



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.61.14

OCTOBER 8, 2024

## EFFECTIVE DATE

(10-08-2024)

## PURPOSE

- (1) This transmits revised IRM 4.61.14, International Examination Guidelines, Guidelines for Handling Delinquent Forms 1120-F and Requests for Waiver.

## MATERIAL CHANGES

- (1) IRM 4.61.14.1(3), Program Scope and Objectives - Added Strategy, Policy & Governance (SPG) office in the Assistant Deputy Commissioner Compliance Integration (ADCCI) organization as owners.
- (2) IRM 4.61.14.1(4), Program Scope and Objectives - Changed Program Owner from the CBA practice network to Cross Border Activities (CBA) Practice Area.
- (3) IRM 4.61.14.1(6), Contact Information - Removed program goals and added contact information.
- (4) IRM 4.61.14.1.1, Background - Combined separate background sections.
- (5) IRM 4.61.14.1.3, Roles and Responsibilities – Expanded responsibilities for examination team and added the role of the Waiver Committee.
- (6) IRM 4.61.14.1.6, Acronyms - Added ADCCI, GAO, LB&I, SPG, TIGTA, and TS to table.
- (7) IRM 4.61.14.1.7(1), Related Resources - Removed reference to IRM 4.61, International Examination Guidelines and added IRM 4.46, LB&I Examination Process. Updated title of IRM 4.4.9, AIMS Validity and Consistency, Delinquent and Substitute for Return Processing.
- (8) IRM 4.61.14.2.1, General Filing Deadline for Foreign Corporations – Updated due dates for domestic corporations.
- (9) IRM 4.61.14.2.4, Waiver of the Special Filing Deadlines - Added cooperation aspect for granting waivers.
- (10) IRM 4.61.14.3, Processing the Examination Team's Recommendation on a Request for Waiver - Updated items to include in waiver package.
- (11) Exhibit 4.61.14-3, Scenarios - Updated to require the examination team to notify the taxpayer in writing of the option to request a waiver.
- (12) Exhibit 4.61.14-4, Wording to Use with Waiver Procedure Information Letter - Updated service center location to use when filing Form 1120-F.
- (13) Reviewed and updated website addresses, legal references, and organization titles as necessary. Various editorial changes throughout the IRM for clarification. Reviewed and updated grammar, plain language, titles, and other editorial changes.
- (14) Changed all Wage and Investment (W&I) references to Taxpayer Services (TS).

## EFFECT ON OTHER DOCUMENTS

IRM 4.61.14 dated June 8, 2020 is superseded.

**AUDIENCE**

Primarily LB&I managers, examiners, and specialists. May also apply to some SB/SE and Taxpayer Services (TS) personnel.

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4.61.14

Guidelines for Handling Delinquent Forms 1120-F and Requests for Waiver

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4.61.14.1  
(10-08-2024)  
**Program Scope and Objectives**

- (1) **Purpose:** This IRM provides the procedures for handling a delinquent Form 1120-F or a request for waiver pursuant to 26 CFR 1.882-4(a)(3)(ii).
- (2) **Audience:** These procedures apply to revenue agents, examiners, and their immediate managers in LB&I. These procedures may also apply to examiners in Small Business/Self-Employed (SB/SE) and Taxpayer Services (TS).
- (3) **Policy Owner:** LB&I Policy under the Strategy, Policy & Governance (SPG) office in the Assistant Deputy Commissioner Compliance Integration (ADCCI) organization and Director, CBA Practice Area, LB&I.
- (4) **Program Owner:** CBA Practice Area, LB&I.
- (5) **Primary Stakeholders:** IRS managers, revenue agents, examiners and specialists in LB&I, SB/SE and TS.
- (6) **Contact Information:** To recommend changes or to make any other suggestions to this IRM section, contact the IRM author or see SPDER's IMD Contacts list by referencing guidelines provided in IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance. A request or inquiry can also be made at *LB&I Policy Gateway*.

4.61.14.1.1  
(10-08-2024)  
**Background**

- (1) A foreign corporation is required to file Form 1120-F if it is:
  - a. Engaged in a U.S. trade or business, whether or not it has U.S. source income from that trade or business, and whether or not income from such trade or business is exempt from U.S. tax under a tax treaty;
  - b. If it has income, gains, or losses treated as if they were effectively connected with the conduct of a U.S. trade or business; or
  - c. If it is not engaged in a trade or business in the U.S., but has income from any U.S. source, and if its tax liability was not fully satisfied by the withholding of tax at source under Chapter 3 of the Internal Revenue Code.

**Note:** Form 1120-F must be filed in the manner described in the instructions to Form 1120-F, U.S. Income Tax Return of a Foreign Corporation.
- (2) In general, if the foreign corporation fails to file Form 1120-F before the earlier of the date of notification by the IRS that a return is due or 18 months after the due date under IRC 6072, it is not entitled to the deductions and credits specified under IRC 882(c)(2) and the regulations thereunder, and will instead be subject to tax under IRC 11 on its gross income at the rate provided for the applicable tax year.
- (3) 26 CFR 1.882-4(a)(3)(ii) permits the Commissioner to waive the filing deadline, and thus allow the foreign corporation to claim such deductions and credits, if the foreign corporation can establish, based on the facts and circumstances, that it acted reasonably and in good faith in failing to timely file a return.
- (4) Compliance employees should not accept delinquent returns, except as provided in this IRM. In addition, compliance employees should not discuss with taxpayers prior to the filing of a delinquent return whether a waiver will be granted.

- (5) The guidelines in this IRM apply once a return is filed and selected for examination.
- (6) Unless otherwise noted, any reference to a Form 1120-F in this IRM includes a protective Form 1120-F as described in 26 CFR 1.882-4(a)(3)(vi).
- (7) These guidelines have been established for handling delinquent Forms 1120-F (including Forms 1120-F described in 26 CFR 1.882-4(a)(3)(vi)) (protective returns) and requests for waiver pursuant to 26 CFR 1.882-4(a)(3)(ii).

4.61.14.1.2  
(06-08-2020)

#### Authority

- (1) All waiver requests are granted or denied by the authority of the Deputy Commissioner, LB&I under 26 CFR 1.882-4(a)(3)(ii) pursuant to LB&I DO 1-23-12 (Rev 1).
- (2) Without prejudice to prior determinations, the Deputy Commissioner has delegated this authority to the Directors of Field Operations (DFO), CBA.
- (3) Accordingly, the procedures below set forth the way waiver requests will be elevated to the DFO for a final determination.

4.61.14.1.3  
(10-08-2024)

#### Roles and Responsibilities

- (1) Examination teams assisting taxpayers or working delinquent Form 1120-F cases have several responsibilities outlined in this subsection.
- (2) Examination team members should not accept delinquent Form 1120-F filings from their taxpayer, nor should they discuss with the taxpayer whether a waiver of the filing deadline is being granted. Instead, the examination team should inform the taxpayer that the delinquent Form 1120-F must be filed in accordance with the form's filing instructions. See also 26 CFR 1.882-4(a)(3)(i).

**Exception:** It may be appropriate to deviate from Form 1120-F's filing instructions if 1) a party related to the taxpayer is currently under examination (see IRM 4.12.1.16 and IRM 4.12.1.17), 2) where the taxpayer is under exam for a year other than the delinquent return year, or 3) where the taxpayer is under exam for a return type other than the delinquent Form 1120-F. If the return is secured as provided under (2) above, it should be filed with the appropriate Submissions Processing Center for Business Master File returns under existing procedures set forth in IRM 4.12.1.17(4).

- (3) Once a return is filed, and selected for examination, the examination team will develop any requests for waiver in accordance with the waiver request guidelines.
- (4) If the taxpayer did not submit a request for waiver for the tax return selected for examination, the examination team should make the taxpayer aware in writing of the option to request a waiver under 26 CFR 1.882-4(3)(ii), but shall not advise, instruct, or otherwise signal the taxpayer to take any particular action. See Exhibit 4.61.14-4, Wording to Use with Waiver Procedure Information Letter.
- (5) The Waiver Committee provides recommendations on waiver request packages (see IRM 4.61.14.1.5 below).

4.61.14.1.4  
(10-08-2024)  
**Program Management  
and Review**

- (1) CBA Practice Area will conduct ad hoc Waiver Procedures program reviews as necessary to verify compliance with IRM requirements, address Treasury Inspector General for Tax Administration (TIGTA) or Government Accountability Office (GAO) findings, and provide support for any trends.
- (2) Territory and team managers conduct case reviews to ensure compliance with this IRM.
- (3) The CBA DFO determines whether to grant or deny a waiver request based only on a review of the waiver request package and from recommendations made by the Waiver Committee.

4.61.14.1.5  
(10-08-2024)  
**Program Controls**

- (1) An independent Waiver Committee will be selected to ensure that all recommendations for denial of waivers will be evaluated and handled consistently.
- (2) The Waiver Committee will be comprised of a CBA Practice Area program manager, a CBA territory manager, a CBA team manager, and a member of the Treaty Assistance and Interpretation Team (TAIT) (if the foreign corporation is a resident of a treaty jurisdiction).
- (3) The CBA DFO will designate a CBA territory manager and a CBA team manager to participate in the Waiver Committee. The DFO will ensure the committee members are not the same as those that reviewed the waiver request package.

4.61.14.1.6  
(10-08-2024)  
**Terms/Definitions/  
Acronyms**

- (1) The following table contains commonly used acronyms.

**Acronyms**

Acronym	Definition
ADCCI	Assistant Deputy Commissioner Compliance Integration
CBA	Cross Border Activities
DFO	Director of Field Operations
ECI	Effectively Connected Income
FOIA	Freedom of Information Act
GAO	Government Accountability Office
LB&I	Large Business & International
SPG	Strategy, Policy & Governance
TAIT	Treaty Assistance and Interpretation Team
TIGTA	Treasury Inspector General for Tax Administration
TS	Taxpayer Services
USTB	United States Trade or Business

4.61.14.1.7  
(10-08-2024)

**Related Resources**

- (1) See the following IRM resources:
  - IRM 4.4.9, AIMS Validity and Consistency, Delinquent and Substitute for Return Processing
  - IRM 4.46, LB&I Examination Process
- (2) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see *Taxpayer Bill of Rights*.

4.61.14.2  
(06-08-2020)

**Summary of the  
Relevant Law - IRC  
882(c)(2)**

- (1) Under IRC 882(c)(1), a foreign corporation that is engaged in a trade or business within the United States is only allowed deductions and credits that are connected with income that is effectively connected with the conduct of a trade or business ("ECI"). Under IRC 882(c)(2), those deductions and credits are further conditioned on the foreign corporation filing a true and accurate return in the manner required by subtitle F, including all the information necessary for the calculation of such deductions and credits. These conditions do not apply to credits provided by IRC 33 for tax withheld at the source or to deductions for charitable contributions allowed under IRC 170.

4.61.14.2.1  
(10-08-2024)

**General Filing Deadline  
for Foreign Corporations**

- (1) IRC 6072 provides the due dates for foreign corporations required to file an income tax return (Form 1120-F). The due date depends on whether the foreign corporation has an office or place of business in the United States. If it does have such an office or place of business, the return is due at the same time as a return of a domestic corporation. If it does not have such an office or place of business, the return is due on or before the 15th day of the 6th month after the close of its calendar or fiscal year.

**Note:** Due dates for domestic corporations changed for tax years beginning on or after January 1, 2016 to the 15th day of the 4th month following the close of the calendar or fiscal year. However, under a special transition rule for tax years beginning before 2025, a C corporation with a fiscal tax year ending June 30th must file by the 15th day of the 3rd month after the end of its tax year.

- (2) Under 26 CFR 1.6012-2(g)(1), a foreign corporation is required to file a tax return if it is engaged in a U.S. trade or business, even if it has no ECI or its income is exempt from tax under a tax treaty. However, if the foreign corporation has no gross income for the taxable year, it is not required to complete the return schedules, but must attach a statement indicating the nature of any exclusions claimed and the amount of the exclusions, to the extent such amounts are readily determinable. If the income is exempt from tax under a tax treaty, a foreign corporation must attach Form 8833 to the tax return.
- (3) The table below provides an illustrative example of the filing deadlines as described above (under IRC 6072 and 26 CFR 1.882-4(a)) based on whether the foreign corporation maintains an office or fixed place of business in the United States and its tax year end.



End of Tax Year	6072(a) Due Date (Office in U.S.)	6072(c) Due Date (No Office in U.S.)	Treas. Reg. 1.882-4 Due Date (Office in U.S.)	Treas. Reg. 1.882-4 Due Date (No Office in U.S.)
<b>Calendar Year</b> (e.g., 12/31/2023)	4/15/2024	6/15/2024	10/15/2025	12/15/2025
<b>Fiscal Year</b> (e.g., 3/31/2023)	7/15/2023	9/15/2023	1/15/2025	3/15/2025

4.61.14.2.2  
(06-08-2020)  
**Special Filing Deadlines  
for Foreign Corporations  
Under IRC 882(c)(2)**

- (1) 26 CFR 1.882-4(a)(3)(i) prevents a foreign corporation from receiving the benefit of deductions and credits otherwise allowable (with the exceptions for deductions and credits noted in the statute) if it fails to meet the following special filing dates, as applicable, set forth in the regulations:
  - a. If a return was filed for the immediately preceding taxable year, or if the current taxable year is the first taxable year of the foreign corporation for which a return is required to be filed, the required return for the current taxable year must be filed within 18 months of the due date as set forth in IRC 6072 and the regulations under that section.
  - b. If no return for the taxable year immediately preceding the current taxable year has been filed, the required return for the current taxable year (other than the first taxable year of the foreign corporation for which a return is required to be filed) must have been filed no later than the earlier of the date which is 18 months after the due date, as per IRC 6072, for filing the return for the current taxable year or the date the IRS mails a notice to the foreign corporation advising the corporation that the current year tax return has not been filed and that no deductions or credits (other than those excepted by statute) may be claimed by the taxpayer.

4.61.14.2.3  
(06-08-2020)  
**Protective Returns for  
Purposes of IRC  
882(c)(2)**

- (1) Under 26 CFR 1.882-4(a)(3)(vi), a foreign corporation that conducts limited activities in the United States that it determines do not give rise to ECI may nonetheless file a return for the taxable year on a timely basis under 26 CFR 1.882-4(a)(3)(i) to protect its right to receive the benefit of deductions and credits if it is later determined, after the return is filed, that the determination is incorrect. The return does not need to report any gross income as ECI or any deductions or credits but should include a statement that the return is being filed to protect the foreign corporation's right to deductions and credits. A foreign corporation may follow the same procedure if it determines initially that it has no U.S. tax liability under the provisions of an applicable income tax treaty. If it is claiming it does not have a permanent establishment in the United States, it must also generally disclose that position on Form 8833. Failure to attach a Form 8833 to a Form 1120-F results in a penalty annually of \$10,000. See IRC 6712(a).

4.61.14.2.4  
(10-08-2024)  
**Waiver of the Special  
Filing Deadlines**

- (1) Under 26 CFR 1.882-4(a)(3)(ii), the filing deadlines set forth in 26 CFR 1.882-4(a)(3)(i) may be waived if the foreign corporation establishes to the satisfaction of the Commissioner or their delegate that the corporation, based on the facts and circumstances, acted reasonably and in good faith in failing to file a U.S. income tax return, including a protective return (as described in 26 CFR 1.882-4(a)(3)(vi)).
- (2) For this purpose, a foreign corporation shall not be considered to have acted reasonably and in good faith if it knew that it was required to file the return and chose not to file. The regulations provide six factors to be considered in this analysis (see 26 CFR 1.882-4(a)(3)(ii)(A)-(F) for a list of these factors).
- (3) 26 CFR 1.882-4(a)(3)(ii) requires cooperation from a foreign corporation in the process of determining its income tax liability for a waiver to be granted.

4.61.14.3  
(10-08-2024)  
**Processing the  
Examination Team's  
Recommendation on a  
Request for Waiver**

- (1) The examination team will review and analyze the taxpayer's waiver request based on the six factors as outlined in sections (A) through (F) of 26 CFR 1.882-4(a)(3)(ii) as outlined below:

Reg. Section	Factor
(A)	Whether the corporation voluntarily identifies itself to the Internal Revenue Service (IRS) as having failed to file a U.S. income tax return before the IRS discovers the failure to file;
(B)	Whether the corporation did not become aware of its ability to file a protective return (as described in paragraph (a)(3)(vi) of 26 CFR 1.882-4) by the deadline for filing a protective return;
(C)	Whether the corporation had not previously filed a U.S. income tax return;
(D)	Whether the corporation failed to file a U.S. income tax return because, after exercising reasonable diligence (taking into account its relevant experience and level of sophistication), the corporation was unaware of the necessity for filing the return;
(E)	Whether the corporation failed to file a U.S. income tax return because of intervening events beyond its control; and
(F)	Whether other mitigating or exacerbating factors existed.

See 26 CFR 1.882-4(a)(3)(iii) for illustrative examples.

- (2) The examination team will review and analyze the taxpayer's waiver request and make a recommendation whether to grant or deny the waiver request based on all facts and circumstances, including those provided in the taxpayer's request. The examination team will prepare the "waiver request package" (described in paragraph (3) below) and forward the recommendation to grant or deny the waiver to the territory manager along with the package.
- (3) The waiver request package may include:
  - a. The waiver summary analysis (see Exhibit 4.61.14-1).
  - b. The taxpayer's request for waiver and any supplements thereto.

- c. Any Information Document Requests (IDRs) or other requests for information related to the request for waiver issued by the examination team to the taxpayer or third parties.
  - d. The responses to any such IDRs and requests for information.
  - e. A Form 886-A, if any.
  - f. Documentation to support that the procedures outlined in this IRM are followed.
  - g. Other relevant information to support the exam team's recommendation.
- (4) The territory manager will schedule a call with the examination team to review the information and discuss the recommendation. If necessary, this may result in the examination team collecting additional information from the taxpayer. This process will continue until the examination team and the territory manager agree on a recommendation to send forth to the appropriate CBA DFO area staff assistant (Staff Assistant).
- (5) The processing of the examination team's recommendation on a request for a waiver differs depending on whether the examination team, with the concurrence of the territory manager, recommends that the waiver request be granted (see IRM 4.61.14.3.1) or denied (see IRM 4.61.14.3.2). See Exhibit 4.61.14-2 for the flowchart of the procedures.

4.61.14.3.1  
(06-08-2020)

## **Recommendation That a Request for Waiver Be Granted**

- (1) If the examination team, with the concurrence of the territory manager, recommends that a request for a waiver be granted, the territory manager will forward the waiver request package to the appropriate Staff Assistant.
- (2) Once the Staff Assistant confirms that the waiver request package is complete, they will forward the waiver request package to the CBA DFO for their determination to grant or deny the request for waiver. Follow paragraph (3) below if the CBA DFO agrees with the examination team's assessment. Otherwise, follow paragraphs (4) and (5) below.
- (3) If the CBA DFO agrees with the examination team's recommendation and determines that the waiver should be granted, the Staff Assistant will communicate the determination to the territory manager and the team manager. The examination team will subsequently notify the taxpayer in writing of the determination.
- (4) If the CBA DFO does not agree with the recommendation to grant the waiver, the CBA DFO has the option to request additional information, and consult with the Waiver Committee to reach a final decision.
- (5) The Staff Assistant will communicate the CBA DFO's final determination (to grant or deny the waiver) to the territory manager, the team manager, and Waiver Committee (if consulted). The examination team will subsequently notify the taxpayer in writing of the determination.

4.61.14.3.2  
(06-08-2020)

## **Recommendation That a Request for Waiver Be Denied**

- (1) If the examination team, with the concurrence of the territory manager, recommends that a request for waiver be denied, the territory manager will forward the waiver request package to the Staff Assistant.
- (2) Once the Staff Assistant confirms that the waiver request package is complete, they will forward the waiver request package to the Waiver Committee as

described in IRM 4.61.14.1.5 for its consideration (with a copy to the CBA DFO).

- (3) The Waiver Committee will ensure that all recommendations for denial of waivers will be independently evaluated and handled consistently.
- (4) The Staff Assistant will schedule a conference call with the Waiver Committee, the examination team, and the territory manager to discuss the case.
- (5) The team manager on the Waiver Committee will forward the waiver recommendation(s) and the waiver request package to the Staff Assistant.
- (6) The Staff Assistant will submit the recommendation(s) to the CBA DFO. The CBA DFO may request additional information or clarification from the Waiver Committee and/or examination team prior to making their determination.
- (7) The Staff Assistant will communicate the CBA DFO's final determination to the territory manager, team manager and the Waiver Committee. The examination team will subsequently notify the taxpayer in writing of the determination.
- (8) Exhibit 4.61.14-3 contains scenarios to illustrate these procedures.

# Guidelines for Handling Delinquent Forms 1120-F and Requests for Waiver 4.61.14

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## Exhibit 4.61.14-1 (06-08-2020)

### Waiver Summary Analysis

Taxpayer Name:

EIN:

Years:

**NOTE:** When submitting the Waiver Summary Analysis as part of the waiver request package, please include, if applicable, the 886-As, and the taxpayer's protest and the Service's rebuttal. If there is not a protest and a rebuttal, please submit the correspondence which gives rise to the Waiver Request and documentation that supports the Waiver Summary Analysis. Please provide detailed responses in the boxes below.

**Conclusion:** Waiver of filing deadlines under Treas. Reg. 1.882-4(a)(3)(ii) is (*Highlight one*) granted/denied as summarized below.

Did the corporation cooperate in the process of determining its income tax liability for the taxable year for which the return was not filed?

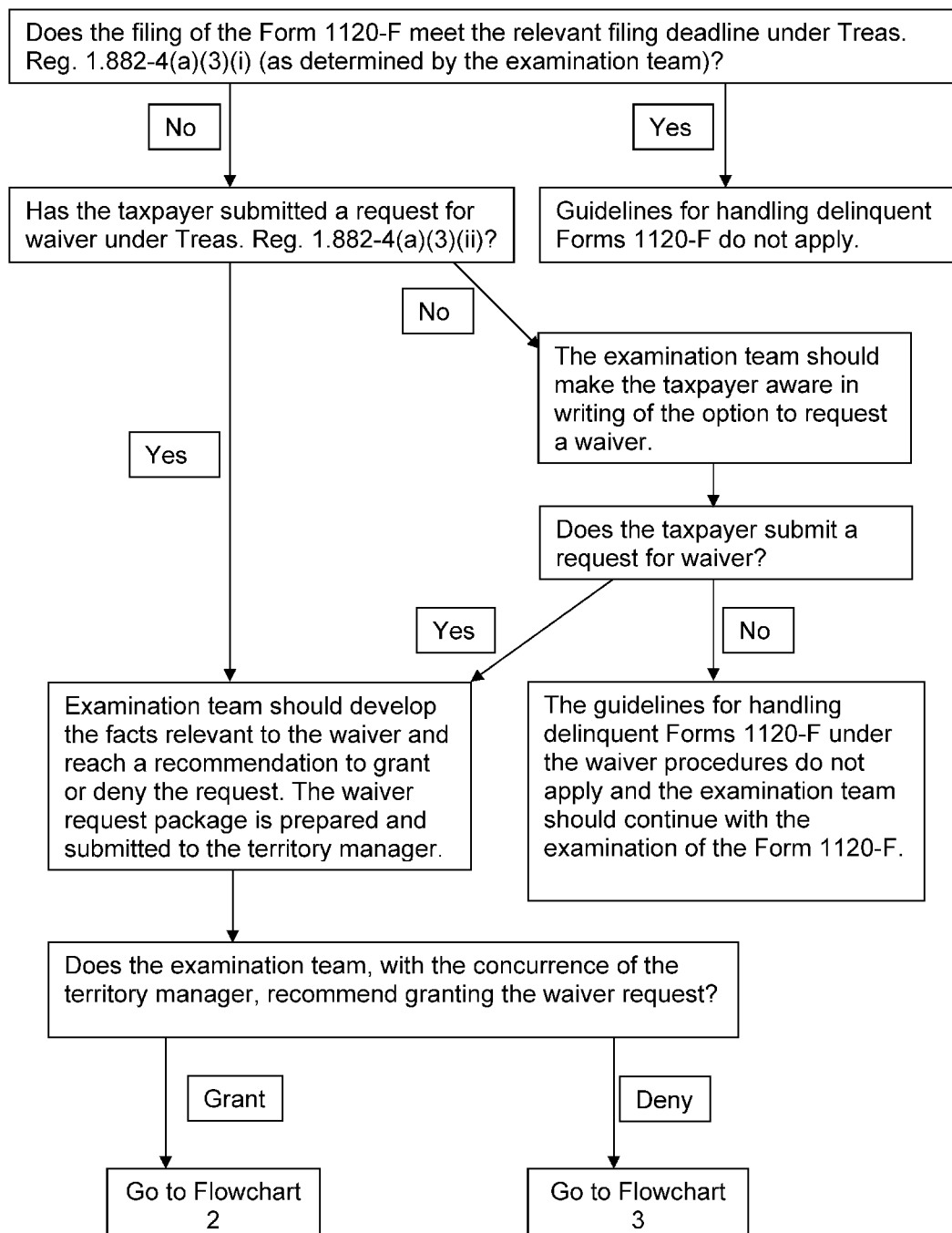
Additionally, consider the following factors in determining whether the foreign corporation, based on the facts and circumstances, acted reasonably and in good faith in failing to file a U.S. income tax return:

Reg. Section	Factor
(A)	Whether the corporation voluntarily identifies itself to the Internal Revenue Service as having failed to file a U.S. income tax return before the Internal Revenue Service discovers the failure to file.
(B)	Whether the corporation did not become aware of its ability to file a protective return (as described in (a)(3)(vi) of Treas. Reg. 1.882-4) by the deadline for filing a protective return.
(C)	Whether the corporation had not previously filed a U.S. income tax return.
(D)	Whether the corporation failed to file a U.S. income tax return because, after exercising reasonable diligence (taking into account its relevant experience and level of sophistication), the corporation was unaware of the necessity for filing the return.
(E)	Whether the corporation failed to file a U.S. income tax return because of intervening events beyond its control.
(F)	Whether other mitigating or exacerbating factors existed.

## Exhibit 4.61.14-2 (06-08-2020)

## Flowchart of Waiver Request Processing

**Flowchart 1: The Examination Team Has Been Assigned a Form 1120-F Examination**

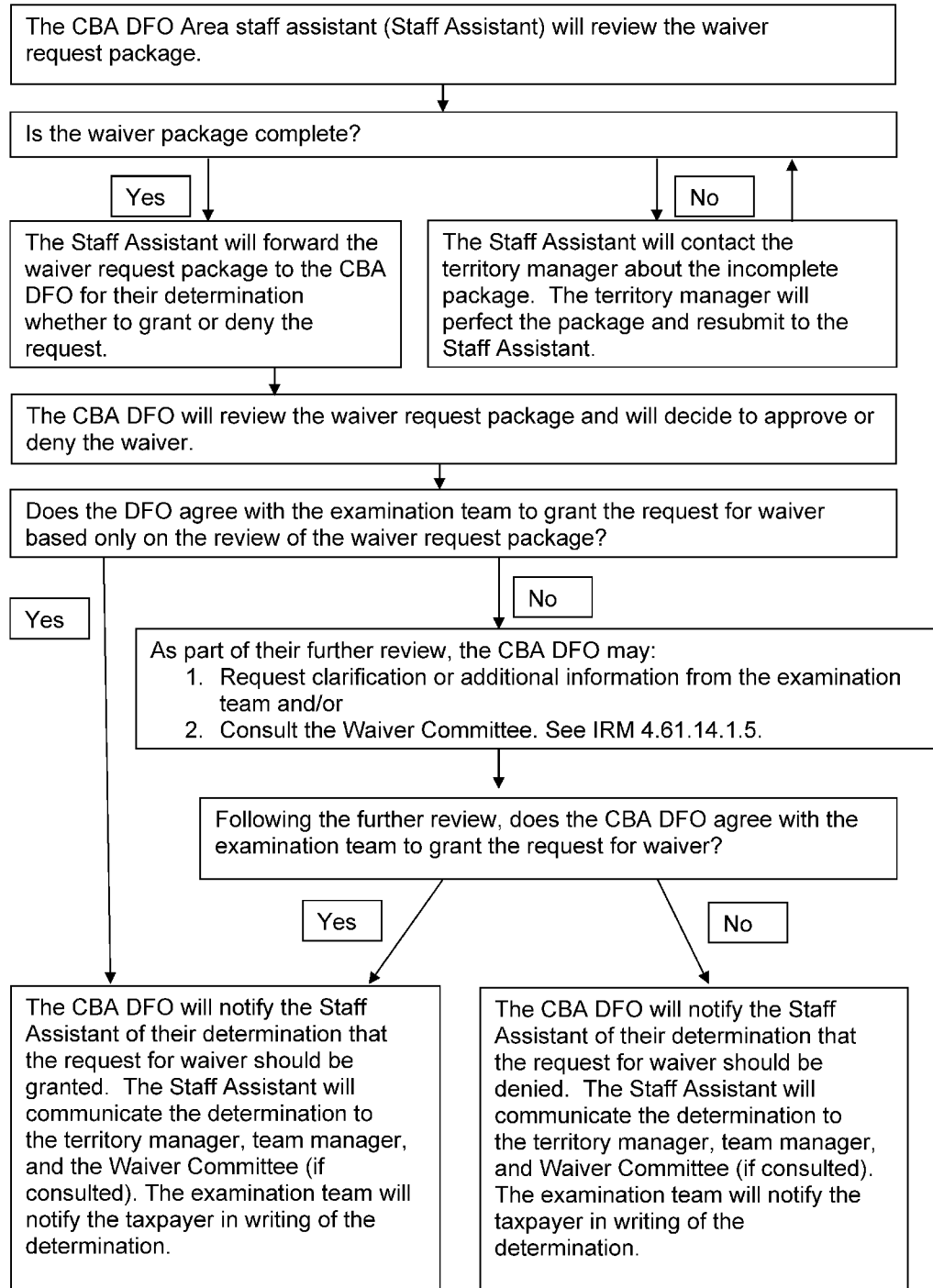


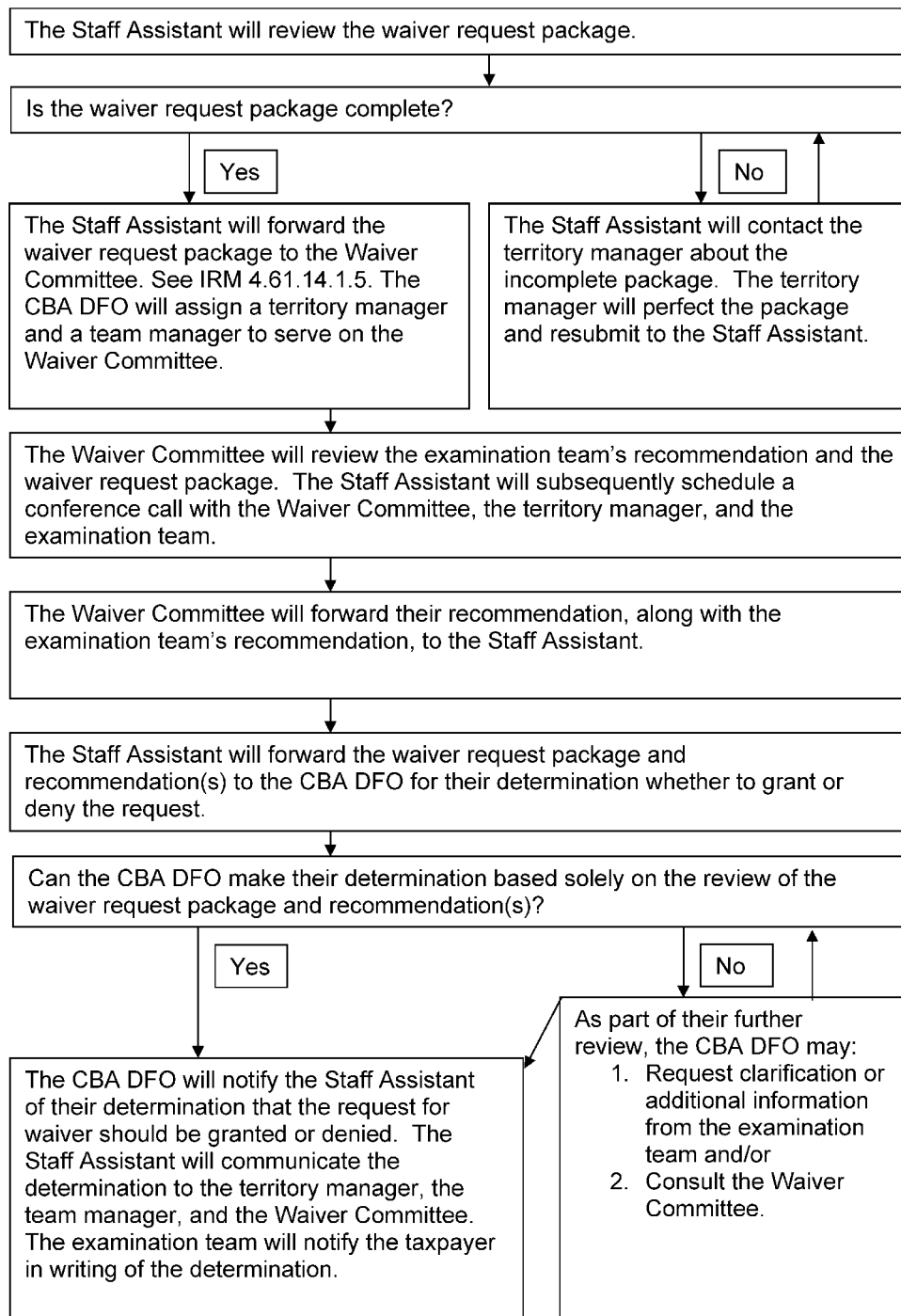
## Exhibit 4.61.14-2 (Cont. 1) (06-08-2020)

### Flowchart of Waiver Request Processing

#### Flowchart 2

#### If the Examination Team Recommendation is to GRANT the Waiver Request



**Exhibit 4.61.14-2 (Cont. 2) (06-08-2020)****Flowchart of Waiver Request Processing****Flowchart 3****If the Examination Team Recommendation is to DENY the Waiver Request**



# Guidelines for Handling Delinquent Forms 1120-F and Requests for Waiver 4.61.14

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## Exhibit 4.61.14-3 (10-08-2024)

### Scenarios

**Scenario 1:** A taxpayer not currently under exam approaches the IRS (e.g., examiner, revenue agent or specialist) directly and informs the IRS that for a particular tax year it has not filed a Form 1120-F for which the relevant timely filing deadline under Treas. Reg. 1.882-4(a)(3)(i) has passed, and that it now seeks to file a delinquent Form 1120-F. In some instances, a taxpayer representative may approach the IRS on a no-name basis on behalf of a taxpayer. The taxpayer or representative may seek to submit a delinquent return to the IRS or discuss the likelihood of a waiver being granted from the filing deadlines for the delinquent Form 1120-F.

In Scenario 1, the IRS should inform the taxpayer (or its representative, as applicable) that the Form 1120-F, even though delinquent under Treas. Reg. 1.882-4(a)(3)(i), must be filed in accordance with the filing instructions for the Form 1120-F. The examination team should make the taxpayer aware in writing of the option to request a waiver under Treas. Reg. 1.882-4(a)(3)(ii).

**Scenario 2.** An examiner, revenue agent or specialist (examination team) has been assigned the examination of a filed Form 1120-F for a particular tax year and determines that the filing of the Form 1120-F failed to meet the relevant timely filing deadline under Treas. Reg. 1.882-4(a)(3)(i).

In Scenario 2, the steps that the IRS should take depend on whether the taxpayer has submitted a request for waiver pursuant to Treas. Reg. 1.882-4(a)(3)(ii).

IF	THEN
Taxpayer has submitted a request for waiver	The examination team should develop the facts relevant to the request for waiver in accordance with Treas. Reg. 1.882-4(a)(3)(ii), reach a recommendation to grant or deny the request and then follow the process set forth in IRM 4.61.14.3.
Taxpayer has not submitted a request for waiver.	The examination team should make the taxpayer aware in writing of the option to request a waiver under Treas. Reg. 1.882-4(a)(3)(ii). The examination team should not advise, instruct, or otherwise signal the taxpayer to take any particular action. Sample language, in the form of a letter, that may be used as a guide to implement this step is attached to these guidelines (see Exhibit 4.61.14-4). The examination team will continue the examination of the filed return and may, as appropriate, propose any adjustments (to include the disallowance of deductions and credits (see <b>Note</b> below)) as determined under examination.
If the taxpayer submits a request for waiver in response to a proposed disallowance under IRC 882(c)(2).	The examination team should develop the facts relevant to the request in accordance with Treas. Reg. 1.882-4(a)(3)(ii), reach a recommendation to grant or deny the request and then follow the process set forth in under IRM 4.61.14.3, above.

**Exhibit 4.61.14-3 (Cont. 1) (10-08-2024)****Scenarios**

**Note:** Regardless of the determination on a request for waiver, the examination team may, as appropriate, propose to disallow specific deductions and credits in any amount to the extent that they are determined to not be allowable under the law or have not been properly substantiated.

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# Guidelines for Handling Delinquent Forms 1120-F and Requests for Waiver 4.61.14

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**Exhibit 4.61.14-4 (10-08-2024)**

**Wording to Use with Waiver Procedure Information Letter**

[IRS contact]

[IRS contact telephone number]

[Date]

[Taxpayer]

[Street Address]

[Postal Code]

Internal Revenue Code section 882(c)(2) and Treas. Reg. 1.882-4(a)(2) provide that a foreign corporation is allowed deductions properly allocated and apportioned to effectively connected income and credits attributable to that income only if it timely files a true and accurate return of its taxable income which is effectively connected, or treated as effectively connected, with the conduct of a United States trade or business for the taxable year (exceptions apply for the deductions allowed under section 170 and credits provided by sections 33, 34 and 852(b)(3)(D)(ii)). The return, on Form 1120-F, must be filed in accordance with the Form 1120-F filing instructions. The filing instructions provide that the Form 1120-F return must be filed with the Internal Revenue Service at the appropriate service center.

Treas. Reg. 1.882-4(a)(3)(i) sets forth the specific filing deadlines for filing a true and accurate return of a foreign corporation for purposes of determining allowance of the deductions and credits described above. Treas. Reg. 1.882-4(a)(3)(ii) provides that the filing deadlines may be waived if the foreign corporation establishes to the satisfaction of the Commissioner or their delegate that the corporation, based on the facts and circumstances, acted reasonably and in good faith in failing to file a U.S. income tax return (including a protective return). For this purpose, a foreign corporation shall not be considered to have acted reasonably and in good faith if it knew that it was required to file the return and chose not to do so. Please note that under these regulations “a foreign corporation shall not be granted a waiver unless it cooperates in the process of determining its income tax liability for the taxable year for which the return was not filed.”

The Service has determined that you have not timely filed under Treas. Reg. 1.882-4(a)(3)(i) your Form(s) 1120-F for the taxable year(s) ending [insert taxable year(s) ending]. If you choose to make a request for waiver of the filing deadlines, please note that Treas. Reg. 1.882-4(a)(3)(ii) sets forth a list of particular factors that the Service will consider in making its determination.

Please contact the IRS personnel listed above if you have any questions about this letter.

[Signature]

[Title]

