



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.23.14

JANUARY 9, 2025

## EFFECTIVE DATE

(01-09-2025)

## PURPOSE

- (1) This transmits revised IRM 4.23.14, Employment Tax, Statute Control and Extension.

## MATERIAL CHANGES

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

Number	SUBSECTION	CHANGE
1.	IRM 4.23.14.1	Revised the subsection title to “Program Scope and Objectives” to be consistent with IRM 1.11.2.2.4, Address Management and Internal Controls.
2.	IRM 4.23.14.1.2	Updated paragraph (3) due to the reorganization that resulted in one Deputy Commissioner.
3.	IRM 4.23.14.1.3	Revised the subsection title to “Roles and Responsibility” to be consistent with IRM 1.11.2.2.4, Address Management and Internal Controls.
4	IRM 4.23.14.1.4	Revised the subsection title to “Program Management and Review” to be consistent with IRM 1.11.2.2.4, Address Management and Internal Controls. Updated paragraph (1) for clarity.
5.	IRM 4.23.14.1.5	Added new subsection titled “Program Controls” to document the reviews and quality assurance activities associated with the Employment Tax Program and to be consistent with IRM 1.11.2.2.4, Address Management and Internal Controls. All subsequent subsections were renumbered.
6.	IRM 4.23.14.1.7	Updated paragraph (1) due to the reorganization that resulted in the name change of Wage and Investment to Taxpayer Services. Updated for clarity and website addresses paragraphs (3) and (5). Added paragraph (6) that provides the responsibility for civil penalty programs is assigned to Office of Servicewide Penalties (OSP).
7	IRM 4.23.14.5	Revised paragraph (8) to be consistent with IRM 10.10.1.6.1, Accepting Images of Signatures and Digital Signatures in Certain Taxpayer Interactions, and IRM 11.3.2.3.2, Requirements for Verbal or Electronic Requests.

- (2) Replaced URL/web address to internal sites with a hyperlink.
- (3) Editorial, typographical, and technical changes have been made throughout this section. Organization titles and symbols were updated.

## **EFFECT ON OTHER DOCUMENTS**

IRM 4.23.14 dated June 14, 2023, is superseded.

## **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.

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4.23.14

Statute Control and Extension

## Table of Contents

4.23.14.1 Program Scope and Objectives

4.23.14.1.1 Background

4.23.14.1.2 Authority

4.23.14.1.3 Roles and Responsibilities

4.23.14.1.4 Program Management and Review

4.23.14.1.5 Program Controls

4.23.14.1.6 Acronyms

4.23.14.1.7 Related Resources

4.23.14.2 Period of Limitation for Assessment

4.23.14.2.1 Additional Medicare Tax: Wages Paid by an Employer

4.23.14.2.2 Additional Medicare Tax (AdMT) under IRC 3101(b)(2)

4.23.14.2.2.1 Period of Limitation for Assessment – Employer’s Liability for AdMT – Form 941

4.23.14.2.3 Period of Limitation for Assessment - Employee Liability for AdMT - Form 1040

4.23.14.2.4 Additional Medicare Tax (AdMT) under IRC 1401(b)(2): Self-Employment Income

4.23.14.2.5 Individual Subject to Both AdMT and SECA

4.23.14.3 Statute Control and Extension of Statutory Assessment Period

4.23.14.3.1 Form 895 and Statute Control Procedures

4.23.14.3.2 Statute Controls for Offer-in Compromise, Doubt as to Liability (OIC-DATL) Cases

4.23.14.4 Closing Cases With Short Statutes

4.23.14.5 Form SS-10, Consent to Extend the Time to Assess Employment Taxes

4.23.14.5.1 Consent to Extend the Time to Assess Additional Medicare Tax (AdMT)

4.23.14.5.2 Face-to-Face Consent Delivery

4.23.14.6 Employee’s Share of FICA

4.23.14.6.1 Schedule H

4.23.14.7 Form 2750, Waiver Extending Statutory Period for Assessment of the Trust Fund Recovery Penalty

4.23.14.8 Form 4016, Consents Fixing Period of Limitation Upon Assessment of Employment or  
Miscellaneous Excise Taxes Against Transferee

4.23.14.9 Form 872, Consent to Extend the Time to Assess Tax, for Form 1042

4.23.14.10 Protective Assessments

4.23.14.11 Barred Statutes

4.23.14.12 Penalties under IRC 6721 and 6722



4.23.14.1  
(01-09-2025)  
**Program Scope and Objectives**

- (1) **Purpose:** This section explains the procedures for statute control and extension periods on employment tax returns, including those filed for reporting the taxes due under the following:
  - Federal Insurance Contributions Act (FICA)
  - Federal Unemployment Tax Act (FUTA)
  - Railroad Retirement Tax Act (RRTA)
  - Federal Income Tax Withholding (FITW)
  - Backup Withholding (BUWH)
- (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 issues.
- (3) **Policy Owner:** Director, Specialty Examination Policy of the Small Business/Self-Employed Division.
- (4) **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.
- (5) **Primary Stakeholders:**
  - Employment Tax – Workload Selection and Delivery (ET-WSD)
  - Specialty Examination - Employment Tax

4.23.14.1.1  
(08-24-2017)  
**Background**

- (1) Returns filed under the employment tax provisions have unique statute of limitation and statute control requirements. This IRM discusses those unique procedures and issues. In addition, this revision of the IRM reflects the changes to IRC 7436 procedures.

4.23.14.1.2  
(01-09-2025)  
**Authority**

- (1) 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 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, *IMD Search Servicewide Delegation Orders*, provides a searchable list of Servicewide Delegation Orders issued by the Commissioner of the Internal Revenue, or on their behalf by the Deputy Commissioner. Delegation Orders pertaining to each IRS business process can be found in IRM 1.2.2 , 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.

4.23.14.1.3  
(01-09-2025)

**Roles and 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.
- (3) Chief, Employment Tax Examination, is responsible for ensuring examiners follow the guidance included in this IRM.

4.23.14.1.4  
(01-09-2025)

**Program Management and Review**

- (1) Program Goals: The processes and procedures provided in this IRM are consistent with the objectives or goals addressed in IRM 1.1.16.5.3.3, Employment Tax Examination and IRM 1.1.16.5.5.2.2, 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: 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) Program Reports: Information regarding the reporting of program objectives are included on, but not limited to, the following reports submitted to the Director, Specialty Examination Policy:
  - Headquarters Examination Monthly Briefing,
  - Program Manager Monthly Briefing,
  - Examination Operational Review, and
  - Business Performance Reviews.
- (5) The Quarterly Business Performance Review (BPR) provides updates on the status of the Whistleblower claims in Operating Division SME status.

4.23.14.1.5  
(01-09-2025)

**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.
- (6) The delegated authorities for the IRS under the control of SB/SE Specialty Exam Policy - Employment Tax are-
  - IRM 1.2.2.5.39, Delegation Order 4-50 (Rev. 1), Voluntary Classification Settlement Program (VCSP) Applications,
  - IRM 1.2.2.8.13, Delegation Order 7-13 (Rev. 2) (formerly DO-248, Rev. 1), Authority to Accept Classification Settlement Program (CSP) Offers and to Execute the Pro Forma Closing Agreements on CSP Issues, and
  - IRM 1.2.2.15.19, Delegation Order 25-19 (Rev. 1), Professional Employer Organization (PEO) Certification.

4.23.14.1.6  
(08-24-2017)  
**Acronyms**

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

Acronym	Definition
AdMT	Additional Medicare Tax
AIMS	Audit Information Management System
ASED	Assessment Statute Expiration Date
BUWH	Backup Withholding
CCP	Centralized Case Processing
DATL	Doubt as to Liability
EO	Exempt Organizations
ERCS	Examination Returns Control System
ETER	Employment Tax Examiner's Report
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FSL/ET	Federal, State & Local/ Employment Tax Area
FUTA	Federal Unemployment Tax Act

Acronym	Definition
ITG	Indian Tribal Governments
LB&I	Large Business & International
OIC	Offer in Compromise
Pub	Publication
RCCMS	Reporting Compliance Case Management System
RRTA	Railroad Retirement Tax Act
SB/SE	Small Business/Self-Employed
SECA	Self-Employment Contributions Act Tax
SE Tax	Self-Employment Tax
SFR	Substitute for Return
SOL	Statute of Limitations
TE/GE	Tax Exempt and Government Entities
TEGEDC	Tax Exempt and Government Entities Division Counsel
TS	Taxpayer Services
TFRP	Trust Fund Recovery Penalty
TIPRA	Tax Increase and Prevention Reconciliation Act (of 2005)



4.23.14.1.7  
(01-09-2025)

**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 owned by SB/SE Specialty Examination 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 4.7.3	Examination Returns Control System (ERCS) - Statute of Limitations	This section contains information regarding the establishment of and requirements for control of the Assessment Statute Expiration Date (ASED) for returns controlled on ERCS.
IRM 20.1.7	Penalty Handbook - Information Return Penalties	This section provides policy and procedures for the application of information return penalties per IRC 6721, 6722, and 6723. It also discusses reasonable cause criteria per IRC 6724.
IRM 25.6.1	Statute of Limitations - Statute of Limitations Processes and Procedures	This section provides an introduction to the establishment and awareness of Statute of Limitations

Source	Title	Description of Guidance
IRM 25.6.22	Statute of Limitations - Extension of Assessment Statute of Limitations by Consent	This section discusses extensions of the period of time for assessment of tax by consent.
IRM 25.6.23	Statute of Limitations - Examination Process - Assessment Statute of Limitations Controls	This section contains information on assessment statute controls for all LB&I, SB/SE and TS organizational components conducting examinations of tax returns, including supporting activities and examination activities conducted by the campuses.
IRM 5.7.3	Trust Fund Compliance - Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP)	This chapter provides guidance for Collection employees on the basis of the Trust Fund Recovery Penalty (TFRP) liability and information regarding the TFRP ASSED.

- (2) 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 accordance with taxpayer rights. See IRC 7803(a)(3). For additional information about the TBOR, see *Taxpayer Bill of Rights*.
- (3) Helpful information sources include:
- *SB/SE Employment Tax Small Business Knowledge Base* provides guidance, resources and information for examiners to aid in raising, developing, and resolving employment tax issues.
  - *Specialist Referral System* can be used by any employee, regardless of operating division. In addition to requesting assistance or a referral, SRS may be used to submit informal questions or to request a consultation with an employment tax specialist to discuss employment tax potential in an examination.
  - A list of SB/SE Employment Tax Policy Analysts, including their contact information and program assignments, is found at: *Employment Tax Policy Contacts* provides contact information and program assignments for SB/SE Employment Tax Policy Analyst.

- (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 assistance to taxpayers when they face financial difficulties due to an IRS problem, when they are unable to resolve tax problems 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) 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*.
- (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*.

4.23.14.2  
(05-08-2020)  
**Period of Limitation for  
Assessment**

- (1) **General Rule** Federal employment taxes must be assessed within three years after the return is filed for FICA, FUTA, RRTA, FITW, and BUWH purposes. A proceeding in court for collection of such taxes may not begin following the expiration of the three-year period unless assessment of such taxes has occurred within such three-year period **or** IRC 7436 procedures are applicable.
- (2) The period of limitation is measured from the date the return is filed. Any return filed prior to the last day prescribed for the filing of such return is considered as filed on such last day. See Treas. Reg. 301.6501(a)-1 and (b)-1; IRC 6501(a) and (b).

**Note:** For a discussion of Additional Medicare Tax (AdMT) statute considerations, see IRM 4.23.14.2.3 and IRM 4.23.14.2.4.

- (3) **Presumptive Rule** Forms 941, Employer's Quarterly Federal Tax Return, are filed quarterly. 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 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, are filed annually. For purposes of the statute of limitations, IRC 6501(b)(2) provides a "deemed" filing date for taxes imposed by the following chapters of the Internal Revenue Code:
  - a. Chapter 3: Withholding of Tax on Nonresident Aliens and Foreign Corporations.
  - b. Chapter 21: Federal Insurance Contributions Act.
  - c. Chapter 24: Collection of Income Tax at Source on Wages.

**Note:** Any Form 941, Form 943, Form 944, Form 945, or Form 1042 filed for any period ending with or within a calendar year before April 15 of the succeeding year is deemed filed on April 15th of the succeeding year, even if the

return is required to be filed prior to that date. If the return is filed after April 15th of the succeeding calendar year, the period of assessment is three years from the date the return is filed. See IRC 6501(b)(2) and Treas. Reg. 301.6501(b)-1(b).

**Note:** Withholding tax returns under Chapter 3, (e.g., Form 1042), are income tax returns under Subtitle A and not employment tax returns under Subtitle C. Revenue agents use Form 4549, Income Tax Examination Changes, as the report form.

- (4) The Presumptive Rule does not apply to returns reporting FUTA taxes (Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return) or RRTA taxes (Form CT-1, Employer's Annual Railroad Retirement Tax Return). Form 940 is an annual return due January 31 of the next calendar year. Any return filed prior to January 31 is treated as if it were filed on January 31. If the return is filed on or after January 31 of the next calendar year, the period in which to assess is measured from the date the return is actually filed. Form CT-1 is an annual return due the last day of February of the next calendar year. Any return filed prior to this date is treated as if it were filed on the last day of February. If the return is filed on or after the last day of February of the next calendar year, the period in which to assess is measured from the date the return is actually filed.
- (5) Returns executed by Area Directors or other IRS personnel under authority of IRC 6020(b) do not start the running of the statutory period of limitations on assessment and collection. See IRC 6501(b)(3) and Treas. Reg. 301.6501(b)-1(c).
- (6) The following are among other exceptions to the statute of limitations rules found in IRC 6501(c):
  - a. False or fraudulent return, IRC 6501(c)(1)
  - b. Willful attempt in any manner to defeat or evade tax, IRC 6501(c)(2)
  - c. Failure to file a return, IRC 6501(c)(3)
  - d. Extension by agreement, IRC 6501(c)(4)
- (7) See IRM 25.6.1.9.4, Returns That Begin the Period of Limitations, to determine what is a valid return which would start the running of the statute of limitations. See IRM 25.6.1.9.4.1, Valid Return, paragraph (2), if the taxpayer filed a return on the wrong tax form.
- (8) The statute of limitations for civil penalties is found in IRM 20.1.7.12.2.8, Civil Penalties Statute of Limitations.

4.23.14.2.1  
(05-08-2020)

**Additional Medicare Tax:  
Wages Paid by an  
Employer**

- (1) The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, H.R. 3590, 111th Cong. (2010) (Affordable Care Act), added IRC 3101(b)(2). IRC 3101(b)(2) imposes an additional Medicare tax (AdMT) of 0.9 percent on an individual's FICA wages received in any taxable year beginning after December 31, 2012, which are in excess of certain threshold amounts. AdMT is distinct from Medicare tax in that AdMT is imposed only on wages that exceed a threshold amount based on the filing status of the individual.
- (2) AdMT is imposed only on an individual; there is no employer portion of AdMT.

- (3) IRC 3102(f)(1) provides that an employer must withhold AdMT from wages it pays to an individual in excess of \$200,000 in a calendar year, without regard to any wages received by the individual's spouse.
- (4) IRC 3102(f)(2) specifies that to the extent AdMT is not withheld by the employer, the employee must pay the tax.
- (5) IRC 3102(f)(3) provides that if an employer fails to withhold AdMT, and the tax is subsequently paid by the employee, the IRS will not collect the tax from the employer. IRC 3102(f)(3) specifies, however, that the employer would remain subject to any applicable penalties or additions to tax for failure to withhold AdMT as required.
- (6) AdMT applies to Railroad Retirement Act compensation to railroad employees and employee representatives in the same manner as FICA tax (IRC 3201(a) and IRC 3211(a)).

4.23.14.2.2  
(05-08-2020)  
**Additional Medicare Tax  
(AdMT) under IRC  
3101(b)(2)**

- (1) The AdMT imposed under IRC 3101(b)(2) is an employment tax imposed under subtitle C and is not subject to the deficiency procedures under IRC 6211 to IRC 6213. IRC 6211(a) limits the term "deficiency" to income, estate, and gift taxes imposed under subtitles A and B and certain excise taxes. Therefore, the Tax Court's deficiency jurisdiction does not extend to the amounts owed under IRC 3101(b)(2).
- (2) Because the AdMT imposed under IRC 3101(b)(2) is not subject to the deficiency procedures, the IRS should not issue a notice of deficiency with respect to these taxes.

4.23.14.2.2.1  
(05-08-2020)  
**Period of Limitation for  
Assessment –  
Employer's Liability for  
AdMT – Form 941**

- (1) The employer reports AdMT **withheld** on Form 941, so the statute of limitations period with regard to the assessment of the **employer's liability** for that **withholding** obligation runs with the filing of the Form 941. Form 941 does not include information concerning employee filing status, employee wages from other sources, and employee spouse wages, and does not provide sufficient information to allow the IRS to compute an individual taxpayer's liability for the AdMT imposed by IRC 3101(b)(2). Since the individual's Form 1040 (or other individual tax return as appropriate), includes this information, the filing of an individual's Form 1040 starts the running of the limitations period for the assessment of the employee's liability for the AdMT on wages imposed by IRC 3101(b)(2).

**Note:** AdMT rules are similar for Form 943 and Form 944.

- (2) 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**. See Treas. Reg. 31.3102-4(a). However, individual liability for AdMT on wages can and often does differ from the amount of AdMT withheld by an employer because individual AdMT liability is calculated based on the Form 1040 filing status.

4.23.14.2.3  
(05-08-2020)

**Period of Limitation for Assessment - Employee Liability for AdMT - Form 1040**

- (1) The filing of an individual's Form 1040 starts the running of the limitations period for the assessment of the employee's liability for the AdMT on both wages paid by an employer (IRC 3101(b)(2)), as well as on self-employment income (IRC 1401(b)(2)(A)). The individual's liability for AdMT 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). 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, U.S. Individual Income Tax Return) 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.

4.23.14.2.4  
(05-08-2020)

**Additional Medicare Tax (AdMT) under IRC 1401(b)(2): Self-Employment Income**

- (1) IRC 1401 imposes social security and Medicare taxes on the self-employment income of every individual at the same combined employer and employee rates applicable under FICA.
- (2) The Affordable Care Act added IRC 1401(b)(2)(a) imposing an additional Medicare tax of 0.9 percent on self-employment income for any taxable year beginning after December 31, 2012, which is in excess of certain threshold amounts. As with AdMT under FICA, the threshold amounts for an individual for AdMT on self-employment income are determined by the individual's filing status.
- (3) The AdMT imposed 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. Form 4549 will reflect the SECA tax and AdMT on self-employment income as part of the income tax deficiency.

4.23.14.2.5  
(05-08-2020)

**Individual Subject to Both AdMT and SECA**

- (1) If a taxpayer is subject to AdMT liability under both IRC 1401(b)(2) and IRC 3101(b)(2) and fails to report the amounts of such tax liability on a Form 1040, only the AdMT imposed under IRC 1401(b)(2) should be included in a notice of deficiency, since the tax imposed under IRC 3101(b)(2) is not subject to deficiency procedures.
- (2) Because the threshold amounts under IRC 1401(b)(2)(A) are reduced (but not below zero) by the amount of wages taken into account in determining AdMT under FICA, in situations where a taxpayer has both FICA wages and self-employment income, any AdMT determined by the IRS under IRC 1401(b)(2)(A) could be subject to both deficiency procedures as well as assessment depending on the facts and circumstances.
- (3) Treas. Reg. 1.1401-1(d)(2)(ii) provides the following examples:
  - **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).

**Note:** RRTA compensation is always separately compared to the threshold amounts and therefore threshold amounts under IRC 1401(b)(2)(A) are **not** reduced by the amount of any compensation taken into account in determining AdMT under RRTA.

4.23.14.3  
(09-24-2015)  
**Statute Control and  
Extension of Statutory  
Assessment Period**

- (1) Generally, the examination of an employment tax return is conducted in a timely manner to ensure that the case is closed prior to the expiration of the statutory period of limitations. In cases where there is a compelling business reason, a *Form SS-10*, Consent to Extend the Time to Assess Employment Taxes, may be solicited. An example is when a subsequent/related year is under examination and:
  - a. There are firm indications that substantial additional tax is due for a prior year,
  - b. The limitation period for the prior year will expire within 180 days, and there is insufficient time to complete the examination and administrative processing of the case.

**Note:** See IRM 25.6.22.2.1, Assessment Statute Extension.

- (2) IRC 6501(c)(4) mandates that the IRS **must** notify the taxpayer of certain rights each time when requesting the taxpayer's consent to extend the period for assessment. Examiners are required to follow the procedures in IRM 25.6.22.3, Notification of Taxpayer's Rights.
- (3) The examiner must have managerial approval prior to requesting a consent. See IRM 25.6.22.2.1.
- (4) Detailed instructions on the preparation of Form SS-10 and statute controls are found in IRM 25.6.22.5, Preparation of Consent Forms – General Procedures, and IRM 25.6.23, Examination Process - Assessment Statute of Limitations Controls, respectively. Form 10949, Statute Extension Checksheet, is available as a job aid for the preparation and issuance of consents, including necessary examiner and group manager actions.

- (5) IRM 25.1.4.4.8, Statute Protection, provides the procedures for Criminal Investigation and Examination to follow when allowing the expiration of a civil statute in a joint investigation case.

4.23.14.3.1  
(01-15-2013)  
**Form 895 and Statute  
Control Procedures**

- (1) Refer to IRM 25.6.23, Examination Process-Assessment Statute of Limitations Controls, for procedures and guidelines. Statute controls ensure:
- Statute expiration dates are properly reviewed to determine that ERCS/ AIMS (RCCMS/AIMS for TE/GE) properly reflects the correct Assessment Statute Expiration Date (ASED).
  - Cases are closely monitored to prevent unintended expiration of the assessment statute of limitations.
- (2) Statute controls are initiated in all Examination and TE/GE functional areas for all returns meeting control criteria. See IRM 25.6.23.3, Returns Subject to Statute Control, for definition.
- (3) Instructions on obtaining consents are in IRM 25.6.22, Extension of Assessment Statute of Limitations By Consent.
- (4) See IRM 25.6.23.6, Statute Controls in Examination Case Closing Functions, for Form 895, Notice of Statute Expiration, and group control procedures.
- (5) The time for initiating control and issuing Form 895 on a Substitute for Return (SFR) is at the time the SFR and alpha code "EE" is input (i.e., when Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, is input). See IRM 25.6.23.6.1.1, Time for Initiating Controls in Case Closing Functions.
- (6) See IRM 4.7.3, Statute of Limitations, for additional group procedures.

4.23.14.3.2  
(08-24-2017)  
**Statute Controls for  
Offer-in Compromise,  
Doubt as to Liability  
(OIC-DATL) Cases**

- (1) IRC 7122(f) applies to all Offers in Compromise (OIC) cases, including both Doubt as to Liability (DATL) and Doubt as to Collectability (DATC) offers. OIC cases worked in Examination will fall under OIC-DATL; Collection handles all OIC-DATC offers.
- (2) Under IRC 7122(f), if the IRS does not make a determination with regard to the OIC-DATL within 24 months of receipt, the OIC will be deemed accepted. The IRS received date is the earliest date stamped on the Form 656-L, Offer in Compromise (Doubt as to Liability), and will be used to determine the new statute date (also known as the TIPRA statute). If IRS does not make a timely determination, the offer is considered accepted-in-full and the statute is considered barred.

**Note:** The IRS must follow appropriate barred statute procedures in any situation where the 24-month OIC-DATL date lapses with no determination.

**Note:** See IRM 5.8.8.12, Mandatory Acceptance under IRC 7122(f), for additional information.

- (3) OIC-DATL cases should contain a statute date that is two years from the IRS offer received date (earliest date stamped on the Form 656-L). The statute date will reflect an "R" at the end identifying the case as an OIC-DATL statute.



**Example:** An offer received on March 28, 2016, will have a statute for all tax periods involved with the offer of “3/28/2018R” regardless of the “normal” statute date of three years from date filed.

- (4) Any new OIC-DATL case assigned to the group from Employment Tax - Workload Selection and Delivery (ET-WSD) will carry the new date.
- (5) All cases will use:
  - Tracking Code: “6506”
  - AIMS Freeze Code: “08”. This ensures proper closing to Technical Services for the Offer resolution before sending to Centralized Case Processing (CCP) for final examination closure.
  - Project Code: “0264” if no project code is assigned. Otherwise, use the appropriate project code identifying the key issue.

4.23.14.4  
(08-24-2017)  
**Closing Cases With  
Short Statutes**

- (1) When submitting a case to:
  - Centralized Case Processing (CCP): A minimum of 120 days should remain on a statute for CCP to properly process agreed, no-change, and unagreed cases **not** involving IRC 7436 issues or a request for Appeals.
  - Technical Services: For unagreed cases subject to Letter 3523, Notice of Employment Tax Determination Under IRC Section 7436, 180 days should remain on the statute to allow Technical Services time to issue the letter and still be able to process the case to CCP upon signature or default of the letter.
  - Appeals: The statute of limitations on any case sent to Appeals should have no less than 395 days remaining on the statute when the case is forwarded from the exam group to Technical Services for transfer to Appeals. (The case must have 365 days on the statute when received by Appeals, with an extra 30-day allowance for Technical Services to review and transfer the case.)

**Note:** See IRM 25.6.23.7.1, Minimum Time Remaining on ASERD.

- (2) If a case is closed with less than 90 days remaining on the statute of limitations, the following actions are required:
  - a. The case is discussed with the territory manager and a notation is made on Form 4665, Report Transmittal, and in the case activity record noting that the territory manager has been involved,
  - b. The compliance group manager or team manager will contact the manager in CCP or Technical Services to advise of the imminent statute case requiring special handling,
  - c. When feasible, the case is hand-delivered to CCP or Technical Services. (The routing to CCP or Technical Services depends on whether it is a IRC 7436 issue or a non-IRC 7436 issue. See IRM 4.23.22.11, Special Procedures for Letter 3523 under IRC 7436, for information on IRC 7436.) If not feasible, the file is sent using the most expeditious method of delivery. The group or team manager must follow up with the CCP or Technical Services manager to ensure the case has arrived, and
  - d. For cases sent to Technical Services, the examiner may be asked to assist in the preparation of the Letter 3523. See (3) below for procedures.

**Note:** See IRM 25.6.23.7.2, Cases With Less Than 90 Days to ASED Expiration.

(3) **Procedures when not issuing a 30-day letter due to inadequate time remaining on the statute:**

- a. The examiner will solicit an extension of the statute of limitation (SOL) from the taxpayer prior to issuance of a 30-day letter.
- b. If the taxpayer refuses to execute an extension, the examiner should document on the contact sheet or Form 9984, Examining Officer's Activity Record, that the taxpayer refused to extend the SOL and inadequate time remains to forward the case to Appeals.
- c. The examiner will provide the taxpayer with a copy of the examiner's report along with the explanation of adjustments. It should be clearly notated on the activity record the date the taxpayer was provided a copy of the examiner's report.
- d. The examination group should immediately forward the case file to Technical Services for issuance of a Letter 3523 (for issues involving IRC 7436) or to CCP for immediate assessment (for issues not involving IRC 7436).

**Note:** See IRM 4.23.22.7, Unagreed Case Procedures - Insufficient Time Remaining on Statute of Limitations.

- (4) For LB&I cases, the team manager must prepare and deliver a memo to the Territory Manager that explains why the case was not closed within the appropriate time frames.

4.23.14.5  
(06-14-2023)

**Form SS-10, Consent to Extend the Time to Assess Employment Taxes**

- (1) Form SS-10 is used to obtain the taxpayer's consent to extend the statutory period within which assessment may be made of FICA, FUTA, RRTA, FITW, and BUWH taxes. See IRM 25.6.22.6.10, Employment Taxes. Form 10949 is available as a job aid for the preparation and issuance of consents, including necessary examiner and group manager actions.
- (2) Form SS-10 is also used to obtain an employer's consent to extend the assessment statute date for the FICA portion of domestic employment taxes (Schedule H taxes). An additional Form 872, Consent to Extend the Time to Assess Tax, is used to extend the assessment date for the FITW portion of Schedule H taxes.
- (3) Form SS-10 is also used to obtain the employee's consent to extend the statutory period for assessment of the employee's share of FICA taxes as well as the employee's liability for AdMT on wages paid by an employer. In this case, the Form SS-10 should specifically refer to the employee's liability for the employee's share of FICA or AdMT on wages. See IRM 25.6.22.6.10.1, Employment Taxes - Employee Share of FICA, and IRM 4.23.14.2.1.
- (4) Form SS-10 is completed in duplicate. The form is typewritten or computer generated; hand-printing in ink is discouraged. See IRM 25.6.22.5.2, Preparation of Consents. Letter 907, Request to Extend Assessment Statute, accompanies the Form SS-10 when mailed or delivered to the taxpayer, as well as Publication 1035, Extending The Tax Assessment Period. If the taxpayer does not return the executed Form SS-10 within 10 days, issue Letter 928, Request to Extend Statute - Follow-up Letter, as a reminder. See IRM 25.6.22.4.2, Letters and Publications Sent with Consents. Once the Form SS-10 is secured, the examiner forwards all copies to the individual delegated

to execute consents to extend the statute for assessment; generally, the group/team manager. See IRM 1.2.2.15.2, Delegation Order 25-2 (Rev. 3) (formerly DO-25-2 and DO-42, Rev. 28), Authority to Execute Agreements to Extend the Period of Limitations on Assessment or Collection and to Accept Form 900, Tax Collection Waiver.

- (5) The IRS employee requesting the consent will document in the case file on Form 9984 or other appropriate form, as specified by the procedures of the particular operating division or function, that the required notification of rights was made. The specifics to be notated are:

- That the required notification of rights was made,
- The date of notification,
- The consent form(s), letters and publications provided, including the mailing of Letter 907,
- Who was notified, and
- How they were notified; for example, by mail or personal presentation.

**Note:** See IRM 25.6.22.3, Notification of Taxpayer's Rights, for additional information.

- (6) If the taxpayer is represented, a copy of any documents mailed to the taxpayer should be mailed to the properly authorized representative using Letter 937, Transmittal for Power of Attorney.

**Note:** Blank forms, notices, and publications available on *IRS.gov* should not be sent to the taxpayer's representative or appointee, including Pub 1035. Only copies of letters and other forms and documents addressed or specific to the taxpayer should be enclosed with the Letter 937. The enclosure section of Letter 937 should indicate only the specific enclosures included with the letter.

- (7) If a taxpayer exercises their right to refuse to extend the statute, the taxpayer and representative, if any, will be notified that issuance of a Letter 3523 or other appropriate action will be taken to assess tax. The refusal and resulting procedures will be explained to the taxpayer and must be documented in the case file.

**Note:** This notification is included in the language in Pub 1035.

- (8) Examiners may accept images of an original signature on documents related to the determination or collection of a tax liability or to the resolution of tax controversies. See IRM 10.10.1.6.1, Accepting Images of Signatures and Digital Signatures in Certain Taxpayer Interactions. In all cases, the examiner must document in the case history:

- That taxpayer contact has been made,
- The date of contact,
- The desire of the taxpayer to submit the document by fax, and
- They authenticated the signature.

**Note:** Examiners must authenticate the taxpayer or representative by phone or in-person to ensure they are authorized to sign the document in question. See IRM 11.3.2.3.2, Requirements for Verbal or Electronic Requests.

**Note:** If these conditions are met, the faxed consent will be considered an **original** consent form with **original** signature(s)

- (9) The original consent, executed by both the taxpayer and the delegated Service official, will be securely attached to the back of page one of the return for the latest year covered by the consent. A copy of the consent will be securely attached to the back of each page one of all other returns covered by the consent. See IRM 25.6.22.5.6.1, Multiple Tax Periods. One original signed/ executed Form SS-10 is returned to the taxpayer accompanied by Letter 929.

**Note:** Digital signatures by Service personnel are allowed when executing statute extensions by consent. See IRM 25.6.22.5.11, Delegation of Authority to Sign for Commissioner and Date. For guidance on acceptable digital signatures for use when delegated Service officials elect to sign consent forms digitally, see IRM 4.10.1.4.4, Digital Signatures.

- (10) In situations where multiple entities require statute extension forms, such as in parent and subsidiary relationships, it is recommended that a separate Form SS-10 be obtained for each entity. The use of a consolidated consent Form SS-10 is authorized by Rev. Proc. 72-38, 1972-2 C.B. 813, as modified by Rev. Proc. 82-6, 1982-1 C.B. 409, and IRM 25.6.22.6.2.3, Parent and Subsidiary Corporations. If a consolidated consent form is used, confirm the signing authority of the person signing the consent, because not all corporate officials have signing authority for each entity.
- (11) IRM 25.6.22.6.2, Corporations, and following subsections provide extensive information on the preparation of consents for corporations, including those with changes in composition including mergers, acquisitions, etc. Local TEGEDC (Division Counsel) is available if there are questions with regard to the correct preparation.
- (12) For purposes of extending the period for FICA, RRTA, and withholding taxes, the line “**from BLANK through BLANK**” includes all the periods being covered under the extension. More than one period may be covered by one Form SS-10. The term “withholding taxes” includes FITW and BUWH.
- (13) In the case of a sole proprietorship (Schedule C business), the primary taxpayer’s name as shown on the employment tax return will be input on the Form SS-10 followed by “dba” (“doing business as.”) If the taxpayer filed a joint return, the primary taxpayer is the person who owns the business, or exercises substantially all of the management and control of the trade or business. See IRM 25.6.22.6.10, Employment Taxes.
- (14) On railroad conversion issues, where FICA coverage is converted to RRTA coverage and Form CT-1 has been filed, care should be taken to cover both taxes (FICA and RRTA) on Form SS-10. Note that the statute date for RRTA is three years from the last day of the second month following the end of the tax year, or the date the Form CT-1 is filed, whichever is later.

4.23.14.5.1  
(05-08-2020)  
**Consent to Extend the  
Time to Assess  
Additional Medicare Tax  
(AdMT)**

- (1) **For the Employer Examination Form 94X:** Form SS-10 is used to extend employment taxes, including FICA taxes and employee FICA tax withholding obligations. Therefore, to extend the statute on the employers’ withholding liability for AdMT, Form SS-10 is required.

- (2) **For the Employee Examination Form 1040:** With regard to the employees' liability for AdMT, either the Form SS-10 or the Form 872 may be used to extend the statute of limitations on assessment for the Form 1040.
- (3) When Form SS-10 is used to protect the statute with regard to the employees' liability for AdMT, it should specify that it is extending the period with respect to the **employees' liability** for AdMT. While Form SS-10 can be used to extend the AdMT statute for employees, the best practice in such situations is to use Form 872 in conjunction with the extension request for the Form 1040. When Form 872 is used to protect the statute with regard to employees' liability for AdMT, it should specify that it is extending the period for AdMT.

4.23.14.5.2  
(05-08-2020)  
**Face-to-Face Consent  
Delivery**

- (1) If a face-to-face request for a consent is made to the taxpayer, the consent form, Letter 907, and Pub 1035 will be handed to the taxpayer.
- (2) If a face-to-face request for a consent is made to a properly authorized representative, the consent form, Letter 907, and Letter 937 will be handed to the representative.
- (3) When soliciting a consent in person or verbally, examiners should give taxpayer(s) and/or authorized representative(s) an explanation using plain language of:
  - The taxpayers' rights and options,
  - Why the extension is being requested, and
  - Any other information relevant to allow the taxpayer to make an informed decision, such as how the proposed extension date was determined and the fact that the statute can, if necessary, be extended again.

**Reminder:** This communication should be documented in the case file activity record.

**Note:** See IRM 25.6.22.4.2, Letters and Publications Sent with Consents.

4.23.14.6  
(05-08-2020)  
**Employee's Share of  
FICA**

- (1) Except for the FICA tax on tip wages not reported by the employee to the employer and the employee liability for AdMT attributable to the Form 1040, discussed at IRM 4.23.14.2.4, the regulations under IRC 6011 require the employee's share (and the employer's share) of FICA taxes to be reported by the employer on Form 941. Therefore, in the absence of fraud, the statute of limitations for assessment of the employee's share of FICA tax is determined by the statute date of the Form 941 filed by the employer. This is true even when the employer omits all wages paid to a particular employee and does not report any FICA taxes for the employee. This must be considered if the examiner intends to pursue the assessment against an individual employee. The statute date of the employee's share of FICA tax corresponds to the statute date of the employer's Form 941, not the employee's Form 1040 statute date.

**Note:** See discussion of AdMT at IRM 4.23.14.2.2. For additional information, refer to IRM 4.23.10.17.3.1, Partial Assessment/Quick Assessment Processing for Form 1040 relating to Employment Taxes - Non-Deficiency Procedures, and IRM 25.6.22.6.10.1, Employment Taxes – Employee Share of FICA.

**Note:** See IRM 4.75.16.4.2, Statute Considerations for minimum days remaining on the statute for employment tax cases closed in TE/GE's Exempt Organizations.

- (2) FICA tax on tips **not** reported by an employee to the employer is reported on the employee's income tax return using Form 4137. If income tax and FICA tax on tips were reported on the same return, the statute of limitations for assessment of additional FICA tax is the same as the statute of limitations for the income tax. See IRM 25.6.22.6.10.2, FICA Tax on Tips Not Reported to Employer. Form 872 is used to extend the time to assess tax for the income tax return. However, if Form 4137 was not filed and no FICA tax on tips was reported on the employee's income tax return, no consent to extend the period of limitations is necessary because the period of limitations has not begun to run, as no return is considered to have been filed. See Rev. Rul. 79-39, 1971-1 C.B. 435. See also IRM 25.6.1.9.4.3, Forms Reporting More Than One Item of Tax.
- (3) There are special circumstances when mitigation rules under IRC 6521 would allow an offset between the employee's share of FICA tax and self-employment tax. In these instances, the timing of the FICA tax assessment or the Self-Employment Contribution Act (SECA) tax deficiency in relation to the expiration of the statute of limitations on Form 941 and Form 1040 becomes critical. Examiners are advised to take a conservative approach and protect the statute of limitations rather than relying on mitigation rules. See Rev. Rul. 78-127, 1978-1 C.B. 436.

**Note:** The mitigation procedures provided in IRC 6521 may not be used in cases where the FICA tax was assessed based on IRC 3509.

- (4) For statute control on Form 1040, Alpha Code "II" can be used to designate that the period for assessment has not expired for "Other Taxes," including Social Security and Medicare on tip income not reported to the employer. See IRM 25.6.23-3, Instructions for Updating the Statute on AIMS.

4.23.14.6.1  
(02-26-2010)  
**Schedule H**

- (1) Schedule H is filed by household employers to calculate and report employment taxes for household employees and is generally attached to the household employer's Form 1040. Schedule H examinations are controlled on AIMS with MFT "30" utilizing the employer's SSN. See IRM 4.23.10.10.5, Household Employment Taxes.
- (2) There is no separate Assessment Statute Expiration Date (ASED) reflected on Master File or AIMS for Schedule H taxes, as Master File will reflect only the Form 1040 ASED. The ASED for Schedule H needs to be determined separately in the instances of non-filing Schedule H.
- (3) Non-filing for the purposes of this AIMS Alpha Code means that the taxpayer filed a Form 1040 return but did not attach the information required by Schedule H. The taxpayer must provide information sufficient for calculating the household employment tax liability in order to commence the running of the period of time for assessment of that tax.
- (4) Alpha Code "II" is used to indicate that:
  - The Schedule H (Form 1040), Household Employment Taxes, is being examined for the non-filing or under-reporting of taxes, and



- A determination has been made that there are no income tax issues of material tax consequence on the Form 1040 return which require examination, or the assessment statute of limitations period has already expired with respect to the income taxes.
- (5) Since the extended tax assessment statute resulting from the non-filing of Schedule H only applies to the tax liability relating to the Schedule H, **a careful determination that no income tax issues are present on the return must be made before coding the AIMS ASED with Alpha Code "II"**. Include a statement in the "Remarks" section of Form 895 that there are no issues on the Form 1040 other than Schedule H tax issues, therefore the statute is updated to the alpha statute to "II". See IRM 25.6.23-3, Instructions for Updating the Statute on AIMS for additional information on Alpha Code "II".

**Note:** For Form 895 instructions, see IRM 25.6.23.6.1.3, Initiation of Statute Controls in Case Closing Functions.

- (6) If the income tax ASED has not expired at the time the alpha coding determination is made and if, based on an inspection of the Form 1040, there are income tax issues of consequence, a referral to the appropriate BOD must be made on Form 5346, Examination Information Report. Action must be taken to protect the income tax ASED in the following manner:
- If 211 days or more remain on the ASED, refer to the appropriate BOD via Form 5346 and continue to develop the Schedule H issue.
  - If 210 days or less remain on the ASED, solicit Form 872. Refer to the appropriate BOD via Form 5346 (include the signed Form 872 with the referral) and continue to develop the Schedule H issue. If the taxpayer refuses to sign Form 872, expedite the referral and include a detailed explanation.
- (7) After a referral to General Program has been made and the income tax ASED is within 180 days, code the AIMS ASED with Alpha Code "II."
- (8) Examples:
- **Example 1:** The taxpayer timely filed their Form 1040 for 2019, but failed to attach Schedule H. The ASED for an income tax assessment has expired. To begin a Schedule H examination, establish the 1040 on AIMS with Alpha Statute Code 04/II/23.
  - **Example 2:** The taxpayer timely filed their 2019 Form 1040 with no Schedule H attached. The income tax ASED will expire in 200 days. The examiner inspected the Form 1040 and notes that a large amount of income reflected on an IRP was not reported. The examiner should solicit Form 872 from the taxpayer, refer the income tax issue to General Program, and immediately begin the Schedule H examination. The Schedule H examination should be controlled on AIMS with the normal ASED of 4/15/23, or the extended statute if the Form 872 was signed. When the ASED is within 180 days, it should be updated to 04/II/23.
  - **Example 3:** Assume the same facts as example 2 except that inspection of the Form 1040 notes no income tax issues of consequence. The examiner should immediately begin the Schedule H examination and establish the 1040 on AIMS with a statute of 4/15/23. When the ASED is within 180 days, update it to 04/II/23.

(9) For more information, see:

- IRM 25.6.23-3, Instructions for Updating the Statute on AIMS
- IRM 25.6.1.9.4.3, Forms Reporting More Than One Item of Tax
- IRM 4.23.10.10.5, Household Employment Taxes

4.23.14.7  
(09-24-2015)  
**Form 2750, Waiver  
Extending Statutory  
Period for Assessment  
of the Trust Fund  
Recovery Penalty**

- (1) In all cases where the Trust Fund Recovery Penalty (TFRP) provided by IRC 6672 is, or can be, imposed, the examiner must secure the waiver Form 2750, Waiver Extending Statutory Period for Assessment of the Trust Fund Recovery Penalty, along with the Form SS-10.
- (2) Form 2750 is used to extend the period of limitations for assessment of the TFRP under IRC 6672. All examiners are responsible for protecting the statute of limitations. Form 2750 is obtained from all persons who appear responsible for, but did not collect, account for and/or pay the taxes.
- (3) Form 2750 must be secured when the TFRP statute expires within one year for agreed cases, or two years for unagreed cases. The waiver should provide for extension of the statutory assessment period to allow ample time during which issues bearing on assertion of the penalty may be resolved, so that normally it is necessary to secure only one waiver from each responsible officer. Care should be exercised in determining the date to which the statute of limitations is extended. In the absence of unusual circumstances, this date is December 31 of the year following the year in which the statutory period will expire.
- (4) If the potentially responsible person(s) refuses to extend the statute of limitations for Trust Fund Recovery Penalty, a memorandum accompanies Form 6238, Referral Report for Potential Trust Fund Recover Penalty Cases, stating this fact and the reasons given for refusal to extend the statute.
- (5) Completion of various line items on Form 2750 are self-explanatory. Items 1 through 4 on the waiver are completed by the examiner. Items 5 and 6 are signed and dated by the person potentially responsible if they agree to extend the statute of limitations. The examiner's manager completes Item 7. See IRM 1.2.2.15.2, Delegation Order 25-2 (Rev. 3) (formerly DO-25-2 and DO-42, Rev. 28), Authority to Execute Agreements to Extend the Period of Limitations on Assessment or Collection and to Accept Form 900, Tax Collection Waiver. After the manager completes the signature portion of the waiver, Part 2 is given to the responsible person concerned. The remaining copies are forwarded with Form 6238 to Collection.
- (6) For information on TFRP, see:
  - IRM 25.6.22.6.10.3, Trust Fund Recovery Penalty (formerly referred to as 100% Penalty)
  - IRM 5.7.3.6, Statutory Assessment Period
  - IRM 5.7.3.7, Extension of Statutory Assessment Period

**Note:** See IRM 4.23.9.14, Trust Fund Recovery Penalty, and subsequent sections for additional information on procedures and Form 6238.



4.23.14.8  
(09-24-2015)  
**Form 4016, Consents  
Fixing Period of  
Limitation Upon  
Assessment of  
Employment or  
Miscellaneous Excise  
Taxes Against  
Transferee**

- (1) Form 4016, Consent Fixing Period of Limitation Upon Assessment of Employment or Miscellaneous Excise Taxes Against A Transferee, is used in extending the statutory period of limitation upon assessment of employment taxes against a transferee, arising on liquidation of a corporation or partnership, or on a reorganization within the meaning of IRC 368(a). See:
- IRM 25.6.22.6.10, Employment Taxes
  - IRM 25.6.22.6.2.5, Merged Corporations

4.23.14.9  
(06-14-2023)  
**Form 872, Consent to  
Extend the Time to  
Assess Tax, for Form  
1042**

- (1) Form 872 or Form 872-A, Special Consent to Extend the Time to Assess Tax, is used to extend the period of limitations for Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
- Note:** Form 1042 is filed timely on or before March 15 of the calendar year following the year the payment of the income was made and the tax was required to be withheld. The statute of limitations on assessment of tax does not begin until April 15. For more information refer to IRC 6051(b) and Treas. Reg. 301.6501(b)-1(b)). The normal statute of limitations on assessment under IRC 6051(a) expires three years from the date the return is filed (keeping in mind that a return timely filed on or before March 15 will be deemed to have been filed on April 15).
- (2) Line (1) of Form 872 should be modified to read as follows:
- “(1) The amount of any Federal “**tax liability under IRC sections 1441–1474**” tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended...”
  - The **bold** wording in quotes above should be included on the blank line on the Form 872, and the word “*tax*” after the blank line should be lined through.
- (3) See IRM 25.6.22.6.14, Form 1042 Withholding on U.S. Income of Foreign Persons, and IRM 4.10.21, U.S. Withholding Agent Examinations - Form 1042, for additional information.

4.23.14.10  
(09-24-2015)  
**Protective Assessments**

- (1) When a taxpayer refuses to sign a consent on Form SS-10 and the assessment statute expiration date (ASED) is 180 days or less, a protective assessment is made to protect the government’s interest. The examiner should determine the probable additional tax due. Any over-assessment will be adjusted after the examination has been completed. Quick assessment procedures are used to protect the statute. See IRM 4.23.11.10, Quick Assessments.
- (2) When a taxpayer refuses to sign a consent on Form 2750 do not make a protective assessment. A preliminary notice may be issued under IRC 6672(b) to protect the government’s interest. The examiner should determine the probable additional tax due. If collection is in jeopardy, the procedures described in IRM 4.23.11.12, Jeopardy Assessments, may be used.

4.23.14.11  
(02-26-2010)  
**Barred Statutes**

- (1) Procedures for processing barred statute cases are covered in IRM 25.6.1.13, Barred Assessments/Barred Statute Cases.

- (2) Procedures for processing LB&I barred statute cases are covered in IRM 25.6.1.13.2.9, Statute Expiration Reporting Responsibilities and Procedures for LB&I Field Operations and LB&I Campus Employees.

4.23.14.12  
(06-14-2023)

**Penalties under IRC  
6721 and 6722**

- (1) IRC 6665(a)(1) provides that these penalties are assessed, collected, and paid in the same manner as taxes, and IRC 6665(a)(2) states that any reference to “tax” shall also be deemed to refer to penalties. See also IRC 6671.
- (2) There is no form designed to accommodate an extension of the statute of limitation on IRC 6721 (Failure to file correct information returns) or IRC 6722 (Failure to furnish correct payee statements) penalties.
- (3) Form 872 is used to extend the statute of limitations on IRC 6721 and IRC 6722 penalties. The following will be entered on the “kind of tax” line:
- “**penalties prescribed by IRC 6721 and 6722**”,
  - The word “**tax**” printed to the right of the entry field must be striked-through.

**Note:** For further information refer to IRM 20.1.7.12.2.8, Civil Penalties Statute of Limitations, and IRM 25.6.22.5.4, Kind of Tax.