the limitation period for assessment will not expire before the date that is five years after the later of:
 - a. The date on which the original return that includes the calendar quarter with respect to which the credit is determined is filed, or
 - b. The date on which the return is treated as filed under IRC 6501(b)(2).

- (3) The ARP five-year statute of limitations applies based on when the leave was taken, not when the wages were paid. The five-year period for sick and family leave credits “shall apply only to wages paid with respect to the period beginning on April 1, 2021, and ending on September 30, 2021.” See IRC 3131(h) for additional information. Accordingly, an examiner must first determine when the leave was taken to determine whether a three-year or five-year period of limitations for assessment applies.

Reminder: For other quarters and other issues, the normal three-year period of limitations under IRC 6501 applies. Since your audit may involve issues other than entitlement to COVID-19 credits, examiners should operate under the general presumption that the regular three-year period for assessment applies.

- (4) If the five-year statute of limitation applies to your examination and your manager concurs, then follow IRM 4.23.14.3.1, *Form 895 and Statute Control Procedures*, for proper statute control procedures. The alpha code “RR” - Various Other IRC’s that Override IRC 6501(a) should be used. See IRM 25.6.23-3, *Instructions for Updating the Statute on AIMS*, for additional information.

Note: If there are more than 180 days on the normal statute the statute date **cannot** be updated to “RR.” To close the case to Technical Services (and Appeals) the examiner must notate on Form 3210 that this is a claim with more than 180 days on the statute so Tech Services (and Appeals) does not return the case.

4.23.13.2.2.3
(07-01-2024)
Resolved Claim Issues

- (1) A claim for refund or adjusted return that has been resolved (whether the taxpayer received the refund or it was applied to another balance), the procedures in this IRM do not apply as it is no longer a claim for refund.
- (2) Treat the claim issue as any other exam issue. If it is determined the claim for refund or adjusted return was not allowed or paid incorrectly, include this as issue in your examination to reassess the incorrect amount.
- (3) The recovery by assessment must be done within the assessment statute period and must be assessed by the ASSED. The statute of limitations for assessment must be protected. The use of “AA” as discussed in IRM 4.23.13.2.2.1, *Alpha State “AA,”* is not appropriate.

Note: This is considered a Category C erroneous refund, see IRM 21.4.5.5.4, *Category C Erroneous Refunds* for more information.

4.23.13.2.3
(07-01-2024)
Revenue Base Protection

- (1) Examinations frequently involve claims for refund or adjusted returns where the examiner attempts to prevent the erroneous refund of money to a taxpayer or transfer of credit. It is important to capture examiner time spent on claim activities and similar revenue protection situations on the case activity record, Issue Management System (IMS), and Form 5344, *Examination Closing Record*. This examination activity is “Revenue Base Protection” (RBP).
- (2) The definition of “claim” is a request made by taxpayer that alleges an over-assessment, an overpayment, or both. A claim that alleges an overpayment is a claim for refund, whether the taxpayer also alleges an overassessment. A claim that alleges an overassessment and that does not allege any overpay-

ment, for example, in an underpayment situation, is a claim for abatement. These definitions apply regardless of whether the assessment was made from a filed return or as a result of an examination. Examiners use Source Code “30” for a claim for refund or an adjusted return where some amount of the tax previously assessed and paid would be refunded to the taxpayer or the credit would be transferred to the period in which the “X” adjusted return was filed. These returns require RBP procedures.

- (3) If the assessed liability was not paid in full and the taxpayer does not allege an overpayment, then the claim would be a claim for abatement or an audit reconsideration case. RBP procedures do not apply in these situations. Examiners use Source Code “73” for claims for abatement and audit reconsiderations. RBP Procedures also do not apply if the amounts reflected on the Form 94x-X have already been paid to the taxpayer, since there is no longer a claim.
- (4) When a Form 94x-X is received during an in-process examination and is for the same tax period that is already open, it is up to the examiner to determine if the issues on the Form 94x-X are significant in comparison to the other audit issues being addressed, because the proper allocation of time spent on the case must be allocated between RBP and non-RBP time. IRM 4.4.12.5.34, *Revenue Base Protection Section (Claim for Refund Disallowed)*, provides further clarification when making the determination on whether the Form 94x-X should be considered as RBP.

Note: Generally, the source code will not be changed if a claim for refund or request for abatement is received during an open examination. For more information refer to IRM 4.10.11-5, *Source Codes - Claims for Refund and Requests for Abatement*.

4.23.13.3
(07-01-2024)

Examining Claims for Refund

- (1) When the Form 94x-X, claim for refund, is timely filed and has merit, the examiner will develop the issues just as in any other examination.
- (2) There are eight possible results of a claim for refund:

Result	IRM Subsection
Full Disallowance with no Audit Development	IRM 4.23.13.3.1.1
Full Disallowance with no Additional Tax Adjustment	IRM 4.23.13.3.1.2
Full Disallowance with Additional Tax Adjustment	IRM 4.23.13.3.1.3
Partially Disallowed with no Additional Tax Adjustment	IRM 4.23.13.3.2.1
Partially Disallowed with Additional Tax Adjustment	IRM 4.23.13.3.2.2
Allowed in Full with no Audit Development – Surveyed After Assignment	IRM 4.23.13.3.3.1
Allowed in Full with no Additional Tax Adjustment	IRM 4.23.13.3.3.2
Allowed in Full with Additional Tax Adjustment	IRM 4.23.13.3.3.3

4.23.13.3.1
(07-01-2024)

**Full Disallowance of
Claim for Refund**

- (1) Cases containing claims for refund that are disallowed in full are processed in three different ways:
 - Full disallowance without audit development
 - Full disallowance with no additional tax adjustment
 - Full disallowance with additional adjustment
- (2) The explanation and reason for disallowance must include enough information to enable the taxpayer to challenge the determination.

4.23.13.3.1.1
(07-01-2024)

**Full Disallowance with
no Audit Development**

- (1) In certain situations, the examiner will dispose of the claim for refund without performing any audit actions, if one of the following criteria is met. The claim:
 - a. Is not timely filed,
 - b. Is based solely on alleged unconstitutionality of revenue acts, moral, religious, political, conscientious, or similar grounds,
 - c. Is based on a return stamped "Waiver of Refund" or there is other evidence in the case file indicating that a refund was waived as a consideration in a settlement by the Department of Justice, the Chief Counsel's Office, etc.,
 - d. Relates to a return closed based on a final court order, unless a refund may nevertheless be allowed under specific provisions of the IRC,
 - e. Covers a taxable period in which the tax liability or specific issues were the subject of a final closing agreement under IRC 7121 or in which the tax liability was compromised under IRC 7122 except in statutory exceptions to finality of closing agreements, and claims based on issues not included in prior specific matter closing agreements,
 - f. Is the subject of a request for withdrawal by the taxpayer,
 - g. Requests the examiner to reconsider issues previously considered by Appeals, or
 - h. Requests examiner to reconsider a previously disallowed claim if no additional facts are submitted.
- (2) If issues were previously considered, the examiner will inform the taxpayer that the issues have already been considered and will not be considered if the Form 94x-X:
 - Is based solely on an issue considered in previously examined returns of the claimant who requests in writing the immediate issuance of a statutory notice of claim disallowance, or
 - Raises the same issues that were previously considered in the closing of the case.
- (3) See IRM 4.23.13.3.1.2, *Full Disallowance with No Additional Tax Adjustment*, for forms and letters that need to be prepared.

4.23.13.3.1.1.1
(07-01-2024)

**Withdrawn Claims for
Refund**

- (1) Claims that are withdrawn are still considered filed. The taxpayer is withdrawing their argument or position stated in the claim (for example, the claim issues), unless part of a formal withdraw process such as the Employer Retention Credit Withdrawal Program.
- (2) If the examination is discontinued (or continued but no additional tax is proposed), follow the procedures outlined in IRM 4.23.13.3.1.2, *Full Disallowance with No Additional Tax Adjustment*.

- (3) If the examination is continued with additional tax adjustment, follow the procedures outlined in IRM 4.23.13.3.1.3, *Full Disallowance with Additional Tax Adjustment*.

4.23.13.3.1.2
(07-01-2024)

**Full Disallowance with
no Additional Tax
Adjustment**

- (1) Cases containing claims for refund that are examined and disallowed in full, **with no additional adjustments** (Disposal Code (DC) "01"), must include:

Item	Additional Information
Form 886-A, <i>Explanation of Items</i>	Required for unagreed cases, optional for others.
Form 2297, <i>Waiver of Statutory Notice of Claim Disallowance</i>	Refer to IRM 4.23.13.3.4, <i>Form 2297</i> and Exhibit 4.23.13-3, <i>Instructions for Completing Form 2297</i> .
Form 3363, <i>Acceptance of Proposed Disallowance of Claim for Refund or Credit</i>	Refer to IRM 4.23.13.3.5, <i>Form 3363</i> , and Exhibit 4.23.13-4, <i>Instructions for Completing Form 3363</i> .
Form 4666, <i>Summary of Employment Tax Examination</i>	Refer to IRM 4.23.13.3.6, <i>Form 4666</i> , for language in the "Other information" section.
Letter 5376, <i>Full or Partial Claim Disallowance Letter - Employment Tax</i>	This letter is considered a 30-day letter (see IRM 4.23.22.6, <i>30-Day Letters: Unagreed Case Procedures</i>).
Pub 5, <i>Your Appeal Rights and How to Prepare a Protest if You Disagree</i>	Blank

Note: TE/GE examiners are to refer to IRM 4.70.17.6.5.1, *Employment Tax Cases: Claim Disallowed in Full without Additional Tax Adjustment*, for guidance.

4.23.13.3.1.3
(07-01-2024)

**Full Disallowance with
Additional Tax
Adjustment**

- (1) Cases containing claims for refund that are examined and disallowed in full, **with additional adjustments resulting in an increase in employment tax liabilities** (DC "03" if agreed, DC "07" if appealed, and DC "08" if unagreed without an appeal request), must include:

Item	Additional Information
Form 886-A	Required for unagreed cases, optional for others.
Form 2297	Refer to IRM 4.23.13.3.4, <i>Form 2297</i> and Exhibit 4.23.13-3, <i>Instructions for Completing Form 2297</i> .
Form 3363	Refer to IRM 4.23.13.3.5, <i>Form 3363</i> , and Exhibit 4.23.13-4, <i>Instructions for Completing Form 3363</i> .
Form 4666	Refer to IRM 4.23.13.3.6, <i>Form 4666</i> , for language in the "Other information" section.
Form 4667, <i>Examination Changes - Federal Unemployment Tax</i>	If applicable.

Item	Additional Information
Form 4668, <i>Employment Tax Examination Changes Report</i>	If applicable.
Form 4668-B, <i>Report of Examination of Withheld Federal Income Tax for Withholding Reported on Forms 1099 and W-2G</i>	If applicable.
Form 4668-C, <i>Employment Tax Examination Changes Report - Railroad</i>	If applicable.
Letter 5376,	This letter is considered 30-day letter (see IRM 4.23.22.6, <i>30-Day Letters: Unagreed Case Procedures</i>).
Forms 2504, 2504-S, or 2504-T	Whichever if applicable. Refer to IRM 4.23.10.10.10, <i>Form 2504, Form 2504-S, and Form 2504-T</i> for information on the appropriate version.
Pub 5	Blank
Pub 594, <i>The IRS Collection Process</i>	Blank

Note: TE/GE examiners are to refer to IRM 4.70.17.6.6.1, *Employment Tax Cases: Claim Disallowed in Full with Additional Tax Adjustment*, for guidance.

4.23.13.3.2
(07-01-2024)
**Claim for Refund
Partially Disallowed**

- (1) Cases containing claims for refund that are disallowed in part are processed in two different ways:
 - Partially disallowed with no additional tax adjustment
 - Partially disallowed with additional tax adjustments resulting in an increase in employment tax liabilities
- (2) The explanation and reason for disallowance must include enough information to enable the taxpayer to challenge the determination.

4.23.13.3.2.1
(08-05-2020)
**Partially Disallowed with
no Additional Tax
Adjustment**

- (1) Cases containing claims for refund that are examined and disallowed in part, **with no additional audit adjustments**, will be closed with DC "04" if agreed, DC "07" if appealed, or DC "08" if unagreed without an appeal request. Case files must include:

Item	Additional Information
Form 886-A	Required for unagreed cases, optional for others.
Form 2297	Refer to IRM 4.23.13.3.4, <i>Form 2297</i> and Exhibit 4.23.13-3, <i>Instructions for Completing Form 2297</i> .
Form 3363	Refer to IRM 4.23.13.3.5, <i>Form 3363</i> , and Exhibit 4.23.13-4, <i>Instructions for Completing Form 3363</i> .

Item	Additional Information
Form 4666	Refer to IRM 4.23.13.3.6, <i>Form 4666</i> , for language in the “Other information” section.
Form 4667	If applicable.
Form 4668	If applicable.
Form 4668-B	If applicable.
Form 4668-C	If applicable.
Letter 5376	This letter is considered a 30-day letter (see IRM 4.23.22.6, <i>30-Day Letters: Unagreed Case Procedures</i>).
Forms 2504, 2504-S, or 2504-T	Whichever if applicable. Refer to IRM 4.23.10.10.10, <i>Form 2504</i> , <i>Form 2504-S</i> , and <i>Form 2504-T</i> for information on the appropriate version.
Pub 5	Blank
Pub 594	Blank

Note: TE/GE examiners are to refer to IRM 4.70.17.6.3.1, *Employment Tax Cases: Claim Partially Disallowed without Additional Tax Adjustment*, for guidance.

4.23.13.3.2.2
(07-01-2024)

**Partially Disallowed with
Additional Tax
Adjustment**

- (1) Cases containing claims for refund that are examined and disallowed in part, **with additional audit adjustments resulting in an increase in employment tax liabilities**, will be closed with DC “03” if agreed, DC “07” if appealed, or DC “08” if unagreed without an appeal request. Case files may include:

Item	Additional Information
Form 886-A	Required for unagreed cases, optional for others.
Form 2297	Refer to IRM 4.23.13.3.4, <i>Form 2297</i> and Exhibit 4.23.13-3, <i>Instructions for Completing Form 2297</i> .
Form 3363	Refer to IRM 4.23.13.3.5, <i>Form 3363</i> , and Exhibit 4.23.13-4, <i>Instructions for Completing Form 3363</i> .
Form 4666	Refer to IRM 4.23.13.3.6, <i>Form 4666</i> , for language in the “Other information” section.
Form 4667	If applicable.
Form 4668	If applicable.
Form 4668-B	If applicable.
Form 4668-C	If applicable.

Item	Additional Information
Letter 5376	This letter is considered a 30-day letter (see IRM 4.23.22.6, <i>30-Day Letters: Unagreed Case Procedures</i>).
Forms 2504, 2504-S, or 2504-T	Whichever if applicable. Refer to IRM 4.23.10.10.10, <i>Form 2504, Form 2504-S, and Form 2504-T</i> for information on the appropriate version.
Pub 5	Blank
Pub 594	Blank

Note: TE/GE examiners are to refer to IRM 4.70.17.6.4.1, *Employment Tax Cases: Claim Partially Disallowed with Additional Tax Adjustment*, for guidance.

4.23.13.3.3
(07-01-2024)
**Claim for Refund
Allowed in Full**

- (1) Full allowance of a claim for refund may be:
- Allowed in full without audit development – Surveyed after assignment
 - Allowed in full with no additional tax adjustment
 - Allowed in full with additional tax adjustment

4.23.13.3.3.1
(07-01-2024)
**Allowed in Full with no
Audit Development -
Surveyed After
Assignment**

- (1) Claims for refund may be surveyed after assignment if it is determined that the **claim issue is clearly allowable in full** and the return does not otherwise warrant examination.
- (2) Examiners will prepare Form 2503, *Survey – Excise or Employment Tax*, to briefly explain why the claim is being surveyed.
- (3) Claims must be stamped “Survey after Assignment” and signed/dated by both the examiner and the group manager.
- (4) Letter 570, *Claim Allowed in Full*, is prepared by the examiner, signed by the group manager on behalf of the Chief, Employment Tax and mailed prior to closing the case to Centralized Case Processing (CCP). Form 15292-A, *Employment Tax Case Closing Cover Sheet*, should be used to transmit all paperless cases to Exam CCP.
- (5) The examiner must prepare Form 5344 for cases closed “Survey after Assignment”. A surveyed claim is considered an “examined closure” for AIMS purposes and requires a Form 5344 with a DC 34. A Survey Reason Code is not required. See Exhibit 4.23.13-1, *Form 5344*. TE/GE examiners are to refer to IRM 4.70.17.5, *Claim Survey Before or After Assignment*, for closing procedures.

Note: If the tax module for the period of the claim shows an FTD penalty was assessed, the examiner should inform the taxpayer to submit a Schedule B (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*, (or Form 943-A, *Agricultural Employer’s Record of Federal Tax Liability*, or Form 945-A, *Annual Record of Federal Tax Liability*, as appropriate), so the Failure to Deposit (FTD) penalty can be recomputed at the Campus if the tax is decreased.

Note: TE/GE examiners are to refer to IRM 4.70.17.5, *Employment Tax Cases: Claim Partially Disallowed with Additional Tax Adjustment*, for guidance.

Reminder: TE/GE employees are no longer required to complete Forms 2503, 5596, 5599 or 3198-A or post the forms as separate documents to the RCCMS when surveying a case or claims allowed in full.

4.23.13.3.3.2
(07-01-2024)

**Allowed in Full with no
Additional Tax
Adjustment**

- (1) Case files containing claims for refund that are examined and allowed in full, **with no additional adjustments**, must include:

Item	Additional Information
Form 4666	Refer to IRM 4.23.13.3.6, <i>Form 4666</i> , for language in the “Other information” section.
Form 4667	If applicable.
Form 4668	If applicable.
Form 4668-B	If applicable.
Form 4668-C	If applicable.

Note: TE/GE examiners are to refer to IRM 4.70.17.6.1.1, *Employment Tax Cases: Claim Allowed in Full with no Additional Tax Adjustments*, for guidance.

- (2) Letter 570, *Claim Allowed in Full*, is prepared by the examiner, signed by the group manager on behalf of the Chief, Employment Tax and mailed prior to closing the case to Centralized Case Processing (CCP). Form 15292-A, *Employment Tax Case Closing Cover Sheet*, should be used to transmit all paperless cases to Exam CCP.
- (3) The examiner must prepare Form 5344 for cases closed with no additional audit adjustments. Examiners will use DC **03**. See Exhibit 4.23.13-1, *Form 5344*. TE/GE examiners will complete the RCCMS closing record and refer to IRM 4.70.17.6.1, *Claim Allowed in Full*, for further guidance.

4.23.13.3.3.3
(07-01-2024)

**Allowed in Full with
Additional Tax
Adjustment**

- (1) A claim of refund that is allowed in full with offsetting adjustments which partially reduces the allowed in full claim for refund is considered a “Partially Disallowed Claim for Refund with Additional Audit Adjustments” will follow procedures outlined in IRM 4.23.13.3.2.2, *Partially Disallowed with Additional Tax Adjustments*, with the exception of the language on Form 4666. For the language for Form 4666 see IRM 4.23.13.3.6, *Form 4666*.
- (2) A claim of refund that is allowed in full with offsetting adjustments which reduces the allowed in full claim for refund to zero is considered a “Full Disallowance With Additional Audit Adjustment” will follow procedures outlined in IRM 4.23.13.3.1.3, *Full Disallowance with Additional Audit Adjustment*, with the exception of the language on Form 4666. For the language for Form 4666 see IRM 4.23.13.3.6, *Form 4666*.

- (3) TE/GE examiners are to refer to IRM 4.70.17.6.2.1, *Employment Tax Cases: Claim Allowed in Full with Additional Audit Adjustments*, for guidance.

4.23.13.3.4
(07-01-2024)

Form 2297

- (1) Form 2297 is used when claims for refund or adjusted returns are disallowed in part or whole. Securing this waiver means the IRS is not required to issue a Statutory Notice of Claim Disallowance (Letter 905, *Final Partial Claim Disallowance Letter*, or Letter 906, *Final Full Claim Disallowance Letter*). A signed Form 2297 starts the two-year period for the taxpayer to file suit as allowed in IRC 6532.
- (2) Form 2297 is not applicable for unagreed, fully or partially disallowed requests for abatement, or audit reconsiderations.
- (3) If the Form 2297 is not secured when a claim for refund is proposed for disallowance in whole or in part, and no appeals request was received, close the case to Technical Services for preparation and issuance of a statutory notice of claim disallowance, Letter 905 or 906, by Technical Services. On the Form 3198 under **Forward to Technical Services** the examiner will check the box "Statutory Notice of Claim Disallowance – Letters 905 and 906."
- (4) If a Form 2297 is not secured and the case is appealed, the statutory notice of claim disallowance will be issued after all other administrative action has been concluded. Examiner does not indicate on the Form 3198 under **Forward to Technical Services** that the **Statutory Notice of Claim Disallowance – Letters 905 and 906** is to be issued. The examiner is to check the box on Form 3198 **Unagreed to Appeals**.
- (5) For instructions to complete Form 2297 refer to Exhibit 4.23.13-3, *Instructions for Completing Form 2297*.
- (6) TE/GE examiners are to refer to IRM 4.70.17.6.8, *Completing Form 2297*, for guidance.

4.23.13.3.5
(07-01-2024)

Form 3363

- (1) Form 3363 is requested at the same time as Form 2297. Form 3363 is to be used in "agreed cases" when claims for refund or adjusted returns are disallowed in full or part. By signing Form 3363, the taxpayer accepts the proposal of the IRS to disallow the claim(s) in full or in part.
- (2) In an agreed case where the claim is being disallowed in full or part "with additional adjustments" to the tax liability, both Form 3363 and an examination report should be secured to indicate agreement. See IRM 4.23.13.3.1.3, *Full Disallowance with Additional Tax Adjustments*, and IRM 4.23.13.3.2.2, *Partially Disallowed with Additional Tax Adjustments*. Also see IRM 4.23.13.3.6, *Form 4666*, for information to be included in the remarks section of the report.
- (3) Form 3363 does not waive the taxpayer's right to file suit on the disallowance.
- (4) For instructions to complete Form 3363 refer to Exhibit 4.23.13-4, *Instructions for Completing Form 3363*.
- (5) TE/GE examiners are to refer to IRM 4.70.17.6.9, *Completing Form 3363*, for guidance.

4.23.13.3.6
(07-01-2024)
Form 4666

- (1) Form 4666 must be completed for all examined Form 94x-X claim for refund cases.
- (2) The Form 4666 will include the following statement (Form 941-X used as example): "On (date stamped on 941-X) you filed claim Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, or an informal claim for a refund of \$(amount) for (period/year)."
- (3) In addition, one of the following statements must be included:
 - a. As a result of our examination, we allowed your claim in full, as shown in the attached report.
 - b. As a result of our examination, we allowed your claim in full. The total amount of the refund has been increased or decreased by other adjustments, as shown in the attached report.
 - c. As a result of our examination, we allowed your claim in part, as shown in the attached report.
 - d. As a result of our examination, your claim was disallowed in full.
 - e. On (date) you requested the IRS no longer consider your claim, therefore we are disallowing your claim in full.
- (4) In addition, include any other required language. See IRM 4.23.10.10.7, *Form 4666*, and IRM 4.23.10-1, *Form 4666, Summary of Employment Tax Examination*.

4.23.13.4
(07-01-2024)
**Audit Reconsideration
and Requests for
Abatement**

- (1) Requests for abatement of assessment can be an audit reconsideration (if based on a previous TC30X or TC29X assessment) or a simple request to abate unpaid tax. The only difference in how requests for abatement are processed from an audit reconsideration is the letters used in the closing process.
- (2) Criteria for requesting an audit reconsideration can be found IRM 4.13.1.2.1, *Criteria for Reconsideration*, and IRM 4.10.11.4.1, *Audit Reconsideration – General Requirements*.
- (3) Reasons for an audit reconsideration request:
 - a. The taxpayer did not receive the initial appointment letter, 30-Day Letter with the report, or Letter 3523, *Notice of Employment Tax Determination Under IRC Section 7436*, or
 - b. The taxpayer has new information that, if considered, would change the original assessment, or
 - c. Show the assessment was made as a jeopardy assessment. (See Policy Statement 4-88 at IRM 1.2.1.5.27, *Policy Statement 4-88, Jeopardy assessments to be used sparingly and assessment to be reasonable in amount*.)

Reminder: Additional information on Audit Reconsiderations can be found in IRM 4.13, *Audit Reconsideration*.

- (4) Both audit reconsiderations and requests for abatements require the use of the appropriate employment tax report forms by the examiner (appropriate Form 2504, Form 4666, Form 4668, Form 4667).

Note: Form 3363 and Form 2297 **are not** used.

4.23.13.4.1
(01-08-2016)

**Examining the Issues -
Audit Reconsiderations
and Requests for
Abatement**

- (1) Audit reconsiderations and requests for abatement are administrative procedures available to the taxpayer to reduce taxpayer burden. The IRS does not want to require the taxpayer to pay the assessment and file a claim if there is additional information to be considered.
- (2) The purpose of the audit reconsideration or request for abatement process is to examine information that was not previously considered:
 - a. If the taxpayer presents new information that was not previously considered, evaluate that information and determine if a change to the assessment is warranted. Document workpapers and the activity record. If a change to the assessment is warranted, make that change.
 - b. If the taxpayer cannot or does not present new information in support of their position, do not abate any tax.

4.23.13.4.1.1
(08-05-2020)

**Full Allowance (Full
Abatement of
Assessment) Audit
Reconsideration Only**

- (1) After receipt and evaluation of the taxpayer's information and a full abatement is allowable, the examiner will issue:
 - Letter 2738, *Audit Reconsideration - Allowed in Full*,
 - Form 2504, 2504-S, or 2504-T, whichever if applicable (see IRM 4.23.10.10.10, *Form 2504, Form 2504-S, and Form 2504-T*)
 - Form 4666, (see IRM 4.23.13.3.6, *Form 4666*),
 - Form 4667, if applicable, and
 - Form 4668, if applicable, reflecting the full abatement of tax.
- (2) The case will be closed with the DC "01".

4.23.13.4.1.2
(08-05-2020)

**Full Disallowance (No
Abatement) Audit
Reconsideration Only**

- (1) After receipt and evaluation of the taxpayer's information and it is determined that no abatement is allowable, the examiner will issue:
 - Letter 5182, *Audit Reconsideration - No Changes to Original Assessment*,
 - Form 886-A,
 - Pub 5, and
 - Pub 594.
- (2) The case will be closed with the DC "01," unless the taxpayer provides an appeal request; if appealed, the DC is "07".

4.23.13.4.1.3
(08-05-2020)

**Partial Disallowance
(Partial Abatement)
Audit Reconsideration
Only**

- (1) After receipt and evaluation of the taxpayer's information and it is determined that only part of the abatement is allowable, the examiner will issue:
 - Letter 5183, *Audit Reconsideration - Change to Original Assessment*,
 - Form 2504, 2504-S, or 2504-T, whichever if applicable (see IRM 4.23.10.10.10, *Form 2504, Form 2504-S, and Form 2504-T*)
 - Form 4666, (see IRM 4.23.13.3.6, *Form 4666*),
 - Form 4667 (if applicable),
 - Form 4668 (if applicable),
 - Form 886-A,
 - Pub 594, and
 - Pub 5.
- (2) The case will be closed:
 - DC "04", if agreed,

- DC “07”, if appealed, or
- DC “08,” if the taxpayer does not respond.

Note: If the tax is decreased and the account previously had a FTD penalty, the examiner should inform the taxpayer to submit a new Schedule B (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*, (or Form 943-A, *Agricultural Employer's Record of Federal Tax Liability*, or Form 945-A, *Annual Record of Federal Tax Liability*, as appropriate), so the FTD penalty can be recomputed at the Campus.

4.23.13.4.1.4
(07-01-2024)

**Request for Abatement,
All Closures**

- (1) For all requests for abatement (allowed in full, allowed in part or disallowed in full), Letter 5154, *Employment Tax Reply to Request for Reconsideration of Assessment*, will be used when the report is issued.
- (2) Since a request for abatement is not a claim for refund, claim forms and letters (for example, Form 3363, Form 2297 and Letter 5376) are not used. Disallowed requests for abatement have no appeal rights beyond the group level without paying the tax and filing a claim for refund.

4.23.13.4.2
(07-01-2024)

**Audit Reconsideration -
Appeals**

- (1) Where the taxpayer has responded and provided additional information, consideration by Appeals **will be** afforded if the taxpayer does not agree with the examiner's determination. A 30-Day Letter (Letter 5182 or Letter 5183) and report will be issued to the taxpayer to start the Appeal process.
- (2) Where the taxpayer has not responded or has not provided additional information, consideration by Appeals **will not be** afforded. A Letter 5154 is issued to the taxpayer. Letter 5154 is also used when an adjustment was made to the prior assessment for both a request for abatement and audit reconsideration. The taxpayer is not afforded consideration by Appeals.

4.23.13.4.3
(01-08-2016)

**IRC 3402(d) and IRC
3102(f)(3)**

- (1) For information regarding employer's requests under:
 - IRC 3402(d) - Relief from payment of income tax withholding: These requests constitute abatement claims and are usually handled at a Campus. However, examiners have discretion to accept the Form 4669, *Statement of Payments Received*, and Form 4670, *Request for Relief of Payment of Certain Withholding Taxes*, if completed correctly and provided before the examination is closed to reduce and/or abate the appropriate portion of the assessment as part of their examination report. For additional information, see IRM 4.23.8.4, *IRC 3402(d) - Relief for Employer When Employees Have Paid Income Tax on Wages*.
 - IRC 3102(f)(3) - Relief from payment of Additional Medicare Tax withholding: These requests constitute abatement claims and are usually handled at a Campus. However, examiners have discretion to accept the Forms 4669 and 4670 before the examination is closed to reduce and/or abate the appropriate portion of the assessment as part of their examination report. For additional information, see IRM 4.23.8.4.1, *IRC 3102(f)(3) - Relief for Employer When Employees Have Paid Additional Medicare Tax on Wages*.

4.23.13.5
(07-01-2024)
**Claims Received on
Cases Previously
Considered by Appeals**

- (1) If a claim is received for a case previously closed by Appeals, and clearly falls within the circumstances described in IRM 4.23.13.3.1.1, *Full Disallowance of Claim for Refund without Audit Development*, the claim will be processed as a full claim disallowance. All other claims on cases previously closed by Appeals will be processed as provided in (2) and (3) below. If there is a question as to the action to be taken, retrieve the administrative file and review Appeals' closing documents (for example, Appeals Case Memo (ACM), agreement form, closing letters, etc.). If the case file does not contain the Appeals' closing documents, follow procedures in paragraph (2) for contacting Appeals. See IRM 8.7.7.16, *Reconsideration of Claims for Liabilities Previously Considered by Appeals*, and IRM 4.13.1.4.1.3, *Cases Previously Closed by the IRS Independent Office of Appeals*.
- (2) If the Appeals officer closed the case using a Form 2504 agreement and the claim does not relate to an issue considered during the appeals process, the claim may be processed as though Appeals had not previously acted on the case. However, if the claim relates to an issue considered during the Appeals process, retrieve the administrative file and review Appeals' closing documents. If the case file does not contain the Appeals' closing documents, contact the Appeals Account Resolution (AARS) team to determine if the missing documents were retained on Appeals Centralized Database System (ACDS). Send a secured email request for this information to Appeals at ***AP Inquiries**.
- (3) If the Appeals officer settled and closed the case using Form 2504-AD, *Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment (Employment Tax)*, the claim and case file will not be forwarded directly to Appeals. However, if the claim does not relate to an issue considered during the Appeal process, the claim may be processed as though Appeals had not previously acted on the case.

4.23.13.6
(07-01-2024)
**Request for
Reconsideration of
Disallowed Employment
Tax Claims**

- (1) A claim that has been disallowed in whole or in part will be reconsidered upon submission of additional facts by the claimant, provided such facts are received prior to the expiration of the statute of limitations for bringing suit. If the additional facts submitted warrant reopening of the claim, the claim will be reopened and appropriate adjustments will be made.
- (2) The disposition of a request for reconsideration of a disallowed claim will generally require one of the following types of action:
 - a. Denial of the request for reconsideration.
 - b. Allowance of the issue in whole or in part.
 - c. Entering into an agreement to extend the running of the statutory period of limitations under IRC 6532(a)(2), on a properly executed Form 907. For additional information see IRM 4.23.13.8, *Form 907 - Agreement to Extend the Time to Bring Suit*.
- (3) There is no provision in the IRC or regulations requiring the issuance of a certified notice of denial or disallowance of a claimant's request for reconsideration. Therefore, requests for reconsideration of disallowed claims made on any "X" form, or made otherwise, (such as in a letter, brief, or affidavit), **will not** be treated as original claims. Examiners' reports on requests for reconsideration of disallowed claims must not contain any language from which the claimant may infer that a certified notice of the denial or disallowance will be issued.

- (4) Letter 917, *Reply to Taxpayers Request for Reconsideration of Claim*, is a multipurpose letter. This letter is prepared (with applicable box checked) and issued to inform the taxpayer that the IRS:
- a. Has received their request for reconsideration of a claim.
 - b. Can not consider their request because it did not include any new documentation or information.
 - c. Disallowed the request since the taxpayer entered a final action (for example, a closing agreement, a court order, etc.).
 - d. Can not consider their request since there is insufficient time to complete the reconsideration of your claim before the deadline of filing suit.
 - e. Can not consider their request since it was filed after the deadline for filing suit.
 - f. Is recommending approval of the claim in whole or part.

Note: No action can be taken on a request for reconsidering the claim if the request is based on IRM 4.23.13.3.1.1, *Full Disallowance of Claim for Refund without Audit Development*.

- (5) If there are no changes to the previous determination, a Letter 917 is issued with the appropriate paragraph chosen, a copy will be placed in the case file and the case closed to CCP. This letter is not considered a certified notice of claim disallowance; Letter 905 and Letter 906 are considered statutory notices of disallowance.
- (6) If the request for reconsideration concerns a liability issue previously considered by Appeals, determine how Appeals closed the case and whether the liability issue was closed with finality. See IRM 8.7.7.2.2, *Liability Issues Previously Closed with Finality*. If the liability issue was not previously closed with finality and the taxpayer provides new information, consider the new information and decide whether to allow the claim. If disallowed and unagreed, follow normal 30-day letter procedures. If protested, following Pub 5 requirements, forward the case to Appeals if there is at least 6 months on the period of limitations for instituting suit. If the period of limitations for instituting suit on the disallowed claim will expire in less than 6 months, the case will not be referred to Appeals unless that office agrees to accept jurisdiction or a Form 907, *Agreement to Extend the Time to Bring Suit*, is secured. See IRM 4.23.13.8, *Form 907 - Agreement to Extend the Time to Bring Suit*. The request for reconsideration will be disallowed and a Letter 917 is issued with the appropriate paragraph chosen if either applies: (1) the liability issue was previously closed with finality, or (2) the liability issue was not previously closed with finality, but no new information was provided.
- (7) When the examiner or group manager is notified that a taxpayer has filed suit for recovery of taxes paid in a case involving an open claim for refund of employment tax, the case file will be expeditiously sent to Technical Services. SB/SE ET examiners will attach a Form 3198 to the file instructing Technical Services to issue a statutory notice of claim disallowance before sending the case file to Area Counsel and/or the Office of Chief Counsel. TE/GE will send their cases to Mandatory Review to prepare and issue the statutory notice of claim disallowance before sending the case to Area counsel and/or the Office of Chief Counsel.

4.23.13.7
(07-01-2024)
Adjusted Returns

(1) Forms 94x-X allow the taxpayer to file either:

- An “Adjusted employment tax return”: Box 1, of Part 1, of the Form 94x-X is checked, or
- A “Claim”: Box 2, of Part 1, of the Form 94x-X is checked.

Reminder: While the taxpayer’s selection between the two blocks does not affect how the case is worked by the examiner, it does affect the final processing of the case.

Reminder: TE/GE examiners must refer to IRM 4.70.17.6.7, *Employment Tax Cases: Adjusted Amended Return Resulting in a Credit Balance*, for guidance.

- (2) Returns with the “Adjusted employment tax return” box checked should not result in a refund being issued to the taxpayer. Any credit balance resulting from the exam or processing of the return **MUST** be moved to the period in which the “X” adjusted return was filed. Any credit balance transferred will be completed by using a Form 3870, *Request for Adjustment*, after the amount of the credit is determined.
- (3) If a taxpayer files an adjusted employment tax return within 90 days of the expiration of the period of limitations on credit or refund under IRC 6511, the adjustment request must be converted to a claim for refund. This is referred to as **the 90-day rule**. See Treas. Reg. 31.6413(a)-2(d)(2), Rev. Rul. 2009-39, and IRM 21.7.2.4.6.5, *90 Day — Claim*. This will allow the IRS sufficient time to process the request for an overpayment adjustment.
- (4) The following special procedures must be used for all Forms 94x-X examined if the taxpayer checked the “Adjusted employment tax return” box:

1. Prepare a partial Form 3870. See Exhibit 4.23.13-2, *Instructions for Completion of Form 3870 by the Examiner*.

Note: A copy of the partially completed Form 3870 must be uploaded as a workpaper into IMS or your functions electronic case file.

2. Enter Hold Code “2” in Item 07 on Form 5344. TE/GE examiners enter Hold Code **2** in the Closing Records General tab on RCCMS. This will keep the credit balance from being refunded to the taxpayer.
3. Enter “Adjusted Return involving a Credit Balance” in the “Other instructions” section of the Form 3198, *Special Handling Notice for Examination Case Processing*. TE/GE examiners enter “Adjusted Return involving a Credit Balance” in the comment section on the RCCMS 3198-A Checksheet and on the Comments tab on the RCCMS Closing Record.
4. Close the case using the appropriate procedures based on case disposition, for example, CCP.

Note: For SB/SE employment tax cases worked in Area 212, secure email the Form 3870 to the Employment Tax - Workload Selection and Delivery (ET-WSD) at ***SBSE ET WSD Case Closing Packages** (sbse.et.wsd.case.closing.packages@irs.gov) with the “Form 3870 - Adjusted Return” in the subject line.

- (5) For additional instructions on the examination of Form 94x-X, “Adjusted Return,” see:

- IRM 4.23.13.3.1, *Full Disallowance of Claim for Refund*
- IRM 4.23.13.3.2, *Partial Disallowance of Claim for Refund*
- IRM 4.23.13.3.3, *Full Allowance of Claim for Refund*

4.23.13.8
(08-05-2020)

**Form 907 - Agreement to
Extend the Time to
Bring Suit**

- (1) The issuance of a statutory notice of claim disallowance, or the receipt of the Form 2297, starts the two-year period in which the taxpayer can file suit in court for payment of the denied requested refund. IRC 6532 allows for the two-year period.
- (2) Under IRC 6532(a)(2), the period of limitations for filing suit on a disallowed claim may be extended. Carefully consider the need to extend the time for filing suit. The following are examples of satisfactory reasons for extending the time for filing suit under IRC 6532:
 - a. If the disposition of a request for reconsideration of a disallowed claim is contingent on a pending court decision, the taxpayer should be given the opportunity of submitting a properly executed Form 907.
 - b. The IRS had under consideration a change in position requiring the suspension of action in all similar cases.
 - c. When an extension will prevent possible inequities to taxpayers.
- (3) The taxpayer and the IRS may extend the time for filing suit by executing Form 907 if the parties execute the form before the two-year statute of limitations period for filing a suit in court expires. The requested new expiration date should not be a date more than two years from the expiration of the statute.
- (4) Successive Forms 907 may be executed by the IRS and the taxpayer to extend the period to file a refund suit, if each extension is executed before the period previously agreed upon has expired.
- (5) Two original Forms 907 must be signed by:
 - The taxpayer or an attorney, agent, trustee, or other fiduciary acting on the taxpayer's behalf pursuant to Form 2848, *Power of Attorney*, and
 - The Internal Revenue Service. See IRM 1.2.65.3.9, *SBSE 1-23-24, Authority to Sign Agreements to Extend the Running of the Period of Time to Bring Suit* for signature authority and delegation, for information on the delegation of signing authority.

Note: Rev. Rul. 76-60, 1976-1, C.B. 367, requires the inclusion of special language on Form 2848 to authorize an individual to sign Form 907 on the taxpayer's behalf.
- (6) After both agreements are signed, the second original is sent to the taxpayer.

4.23.13.9
(08-05-2020)

**Appeals to the Federal
Courts**

- (1) Taxpayers who disagree with IRS findings after the Appeals conference or taxpayers choosing to forgo the appeals process are generally entitled to take their case to:
 - U.S. District Court,
 - U.S. Court of Federal Claims,
 - Bankruptcy Court, and in some cases,
 - U.S. Tax Court.

Each of these courts is independent of the IRS. Different procedures and time limits apply on which court will hear the case.

- (2) Generally, the United States Tax Court does not have jurisdiction over employment tax cases. However, the United States Tax Court does have jurisdiction over certain IRC 7436 cases. See IRC 7442. Employment tax cases can also end up in Tax Court through Collection Due Process hearings.
- (3) The taxpayer may litigate other types of employment tax cases in either the United States District Court or the United States Court of Federal Claims. Before taxpayers can initiate suit in either of these courts, they will have to pay, at a minimum, the employment tax assessment attributable to one employee for any one quarter and file a claim for refund of the tax. Once the claim for refund is denied or six months elapse after filing the Form 94x-X without any action by the IRS, the taxpayer may initiate suit.

Note: See Pub 5, *Your Appeal Rights and How to Prepare a Protest if You Disagree*.

4.23.13.10
(07-01-2024)
**Repayments,
Reimbursements and
Employee Consents**

- (1) An employer has a duty to ensure that its employees' rights to recover overpaid taxes that were withheld are protected. See Treas. Reg. 31.6402(a)-2(a)(2), Treas. Reg. 31.6413(a)-1, and Rev. Rul. 81-310, 1981-2, C.B. 241.
- (2) The employer's certifications on the "X" forms address the requirement to:
 - a. Repay or reimburse employees for the overcollection of taxes, or
 - b. Obtain consents from employees to file a claim on their behalf.

Note: An employer "reimburses" an employee by applying the overwithheld amount against taxes to be withheld on future wages.
- (3) With respect to amounts of social security and Medicare taxes collected in a prior year, the employer must obtain a written statement from the employee certifying that the employee has not made any previous claims (or the claims were rejected) and will not make any future claims for refund or credit of the amount of the overcollection. See Treas. Reg. 31.6402(a)-2(a)(2)(ii) and Treas. Reg. 31.6413(a)-1(a)(2)(v).
- (4) For overcollected FITW and AdMT, the employer is required to repay or reimburse the employee prior to the end of the calendar year in which the wages were paid or an adjustment may not be made to correct the error. See Treas. Reg. 31.6413(a)-1(a) and (b).
- (5) IRC 6414 permits refunds of FITW to an employer only to the extent the amount of the FITW overpayment **was not** actually deducted and withheld from an employee. Similarly, under Treas. Reg. 31.6402(a)-2(a)(1)(iii), employers may claim a refund of overpaid AdMT only if the employer did not withhold the overpaid AdMT from the employee's wages.

Note: An employee may claim a refund of overpaid FITW and AdMT on Form 1040 or if the employee has filed Form 1040, on Form 1040-X.

- (6) For adjusted returns, the employer must retain appropriate records to reflect that the employee has been repaid or reimbursed. The employer must obtain

and retain the written receipt of the employee showing the date and amount of the repayment or the evidence of reimbursement. For purposes of overpayment adjustments of employee FICA taxes overcollected in a prior year, the employer must also obtain and retain the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount.

- (7) For adjusted returns, the requirement to repay or reimburse does not apply to the extent that the taxes were not withheld from the employee. Nor do they apply if, after having made reasonable efforts, the employer cannot locate the employee or, for prior year FICA taxes, the employee did not provide the required written statement. If, after the employer's reasonable efforts to secure the required written statement the employee does not furnish it, the employer may make an adjustment of the overpaid employer FICA taxes.
- (8) For claims, the employer must retain appropriate records reflecting that it has repaid or reimbursed its employee or obtained the employee's consent. The employer must obtain and retain the written receipt of the employee showing the date and amount of the repayment, the evidence of reimbursement, or the written consent of the employee. For purposes of claims for refund of employee FICA taxes overcollected in a prior year, the employer must also obtain and retain the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection or, if so, such claim has been rejected and that the employee will not claim refund or credit of the amount.

Note: Under Treas. Reg. 31.6402(a)-2(a)(1)(iii), employers may claim a refund of overpaid AdMT only if the employer did not withhold the overpaid AdMT from the employee's wages. Thus, the rules for employee consents are not applicable to overpayments of AdMT.

- (9) For claims, generally, if the employer has not repaid or reimbursed an employee, a refund for the employer share of the overpaid FICA taxes will not be allowed unless the employer has secured the employee's consent and included a claim for the refund of the employee share. However, these requirements do not apply if, after the employer's reasonable efforts to obtain the employee's consent (including any required written statement), the employer cannot locate the employee or the employee does not furnish either the employee consent or a response indicating that the employee is not authorizing the employer to claim a refund of FICA taxes on his or her behalf. In these cases, the employer may claim a refund of the overpaid employer share of the tax but may not obtain a refund of the employee share.
- (10) Under *Chicago Milwaukee Corp. v. U.S.*, 40 F.3d 373 (C.A. Fed. 1994), an employer need not repay or reimburse its employees or obtain the employees' consents for the filing of a refund claim prior to filing the claim, for the claim to be valid. For example, the Instructions for Form 941-X indicate that an employer may not have repaid or reimbursed its employees or obtained their consents prior to filing a claim, in cases where the period of limitation on credit or refund is about to expire. However, the employer must repay or reimburse its employees or obtain the employees' consents before the IRS can grant the claim.

- (11) Rev. Proc. 2017-28, 2017-17 I.R.B 1061, provides guidance to employers on the requirements for employee consents used by an employer to support a claim for refund of overpaid taxes under the FICA and the RRTA. It provides the basic requirements for both the request for a consent and for the employee consent itself, and permits a consent to be requested, furnished, and retained in an electronic format as an alternative to a paper format. It also contains guidance concerning what constitutes **reasonable efforts** if employee consent is not secured to permit the employer to claim a refund of the employer share of overpaid FICA and RRTA.

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Exhibit 4.23.13-1 (08-05-2020)
Form 5344

The items completed on Form 5344 are dependent on whether the Form 94x-X is an “Revenue Base Protection” (RBP) Claim. RBP is required when the claim received would result in a refund of money to the taxpayer if the amount claimed was allowed in-full or in-part. When claims for refunds are received during an in-process examination and are for the same tax periods that are already open, it is up to the examiner to determine if the issues on the Form 94x-X are significant in comparison to the other audit issues being addressed.

RBP procedures do **not** apply to claims for abatement, audit reconsiderations, or adjusted returns where any refund would be applied to a subsequent quarter. They also do not apply if the amounts reflected on the Form 94x-X have already been paid to the taxpayer since there is no longer a claim.

If the examiner determines the claim is RBP, then the examination time must be split between regular exam time (time spent on issues not reflected on the Form 94x-X) and RBP time (time spent on issues on the Form 94x-X) and the following items must be completed:

- Item 21: Amount Claimed (dollars claimed)
- Item 22: Dollars Protected (the amount of the claim disallowed)
- Item 23: RBP Hours (time charged)
- Item 24: Claim Type (“L” is used for employment tax claims)

How the time is captured depends on whether a refund would be due to the taxpayer if the claim were to be allowed in-part or in-full. If the reduction in tax were allowed in-full or in-part and there is no money that is to be refunded to the taxpayer, these are not claims for refund for purposes of RBP procedures. They are either a “request for abatement” of unpaid tax, or an “audit reconsideration”, if based on a prior examination adjustment. The examination time would be captured as regular examination time.

- If the tax assessment is partially paid, a subsequent claim might result in part refund and part abatement. IRM 4.4.12.5.34, *Revenue Base Protection Section (Claim for Refund Disallowed)* provides an example of a part refund/part abatement allocation to help determine the amount of the claim to be considered as RBP.
- Time spent on “affirmative issues” presented by a taxpayer during an examination is often considered RBP time. If allowing the affirmative issue(s) would result in the refund of a previously paid tax, examining these issues would be RBP time.
- Occasionally, time spent examining an original return can be considered RBP time. If the original return refund has been frozen pending an examination, any time spent examining the issue related to the frozen refund is considered RBP time.

Note: “Affirmative Issue”: Issue information that is supplied by the taxpayer that could result in either a decrease to taxpayer’s taxable income or an increase to allowable credits. (Taxpayer’s favor)

Exhibit 4.23.13-2 (11-02-2012)**Instructions for Completion of Form 3870 by the Examiner**

This form will be completed in ALL cases involving a Form 94x-X where the taxpayer has marked “Adjusted Employment Tax Return” in Part 1 of the form.

Complete all pertinent information in Blocks 1 through 10

Complete Block 11 as follows: “The Taxpayer filed a Form 94x-X requesting an adjustment on *Date1*. Please input the following credit transfer: **From:** *MFT: XX, Tax Period: XXXXXX, Transaction Code: 830, Date2: XX/XX/XX. Amount: \$ XXXX. To: MFT: XX, Tax Period: XXXXXX, Transaction Code: 710, Date3: XX/XX/XX Amount: \$ XXXX.*”

Legend for Form 3870 Block 11 wording:
<i>94x-X:</i> The specific type of “X” return (941-X, 943, 944-X, 945-X, CT-1X that was filed)
<i>Date1:</i> The date the “X” return was received by the IRS
<i>MFT:</i> The specific MFT for the type of return
<i>Tax Period:</i> The specific taxpayer period
<i>Date2:</i> The due date of the return for which the Form 94x-X is filed
<i>Date3:</i> The 1st day of the quarter in which the Form 94x-X is filed
<i>Amount:</i> The examiner will never complete the Amount. This will be completed by Employment Tax - Workload Selection and Delivery (ET-WSD) once the case is closed.

Example: A Form 941-X with the adjusted return block checked for the 202209 quarter. The return is received by the IRS on September 21, 2023. The audit results in a credit of \$1,000. The wording in Block 11 of Form 3870 would be: “The taxpayer filed a Form 941-X for the period above on 9/21/2023. Please input the following credit transfer: From: MFT 01, Tax Period 202209, Transaction Code: 830, Date 10/31/2022, Amount: \$ _____. To: MFT 01, Tax Period 202309, Transaction Code: 710, Date 7/1/2023, Amount: \$ _____.”

Exhibit 4.23.13-3 (07-01-2024)**Instructions for Completing Form 2297**

Form 2297 is used when a claim for refund or adjusted return is disallowed in part or whole.

- a. Enter the name, EIN, and address of taxpayer where indicated.
- b. Taxable Period Ended - list each year for which a claim has been filed and disallowed in part or in full.
- c. Kind of tax - enter the type of tax covered by the return under examination, such as "Employment Tax." It is not necessary to show the return under examination, form number, or the type of income.
- d. Amount of Claim - enter the amount of refund requested in the claim (Form 94x-X) filed by the taxpayer.
Note: Netting a Form 94x-X overpayment with a Form 94x-X underpayment is permitted for the same tax period. The underpayment and overpayment must be presented separately on the Form 4666 "Other information" section.
- e. Amount of Claim Disallowed - enter the amount of the claim disallowed where indicated.
- f. Signature - see the instructions on the form.

Exhibit 4.23.13-4 (07-01-2024)**Instructions for Completing Form 3363**

Form 3363 is to be used in “agreed cases” when a claim for refund or adjusted return is disallowed in full or part. By signing Form 3363, the taxpayer accepts the proposal of the IRS to disallow the claim in full or in part. Form 3363 does not waive the taxpayer’s right to file suit on the disallowance

- a. Enter the name, EIN, and address of taxpayer where indicated.
- b. Year or Period - list each year for which a claim has been filed and disallowed in part or in full.
- c. Date Claim Filed - enter date Form 94x-X was filed,
- d. Kind of tax - enter the type of tax covered by the return under examination, such as “Employment Tax.” It is not necessary to show the return under examination, form number, or the type of income.
- e. Amount of Claim - enter the amount of refund requested in the claim (Form 94x-X) filed by the taxpayer.
- f. Amount of Claim Disallowed - enter the amount of claim disallowed per the examination report.
- g. Amount of Claim Allowed - enter the amount of claim allowed per the examination report.
- h. Signature - see the instructions on the form.