



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.25.9

JULY 20, 2018

## EFFECTIVE DATE

(07-20-2018)

## PURPOSE

- (1) This transmits revised IRM 4.25.9, *Requests for Abatement, Claims for Refund, and Doubt as to Liability Offer in Compromise in Estate and Gift Tax Cases*.

## MATERIAL CHANGES

- (1) Subsection 4.25.9 was retitled from *Requests for Abatement, Claims for Refund, and Doubt as to Liability in Estate and Gift Tax Cases* to *Requests for Abatement, Claims for Refund, and Doubt as to Liability Offer in Compromise in Estate and Gift Tax Cases*.
- (2) A new IRM 4.25.9.1 was added to comply with the new internal control requirements set forth in IRM 1.11.2.2.5, *IRM Standards, Address Management and Internal Controls*. New subsections were added to provide the necessary background, authority, program objectives and review, terms/definitions/acronyms, and related resources required by IRM 1.11.2.2.5. The addition of the new IRM 4.25.9.1 resulted in the renumbering of all subsequent IRM subsections.
- (3) 4.25.9.1, *Distinguishing between a Request for Abatement, a Claim for Refund, and a Doubt as to Liability/Offer in Compromise in Estate and Gift Tax Cases*, paragraphs (1) through (4) were moved to IRM 4.25.9.1.1, *Background—Distinguishing between a Request for Abatement, a Claim for Refund, and a Doubt as to Liability/Offer in Compromise in Estate and Gift Tax Cases*.
- (4) 4.25.9.1, *Distinguishing between a Request for Abatement, a Claim for Refund, and a Doubt as to Liability/Offer in Compromise in Estate and Gift Tax Cases*, paragraphs (4) and (5) were moved to IRM 4.25.9.1.5, *Related Resources* paragraphs (2) and (3).
- (5) IRM 4.25.9.6, *Doubt as to Liability and Offer in Compromise* was retitled as *Doubt as to Liability, Offer in Compromise*. This IRM subsection was also revised extensively to remove outdated procedural content. IRM 4.25.9.6.1 through 4.25.9.6.7 were removed. Examiners are now directed to current examination procedures in IRMs 4.18.2, *Doubt as to Liability*. The OIC WSD Coordinator content was also removed. As a result of realigned responsibilities, the DATL Coordinator procedures no longer belong to Estate and Gift Tax Examination. Estate and Gift Workload Selection and Delivery's IRM 4.25.3.9.2.6 contains the DATL Coordinator procedures.
- (6) Editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.

## EFFECT ON OTHER DOCUMENTS

This material supersedes the August 7, 2015 publication of IRM 4.25.9.

## AUDIENCE

This section contains instructions and guidelines for Small Business/Self-Employed Estate and Gift Tax Specialty Programs employees.

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4.25.9

Requests for Abatement, Claims for Refund, and Doubt as to Liability Offer in Compromise in Estate and Gift Tax Cases

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4.25.9.1  
(07-20-2018)  
**Program Scope and Objectives**

- (1) **General Overview** - This IRM provides information about estate and gift related requests for audit reconsideration, protective claims, claims and doubt as to liability, offer in compromise examination procedures.
- (2) **Purpose** - This IRM explains Estate and Gift claim, audit reconsideration and analysis and doubt as to liability, offer in compromise examination responsibilities so that managers, senior-level officials and estate, gift and generation skipping transfer tax return examiners will be better equipped to prepare and submit accurate an appropriate penalty assessments.
- (3) **Audience** - This IRM is for Estate and Gift Specialty Tax managers, examiners and personnel at the campus who process estate, gift and generation skipping transfer tax returns, refunds and claims.
- (4) **Policy Owner** - Director, Examination - Specialty Policy is responsible for the administration, procedures and updates related to the technical guidance and information processing steps and methods specific to Estate and Gift Tax examiner responsibilities, IRM subsections, and forms created for the examination of returns and claims.
- (5) **Program Owner** - Director, Examination - Specialty Examination owns Estate and Gift Tax Examination.
- (6) **Primary Stakeholders** - Advisory Collections, Appeals, Counsel, Estate and Gift Tax Workload Selection and Delivery, Specialty Examination, SB/SE Examination Quality & Technical Support, and Collection Policy are the primary stakeholders for this IRM.

4.25.9.1.1  
(07-20-2018)  
**Background - Distinguishing Between a Request for Abatement, a Claim for Refund, and a Doubt as to Liability/Offer in Compromise in Estate and Gift Tax Cases**

- (1) Requests for abatement, audit reconsiderations, and amended returns increasing the tax liability are not considered claims. A request for abatement of estate tax, gift tax, and the related penalties and interest is permitted in very limited circumstances.
- (2) A claim is a request by the taxpayer for a refund of assessed tax that has been fully paid (tax, penalties, and interest). See IRC 6511. The claim may be informal, formal or protective in nature.
- (3) Doubt as to Liability, Offer in Compromise requests can be made by the taxpayer where there is a legitimate doubt to the liability and/or a genuine dispute as to the existence or amount of the correct tax debt under the law.

4.25.9.1.2  
(07-20-2018)  
**Authority**

- (1) Estate and gift tax examiners and managers assigned to examine and oversee the examination of estate and gift tax returns and issues are responsible for complying with servicewide policies and authorities set forth in IRM 1.2.13, *Servicewide Policies and Authorities, Policy Statements for the Examining Process*.
- (2) Examination of estate and gift tax returns should be conducted in a manner that will promote public confidence as stated in the Mission of the Service. See IRM 1.2.10.2, and *Policy Statement 1-1*.
- (3) Policy Statement 4-52 established a general guideline that examination and processing of returns should be completed within 18 months of the filing date. See IRM 1.2.13.18, *Policy Statement 4-52*.

- (4) Estate and gift examiners and managers assigned to examine and oversee the examination of international estate and gift tax returns and issues are responsible for complying with all applicable servicewide examination delegation orders and SB/SE delegation orders. A table summarizing estate and gift delegation orders is available at IRM 4.25.14.9, *Estate and Gift Tax, Miscellaneous Procedures, Signature Authority*.
- (5) Section 3504 of RRA 98, Public Law 105-206 requires the Service to include an explanation of the examination and collection process, as well as information about assistance from the Taxpayer Advocate with any first report/notice of proposed deficiency. Pub 3498, *The Examination Process*, must be used for this purpose.
- (6) Statement of Procedural Rules 601.506 requires that examiners must forward any correspondence (or copy), discussions, reports and/or other material to the taxpayer at the same time it is sent to the representative.
- (7) The Form 706 return instructions and CFR 20.6018-4, CFR 25.6019-3, and CFR 25.6019-4 list required filing documents.
- (8) IRC 7122, *Compromises*, was amended by section 509 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), PL 109-222, effective for offers filed after July 16, 2006. This code section authorized doubt as to liability offers.

#### 4.25.9.1.3 (07-20-2018)

##### **Program Review and Objectives**

- (1) The National Quality Review System (NQRS) is a web-based review system used by Estate and Gift Tax Policy, Estate and Gift Tax Examination Management and Estate and Gift Tax Quality Measures and Analysis (QMA) to generate and review reports analyzing national quality performance based upon standardized quality attributes set forth in Document 12499, *Estate and Gift Tax Examination Embedded Quality Job Aid*. NQRS report data is compiled by QMA on a quarterly basis, but **ad hoc** reports may be obtained monthly. The use of NQRS is explained in additional detail in IRM 4.25.1.8, *Manager Embedded Quality Review and Specialty Exam National Embedded Quality Review Programs*.
- (2) Operational Reviews and related NQRS reports are conducted by Territory Managers and the Chief of Estate and Gift to measure national adherence to quality standards and managerial performance and/or oversight.
- (3) Customer (i.e. taxpayer) satisfaction reports are generated by SB/SE Operation Support Research on a quarterly basis. These reports provide masked taxpayer narratives that are responsive to a pre-defined set of survey questions. The quarterly survey reports are to be used to identify areas for examination quality improvement.
- (4) Frequent Front-line manager reviews are conducted under the Examination Quality Review System (EQRS), with the frequency based on annual personnel requirements.

#### 4.25.9.1.4 (07-20-2018)

##### **Terms/Definitions/ Acronyms**

- (1) The following table sets forth commonly used acronyms:

Term	Acronym
Assessment Statute Expiration Date	ASED
Doubt as to Liability, Offer in Compromise	DATL
Examination Returns Control System	ERCS/AIMS
Examination Quality Review System	EQRS
Issue Management System	IMS
National Quality Review System	NQRS
Offer in Compromise	OIC
Protection of Revenue Base	P of RB
Refund Statute Expiration Date	RSED
Revenue Base	RB
Small Business/Self Employed	SB/SE
Substitute for Return	SFR
Workload Selection and Delivery	WSD

4.25.9.1.5  
(07-20-2018)

**Related Resources**

- (1) The Estate and Gift Tax program is required to follow all servicewide examination procedures and those set forth in SB/SE examining process IRM. The following IRM subsections provide additional information relating to the processing, classification and examination of Estate and Gift Tax program returns and claims:

- IRM 4.25.1, *Estate and Gift Tax, Estate and Gift Tax Examinations*
- IRM 4.25.2, *Campus Procedures for Estate Tax*
- IRM 4.25.3, *Planning, Classification and Selection*
- IRM 4.25.4, *International Estate and Gift Tax Examinations*
- IRM 4.25.5, *Technical Guidelines for Estate and Gift Tax Issues*
- IRM 4.25.6, *Report Writing Guide for Estate and Gift Tax Examinations*
- IRM 4.25.7, *Estate and Gift Tax Penalty and Fraud Procedures*
- IRM 4.25.8, *Delinquent Returns and SFR Procedures*
- IRM 4.25.10, *Case Closing Procedures*
- IRM 4.25.11, *Special Examination Procedures*
- IRM 4.25.12, *Valuation Assistance*
- IRM 4.25.13, *Appeals, Mediation and Settlement Procedures*
- IRM 4.25.14, *Miscellaneous Procedures*

- (2) Additional SBSE Examination claim, abatement, audit reconsideration, and doubt as to liability, offer in compromise case IRM resources can be found at:

- IRM 4.10.8, *Report Writing*
- IRM 4.13, *Audit Reconsideration Cases*
- IRM 4.4.4, *Claims (AIMS)*
- IRM 4.4.12, *Examined Closings, Surveyed Claims and Partial Assessments (AIMS, 5344)*
- IRM 4.18.1, *Exam Offer-In-Compromise, Offers-In-Compromise Received in Exam*
- IRM 20.1.5.16, *IRC 6676 Erroneous Claim for Refund or Credit Penalty*
- IRM 4.36, *Joint Committee Procedures (Claims >\$2M)*
- IRM 21.5.3.4.7.3, *Protective Claims*
- IRM Exhibit 25.6.23-3, *Statutes (Alpha Codes)*

(3) Additional internal examination resources can be found at:

- Interest Abatement Coordinators: Collection Interest Abatement Coordinators are limited in their duties and expertise to IRC 6404(e)(1) issues - abatement of interest due to deficiencies attributable to any unreasonable delay or error by a Service employee in performing a managerial or ministerial act.
- See the *Servicewide Penalties website* for IRC 6676 Erroneous Claim penalty procedures
- *MySBSE Exam Claims website* contains SBSE specific claim procedures
- Examiners may contact the Claim Coordinators in Exam Technical Services regarding group manager authorized complex issues or cases involving claims.

4.25.9.2  
(07-20-2018)

**Request for Abatement  
in Estate and Gift Tax  
Cases**

(1) IRC 6404(b) provides that taxpayers have no right to file a claim for abatement of estate or gift tax. However, a taxpayer or taxpayer's representative may file a request for abatement in the following situations:

- The taxpayer is requesting an abatement of interest relating to estate, gift, and/or generation-skipping deficiency whose accrual is attributable to any unreasonable error or delay in performing a ministerial or managerial act. See IRC 6404(e).
- The taxpayer or taxpayer's fiduciary is seeking an abatement of any penalty or addition to tax (but not the tax) attributable to erroneous written advice from the Service pursuant to a specific written request and upon which the taxpayer reasonably relied. See IRC 6404(f).
- The request for abatement of penalty or interest is requested as a result of the taxpayer being granted relief because of a Presidentially declared disaster or a terroristic or military action. See 7508A(a)(2).
- The request is an abatement of a "math error" assessment (any reassessment must use the deficiency procedures). See IRC 6213(b)(2).
- There is a request for abatement based upon a zero net interest rate on overlapping tax underpayments and overpayments. See Rev. Proc. 2000-26 and IRC 6621(d).
- There is a request for removal of penalties under the Post-Assessment Penalty Appeal process. See IRM 8.11.4, *Appeals, Penalty Appeals (PENAP)*.

(2) Although IRC 6404(b) provides that taxpayers have no right to file a claim for abatement of estate or gift tax, the Service will consider a taxpayer's request for an abatement of such taxes where the taxpayer files an amended return



with the IRS that shows a decrease in the tax assessed prior to the expiration of the Assessment Statute Expiration Date (ASED).

- (3) If an amended return is received either before or after the Assessment Statute Expiration Date (ASED) requesting an abatement of tax and there are conditions which meet examination selection criteria, the case will be sent to exam before making the abatement.
- (4) When preparing a Report of Examination Changes (Report), the "Per Return or As Previously Adjusted" column should reflect amounts for either gift tax or estate tax that are the amounts as reflected on a current transcript of the account. It is not necessary to repeat adjustment(s) previously made. The examiner may disallow, partially allow, or fully allow the request for abatement, and should follow standard report writing and case closure procedures where the statute of limitations to assess tax has not expired. See IRM 4.25.6.6, *Report Writing Guide for Estate and Gift Tax Examinations, Estate and Gift Tax Claim Cases*, and IRM 4.25.10, *Case Closing Procedures*.
- (5) A taxpayer may label a filing as a request for abatement, but the filing may also include a request for the return of a paid assessment (i.e., a claim for credit or refund). The claim for credit or refund of an overpayment is subject to the requirements of IRC 6511. The period of limitations for filing a claim must be open and the amount of the credit or refund is limited by the two or three year rule look-back limitations.

## 4.25.9.3 (07-20-2018) **Protective Claim for Refund**

- (1) If a claim is not adjudicated, settled or ascertainable before the estate tax statute of limitations runs, a protective claim allows the estate to put the Service on notice that a future claim for refund will be filed, and effectively tolls the claim filing period until the claimed amount is ascertainable.
- (2) A protective claim for refund may be filed at any time before the expiration of the period of limitation prescribed in IRC 6511(a) to preserve the estate's right to claim a refund in the case of a claim or expense that might not be paid or might not otherwise meet the requirements of deductibility until after the expiration of the period of limitation for filing a claim for refund.
- (3) A protective claim is generally filed by an estate's fiduciary (Trustee/Executor) or other person authorized to act on behalf of the estate. A written statement affirming the fact that the filer has continuing authority to act in a fiduciary capacity for the estate should be included with any protective claim filing(s).
- (4) If a claim is submitted directly to a field examiner, the determination as to whether the claim received is a protective claim will be made by the examiner. If a determination is made that the claim received is a valid protective claim, it will be forwarded to the Estate and Gift Operations at the Campus (Campus) for processing. The Campus will accept the determination made by the field examiner and process the protective claim accordingly.
- (5) When a protective claim is received by the Campus, they will determine whether it meets the threshold requirements for a protective claim. The Campus will acknowledge receipt by responding to the taxpayer with a stamped copy of the claim and a letter that provides instructions and contact information for the claim's perfection. An Action Code 700 for Transaction Code

971 should be placed on the account. The protective claim should then be sent to the Files Unit to be associated with the original filing.

- (6) A claim submitted directly to the Campus, must be reviewed to determine if it is a protective claim. IRM 21.5.3.4.7.3.1, **Protective Claims** specifically provides that any claim identifying a pending court case or decision should be treated as a protective claim. However, protective claims are not limited to claims identifying a pending court case or decision. Therefore, the Campus will also look at other factors in determining whether a claim is a protective claim, including, but not limited to, claims based on expected changes in the current IRC or regulations. Prior to denial of a claim, a determination needs to be made that it is not a protective claim. Since there are many issues that would permit allowance of a protective claim, and it may not be clear from the claim itself, the Campus will consult the Estate and Gift Tax Workload Selection and Delivery (WSD) National Gatekeeper prior to disallowing a claim to ensure that it is not a protective claim. If it is clear that the claim filed is not a protective claim and was not intended by the taxpayer to be a protective claim then consultation is not required. See IRM 4.25.2.3.3.4, **Miscellaneous Forms and Schedules, Schedule PC** for Campus procedures relating to the processing of protective claims.

4.25.9.3.1  
(01-07-2014)  
**Protective Claims of IRC  
2053 Deductions**

- (1) The amended 2053 Treasury Regulation applies to estates of decedents dying on or after October 20, 2009. Under Treas. Reg. 20.2053-1(d) the amount deductible is limited to expenses actually paid in settlement or satisfaction of that item claimed as a deduction.
- (2) For estates of decedents dying on or between October 20, 2009 and December 31, 2011, the estate may file an IRC 2053 protective claim using Form 843, *Claim for Refund and Request for Abatement*, with "Protective Claim for Refund under Section 2053" written across the top. The Form 843 should be mailed directly to the address specified in Rev. Proc. 2011-48.
- (3) For estates of decedents dying on or after January 1, 2012, the protective claim may be filed using Form 843 as described above or by attaching to Form 706 one or more Schedules PC. A separate Schedule PC must be filed for each claim or expense. See Rev. Proc. 2011-48 and Treas. Reg. 20.2053-1.

4.25.9.3.2  
(01-07-2014)  
**Form 706, Schedule PC**

- (1) Form 706, Schedule PC may be used to file an IRC 2053 protective claim for refund by estates of decedents who died after December 31, 2011. It may be used to inform the Service when a contingency leading to the protective claim for refund is resolved and the refund due the estate is finalized. The estate must indicate whether the Schedule PC being filed is the initial notice of protective claim for refund, notice of partial claim for refund, or notice of the final resolution of the claim for refund.
- (2) The first Schedule PC to be filed is the initial notice of protective claim for refund. The estate will receive a written acknowledgment of receipt of the claim from the Campus. A certified mail receipt or other evidence of delivery is not sufficient to claim receipt and processing of the protective claim for refund.
- (3) Each separate claim or expense requires a separate Schedule PC. Therefore, there may be more than one Schedule PC included with the Form 706.

- (4) The filing of a Schedule PC does not suspend the Service's review and/or examination of the Form 706, nor will it delay the issuance of a closing letter for the estate.
- (5) The Schedule PC will not be subject to substantive review until the amount of the claim has been established. However, a protective claim can be disallowed at the time of filing. The protective claim for refund will be rejected if:
  - The claim was not timely filed.
  - The claim was not filed by the fiduciary or other person with authority to act on behalf of the estate.
  - The acknowledgment of the penalties of perjury statement (*jurat*) was not signed.
  - The claim was not adequately described.
- (6) The estate may be given an opportunity to cure any defects in the initial notice by filing a corrected and signed protective claim for refund before the expiration of the limitations period described in IRC 6511(a), or within 45 days of the notice of the defect, whichever is later.
- (7) If the initial notice of the protective claim for refund is submitted by the taxpayer after the Form 706 was filed, the taxpayer should use Form 843, *Claim for Refund and Request for Abatement*, to file the claim.

## 4.25.9.3.3 (08-07-2015) **Protective Claim is Ready for Determination**

- (1) When an expense that was subject of an IRC 2053 protective claim for refund is finally determined, the estate must notify the Service that the claim for refund is ready for consideration. The estate has 90 days to notify the Service of the claim's resolution. The 90 day notice period begins from the date the claim or expense was paid, or the date on which the amount of the claim became certain, whichever is later. The notification should provide facts and evidence substantiating the deduction under IRC 2053 and the resulting recalculation of the estate tax liability. A separate notice of final resolution must be filed with the Service for each resolved IRC 2053 protective claim for refund.
- (2) The estate may notify the Service that the claim is ready for consideration by filing a supplemental Form 706 or by filing a Form 843, *Claim for Refund and Request for Abatement*, or by filing a supplemental Form 706 with an updated Schedule PC and including each schedule affected by the allowance of the deduction under IRC 2053. Page 1 of the Form 706 should contain the notation "Supplemental Information – Notification of Consideration of Section 2053 Protective Claim(s) for Refund" and include the filing date of the initial notice of protective claim for refund. A copy of the initial notice of claim should also be submitted.
- (3) The estate may also notify the Service that the claim is ready for determination by filing an updated Form 843, *Claim for Refund and Request for Abatement*. The Form 843 must contain the notation "Notification of Consideration for Refund," and include the filing date of the initial notice of protective claim for refund on page 1. A copy of the initial notice of claim must also be submitted.
- (4) The Campus will receive and review the additional information, and determine whether the perfected claim should be referred to the Gatekeeper for selection and assignment to an Estate and Gift Tax field group for examination.

## 4.25.9.4

(01-07-2014)

**Claims for Refund**

- (1) A claim is a request by the taxpayer for a refund of assessed tax that has been fully paid (tax, penalties, and interest). See IRC 6511. An informal claim is a request for refund submitted by the taxpayer either on a non-standard form (written request) or by some other means as long as the required claim elements are identified, i.e., tax year, identification number, refund requested and reason for the refund. The taxpayer may also make a protective claim to protect their interest when the amount of the claim cannot be established with certainty.
- (2) Taxpayers must submit claims for refund of estate tax in writing. An oral request either by telephone or interview is not considered a claim, formal or otherwise. The claim for refund may be made by filing:
  - a. A Form 843, *Claim For Refund and Request For Abatement*
  - b. A subsequent Form 706 which reports less tax liability than shown on the original return.
  - c. Any other form of writing (an informal claim). An informal claim must have a written component with the issues of the refund clearly identified, and it should adequately apprise the Service that a refund is sought for certain years.
- (3) The procedure for handling formal and informal claims is the same.
- (4) Taxpayers may file a claim for refund and bring suit for estates for which an election under IRC 6166 has been made during the deferral period if the election was denied or the amount of the deferred tax was adjusted. See IRC 7422(j).
- (5) If a claim is submitted directly to a field examiner, the determination as to whether the claim received is a protective claim will be made by the examiner. If a determination is made that the claim received is a valid protective claim, it will be forwarded to the Campus for processing. The Campus will accept the determination made by the field examiner and process the protective claim accordingly.
- (6) Determine whether the taxpayer's claim is complete. All of the following requirements must be met before a claim or amended return is considered complete:
  - a. It is filed on a permitted form or in an informal written inquiry and includes everything necessary to input a correct adjustment.
  - b. The claim contains sufficient required information to permit the mathematical verification of the amount shown on the claim.
  - c. The claim contains the name, address, and Taxpayer Identification Number (TIN) of the taxpayer and is signed by the taxpayer (if a joint return, both taxpayers) or authorized representative under penalties of perjury (also known as the *jurat*).
  - d. The taxpayer must sign the claim or amended return requesting an adjustment; or include a valid Power of Attorney (POA) pursuant to Treas. Reg. 1.6012-1(a)(5). For Forms 709 where spouses elected to gift split, both spouses must submit separate signed claims and Powers of Attorney. IRM 21.5.3.4.4.1, *Special Handling of Signature Requests*, for exceptions. Refer to the table in IRM 21.5.3.4.2, *Tax Decrease or Credit Increase Processing*, for acceptance of faxed signatures. Signature requirements for penalty abatements are referenced in IRM 20.1, *Penalty Handbook*.

(7) The claim is determined to be complete and should be initially reviewed for the following:

1. The examiner should verify that the claim was timely filed. Taxpayers may still be entitled to a refund on some claims for abatement/refund filed after the normal Refund Statute Expiration Date (RSED). See IRM 25.6.1.10.2.5.7, *Offsetting the Amount of a Refund With a Time-barred Adjustment*, for additional information. The examiner and group manager should verify the statute date, and notate any special considerations regarding whether the examiner should apply an “AA” statute date to the ERCS/AIMS module.
2. Whether there are any freezes on the tax account.

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3. Whether the taxpayer requests full or partial disallowance.
4. Whether or not a tax treaty is involved.

4.25.9.4.1  
(01-07-2014)  
**Claim Filing  
Requirements**

- (1) In order for a claim for refund to be valid, the claim must be filed within three years of the date of the original tax return filing, or be filed within two years of any payment. If the due date to file a claim for refund is a Saturday, Sunday, or legal holiday it is filed on time if it is filed on the next business day. Returns filed before the due date are considered filed on the due date.
- (2) The claim should be filed using Form 843, *Claim for Refund or Request for Abatement*.
- (3) The claim should provide sufficient information to establish the amount of refund requested with an adequate statement of each ground upon which the claim for refund is based.
- (4) After the statute of limitations has run, an amendment to a timely filed claim may be made only to the extent the claimed items are sufficiently related to those contained in the original claim. No additional grounds, other than those originally raised, may be introduced after the statute of limitations has run.

4.25.9.4.2  
(01-07-2014)  
**Protection of the  
Revenue Base**

- (1) Generally, claims are requests made by taxpayers to reduce a tax liability recorded (assessed) and paid in full by the taxpayer as a result of a previously filed return or a prior examination. How the Service captures examination time spent examining a claim depends on whether or not the previous tax assessment was paid in full by the taxpayer, and whether or not a refund would be due to the taxpayer if the claim were to be allowed in part or in full. This section provides instructions for accurately determining when an examiner's time and efforts are spent protecting the revenue base.

4.25.9.4.2.1  
(01-07-2014)

**Capturing Time and Efforts – Protecting the Revenue Base**

- (1) If the previous tax assessment was not paid in full by the taxpayer (the tax module reflects a balance due), then there would be no refund due to the taxpayer if the claim were to be allowed in part or in full. Instead, the balance due from the taxpayer would be reduced by the amount of claim that is allowed. This is considered a request for abatement of unpaid tax, or an audit reconsideration if the request is for an abatement of a prior examination adjustment. Neither of these constitutes a valid claim for refund within the meaning of IRC 6511. Any time spent on such requests would be captured as regular examination time.
- (2) In instances where the previous tax assessment was paid in full by the taxpayer (the tax module reflects a zero balance), there would be a refund due to the taxpayer if any portion of the claim were to be allowed. Time spent examining claims for refund prior to the release of any money back to the taxpayer is considered time spent protecting the revenue base.
- (3) There may be instances where a previous tax assessment is partially paid by the taxpayer (the tax module balance reflects the unpaid portion), and a claim is filed for the entire amount of the assessment. The paid portion (if not yet refunded) could be a claim for refund, while the unpaid portion is considered a request for abatement or audit reconsideration. The allocation of Protection of Revenue Base (P of RB) time and results in these instances would have to be determined on a case by case basis.
- (4) Time spent examining affirmative issues presented by a taxpayer during an examination are often considered P of RB time. If allowing the affirmative issue would result in the abatement of a previously paid tax, and a release of funds to the taxpayer, then time spent examining these issues would be P of RB time.

4.25.9.4.2.2  
(01-07-2014)

**Identifying Protection of the Revenue Base Activities**

- (1) It is important to identify P of RB activities as soon as possible so that examiners can accurately report their time. Upon receipt of any request that could potentially result in a refund to the taxpayer, whether it is a claim, a tentative refund request, an affirmative issue, or a questionable refund on an original return, a current transcript of the taxpayer's account should be analyzed. Generally, time must be reported as a P of RB activity if:
  1. Previous assessments were paid by the taxpayer, and
  2. The requested refund was not yet released to the taxpayer
- (2) P of RB applies anytime an examiner is attempting to prevent the release of an erroneous refund. If previous assessments were not paid, or the subject refund was already released, then there is no P of RB activity, and any time should be captured as regular examination time.

4.25.9.4.2.3  
(01-07-2014)

**Protection of Revenue Base Procedures**

- (1) Once it has been determined that a P of RB activity exists, ensure there is an "Amount Claimed" on AIMS and ERCS for each respective tax period. The amount claimed is the specific amount of refund requested.
- (2) If the refund request is filed with a campus, the amount claimed should already be populated when the group receives the return. If it is not, or if the request is filed directly with the group, the amount claimed can be added through ERCS via a Form 5348, *AIMS/ERCS Update*.



- (3) ERCS will send the appropriate update to AIMS. If the amount claimed is not apparent upon receipt of the request, \$1 should be entered until such time that an exact amount can be determined. An amount claimed can be added to any “taxable” record and updated at any time. Negative amounts are not allowed.
- (4) Time spent examining the P of RB issue must be kept separate from regular examination time. This is accomplished through the use of the P of RB indicator in ERCS. The Issue Management System (IMS) should be used to record case time. The IMS P of RB indicators are referred to as Revenue Protection Codes (RPCs). See IRM 4.25.5.2.1.3, *Revenue Protection Codes – RPC*.

4.25.9.4.3  
(01-07-2014)  
**Report Writing  
Procedures for Claim  
Examinations**

- (1) There are four possible results when a claim is examined. The claim may be:
  - Allowed in full,
  - Disallowed in full,
  - Partially allowed, or
  - Offset by other adjustments
- (2) Before preparing a report on a case involving a claim, examiners must have a current transcript of the taxpayer’s account.
  - If the claim is the result of a prior audit or assessment, TC 300 or TC 290 with a dollar amount will be posted. The “as adjusted” figures shown on the original report will be used as the starting point.
  - If the claim has already been allowed by the service center, TC 291 with a dollar amount will be posted.

4.25.9.4.3.1  
(07-20-2018)  
**Claim Allowed in Full**

- (1) If the claim is allowed in full, Letter 570 will be prepared to notify the taxpayer of the findings. Since receipt of Letter 570 by the taxpayer constitutes acknowledgement of closing (subject to the case reopening criteria), the letter will be prepared by the examiner but issued by CCP.
- (2) If the amount claimed has already been refunded to the taxpayer by the campus, the examiner will close the case as a regular no change case. See IRM 4.25.10.
- (3) Even though the issues stated in a claim are allowed in full, if offsetting adjustments are proposed which reduce the amount refundable, the claim will be treated as a partially or wholly disallowed claim. The procedures for claims disallowed in full or in part will be followed. See IRM 4.25.9.4.3.2, *Claims Disallowed in Full or in Part*.

4.25.9.4.3.2  
(07-20-2018)  
**Claims Disallowed in  
Full or in Part**

- (1) When a claim is disallowed in full or in part the examiner will prepare the following:
  - a. Form 1273, *Report of Estate Tax Examination Changes*, or a Form 3233, *Report of Gift Tax Examination*
  - b. Form 6180, *Line Adjustment — Estate Tax*
  - c. Form 886-A (s), *Explanation of Items*, should be included for each adjustment

- d. Form 890, *Waiver of Restrictions on Assessment and Collection of Deficiency and Acceptance of Overassessment – Estate, Gift and Generation–Skipping Transfer Tax*
- e. Form 2297, *Waiver of Statutory Notification of Claim Disallowance*
- f. Form 3363, *Acceptance of Proposed Disallowance of Claim for Refund or Credit*

- (2) An examination report, Form 890, will be prepared if additional tax is due, an offsetting adjustment was made, or if there is a partial disallowance.
- (3) Form 2297, *Waiver of Statutory Notice of Claim Disallowance*, is applicable in all cases where there is a complete or partial disallowance of a formal claim.
- (4) IRC 6532(a)(3) provides that a taxpayer may file a written waiver of the requirement that a notice of disallowance of a claim in whole or in part be sent by certified or registered mail. The effect of such waiver is to start the running of the two year period for filing suit on the claim from the date the waiver is filed. Form 2297 accomplishes the same purpose as a notice of the disallowance of a claim by certified or registered mail, except that it does not affect the six month waiting period required by IRC 6532(a) before filing a refund suit. See Treas. Reg. 301.6532–1(c).
- (5) Since Form 2297 constitutes a waiver of only the statutory notice being sent by certified or registered mail, waiver form(s) (Form 890 and Form 3363) are required in addition to Form 2297, if there is a partial overassessment or if additional tax is assessed.
- (6) Form 2297 should be enclosed in the case folder in the same manner as other waiver and acceptance forms. Where claims for multiple years are disallowed, Form 2297 covering all years should be associated with the claim or amended return covering the most recent year.
- (7) Form 2297 should not be secured in cases that require review by the Joint Committee. See IRM 4.36.3.2.9, *Claim Disallowance in Agreed Cases*.
- (8) If the taxpayer does not agree with the examiner's recommendations the examiner should follow standard unagreed case closure procedures. See IRM 4.25.10.

4.25.9.4.3.3  
(07-20-2018)

**Instructions for  
Completing Form 2297**

- (1) Name and Address — write or type the name and address of the taxpayer, include the SSN or EIN.
- (2) Taxable period ended — list each year for which a claim has been filed and disallowed in part or in full on separate lines.
- (3) Kind of Tax — shows the type of tax covered by the return under examination such as fiduciary income, estate, gift, or generation-skipping transfer tax. It is not necessary to show the form number of the return under examination.
- (4) Amount of Claim information should be entered as follows:
  - a. Where a Form 843, supplemental Form 706, Schedule PC or an informal claim states a definite dollar amount, enter the amount in the "amount of claim" space.



- b. Where an amended return shows the computation of the corrected tax, enter the difference between the corrected amount as computed by the taxpayer and the tax as shown on the original return in the “amount of claim” space.
  - c. Where a claim is filed for “\$1 or more” and no details are shown as to the amount of the reduction in the value of an asset or a claimed deduction, enter \$1 as “amount of claim.” When details are shown as to the amount of reduction but computation of the amount of tax refund is not shown on the claim, compute the amount of the claim based upon the reduction or deduction shown by the taxpayer, and enter this figure as “amount of claim.”
  - d. A taxpayer is required to provide a realistic claim amount by Treas. Reg. 301.6402-3(a)(5), which provides, “A return or amended return shall constitute a claim for refund or credit if it contains a statement setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer’s estimated income tax for the taxable year immediately succeeding the taxable year for which the return (or amended return) is filed.”
  - e. A \$1 claim amount may be acceptable for “protective claims.”
  - f. Where a claim is filed for “entire amount of tax paid,” enter the entire amount of tax shown on the return.
  - g. Where a claim is filed for “such amount as may be due” and no details are shown and a computation cannot be made, enter “indeterminable” in the “amount of claim” space and explain in the “Other Information” section of Form 4549. When details are shown and a computation of the tax refund can be made, enter the computed figure.
- (5) Amount of Claim Disallowed — See IRM Exhibit 4.10.8-4, *Sample Form 2297 — Waiver of Statutory Notification of Claim Disallowance*.
- (6) Signature — see instructions at the bottom of the form.

4.25.9.4.3.4  
(07-20-2018)

**Agreed Cases:  
Acceptance of Proposed  
Disallowance of Claim  
for Refund or Credit  
(Form 3363)**

- (1) Form 3363, *Waiver of Statutory Notification of Claim Disallowance* is to be used in agreed cases where a Form 843 or an amended return is disallowed in full or part and no other adjustments to the tax liability are necessary. By signing the Form 3363, the taxpayer waives the IRC 6532(a)(1) requirement that notice of claim disallowance be sent to them by certified or registered mail for the claims for credit or refund shown on the form. The taxpayer also acknowledges that by signing Form 3363, the two year period for filing suit for refund of the claims disallowed begins to run.
- (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. Each claim rejection statement should have a statement of the issue, the authority for rejecting the claim, and a complete analysis including possible counter arguments. The following information should be included in the explanation section of the report:
- a. Claim Allowed in Full: “On (**date**) you filed Form 843, supplemental Form 706 and Schedule(s) PC, or an informal claim for a refund of \$ (**amount**) for (**year**). As the result of our examination, we allowed your claim in full, as shown in this report.”

- b. Claim Allowed in Full but Offset by Other Adjustments: "On (**date**) you filed Form 843, supplemental Form 706 and Schedule(s) PC, or an informal claim for refund of \$ (**amount**) for (**year**). As the result of our examination, we allowed your claim in full. The total amount of the refund is, however increased or decreased by other adjustments shown in this report."
- c. Claim Allowed in Part: "On (**date**) you filed Form 843, supplemental Form 706 and Schedule(s) PC, or an informal claim for a refund of \$ (**amount**) for (**year**). As the result of our examination, we allowed your claim in part, as shown in this report."
- d. Claim Rejection: "On (**date**) you filed Form 843, supplemental Form 706 and Schedule(s) PC, or an informal claim for refund of \$ (**amount**) for (**year**). The claim is being rejected for the reasons shown in this report."

4.25.9.4.3.5  
(07-20-2018)

**Instructions for  
Completing Form 3363**

- (1) Name and Address — write or type the name or address of the taxpayer; include the SSN and EIN.
- (2) Year or Period — List each year for which a claim has been filed.
- (3) Date Claim Filed — enter date Form 843 or amended return was filed, and/or date of protective claim filing and proof of filing.
- (4) Kind of Tax — enter the type of tax covered by the return under examination, such as fiduciary income, estate, gift, or generation-skipping transfer tax. It is not necessary to show the form number of the return under examination.
- (5) Amount of Claim — enter the amount of refund requested in the claim (Form 843, supplemental Form 706 and Schedule(s) PC, amended return or informal claim) filed by the taxpayer.
- (6) Amount of Claim Disallowed — enter the amount of claim disallowed per RAR.
- (7) Amount of Claim Allowed — enter the amount of claim allowed per the RAR.
- (8) Signature — see instructions on the form.

4.25.9.4.4  
(07-20-2018)

**Claim Examination Case  
Closure Procedures**

- (1) Case closure procedure for claim cases are set forth in IRM 4.25.10.
  - IRM 4.25.10.5.1, *Case Closing Procedures for Survey After Assignment*
  - IRM 4.25.10.4.4, *Case Closing Procedures for Agreed Cases*
  - IRM 4.25.10.4.5, *Case Closing Procedures for Partially Agreed Cases*
  - IRM 4.25.10.4.6., *Case Closing Procedures for Unagreed Cases*

4.25.9.5  
(07-20-2018)

**Doubt as to Liability,  
Offers in Compromise**

- (1) A Doubt as to Liability, Offers In Compromise (DATL) offer is an offer where there is a genuine dispute as to the existence or amount of the correct tax debt under the law. Taxpayers who have a legitimate doubt that they owe part or all of a tax may file an offer in compromise under the doubt as to liability premise. See IRM 4.18.1 , *Exam Offer-In-Compromise, Offers in Compromise Received in Exam* and IRM 4.18.2 , *Exam Offer-In-Compromise, Doubt as to Liability*.
- (2) The Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005 requires the Service to render a decision and notify the taxpayer on all Offers in Compromise within 24 months of the date the Service received the offer or the offer

will be considered to be accepted (IRC 7122(f)). A deemed acceptance could mean a significant loss to the government in the form of abated assessments. The Estate and Gift Workload Selection and Delivery (WSD) DATL Coordinator establishes and monitors the TIPRA statute in IDRS and AOIC. Examiners must not change the statute of limitations for assigned DATL cases. Refer questions relating to the established TIPRA statute to the Estate and Gift WSD DATL Coordinator.

- (3) Field examiner procedures for examining and closing estate and gift DATL cases are located in IRM 4.18.2, *Doubt as to Liability Offers*.
- (4) The WSD DATL Coordinator classifies, routes and monitors DATL cases for Estate and Gift field examination. See IRM 4.25.3.9.2.6, *Estate and Gift Tax, Planning, Classification, and Selection, Doubt as to Liability* for guidance regarding the ongoing communication required for examiners and the WSD DATL Coordinator.

