



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.70.12

NOVEMBER 22, 2023

EFFECTIVE DATE

(11-22-2023)

PURPOSE

- (1) This transmits IRM 4.70.12, TE/GE Examinations, Planning the Examination.

MATERIAL CHANGES

- (1) The TE/GE Examinations process was created to provide a consistent and streamlined examination process across TE/GE.
- (2) This IRM was extracted from the Internal Guidance Memos (IGMs) and IRM sections tabled here:

IGM	IRM
TEGE-0622-0025, Discontinue using paper Forms 895/895- EP, dated June 21,2022.	IRM 4.71.1, Overview of Form 5500 Examination Procedures, dated February 25, 2022.
TEGE-04-0921-0015, Mandatory Actuarial Input for Examination Cases Involving Defined Benefit Plans.	IRM 4.75.10, Exempt Organizations Examination Procedures, Exempt Organization Pre-contact Procedures, dated November 14, 2019.
TEGE-04-0921-0018, Activity, Disposal, Source and Status Codes.	IRM 4.81.5, Tax Exempt Bonds (TEB) Examination Program and Procedures, Conducting the Examination, dated August 5, 2021.
TEGE-04-0221-0003, Interim Guidance on Letter Consolidation, dated February 2, 2021.	IRM 4.86.5, Indian Tribal Governments (ITG) Procedures, Conducting Indian Tribal Government Examination, dated December 15, 2020.
TE/GE-04-0819-0015, Consideration of policy statements and delegation orders into two new IRM sections, dated August 23, 2019.	IRM 7.11.2.6 EP Examination Case Grading Criteria, dated July 25, 2008.
TE/GE-04-0720-0011, Interim Guidance for ITG and GECU on Fully Electronic (100% Paperless) Cases, dated July 2, 2020.	
TEGE-04-0720-0012, Interim Guidance for TEB and GECU on Fully Electronic (100% Paperless) Cases, dated July 2, 2020.	

IGM	IRM
TEGE-04-0820-0016, Interim Guidance on TEB Examination Procedures, dated August 27, 2020.	
TEGE-04-0121-0004, Requesting CP2100 recreates and/or IRPTR data from Classification and Case Assignment, dated January 29, 2021.	
TEGE-04-0321-0006, Interim Guidance on Verifying Forms 8976 Were Filed and Applicable Penalties, dated March 1, 2021.	
TEGE-04-0122-0002, Revised considerations for surveying cases, dated January 11, 2022.	
TEGE-04-0222-0006, Elimination of requirement to post Form 3198-A as a separate workpaper in RCCMS Office Documents folder, dated February 23, 2022.	
TEGE-04-0222-0008, Discussion and Documentation of Publication 1, Notice 609, Publication 5146 and the Examination Process, dated February 28, 2022.	
TEGE-04-0422-0013, TE/GE RCCMS Naming Convention, dated April 26, 2022.	
TEGE-04-0622-0018, Taxpayer Digital Communications Secure Messaging, dated June 23, 2022.	
TEGE-04-0622-0027, Tax Exempt and Government Entities Examination Process, dated June 21, 2022.	
TEGE-04-0622-0026, Reporting Compliance Case Management System (RCCMS) Electronic Case Policy, dated June 21, 2022.	
TEGE-04-0920-0024, Revisions to Activity, Disposal, Source, and Status Codes, dated September 28, 2020.	

IGM	IRM
TEGE-07-0722-0030, EP Examinations Case Grading Criteria, dated July 26, 2022.	

EFFECT ON OTHER DOCUMENTS

This IRM obsoletes IRM 4.71.1, Overview of Form 5500 Examination Procedures, dated February 25, 2022, IRM 4.75.10, Exempt Organizations Examination Procedures, Exempt Organization Pre-contact Procedures, dated November 14, 2019, IRM 4.81.5, Tax Exempt Bonds (TEB) Examination Program and Procedures, Conducting the Examination, dated August 5, 2021, IRM 4.86.5, Indian Tribal Governments (ITG) Procedures, Conducting Indian Tribal Government Examination, dated December 15, 2020, and IRM 7.11.2.6 EP Examination Case Grading Criteria, dated July 25, 2008. This sections incorporates Internal Guidance Memos TEGE-04-0121-0004, Requesting CP2100 recreates and/or IRPTR data from Classification and Case Assignment, dated January 29, 2021, TEGE-04-0321-0006, Interim Guidance on Verifying Forms 8976 Were Filed and Applicable Penalties, dated March 1, 2021, TE/GE-04-0819-0015, Consideration of policy statements and delegation orders into two new IRM sections, dated August 23, 2019, TE/GE-04-0720-0011, Interim Guidance for ITG and GECU on Fully Electronic (100% Paperless) Cases, dated July 2, 2020, TE/GE-04-0720-0012, Interim Guidance for TEB and GECU on Fully Electronic (100% Paperless) Cases, dated July 2, 2020, TEGE-04-0820-0016, Interim Guidance on TEB Examination Procedures, dated August 27, 2020, TEGE-04-0122-0002, Revised considerations for surveying cases, dated January 11, 2022, TEGE-04-0222-0006, Elimination of requirement to post Form 3198-A as a separate workpaper in RCCMS Office Documents folder, dated February 23, 2022, TEGE-04-0222-0008, Discussion and Documentation of Publication 1, Notice 609, Publication 5146 and the Examination Process, dated February 28, 2022, TEGE-04-0422-0013, TE/GE RCCMS Naming Convention, dated April 26, 2022, TEGE-04-0622-0025, Discontinue using paper Forms 895/895- EP, dated June 21, 2022, TEGE-04-0622-0027, Tax Exempt and Government Entities Examination Process, dated June 21, 2022, TEGE-04-0622-0026, Reporting Compliance Case Management System (RCCMS) Electronic Case Policy, dated June 21, 2022, TEGE-04-0622-0018, Taxpayer Digital Communications Secure Messaging, dated June 23, 2022, TEGE-04-0920-0024, Revisions to Activity, Disposal, Source, and Status Codes, dated September 28, 2020, and TEGE-07-0722-0030, EP Examinations Case Grading Criteria, dated July 26, 2022.

AUDIENCE

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4.70.12

Planning the Examinations

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4.70.12.1 (11-22-2023) Program Scope and Objectives

- (1) **Purpose:** IRM 4.70.12, Planning the Examination, provides the planning phase of the examination process. This phase of the examination process determines the scope of the exam. Issues selected for examination should have the broadest impact on compliance regardless of the size and type of entity or organization. Once the examiner determines the issues for examination, they will work to establish effective steps to complete the examination in a timely manner. TE/GE processes and procedures for conducting an examination, along with an overview of taxpayer rights, will be explained at the opening conference.
- (2) **Audience:** This IRM provides procedures for examiners, managers, and support staff in TE/GE examination functions.
- (3) **Policy Owner:** The Directors, Employee Plans, Exempt Organization and Government Entities.
- (4) **Program Owner:** The Directors, Employee Plans Examinations, Exempt Organizations Examinations, and Government Entities.

4.70.12.1.1 (11-22-2023) Background

- (1) This IRM provides an overview of the responsibilities that examiners should understand and apply in the performance of their duties in executing the planning phase of the TE/GE examination process.
- (2) Examination of exempt organizations will be conducted to determine whether such entities meet continued qualification of exempt status, compliance and the causes of noncompliance with the tax laws and applicable resolutions.
- (3) Examination of employee benefit plans is regulatory, with emphasis on continued qualification of employee benefit plans. The IRS selects and examines returns to:
 - a. Promote the highest degree of voluntary compliance with the tax laws governing plan qualification.
 - b. Determine the extent of compliance and the causes of noncompliance with the tax laws and applicable resolutions.
 - c. Determine whether such plans meet the applicable qualification requirements in operation.
- (4) Examination of governmental entities will be conducted to determine whether such entities are in compliance with their employment tax filing, reporting, and payment requirements.
- (5) The Tax Exempt Bond Examination Program is to identify and correct noncompliance in tax-advantaged bonds.
- (6) TE/GE Examiners should refer to IRM 4.23.3, Exam Program and Procedures when examining employment tax cases in addition to this IRM section.
- (7) The procedures contained in this IRM are not intended to be all inclusive. Examiners must use their professional judgment in completing their exam cases and other compliance activities.

4.70.12.1.2
(11-22-2023)
Authority

- (1) Examinations are conducted according to Policy Statement 1-236 (IRM 1.2.1.2.36), Fairness and Integrity in Enforcement Selection, and the Taxpayer Bill of Rights per IRC 7803(a)(3). The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.
- (2) Policy Statement 4-4 (IRM 1.2.1.5.2) provides package audit requirements, that:
 - a. Income tax examinations will include consideration of employment tax liability.
 - b. If warranted, employment tax returns will be examined concurrently with the income tax examination.
 - c. The examination of any return will include a check for filing other federal tax or information returns required to be filed.
- (3) Policy Statement 4-6 (IRM 1.2.1.5.4), Examiner May Not Examine Return if Relationship Impairs Impartiality, prohibits examiners from examining or surveying a tax return if a relationship impairs impartiality. A conflict of interest exists if an examiner's personal relationship(s) or private interest (usually of a financial or economic nature) conflict, or raise a reasonable question of conflict, with the examiner's public duties and responsibilities.
- (4) Under Policy Statement 4-117 (IRM 1.2.1.5.34), examiners and managers:
 - a. Have broad authority to consider and weigh conflicting information, data, and opinions.
 - b. Use professional judgement when applying examination standards for findings of fact and application of tax law to determine the correct tax liability.
 - c. Exercise authority to get the greatest number of agreements to tax determinations without sacrificing the quality or integrity of those determinations.
 - d. Resolve tax differences at the lowest level.
- (5) Policy Statement 4-119 (IRM 1.2.1.5.36) provides that the primary objective of the TE/GE program is regulatory, with emphasis on the continued qualification of exempt organizations and employee benefit plans, and continued compliance of governmental entities (federal, state, and local governmental entities, Indian tribal governments and tribal entities, and entities or organizations that issue tax advantaged bonds). IRS selects and examines returns to:
 - a. Promote the highest degree of voluntary compliance with the statutes governing qualification of plans and exemption of certain types of organizations from tax.
 - b. Determine the extent of compliance and the causes of noncompliance with the tax laws by plans, organizations, and governmental entities.
- (6) IRC 7602 gives examiners the authority to:
 - a. Examine any books, papers, records or other data necessary to complete an examination (includes electronic media).
 - b. Issue a summons for information necessary to complete an examination.
 - c. Take testimony under oath to secure additional information needed.

- d. Ask about any offense connected to administering or enforcing the Internal Revenue laws.

(7) IRC 7601 - Assessment Authority, which falls under Chapter 63 - Assessment.

4.70.12.1.3 (11-22-2023) Responsibilities

- (1) The Directors, EO/GE and EP, are the executives responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.23, Tax Exempt and Government Entities Division, for additional information.
- (2) The Directors, EO Examinations, GE, and EP Examinations reports to the Directors, EO/GE and EP respectively, and are responsible for the delivery of policy and guidance that impacts the field examination process. See IRM 1.1.23, Tax Exempt and Government Entities Division, for additional information.
- (3) All examiners must perform their professional responsibilities in a way that supports the *IRS Mission*. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (4) Examiners and their managers should thoroughly acquaint themselves with the examination procedures and information contained in this IRM, as well as other resources.

4.70.12.1.4 (11-22-2023) Program Controls

- (1) CP&C administers examination inventory control.
- (2) The FAC coordinates the assignment of examination inventory.
- (3) Two review groups make sure examiners conduct examinations per technical, procedural and administrative requirements:
 - a. Mandatory Review / Technical.
 - b. Special Review, see IRM 4.70.7, Special Review (SR) and Tax Exempt Quality Measurement System (TEQMS) Procedures.
- (4) In order to ensure a consistent level of managerial engagement in the process of making key strategic decisions during an exam, the examiner submits requests for approval by their manager through RCCMS.
- (5) The manager approves or rejects any request through RCCMS.
- (6) The IRS is fully committed to protecting the privacy rights of taxpayers and employees. Privacy laws are included in the IRC, the Privacy Act of 1974, the Freedom of Information Act, and IRS policies and practices. For more information about these laws, visit the *IRS Electronic Freedom of Information Act Reading Room*.
 - a. For questions about privacy, email **Privacy*.
 - b. For question about disclosure, email **Disclosure*.

4.70.12.1.5
(11-22-2023)

**Acroymns,
Abbreviations, Forms,
Pubs**

(1) This manual uses the following acronyms and references the following forms.

Acronym	Definition
AIMS	Audit Information Management System
ASED	Assessment Statute Expiration Date
ATAT	Abusive Tax Avoidance Transactions
ATE	IRS Independent Office of Appeals (Appeals) Technical
ATRA	American Taxpayer Relief Act of 2012
Audit CAP	Audit Closing Agreement Program
BMF	Business Master File
BMFOLI	Business Master File On-line Information
BMFOLT	Business Master File On-line Transactions
BMFOLU	Business Master File On-line CAWR
BRTVU	Business Return Transaction View
BOD	Business Operating Division
CA Coordi- nator	Closing Agreement Coordinator
CAF	Centralized Authorization File
CCR	Case Chronology Record
CEP	Coordinated Examination Program
CFINK	Centralized File Inquiry
CHNA	Community Health Needs Assessment
CI	Criminal Investigation Division
CL	Cumulative List
C&CA	Classification & Case Assignment
CP&C	Compliance Planning & Classification
CPG	Compliance Programming Group
CSEC	Cooperative and Small Employer Charity Pension Flex- ibility Act
DOL	Department of Labor
EBSA	Employee Benefits Security Administration
EDS	EP/EO Determination System
EEFax (e- fax)	Enterprise Electronic Facsimile
EFAST	ERISA Filing Acceptance System
EFU	Exam Functional Unit

Acronym	Definition
EGTRRA	Economic Growth and Tax Relief Reconciliation Act
EIN	Employer Identification Number
EO	Exempt Organizations
EP	Employee Plans
EPCU	Employee Plans Compliance Unit
EPMF	Employee Plans Master File
ERISA	Employee Retirement Income Security Act of 1974
ESSP	Examinations Special Support and Processing (Closing Unit)
ESOP	Employee Stock Ownership Plan
FAC	Functional Assignment Coordinator
FAST	Field Agent Support Team
FAP	Financial Assistance Policy
FEMA	Federal Emergency Management Agency
FICA	Federal Insurance Contributions Act
FMV	Fair Market Value
FOIA	Freedom of Information Act
FSL/ET	Federal, State, Local Government / Employment Tax
FTS	Fraud Technical Specialist
GCM	General Counsel Memo
GE	Government Entities
GECU	Government Entities Compliance Unit
HCE	Highly Compensated Employee
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
IGM	Interim Guidance Memo
IMF	Individual Master File
INOLES	Information On-Line Entity Summary
IRA	Individual Retirement Account
IRAS	Information Report Analysis System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRPTRR	Information Returns Processing Transcripts

Acronym	Definition
KSOP	401(k) Employee Stock Ownership Plan
LB&I	Large Business and International
LDC	Lead Development Center
LITC	Low Income Taxpayer Clinic
LUQ	Large, Unusual or Questionable
MAP-21	Moving Ahead for Progress in the 21st Century Act
MeF	Modernized E-File
MFT	Master File Tax
M&P	Master & Prototype Plan
NMF	Non-Master File
NRU	Non-Return Unit
OSC	Ogden Service Center
OTSA	Office of Tax Shelter Analysis
PBGC	Pension Benefit Guaranty Corporation
PC	Project Code
P&M	Planning & Monitoring
PLR	Private Letter Ruling
PMFOL (B,D,S)	Payor Master File On-line
POA	Power of Attorney
POD	Post of Duty
PPA	Pension Protection Act of 2006
PRA	Pension Relief Act of 2010
PSP	Planning and Special Programs
PTIN	Preparer Tax Identification Number
QLAC	Qualified Longevity Annuity Contract
QMS	Quality Measurement System
RA	Revenue Agent
RAC	Remedial Amendment Cycle
RAIC	Revenue Agent in Charge
RAP	Remedial Amendment Period
RAR	Revenue Agent Report
RCCMS	Reporting Compliance Case Management System

Acronym	Definition
RICS	Returns Inventory Management System
RGS	Report Generation Software
RRA	Restructuring and Reform Act
SARSEP	Salary Reduction Simplified Employee Pension
SB/SE	Small Business and Self-Employed
SBJA	Small Business Jobs Act of 2010
SEP	Simplified Employee Pension
SFR	Substitute for Return
SIMPLE	Savings Incentive Match Plan for Employees of Small Employers
SOL	Statute of Limitations
SR	Special Review
SRS	Specialist Referral System
SSA	Social Security Administration
SSN	Social Security Number
STCP	Student Tax Clinic Program
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TCO	Tax Compliance Officer
TE	Tax Examiner
TE/GE	Tax Exempt & Government Entities
TEGEDC	Tax Exempt & Government Entities Division Counsel
TEQMS	Tax Exempt Quality Measurement System
TIN	Taxpayer Identification Number
TMP	Tax Matters Partner
TRASOP	Tax Reduction Act Stock Ownership Plan
TRDBV	Tax Return Database View
TXMODA	Tax Module Account
UBI	Unrelated Business Income
URP	Unenrolled Return Preparer
VCP	Voluntary Compliance Preparer
VS	Volume Submitter Plan
W&I	Wage and Investment

Acronym	Definition
WebETS	Web-Based Employee Technical Time System

Form	Name
Form 872	Consent to Extend the Time to Assess Tax
Form 886-A	Explanation of Items
Form 940	Employer's Annual Federal Unemployment (FUTA) Tax Return
Form 941	Employer's Quarterly Federal Tax Return
Form 945	Annual Return of Withheld Federal Income Tax
Form 1040	U.S. Individual Income Tax Return
Form 1065	U.S. Return of Partnership Income
Form 1120	U.S. Corporation Income Tax Return
Form 1120-S	U.S. Income Tax Return for an S Corporation
Form 2797	Referral Report of Potential Criminal Fraud Cases
Form 2848	Power of Attorney and Declaration of Representative
Form 3198-A	TE/GE Special Handling Notice
Form 3210	Document Transmittal
Form 3244-A	Payment Posting Voucher – Examination
Form 4442	Inquiry Referral
Form 4564	Information Document Request (IDR)
Form 4759	Address Information Request – Postal Tracer
Form 5227	Split-Interest Trust Information Return
Form 5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
Form 5330	Return of Excise Taxes Related to Employee Benefit Plans
Form 5464	Case Chronology Record (CCR)
Form 5500	Annual Return/Report of Employee Benefit Plan
Form 5666	TE/GE Referral Information Report
Form 6882	IDRS/Master File Information Request
Form 8300	Report of Cash Payments over \$10,000 Received in a Trade or Business
Form 8821	Tax Information Authorization

Form	Name
Form 8868	Application for Extension of Time To File an Exempt Organization Return or Excise Taxes Related to Employee Benefit Plans
Form 10329	Transmittal Sheet – Related Cases
Form 12175	Third Party Contact Report Form
Form 12180	Third Party Contact Authorization Form
Form SS-10	Consent to Extend the Time to Assess Employment Taxes
Form W-2	Wage and Tax Statement
Form W-4	Employee's Withholding Allowance Certificate
Pub 1	Your Rights as a Taxpayer
Pub 947	Practice Before the IRS and Power of Attorney
Pub 4019	Third Party Authorization, Levels of Authority
Pub 4245	Power of Attorney Preparation Guide

4.70.12.1.6
(11-22-2023)

Related Resources

- (1) Examiners should consult the resources within the application Knowledge Base within the *Virtual Library* to ensure proper issue development and consistent application of the law.
- (2) To ensure that the IRM is always current, future revisions of the IRM will refer you to one of the books below for the correct codes to use in lieu of specifying an activity code, disposal code, source or status code. The IRM will specify the section of the document to reference and the type of activity, disposition, source and status code to look up.
 - Document 6379, Information Systems Codes FY 2023 Quick Reference for EO Employees
 - Document 6476, Information Systems Codes FY 2023 Quick Reference for EP Agents/Specialists
 - Document 11308, Information Systems Codes FY 2023 for GE Employees

Note: You can also get the current version of the documents at our *Business Systems Planning* page.

4.70.12.2
(11-22-2023)

Overview of Planning Phase

- (1) All cases are transmitted to and from groups via RCCMS. Upon assignment in RCCMS, the Examiner begins the planning phase of the examination.
- (2) Once the examiner begins charging time to the case update to Status 12.
- (3) The planning phase focuses on the required work to be completed during the course of the examination including:
 - a. IRM 4.70.12.3, Pre-Contact Analysis.
 - b. IRM 4.70.12.4, Examination Plan Development and Approval.

- c. IRM 4.70.12.5, Workpaper Development.
- d. IRM 4.70.12.6, Case Chronology Content.
- e. IRM 4.70.12.7, Contacting the Taxpayer.

Note: It is important to remember there is a difference between pre-planning and planning. Planning continues throughout the examination even though the pre-contact analysis and preplan has been completed. The initial plan may be amended and supplemented several times during the conduct of a typical examination. See IRM 4.70.12.4, Examination Plan Development and Approval.

- (4) The examination scope is generally noted in the case file documents and/or classification sheet.
- (5) Issues selected for examination should have the broadest impact on compliance regardless of the size and type of entity or organization. The scope and depth of the examination planning will depend on a number of factors:
 - a. Issues Identified
 - b. Adequacy of the books and records
 - c. Existence of effective internal controls
 - d. Size of the entity
 - e. Results of initial testing and/or sampling
- (6) Once the examiner and group manager determine the issues for examination, they will work to establish effective steps to complete the examination in a timely manner. Examiner will enter the issue codes in the RCCMS Issue Code Data Grid (see IRM 4.70.12.4.4, Issue Code Data Grid).
- (7) Examiners and their managers will determine, on a case by case basis, whether the examination is conducted at the taxpayer's place of business, the POA's office, or worked through correspondence.
- (8) The examination plan is intended to be flexible and, when warranted, adjusted throughout the examination.
- (9) The examiner must obtain managerial concurrence upon development, and/or subsequent modification, of the plan.
- (10) Always consider and explain any large, unusual, or questionable (LUQ) items on the return, which if left unexplained, might raise compliance concerns.
- (11) When deciding the extent to which you will pursue an issue, consider the amount of time necessary to develop the issue in light of all the facts and circumstances.
- (12) You may need to open an exam on one or more related returns to address potential issues you identified during an examination.
- (13) Discuss material issues involving potential noncompliance on other returns with your manager before opening a related examination.
- (14) ITG specialists need to consult with their group manager, ITG Program Manager and Tax Law Specialists when issues involving the General Welfare Exclusion (GWE) Act of 2014 are present.

4.70.12.3
(11-22-2023)
Pre-Contact Analysis

- (1) A good pre-contact analysis saves time during the on-site examination by helping you:
 - Organize the work.
 - Recognize and concentrate on significant issues.
 - Prepare for the initial appointment.
 - Document the examination's course.
 - Ensure the application of quality examination standards.
- (2) The pre-contact analysis helps identify the facts you need to develop during the examination to resolve the identified issues.

4.70.12.3.1
(11-22-2023)
Conflict of Interest Requirements

- (1) The examiner must also be alert to the facts and circumstances of a practitioner in their representation of a taxpayer. Conflicts of interest are defined in Circular 230, section 10.29(a). Any apparent conflicts of interest must be identified and addressed with the representative. See IRM 1.25.1, Rules Governing Practice Before the IRS. See IRM 4.10.2.2.3, (02-11-2016), Conflict of Interest, for identification of personal relationships and financial interests that may constitute a conflict and actions to be taken
- (2) All EP large case examinations must include completion of a Large Case Financial Interest Disclosure Form to disclose conflicts an examiner may have, which might create a real or apparent conflict of interest. Follow financial interest and disclosure procedures in IRM 4.70.11.15.9, for all EP large case examinations.
- (3) Circular 230, Section 10.29(a) provides that, except as provided in paragraph (b), below, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if:
 - The representation of one client will be directly adverse to another client, or
 - There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.
- (4) Circular 230, Section 10.29(b) states that a practitioner may represent a client despite a conflict of interest if:
 - The practitioner reasonably believes that they will be able to provide competent and diligent representation to each affected client;
 - The representation is not prohibited by law; and
 - Each affected client waives the conflict of interest and gives informed consent to the representation, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner.

Example: Bond attorneys provide opinions to their clients on whether a bond issuance will qualify for tax-advantaged status. A conflict of interest doesn't necessarily arise because an attorney is representing the bond issuer after that attorney provided the opinion underlying the issuance of the bond, such as when the focus of the exam is post-opinion compli-

ance. Consider other facts in each situation under exam involving a potential conflict of interest.

- (5) If there is reason to believe, based on the pertinent facts and circumstances available, that a representative has a conflict of interest as defined above, promptly raise the issue with the representative and request that they act to address the conflict of interest.
- (6) The issue may be resolved under the following conditions:
 - a. If the representative provides persuasive information regarding the facts and circumstances that there is not a conflict of interest, or
 - b. The representative provides written assurance that the conflict has been waived as discussed below, or
 - c. The representative withdraws and rescinds the power of attorney.
- (7) If the representative responds that he or she has obtained or will obtain the client's informed consent to the representation, notwithstanding the conflict of interest, require the representative to provide a letter or other signed document stating that after being informed of the conflict of interest, each affected client has waived the conflict and given informed consent to the representation and that the representative confirmed such consent of each client in writing.
- (8) Include in the case file the written assurance received from the representative that resolves the conflict of interest.
- (9) Do not request copies of the informed-consent documents that the affected clients have signed or that otherwise function as the clients' written confirmation described in Circular 230 section 10.29(b).
- (10) The Office of Professional Responsibility (OPR) has exclusive authority to enforce the rules governing practice before the IRS and to pursue sanctions against a practitioner for violations of Circular 230. When a representative with a conflict of interest does not resolve the conflict, consult your manager and contact OPR for guidance.
- (11) Consult OPR about conflict of interest questions and concerns, including:
 - a. Whether there is a potential conflict of interest.
 - b. Whether a representative's written assurance of client consent is adequate.
 - c. Whether a representative is in compliance with Circular 230, Section 10.29.

4.70.12.3.2 (11-22-2023)

Return Assignment

- (1) Upon being assigned a return by a group manager for examination, review documents that accompany the return and/or RCCMS Case file, including:
 - Classification sheets.
 - Claims.
 - Issue ID Sheets.
 - Forms 5666.
 - White Papers.
 - Whistleblower Documentation (including Form 211).
 - Other information, such as referral packages.

Note: Claims and Referrals are considered priority work.

- (2) If items are identified on the Classification documents, document in the case file the decision as to whether to examine the items.
- (3) If the examination is a referral, consider what information to obtain to address the issues raised and determine the viability of the referral. Consider a third-party contact with the informant if warranted utilizing the whistleblower office per IRM 4.70.11.11, Third-Party Contacts.
- (4) If the group receives a federal/state referral case:
 - The GM immediately evaluates the case, and per the Annual Examination Program Priority Memorandum, assigns it to an examiner.
 - The GM and examiner determine the appropriate examination technique.

Note: A referring official may invite the IRS to review and copy documents in the federal/state official investigative files. The assigned examiner coordinates with the EO Fed/State Liaison to do this.

4.70.12.3.2.1 (11-22-2023)

Transfer of Case to Another Group or Area

- (1) Generally, the examination of any return is the responsibility of the group in which the case is assigned. However, it may become necessary to transfer a return to another examiner in the group, another group or another Area after the examination has begun. You may transfer an examination if it promotes conducting an effective and efficient examination. It is the examiner's responsibility (with agreement from the group manager) to determine if the request for case transfer meets the criteria for transfer and to prepare the case for transfer if the criteria are met.
- (2) Management can initiate the transfer of an unopened examination to another group when requested.

Example: Examples include transfers of cases from groups with high case inventory levels to groups with low case inventory levels and related examinations conducted by examiners in another office.

- (3) Management initiates a case transfer from one examiner to another through RCCMS if, for whatever reason, the current examiner can't complete the work.
- (4) Upon agreement for transfer:
 - a. Secure a SOL extension, as necessary.
 - b. Complete Form 2363-A, Request for IDRS Input for BMF-EO Entity Change, if a transfer is due to a permanent change of address.
 - c. Notify CP&C EO Referrals if the case is the result of a referral.
 - d. The manager transfers the case via RCCMS.
- (5) A minimum of 13 months must remain on the SOL at the time of the transfer (26 CFR 301.7605-301.7605-1(e)(4)). If all other considerations are satisfied except the 13 month period, obtain the taxpayer's written agreement to secure a one-year extension of the SOL.
- (6) A transfer should not be made after a statutory notice of deficiency (SNOD), 90-day letter, is issued.

4.70.12.3.2.2
(11-22-2023)

**Transfer the Location of
an Examination**

- (1) Usually, the examination is conducted where the taxpayer is physically located, has its principal office, carries out business transactions, and maintains its books and records. However, you may receive a taxpayer and/or representative request to transfer the examination to another location. IRC 7605 gives the Secretary authority to reasonably set the time and place of an examination.
- (2) For guidance on processing taxpayer and/or representative requests to transfer the place of examination, see 26 CFR 301.7605-1(e)(2). For case transfer purposes, "representative" means a person that the taxpayer has properly designated by executing Form 2848. Generally, the IRS grants a request under the following circumstances:
 - The taxpayer's address is no longer where an examination has been scheduled.
 - The taxpayer's books, records, and source documents are maintained at a location other than where the examination has been scheduled.
- (3) The request to transfer the place of the examination must be in writing (26 CFR 301.7605-1(e)). It must include the following information:
 - a. Reason the requested location is more efficient for the examination.
 - b. Taxpayer's current address, phone number, and current principal place of business.
 - c. Address/location of taxpayer's books, records, and source documents.
 - d. Information as to who possesses the required records and is available to expediently resolve issues.
 - e. Available resources in the area to which the taxpayer requests transfer, if known.
 - f. Other factors that show how conducting the examination at a particular location poses undue inconvenience to the taxpayer.

Note: We will not approve requests for transfers from individuals authorized to receive tax return information using Form 8821 Tax Information Authorization.
- (4) Evaluate a request for transfer on a case-by-case basis. Consider these factors:
 - a. Organization's current address.
 - b. Location of the organization's business.
 - c. Location of the organization's books and records, including vouchers, invoices, cancelled checks, and other documents usually maintained at the business site.
 - d. Location where the IRS can perform the examination most efficiently.
 - e. Availability of the IRS's resources at the location to which the organization requests a transfer.
 - f. Other circumstances that indicate conducting the examination at a particular location would create undue inconvenience to the organization.

4.70.12.3.3
(11-22-2023)

Case Grading

- (1) Cases are graded based on complexity and impact equivalent to those specified in OPM standards for that grade, assuming normal supervision. Income, wages, and/or assets reported on the return are used to determine the case grade of TE/GE examination cases based on type and size of the entity or organization.

- (2) Cases should generally be assigned to an examiner whose grade is commensurate with the grade of the examination.
- (3) Verify the case grade prior to contacting the taxpayer. If you are assigned a case with a grade above your grade, consult with your manager.
- (4) Employment tax case grading criteria is addressed in IRM 4.23.19, Employment Tax Case Assignment and Grading Criteria.

Note: For employment tax cases, also see IRM 4.70.12.3.3.3, Employment Tax Case Grading.

- (5) GS-9 and GS-11 TCOs: Case grading criteria for GS-9 and GS-11 tax compliance officers (TCO) involve the following factors.
 - a. Characteristics of examinations for a TCO:

• Examinations limited to correspondence examinations
• Examinations limited to operational issues only
• Multiple non-filed returns involved only a single entity/organization

- b. General assignment criteria for TCO assignments at the Grade 9 level:

• Involve a single issue identified during classification
• Adjustment is limited to the pre-classified issue

Example: Below are examples of issues that can meet the criteria for TCO assignment at the grade 9 level.

Issue	Plan Type
IRC 415	Profit Sharing Plan (PSP) or Money Purchase Plan (MPP)
Funding deficiencies	MPP
VC 150-day compliance statement follow-up (plans with less than 201 participants)	PSP and MPP
Partial termination/partial vesting (plans with less than 201 participants)	PSP and MPP
Deduction exceeds 25% of compensation (plans with less than 201 participants)	PSP (Single Plans Only)
EOY/BOY assets mismatch	PSP and MPP
SIMPLE IRA plans – eligible sponsors	IRA based plans

Issue	Plan Type
SEP IRA – Required Minimum Distribution (RMD)	IRA based plans

- c. Factors that do not increase TCO case grade include complicated issues that may involve an actuary, on-the-job instructor (OJI), senior agent, or group manager.

Note: If issues outside the scope for TCOs are found during case development, the case should be transferred to the appropriate field examiner to complete the examination.

- d. General assignment criteria for TCO assignments at the Grade 11 level:

- | |
|---|
| <ul style="list-style-type: none"> TCO cases falling outside of the Grade 9 criteria above that otherwise meet the criteria for TCO examinations. |
| <ul style="list-style-type: none"> Any cases that fall under the Grade 11 criteria in IRM 4.70.12.3.3.1 (5) below for EP Case Grading, or IRM 4.70.12.3.3.2 (3) below for EO Case Grading. |

4.70.12.3.3.1
(11-22-2023)

EP Case Grading

- (1) All factors need not be present to determine the case grade. Only one factor must be present to raise the grade of the plan.
- (2) **GS-13: Factors include plans described below for Grade 13 plans.**
 - a. Participants > 1,000.
 - b. Multiemployer plan.
 - c. Leveraged ESOP / TRASOP / KSOP.
 - d. Defined benefit (DB) average benefit test.
 - e. Separate line of business rules.
 - f. IRC 403(b) plan for an educational organization which is a state, a political subdivision of a state, or an agency or instrumentality of any one of these.
 - g. Cash balance plans (conversions) and hybrid plans.
 - h. IRC 457 plans.
 - i. Governmental and church plans (> 999 employees).
- (3) **GS-12: Factors include plans described below for Grade 12 plans without Grade 13 factors.**
 - a. Determination application for the same plan was graded as a GS-12 case.
 - b. Participants > 200 and < 1,001.
 - c. Defined benefit (DB) plan terminations.
 - d. DB safe harbor plans with permitted disparity.
 - e. DB collectively bargained plans.
 - f. Target benefit plans.
 - g. ESOP / TRASOP / KSOP (not leveraged).
 - h. Defined contribution (DC) plans using the average benefit test.
 - i. Affiliated service group status.
 - j. Cash balance plans (no conversion issues).
 - k. IRC 412(3) fully insured plans.
 - l. Governmental and church plans (< 1,000 employees).

m. Orphan plans.

(4) **GS-12: Factors include plans described below for Grade 12 403(b) plans without Grade 13 factors.**

- a. The IRC 403(b) plan is sponsored by an organization recognized by the IRS as a IRC 501(c)(3) organization.
- b. The sponsor employs fewer than 1,000 employees.
- c. There are no related IRC 457 plan features.

(5) **GS-11: Factors include plans described below for Grade 11 plans without Grade 13 and Grade 12 factors.**

- a. Collectively bargained or terminated DC plans.
- b. DC plans with permitted disparity.
- c. Plans using the ratio percentage test.
- d. DB safe harbor plans without permitted disparity (non-integrated).
- e. IRC 408(k) or IRC 408(p) plans (Simplified Employee Pensions (SEP) or SIMPLE IRA).
- f. All other plans without Grade 12 and 13 factors.
- g. Plans with fewer than 201 participants.

(6) Plan types not listed (for example, IRC 401(k) or IRC 401(m)) are graded by the number of participants in the plan.

(7) Case Grade Adjustments.

- a. Some factors that may increase the case grade include failures relating to:

• Funding and actuarial matters.
• Asset valuation issues (for example, investments in limited partnerships.)
• Prohibited transactions.
• Unrelated business income.
• Complex IRC 415 issues.
• Nondiscrimination issues (for example, general test, aggregation, restructuring, and cross testing).
• Exclusive benefit.
• Orphan plan status discovered on Grade 11 plans.

- b. Other factors that may increase the case grade include:

• Significant complications caused by the IRC 414(b), (c) and (n) rules.
• Coordination with the Department of Labor (DOL) and/or Pension Benefit Guaranty Corporation (PBGC).

- c. Factors that may decrease the case grade include:

- | |
|---|
| • Involvement of an actuary, OJI, senior examiner, or group manager. |
| • Case impact is limited (for example, a 5500-EZ returns or a minor adjustment). |
| • Examination doesn't address complex issues justifying the higher grade (for example, an exam where the higher graded issues aren't considered during the course of the examination when instructed by the manager). |

4.70.12.3.3.2

(11-22-2023)

EO Case Grading

- (1) Cases are graded as Grade 9 when they have fewer and less complex issues. The table below shows a Grade 9 case assignment's maximum thresholds for gross receipts **or** assets.

Probable Grade 9	Total Assets	Gross Receipts
IRC 501(c)(3) private foundations	Up to \$100,000	Up to \$100,000
IRC 501(c)(3) other than private foundations	Up to \$100,000	Up to \$100,000
IRC 501(c) all others	Up to \$100,000	Up to \$100,000
IRC 521 black lung trusts	N/A	N/A
IRC 527 political organizations	Up to \$100,000	Up to \$100,000

- (2) Grade 11 cases are those in which:
- You need experience as necessary to determine and resolve issues and apply established laws, precedents and methods frequently used and generally applicable;
 - May have complicated features involving controversy or a number of interrelated issues;
 - The impact of case decisions may extend beyond the organization or metropolitan area because of the scope of activities or the nature of the issues.
- (3) The table below shows a Grade 11 case assignment maximum thresholds for gross receipts **or** assets.

Probable Grade 11	Total Assets	Gross Receipts
IRC 501(c)(3) private foundations	From \$100,000 to \$1,000,000	From \$100,000 to \$500,000

Probable Grade 11	Total Assets	Gross Receipts
IRC 501(c)(3) other than private foundations	From \$100,000 to \$1,000,000	From \$100,000 to \$1,000,000
IRC 501(c) all others	From \$100,000 to \$1,000,000	From \$100,000 to \$500,000
IRC 521 black lung trusts	N/A	Up to \$100,000
IRC 527 political organizations	From \$100,000 to \$1,000,000	From \$100,000 to \$500,000

- (4) Grade 12 cases are those that have major issues with difficult or complex legal or accounting problems and require extensive investigation to resolve problems, such as:
- Direct precedent isn't available or appropriate.
 - Controversy due to interpretation or adaptation of precedents.
 - Complications involving interrelated questions of a factual, financial, legal or accounting nature.
 - Issues impacting larger organizations of regional or national stature or that may arouse public attention.
- (5) The table below shows a Grade 12 case assignment's maximum thresholds for gross receipts **or** assets.

Probable Grade 12	Total Assets	Gross Receipts
IRC 501(c)(3) private foundations	From \$1,000,000 to \$10,000,000	From \$500,000 to \$1,000,000
IRC 501(c)(3) other than private foundations	From \$1,000,000 to \$10,000,000	From \$1,000,000 to \$5,000,000
IRC 501(c) all others	From \$1,000,000 to \$10,000,000	From \$500,000 to \$1,000,000
IRC 521 black lung trusts	N/A	From \$1,000,000 to \$10,000,000
IRC 527 political organizations	From \$1,000,000 to \$10,000,000	From \$500,000 to \$1,000,000

- (6) Grade 13 cases are those which have major issues significantly affected by the lack of applicable precedents or the presence of conflicting precedent. Therefore:
- Investigation of issues requiring ingenuity.
 - Resolution of issues requiring considerable tact and discretion.
 - Complexities necessitating a high degree of experience and sophistication.
 - Decisions that may involve substantial and/or large sums of money or large numbers of people, with the possibility of widespread public attention.
 - Complications that could occur, involving intricately related major issues or unusual issues with conflicting or nonexistent precedents.
- (7) The table below shows a Grade 13 assignment's threshold for gross receipts or assets.

Probable Grade 13	Total Assets	Gross Receipts
IRC 501(c)(3) private foundations	Over \$10,000,000	Over \$1,000,000
IRC 501(c)(3) other than private foundations	Over \$10,000,000	Over \$5,000,000
IRC 501(c) all others	Over \$10,000,000	Over \$1,000,000
IRC 521 black lung trusts	N/A	Over \$10,000,000
IRC 527 political organizations	Over \$10,000,000	Over \$1,000,000

4.70.12.3.3.3
(11-22-2023)
**Employment Tax Case
Grading**

- (1) Annual total tax liability on the return is used to determine the case grade of Employment Tax cases.

Probable Grade 12: Annual Total Tax Liability
All cases \$100,000 or less
Cases less than \$500,000 including Federal insurance Contributions Act (FICA)/Medicare/Federal Income Tax (FIT), that don't meet upgrade criteria*

Probable Grade 13: Annual total Tax Liability
Cases in excess of \$499,999 including FICA/Medicare/FIT
Cases between \$100,000 and \$499,000 that meets upgrade criteria*
Cases with G coded taxpayers with annual compensation in excess of \$1.35 million

- (2) TE/GE follows IRM 4.23.19, Employment Tax Case Assignment and Grading Criteria, with regard to lower graded new hires and training cases.

Note: Refer to IRM Exhibit 4.23.19-1, Employment Tax Case-Grading Factors, for upgrade criteria.

4.70.12.3.3.4
(11-22-2023)
TEB Case Grading

- (1) These criteria are derived from position description factors listed in OPM standards. Work graded using this Case Assignment Guide reflects complexity and impact equivalent to those specified in OPM standards for that grade, assuming normal supervision.
- (2) The type of return, type of bond issue, and issue price reported on the return are used to determine the TEB examination case grade. The following criteria provide probable case grades based on these criteria subject to adjustment with examination group manager concurrence as described below.

Probable Grade 9 Cases
Form 8038-GC
Form 8038-G with an Issue Price of \$10 million or less

Probable Grade 11 Cases
Form 8038 and Form 8038-G with an Issue Price of \$20 million or less, excluding:
• Solid Waste Disposal Facility Bonds
• Pooled Financings
• Qualified Small Issue Bonds
• Qualified Student Loan Bonds
• Qualified Mortgage Revenue Bonds and Qualified Veterans' Mortgage Bonds
• Non-governmental Output Property Bonds

Probable Grade 12 Cases
All Form 8038 Series with an Issue Price of \$100 million or less, excluding:
• Form 8038-R
• Solid Waste Disposal Facility Bonds
• Pooled Financings
• Qualified Student Loan Bonds
• Qualified Mortgage Revenue Bonds and Qualified Veterans' Mortgage Bonds
• Non-governmental Output Property Bonds

Probable Grade 13 Cases
All Form 8038 Series Returns

4.70.12.3.3.5
(11-22-2023)

Case Grading - Group Manager

- (1) Group managers should make sure accurate data is available for financial planning and grade structure changes.
- (2) Group managers can assign appropriately higher level work for developmental purposes.
- (3) Group managers should not evaluate an examiner's performance based on case grading.
- (4) Group managers should not classify examiner's positions based on case grading. For example, don't:
 - a. Predict the appropriate overall grade level for the position of employees doing work assigned in accordance with it, or
 - b. Supersede OPM standards in any way.
- (5) Group managers should not change examiner's grade level when assessing higher or lower level cases for short periods of time.
- (6) Group managers should monitor higher graded work by:
 - a. Restricting the scope to single issue items to reduce the grade.
 - b. Assigning the case to a senior examiner, while assigning the junior examiner to help in the examination.
 - c. Assigning the case to the junior examiner, while assigning a senior examiner to coach the junior examiner through the examination.
 - d. Reviewing Web-based Employee Technical Time System (WebETS) monthly to ensure that the time spent doesn't exceed the 25 % threshold.

4.70.12.3.3.6
(11-22-2023)

Changing Case Grade

- (1) The examiner should notify the Group Manager immediately upon the discovery of a feature/issue which may result in an increase or decrease of the grade level. Until the manager approves the change, the case grade will not be considered changed.
- (2) The table below provides some examples of when the case grade may be increased or decreased:

EP cases	<p>Some factors that may increase the case grade include failures relating to:</p> <ul style="list-style-type: none"> a. Funding and actuarial matters. b. Asset valuation issues (for example, investments in limited partnerships). c. Prohibited transactions. d. Unrelated business income. e. Complex IRC 415 issues. f. Nondiscrimination issues (for example, general test, aggregation, restructuring, and cross testing). g. Exclusive benefit.
	<p>Other factors that may increase the case grade include:</p> <ul style="list-style-type: none"> a. Significant complications caused by the IRC 414(b), IRC 414(c) and IRC 414(n) rules. b. Coordination with the Department of Labor (DOL) and/or Pension Benefit Guaranty Corporation (PBGC).
	<p>Factors that may decrease the case grade include:</p> <ul style="list-style-type: none"> a. Involvement of the field actuary, OJI, senior agent, or Group Manager. b. Complicating issues not found. c. Case impact is limited, e.g., a Form 5500-EZ Annual Return of A One-Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan return, or a minor adjustment. d. Examiner's review doesn't include complicating issues justifying the higher grade. For example, a limited scope audit where the higher graded issues aren't considered during the course of the examination.

EO cases	<p>Some factors that may increase the case grade if one or more of the following items materially increases its complexity include:</p> <ul style="list-style-type: none"> a. Affiliated organizations, multiple entities, or related interests (taxable or nontaxable). b. Allocations of substantial amounts to political purposes or legislative activities. c. Cases involving Rev.Proc. 75-50, 1975-2 C.B. 587 compliance. d. Cases involving transferee liability. e. Changes in activities or purposes of the organization requiring a termination or redetermination. f. Church issues. g. Complex accounting system. h. Controversial issues are present which are of interest to the public. i. Denials, revocations, terminations or reinstatement of exempt status. j. Determination regarding the organization's exempt status is of concern to many individuals (political or public figures). k. Difficulty in classifying the organization's exempt purpose. l. Extensive research and/or interpretation of the law, regulations and court decisions. Laws and regulations may be ambiguous, in a proposed state, or little precedent exists. m. Fraud referrals (accepted or rejected). n. Group rulings. o. IRC 501(c)(7) organizations with substantial gross receipts from the general public (nonmembers). p. Large refund case (over \$100,000). q. Organizations filing under IRC 501(q) such as credit counseling organizations or organizations that provide as a substantial part of their activities financial counseling or education as defined in IRC 501(q). r. Organization is known and/or operates on an international, national or regional basis. s. Organizations with substantial receipts from sources other than members seeking exemption or exempt under IRC 501(c)(12). t. Termination - mergers. u. Termination of private foundation status or other changes to foundation status. v. Unrelated business income or operations (complex allocation problems). w. Unusually complex private foundation issues. x. Unusually large payments to officers, employees or professionals. y. Valuation problems requiring the assistance of an engineering specialist.
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Note: The GM can lower a case grade for good cause, such as, anticipated complexities don't develop. Fully document the basis for the grade change, in the case file.

4.70.12.3.4
(11-22-2023)
Review of Return

(1) During the planning phase of the examination a review of the return associated with the taxpayer should be conducted:

1. Review the return for completeness to determine if all required line items and attachments are present. If information is missing, make a note to question the organization and organization's representative and obtain it.
2. Review schedules, statements, extensions and return attachments for questions and possible issues:

a. Were all required line items and attachments properly completed?

b. Was the return timely filed? If not, did they obtain as approved extension? (MM-DD-YYYY)

3. For EO examinations, review for the following additional items:

a. Do the yes/no questions raise any issues?
--

b. If the organization is a public charity, is the public support schedule complete?
--

c. Does the taxpayer information agree with the EOBFM information?
--

d. The organization's statement of accomplishing its program services.
--

e. Analyze the income sources such as "other revenue".
--

f. Review the compensation section to determine if compensation is reasonable or if there are questionable sources of compensation.

4. For EP examinations, review for the following additional items:

a. The Form 5500 for pre-selected issues.

b. Items listed in section A of the Form 5773-A Employee Plans (EP) Workpaper Summary.
--

c. Determine that information on the return is consistent with the EPMF data. If not, prepare appropriate input documents when you complete the examination.
--

d. Review income items on the return for indicators of UBI.

e. Review any prior examination reports, workpapers, technical advice or technical assistance memoranda and correspondence regarding the entity.
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5. For FSL/ET examinations, review the following additional items:

a. Section 218 Agreements (if applicable).
--

b. Determine whether the entity correctly filed information returns and wage statements.

c. Determine whether the entity met all applicable federal return requirements.

6. For ITG examinations, review for the following additional items:

a. Determine whether the entity correctly filed information returns and wage statements.

b. Determine whether the entity met all applicable federal return requirements.

7. Use the TE/GE workpaper summary index, to note potential examination concerns as you review the return.

8. Consider any LUQ items. LUQ should include anything unusual that potentially impacts compliance issues. Document the reason for any LUQ item that wasn't considered an issue. LUQ items may fall into one of these categories:

a. Dollar amount - The item may be a large dollar amount, or it may be unusual or disproportionate to the income or disbursements shown on the return. It might be a large or unusual expense for the type of organization.

b. Description on the return - It may not be possible to determine the validity of the item based on the way it is described on the return.

c. Presence on the return - Some items shown on the return invite close scrutiny simply because they are there.

d. Absence from the return - An item may be unusual because it doesn't appear on the return.

e. Evidence of intent to mislead — this may include missing schedules, incomplete schedules, misclassified entries, or obviously incorrect items on the return.

f. Whipsaw issues — when there is a transaction between two parties and characteristics of the transaction will benefit one party and harm the other. For example, employee vs. independent contractor.

9. Review the return for missing items. Are items that you would expect to find on the return not there? Check the math. What appears to be an error may actually indicate a missing item.

10. Make note of any items identified that you should incorporate in the initial interview.

4.70.12.3.4.1
(11-22-2023)
**EO Verifying Forms 8976
Were Filed and
Applicable Penalties**

- (1) An organization must notify the IRS that it is operating as an IRC Section 501(c)(4) organization no later than 60 days after the date the organization was organized (that is, formed as a legal entity, called the “date of organization”), by electronically filing Form 8976, Notice of Intent to Operate Under Section 501(c)(4). The organization must pay the correct user fee, which is currently \$50, through pay.gov. The process of filing Form 8976 and paying the

user fee is referred to as an “IRC Section 506 notification”. This process is described in Rev. Proc. 2016-41 and Treas. Reg. § 1.506-1.

Exception: An entity with a date of organization on or before July 8, 2016, isn’t required to submit Form 8976 if, on or before July 8, 2016, it previously:

- a. Applied for exemption under IRC 501(c)(4) by filing Form 1024, or
- b. Filed at least one Form 990 Return of Organization Exempt From Income Tax or, if eligible, Form 990-EZ Short Form Return of Organization Exempt From Income Tax, or Form 990-N Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990EZ.

Note: Entities with a date of organization on or before July 8, 2016, which didn’t file one of the two above-referenced forms, were required to submit Form 8976 by September 6, 2016.

(2) Penalties:

- a. IRC 6652(c)(4)(A) imposes a penalty of \$20 per day, up to a maximum of \$5,000, for each day after the due date that an organization doesn’t submit Form 8976.
- b. The penalty is automatically applied when organizations file Form 8976 more than 60 days after the date of organization. The penalty posts to a civil penalty module (MFT 13) and the IRS issues a CP 215, Civil Penalty notice to the organization.
- c. The penalty can be abated if an organization’s failure to timely submit the Form 8976 was due to reasonable cause.
- d. A similar penalty is imposed by IRC 6652(c)(4)(B) on organization managers who, in response to a written IRS request, don’t submit Form 8976 by the date specified in the written request.
- e. See IRM 20.1.8.3.2.4, IRC 6652(c)(4) – Failure to Submit Notice of Intent to Operate as IRC 501(c)(4) Organization Under IRC 506, for additional information on the IRC 6652(c)(4) penalties.

(3) Form 8976 Processing:

- a. After an organization submits Form 8976, the IRS reviews it to ensure that the organization has provided all required information (name, address, EIN, date of organization, state and country of organization, purpose statement). If Form 8976 is complete and filed timely, IRS updates master file status code to 36 and issues Letter 5822 (acknowledgement letter) electronically. If IRS doesn’t accept the Form 8976 for any reason, we issue Letter 5823 (notice of non-acceptance) and refund the user fee.
- b. An organization’s Form 8976 isn’t an application within the meaning of IRC 6104 and isn’t open to public disclosure. The IRS doesn’t keep a publicly available database of filed Forms 8976. See section 7.01, Rev. Proc. 2016-41.

(4) Examiners must perform a filing check for Form 8976 during all examinations of IRC Section 501(c)(4) organizations.

- a. For Forms 8976 filed beginning in January 2017, IDRS shows a date of organization (as given by the organization on Form 8976 - ORG DT:MM-

DD-YYYY) and a date of IRC Section 506 notification (in other words, the Form 8976 user fee date - REG DT:MM-DD-YYYY). These new fields are displayed near the top of the first page of BMFOLO (before the EO submodule information).

- b. BMFOLO doesn't record Forms 8976 filed before January 2017. Consequently, you must contact the taxpayer to determine whether they filed Form 8976 before January 2017. Contact your group manager and TEGEDC, if necessary, if the taxpayer claims they filed Form 8976 before January 2017 but refuses to or can't provide proof they filed.
 - c. If Form 8976 was timely filed or if the organization wasn't required to file Form 8976, you must notate this conclusion on the Form 5773.
 - d. If Form 8976 was not filed, send a written demand, requesting the organization submit the Form 8976 by a specified date determined reasonable under the circumstances. You must verify that the Form 8976 is filed in response to your written demand by securing either proof of filing from the organization (for example, a copy of Letter 5822) or a BMFOLO showing that it was filed. See 2b below if the taxpayer refuses to file Form 8976 in response to the written demand.
- (5) Consider Penalties: If you determine that the organization failed to timely file a completed Form 8976, consider the IRC 6652(c)(4) penalties.
- a. Form 8976 filed late: If, in response to the written demand, the organization submits Form 8976 late, you don't need to assess the penalties against the organization, because the penalty is automatically assessed when IRS issues the CP 215 Notice. Refer to IRM 20.1.1.3.2 Reasonable Cause, to determine whether the organization's failure to timely submit a completed Form 8976 was due to reasonable cause. Document all determinations of reasonable cause in sufficient detail in the workpapers. Get a reasonable cause statement from the organization and include it in the RCCMS case file.
 - b. Failure to file Form 8976: If, in response to the written demand, the taxpayer fails to file Form 8976 by the date specified in the written demand, consult with your group manager and TEGEDC, as necessary, to discuss applying the penalty on the organization's managers and/or other compliance actions. Document the discussion, penalty approval and/or compliance actions taken on the CCR.

4.70.12.3.4.2

(11-22-2023)

EP Non-Return Unit (NRU) Plans

- (1) IRA based plans (SEP, SIMPLE, SARSEP), IRC 403(b) not subject to ERISA, and IRC 457 plans do not have a filing requirement.
- (2) When you're examining an NRU case and determine it does have a filing requirement:
 - a. Solicit the delinquent return(s).
 - b. Establish the case on AIMS Master File for the applicable MFT. If the taxpayer has a Form 5500, Annual Return/Report of Employee Benefit Plan, filing requirement, follow the procedures in IRM 4.70.13.9.4.1 EP Form 5500 Considerations.
 - c. Delete the NMF AIMS account (the NRU account) using Form 10904, following the procedures in IRM 4.70.14.2.1.2.4.2 EP NRU Cases Established in Error.

- (3) If your NRU case has an incorrect project code and/or activity code (for example, the case is assigned as a SEP IRA case, and you later determine that the case is a SIMPLE IRA):
 - a. The case may be surveyed per group manager discretion.
Note: Document the CCR accordingly.
 - b. The examination may continue at the group manager's discretion.
Note: Do not change the project code. Document the CCR to provide that the project is not accurate, but the decision was made by the group manager to continue the examination.

- (4) When you request an update to an NRU case on RCCMS, check the AIMS box so that the update is also done on NMF AIMS.

4.70.12.3.5 (11-22-2023) Specialist Referral System

- (1) You can request assistance with income tax and other special issues from other business units or specialty groups within the IRS through the Specialist Referral System (SRS). SRS assistance is comprised of either a consultation or referral.
- (2) The SRS system can be found on the IRS Intranet at *Specialist Referral System*.
- (3) Make requests for assistance as early in the examination as possible to avoid unnecessary delays resolving issues.
- (4) For assistance with fraud issues, contact your function's Fraud Enforcement Advisor.
- (5) Through SRS, examiners can request help online at SRS home page. The online request automatically notifies the appropriate function.
 - a. The function may accept or reject the request.
 - b. If accepted, the function assigns a specialist to help on the case.
- (6) Use the SRS to request help from:
 - Art Appraisal Services, see IRM 4.48.2.2
 - Computer Audit Specialists (CAS)
 - Economists
 - Employee Plan (TE/GE)
 - Employment Tax (SB/SE)
 - Employment Tax - Large Case
 - Engineering Specialty Group – Asset Valuation
 - Estate and Gift
 - Excise Tax – General
 - Excise Tax - Fuel
 - Exempt Organizations (TE/GE)
 - Federal, State, and Local Government (TE/GE)
 - Financial Products and Transactions Specialists
 - Indian Tribal Government
 - International
 - Joint Committee
 - LB&I Actuary
 - Multilingual Services

- Outside Expert (COTR)
- SB/SE Collection Group (Early Payment Pilot)
- Tax Computation Specialists
- Tax Exempt Bond

4.70.12.3.6
(11-22-2023)

Required Filing Check

- (1) Perform required filing checks and related case analysis on all exams. Required filing checks are necessary to ensure voluntary compliance. Determine that taxpayers comply with all federal tax and information return filing requirements (IRM 1.2.1.5.2), Policy Statement 4-4).
- (2) Returns include the following:
 - a. The taxpayer's return(s).
 - b. All related returns that impact the taxpayer's return(s).
 - c. Any return the taxpayer is responsible for filing or controls.
- (3) Verify a return was filed using:
 - a. IDRS printouts with return information, such as BMFOLI and BMFOLU.
 - b. You may also need to inspect filed returns, BRTVU prints, CFOL, IRPTRI, or images of filed returns using the MeF.
 - c. Check additional external sources such as Official Statements of Bond transactions and material event notices, Guidestar, Economic Research Institute (ERI), or Foundation Center for copies of Form 990.
- (4) Use your conclusion of required filing checks to:
 - a. Identify additional issues.
 - b. Decide to expand or contract the examination scope.
 - c. Revise examination steps and techniques.
- (5) If the taxpayer failed to file what appears to be a required return, find out why the return was not filed. If the explanation cannot resolve the delinquency, take any of the following actions:
 - a. Request or obtain additional information, research the filing requirement, or perform additional examination steps.
 - b. Solicit a delinquent return, except when fraud or willful failure to file is indicated.
 - c. Establish a substitute for return (SFR) on AIMS and RCCMS.
 - d. Make a referral to another function using Form 5346, Examination Information Report, Form 5666, TE/GE Referral Information Report, or Form 4632, Employee Plans Referral.
 - e. Request a collateral examination. See IRM 4.70.11.14, Collateral Examinations and Referrals.
- (6) Document your workpapers to show your examination steps and conclusions to satisfy the required filing check requirements.
 - a. If the taxpayer has correctly filed all required returns, state your conclusion to that effect. Identify specific returns in the comments.
 - b. If you don't complete the minimum required filing checks, include an explanation, and document managerial involvement in the workpapers.

4.70.12.3.6.1
(11-22-2023)
**EP Specific Filing
Checks**

- (1) During your examination, determine if the plan sponsor is current with their filing requirements for other federal tax or information returns. We perform filing checks to save resources, increase compliance and reduce multiple contacts with taxpayers. We check various returns under the jurisdiction of LB&I, SB/SE or W&I (collectively referred to as Examination Functional Units). See Policy Statement 4-4 in IRM 1.2.1.5.2, Servicewide Policies and Authorities, Servicewide Policy Statements.
- (2) Use internal sources of information such as IDRS to verify the taxpayer filed prior and subsequent year Forms 5500 series returns, related returns and other required returns. Using internal sources reduces the taxpayer's burden of providing copies of returns during your examination. You can use ERTVU to view the Form 5500 line items to determine examination potential for prior and subsequent Forms 5500 returns.
- (3) For all examinations, verify the plan sponsor filed:
 - Form 5500 for the prior and subsequent plan year being examined by reviewing an EMFOL print.
 - Form 940, Form 941 and an income tax return (Form 990, Form 1040, Form 1065, Form 1120) for the periods corresponding to the plan year under examination.

Example: If you're examining the plan year ending 6/30/2018, verify that the plan sponsor filed Forms 941 for the last two quarters of 2017 and the first two quarters of 2018 and Forms 940 for 2017 and 2018. Likewise, verify that the plan sponsor filed Form 1120 for the 6/30/2018 tax year (or the tax year in which the plan year ends) by reviewing a BMFOLI print.
 - Forms directly related to your examination issues.

Example: Classification selected plan distributions for examination. You must verify Form 1099-R were filed for plan distributions.

Note: The Form 1099-R may have been filed using the EIN of the custodian of the plan assets and not the EIN of the plan sponsor.
- (4) For training cases, certain designated special project cases, cases with extenuating circumstances (such as fraud, egregious non-compliance, undisclosed transactions) with your group manager's written approval, or other cases requiring an in-depth review, verify the plan sponsor filed:
 - a. All related Forms 5500 series, 5330, and 990-T returns. A related return is defined as a Form 5500 filed by the plan sponsor or an affiliated employer (e.g., member of a controlled group or an affiliated service group) for another plan.
 - b. Income and employment taxes reported on Form W-2 and Form 1099-MISC.
 - c. Form 1099-R for plan distributions.
- (5) If the taxpayer hasn't filed a required return, try to get the taxpayer to file a delinquent return (unless fraud or willful failure to file is indicated).
- (6) If the taxpayer refuses to file a required return and the return is:

- Under EP jurisdiction, discuss the issue with your manager and determine whether to start an examination of that year.
 - Not under EP jurisdiction, refer to the appropriate unit on Form 5666.
- (7) If you determine that an issue exists on:
- A return that is not under EP jurisdiction, refer it to the appropriate unit on Form 5666.
 - The related income tax return (such as Form 1120 or Form 1040), determine if you should do a discrepancy adjustment or refer it to the appropriate Examination Functional Unit. See IRM 4.70.15, TE/GE Exam Discrepancy Adjustments.
- (8) During an EP examination, verify that the plan sponsor filed Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 941, Employer's Quarterly Federal Tax Return, for the same period as that of the 5500 examination.
- a. This verification should be done during the pre-examination analysis phase of the examination using IDRS command code BMFOL.
 - b. Certain parts of plan examinations may reveal that the plan sponsor/ employer has an employment tax issue.
- Example:** During the initial interview you discover that the employer uses contractors, subcontractors, commissioned employees and casual labor and excludes those individuals from the plan. During your review of eligibility and coverage you review the Form 1099-MISC the employer filed. Based on your interview and a review of the Forms 1099-MISC you find that the employer misclassified employees as independent contractors and determine that the plan failed IRC 410. See IRM 4.23.5, Technical Guidelines for Employment Tax Issues, for helpful information on determining whether an individual is an employee or independent contractor.
- c. If you determine that a possible classification issue exists, contact an Employment Tax Specialist through the Specialist Referral System.
- (9) Employers must comply with the Form W-4 requirements according to 26 CFR 31.3402(f)(2)-1(g). Employers are required to keep records of all remuneration paid to employees and authorized IRS personnel are allowed to inspect employee withholding certificates (Form W-4) (IRC 6001 and 26 CFR 31.6001-5(a)).
- a. Be alert to possible withholding issues. During an examination of a plan, EP reviews Form W-2 to verify certain items for plan qualification, such as compensation and deferrals. While reviewing the Forms W-2, you may discover a Form W-4 withholding issue, such as employees who have little or no income tax withholding. In certain instances, you may want to obtain RTVUE prints for questionable employees.
 - b. If you determine that the taxpayer has questionable Form W-4, make copies of the Forms W-4 for those employees who are still employed by the taxpayer and forward them to the W-4 Coordinator at the appropriate Service Center. The following information must be contained on each Form W-4: Employee name, address and SSN; Employer name, address

and EIN; Marital status and number of allowances claimed by the employee; Date of the W-4; and items pertaining to exempt status (complete when applicable).

- c. Make sure the Forms W-4 that you send to the Service Center's W-4 Coordinator are legible and complete. Submit Form W-4 to the Service Center's W-4 Coordinator, where the taxpayer files Form 941, at the earliest date possible on Form 3210. See Form 941 instructions for the appropriate Service Centers. Provide the employer's name, address, EIN and the number of forms attached in the body of the Form 3210. If the employer has not filed any Forms W-4 with the IRS and the Forms W-4 are questionable, notate the Form 3210 with a note indicating multiple questionable Forms W-4 are attached. Specify in the workpapers that you sent the Forms W-4 to the Service Center.
- (10) IRC 6041 through IRC 6053 provide the reporting requirements for certain information returns that should be inspected. Generally, the regulations require the reporting of items such as payments made in the course of trade or business to another person, payments of dividends, payments of interest, payments of wages, or cash receipts in excess of \$10,000.
- a. It is important that taxpayers timely file these returns as required.
 - b. See the specific return and instructions to the applicable return for more information on filing requirements.
 - c. Examples of information returns that should be inspected include: Other Forms 5500 filed by the employer; Form 1099-R and Form 1096, which are related to plan distributions; Form W-2 ;Form 8300, involving plan assets; Form 945, related to distributions from the plan; and Form 1042.
 - d. The adequacy of taxpayer's records is a critical factor in determining the scope of the examination. Normally, continue the examination to a point where it is reasonably certain that the information return requirements have been fulfilled. Generally, a detailed examination (including any penalty consideration) is warranted if available information indicates that: Information returns were not filed, income amounts were materially incorrect as reported or the time required to make the necessary verifications and/or to get copies of the incorrect or delinquent information returns justifies improving voluntary compliance (payor or payees).
 - e. If you discover that the entity has not filed returns or forms that are under the examination jurisdiction of EO/GE or one of the Examination Functional Units' (LB&I, SB/SE or W&I), prepare and forward Form 5666 to Classification.
 - f. There are three specific areas where you may identify an invalid SSN:

- | |
|--|
| 1. The SSN cannot be attributed to any specific person (e.g., the SSN is not a valid SSN). |
| 2. The SSN belongs to someone who is deceased. |
| 3. The SSN belongs to a living person other than the person identified as a plan participant. |

Note: If you find participants using invalid SSNs, consult your manager, forward a Form 5666 to the Referral Specialist in Classification. Classification will then forward this information to one of the SB/SE Identity Theft Coordinators.

- g. To satisfy the required filing checks, your workpapers must document the steps taken and support the conclusion noted for filed returns.

- (11) Document your workpapers to show your examination steps and conclusions to satisfy the required filing check requirements.

4.70.12.3.6.2
(11-22-2023)

**EO Specific Filing
Checks**

- (1) A filing check is always required for:
- Form 990 in the case of any IRC 501(c) organization or IRC 4947(a)(1) trust, not a private foundation and not a black lung benefit trust.
 - Form 990-EZ in the case of any IRC 501(c) organization or IRC 4947(a)(1) trust, not a private foundation and not a black lung benefit trust.
 - Form 990-N in the case of any IRC 501(c) organization other than a private foundation, except those ineligible to file Form 990-N listed in *Form 990-N (e-Postcard)*.
 - Form 5578 in the case of any IRC 501(c)(3) organization not filing Form 990 or Form 990-EZ that operates, supervises, or controls a private school.
 - Form 990-PF in the case of any private foundation or IRC 4947(a)(1) trust treated as a private foundation.
 - Form 990-BL in the case of any black lung benefit trust exempt under IRC 501(c)(21).
 - Form 1065 in the case of any religious or apostolic organization under IRC 501(d).
 - Form 5227 in the case of any IRC 4947(a)(2) split-interest trust.
 - Form 990-T in the case of any IRC 501(c) organization or government-owned college and university.
 - Form 1120 in the case of any taxable private foundation that is a corporation or unincorporated association.
 - Form 1041 in the case of any IRC 4947 trust, or any taxable private foundation that is a trust.
 - Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return (not applicable to IRC 501(c)(3) organizations).
 - Form 941, Employer's Quarterly Federal Tax Return.
 - Form 944, Employer's Annual Federal Tax Return.
 - Form 945, Annual Return of withheld Federal Income Tax.
 - Form W-2, Wage and Tax Statement.
 - Form W-3, Transmittal of Wage and Tax Statements.
 - Form 1096, Annual Summary and Transmittal of U.S. Information Returns, including Form 1099 series.
 - Form 1099-MISC, Miscellaneous Income.
 - Form 1099-NEC, Nonemployee Compensation.
 - Form 1099-C, Cancellation of Debt (particularly with respect to officers and directors).
 - Prior and subsequent year returns for each of the above.

Example: (1) EO examiner is assigned an IRC 501(c)(3) organization that's exempt from taxes and is filing Form 990 per EO BMF and it has employees. The examiner must conduct a filing check for Form 990 series and Form 941 for the current, prior and subsequent years. The examiner isn't required to check for Form 1120 and Form 940. These returns are outside the organization's sphere of influence (returns a taxpayer can't possibly file). The examiner will determine whether the organization is actually required to file any other return or notice at the conclusion of the exam.

Example: (2) EO examiner is assigned an IRC 501(c)(12) electrical cooperative. The examiner must check for the filing of Form 1120 as well as Form 990. Form 1120 is not outside the organization's sphere of influence because an IRC 501(c)(12) organization that fails the 85% member income test for a specific tax year is required to file Form 1120 instead of Form 990 for that tax year. For the tax years the cooperative filed a Form 990, check for the filing of Form 990-T also. See Notice 92-33, 1992-2 C.B. 363.

Example: (3) The FSL/ET examiner is assigned a local government entity. The examiner must check for filing of Form W-2, Form 1099, and Form 941 for the current, prior, and subsequent years. Other forms may be required such as Form 945 and Form 720.

- (2) Consider penalties under IRC 6651 and IRC 6652 for late or non-filed returns.
- (3) See Exhibit 4.70.12-1, EO Filing Check Guidance Table, for a list of returns that are subject to required or waiver-eligible filing checks.
- (4) You can waive filing checks with managerial approval for certain returns. Group managers can waive a filing check for a return or return category if you show substantial compliance exists, or if specified conditions or circumstances warrant a waiver. Refer to a return's instructions to better ascertain the need to waive a filing check.

Example: A group manager can authorize waivers of filing checks for Forms W-2G, 730 or 11C for certain types of IRC 501(c) organizations under examination that don't conduct gaming.

- a. The waiver must be properly authorized and documented.
- b. Document a manager's authorization on the CCR and applicable workpaper. Include the reason used to support the waiver, and an analysis if the waiver is based on a computation.

Note: An approved waiver of a filing check doesn't relieve you from exercising due diligence in ensuring equitable and fair tax administration in any exam.

- c. Authorization and documentation can take the form of a group manager's memo to the group specifying conditions or circumstances to justify a waiver. You can reference the group manager's memo on Form 5773, at section.
- d. Check for the filing of returns listed in the succeeding paragraphs, absent a waiver.
- e. In general, for any IRC 170(c) organization involved in fund-raising or receives donated property, check for:

Form 8282, Donee Information Return
Form 8870, Information Return for Transfers Associated with Certain Personal Benefit Contracts
IRC 8899, Notice of Income from Donated Intellectual Property

Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes
--

- f. In general, for any organization involved in gaming, check for:

Form 730, Monthly Tax Return for Wagers

Form 11-C, Occupational Tax and Registration Return for Wagering
--

Form W-2G, Certain Gambling Winnings

- g. In general, for any educational, research or health care provider organization, check for:

Form 1098-E, Student Loan Interest Statement
--

Form 1098-T, Tuition Statement

Form 8899, Notice of Income from Donated Intellectual Property
--

Form 1099-Q, Payments from Qualified Education Programs (Under Section IRC 529 and IRC 530)

Form 1099-MISC, Miscellaneous Income (for reporting royalties)
--

- h. In general, for any applicable large employer organization as defined by IRC 4980H or provider of minimal essential health coverage, check for:

Form 1094-B, Transmittal of Health Insurance Coverage Statements
--

Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

Form 1095-B, Health Insurance Coverage
--

Form 1095-C, Employer-Provided Health Coverage
--

Form 8928, Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code

- i. In general, for any organization with a food or beverage establishment or social club where tipping is customary, check for Form 8207, Employer's Annual Information Return of Tip Income and Allocated Tips.
- j. In general, for organizations with international or foreign features, or with foreign workers and contractors, check for:

Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
--

Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding

Form 8288, U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests

FBAR, Report of Foreign Bank and Financial Accounts

- k. In general, for organizations that issue bonds, check for Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues and Form 8038-T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.
- l. In general, for organizations that may be involved in reportable or abusive transactions, check for:

Form 4720, Return of Certain Excise Taxes on Charities and other persons under Chapters 41 and 42 of the IRC
--

Form 8300, Reports of Cash Payments Over \$10,000 Received in a Trade or Business

Form 8870, Information Return for Transfers Associated with Certain Personal Benefit Contracts
--

Form 8886, Reportable Transaction Disclosure Statement
--

Form 8886-T, Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction

- m. In general, for organizations making political expenditures, or for political organizations, check for:

Form 4720, Return of Certain Excise Taxes on Charities and Other persons Under Chapters 41 and 42 of the IRC.

Form 8871, Political Organization Notice of Section 527 Status
--

Form 8872, Political Organization Report of Contributions and Expenditures
--

Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations

- n. See Exhibit 4.70.12-1, EO Filing Check Guidance Table, at the second column, for a complete list of filing checks that are required but are waiver-eligible.

- (5) You are not required to explain your decision not to conduct a filing check for the returns and statements that are optional or not required.

- a. If information obtained from the case file, outside sources, internal databases, or from the conduct of the exam, indicates potential non-compliance, you may conduct a compliance check.
- b. Optional filing and compliance checks include:

All other returns not listed in IRM 4.70.12.3.6.2 EO Specific Filing Checks.
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Returns of related persons including controlled organizations, such as the Form 1040, Form 1041, Form 1120 series, or Form 1065

Withholding Compliance Program involving questionable Form W-4.

- (6) Consider the following examination steps:

- a. Identify returns that should be filed during the filing check phase.

Example: Salaries are reported on Form 990, but Form 941 are not filed.

Example: Bingo income is reported on Form 990, but Form 990-T wasn't filed to report the regularly carried-on sale of pull tabs or concessions.

- b. Reconcile related returns with line items shown on the primary return under examination.
 - c. If the examination reveals transactions with related organizations, or the sharing of facilities, inspect pertinent related returns for accurate reporting.
 - d. During the examination of a Form 990, Form 990-EZ, Form 990-PF or Form 990-BL where the facts and circumstances warrant, inspect the officers' personal income tax returns by securing a RTVUE printout to determine whether all gross income items (from the EO exam) have been reported.
 - e. If an officer didn't properly report all items of gross income, prepare a discrepancy adjustment report. If a full examination is warranted, complete Form 5666, TE/GE Referral Information Report, or Form 5346, and forward to CP&C Referrals for consideration by the appropriate function.
 - f. Group manager: Refer an approved information report to CP&C Referrals for transmittal to the appropriate division for consideration.
 - g. If an organization potentially violated the provisions of IRC 4980B concerning the continuation of health care benefits, prepare Form 5666 or Form 5436 and send to CP&C Referrals for forwarding to the appropriate PSP outside of EO.
- (7) Inspect withholding and other statements retained by a payer organization on the Form W-4, Form W-4P, Form W-9 or Form 5754 series. In the case of organizations or governments with non-resident alien employees or foreign payees, inspect withholding statements on Form 8233, Form W-8BEN, Form W-8ECI, Form W-8EXP or Form W-8IMY.

4.70.12.3.6.2.1
(11-22-2023)

EO Employment Tax Returns Guidelines

- (1) Employment tax is an integral part of the examination of an exempt organization. Review all employment tax returns to ensure filing compliance. For EO, a separate employment tax examination may be necessary if the review reveals a lack of compliance. This responsibility also extends when the examined return is only a Form 990-T. Employment taxes include:
 - Federal Insurance Contributions Act (FICA)
 - Railroad Retirement Tax Act (RRTA)
 - Federal Income Tax Withholding (FITW)
 - Federal Unemployment Tax Act (FUTA)
 - Back-Up Withholding
 - Withholding on gambling winnings
 - Withholding on income paid to foreign persons (a filing check for Form 1042 can be waived in some cases)
- (2) Using IDRS commands BMFOLI and BRTVU, verify proper filing and payment of taxes for each tax period, up to and including the period for which an employment tax return was due.

- (3) Determine whether available information warrants an employment tax exam of the organization's books and records. If an examination is warranted, conduct the employment tax exam concurrently with the organization's return. See Policy Statement 4-4. Refer to IRM 1.2.1.5.2 and IRM 4.23 Employment Tax.
- (4) Generally, an employment tax exam is warranted if:
 - a. Available information indicates that the employment tax liabilities weren't correctly reported,
 - b. Returns are delinquent.
 - c. The potential additional liability or the resulting improvement in voluntary compliance will justify the time required to make the necessary adjustment.
- (5) For EO only, discuss and secure group manager approval for employment tax examinations.
- (6) In worker classification cases, give consideration to Section 530 relief before asserting that a worker is an employee.
- (7) If research indicates there will be an adjustment to the organization's employment tax liability, perform the following actions:
 - a. Request BRTVU printouts or the original returns and a BMFOLT printout, or request retained copies of the returns from the organization (if readily available);
 - b. For EO, if the determined adjustment is limited to a specific quarter, you should establish only that quarter (Form 941) on AIMS/RCCMS.
 - c. Generally, for EO cases, if there is an employment tax adjustment, establish all four quarters (Form 941) on AIMS/RCCMS for the year under examination. See also IRM 4.23.3.6.3.3 and IRM 4.23.10.10.4 Employment Tax Change Report.
- (8) For all open employment tax cases where the examination didn't include either the identification of or the development of a worker classification issue, including requests for information or discussion regarding a reclassification issue, use Form 2504-S, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436, Worker Classification or Section 530 Issues Not Addressed in this Exam). If any workers were reclassified as employees, use Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax Adjustments Subject to IRC 7436), to report additional tax due to the change in worker status. If any workers are reclassified as employees and adjustments are made for a non-7436 issue, examiners should complete both Form 2504 and Form 2504-T.
- (9) If an employer willfully fails to deduct, withhold or pay the employee's portion of employment taxes, consider asserting the penalty provisions under IRC 6672. The employer is liable for the correct amount of FICA tax and income tax withholding from wages, even if the employer failed to collect the withholding taxes from the employee.
- (10) If the employer fails to deduct the tax, the employer is nevertheless liable for the correct amount of tax that should've been withheld. The employee is also liable for the correct amount of tax until it is collected.

- (11) If you concurrently examine employment tax returns and Form 990, complete 3198-A, TE/GE Special Handling Notice, in the RCCMS case file and the employment tax return case file. Indicate on both 3198-A that the case files are related and shouldn't be separated. Also indicate on the 3198-A in the primary return case file that there's a related employment tax examination.
- (12) In cases where the returns must be separated for expediency of processing, e.g., the primary return has a short statute date, state on 3198-A the reason the related return is being closed separately.

4.70.12.3.6.2.2

(11-22-2023)

EO Information Returns

- (1) Certain information returns are the primary input documents for computerized matching programs to detect potential unreported income and nonfilers. Policy Statement 4-4 (see IRM 1.2.1.5.2), and the "required filing check but waiver eligible" provisions in this manual spell out EO's responsibility to ensure the timely and correct filing of information returns.
- (2) Examples of information returns include:
 - a. Form W-2
 - b. Form 8300
 - c. Form 1099 series
- (3) Group managers and special reviewers are responsible for ensuring that examiners properly document their workpapers to reflect adequate coverage of information return issues.
- (4) Consider whether all items paid by a taxpayer have been properly included in the employees' wages. Consider whether tip income has been reported to the employer and included in the employees' wages. Wages include such items as bonuses and fringe benefits (cash or noncash). Examples include:
 - Non-accountable automobile or housing allowances.
 - Corporate vehicles used for personal purposes.
 - Employer provided life insurance in excess of \$50,000.
 - Prizes or awards.
 - Employer provided apartments for employees.
 - Health or social club dues and fees.
 - Spousal travel.
 - Payments on personal legal services and other services.
 - Payments on personal debts, including tax debts.
- (5) IRC 6041 through IRC 6053 require that taxpayers report various types of payments to both the IRS and the recipients of the payments. These payments include such items as dividends, interest, rents, royalties and nonemployee compensation. These payments are reported on a form in the 1099 series.
- (6) To ensure the timely and correct filing of information returns, determine whether all information returns required to be filed were filed by the taxpayer for the calendar years that fall within the period of the assigned return under examination, to the most current calendar year. Consider the following minimum requirements:
 - a. Determine whether the highest paid employees' compensation presents a potential inurement issue. When considering whether compensation is reasonable, or could present potential inurement, remember to consider

employee benefits, personal use of assets owned by the organization, or personal expenses paid by the organization for travel, entertainment or other personal accounts.

- b. During the planning stages of the examination, determine the potential filing requirements. Line items of Form 990 are often indicative of an information return filing requirement, e.g., interest paid, subcontractors labor, rents, consultants, legal and accounting fees, advertising, etc.

Example: Schedule J, Form 990, Compensation Information, to identify reported compensation of officers, directors, trustees, key employees, and the highest compensated employees.

- c. Review highest paid contractors at Form 990 at Part VII, or Form 990-EZ at Part VI, or Form 990PF at Part VII.
- d. Use CFOL command PMFOL to determine if the organization has filed information returns. Use IRPTR to review filed Forms 1099 series.
- e. Question the organization or government about their internal procedures on information reporting and verify all reporting requirements have been met.
- f. Review copies of the Form 1099 series.

Note: Make every attempt to gather this information internally before asking the organization for it (e.g. IDRS).

- (7) Review the procedures the taxpayer uses to decide whether to file information returns on payments made to independent contractors.
- (8) Reconcile Form 1099 to Form 1096, Annual Summary and Transmittal of U.S. Information Returns, and to the books and records of the organization or government.
- (9) Form 1099 isn't required for payments less than \$600 during a calendar year. In addition, Form 1099 isn't required for payments made to exempt organizations or corporations. However, there are exceptions to the corporation rule and they include the following:
 - Medical and health care payments (including payments to veterinarians)
 - Gross proceeds paid to an attorney
 - Attorneys' fees
 - Substitute payments in lieu of dividends or tax-exempt interest
 - Payments by a federal executive agency for services (vendors)
- (10) You can request a "recreate" of CP2100 or CP2100A notices through the group manager by sending an encrypted email, fax, or by calling Technical Services Operations (TSO). See IRM 3.42.9.14.4, Request to Recreate Notices CP2100, CP2100A, and 972CG.

Note: The IRS sends CP2100 or CP2100A notices to payers who file information returns with missing, incorrect or mismatched Taxpayer Identification numbers (TINS), or to payers who file their information returns late. These notices include a listing of the defective information returns filed for a particular payee. Analyzing these notices may identify backup withholding or information return reporting issues. See IRM 4.23.3.3.2, Identifying SB/SE Employment Tax Examination Sources.

- (11) While examining disbursements, note payments to individuals, corporations providing legal services and limited liability company, sole proprietorships, or

partnerships for which required Forms 1099 weren't filed. Obtain name, address, and TIN and make a referral on Form 5666, if necessary. Secure all delinquent Forms 1099 and consider whether back-up withholding tax and penalties under IRC 6721 and IRC 6722 (failure to furnish correct payee statements) are applicable. See IRM 4.23, Employment Tax.

- (12) Form 8282, Donee Information Return (Sale, Exchange or Other Disposition of Donated Property), is required to be filed by exempt organizations who sell, exchange, transfer, or otherwise dispose of charitable deduction property within three years after the date of its receipt. See IRC 6050L. A copy of the return must be given to the donor. Consider the assertion of the non-filing penalty provided in IRC 6721 (failure to file correct information returns) or IRC 6723 if the Form 8282 isn't filed. Review Schedule M, Form 900, Non-Cash Contributions, for current and prior years.
- (13) Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, is required to be filed by any person who, in the course of carrying on a trade or business, receives more than \$10,000 in cash in one transaction, or related transactions.
- Cash received as a charitable contribution isn't subject to the reporting requirements under IRC 6050I.
 - Form 8300 must be filed with the IRS by the 15th day after the date the reportable cash payment was received. A person may elect to report as one payment, several independently reportable payments received within a 15-day period.
 - Inspect the organization's copies of Form 8300, along with the statements required to be furnished to an "identified person". See exceptions under IRC 6050I and Treas. Reg. 1.6050I-1.
 - The recipient of the cash payment must keep a copy of each Form 8300 for a period of five years from the date of filing, furnish a written statement of each identified person on the Form 8300, showing the total amount of cash received during the year from that person(s), and furnish a copy of the written statement to the identified person on or before January 31 of the succeeding calendar year.
- Note:** This statement isn't required to be in a particular form or format. A copy of Form 8300 may be used for this purpose, if the identified person had only one transaction during the year.
- Form 8300 must include:

Name, address and TIN of the person for whom the transaction was completed.

Name, address, and TIN of the person conducting the transaction, if different from (6)a, e.g., an "agent" for a principal.
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Verification of identity of aliens or non-residents, passport, alien ID card, or other official document showing foreign nationality or residence (If Residents or Citizens, driver's license, credit card, or other similar ID).

Description of the transaction and method of payment, i.e., name of business that received cash.
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- f. A transaction giving rise to the reporting requirements of IRC 6050I is the underlying event precipitating the payer's transfer of cash to the recipient. A reportable transaction may be, but isn't limited to a sale of goods or services; sale or rental of property; an exchange of cash for cash; or a conversion of cash to a negotiable instrument.
- g. Interview the person(s) responsible for compliance with IRC 6050I. Generally, the person responsible for the filing of an EO return will also be responsible for filing Form 8300. During the interview, inquire as to:

The names and titles of officers or employees who handle cash transactions and who may be responsible for filing Form 8300.

The responsible person's knowledge of the reports and records required under IRC 6050I.

The internal controls of the business with regard to cash transactions.

The types of records maintained on transactions required to be reported on Form 8300.

Whether or not the organization has filed any Form 8300.
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Whether procedures used to ensure that the information, such as the payer's identity, contained in the report(s) were complete and correct.

- h. Examiners may request a Report of Case Payments over \$10,00 in a Trade or Business and Currency Transaction Report (Form 8300) data (Refer to IRM 4.26.4.5.4 Gatekeeper or Super User Procedures.
- i. Form 8300 data is in a database that monitors currency transactions regulated by USC 3551 (the Bank Secrecy Act). Examiners use this data to identify potential money laundering, structuring transactions, or the operation of a criminal enterprise via cash.

Note: In some instances, these cash transactions could indicate that wages are being paid in cash or that certain individuals are embezzling funds or using the funds for personal purposes.

- j. Inspect the cash receipts and sales journal, bank statements, and deposit slips to verify transactions involving cash receipts of more than \$10,000, consecutive or related transactions with total in excess of \$10,000, and whether or not the currency transactions in excess of \$10,000 were reported.
- k. Be alert to situations that may be an attempt to circumvent the reporting requirements of IRC 6050I, such as:

A single transaction structured as multiple transactions of less than \$10,000.

Transactions in excess of \$10,000 where large amounts of cash (under \$10,000) are combined with small non-cash payments for purposes of avoiding the reporting requirements.
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A pattern or series of transactions of less than \$10,000 conducted over a relatively short period of time by or for the same person.

- l. Submit Form 5666, transactions regulated by 31 USC 3551 and following, or Form 5346, Examination Information Report, on unusual or questionable

transactions discovered during an examination. Form 5666 or Form 5346 can be submitted on the “recipient” or the “identified person”, depending upon which party to the transaction is under examination when the questionable item is discovered. Prior to submitting Form 5666 or Form 5346, consider the following factors:

Does the transaction appear to be an isolated incident, or one of many, which may have been unreported?
Depending on the type of business, is it normal and customary for the business to conduct its transactions in cash?
Is it reasonable for the business to receive large amounts of cash for any single transaction?
Does the business pay its suppliers or vendors in cash, other than for petty cash type items?

- m. Refer to the regulations under IRC 6050I for additional information and examples of reportable cash transaction.

4.70.12.3.6.2.3

(11-22-2023)

Employee Benefit Plan Returns Related to an EO Examination

- (1) If the examination of an organization reveals that the organization maintains an employee benefit plan, conduct certain inspections of the benefit plan(s) in order to ensure compliance with all employee plan requirements. Consult with a pension specialist if further interpretation of the pension plan law is required, using the Online Specialist Referral System. As a required but waiver-eligible filing check, examiners will:
 - a. Become familiar with the working provisions of the plan with particular emphasis on the operations as reflected in order to get background information.
 - b. Note any transactions between the plan and the organization.
 - c. Interview the responsible official with respect to transactions between the plan and the organization.
 - d. Determine if Form 5330 is required (see IRC 4975).
 - e. Inspect Form 5500 series return(s) in order to determine if it was filed correctly.
 - f. Develop the facts and information necessary for the preparation of Form 4632-A, Employee Plans Referral Checksheet.
 - g. Carefully review any unusual transactions encountered during the investigation with respect to other taxpayers involved.
 - h. Consider the amount of deferred compensation in developing excessive compensation issues.
- (2) Determine the type(s) of retirement plan(s) maintained by the organization. For each of the following plans, complete Form 4632-A to determine whether a referral would be made to Employee Plans:
 - Profit Sharing - IRC 401(a)
 - Money Purchase Pension - IRC 401(a)
 - Defined Benefit Pension - IRC 401(a)
 - Elective Salary Deferral - IRC 401(k)

If	Then
All answers circled are in the left column of Form 4632-A	You are not required to refer the plan to Employee Plans (EP). In such cases, associate Form 4632-A with Form 5773, EO Workpaper Summary. This will satisfy the required filing check.
Any answers in the right column of Form 4632-A are circled	Refer the plan to EP. Use Form 4632-A (Employee Plans Referral) to refer the plan. Attach copies of Form 4632-A and Form 5500 for each plan referred. Submit the referral package to CP&C referrals for assignment to EP.

- (3) If an organization has a profit-sharing plan qualified under IRC 401(a), determine the effect on the organization's exempt status. Also, submit a referral to CP&C referrals for IRC 401(a) consideration.
- (4) For examinations of employee welfare benefit plans exempt under IRC 501(c)(9), IRC 501(c)(17), and IRC 120 (Qualified group legal services plan), review plan documents and complete Form 6212-B, Examination Referral Checksheet B. If any item on Form 6212-B is checked in the right-hand column, forward the form to the Pension and Welfare Benefits Administration of the Department of Labor (DOL). The case won't be closed until the earlier of receipt of a response from DOL, or 20 workdays after the date you submitted the document to DOL.
- (5) Determine if fringe benefits constitute taxable wages. Review the chart of accounts for obvious employee benefits. Secure a copy of the personnel department's employee benefits and executive benefits procedures.

Note: A helpful resource to determine benefits and forms of compensation is the employee handbook (if available).

- (6) Complete Form 4632-A for each plan for which a deduction is claimed. Form 4632-A will remain in the case file.
- (7) A completed Form 4632-A will assist in the preparation of Form 4632, Employee Plans Referral, if necessary.
- (8) If a referral is warranted due to other issues or circumstances not covered by Form 4632-A, a referral may be accomplished by a narrative explaining the particular issues or circumstances.
- (9) Complete Form 4632-B, Employee Plans Referral Checksheet or for FSL/ET complete Form 4632-C, Employee Plans Referral Sheet, for IRC 403(b) or IRC 457 plans, to determine if a referral on Form 4632 is necessary for the following plans:
 - Tax Deferred Annuities – IRC 403(b).
 - Eligible Deferred Compensation – IRC 457.
 - Ineligible Executive Deferred Compensation – IRC 457(f).

- (10) The revocation of a 501(c)(3) status may adversely impact deferred compensation programs sponsored by the organization. Consult with an Employee Plans IRC 403(b) / IRC 457 Coordinator.

4.70.12.3.6.2.4

(11-22-2023)

Political Organization Returns (Form 1120-POL)

- (1) IRC 527 explains the extent to which political organizations are taxed. Generally, only the political organization's income from investments, less the expenses directly attributable to such income including a specific deduction of \$100.00, is taxed at the highest corporate rate. Neither the NOL deduction nor the special deductions allowed for corporations are allowable pursuant to IRC 527(c).
- (2) An IRC 501(c) organization, on the other hand, is taxed under IRC 527 on the lesser of the amount expended for political purposes (exempt function), or the organization's net investment income.
- (3) Net investment income, for purposes of IRC 527(f), means the gross amount of interest, dividends, rents, royalties, plus the excess (if any) of gains from the sale or exchange of assets over the losses from the sale or exchange of assets, over the deductions directly connected with the production of this income. To avoid double taxation (and double deductions), IRC 527(f)(2) provides that income and deductions taken into account for purposes of the tax on UBI of IRC 501(c) organizations under IRC 511 aren't to be included as either income or deductions in determining net investment income under IRC 527(f).
- (4) For purposes of IRC 527, expenditures for an "exempt function" (political purposes), are expenditures for the purpose of influencing the outcome of an election to public office. Political expenditures don't include any expenditures for the purpose of influencing legislation regardless of whether those "lobbying" expenditures are for germane lobbying, non-germane lobbying, or grass roots lobbying.
- (5) Review Schedule C, Form 990, Political Campaign and Lobbying Activities.
- (6) Review Schedule R, Form 990, Related Organizations and Unrelated Partnerships, for identifying related organizations.
- (7) Determine whether a separate segregated fund described in IRC 527(f)(3) is maintained by the organization. Also, determine if the organization has expended any amount from its funds during the taxable year directly (or through another organization) for an exempt function under IRC 527(e)(2). If so, a Form 1120-POL, U.S. Income Tax Return For Political Organizations, may be required. Check the minutes and other correspondence files for indications of political contributions. Also check disbursements for possible political expenditures.
- (8) Compare the amount of political expenditures reported on Form 990, Schedule C, Part I, Line 2, to the amount of political expenditures on Form 1120-POL. Also, reconcile the investment income and expenses per return with those reported on Form 1120-POL. Establish Form 1120-POL for examination if adjustments are required.
- (9) If the IRC 501(c) organization has \$100 or less of net investment income for the tax year, no return or tax is due from the IRC 501(c) organization under IRC 527 regardless of the amount of its political expenditures.

- (10) See the Virtual Library for additional technical guidance on examinations involving political organizations.

4.70.12.3.6.2.5
(11-22-2023)
**Tax Exempt Bonds
related to an EO
Examination**

- (1) The Tax Exempt Bond (TEB) program, normally associated with large IRC 501(c)(3) organizations, was established to ensure compliance with the provisions of the Internal Revenue Code applicable to tax-advantaged bonds. Prior to considering a referral to Tax Exempt Bonds via the Specialist Referral System (SRS), be alert for the following transactions:

- a. The sale of assets financed with tax-advantaged bonds.
- b. The proceeds from tax-advantaged bonds were invested, resulting in earnings from “materially higher” investments.

Note: The definitions of “materially higher” investments (arbitrage) can be found in 26 CFR 1.148-2(d) .

- c. The assets financed with tax-advantaged bonds were used for personal gain.
- d. A change in the original intended use of the assets.
- e. The assets financed with tax-advantaged bonds were used for an unrelated trade or business.

Note: Exceptions to EO law for UBI don’t alter a determination of UBI under TEB law (e.g. volunteer labor may affect the designation of UBI for EO, but not for TEB determinations).

- f. Form 8038 series are delinquent.
- g. A for-profit developer or manager privately benefits from and controls the facility financed with tax-advantaged bonds.

Note: If proposing revocation of an IRC 501(c)(3) organization issuing tax-advantaged bonds, a referral to Tax Exempt Bonds is mandatory.

- (2) Review Schedule K, Form 990, Supplemental Information on Tax-Exempt Bonds.
- (3) The revocation of the issuing organization’s tax-exempt status may adversely impact the bonds. Consult with a TEB specialist.

4.70.12.3.6.2.6
(11-22-2023)
**Report of Foreign Bank
and Financial Accounts
(FBAR)**

- (1) FBAR is an information report required when a “U.S. Person” owns or has signature or other authority over foreign financial accounts worth over \$10,000 in any year.

- (2) Certain tax-exempt entities may be required to file FBARs:

- a. A pension plan or an exempt organization formed under U.S. laws which meets the definition of a U.S. person.
- b. A pension plan or an exempt organization may have a direct or indirect financial interest in reportable financial accounts.

Note: See IRM 4.26.16, Bank Secrecy Act, Report of Foreign Bank and Financial Accounts (FBAR), for legal definitions, foreign account valuation, account authority, etc.

- (3) The determination to file the FBAR is made annually.

- (4) FBAR is due on or before April 15. Accountholders who file by October 15 will automatically be considered timely. See *Report of Foreign Bank and Financial Accounts (FBAR)*.
- (5) The FBAR is now filed electronically through the Financial Crimes Enforcement Network (FinCEN) BSA E-File system.
- (6) The FBAR shouldn't be filed with the filer's federal tax return. Don't discuss filing FBAR with a taxpayer.

Note: First, contact the FBAR Coordinator for more information. Refer to IRM 4.26.17.2, Starting an FBAR Examination, for further guidance.

4.70.12.3.6.2.7
(11-22-2023)

**Withholding Compliance
Program and W-4
Compliance Techniques**

- (1) IRC 3401 and IRC 3402 set forth the requirements for withholding and claiming exemption from withholding. Employers must comply with the Form W-4 requirements in accordance with 26 CFR 31.3402(f)(2)-1 and 26 CFR 31.3402(f)(5)-1.
- (2) Under IRC 6001 and 26 CFR 31.6001-5(a), employers are required to keep records of all remuneration paid to (including tips reported by) employees and make them available for inspection by authorized IRS personnel. When an employer is reluctant or refuses to permit an inspection of payroll records, advise them of their obligations under the Code and Regulations.

Note: The Withholding Compliance Program under SB/SE ensures that taxpayers who have serious under-withholding problems are brought into compliance with federal income tax withholding requirements. This process is based on W-2's filed and is the responsibility of the Withholding Compliance Unit. See IRM 5.19.11, Liability Collection, Withholding Compliance Program.

- (3) If you identify potential noncompliance, review only the most recent Form W-4 on file with an employer, using analysis of the Form W-2 as provided by IRPTR:
 - a. Identify those employees whose taxes withheld are less than 10 percent of the wages or who had no withholding whatsoever.
 - b. Sample the Forms W-4 for those employees to identify the marital status and number of exemptions.
 - c. Prepare a workpaper recording the results of the sampling.
- (4) In order to be exempt from withholding the employee must:
 - a. Have had no income tax liability in the previous year,
 - b. Expect to not have any in the current year, and
 - c. Submit a new Form W-4 each year before February 15
- (5) For those employees who claimed "exempt", check the date of the signature. Advise the employer of their obligation to obtain a new Form W-4, if the Form W-4 is dated from an earlier year.
- (6) Under 26 CFR 31.3402(f)(5)-1(b), any unauthorized change or addition to Form W-4 makes Form W-4 invalid. This includes taking out any language by which the employee certifies the form is correct.
- (7) Invalid Forms W-4 can be recognized by:

- a. Deletion of the language of the jurat.

Example: Crossed out penalty of perjury statement above the signature.

- b. Defacement of the certificate.
- c. Any writing on Form W-4 other than the entries requested.

- (8) Under 26 CFR 31.3402(f)(3)(i) and Rev. Rul. 80-68, 1980-1 C.B. 225, a Form W-4 is also invalid if, by the date an employee gives Form W-4 to the employer, he or she indicates in any way it is false.

- (9) The employer may treat a Form W-4 as invalid if the employee wrote "exempt" on line 7 and also entered a number on line 5 or an amount on line 6.

- (10) An employer who receives an invalid Form W-4 from an employee must take the following actions:

- a. Inform the employee that the Form W-4 is invalid.
- b. Request another Form W-4 from that employee.
- c. Withhold tax from employee wages as single with zero allowances until the employee furnishes a valid Form W-4.

Note: If a prior valid Form W-4 is in effect for the employee, the employer must continue to withhold based on the prior Form W-4.

- (11) IRC 6682 and 26 CFR 31.6682-1 allow the assessment of a \$500 civil penalty on an individual for furnishing a false Form W-4 if:

- a. The statement made on the Form W-4 results in less income tax withheld than would've been withheld if the Form W-4 had been correctly completed, and
- b. There was no reasonable basis for such a statement at the time that the statement was made.

- (12) False Forms W-4 are subject to a civil penalty of \$500 for each Form W-4. Accordingly:

- a. Secure copies of any false Form W-4.
- b. Send a referral for each Form W-4 for which the penalty assessment is being requested. Submit these using Form 9045, Withholding Compliance Referral Form. The form may be faxed to (855) 202-8300 and must include copies of the Forms W-4.

4.70.12.3.6.3
(11-22-2023)
**FSL/ET Specific Filing
Checks**

- (1) Employment tax is the primary part of the examination in the case of FSL/ET. Review all employment tax returns to ensure filing compliance.
- (2) In general, for federal, state or local governments, check for timely and correct filing for the current, prior, and subsequent years of:
 - Form W-2, Wage and Tax Statement.
 - Form 1099 series.
 - Form 941, Employer's Quarterly Federal Tax Return.
 - Form 945, Annual Return of Withheld Federal Income Tax.
 - Form 720, Quarterly Federal Excise Tax Return.

4.70.12.3.6.4
(11-22-2023)
**ITG Specific Filing
Checks**

- (1) Make sure that the Indian tribal governments and related businesses/enterprises' are properly coded as tribal entities. Check INOLES for BOD Code, BOD Client Code (CC), Employment Code (EC) and make sure they have the correct filing requirements (FR) listed. If the BOD, CC, EC and FR aren't correct, update the necessary changes using the *Tribal/Entity Information Update Form*. After completing the form, click on the SUBMIT button to send to CP&C for input.
- (2) Use Integrated Data Retrieval System (IDRS) command code INOLES to identify an Indian tribal government/enterprise(s) by these codes:
 - Business Operating Division (BOD)
 - Client code (CC)
 - Employment code (EC)
- (3) Entities wholly owned by Indian tribes are under the jurisdiction of Tax Exempt and Government Entities/Indian Tribal Governments. Tribes may be involved in businesses/enterprises that aren't wholly owned, such as partnerships and joint ventures with other tribes or non-tribal entities. The IRS BOD with jurisdiction (TE/GE, SB/SE or Large Business & International (LB&I)) is generally determined by the level of ownership.

Example: If an Indian tribal government owns more than 50 percent of a partnership, then the entity is coded as TE/GE who may need to coordinate with other BODs.

- (4) If the BOD classification is unclear, then these situations will be resolved at the lowest managerial levels in the IRS units involved. If the group manager(s) can't agree, the issue is raised to the next level of management until resolved.
- (5) ITG entities are identified on IDRS by BOD code "TE", employment code "I" and client code "I".
- (6) If an ITG entity has issued a tax-exempt bond, the CC could be a "1" instead of an "I".
- (7) If an ITG entity was at one time exempt under IRC 501(c), the EO section may show at the bottom of the INOLES display. This EO section is for historical purposes. If the EO status code (STS-CD) is active, this means the entity's IRC 501(c) exempt status is still in effect, subject to EO oversight and not an ITG entity. If the EO status code is inactive, this means the EO tax exempt status is no longer in effect, and it's an ITG entity if an Indian tribal government(s) owns more than 50 percent. See Document 6209, IRS Processing Codes and Information, Section 13.10.(3), Status Codes - Master Files and AIMS, for a list of active and inactive status codes.
- (8) Verify the Employer's Annual Federal Unemployment (FUTA) Tax Return, filing requirement (FR) on INOLES is correct. The FR for ITG entities is either "3" (compliant - not required to file) or "4" (non-compliant - required to file). Most of the time, the Form 940 FR is "3" indicating that the organization has elected not to be subject to Federal Unemployment Tax Act (FUTA) by participating in the state unemployment system.
- (9) For more information, see IRM 4.10.5, Required Filing Checks; IRM 4.23.3.6.3, Procedures for Required Filing Checks and Scope of Employment Tax Examinations; and IRM 4.23.3.6.2, Required Filing Checks for Non-Employment Tax

Cases, for procedures for verifying the filing of required returns by the taxpayer and assessing the examination potential of these returns.

4.70.12.3.6.5
(11-22-2023)
**TEB Specific Filing
Checks**

- (1) Complete a pre-contact analysis for all examinations.
- (2) Use the Tax Exempt Bond Workpaper Summary, or an equivalent document, to prepare an exam plan. Ask your manager for input in developing the plan.
- (3) Analyze the following information, if applicable, during your pre-contact analysis:
 - Form 8038 series information return filed for the bond issuance.
 - For direct-pay bonds, related Form 8038-CP returns.
 - Form 8038-T and Form 8038-R returns.
 - The Official Statement. If there is an Official Statement for the bonds, it should be available on EMMA (<https://emma.msrb.org>).
 - Material event notices, redemptions, pricing information, refundings, tenders, and any other relevant information to the examination and financial statements. Consult EMMA.
 - Code sections, regulations, court cases, revenue rulings and procedures applicable to the case.
 - IDRS research (see IRM 2.3.1, Section Titles and Command Codes for IDRS Terminal Responses and IRM 2.4.1, Section Titles and Command Codes for IDRS Terminal Input) conducted on issuers, conduit borrowers, and related parties.
 - Pertinent state and federal agency reports or files, such as audit reports, minutes of meeting, and annual financial reports.
 - Issuer and borrower internet websites.
 - Any other information obtained through internet search engines and other sources (for example, Guidestart-990 Returns or EDGAR-SEC Filings).
- (4) Document the steps you took in your pre-contact analysis in the workpapers.
- (5) Notify your group manager if the issuer or borrower is under exam by another TEB examiner, TE/GE functions, or operating division. Your manager will coordinate with the group manager of the unit controlling the related examination as indicated on the AMDISA. If there is an open examination of a conduit borrower, determine:
 - The years under examination.
 - The status of the examination.
 - Any extensions of the statutory period for assessment.
- (6) Continue the examination planning throughout the exam. Because the general information returns filed to report bond transactions provide very limited information, you may plan a significant portion of the examination after you receive the response to the initial Information Document Request (IDR).
- (7) Develop an IDR tailored to your exam plan and the examination scope.
- (8) Prepare the appropriate initial contact letter (using Letter 6031) to send to the issuer with the IDR, Pub 1 and the Supplement to Form 2848.

4.70.12.3.6.6
(11-22-2023)
**Prior and Subsequent
Years' Returns**

- (1) Review the prior and subsequent years of the primary return assigned to you for proper filing and to evaluate examination potential. Using the returns, complete an analysis, comparing the changes in the over the three-year period, looking to identify any large or questionable differences. Recognize any trends, either positive or negative, that are present or developing during the three years.
- (2) Determine whether significant differences or trends may warrant establishing the prior or subsequent tax year's return for examination.

Caution: Consult with the group manager before establishing prior and/or subsequent year returns for examination.

- (3) A review of prior and subsequent year's returns is essentially equivalent to the classification of a return to determine if an examination is necessary. If the group manager hasn't approved the examination, don't request books and records related to those returns.

Note: If transactions occurred in prior or subsequent years that affect the assigned return, such transactions may be examined and the relevant books and records may be requested.

- (4) Document in the workpapers whether prior and subsequent years' returns were reviewed and explain why an exam wasn't warranted.
- (5) If, during the examination, information is obtained that indicates potential substantive noncompliance in subsequent years for which returns haven't yet been filed by the taxpayer, obtain managerial approval to open the year(s) on Non-Master File.
- (6) An examination of prior or subsequent year returns may be warranted if:
 - Noncompliance exists.
 - An issue is developed during the examination of an originally assigned return that carries back or forward to other years' returns.
 - There is a large, unusual or questionable item that must be resolved.
 - The adjustment in the examination year is likely to be treated the same in another tax year.
 - There are carryback or carryforward issues.
- (7) If adjustments are made to the return(s) under examination, document the reasons other years weren't opened for examination.
- (8) Obtain and document in the workpapers or the CCR, group manager approval to extend an examination into the prior or subsequent years.
- (9) Examine prior or subsequent year return(s) concurrently with the assigned return. Ensure sufficient time remains on the statute of limitations before starting an examination of a prior or subsequent year return. See IRM 25.6, Statute of Limitations.
- (10) Inform the taxpayer of the decision to expand the examination to include a prior or subsequent year's return by issuing Letter 5968, Prior or Subsequent Year Pickup, or for EP, Letter 1346-J, Employee Plans Prior Year, Subsequent Year and Related Return Pick-Up. Verify the presence or absence of an audit

indicator on a related return before initiating the examination. If an audit indicator is present, take appropriate steps to coordinate before contacting the organization.

- (11) In order to establish cases on AIMS using retained copies of the taxpayer's returns, create a module on RCCMS as soon as you know an examination will be initiated. Request establishment with the Update AIMS check box selected for Business Master File (BMF) modules.
- (12) If it is not possible to secure the original return or if closing would be delayed by awaiting receipt of the original, close the case based on the taxpayer's retained copy. If the taxpayer doesn't provide a copy, secure BRTVUE and RTVUE prints internally. Original returns must be obtained in the following instances:
 - Unagreed cases involving fraud
 - Jeopardy assessments
 - When the closing is on the basis of a notice of deficiency
- (13) Generally, examinations of prior and subsequent year returns will be limited to the issue(s) giving rise to the examination of the originally assigned return. However, the returns would still be reconciled to the taxpayer's books and records, just as the originally assigned return.
- (14) If you discover that the taxpayer hasn't filed returns or forms, the examination of which are within the jurisdiction of another function or Operating Division, prepare Form 5666 or Form 5346 and send to the CP&C Referrals for transmittal to the appropriate function.

4.70.12.3.7
(11-22-2023)
**Statute of Limitations
and Statute Control
Procedures**

- (1) The Internal Revenue Code requires that the IRS assess, refund, credit, and collect taxes within specific time limits. These limits are known as "Statutes of Limitations". When they expire, the IRS can no longer assess additional tax, allow a claim for refund by the taxpayer or take collection action.
- (2) Use statute controls for all tax returns and/or information returns (filed and non-filed) and civil penalty cases under examination. Effective statute control procedures are a result of a collaborative effort. Any individual handling a return has the responsibility for identifying and protecting statutes of limitations for return(s) in their custody. Statute controls ensure the following:
 - a. Statute expiration dates for tax returns are properly determined and the records are annotated to reflect the correct assessment statute expiration date (ASED).
 - b. Miscellaneous civil penalties that have statute expiration dates and are controlled on RCCMS and not AIMS are properly determined and monitored.
 - c. Cases are closely monitored to prevent unintended expiration of the assessment statute of limitations.

Caution: Failing to protect the statute of limitations not only impacts the amount of tax that IRS could have statutorily assessed and collected, but it could also result in employee disciplinary action.

- (3) Employees must take all necessary actions to protect the government's interest when expiration of the statutory period for assessment of any additional or potential tax is imminent. This responsibility extends not only to the

liability of the entity under examination, but also to the liabilities of the related taxpayers, whether or not these returns are currently under examination. Examiners are responsible for protecting the statute of limitations for any:

- a. Assigned returns.
- b. Any prior or subsequent year returns if the adjustments to the examination year create adjustments for the prior or subsequent year and an examination of the prior or subsequent year is justified.
- c. Any income, employment, or excise tax returns filed or required to be filed by the taxpayer if the examination of a primary return may result in an adjustment to the tax liability on such tax returns.
- d. Any income or excise tax returns filed or required to be filed by related individuals or entities if the examination of a primary return may result in an adjustment to the tax liability on such returns.
- e. Civil penalty cases.

Caution: Be familiar with situations where the filing of a primary return by an exempt organization, a private foundation or a non-exempt charitable trust can start the running of the statute of limitations for other returns. Protect the statute of limitations on these returns as necessary.

- (4) Refer to IRM 25.6.1, Statute of Limitations Processes and Procedures, IRM 25.6.22, Extension of Assessment Statute of Limitations by Consent and IRM 25.6.23, Examination Process - Assessment Statute of Limitations, for Service-wide guidance on identifying, monitoring, controlling, and updating statute of limitations dates.
- (5) See IRM 4.82.3, Direct Pay Bonds, for statute considerations and statute controls for Direct Pay Bonds.

4.70.12.3.7.1
(11-22-2023)
**Group Manager
Responsibilities and
Procedures**

- (1) Group managers are responsible for the continuous overall supervision of statute controls for assigned and unassigned returns in the group. When group managers receive cases in the group:
 - a. Ensure policies to verify the statute of expiration is accurate, including proper determination of assessment statute expiration date (ASED) or any alpha codes used or to be used.
 - b. Properly identify statute expiration dates on tax returns and/or information returns (filed and non-filed).
 - c. Closely monitor all controlled cases to protect all statutes of limitations to prevent their expiration.
- (2) Notify the examiner in writing when an assigned return's statute of limitations will expire within 270 days.
- (3) Ensure the examiner documents on the CCR they have completed the statute validation process in RCCMS. Refer to *RCCMS Change Document for Release 3.5.0/3.5.1* for detailed description of the new RCCMS feature, started July 2020, for statute validation.
- (4) See IRM 25.6.22.5.13, Manager's Responsibilities When Signing Consents.
- (5) For EP ensure the additional steps have been followed:

Step	Action
1.	<p>When you and the examiner decide not to extend the statutory period for a Form 5500/ Form 1041, ensure that:</p> <ol style="list-style-type: none"> You made the decision before the expiration of the statute of limitations. The examiner included a memo of explanation (signed by the manager) detailing the reasons for not extending the statutory period. See <i>Employee Plans Examination Exhibits</i> for an example of the memo to use when updating a statute to alpha code "PP". You placed a copy of the memo in the case file and sent a copy to the Area Manager to document your decision not to extend the statutory period. Between 60 and 270 days before the statute expiration, the examiner updated both AIMS and RCCMS to show this decision using alpha code "PP"- Non-taxable EP Return. <ul style="list-style-type: none"> Note: Use the "PP" code when the examiner and manager determine with certainty that the non-taxable return will not be converted to a taxable return. If we later determine this alpha code was inappropriate, you may need to prepare Form 3999 per IRM 4.70.12.3.7.8, Barred Statute Reporting - Form 3999, Statute Expiration Report. The examiner included a copy of the AIMS print in the file to verify the date of the update action to "PP" the statute. <ul style="list-style-type: none"> Note: If the case has been properly updated to alpha code "PP", the case file should not be placed in a red folder.

2.	<p>When the manager and examiner decide to open a Form 5500 examination for a prior year for which the statute of limitations has expired or has less than 270 days remaining:</p> <ol style="list-style-type: none"> Update the statute of limitations to alpha code "PP" immediately. Include a memo of explanation (signed by the group manager) detailing the reasons for opening an examination of a prior year's return must be included in the case file and/or saved in the RCCMS Office Documents folder using the RCCMS Naming Convention. See <i>Employee Plans Examination Exhibits</i> for an example of the memo. Include a copy of the AIMS print in the case file to confirm the date of the statute update action to alpha code "PP". <p>Note: The statute of limitations is a limitation on the assessment and collection of taxes and does not apply to plan disqualification. <i>Christy & Swan Profit Sharing Plan v. Commissioner</i>, T.C. Memo. 2011-62. The IRS is not prohibited from pursuing plan disqualification for a year even if the statute of limitations is closed on the Form 1041 for that year. When a plan fails to qualify under IRC 401(a) for a given year, the plan continues to be non-qualified until the plan appropriately corrects and becomes re-qualified.</p>
3.	When an examiner extends a statute of limitations, ensure that Form 872 (or Form 872-H with Form 56, for Form 5500 / Form 1041 extensions) is properly completed and executed.
4.	When an examiner extends the statute of limitations or updates it to an alpha code, make sure RCCMS and AIMS are updated to reflect the current statute date and complete the statute validation process.
5.	For additional procedures, see IRM 4.70.12.3.7.2.

- (6) See IRM 4.70.12.3.7.10, Timeline for Closing Examined Returns, to ensure cases closed from the group have the required time remaining on the statute of limitations prior to case closure.
- (7) Ensure all short statute cases have been placed in a red folder (Form 10364-A), when closing with a paper case file.

4.70.12.3.7.2
(11-22-2023)

Examiner Responsibilities and Procedures

- (1) Examiners are responsible for:
 - Identifying and protecting the statute of limitations for returns in their inventory, including all primary and related returns covered by the scope and depth of exams being conducted. You are also responsible for protecting the statute of limitations for subsequent tax years if there is a potential tax effect.

- b. Verifying the correctness of the statute of limitations date shown on RCCMS/AIMS for each return in their inventory and verifying ASED alpha day codes.
- c. Initiating and completing the Statute Validation process in RCCMS.

Note: For any case (AIMS and non-AIMS) with less than 270 days left on the statute of limitations, or otherwise meeting control criteria, follow the instructions in the *RCCMS Change Document for Release 3.5.0/3.5.1* to validate the statute through your manager. Cases coming to closing groups with less than 270 days on the statute require the validation process to have been completed before submission.

- d. Document on CCR you have completed the statute validation process in RCCMS.

- (2) See IRM 25.6.1, Statute of Limitations Processes and Procedures, IRM 25.6.22, Extension of Assessment Statute of Limitations by Consent, and IRM 25.6.23, Examination Process-Assessment Statute of Limitations Controls. To the extent the procedures in this IRM impose tighter controls than those in IRM 25.6, Statute of Limitations, use the procedures in this IRM.

Example: IRM 25.6.23.5.1.1, Time for Initiating Controls, requires statute controls for returns with assessment statutes that expire within 180 days. This manual requires statute controls for returns with statutes that expire within 270 days. Follow the instructions with respect to statute controls from this manual, because statute controls for EO Examinations take effect sooner than those stated in IRM 25.6.23.5.1.1, Time for Initiating Controls.

Note: A “short statute return” for TE/GE is a return with less than 270 days remaining until the ASED.

- (3) Maintain “statute controls” for all short statute returns under examination, whether or not controlled on AIMS.
- (4) You may not begin an examination or requisition any return for examination if fewer than 12 months remain on the statute unless you get your Program Manager’s approval.
 - a. Obtain managerial approval before you open an examination of a return with fewer than 12 months remaining on the statute.
 - b. Document the approval and justification, or disapproval on the CCR.
 - c. Consider factors such as the amount of potential tax liability and the impact on plan participants before opening a year with a short statute.
 - d. If you/your manager decide to examine a return with 270 days or less remaining of the statute of limitations, submit a request for AIMS/RCCMS establishment and statute validation.
- (5) Review the following sources to verify statute of limitations date, as appropriate, and document in the case file:
 - a. IDRS
 - b. AIMS
 - c. Received date stamped by the campus on the face of the original return.

- d. Postmark date on the envelope in which the return was mailed, if attached.

Caution: If unable to determine the actual postmark date and/or received date, use the most conservative date.

- (6) If the criteria in (4) applies, but by not conducting an examination may result in a. through d. below, get your GM's approval if you determine an examination should be conducted. Document the approval and basis for the decision in the CCR, the workpaper summary sheet or a separate workpaper, as appropriate:
 - a. Serious criticism of the IRS's administration of the tax law.
 - b. Inconsistent treatment of similarly situated taxpayers.
 - c. The establishment of a precedent that seriously hampers IRS subsequent attempts to take corrective action.
 - d. The loss of a substantial amount of tax revenues.
- (7) If you determine that the statute date is incorrect: See IRM Exhibit 25.6.23-3, Instructions for Updating the Statute on AIMS, for proper alpha coding of the assessment statute expiration date (ASED).
- (8) After you determine the correct statute date and update it, if necessary, continue to monitor the statute date to protect the government's interest.
 - a. The statute date doesn't change unless you update it to reflect an executed statute extension or to an alpha statute code.
 - b. The group manager and specialist must continue to monitor the statute.
 - c. Use inventory validation guidelines, monthly reconciliation of AIMS Table 4.0, Returns with Statute Date Pending, and RCCMS, to ensure you start statute control procedures within 270 days of its expiration.
- (9) If you discover a potentially expired statute of limitation, complete Form 3999, Statute Expiration Report.
- (10) When preparing Form 872-H for a trust with a fiscal year end, the trust year is converted to a calendar year when there is a possible qualification issue. See IRM 4.70.12.3.8.6, Securing Consents for Form 5500 and Form 1041.

Note: If the plan's qualified status is revoked, the trust becomes taxable and Form 1041 is due each calendar year.
- (11) When you propose to disqualify a qualified plan, which would result in the conversion of a Form 5500 series return to a taxable return, you are responsible for controlling and protecting the statute until either.
- (12) For any examination involving revocation or non-qualification, you must prepare and timely forward, necessary referrals to the appropriate Examination Functional Unit (EFU) (for example, SB/SE) responsible for the Form 1041 trust return. Consider making a preliminary referral based on the proposed revocation issues. Include any necessary supporting documentation that will help SB/SE calculate the correct tax to be reported on Form 1041.
- (13) Follow these procedures when you refer to an EFU for tax due on Form 1041:
 - a. Either secure a statute extension on Form 872-H to extend a short statute, or with your group manager's approval, update the statute of limitations on the corresponding Form 5500 return to alpha code "PP". See

IRM 4.70.12.3.7.7, Use of Alpha Codes.

- b. When the statute is updated to alpha code "PP" (for example, 12/PP/2018), prepare a memo of explanation justifying the use of alpha code "PP", obtain your manager's signature on the memo.
 - c. Forward a copy of the memo to your Area Manager.
- (14) Follow these special procedures for project code 6451, *404 Deduction Only (CIP Support)*, examinations:
- a. Update the statute of limitations to alpha code "PP" immediately upon assignment.
 - b. When you expand the scope of a project code 6451 examination to include an IRC 401(a) issue and the statute of limitations is still open for that year, the general statute of limitation procedures contained in this IRM apply and you must protect the statute of limitations for Form 5500 / Form 1041.
 - c. When you expand the scope of a project code 6451 examination to include an IRC 401(a) issue and the statute of limitations is closed for that year, the statute of limitations on RCCMS and AIMS should continue to reflect alpha code "PP" for that year. If Form 5500 examinations are opened in later years for which the statute is still open, the general statute of limitations procedures contained in this IRM apply and you must protect the statute of limitations for Form 5500 / Form 1041.
- (15) Include a memorandum of explanation (signed by the group manager) detailing the reason for the examination and the update of the statute to alpha code "PP" in the case file.

4.70.12.3.7.3
(11-22-2023)

Determining the Statute of Limitations Expiration Date

- (1) To protect the government's interest, you must be able to determine the statute of limitations expiration date for the assessment of tax for returns that are within TE/GE's jurisdiction.
- (2) See IRM 25.6.1, Statute of Limitations Processes and Procedures, and IRM 25.6.1.6.4, Statute of Limitations Chart for Tax Returns, for statute of limitations chart for tax returns.
- (3) The guidelines to determine the statute of limitation for assessment are in IRM 25.6.1.9, Assessments. IRC 7502 states that a timely mailed return is treated as timely filed. The Assessment Statute Expiration Date (ASED) is computed as shown below:

if the return is postmarked:	And the return is received:	The statute date is based on:
On or before the normal due date	Before, on or after the normal due date	Normal due date
After the normal due date (No extension)	After the normal due date	Service Center received date
On or before the extension date (After the normal statute date)	On or before the extension due date	Service Center received date

if the return is postmarked:	And the return is received:	The statute date is based on:
On or before the extension date (After the normal statute date)	After the extension due date	Postmark date
After the extension date	After the extension due date	Service Center received date

- (4) For purposes of the statute of limitation, IRC 6501(b)(2) provides a “deemed” filing date for taxes imposed by the following chapters of the Internal Revenue Code:

- Chapter 3 - Withholding of Tax on Nonresident Aliens and Foreign Corporations.
- Chapter 4 - Taxes to Enforce Reporting on Certain Foreign Accounts.
- Chapter 21 - Federal Insurance Contributions Act.
- Chapter 24 - Collection of Income Tax at Source on Wages.

Note: If a return of tax imposed by chapter 3, 4, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

- (5) The statute of limitations is extended from three years to six years from the date the return is filed or deemed filed, whichever is later in the following circumstances, and as detailed in IRM 25.6.1.9.5.3:
- a. 25% omission of income taxes. The statute of limitations is extended from three years to six years from the date the return is filed or deemed filed, whichever is later, if there has been a substantial omission of 25% of the amount of gross income properly includible on the return. See IRC 6501(e)(1) and 26 CFR 301.6501(e)-1(a). This does not apply to employment tax returns (Forms 940/941/944) that underestimate originally reported wages.
 - b. Exceptions to statute of limitations. In the following circumstances, there is no assessment statute of limitations. See IRC 6501(c).
 - False or fraudulent returns
 - Failure to file a returns
 - Willful attempt to defeat or evade tax in any manner
 - c. In the following circumstances, the assessment statute of limitations is altered. See IRC 6501(c).
 - Certain amended returns
 Extension of the statute by agreement
 - d. IRC 4940 Tax: If a private foundation omits from its primary return tax imposed by IRC 4940 an amount of tax properly includible which is in excess of 25% of the amount of tax imposed by IRC 4940 which is reported on the return, the tax may be assessed at any time within six years after the return was filed. If a private foundation discloses in its return (or in a schedule or statement attached thereto) the nature, source, and amount of any income giving rise to any omitted tax, the tax arising from such income is counted as reported on the return in computing whether the foundation has omitted more than 25% of the tax

- reported on its return. See IRC 6501(e)(3) and 26 CFR 301.6501(e)-1(c)(3)(i). IRC Chapter 41 and IRC Chapter 42 Excise Taxes (Other than IRC 4940): If a public charity or a private foundation, trust, or other organization, as the case may be, fails to disclose an item subject to tax under IRC 4911, IRC 4912, IRC 4941(a), IRC 4942(a), IRC 4943(a), IRC 4944(a), IRC 4945(a), IRC 4951(a), and IRC 4952(a).
- e. IRC 4953, and/or IRC 4958 in its primary return (or a schedule or statement attached thereto), the tax arising from any transaction not disclosed may be assessed at any time within six years after the return was filed. See IRC 6501(e)(3) and 26 CFR 301.6501(e)-1(c)(3)(ii).
 - f. Form 5330. There has been an omission of more than 25% of the excise tax due, unless disclosure of the item giving rise to the tax was made in a manner that adequately apprises the Secretary of the existence and nature of the item. See IRC 6501(e)(3) and 26 CFR 301.6501(e)-1(c).
 - g. IRC 4953, and/or IRC 4958 in its primary return (or a schedule or statement attached thereto), the tax arising from any transaction not disclosed may be assessed at any time within six years after the return was filed. See IRC 6501(e)(3) and 26 CFR 301.6501(e)-1(c)(3)(ii).
- (6) Never rely on the existence of a six-year statute without the concurrence of TEGEC, as documented in a counsel memorandum or secured e-mail.
- (7) As a general rule if no return is filed, the statute of limitation doesn't start to run. Primary returns filed by a public charity, private foundation, or non-exempt charitable trust are an exception to the general rule as the filing of a primary return by these entities starts the running of the statute of limitation for some income and excise tax returns in the circumstances described below:
- a. The filing of a primary return which discloses sufficient facts to apprise the IRS of the potential existence of unrelated business taxable income begins the running of the period of limitations on assessment of tax on Form 990-T, Rev. Rul. 69-247, 1969-1 C.B. 30.
 - b. The filing of a primary return which discloses sufficient facts to apprise the IRS of the potential existence of tax on political expenditures may begin the running of the period of limitations on assessment of tax on Form 1120-POL even though Form 1120-POL was not filed based on the rationale applied to unrelated business income in Rev. Rul. 69-247, 1969-1 C.B. 303.
 - c. A primary return filed by a public charity, a private foundation, a non-exempt charitable trust, or a IRC 501(c)(4) starts the running of the period of limitations on the assessment of excise tax on a Form 4720 filed or required to be filed by the organization, private foundation or trust and on Form 4720 filed or required to be filed by foundation managers and/or disqualified persons. The filing of the primary return starts the running of the period of limitations on assessment of excise tax on Form 4720 even if the transaction, act, or failure to act that gives rise to the excise tax on Form 4720 isn't disclosed on the primary return. The filing of a Form 4720 by the organization, foundation manager or disqualified person doesn't start the running of the statute of limitation. See IRC 6501(l)(1) and 26 CFR 301.6501(n)-1.
 - d. The filing of a primary return by a taxpayer, who determines in good faith that they are an exempt organization under IRC 501(c), starts the running of the statute of limitation, if the organization is later held to be a taxable

organization. See IRC 6501(g)(2) and 26 CFR 301.6501(g)-1(b). (Applies to both organizations ruled as exempt by EO Determinations and to AIMS status 36 cases.)

- (8) The filing of a Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ, doesn't start the running of the statute of Limitation. The Form 990-N is recorded on BMFOLT with a Transaction Code (TC) 150 and a DLN sequence that begins with "93489". The Form 990-N isn't actually a form and doesn't constitute a return for statute purposes. However, for DC purposes, Form 990-N is treated as a primary return.
- (9) The assessment period is extended to 60 days after IRS receives the amended return. See IRC 6501(c)(7). An amended return doesn't extend the statute expiration date unless the return meets both of the following conditions:
 - a. An income tax return received within 60 days before the ASERD.
 - b. The amended return shows the taxpayer owes additional tax.
- (10) A substitute for return prepared by the IRS, under the authority of IRC 6020(b), is treated as if no return was filed. If a taxpayer signs an IRS prepared return, it becomes a regular return and the statute of limitation begins on the signature date.
- (11) An invalid return will not start the running of the statute of limitation. Under the present case law, the following factors must exist for the return to be valid:
 - a. There must be sufficient information to calculate tax liability.
 - b. The document must purport to be a return.
 - c. There must be an honest and reasonable attempt to satisfy the requirements of the tax law.
 - d. The taxpayer must execute the return under penalties of perjury.

Caution: These factors don't take into account the processing concerns that an incomplete return presents for the Service. Therefore, approach any question concerning the validity of a return missing a form or schedule with the presumption that there's sufficient data to calculate the tax liability.

- (12) Take the most conservative approach and protect the three-year statute, if possible, even though a six year statute appears applicable, or when it appears that the return is false or fraudulent.
- (13) Obtain written approval from TEGEDC before pursuing a six year statute of limitations.

4.70.12.3.7.4
(11-22-2023)
**Monitoring the Statute
Date on a Non-Return
(NRU Case)**

- (1) Although a NRU does not have its own statute date (because a return was not filed), there are returns with statute of limitations affected by the NRU plan under examination.
- (2) Use RCCMS to track the statute date of the affected related return.
 - a. On the RCCMS NRU case, enter the statute date of the related Form 941, Form 1120, Form 1120-S, Form 1065, or Form 1040, (as applicable) affected by the NRU examination.

Note: Generally, the Form 1040 for each of the S-Corporation owners is going to be the controlling return for the statute of limitations. Examiners should protect the statutes for the Forms 1040 of the S-Corporation owners, if it is believed there will be income tax consequences on those returns flowing from adjustments made to the Form 1120-S.

Note: The rules concerning whether the controlling return for the statute of limitations is the Form 1065 or the income tax return of each partner are complicated and factually dependent. Examiners should contact TEGEDC when the plan sponsor is a partnership, and it is believed there will be adjustments resulting in income tax consequences.

- b. The statute date will help you and your manager monitor the case for a timely referral or pursuit of a Form 1040/1120 discrepancy adjustment, or pursuit and assessment of applicable penalties, when necessary.
- (3) For IRC 403(b) and IRC 457(b) examinations, the affected related return will be the last quarterly Form 941 filed for the tax year examined.

Note: The last quarterly Form 941 return is due by 1/31 and has a three year statute date from 4/15.

Example: The statute date for the Form 941 quarter ending 12/31/2017 is 4/15/2021).

- a. Initially, Classification uses the normal statute date of the related Form 941 for IRC 403(b) and IRC 457(b) examinations for RCCMS statute control purposes.
- b. EP won't control the Form 941 return for IRC 403(b) and IRC 457(b) examinations on AIMS since EP does not have jurisdiction to examine Forms 941.
- c. Even though EP does not control the Form 941 statute date on AIMS for the applicable tax years, protect the Government's interests for any potential tax adjustments to that return before the statute expires.
- d. Steps to protect the Government's interest would include making a timely referral on Form 5666 with Exempt Organizations (EO) (or whichever business unit has jurisdiction over the taxpayer) to ensure the Form 941 statute is protected for any proposed adjustments.
- e. When you make a timely referral to EO (or whichever business unit has jurisdiction over the taxpayer), the responsibility to protect the statute no longer rests with you. When you make a timely referral, update the statute of limitations to alpha code "EE" in RCCMS and NMF AIMS (for example, 04/EE/2018).
- f. You may update the statute date for the IRC 403(b) and IRC 457(b) examination to alpha code "EE" when you and your manager determine that there are no tax consequences to the related Form 941 or the Form 941 tax is insignificant.

Note: Document your discussion with your manager and his/her concurrence on the CCR.

- g. You may update the statute date for the IRC 403(b) and IRC 457(b) examination to alpha code “EE” when you pick up a prior year and the related Form 941 statute has already barred.

Example: You are resolving an examination issue through Employee Plans Compliance Resolution System (EPCRS). As part of resolution, you open prior years for correction. Although you don’t create an AIMS account for the 403(b) return, you may update the 403(b) statute using alpha code EE.

Note: Document your discussions with your manager and his/her concurrence on the CCR.

- h. The statute of limitations for Form 941 is extended by Form SS-10. See *Employee Plans Examination Exhibits*.
- i. Form SS-10 may be secured by EP Examinations or by EO or FSL/ET.

Note: If Form SS-10 is secured by EP, the EP group manager can countersign Form SS-10 for the IRS.

- j. When secured, and the group has a scanner, scan the Form SS-10 and save it in RCCMS Office Documents folder using the RCCMS Naming Convention, regardless of whether EO or FSL/ET secures it. If not scanned, place a copy of the SS-10 in the paper case file.

- (4) When updating the statute of limitations for a Form 941 that is not under examination (the examination is not established on AIMS by either EO, SB/SE or LB&I), complete Form 3177 as follows:

- a. **Initiator.** Enter the examiner’s name and phone number.
- b. **Date.** Enter the current date.
- c. **Taxpayer Name.** Enter the name of the Taxpayer.
- d. **EIN OR SSN.** Enter the TIN of the Taxpayer.
- e. **TRC.** Highlight “560” and enter the new statute date as *MM/DD/YYYY*.
- f. **MFT Code.** Enter 01 for Form 941.
- g. **Taxable Period.** Enter the taxable period being extended as *YYYYMM*.
- h. Send through secure email or efax the completed Form 3177 and Form SS-10 to the manager of the TE/GE Closing Group in Brooklyn. The efax number is 855-821-0089.
- i. The Efax Cover Sheet should contain the following note: “Please update the statute on Form 941. The return is not controlled on AIMS.”

- (5) For SEP, SARSEP, SIMPLE IRAs, and IRC 457(f) examinations, the related return(s) affected will normally be Form 1040 for the tax years under examination for the individual participants.

Note: The related Form 1120 can be a return of concern for a SEP, SARSEP, or SIMPLE IRA-based plan sponsor if potential discrepancy adjustments are proposed as a result of an improper deduction for employer contributions to the participant’s IRA accounts.

- a. Initially, EP Classification uses the normal statute date of the related Form 1040 for SEP, SARSEP, SIMPLE IRA, and 457(f) examinations for control purposes on RCCMS.
- b. If you establish the related Form 1040 discrepancy adjustment on AIMS and RCCMS, you may update the statute date for the SEP, SARSEP, SIMPLE IRA, or IRC 457(f) examination to alpha code “EE”.

- c. You may update the statute date for the SEP, SARSEP, or SIMPLE IRA examination to alpha code “EE” in RCCMS and NMF AIMS when you and your manager determine that the SEP/SARSEP complies with IRC 408(k) or the SIMPLE IRA complies with IRC 408(p).
- (6) The statute for a nonbank trustee investigation (NBTI) is similar to other NRU statutes in that NRUs don’t have their own statute date because there is no return. The statute of a NBTI is related to the period assigned.

Example: The NBTI for the 2020 cycle would have a statute expiring on 04/15/2024.

- a. There is no means to extend the NBTI statute. The statute can only be alpha coded to “EE”. The statute date may be updated to alpha code “EE” when examiner and manager determine it’s warranted.

Example: The statute expires within 12 months. The NBTI statute can’t be updated using RCCMS like all other NRUs. The NBTI statute must be updated using Form 5595, see IRM 4.5.1.6.9.1, Form 5595, TE/GE Update.

- (7) Because related 1040 and 1120 tax returns can be affected by NRU examinations, examiners should review IRM 4.70.12.3.8.4, EP Statute of Limitations for Form 1040 and Form 1120, before opening an examination of a particular year.
- (8) Because a related Form 941, Form 1040 or Form 1120 can be affected by NRU examinations, follow the time frames in IRM 4.70.12.3.7.2, Examiner Responsibilities and Procedures, when beginning an examination.

Example: You shouldn’t start a SIMPLE IRA examination for the 2016 calendar tax year any later than April 15, 2019 (if the related Form 1040 was timely filed and there were no extensions), since starting the examination after that date would leave less than one year on the related Form 1040 statute date.

4.70.12.3.7.5
(11-22-2023)

Extending the Statute of Limitations

- (1) A statute of limitations to assess tax can be extended with the taxpayer’s consent:
 - a. Clearly identify the need for a consent before you solicit it.
 - b. Obtain your group manager’s approval before you request a taxpayer to execute a consent and document the approval in the case file.
 - c. See IRM 25.6.22, Extension of Assessment Statute of Limitations by Consent, for instructions on obtaining consents, and see IRM 25.6.22.2.1(3), Assessment, for a list of some conditions that allow a statute extension.
- (2) Use the following forms to extend certain types of statutes:

Form	Form Title	Extends
Form 872	Consent to Extend the Time to Assess Tax	<ul style="list-style-type: none"> Form 990 Form 990-PF Form 990-T (non-trust as taxpayer) Form 1040 Form 1042 Form 1120 Form 4720 Form 5329 Form 5330
Form 872-B	Consent to Extend the Time to Assess Miscellaneous Excise Taxes	<ul style="list-style-type: none"> Form 720 Form 730 IRC 6721 and IRC 6722 penalties
Form 872-H	Consent to Extend the Time to Assess Tax on a Trust	<ul style="list-style-type: none"> Form 1041 Form 990-T (Trust as taxpayer)
Form SS-10	Consent to Extend the Time to Assess Employment Taxes	<ul style="list-style-type: none"> Federal Contributions Act (FICA) Federal Unemployment Contributions Act (FUTA) Income Tax Withholding provisions (FITW) Railroad Retirement Tax Act (RRTA) Back-up Withholding (BUWH) Form 941 related to a Non-Return Unit (NRU) examination or an IRC 403(b) plan that filed a Form 5500

- (3) The IRS must prepare the consent in duplicate (three copies if there is a designated representative), not the taxpayer or the POA.
- (4) IRS must notify taxpayers of their right to: refuse to extend the limitation period, request the extension be limited to particular issues and request the limitation period be limited to a specific date IRC 6501(c)(4)(B). You must inform the taxpayer of his or her rights every time you ask them to extend the statute of limitations. Notify the taxpayer by mailing:
 - a. Appropriate transmittal letter; see below: IRM 4.70.12.3.7.6, Letters Used to Transmit Executed Consents.
 - b. Pub 1035, Extending the Tax Assessment Period, (latest revision).
 - c. Form 872, Form 872-H, or Form SS-10, whichever is appropriate.

- (5) Managers must review the statute extension package before mailing to the taxpayer.
- (6) If the taxpayer or representative signs the consent form, do the following immediately upon receipt:
 - a. Inspect the signed forms for errors, markings and edits, signature, date and title of an authorized individual.
 - b. Stamp all signed consent forms with the received date.
 - c. Submit all signed consent forms to your group manager for signature.
 - d. Upload executed consent form in the RCCMS case file.
 - e. Prepare and issue Letter 929 or Letter 1343 for the taxpayer, enclosing the executed extension form.
 - f. If there is a designated representative, prepare Letter 937-A enclosing a copy of the executed consent form.
 - g. Update the statute date on RCCMS (manually on Form 5595 if needed), Keep a copy of Form 5595 for the case file.
 - h. Complete the statute validation and request manager approval in RCCMS.
 - i. Document these actions on the CCR.

Note: You may accept consents by efax if you have contacted the taxpayer by phone or in-person and documented the CCR with the contact date and noted that the taxpayer wishes to send the Form 872, Form SS-10 or Form 872-H by efax. See IRM 25.6.22.5.1, Fax Signatures.
- (7) Consents with alterations, erasures and corrections should not knowingly be provided to the taxpayer for signature, regardless of how slight or immaterial.
- (8) If the taxpayer has made alterations on the consent, it is preferred you prepare a new consent for the taxpayer's signature.
 - a. However, if the alterations on the consent are acceptable to the IRS, the taxpayer has initialed each alteration, and there is not sufficient time to perfect the consent, the IRS representative signing the consent may initial alterations and sign the consent.
 - b. Advice of TEGEDC must be sought before accepting an altered consent.
- (9) The IRS **will not** make changes to a consent form after execution by the taxpayer.
- (10) If later discovered that consents mailed to the taxpayer contain errors prepare and mail corrected consents to the taxpayer. Use Letter 1817-A Letter to Taxpayer Regarding Consents - EP to:
 - a. Solicit corrected consents to the taxpayer.
 - b. Solicit Form 56 if Form 872-H is received with Form 56.
- (11) **No Reply.** If the taxpayer doesn't reply to your request to extend the statute date by the due date:
 - a. Discuss the next course of action with your group manager.
 - b. If follow-up is the next course of action, issue Letter 928 Request to Extend Statute - Follow-up, enclosing Pub 1035.

- (12) **Refusal to Extend the Statute.** If a taxpayer won't extend the statute of limitations for assessment:
- Discuss the next course of action with your group manager.
 - Generally, inform the taxpayer that not extending a statute date could jeopardize its ability to appeal. Per IRM 8.20.5.3.1.2(2), Verifying Administrative File Contents, Appeals requires at least 365 days remain on the statute date when they receive the case. For cases previously returned to the examination group by Appeals, Appeals requires at least 180 days remain on the statute date. See IRM 8.20.5.3.1.2(2), Exception; and IRM 8.2.1.4(1), Step 1, Exception.
- (13) When the statute of limitation is extended or updated to an alpha code, RCCMS and AIMS must be updated to reflect the current statute date.
- Note:** For paper case files, attach the original consent form to the back of the first page of the return. For case files where there is no tax return (i.e., penalty case), the executed consent form should be placed in a visible location within the case file. Remove red folder from the case file if the statute will no longer expire within 270 days.
- (14) Document the completion date, extension dates and consents to extend the statute, or refusal to extend the statute, on the CCR.

4.70.12.3.7.6
(11-22-2023)

**Letters Used to Transmit
Executed Consents**

- (1) Use the following letters to send consents to the taxpayer with copies to the POA:

Letter	Description
Letter 907-A, TE/GE Request to Extend Statute	Send the applicable consent form to the taxpayer or POA.
Letter 907-E, Consent Solicitation for Erroneous Claim for Refund or Credit Penalty	Request that the taxpayer agree to extend the time period for penalty assessment (the period of limitations).
Letter 907-P, Return Preparer Penalty Statute Extension Request	Send to return preparer penalty for statute extension request.
Letter 928, Request to Extend Statute - Follow-up	Follow-up to Letter 907-A when you haven't timely received the requested consents from the taxpayer.
Letter 929, Transmittal to Taxpayer of Copy of Signed Consent	Send the original executed consent form to the taxpayer and/or POA.
Letter 1343, Transmittal Letter - Form 872-A	Send the original executed consent form to the taxpayer and/or POA.

Letter	Description
Letter 1817-A, Letter to Taxpayer Regarding Consents - EP	Request additional information or send the taxpayer revised consent forms if you need to secure a revised consent.

- (2) If the taxpayer has a POA, you must mail a copy of the same documents mailed to the taxpayer to the POA. Use cover Letter 937-A, Transmittal Letter for Power of Attorney, to mail the documents.

Note: When preparing any of these letters, make sure your (examiner's) address is in the top header, and the correct taxpayer information is on the address line and in the spaces in the upper right header.

- (3) When you mail Letter 907-A or Letter 1343 (EO & EP) to the taxpayer, include the following items as enclosures:
- Copy of the executed consent form (Form 872, Form SS-10 or Form 872-H),
 - Pub 1035,
 - Form 56 (if the consent pertains to Form 1041 or Form 990-T), and
 - A self-addressed return envelope.
- (4) If the applicable return is a jointly filed Form 1040 and both spouses are residing at the same mailing address, then mail or present one complete set of documents, which contains Letter 907-A addressed to both spouses at the common address, Pub 1035 and copy of Form 872.
- (5) If the applicable return is a jointly filed Form 1040 and you determined that both spouses are not residing at the same address, document the separate addresses in the CCR and mail separately a complete set of documents, which contains Letter 907-A, Pub 1035 and copy of Form 872, to each spouse and document the CCR with the date and fact that you mailed one set of documents to each spouse.
- (6) The taxpayer must send you the original executed consent form (Form 872, Form SS-10 or Form 872-H).
- The form should be executed by an authorized IRS representative.
 - Upload the executed consent form in the RCCMS case file and mail the original back to the taxpayer.
- (7) Per IRS Delegation Order 25-2 (see IRM 1.2.2.15.2), group managers and reviewers (grade GS-11 or higher) are authorized to sign consents.
- (8) Persons officially acting for someone authorized to sign consents may sign consents.
- (9) The IRS official executing the consent should enter the date in the space provided to the right of his/her signature.
- (10) Save a copy of all letters mailed in the RCCMS Office Documents folder using the RCCMS Naming Convention.

4.70.12.3.7.7
(11-22-2023)

Use of Alpha Codes

- (1) In some cases, you may enter a two-digit alphabetic code designating a special statute situation in the day (DD) position of the statute date on AIMS and RCCMS.

Example: If you update a statute to alpha code “PP” and the actual statute expiration date is 12/31/2017, the statute date will be entered on AIMS as 12/PP/2017.

- (2) Use ASED alpha codes to indicate that special conditions exist that affect a statute expiration date. See Exhibit in IRM 25.6.23-3, Instructions for Updating the Statute on AIMS.
- (3) If authorized, you can use alpha code PP for TE/GE non-taxable returns, if there is no income tax, such as an MFT 67 converted to a taxable return.
- (4) In non-filer situations, update the statute to alpha code “EE” after the AIMS record for the non-filed tax period is established.

Note: This does not apply to IRC 4975 excise tax if a Form 5500 was filed for the applicable year in which the prohibited transaction occurred or was deemed to re-occur.

- (5) Most alpha codes apply only when precise requirements of the law are met. The alpha code should be used only when it is clear that all essential elements of the applicable law are present.

Note: To protect the persons determining and approving the alpha code, in cases where the normal statutory period for assessment is still open, complete the statute validation and submit for manager approval in RCCMS.

- (6) The below are commonly used Alpha Codes for TE/GE:

Alpha Code	Description
AA	Claim for Refund/Credit/Abatement Issue
AB	Assessment Statute of Limitations Waived by Properly Executed Closing Agreement
AD	Employment Tax Return Examination Limited to IRC 3121(q), Tips Included for Both Employee and Employer Taxes
CC	Joint Investigation
EE	No Return Filed–IRC 6501(c)(3), No Return
II	Form 1040, Other Taxes
OO	IRC 6501(c)(1), False Return, Taxpayer not under joint investigation
PP	Non-taxable TE/GE Return
WW	Failure to Provide Information with Respect to “Listed” Transactions–IRC 6501(c)(10), Listed Transactions

Alpha Code	Description
XX	Return Preparer, Promoter and Aiding/Abetting Penalties (Only Used for ERCS Controls, not an AIMS Entry)

Caution: Assessment statutes have expired and the ability to assess a tax liability has been lost through improper use of alpha codes. It is important that persons making alpha code determinations understand how the tax law impacting the periods of limitation applies in each particular situation.

Caution: Generally, alpha coding the ASER should only be considered after attempting to extend the assessment statute or where there is not sufficient time to attempt to protect the assessment statute when the return is received in the examining group (generally, less than 30 calendar days prior to the return's ASER).

(7) Alpha code "AA" can be used to designate a claim for refund/credit/abatement that was timely filed by the taxpayer if **all** of the following conditions are met:

1. A decision has been made that there are no other issues on the return which warrant an assessment,
2. 180 days or less remain in the statute of limitations for assessment, and
3. The claimed refund/abatement has not been paid.

Use of alpha code "AA"	<ul style="list-style-type: none"> Alpha code "AA" designates the taxpayer timely filed a claim for refund/credit and you've decided there are no other issues on the return which will warrant an additional assessment and the claimed refund has not been paid to the taxpayer. The statute is held open for refund or credit up to the amount of the claim subject to the limitation on the amount provided by the look back rules of IRC 6511(b) (for example, for a refund claimed filed within the 3-year period, the amount is limited to the tax paid during the 3 years immediately preceding the filing of the claim, plus the period of any extension of time for filing the return). If the statute for assessment is open when you receive a claim, enter the actual statute expiration date, rather than "AA", on the statute control records. Update the statute controls to "AA" only after you're sure there's no likelihood of a tax or penalty assessment and you've determined that the refund amount has not already been paid to the taxpayer. Complete the statute validation and submit for manager approval in RCCMS when updating the statute of limitations to alpha code "AA". An appropriate statement in the "Comments" section when requesting the statute validation approval would be: "The return was inspected and there are no material issues other than those on the claim and the claimed refund has not been paid."
When NOT to use alpha code "AA"	<ul style="list-style-type: none"> If the claimed refund/abatement has been paid. If there are issues which could result in additional assessment of tax or penalties.

- (8) Alpha code "AB" is used when a particular tax for a particular period is addressed in a properly executed closing agreement:

- a. Alpha code “AB” designates that the statutory limitation pertaining to the period of time for assessment of tax for the taxable period is no longer pertinent because any applicable tax has been addressed in or waived by a closing agreement that has been properly executed by both the taxpayer and a delegated IRS official.
 - b. The month (MM) and year (YYYY) entries accompanying the AB alpha code are the month and year the statute expired, absent the properly executed closing agreement waiving the assessment statute of limitations.
- (9) Alpha code “AD” indicates that the examination is limited to IRC 3121(q), Tips Included for Both Employee and Employer Taxes. Employment taxes for tip income not reported to the employer is the only issue. See IRM 4.23.7.8, Statute of Limitations for Tip Examinations, for additional information.
- (10) Alpha code “CC” is used to reflect tax periods covered by a Form 10498-B or memorandum signed by an Area Manager or Director in TE/GE, stating that no consent to extend the statute should be secured.
- a. An appropriate statement in the “Comments” section of the statute validation request would be: “Concurrence memorandum approved on [date signed by the Area Manager or Director].”
 - b. Alpha code “CC” may also be used with a tax return under joint investigation which has a statutory period for assessment that expired before the return was established on AIMS.
 - c. If Criminal Investigation withdraws from the joint investigation prior to the expiration of the statute, the statute controls should be updated to reflect the normal statute expiration date, or other applicable alpha code if some other exception to the normal three-year assessment statute applies.
- (11) Alpha code “EE” is used when a return has not been filed and the statute of limitations has not begun to run.

Use alpha code “EE” for a	SFR Form 940, 941, 943, 944 and 945.
	SFR Form 5329 or Form 5330 for excise tax other than IRC 4975 excise tax.
	SFR Form 5500 series return.
	IRC 403(b) or IRC 457(b) examination when you make a timely referral to EO or FSL/ET (whichever business unit has jurisdiction over the taxpayer), for a related Form 941. See IRM 4.70.12.3.7.4, Monitoring the Statute on a Non-Remit Unit (NRU) Case.

	IRC 403(b) or IRC 457(b) examination when you and your manager determine that there are no tax consequences to the related Form 941 or that any amount of tax on the Form 941 is determined to be insignificant by your group manager. See IRM 4.70.12.3.7.4, Monitoring the Statute Date on a Non-Return Unit (NRU) Case.
	IRC 403(b) or IRC 457(b) examination when you pick up a prior year and the related Form 941 statute has already barred.
It would not be appropriate to use alpha code “EE” for a	Form 5330 that is due for a prohibited transaction if a Form 5500 series return was filed for the period in which the prohibited transaction occurred or was deemed to occur.
	Form 990-T whether there was something disclosed on the Form 5500 or not. TEGEDC’s position is that examiners should take the conservative approach and assume the filing of the Form 5500 starts the SOL running on the Form 990-T.
	Form 1040 or Form 1120 discrepancy adjustment prepared by EP.

Example: You’re resolving the examination issue via EPCRS and opening prior years to verify correction).

- a. The month and year appearing with alpha code “EE” represent the date that is six years from the date the SFR posted.

Example: If the SFR posted on 04/15/2017 the statute date on RCCMS and AIMS should be reflected as 04/EE/2023.

- b. Update the case to alpha code “EE” through RCCMS by selecting alpha code “EE” on the “alpha day” line in the first RCCMS “General” tab. Do this after the SFR is processed, the return is posted and the examination is established on AIMS.

Note: When updating the statute to alpha code “EE” you must also select aging reason code 26 in the “Codes” tab of RCCMS to keep alpha code “EE” from falling off of AIMS (i.e., the statute will revert back to the original statute date if aging reason code 26 is not input). Make sure the “Update AIMS” box in RCCMS is checked when the update is transmitted.

- c. If you receive a a late filed return from a taxpayer, replace the alpha code “EE” statute designation with the true statute expiration date based on the date the return was received by the IRS.

- d. Get AIMS transcripts throughout the examination, at least once every six months, to check for posting of a filed return (such as transaction code 976 or 977).
- (12) Alpha code “II” is used when is used for non-income tax issues related to Form 1040.
- a. Do not use alpha code II for Forms 1040 related to Form 5329 examinations (for example, the statute date of Forms 1040 related to Forms 5329 under examination should no longer be updated to alpha code “II”).
 - b. Alpha code “II” can be used when IRS determined there are no income tax issues of material tax consequence on the Form 1040 return, which require examination, or the assessment statute has already expired for the income taxes.
 - c. Since the extended tax assessment statute resulting from the non-filing of Other Taxes only applies to the tax liability relating to the Other Tax and does not apply to the income tax ASSED, decide carefully that no income tax issues are present on the return before you update the statute to alpha code “II”.
 - d. If there are income tax issues of tax consequence based on inspection of the Form 1040 and the period for assessment of the income taxes has not expired, don’t update the statute to alpha code “II”. Take action to protect the income tax assessment statute of limitations.
- (13) Alpha code “OO” is used when the IRS is relying on the provisions of IRC 6501(c)(1), relating to the filing of a false or fraudulent return with the intent to evade tax, to keep the statute open.
- a. If fraud is proven, there is no limit on the period for assessment.
 - b. The taxpayer cannot undo the fraudulent return by filing a non-fraudulent amended return. See *Badaracco v. Commissioner*, 464 U.S. 386 (1984).
 - c. If the original return is fraudulent, an increase in the tax liability can be assessed at any time.
 - d. As a general rule, the IRS relies on IRC 6501(c)(1) to keep the statute open only in situations where the normal three-year statute has otherwise expired.

Note: The IRS has the burden of proof with respect to fraud.

- (14) Alpha code “PP” is used only for the following returns and with the following guidelines:

Form	Delegated to	Approving Documents
Form 990 or Form 990-EZ	Area Manager	Statute validation in RCCMS, attach Memorandum of Explana- tion
Form 990 or Form 990-EZ Mandatory Review	Manager with returns in their inventory with less than 270 days remaining on ASSED	Statute validation in RCCMS
Form 990-N	Group Manager	Statute validation in RCCMS

Form	Delegated to	Approving Documents
Form 5500 series	Group Manager	Statute validation in RCCMS

- a. Unless the exception stated in the next paragraph, only the examining group may request to update the statute to alpha code “PP” with **no less than 60 days remaining** on the statute **and no more than 270 days remaining** on the statute.
- b. When you/your manager decide to pick up an examination of Form 5500 series for a prior year for which the statute of limitations has expired or has less than 271 days remaining, immediately update the statute of limitations to alpha code “PP”.
- c. The group manager must determine with certainty that Form 1041 won’t be due for the period under examination, or if a timely referral is made to the Examination Functional Unit (such as SBSE), that EP is no longer responsible for protecting the statute of limitations on Form 1041.

Note: When a timely referral is made to an Examination Functional Unit for tax due on Form 1041, the statute of limitations may be updated to alpha code “PP” (with group manager approval).

- d. All reasonable attempts were made to extend the ASER and documented the reasons for not extending.
- e. Determine with certainty that applicable forms won’t be due for the period under examination, or if a timely referral is made to the Examination Functional Unit (such as SB/SE) that TE/GE is no longer responsible for protecting the statute of limitations on said forms.
- f. If there’s to be a converted return, the tax will be within the tolerance described in IRM 25.6.1.13.2.4(1)a, Identifying Barred Statute Cases.
- g. Have a valid reason to keep the examination open. Simply needing or wanting more time to close an examination without further justification isn’t a valid reason to use alpha code PP.

Example: A valid reason includes your need to further develop the facts for the examinations of related returns, which are best gathered within the context of the Form 990 examination. Note that an examination of a related return could affect the findings of the Form 990 examination.

- h. Follow the following steps for obtaining approval to use alpha code “PP”:

Examiners:	<ol style="list-style-type: none"> 1. Obtain TEGEDC's written opinion on the use of alpha code "PP". TEGEDC requires 45 days to provide a written opinion. Submit your request for a written opinion in enough time to allow your manager to comply with the timeframe window in the previous paragraph. 2. For EP, Include a memorandum of explanation (signed by the group manager) detailing the reasons for opening an examination of a prior year's return in the case file and/or save it in the RCCMS Office Documents folder using the RCCMS Naming Convention. See <i>Employee Plans Examination Exhibits</i> for an example of the memo 3. Complete the statute validation and submit for manager approval in RCCMS and prepare, sign and date the memorandum of explanation certifying that the conditions in the previous paragraph were satisfied (except for the timeframe condition). 4. If approved, immediately update the statute date to alpha code PP on AIMS, RCCMS and complete the statute validation and submit for manager approval in RCCMS. Upload the memorandum of explanation to the RCCMS case file and log the approval on CCR.
Group Managers:	<ol style="list-style-type: none"> 1. Within 7 calendar days of receipt, approve the request by signing and dating the memo. Submit the memo to the area manager. The area manager won't accept a request if it isn't received within the timeframe window in the previous paragraph. 2. Ensure the statute validation has been completed in RCCMS. 3. Ensure that a memorandum of explanation (signed by the manager and detailing the reasons for not extending the statutory period) is uploaded in the RCCMS case file, and a copy of the memo is sent to the area manager.
Area Managers:	Within 7 calendar days of receipt, approve the request by signing and dating the memo. A non-response is not approval.

i. Include the following items in the Memorandum of Explanation:

The returns and years for which alpha code PP is requested.
Estimate of any penalty for each return, and a description of reasonable cause if so established.
Actual statute expiration date for each return.
The reason for the request to use alpha code PP.

The examination steps and issues that remain, and an estimated closing date.
The dates a statute extension was solicited.
An explanation why a statute extension wasn't needed or wasn't executed after extension requests.
Statement of certainty the Form 990 or Form 990-EZ won't result in a converted tax return.
If there will be a converted income tax and penalty, include an estimate of the tax and penalty.
Signature lines for the examiner, GM, and area manager.
Attach TEGEDC's written opinion.

- j. If we later determine that alpha code "PP" was inappropriate, you may need to complete Form 3999 per IRM 4.70.12.3.7.8, Barred Statute Reporting - Form 3999, Statute Expiration Report.
 - k. Include a copy of the AIMS print in the case file (or RCCMS) to verify the date the statute was updated to alpha code "PP".
 - l. The use of alpha code "PP" doesn't relieve you from carefully monitoring normal statute expiration dates for all examined returns.
- (15) Alpha code "WW" is used to indicate that, per IRC 6501(c)(10), the period for assessment of tax for to a "listed transaction" that the taxpayer failed to disclose as required under IRC 6011 won't expire before one year after the earlier of either: i) the date the taxpayer discloses the transaction per prescribed procedures (see Rev. Proc. 2005-26), or subsequently published guidance) or ii) the date a "material advisor" meets the requirements of IRC 6112 for a request by the Secretary under IRC 6112 relating to the transaction.

Note: Area Counsel should be consulted before beginning work on a section IRC 6501(c)(10) assertion.

- a. If neither the taxpayer nor the "material advisor" disclose the required information, the period of time for assessment of any tax with respect to the "listed transaction" is unlimited.
- b. Other exceptions to the normal statutory period for assessment of tax may also apply to the tax return in question and IRC 6501(c)(10) does not shorten any other applicable period for assessment, such as the general three-year period prescribed by IRC 6501(a).
- c. IRC 6707A(c)(2) defines a "listed transaction" as a transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction.
- d. IRC 6501(c)(10) should generally be relied upon to extend the period for assessment only in those instances when the normal three year statute for the year has expired.
- e. The statute may be updated to alpha code "WW" when you've determined that IRC 6501(c)(10) applies and the normal three-year assessment statute applicable to the entire return may be allowed to expire if: (1) a consent to extend the assessment statute for the entire return can not be obtained after timely and proper solicitation, (2) the case file is documented with adequate justification for letting the assessment statute applicable to the entire return expire in reliance on IRC

6501(c)(10) written TEGEDC approval is obtained in advance of the normal three-year assessment statute expiration date, and (4) written area manager approval is obtained in advance of the normal three-year assessment statute expiration date.

Note: TEGEDC's written approval must be maintained in the case file.

- f. In order to determine if the one-year period under IRC 6501(c)(10) has started to run, consult Rev. Proc. 2005-26, or subsequently published guidance, to determine if the taxpayer or "material advisor" has complied with the requirements contained in the applicable published guidance.
 - g. The statute is one year after the earlier of the date the taxpayer discloses the transaction, as discussed in the above-referenced revenue procedure, or the date that a "material advisor" meets the requirements of IRC 6112 with respect to a request by the Secretary under IRC 6112 relating to the transaction.
 - h. The statute date determined under IRC 6501(c)(10) can be extended by consent agreement (Form 872) but the examiner needs to bear in mind that consent agreements to extend the IRC 6501(c)(10) statute date only apply to the period for assessing the liability related to the "listed transaction".
 - i. The group manager will ensure the statute validation is completed and submitted for manager approval in RCCMS.
 - j. A copy of the AIMS print will be included in the case file (or RCCMS) to verify the date of the statute was updated to alpha code "WW".
- (16) Alpha code "XX" is used is used on RCCMS to designate that a return preparer penalty under IRC 6694(b) may be assessed at any time.
- a. Alpha code "XX" should not be used to reflect an alpha code statute on AIMS.
 - b. Return preparer penalty controls for penalties under IRC 6694(a) and IRC 6695 are to reflect a date three years after either the due date of the return (without regard to an extension of time to file) or the date the return or claim for refund with respect to which the penalty is assessed was filed, whichever is later.
 - c. Alpha code "XX" can be used to designate that a return preparer penalty under IRC 6713 for preparer's unauthorized disclosure or use of taxpayer information may be assessed at any time.
 - d. Alpha code "XX" can also be used to designate that the penalties under IRC 6700 and IRC 6701 for promoting abusive tax shelters and aiding and abetting understatement of the tax liability, respectively, may be assessed at any time.

4.70.12.3.7.8
(11-22-2023)

**Barred Statute Reporting
– Form 3999, Statute
Expiration Report**

- (1) Form 3999, is used to report barred statutes on returns requiring statute control. See *Employee Plans Examination Exhibits*.
- (2) Form 3999 should be prepared for each taxpayer involved in returns assigned for examination and/or controlled on AIMS and/or RCCMS when the statutory period is reflected as expired should be prepared for each taxpayer involved in returns assigned for examination and/or controlled on AIMS and/or RCCMS when the statutory period is reflected as expired.
- (3) One of the primary uses of the Form 3999 is to identify potential systemic problems or issues and recommendations for corrective actions.

4.70.12.3.7.8.1
(11-22-2023)

Times Frames for Form 3999

- (1) Within 10 calendar days of discovery of a potentially expired statute, the individual who discovers the potential statute expiration must prepare a preliminary Form 3999 and forward through the appropriate area manager/program manager to be submitted to the appropriate TE/GE director.
- (2) A final Form 3999 can be prepared as the initial report, if all of the necessary information is available at the time of discovery.
- (3) The final Form 3999, if not submitted as the initial report, should be prepared within 60 calendar days of the date of the preliminary report.

4.70.12.3.7.8.2
(11-22-2023)

Responsibilities for Preparation of Form 3999

- (1) The individual discovering the potential statute expiration is responsible for preparing both:
 - The preliminary barred statute report.
 - A narrative of the facts and circumstances, with a time line, leading up to the potential statute expiration.
- (2) The manager of the function or area who possesses the return with the potentially expired statutes is responsible for preparing the final Form 3999.
- (3) If the statute expires after the case was assigned to you, complete Form 3999 explaining the facts and circumstances with a timeline, leading up to the expired statute of limitation.
- (4) If the statute expired before you received the return, prepare a "Preliminary Report Form 3999". Give it to your GM.
 - GM: Forward the preliminary Form 3999 to the group/area that had possession of the return when the statute expired.

4.70.12.3.7.8.3
(11-22-2023)

Instructions for Preparing the Preliminary, Form 3999

- (1) Only Items 1 through 12 of Form 3999 are completed when a preliminary report is submitted. However, if all of the facts are known at the time of discovery and the 10-day time frame can be met, then a final report can be submitted in lieu of a preliminary report.
- (2) A preliminary report should include a brief narrative of how the statute expired with a timeline illustration of the processing of the case leading to the statute expiration.
- (3) The following signatures are required for the preliminary Form 3999:
 - The group/unit manager
 - The area manager/program manager or the manager, Mandatory Review (as applicable)
 - The appropriate TE/GE director
- (4) Make three copies of the completed preliminary report and distribute as follows:
 - Place one copy for the case file.
 - Send a copy to the area manager.
 - Send a copy to the manager, EP Mandatory Review.
- (5) Send the **original** completed preliminary report to the appropriate TE/GE director, routed through the area manager/program manager.

4.70.12.3.7.8.4
(11-22-2023)

**Instructions for
Preparing the Final
Report, Form 3999**

- (1) The completion of most items is self-explanatory. However, close attention should be given when completing the following line items:

Part & Box #	Entry
Part A, Box 7	<ul style="list-style-type: none"> Select the taxpayer notification letter issued. Document the date the taxpayer was notified per IRM 4.2.1.14 Taxpayer Notification of Assessment Statute Expiration and Acceptance of Voluntary Payments on Expired Statute Returns When Taxpayer Was Contacted for Examination.
Part A, Box 8	<ul style="list-style-type: none"> Input date the potentially barred statute was identified or discovered in Non-Joint cases.
Part A, Box 9	<ul style="list-style-type: none"> (a) - (c) self-explanatory (d) Interest computed to statute expiration date (e) Penalties computed to statute expiration date (f) Total barred deficiency or (Overassessment) (g) Subtract Amount to excess collections or offset by claim/abatement, if applicable (h) Form 3999 is still required if there is no loss to the government
Part B, Box 10	<ul style="list-style-type: none"> Select the appropriate reason for the barred statute and provide details supporting the selection in the space provided. If additional space is needed please attach a separate document. Systematic: Statute Deliberately Allowed to Expire – This category is used when a managerial decision is made to allow a statute to expire in reliance of an alternative statute. Other Reason for Barred Statute –This could include: Not adhering to statute controls and monitoring processes in place, statute date computation error, failing to follow steps outlined by procedures in place, or failing to act timely on information provided that could have prevented the barred statute. Signatures: It is very important to identify the business unit and function in agency wide terms. For example, TE/GE, Area Name, or Business Unit, Campus Name, subfunction. Management must sign the Form 3999 before the final package is submitted.

Part & Box #	Entry
Part B, Box 11	<ul style="list-style-type: none"> Detail the case history with a focus on points in time for which the statute was, or should have been, a consideration. Be sure to identify when a responsible operation or action to prevent the barred assessment should have been taken. Include Counsel involvement/decision. Include date of referral to CID and date of final civil liability determination in joint investigation cases.. Include the status and location of the return at the time of the statute expiration. Do not include disciplinary considerations (<i>may attach separate sheet</i>).
Part B, Box 12	<ul style="list-style-type: none"> Detail the corrective actions taken or planned to prevent the recurrence of a barred statute under the same or similar circumstances. This section should focus on the corrective actions taken at all levels. Items detailed here could include development of additional training or reminder memos issued. Briefly describe any disciplinary action taken. Do not document the responsible employee(s) name, or other identifying information here, but create a separate report. State systemic or personnel changes to be made to this problem in the future. Include each type of employee and each function considered responsible for the statute of limitation expiration. Explain if disciplinary action was considered and recommended without identifying the responsible employee. The disciplinary action taken will be the subject of a separate report. <p>Note: A sample narrative might begin as follows: "No changes to procedures are recommended. If procedures in place had been properly followed, expiration would not have occurred."</p>

(2) Also, include the following information in the final report:

- Any change in the facts of the case discovered subsequent to the initial report, (if applicable).
- Narratives from other affected functions cited in the Preliminary Report, (as applicable).

4.70.12.3.7.8.5
(11-22-2023)
**Distribution of
Completed Final Form
3999**

- (1) Once the file Form 3999 is completed, distribute three copies and the original as follows:
 - a. Send the original to the appropriate TE/GE director, routed through the area manager or program manager.
 - b. Place a copy in the case file.
 - c. Send a copy to the area manager or program manager.
 - d. Send a copy to the group manager or Mandatory Review manager who will maintain copies for trend review.

4.70.12.3.7.9
(11-22-2023)
**Advance Written
Notification to Closing
Units**

- (1) Group managers must notify the receiving manager of the closing unit or review function, via secure email, that a short statute return is forthcoming. Advance written notification includes:
 - The returns and years being closed.
 - Actual statute expiration date for each return.
 - The reason for the short statute condition.
 - The dates a statute extension was solicited.
 - The amount of tax and penalty for the short statute returns.
 - An explanation why a statute extension wasn't needed or wasn't executed after extension requests.
 - Documentation of the approval of the area manager or program manager before closure.

4.70.12.3.7.10
(11-22-2023)
**Timeline for Closing
Examined Returns**

- (1) The group manager does the final review of cases before closing to Appeals, function specific closing unit, mandatory review or to the TE/GE Closing Group. Each recipient needs sufficient time for processing. See the table below for actions to take when a case meets certain deadlines:

Type of Case	Days left on statute at closing	Actions to take
Closing a valid unagreed protest to Appeals.	395 or more	Close to the TE/GE Closing Group, who sends the case to Appeals.
	394 days or less	Secure a statute extension. If none secured, close as unagreed without protest.
Appeals returns a case for more work and it stays unagreed.	330 days or more	Return the case to Appeals.

Type of Case	Days left on statute at closing	Actions to take
	329 days or less	Secure a statute extension. If unable to do so, close as unagreed without protest. If secured, return the case to Appeals.
Closing an unagreed excise tax /income tax/worker classification case without protest.	270 days or more	Close to Mandatory Review or ITG Technical for preparation and issuance of the statutory notice of deficiency.
	269 days or less	Email the Mandatory Review or ITG Technical manager before closing, to discuss special handling instructions.
Closing an unagreed non-worker classification employment tax case without protest.	180 days or more	Close to the TE/GE Closing Group.
	179 days or less	Email the TE/GE Closing Group manager before you forward them to the TE/GE Closing Group
Appeals returns a case for more work and you secure agreement.	180 days or more	Close to the TE/GE Closing Group.
Closing an agreed case.	180 days or more	Close to the TE/GE Closing Group,.
Closing any case.	91 to 179 days	Email the TE/GE Closing Group manager before you forward them to the TE/GE Closing Group.

Type of Case	Days left on statute at closing	Actions to take
Imminent statute.	90 days or less	Group manager places a phone call to both the Manager of the Closing group and the Program Manager for CP&C Planning and Monitoring, or Manager Mandatory Review/Technical, to discuss special handling instructions. For EO see IRM 4.70.12.3.7.11, Imminent Statute, for additional procedures.

4.70.12.3.7.11
(11-22-2023)
EO Imminent Statute

- (1) An imminent statute return is a return with 90 days or less remaining until the statute expiration date.
- (2) For imminent statute returns subject to a mandatory review, examiners assume the responsibility for preparing final closing letters including 90-day letters.
- (3) Examiners:
 - a. For instructions on preparing a final adverse determination letter (FADL), see IRM 4.70.14.6.9.2, EO – Final Adverse Determination Letter Case Processing.
 - b. For instructions on preparing a SNOD, see IRM 4.8.9, Statutory Notices of Deficiency.
 - c. For instructions on preparation of Letter 3523, Notice of Employment Tax Determination Under IRC 7436. See IRM 4.8.10, Notice of Employment Tax Determination Under IRC 7436.
 - d. Arrange for pre-issuance review of the draft 90-day letter with TEGEDC. Refer also to the *TE/GE Area Counsel Directory*.
 - e. Review functions are not available for pre-issuance review.
 - f. With the group manager's approval, send the completed 90-day letter package to the appropriate area address in order to obtain the signatures on the 90-day letter. Include pre-addressed mailing envelopes with the package.

Note: TEGEDC's approval is not required for agreed declaratory judgment cases.

Reminder: TEGEDC generally requires up to 45 days to provide legal advice.

- (4) Area Office:

- a. Regarding the SNOD and Letter 3523, Notice of Employment Tax Determination Under IRC 7436, the area manager signs and issues the 90-day letter to the taxpayer via certified mail.
- b. Regarding the FADL, forward the two copies of the FADL to the Manager, FSL/ET (or designee) for signature. The Manager, FSL/ET (or designee) will return the signed FADLs to the area office for issuance via certified mail.

Exception: ITG Technical prepares and issues all Statutory Notices of Deficiency and Notice of Employment Tax Determination Under IRC 7436, and suspends the case in ITG Technical during the 90-day period.

(5) Examination groups indicate on Form 3918-A, the following:

- a. The 90-day letter that was issued and the date issued. See the “Other” checkbox (or the “Stat Notice Issued Date” checkbox), located in the “Mandatory Review/Operations, Planning & Review” section of the form.
- b. The recomputed statute date after issuing an SNOD or Letter 3523, Notice of Employment Tax Determination Under IRC 7436. See IRM 4.5.2-5, Computation of Statute Dates.

Note: There is no recomputed statute date after issuing a FADL.

(6) If you had not issued a 30-day letter by the time a statute date is imminent, do the following:

- a. Consult with TEGEDC whether to issue a substitute transmittal letter in lieu of a 30-day letter.
- b. If the substitute transmittal letter is to be issued, determine the content, format, timing and issuance of the letter with TEGEDC.
- c. Include in the transmittal letter why a standard 30-day letter can't be issued if so advised by Counsel.
- d. Include the most recent Taxpayer Advocate Service (TAS) paragraph in the cover letter by reviewing TAS paragraphs in recently published 30-day letters.
- e. Enclose your report of examination if so advised by Counsel.
- f. Issue the substitute transmittal letter transmitting your report of examination, either before or on the day of issuance of the 90-day letter to which it pertains.

(7) Close the imminent statute case to Mandatory Review for suspense and storage within five (5) business days of issuance of the 90-day letter.

4.70.12.3.7.12
(11-22-2023)

**Special Procedures for
All Managers in TE/GE**

(1) Group managers and Managers, Mandatory Review, TE/GE Closing Group and Classification are responsible for maintaining statute controls, when applicable, for returns under their jurisdiction. This will be accomplished by the following procedures.

- a. The statute control clerk or other designated employee will annotate the statute expiration date of all incoming returns on a case-tracking sheet.
- b. The manager or a designated individual will verify the statute of limitations date and initial the tracking sheet as appropriate.
- c. All cases received with less than 180 days on agreed cases or 365 days on unagreed cases should be assigned as soon as possible.

- d. The statute control file will be checked at least monthly and, where required, the reviewers will secure consents extending the statute and update AIMS and RCCMS on assigned cases.

4.70.12.3.7.12.1
(11-22-2023)

Procedures for Table 4.0

- (1) Each month the AIMS coordinator will forward AIMS Table 4.0 to all groups.
- (2) Managers should review Table 4.0, verify statutes and resolve all problems identified on the table.
- (3) Statute analysis will be completed monthly for all groups.
- (4) A completed chart containing imminent or potential expired statutes will be provided to CP&C management.

4.70.12.3.7.12.2
(11-22-2023)

Table 4.0 Procedures for Group Managers

- (1) Generally, once per quarter, a group receives the Table 4.0 with instructions from the AIMS coordinator outlining steps for working the table and returning it for verification.

Note: Area Managers may request the Table 4.0 more often than once per quarter..

- (2) The group checks the Table 4.0 cases listed against group statute control files and the returns or other return information, such as BMFOL, EMFOL, IMFOL or RTVUE, to ensure the current statute expiration dates are reflected on the table. See IRM 4.70.12.3.9, IDRS Review, for procedures for requesting transcripts of accounts and various IDRS command codes that can be used for research during the course of an examination.
- (3) Use the table as a check to ensure that proper statute control actions are taken.
- (4) Immediately take any actions if you discover discrepancies and update AIMS and RCCMS.
- (5) Complete the Table 4.0 review within 10 workdays.
- (6) When the group finishes their review of Table 4.0, verifies all statute dates and resolves all problems, send the Table to the AIMS coordinator per the instruction memo or to CP&C management.

Note: Always send a copy to the EP AIMS coordinator.

- (7) Contact the AIMS coordinator with any questions on Table 4.0.

4.70.12.3.7.12.3
(11-22-2023)

Table 4.0 Procedures for EP AIMS Coordinator

- (1) Upon receipt of worked AIMS Tables 4.0 from the groups, the EP AIMS coordinator will:
 - a. Analyze each table to ensure that group managers have taken proper and timely actions.
 - b. Perform additional IDRS research on cases closed from the group level for more than five weeks.

IF the research shows that the case is	THEN
closed (status 90)	Note this on the Table 4.0 and don't take further action.
open	The group manager is asked to send copies of the group's Form 3210 to the AIMS coordinator. These documents will be analyzed to determine if further action is warranted.

- c. Thirty days after the AIMS Tables 4.0 have been distributed to the groups, the AIMS coordinator will provide a report to the director, EP Examinations identifying any significant problems encountered and listing those groups that didn't return the report.

4.70.12.3.8
(11-22-2023)
**EP Statute Control
Procedures**

- (1) The following guidance in IRM sections 4.70.12.3.8.1 through 4.70.12.3.8.12 establishes uniform procedures for statute controls on EP examination cases to properly determine the statute expiration dates on Form 1041, Form 5329, Form 5330, Form 990-T, Form 1040, and Form 1120.
- (2) Generally, the Form 1040 for each of the S-Corporation owners is going to be the controlling return for the statute of limitations. Examiners should protect the statutes for the Forms 1040 of the S-Corporation owners, if it is believed there will be income tax consequences on those returns flowing from adjustments made to the Form 1120-S.
- (3) The rules concerning whether the controlling return for the statute of limitations is the Form 1065 or the income tax return of each partner are complicated and factually dependent. Examiners should contact TEGEDC when the plan sponsor is a partnership, and it is believed there will be adjustments resulting in income tax consequences.

4.70.12.3.8.1
(11-22-2023)
**EP Statute of Limitations
for Forms 5500 and
Form 1041**

- (1) When an IRC 401(a) plan has a qualification failure there is no statute of limitations on the number of plans years designated as not qualified. An IRC 401(a) plan is not qualified from the point at which a qualification failure first occurs.
- (2) A non-qualified trust must file Forms 1041 to report income for each tax year. The statute of limitations on the trust year runs with the filing of the Form 5500 for the plan year in which the trust year ends.
- (3) The normal statute of limitations date expires three years from the later of the due date of the Form 5500 series return or the date the Form 5500 series return is filed.
- (4) If a Form 5500 is not filed, but is required to be filed, and you prepare a substitute for return that is established on AIMS and RCCMS, update the statute of limitations on AIMS and RCCMS to alpha code "EE" per IRM 4.70.12.3.7.7, Use of Alpha Codes.
- (5) The statute of limitations on the trust year runs with the filing of the Form 5500 for the plan year in which the trust year ends.

- (6) See the Statute Expiration Chart to help you determine the statute of limitations for Forms 1041. Complete this chart and place it in the case file. See *Employee Plans Examination Exhibits* for the Form 1041 Statute Expiration Chart.

4.70.12.3.8.2
(11-22-2023)

**EP Statute of Limitations
for Form 5330**

- (1) For Chapter 43 excise taxes other than IRC 4975, the statute of limitations commences to run only when the Form 5330 is filed or due, whichever is later. Examples of excise taxes where the filing of Form 5330 begins the running of the statute are:

IRC Section	Description	Form 5330 Due Date	Responsible Filer
IRC 4971	Failure to meet minimum funding standards.	<p>(1) The Form 5330 due dates are mandated by the Form 5330 instructions and form, see IRC 6011 and Treas. Reg. § 54.6011-1.</p> <p>Reminder: The taxpayer may file Form 8868, Application for Extension of Time to File an Exempt Organization Return or Excise Taxes Related to Employee Benefit Plans, to request an extension of time to file. If approved, the taxpayer may be granted an extension of up to 6 months after the normal due date of Form 5330.</p> <p>Caution: Form 8868 does not extend the time to pay taxes.</p>	Employer
		<p>(2) The due date can vary depending on the type of Chapter 43 excise tax. See the applicable Form 5330 instructions.</p> <p>Note: The due date for reporting and paying excise taxes under IRC sections 4971(a)(1) and 4971(f)(1) with respect to a minimum required contribution that would otherwise be due during calendar year 2020 was extended to January 15, 2021, if elected by the plan sponsor, see <i>Announcement 2020-17</i> and <i>Notice 2020-61</i>. Please consult your Area Actuary for assistance, as needed.</p>	
IRC 4972	Nondeductible contributions to qualified employer plans.	By the last day of the 7th month after the end of the tax year of the employer or other person who must file the return.	Employer
IRC 4973(a)(3)	Excess contributions to an IRC 403(b)(7)(A) custodial account.	By the last day of the 7th month after the end of the tax year of the individual who must file the return.	The individual who is liable for the tax under section 4973(a)(3).

IRC Section	Description	Form 5330 Due Date	Responsible Filer
IRC 4976	Maintaining a funded welfare benefit plan that provides a disqualified benefit during any tax year.	By the last day of the 7th month after the end of the tax year of the employer or other person who must file the return.	Employer
IRC 4978 and IRC 4978A	Tax on certain ESOP dispositions.	By the last day of the 7th month after the end of the tax year of the employer or other person who must file the return.	Employer
IRC 4979	Excess contributions and excess aggregate contributions to plans with cash or deferred arrangements.	By the last day of the 15th month after the close of the plan year to which the excess contributions or excess aggregate contributions relate.	Employer
IRC 4979A	Certain prohibited allocations of qualified securities by an ESOP.	By the last day of the 7th month after the end of the tax year of the employer.	Employer
IRC 4980	Reversion of qualified plan assets to employers.	By the last day of the month following the month in which the reversion occurred.	Employer

(2) In general, for Form 5330 filed for IRC 4975 excise tax:

- a. The three-year statute of limitations begins to run on the date the administrator files the Form 5500 series return. See IRC 6501(l)(1).
- b. If the filed Form 5500 does not adequately disclose the prohibited transaction, the six-year statute period applies. The excise tax may be assessed at any time within six years after the later of the date the Form 5500 series return was filed or due.

Note: Written approval from TEGEDC is required in order to rely on a six-year statute of limitations.

(3) Even if the disqualified person files Form 5330 and pays the excise tax, it is the filing of the applicable Form 5500 series return that starts the running of the statute of limitations for IRC 4975 excise tax.

Note: Examiners should contact Counsel in either of the following situations: (1) the disqualified person files Form 5330 and reports an IRC 4975 excise tax and the applicable Form 5500 series return was filed; or (2) the disqualified person files Form 5330 and reports an IRC Section 4975 excise tax and no applicable Form 5500 series return was filed.

- (4) For prohibited transactions under IRC 4975 involving a discrete act (one-time occurrence, such as a sale), even though the taxes are imposed annually, there is only one period of limitations applicable to all the tax attributable to the prohibited transaction. Therefore, the filed or due date to be used in determining the statute of limitations date is limited to that of the initial Form 5500 return filed for the period in which the discrete act occurred.
 - a. It is the filing of the Form 5500 for the plan year in which the prohibited transaction occurs that starts the running of the statute of limitations for IRC 4975 excise tax imposed on a disqualified person for a discrete act. The Form 5500 filed for the year in which the discrete act occurred governs the Form 5330 statute of limitations for the initial year in which the prohibited transaction occurred, and also for all years within the taxable period. The taxable period ends on the earlier of: i) Mandatory Review mailing of the notice of deficiency (90-Day Letter), ii) the assessment of the excise tax under IRC 4975(a), or iii) the correction of the prohibited transaction.
 - b. The IRS must assess all excise taxes on a disqualified person for a discrete transaction, even those payable in later tax years, before the statute of limitations expires for the tax year in which the transaction initially occurred. The IRS can't assess any excise tax on a prohibited transaction payable in any year, once the statute has expired for the disqualified person's tax year in which the transaction occurred if that prohibited transaction is a discrete act.
 - c. See IRM 4.70.12.3.8.8, Securing Consents for Form 5330, for instructions on preparing Form 872 for a prohibited transaction that is a discrete act.
- (5) For a prohibited transaction that is considered a continuing transaction, such as a loan or lease, the situation is different.
 - a. In addition to the original transaction, a new transaction is deemed to occur on the first day of each subsequent taxable year of the disqualified person. The amount involved is reported and taxed in the initial tax year and again in each subsequent tax year until the original transaction is corrected.
 - b. The filing of the Form 5500 return for the year in which the prohibited transaction first occurred starts the running of the statute of limitations for purposes of the tax on the actual transaction occurring in that plan year. It does not start the running of the statute of limitations for the transactions deemed to occur in subsequent plan years.
 - c. There are separate statutes of limitations for the transactions deemed to occur in each subsequent year. The filing of the Form 5500 return for each subsequent plan year starts the running of the statutes for transactions deemed to reoccur in that year.
 - d. Unlike a discrete act, the statutory period may expire for the act engaged in the first year, but IRS may assess the tax for subsequent acts deemed to have occurred for which the statutory period has not expired.
 - e. Excise tax related to a year for which the statute of limitations has expired may not be tiered into later years.
- (6) If the excise tax omitted, without adequate disclosure on a filed return, is greater than 25% of the excise tax initially reported, the statute of limitations period is six years.

Note: You must obtain TEGEDC's written advice on whether the six-year statute applies and keep it in the case file.

- (7) Filing Form 5330 for one type of excise tax does not start the running of the statute of limitations for another type of excise tax. Examiners should contact Counsel if this situation occurs.

Example: If Employer A files Form 5330 to report excise tax for IRC 4975 excise tax, but also owes IRC 4972 excise tax which was not reported on the Form 5330, the statute of limitations for IRC 4972 excise tax does not begin to run with the filing of Form 5330 filed for IRC 4975 excise tax.

4.70.12.3.8.3
(11-22-2023)
**EP Statute of Limitations
for Form 990-T**

- (1) If the trust has unrelated business taxable income for the taxable year of \$1,000 or more, the trust is required to file a Form 990-T. See 26 CFR 1.6012-2(e).
- (2) Form 990-T is due on the 15th day of the fourth month following the close of the taxable year of the trust.

Note: For purposes of UBIT, if the trust is required to file a Form 990-T, the taxable year of the trust is the same as the plan year of the trust.

- (3) If the trust files a Form 990-T before filing a Form 5500, then the Form 990-T is the return that begins the running of the statute of limitations on the Form 990-T.
- (4) If the Form 990-T is not filed, the statute of limitations starts to run based upon the Form 5500 return if the Form 5500 series return is filed.

Note: Announcement 2007-63, which eliminated the Schedule P to the Form 5500, states that the IRS will treat the plan's filing of a Form 5500 return as the filing of an income tax return of the plan's trust. Therefore, if the Form 990-T is not filed, and a Form 5500 series return was filed, the examiner should assume that the filing of the Form 5500 series return starts the running of the statute on UBIT reportable on the Form 990-T. The examiner should also contact TEGEDC for assistance in that situation.

- (5) If the Form 990-T is not filed, and the criteria in IRM 4.70.12.3.8.3(4), EP Statute Control Procedures, are not met, the statute of limitations does not begin to run.
- (6) If the trust files Form 990-T and the amount of omitted gross income from unrelated business activity, without adequate disclosure is greater than 25% of the reported gross income from unrelated business activity, the statute of limitations period is six years from the date the Form 990-T return was filed.

Note: Obtain TEGEDC's written advice on whether the six-year statute applies and keep it in the case file.

4.70.12.3.8.4
(11-22-2023)
**EP Statute of Limitations
for Form 1040 and Form
1120**

- (1) The normal statute of limitations for Forms 1040 and Forms 1120 expires three years from the due date of the return or the date filed, whichever is later. A return is deemed filed on the due date of the return if filed on or before its due date.
- (2) Forms 1040 are due on April 15th following the end of the tax year of the individual.

Example: Form 1040 for a tax year ending December 31, 2017, was due on April 16, 2018 (April 15, 2018, was a Sunday).

- (3) Forms 1120-S are due on the 15th day of the third month following the end of the tax year of an S corporation. Except for tax years ending on June 30 and beginning before 2026, Forms 1120 are due on the 15th day of the 4th month after the end of the tax year of a C corporation. A six-month extension is allowed from that date. For tax years ending June 30 and beginning before 2026, Forms 1120 for C corporations are due on the 15th day of the third month following the end of the tax year, and a seven-month extension is allowed from that date.

Note: For tax years beginning before 2016, Forms 1120 for C corporations are due on the 15th day of the third month after the end of the tax year.

- (4) If the gross income omitted on the Form 1040 or Form 1120 return, without adequate disclosure is greater than 25% of the reported gross income, the statute of limitations period is six years from the date the applicable return was filed.

Note: Obtain TEGEDC's written advice on whether the six-year statute applies and keep it in the case file.

4.70.12.3.8.5 (11-22-2023)

EP Statute of Limitations for Form 5329

- (1) An EP examiner would typically check to see if a Form 5329 is filed to report excise / additional taxes under:

- a. IRC 4973 – Excise Tax on excess contributions to certain tax-favored accounts and annuities.

Exception: Section 4973(a)(3) tax on excess contributions to section 403(b)(7)(A) custodial accounts is reported on a Form 5330.

- b. IRC 4974 – Excise tax on certain accumulations in qualified retirement plans.
c. IRC 72(t) – Additional 10 Percent Tax on Early Distributions from Qualified Retirement Plans

- (2) Generally, the statute of limitations for Form 5329 is governed by the later of the due date or filing date of the Form 5329 except for the tax due under IRC 72(t).

- (3) The IRC 72(t) tax is governed by the later of the due date or filing date of the Form 1040. (The reason is because the IRC Section 72(t) tax is an additional income tax, not an excise tax.) Also see IRM 25.6.1.9.4.3, Forms Reporting More Than One Item of Tax.

- (4) The statutory period for assessment of tax is six years from the date the return is filed when a determination is made that there has been an omission of more than 25% of the tax due, without adequate disclosure. See IRC 6501(e)(3).

Note: Only TEGEDC can determine if a six-year statute of limitations applies. Fully document all discussions with and responses from TEGEDC in the CCR.

- (5) TEGEDC must be consulted in situations where a Form 5329 was filed reporting one kind of excise tax, but the examiner wants to pursue a different excise tax that is also reportable on the Form 5329.
- (6) Examiners review the Form 1040 of the taxpayer when pursuing the IRC 4973 or IRC 4974 excise tax against that taxpayer. The examiner should check whether anything (even a "0" or "zero") was reported on the Form 1040 regarding the IRC Section 4973 or IRC Section 4974 excise tax (either on the Form 1040 itself or on an attached schedule). Consult TEGEDC in situations where the taxpayer did report something on the Form 1040 regarding an excise tax.
- (7) IMF will automatically calculate a statute of limitations date for a Form 5329 established on AIMS; however, we can't rely on the calculated date to correctly reflect the statute date for a SFR for IRC 4973 excise taxes.
- (8) Update the statute of limitations to alpha code "EE" when no return has been filed and the statute of limitations has not started.
- (9) If AIMS and/or RCCMS reflects an incorrect statute date, notify your manager and update the statute of limitations through RCCMS with the "Update AIMS" box checked.

4.70.12.3.8.6
(11-22-2023)

**Securing Consent for
Forms 5500 and Form
1041**

- (1) Solicit a statute extension if the statute will expire within 210 days on an agreed case and one year on an unagreed case.

Note: When a Form 5500 examination is closed from the group, agreed cases should have at least 180 days remaining on the statute of limitations and unagreed cases should have one year.

- (2) Consents related to a Form 5500 are secured for the related Form 1041.
- (3) Use the most current version of Form 872-H when extending a statute of limitations for a Form 1041 related to a Form 5500.
- (4) Also send Form 56 to the trustee(s) for completion when extending the statute of limitations on a trust. See *Employee Plans Examination Exhibits* for an example of a completed Form 56.

Note: If the trustee is an institution then the name on the Form 56 will be the name of the institution and then an individual will sign the Form 56 on behalf of the financial institution. That individual person is not the trustee. The financial institution is.

- (5) The statute of limitations for a Form 1041 related to a Form 5500 expires three years from the later of:
 - a. The due date of the Form 5500 (the last day of the seventh month after the end of the plan year), or
 - b. The date the Form 5500 was filed.
- (6) Once a plan is no longer qualified under IRC 401(a), realized income earned by the trust becomes taxable.
 - a. The trust must file a Form 1041 for those years during which the plan is disqualified and the statute of limitations is open.

- b. The Form 1041 is filed on behalf of the trust by the trustee.
- c. The trust is responsible for paying the tax, and the trustee is responsible for making sure that the Form 1041 is filed and the taxes are paid.
- d. The trustee (or authorized representative) must sign the statute extension form (Form 872-H) in order for the extension to be valid.

Note: If the trust has multiple trustees, review the trust document to determine if multiple trustees are required to sign Form 872-H. If the trust document doesn't specifically require the signature of more than one trustee, the signature of one trustee is sufficient.

Note: You (the examiner) must verify fiduciary authority to ensure the validity of the consent. You can verify this by reviewing the plan and/or trust instrument. Include in the case file a copy of the documentation under which the fiduciary derives the authority to act and which documents the fact that such authority remains in full force and effect on the date the consent is signed by the fiduciary.

- e. Form 872-H must be signed by a current trustee and dated, which may be a different individual than the person who was a trustee when Form 5500 was filed.
- (7) Use Form 872-H when extending a statute of limitations for a Form 1041 related to Form 5500.
- (8) Since an examination of Form 5500 may result in the revocation or disqualification of the plan, consents must be secured for the trust for the calendar year.

Note: The tax year of any trust is a calendar year (IRC 644(a)). If IRS determines that the plan is not tax-exempt under IRC 401(a), its associated trust would also not be qualified under IRC 501(a). Therefore, consents are obtained for the calendar year.

- (9) The statute of limitations on the trust year runs with the filing of the Form 5500 for the plan year in which the trust year ends. For example, if the plan years ending September 30, 2016 and September 30, 2017 are being examined and it is determined that issues exist that may result in revocation or disqualification of the plan:
- a. Form 872-H would be secured for the trust year ending 12/31/2015. If the Form 5500 for the 9/30/2016 plan year was filed timely on 4/30/2017, the statute of limitations for the trust year ending 12/31/2015 would expire on 4/30/2020.
 - b. Form 872-H would be secured for a short trust year (10/1/2015 through 12/31/2015) if the 9/30/2016 plan year is the initial year of proposed revocation or disqualification (for example, the plan sponsor failed to include eligible employees in the plan and you determined that this issue didn't occur in the 9/30/2015 plan year).

Note: See *Employee Plans Examination Exhibits* for an example of a completed Form 872-H for a short tax year.

- c. If you need to extend the statute of limitations for the trust year ending 12/31/2016, you'd complete Form 872-H for the trust year ending 12/31/2016 for a full calendar year (1/1/2016 through 12/31/2016). The statute of limitations would be based on the Form 5500 for the plan year ending

9/30/2017. The statute of limitations for the trust year ending 12/31/2016 would expire on 4/30/2021 if the Form 5500 for the 9/30/2017 plan year was timely filed on 4/30/2018.

Note: When you must extend the statute of limitations for the trust year ending 12/31/2016, do not neglect to also extend the statute for the trust year ending 12/31/2015. See *Employee Plans Examination Exhibits* for an example of a completed Form 872-H for the short tax year (12/31/2015) and the subsequent full trust year (12/31/2016).

- d. If the plan disqualification extends to an earlier plan year, Form 872-H would be secured for the entire 2015 calendar year (for example, the plan sponsor failed to amend the plan timely for EGTRRA, or the plan sponsor failed to include eligible employees in the plan in an earlier plan year).

Note: See *Employee Plans Examination Exhibits* for an example of a completed Form 872-H for a full trust year.

- (10) Generally, the name of the trust should be listed on the "Name(s)" line of Form 872-H, unless since filing, there has been a name change.
- (11) If the trust name has changed since the applicable Form 5500 was filed, prepare the consent using both the current trust name and the former name of the trust (for example, "XYZ Profit Sharing Trust, formerly XYZ ESOP Trust").
- (12) Include the plan number on the "Name(s)" line.
- (13) If the trust has its own EIN, list it on the "Taxpayer Identification Number" line in the header of Form 872-H.
 - a. Do not use the plan sponsor's EIN on Form 872-H.
 - b. If the trust does not have an EIN, then leave the "Taxpayer Identification Number" line on Form 872-H blank.
 - c. Research to determine if the trust has an EIN: Ask the plan sponsor or trustee if the trust has its own EIN. Also, review all documentation you received when reviewing the plan assets for the existence of a trust EIN.

Note: Verify that the trust EIN is correct via IDRS research with the INOLES command code (i.e., INOLES 75-0000000).
 - d. If the trust does not have its own EIN, the taxpayer can obtain an EIN for the trust by: i) filing Form SS-4 (see Form SS-4 instructions) or ii) online at *Form SS-4 Instructions*. See IRM 4.70.12.3.8.13, Obtaining a Trust EIN.

- (14) List the current address on the appropriate lines.
- (15) List the word "Income" on the "Kind of tax" line of Form 872-H.
- (16) List a date on the "Expiration date" line of Form 872-H that is far enough in the future to allow ample time for case processing.

Note: When a Form 5500 examination is closed from the group: agreed cases should have at least 270 days remaining on the statute of limitations and unagreed cases should have one year

- (17) List the following information in the “Internal Revenue Service Signature and Title” section:
 - a. List the name of the authorized individual’s name (for example, group manager’s name) who will sign the consent on the “IRS Official’s Name” line.
 - b. List in the title of the authorized individual (such as Manager, Group 7672) on the “IRS Official’s Title” line.

- (18) Complete Form 56. See *Employee Plans Examination Exhibits*.

Note: If the trust does not have an EIN, leave the EIN on Form 56 blank.

- (19) Mail Form 56 to the trustee along with the two original Form 872-H.
- (20) The trustee(s) must sign both Forms 872-H exactly as his/her name appears on Form 56. The trustee must be a current trustee.
- (21) Per IRS Delegation Order 25-2 (see IRM 1.2.2.15.2), group managers and reviewers (grade GS-11 or higher) are authorized to sign consents (Form 872 or Form 872-H).

Note: Effective December 21, 2018, digital signatures by Service personnel are allowed when executing statute extensions by consent.

- (22) Persons officially acting for someone authorized to sign consents may sign consents.
 - a. Be cautious and document the authority for the acting assignment in case the person’s authority to sign the consent is later questioned.
 - b. Attach the document giving authority to act to the IRS’s copy of the consent.
- (23) Make sure the consent is dated on the “Date signed” line next to the signatures.

4.70.12.3.8.7
(11-22-2023)

Securing Consents for a Master Trust

- (1) Use Form 872-H to extend the statute of limitations for a master trust.
- (2) When extending a statute of limitations related to a master trust, secure a statute extension for the entire master trust.
- (3) When completing Form 872-H, and Form 56 for a master trust:
 - a. Use the name of the master trust.
 - b. Use the EIN of the master trust (all have an EIN).
 - c. Use the address of the master trust.

Note: If the trustee is an institution then the name on the Form 56 will be the name of the institution and then an individual will sign the Form 56 on behalf of the financial institution. But that individual person is not the trustee. The financial institution is.

- (4) If the taxpayer or POA requests a restricted consent, including a restricted consent that attempts to limit the consent to the plan under examination, the restricted consent must be approved by TEGEDC prior to its execution. If the

taxpayer or POA requests that restrictive language be added to a consent, the restrictive language must be approved by TEGEDC prior to the execution of the restricted consent.

- (5) Form 872-H must be signed by the trustee of the master trust.

Note: Consult TEGEDC if you have concerns about an individual's authority to sign the Form 872-H.

- (6) Since the name of the master trust is being used on Form 872-H, document the CCR and the workpapers to explain that plan assets are invested in a master trust and that Form 872-H was secured to extend the statute of limitations on the master trust.

- (7) Update the statute of the Form(s) 5500 under examination in RCCMS for the plan year(s) that correspond to the years of the master trust that were extended with Form 872-H.

4.70.12.3.8.8 (11-22-2023)

Securing Consents for Form 5330

- (1) Use the most current version of Form 872 when extending a statute of limitations for a Form 5330.
- (2) Solicit a statute extension if the statute will expire within 210 days on an agreed case and one year on an unagreed case.

Note: When a Form 5330 examination is closed from the group, agreed cases should have at least 180 days remaining on the statute of limitations and unagreed cases should have at least one year.

Note: Appeals will not accept a case unless there is at least one year remaining on the statute of limitations when they receive it.

- (3) A Form 5330 examination is considered agreed if:
- The issue giving rise to the excise tax has been corrected (in the case of IRC 4971 and IRC 4975 excise tax), and
 - The responsible party has filed Form 5330 (or signed and submitted Form 870-EP) for the correct amount of tax.

Note: A case is considered to be an agreed case if these two items occur, even if no taxes have been paid at the time the case is ready to close.

- (4) Remember that for Chapter 43 excise taxes, other than for prohibited transactions (IRC 4975), the statute of limitations starts to run only when the Form 5330 is filed or due, whichever is later. For all excise taxes other than IRC 4975, prepare Form 872 only if:
- Form 5330 was filed,
 - The tax reported is incorrect, and
 - The statute of limitations is less than the number of days specified above.

Note: See IRM 4.70.12.3.8.2, EP Statute of Limitations for Form 5330, for additional information on determining the statute of limitations for Forms 5330.

- (5) Remember that for IRC 4975 excise tax, the statute of limitations is initially based on the Form 5500 series return filed for the plan year in which the prohibited transaction occurred. The normal statute of limitations date is three years following the later of the date the Form 5500 was filed or due.
- (6) Prepare Form 872 to extend the statute of limitations for a Form 5330 for any excise tax listed in. IRM 4.70.12.3.8.2, EP Statute of Limitations for Form 5330 other than tax under IRC 4975 for a discrete prohibited transaction as follows:
- List the complete name of the person or entity responsible for filing the Form 5330 on the "Name(s)" line.
 - List the EIN or SSN of the person responsible for filing the Form 5330 in the "Taxpayer Identification Number" block.
 - List the current address of the person or entity responsible for filing the Form 5330 on the address line.
 - For IRC 4975 excise tax, insert "IRC 4975 excise" as the type of tax.
 - For all other excise tax, insert "excise" as the type of tax.
 - Enter the tax period for which the statute is being extended.

Note: The tax period must be the taxpayer's tax year and not the plan year.

- Input a date on the "Expiration date" line of Form 872 that is far enough in the future to allow ample time for case processing.
- Fill in the name and title of the authorized individual who will sign on behalf of the IRS (normally the group manager).

Note: IRS Delegation Order 25-2 authorizes group managers and reviewers (grade GS-11 or higher) to sign consents (Form 872 or Form 872-H).

Note: Effective December 21, 2018, digital signatures by Service personnel are allowed when executing statute extensions by consent.

- Persons officially acting for someone authorized to sign consents may sign consents. Be cautious and document the authority for the acting assignment in case the person's authority to sign the consent is later questioned. Attach the document giving authority to act to the IRS's copy of the consent.
 - Make sure the consent is dated on the "Date signed" line next to the signatures.
 - See *Employee Plans Examination Exhibits* for an example of Form 872 for a continuing prohibited transaction (IRC 4975 excise tax).
- (7) For prohibited transactions involving a discrete act, you must obtain an extension that covers not only the tax year of the disqualified person for the year in which the act occurred, but also each subsequent year.
- The preferred way to prepare an extension is to complete a restricted consent that specifies the type of tax (IRC 4975 excise) and the initial year in paragraph (1) of Form 872.
 - Include in the consent an additional paragraph (6) that lists each subsequent tax year beginning with the second tax year and ending with the current tax year.

Example: Assume a discrete prohibited transaction occurred on July 1, 2014, during the plan year ending December 31, 2014. Also

assume that the transaction involves a disqualified person with a calendar tax year. If the consent is being mailed on October 10, 2017, paragraph (6) would read as follows: "This consent also applies to returns filed for the periods ended December 31, 2015, December 31, 2016, and December 31, 2017, for tax attributable to prohibited acts occurring during the plan year ending December 31, 2014."

- c. See *Employee Plans Examination Exhibits* for an example of Form 872 for a discrete prohibited transaction.

Note: For discrete acts, the statute is technically extended for each affected taxable year if a consent is obtained for the year in which the prohibited transaction occurred. However, obtaining an extension that covers each year will resolve any questions as to whether later years have closed because specific extensions were not obtained for those years.

- (8) For prohibited transactions involving either discrete or continuing transactions:

- a. More than one disqualified person may be involved in the same prohibited transaction. In such cases, all of the parties are jointly and severally liable.
- b. Secure the consent to extend the statutory period from all disqualified persons who may be subject to tax on the prohibited transaction.

Note: Remember that, initially, the three-year statute of limitations will commence to run on the date the administrator files the Form 5500 series return.

- c. While each disqualified person must sign a separate consent, only one must pay the tax.
- d. Obtaining a statute extension for the Form 5500 does not extend the statute of limitations for IRC 4975 excise tax on a prohibited transaction that occurred in that plan year.

4.70.12.3.8.9
(11-22-2023)

Securing Consents for Form 990-T

- (1) If the trust has engaged in activities which result in UBI, the trust is required to file a Form 990-T for those years during which the trust has engaged in such activities and for which the statute of limitations is open.
- (2) If the trust files a Form 990-T prior to the filing of a Form 5500, then the Form 990-T is the return that begins the running of the statute of limitations on the Form 990-T. If the Form 990-T is not filed, examiners should take the conservative approach and assume the filing of the Form 5500 starts the SOL running on the Form 990-T.
- (3) The Form 990-T is filed by the trustee(s) on behalf of the trust.
- (4) The trust is responsible for paying the tax, and the trustee is responsible for making sure the Form 990-T is filed and that the taxes are paid.
- (5) The trustee must sign the Form 872-H in order for the extension to be valid.

Note: If the trust has multiple trustees, then the trust document must be reviewed to determine if multiple trustees are required to sign Form 872-H. If the trust document does not specifically require the signature of more than one trustee, the signature of one trustee is sufficient.

Note: You must verify fiduciary authority to ensure the validity of the consent. Verify by reviewing the plan and/or trust instrument. Include in the case file a copy of the documentation under which the fiduciary derives the authority to act and which documents, the fact that such authority remains in full force and effect on the date the fiduciary signed the consent.

- (6) Also send Form 56 to the trustee(s) for completion when extending the statute of limitations on a trust. See *Employee Plans Examination Exhibits* for an example of a completed Form 56.

Note: Check Line 4h in section B of Form 56 and insert “Form 990-T” in the space provided.

- (7) If the trust is required to file a Form 990-T, the taxable year of the trust is the same as the plan year of the trust. A trust does not lose its exempt status due to UBI; therefore, if the plan is on a calendar year, the Form 990-T is filed based upon a calendar year. If the trust is on a fiscal year, the Form 990-T is filed based upon the plan’s fiscal year. The Form 872-H must reflect the plan year of the trust as the period being extended.

- (8) Prepare Form 872-H to extend the statute of limitations for a Form 990-T as follows:

- a. List the name of the trust on the “Name(s)” line of Form 872-H.

Note: If the trust name has changed since the applicable Form 5500 was filed, the consent should be prepared using both the current trust name and the former name of the trust (for example, “XYZ Profit Sharing Trust, formerly XYZ ESOP Trust”).

- b. List the employer identification number (EIN) of the trust in the “Taxpayer Identification Number” block.

Note: Do not use the plan sponsor’s EIN. If the trust doesn’t have an EIN, the trustee must get one before a consent can be secured for Form 990-T. See IRM 4.70.12.3.8.13, Obtaining a Trust EIN, for the procedures in obtaining a trust EIN.

- c. List the current address of the trust on the address line.
d. Insert “income” as the type of tax.
e. Enter the tax period for which the statute is being extended.

Note: For Form 990-T this would be the same period as the plan year.

- f. Input a date on the “Expiration date” line of Form 872-H that is far enough in the future to allow ample time for case processing.
g. Type the name of the authorized individual’s name (e.g., group manager’s name) who will sign the consent on the “IRS Official’s Name” line.
h. IRS Delegation Order 25-2 (see IRM 1.2.2.15.2) provides that group managers and Reviewers (grade GS-11 or higher) are authorized to sign consents (Form 872 or Form 872-H).

Note: Effective December 21, 2018, digital signatures by Service personnel are allowed when executing statute extensions by consent.

- i. Persons officially acting for someone authorized to sign consents may sign consents. Be cautious and document the authority for the acting as-

signment in case the person's authority to sign the consent is later questioned. Attach the document giving authority to act to the IRS's copy of the consent.

- j. Make sure the consent is dated on the "Date signed" line next to the signatures.

- (9) See *Employee Plans Examination Exhibits* for an example of Form 872-H for Form 990-T.

4.70.12.3.8.10
(11-22-2023)

**Securing Consents for
Form 1040 and Form
1120**

- (1) Use the most current version of Form 872 when extending the statute of limitations for a Form 1040 or Form 1120.
- (2) Solicit a statute extension if the statute will expire within 210 days on an agreed case and one year on an unagreed case.

Note: When a Form 1040 or Form 1120 discrepancy adjustment is closed from the group, agreed cases should have at least 180 days remaining on the statute of limitations and unagreed cases should have one year.

Note: A case is considered agreed if the taxpayer signs Form 4549-E.

- (3) Complete Form 872 as follows:
 - a. Prepare the consent using the same name(s) as that under which the return was filed, unless since filing, there has been a name change. If the name changed, prepare the consent using both names (for example, "Mary J. Smith, formerly Mary J. Brown").
 - b. For a jointly filed Form 1040, list both spouses' names (for example, William L. Smith and Jane M. Smith).
 - c. List the EIN or SSN in the "Taxpayer Identification Number" block. For a jointly filed Form 1040, list only the primary SSN.
 - d. Insert "income" as the type of tax.
 - e. Use the taxpayer's current address, rather than the address shown on the return. Determine the current address based on the best information available, including IDRS, correspondence from the taxpayer, etc.
 - f. Enter the tax period for which the statute is being extended.
 - g. State the year covered by the consent in full, including the month, day, and year.
 - h. Input a date on the "Expiration date" line of Form 872 that is far enough in the future to allow ample time for case processing.
 - i. Type the name of the authorized individual's name (for example, group manager's name) who will sign the consent on the *IRS Official's Name* line.
 - j. The consent must be signed and dated by a corporate officer when extending the statute for a Form 1120.
 - k. The consent must be signed and dated by both spouses when extending the statute for a jointly filed Form 1040.

Note: Alternatively, each spouse (or former spouse, if the taxpayers are no longer married) may sign two copies of separate Forms 872.

- l. IRS Delegation Order 25-2 (see IRM 1.2.2.15.2) provides that group managers and reviewers (grade GS-11 or higher) are authorized to sign consents (Form 872 or Form 872-H).

Note: Effective December 21, 2018, digital signatures by Service personnel are allowed when executing statute extensions by consent.

- m. Persons officially acting for someone authorized to sign consents may sign consents. Be cautious and document the authority for the acting assignment in case the person's authority to sign the consent is later questioned. Attach the document giving authority to act to the IRS's copy of the consent.
 - n. Make sure the consent is dated on the "Date signed" line next to the signatures.
- (4) Wherever practicable, any notice for a joint return must be sent separately to each individual filing the joint return. See Act section 3201(d) of RRA 98.

Note: If you can determine with absolute certainty that both individuals reside at the same address, then you don't need to mail the consents separately. Document in the CCR how you determined that the taxpayers resided at the same address.

4.70.12.3.8.11
(11-22-2023)
**Securing Consents for
Form 5329**

- (1) Use the most current version of Form 872 when extending a statute of limitations for a Form 5329.
- (2) Solicit a statute extension if the statute will expire within 210 days on an agreed case and one year on an unagreed case.

Note: Form 5329 taxes are now handled through discrepancy adjustments as covered in IRM 4.70.15. When an agreed discrepancy adjustment including Form 5329 taxes is closed from the group, agreed cases should have at least 180 days remaining on the statute of limitations and unagreed cases, one year.

Note: A case is considered to be an agreed case if the correct amount of tax is reported or adjusted, even if no taxes have been paid at the time the case is ready to close.

- (3) Remember that the statute of limitations commences to run only when the Form 5329 is filed or due, whichever is later, so preparation of Form 872 is only necessary if:
- a. Form 5329 was filed, and
 - b. The statute of limitations is less than the number of days specified above.

Note: The IRC 72(t) tax is governed by the later of the due date or filing date of the Form 1040. (The reason is because the IRC Section 72(t) tax is an additional income tax, not an excise tax.) Also see IRM 25.6.1.9.4.3, Forms Reporting More Than One Item of Tax.

- (4) Prepare Form 872, when extending the statute of limitations for a Form 5329, as follows:
- a. List the complete name of the person responsible for filing the Form 5329 on the "Name(s)" line.

Note: IRC 4973 and IRC 4974 do not have joint and several liability. So, the consent would only be executed by the person who is liable for the tax (even if they filed a joint Form 1040 with their spouse).

- b. List the SSN of the person responsible for filing the Form 5329 in the "Taxpayer Identification Number" block.
- c. List the current address of the person responsible for filing the Form 5329 on the address line.
- d. List "excise" as the type of tax.
- e. Enter the tax period for which the statute is being extended.

Note: The tax period must be the taxpayer's tax year and not the plan year.

- f. Input a date on the "Expiration date" line of Form 872 that is far enough in the future to allow ample time for case processing.
- g. Fill in the name and title of the authorized individual who will sign on behalf of the IRS (normally the group manager).

Note: IRS Delegation Order 25-2 authorizes group managers and reviewers (grade GS-11 or higher) to counter sign Form 872.

Note: Effective December 21, 2018, digital signatures by Service personnel are allowed when executing statute extensions by consent.

- h. Persons officially acting for someone authorized to sign consents may sign consents. Be cautious and document the authority for the acting assignment in case the person's authority to sign the consent is later questioned. Attach the document giving authority to act to the IRS's copy of the consent.
- i. Make sure the consent is dated on the "Date signed" line next to the signatures.

4.70.12.3.8.12
(11-22-2023)

Securing Consents for IRC 6707A Penalties

- (1) IRC 6707A imposes a penalty for failure to include "reportable transaction" information on a return.
- (2) "Reportable transaction" means any transaction with respect to which information is required to be included with a return or statement because that transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion. See IRC 6707A(c)(1).
 - a. A "listed transaction" is a type of "reportable transaction".
 - b. A "listed transaction" is defined as a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of IRC 6011.
- (3) Generally, the initial statute of limitations period for purposes of IRC 6707A is determined by the statute of limitations for the applicable tax return(s) (Forms 1040, 1120 1120-S or 1065), which is the later of three years from the date the return is filed or due.
- (4) If a "reportable transaction" exists, IRC 6011 requires that the transaction be reported on the applicable income tax return (Forms 1040, 1120, 1065) of the entities involved in the transaction.

- (5) The taxpayer should file Form 8886 with the applicable tax return(s) and the Office of Tax Shelter Analysis (OTSA).
- (6) If Form 8886 is not filed with the applicable tax return and with OTSA, additional time may be added to the normal three year statute of limitations per IRC 6501(c)(10).
- (7) Per IRC 6501(c)(10), if a taxpayer fails to include on any return or statement for any taxable year any information with respect to a “listed transaction”, which is required under IRC 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of:
 - a. The date on which the Secretary is furnished the information so required, or
 - b. The date that a material advisor meets the requirements of IRC 6112 with respect to a request by the Secretary under IRC 6112(b) relating to such transaction with respect to such taxpayer.
- (8) If the normal statute has expired, seek written approval from Counsel for support of the extended statute under IRC 6501(c)(10) for a “listed transaction”.
 - a. Include Counsel’s **written approval** in the penalty case file.
 - b. Get the Counsel attorney’s contact information from the EP Abusive Tax Avoidance Transaction (ATAT) Coordinator.

Note: The contact information for ATAT Program Coordinator is found on the TE/GE Fraud Awareness Knowledge Base at the *ATAT Program Contacts* link.

- (9) Form 5500 is not subject to the IRC 6707A penalty.
- (10) When an IRC 6707A penalty file is closed from the group, agreed cases should have at least 210 days remaining on the statute of limitations and unagreed cases, at least one year.
 - a. Solicit a statute extension if the statute will expire within 210 days on an agreed case and one year on an unagreed case.
 - b. A case is considered agreed if Form 870-EP is signed by the taxpayer.
- (11) When extending the statute on an IRC 6707A penalty case (Forms 1120, 1120-S, 1065, or 1040), prepare Form 872 (using the most current version) for each entity or person involved in the transaction as follows:
 - a. List the complete name of the person or entity on the “Names(s)” line of Form 872.
 - b. List the employer identification number (EIN) or social security number (SSN) on the “TIN” line of the Form 872.
 - c. List the current address of the person or entity on the “Address” line of Form 872.
 - d. If you’re extending both the income tax statute and IRC 6707A penalty statute, list “Income and IRC 6707A Penalty” on the “Kind of tax” line of Form 872.
 - e. If you’re extending the IRC 6707A penalty statute only, list “IRC 6707A Penalty” on the “Kind of tax” line of Form 872.

- f. Enter the tax period for which the statute is being extended on the applicable line of Form 872.
- g. Enter a date on the "expiration date" line of Form 872 that is far enough in the future to allow ample time for the penalty case to process.
- h. Include in the consent an additional paragraph (6) that reads as follows: "Without otherwise limiting the applicability of this agreement, this agreement also extends to the expiration date identified in paragraph (1) above, the period of limitations for assessing any penalty pursuant to IRC section 6707A, Penalty For Failure to Include Reportable Transaction Information with the Return, with respect to the taxpayers, kind of tax and tax periods identified above."
- i. To extend the statute for a partnership (Form 1065), the Form 872 should be signed by the General Partner and not the Tax Matters Partner. Since there isn't a line on the Form 872 for a General Partner to sign, strike through the words "Corporate Name" and insert "Partnership Name" and strike through "Corporate Officer" and insert "General Partner".
- j. Type the name of the authorized individual's name (e.g., group manager's name) who will sign the consent on the "IRS Official's Name" line.
- k. Per IRS Delegation Order 25-2, group managers and reviewers (grade GS-11 or higher) are authorized to sign consents (Form 872).

Note: Effective December 21, 2018, digital signatures by Service personnel are allowed when executing statute extensions by consent.

- l. Make sure the consent is dated on the "Date signed" line next to the signatures.
 - m. See *Employee Plans Examination Exhibits* for an example of a completed Form 872 for a IRC 6707A penalty case.
- (12) Once a signed Form 872 has been secured and countersigned, update Non-Master File AIMS for the penalty case, AIMS (for the taxable return if the 872 covers it), and RCCMS.
- (13) If the taxable return is established on AIMS, the group responsible for the return must update AIMS.
- a. If the return is charged out to an SB/SE group, that group must update the statute.
 - b. If the return is not charged out to any group (the examination is not established on AIMS by either EP, SB/SE or LB&I), follow the instructions in IRM 4.70.12.3.8.12(14), Securing Consents for IRC 6707A Penalties, to update the statute on Master File using Form 3177.
 - c. If Form 872 is secured only for the IRC 6707A penalty, update only Non-Master File AIMS for the penalty case and RCCMS.
- (14) When updating the statute of limitations using Form 3177 for a Form 1120, 1120-S, 1065, or 1040 for which an examination has not yet been established on AIMS, complete and process Form 3177 as follows.
- a. **Initiator** – Enter the examiner's name and phone number.
 - b. **Date** – Enter the current date.
 - c. **Taxpayer Name** – Enter the name of the Taxpayer.
 - d. **EIN OR SSN** – Enter the TIN of the Taxpayer.
 - e. **TRC** – Highlight "560" and enter the new statute date as *MM/DD/YY*.
 - f. **MFT Code** – Enter 02 for Form 1120, 06 for Form 1065, or 30 for Form 1040.

- g. **Taxable Period** – Enter the taxable period being extended as YYYY/MM.
- h. Efax the completed Form 3177, Form 872 and AMDIS print to the manager of the TE/GE Closing Group in Brooklyn. The efax number is 855-821-0089.
- i. The Efax Cover Sheet should contain the following note: “Please update the statute on this return. The return is not controlled on AIMS.”
- j. See *Employee Plans Examination Exhibits* for an example of a completed Form 3177.

Note: If a return is controlled on AIMS (an examination of the applicable return has been initiated), the group with the open examination must complete this update to the statute. Do not send it to the manager of the Support Processing Unit.

4.70.12.3.8.13
(11-22-2023)
Obtaining a Trust EIN

- (1) This section is to be used when a trust has a required filing requirement for Form 990-T or Form 1041.
- (2) Solicit the trust EIN from the plan sponsor.

Note: If the trust does not have an EIN, the plan sponsor must complete Form SS-4 and file or fax it to the appropriate IRS office listed on the instructions. Alternatively, the taxpayer can apply for an EIN for the trust online at *EIN Assistant*.

- (3) If the plan sponsor provides a trust EIN, secure a BMFOLI print to make sure the EIN is not being utilized to file returns other than trust returns (e.g., Form 990-T or Form 1041).

Note: A Form 990-T sent to Ogden with an EIN that is used for any other purpose than for the filing of Form 990-T for the trust will not process at the Service Campus. The return will reject and a new trust EIN will have to be assigned causing a delay in the processing of the Form 990-T.

- (4) If the trust does not have an EIN and the plan sponsor will not obtain one, obtain one by faxing Form 4442 to the EO Entity Unit at Ogden Campus. The e-fax number is 855-306-0953. See Exhibit 8 at *Employee Plans Examination Exhibits* for an example of a completed Form 4442.
- (5) Obtaining a new EIN for the trust will automatically establish an entity module.

4.70.12.3.9
(11-22-2023)
IDRS Review

- (1) Most cases assigned in RCCMS include IDRS research from Classification in the case file documents folder. IDRS research to be included in the file is designated on the classification cover sheet included in RCCMS.
- (2) To thoroughly plan an examination, it may be necessary to request additional IDRS prints that were not received in the RCCMS case file.
- (3) Examiners without IDRS access use Form 6882, IDRS/Master File Information Request, or Form 15036, TE/GE IDRS Research Request, to request IDRS information and submit to their manager for approval. The manager then forwards the form to a designated individual with IDRS access to do the research.

Note: Examiners should follow their local group procedures for requesting IDRS.

- (4) Each Business Operating Division (BOD) is responsible for assigning the BOD Codes (BODC) to the taxpayer's account. The purpose of these codes is to further categorize the taxpayer's account within the BOD.
- (5) Tax Exempt & Government Entities uses the BODC of 'TE'.
- (6) Business Master File (BMF) Employment Codes (ECs) identify employers who are other than normal business employers (see IRM 3.13.2.6, BMF Employment Codes (ECs) and IRC 3.13.12.6.28, Employment Code, for ECs used by EO, FSL, ITG and TEB).
- (7) To further categorize the taxpayer's account within the BOD, there are currently six BOD Client Codes (BCC) used by FSL, ITG and TEB (see IRM 3.13.12.6.33, BOD Code and BOD Client Code Changes).
- (8) For specific command codes, use the *CFOL Express* (Nov 2017) A CFOL/IDRS Reference Guide or the IDRS Command Code Job Aid at *IDRS Command Code Job Aid*. The first five letters input in IDRS constitute the command code, and the sixth character is a definer code. Commonly used command codes and definers used in TE/GE include:
 - a. AMDISA (Audit Management Display Information System) displays a summary of the AIMS file, including a list of returns under examination and their applicable examination codes. Using a "P" after the TIN lists Forms 5500 under examination. Using a "N" after the TIN lists all Non-Return Unit examinations for the taxpayer.
 - b. BMFOL (Business Master File On-Line) is an on-line command code used to research BMF tax modules.
 - c. BMFOLI provides a list of on-line modules, including the business returns filed by the taxpayer, tax module balances, posted return indicators, IDRS service centers and freeze codes (e.g. a -L Freeze for any line item indicates Exam is working the case).
 - d. BMFOLK provides information on the Federal Tax Deposit schedule of the taxpayer.
 - e. BMFOLO provides information on an exempt organization.
 - f. BMFOLR is the return information screen, containing a brief summary of key entries from the return. When run for a bond issuer, it shows CUSIP numbers, issue price, issue date, maturity date, yield reduction payments, total and unused volume cap, bond issuance costs and rebate amounts. When run for a bond borrower, shows a transcript of the borrower's filed tax return for a specific period.
 - g. BMFOLT provides a transcript of transactions on a BMF tax module, including the date that a business entity's taxable return was filed and whether any extensions of time to file were granted. It also reflects assessments of tax, penalties and interest.
 - h. BMFOLU is used to view Combined Annual Wage Reporting (CAWR) information, matching the Forms 941 to the Form W-3 and the Forms W-2.
 - i. BMFOLZ is the examination history screen, displaying closing codes and assessment amounts of prior examinations.
 - j. BRTVU provides an in-depth display of BMF return information, including line items, for a specific tax period. It is only available for the three most recent tax years. TRDBV may also be used.
 - k. CFINK provides information on the TIN's powers of attorney or appointees nationwide pursuant to Forms 2848 and Forms 8821 that have been processed.

- l. EMFOL is the Employee Plans Master File On-Line, providing basic entity, posted return, transaction codes and data for employer pension and benefit plans filing a Form 5500 series return.
- m. EMFOLD shows the plan administrator information from Form 5500.
- n. EMFOLI provides a list of plans maintained by the TIN along with the years for which a transcript can be requested.
- o. EMFOLL shows information on the plan's determination letter, the plan effective date and termination date.
- p. EMFOLT provides a transcript of transactions on a EPMF tax module, including date that the Form 5500-series return was filed and whether any extensions of time to file were granted. It also reflects any assessment of late filing penalties.
- q. ERTVU is a transcript of the Form 5500-series return, showing line items for a particular plan and tax period.
- r. FINDE provides taxpayer name and address when the EIN is known. See IRM 2.3.60, IDRS Terminal Responses, Command Codes NAMES, NAMEE, NAMEI, NAMEB, FINDS, FINDE, and TPIIP.

Note: This command code is separate from FINDS. The user must be profiled separately for this command..

- s. FINDS provides taxpayer name and address when the SSN is known. See IRM 2.3.60, IDRS Terminal Responses, Command Codes NAMES, NAMEE, NAMEI, NAMEB, FINDS, FINDE, and TPIIP.
- t. IMFOLI (for Form 1040) provides an index summary screen of all accounts for an individual SSN, including the individual returns filed by the taxpayer, the filing status codes, tax module balances, return status and freeze codes.
- u. IMFOLT (for Form 1040) shows the date that an individual's taxable return was filed and whether any extensions of time to file were granted, the assessment statute expiration date (ASED). It also reflects assessments of tax, penalties and interest.
- v. INOLEP provides a list of all retirement plans maintained by a TIN that files Form 5500-series returns.
- w. INOLES (Inquiry On-Line Entity) displays the online entity screen, including the most current name, address, establishment date and filing requirements for an entity. It provides group exemption number, exemption subsection, ruling date and foundation status of an exempt organization. It may also indicate the TINs of subsidiaries or parents. It can be used for an individual or business.
- x. INOLET provides both BMF and EPMF information of a particular TIN or for other plans maintained by the employer.
- y. INOLEX produces cross referenced EINs that may lead to related entities.
- z. IRPTR (Information Returns Processing Transcript) gives details of Form W-2 (wages and salary deferrals), Form 1099-R (distributions) and Form 5498 (FMV and rollover contributions of IRA) information reports issued to a recipient.
- aa. IRPTRI provides an on-line summary screen of documents with the total number of documents filed of Forms W-2, W-2G, 1042-S, 1099-R and 1099-MISC returns filed by a TIN for a specified calendar year.
- ab. IRPTRR is used to request transcripts of any and all information returns (e.g., Forms W-2, 1099, etc.) issued by an organization. Transcripts are sent to the RICS (Return Inventory Control System) using destination code.
- ac. IRPTRO provides only transcripts of documents received by a taxpayer.

- ad. NAMEB and NAMEE research by name to obtain an employer identification number when the address is known.
- ae. NAMEI and NAMES research by taxpayer name to obtain a social security number when an address is known.
- af. PMFOLS (Payor Master File On-Line System) summarizes for each calendar year the number of information returns (e.g. Forms W-2 and 1099) filed by an entity and the total dollars reported for each.
- ag. SUMRY provides a summary screen showing all modules on IDRS, including campus, collection, sometimes examination and criminal investigation. A -L Freeze indicates Exam is working the case.
- ah. RTVUE provides an in-depth display of IMF return information for Form 1040, including line items, for a specific tax period. It is only available for the three most recent tax years.
- ai. TXMOD provides a history of a tax module, which can include campus notices issued.
- aj. TRDBV lists paper and electronic filings for both IMF and BMF returns. For IMF returns, TRDBV provides more detailed information than provided by RTVUE if an electronic return was file, including W-2 payer information.

- (9) General guidelines for disclosing transcript and IDRS prints are located on the Disclosure Virtual Library, at <https://portal.ds.irsnet.gov/sites/vl003/Lists/RespondDirectly/DispItemForm.aspx?ID=4>.

4.70.12.3.9.1
(11-22-2023)

**Requesting CP2100 and
IRPTR data**

- (1) Requesting CP 2100 Data: Review PMFOLB for the entity and tax years needed. This will ensure research has been conducted and that CP2100 notices exist for the entity and years requested.
 - a. Send an encrypted email to **TE/GE CPC Case Assignment*. The subject line of the email should include "Request for CP2100 recreates". Include the PMFOLB prints for each tax year.
- (2) Requesting IRPTR data: When IRPTR data is requested, the records populate to the IRPTR table on RICS. Once populated, the records are imported to Excel and manipulated into a useable format.
 - a. Review PMFOLS for the entity and tax years needed. This will ensure research has been conducted and that data exists for the entity and years requested.
 - b. Send an email to **TE/GE CPC Case Assignment*. The subject line of the email should include "Request for IRPTR data". Include the PMFOLS print for each tax year. Include the completed Form 15270 Information Returns Processing Transcript (IRPTR) Form.
 - c. Once the Excel report is created, it is sent to the recipient via Outlook or TEAMS, depending on the size of the file. In the event the file is too large for TEAMS, it can be saved and encrypted on a flash drive and then securely mailed to the recipient overnight.

4.70.12.3.9.2
(11-22-2023)

**Non-Master File
Transcript Requests**

- (1) Non-Master File is used to control returns or entities that are not available from the Master File.
- (2) Data for Non-Master File assessments are on the ANMF system. See Document 6209, Section 7 for Non-Master File transaction codes and other related information.

- (3) Certain transactions in EP, such as closing agreement sanction payments, are posted on Non-Master File.
- (4) The Non-Master File MFT code for closing agreements is 28.
- (5) Get a Non-Master File transcript by faxing or emailing the Accounting Operations Department in the Kansas City Submission Processing Center.
- (6) Prepare Form 10321:
 - a. Address the EEFax to the Kansas City Submission Processing Center.
 - b. Use the EEFax number for the Accounting Operations Department (888) 981-6493.
 - c. Send an email to **W&I KCSPC Non-Master File Team*.
 - d. Include your name, address, phone and EEFax number.
 - e. Request in the bottom section of Form 10321, a Non-Master File transcript and list the name of the entity, TIN of the entity, MFT 28, and the tax period (e.g., "Please provide a Non-Master File transcript for XYZ Corporation; EIN XX-XXXXXXX; MFT 28; Tax period 201911").

Note: If the transcript request is for a closing agreement, the tax period is the year and month the closing agreement is signed.
- (7) A clerk in the Accounting Operations Department of the Kansas City Submission Processing Center will print the transcript and either email or EEFax it to you.

4.70.12.3.9.3 (11-22-2023)

IDRS Service Requests

- (1) Request access to the IDRS System, through the Business Entitlement Access Request System (BEARS).
- (2) Reset an IDRS password using the self-service password management (PWMGT) tool within IDRS:
 - a. Activate the PWMGT tool by using command code PWACT. Follow the on-screen prompts.
 - b. Use the PWMGT tool, skip the password field in SINON screen and answer the security question in the PWMGT field. Follow the on-screen prompts.

Note: If the PWMGT tool is inactive or becomes disabled, you'll need to submit a reset password request through BEARS.
- (3) Use the OS GetServices ticket process for all IDRS Service Change Requests, such as a request to:
 - Unlock an employee's profile or terminal, or
 - Add command codes to the employee's user profile.

Note: Find instructions titled "IDRS OS GetServices Request" to submit an IDRS Service Request on the Data Security Tab under the TE/GE Automation Support Tab on the TE/GE SharePoint Site. See <https://irs.gov.sharepoint.com/sites/bspautomationsupport/SitePages/Home.aspx>.

4.70.12.3.10
(11-22-2023)
Research

- (1) Pre-examination planning of an examination requires conducting research of the entity filing the return that is under examination to perform an adequate risk analysis and set the proper scope for the examination.
- (2) Research is conducted using available internal IRS systems, databases, and external sources.
- (3) Internal sources include:
 - IDRS (Integrated Data Retrieval System).
 - YK1 to visualize a graphic representation of the taxpayer and their flow-through relationships to other entities and to quickly export historical return data.
 - CKGE (CDW Knowledge Graph Environment) to visualize and explore graph connections between entities, including responsible parties, parent EINs, spouses and dependents, employee/employer relationships, and partnership, beneficiary and shareholder connections.
 - IRAS (Information Return Analysis System), a Microsoft Access database application that processes information return data including Forms 1099, W-2 and W-2G to provide an efficient method for inspection.
 - EDS (EP/EO Determination System) for information about determination letters issued for a tax exempt entity or a qualified retirement plan.
 - On-Line SEIN system provides access to original images of scanned Forms 990, 990-EZ, 990-PF, 990-T and related tax returns, both paper and e-filed, from 2002- present.
 - Filed Forms 8871, Political Organization Notice of Section 527 Status, and Forms 8872, Political Organization Report of Contributions and Expenditures (both paper and electronic filings). Refer to *Basic Search (irs.gov)*.
 - The ITG Tribal database.
 - MeF is a web-based system that allows electronic filing of returns through the internet. The MeF system provides the examiner access to electronically filed tax return data in various formats, including a Form View, which resembles a tax return.
 - The FSL/ET State Section 218 Agreements.
- (4) External sources include:
 - Accurint, for information about people, businesses, assets, licenses, and court filings
 - TEOS (Tax Exempt Organization Search) on IRS.gov for information about an organization's tax exempt status and filings
 - Guidestar-990 Returns
 - PACER (Public Access to Court Electronic Records) bankruptcy and court filings
 - EDGAR (Electronic Data Gathering, Analysis and Retrieval system) SEC filings
 - EMMA (Electronic Municipal Market Access) for information on municipal securities data and disclosure documents
 - EFAST2 for publicly available Form 5500 series returns
 - State agency web sites that provide access to public records for corporations or property. Some states and/or counties have departments with which exempt organization must register if they solicit charitable donations or engage third-party fund-raiser to solicit for them

- Westlaw TM provides online comprehensive tax, legal and business research. Bloomberg TaxTM provides online tax research services and tax-related databases
- Internet search engines for information available to the public, including an entity's own internet web site. You can retrieve images of previous web pages from *www.archive.org*.

Note: Not all available sources must be queried, but enough pertinent information must be obtained to adequately set the scope of the examination.

- (5) Research all issues that appear likely to arise based on your review of the return and risk analysis to the extent necessary to develop the pre-contact plan. Although it's important to become familiar with identified issues, especially issues that haven't been previously examined, it is equally important not to expend a large amount of time researching an issue that may become a non-issue once the examination is in process.
- (6) If you determine during the pre-contact phase (or later in the examination) that you need help from a TE/GE field specialist or one in another operating division, submit a request using the online Specialist Referral System at *Specialist Referral System* as soon as possible to avoid unnecessary delay in resolving the issues. See IRM 4.70.12.3.5 Specialist Referral System.
- (7) If you need assistance interpreting the law, submit a request using the Contact an Expert feature of the applicable Knowledge Base.

4.70.12.3.10.1
(11-22-2023)
**General Guidance
Related to Exempt
Organizations**

- (1) For every examination of an organization described in IRC 501(c), that was granted tax-exempt status *after* October 2013 (Ruling Date 201310 in the EOBFM) obtain a copy of the organization's current organizing documents, including amendments, from the state authority online or directly from the organization.
- (2) Review the organizing documents to determine whether they contain the required language for the type of exemption granted.
 - a. If yes, the organizational requirements have been satisfied.
 - b. If not, obtain the Determination Administrative File (determination file) in RCCMS.
 - c. If RCCMS doesn't include the determination file, request a copy of the file by sending a secure email, attaching Form 14264, Request for EP or EO Administrative File form, to **TEGE Determinations Processing*.
- (3) Review the organizing documents and the application for tax exemption, including supporting documents, in the determination file.
 - a. If the determination file indicated the organization attested it made conforming amendments as part of the determination process, but the examination reflects no attempt to implement the required changes, propose revocation after discussion with the manager.
 - b. If the organization attempted to implement the required changes but wasn't successful, (e.g., the organization added a dissolution clause, which the examiner concludes still doesn't satisfy the organizational test), inform the organization that it must amend its organizing document. Prior to closing the case, secure a conformed copy of the amendments consistent with IDR procedures.

- c. If the determination file shows that the organization applied on Form 1023-EZ and doesn't have organizing documents, propose revocation after discussion with the manager.
- (4) If you secure conformed copies of amended organizing documents after the start of the examination to satisfy organizational requirements, issue Letter 1744, Change Due to Correction of Operations Closing letter, to the organization.
 - a. Close the case with DC 19, Amendment Secured, unless other issues require a higher priority DC.
- (5) If after discussion with the manager, you propose a revocation for not satisfying organizational requirements, issue Letter 3618, 30-Day Letter - Proposed Revocation of Exempt Status.
 - a. Close the case with the proper revocation DC.
- (6) For guidance on what constitutes a conformed copy of an organizing or enabling document, see Pub 557, Tax-Exempt Status for Your Organization; Instruction 1023; Instruction 1023-EZ; or Instruction 1024.

4.70.12.3.10.2
(11-22-2023)
**Guidance for
Examinations Related to
Indian Tribal
Government Entities**

- (1) ITG is the central point for all IRS contacts with federally recognized Indian tribes.
 - a. ITG is also responsible for ensuring that the IRS is in compliance with relevant Presidential Executive Orders that outline the relationships and protocols required in working with tribes.
 - b. The ITG staff is specially trained in the unique areas of tax law and protocol that apply to Indian tribes
- (2) You must contact the local area ITG specialist before making initial contact on EO examinations related to ITG entities, or as soon as you're aware of a relationship. For a current list of the local area contacts, see the ITG website.

Example: Contact your local ITG specialist if you receive an examination for an EO located on tribal land or an EO established and controlled by members of a tribal council.

- (3) When an EO/ITG relationship is apparent, Classification includes a copy of the ITG contact listing in the file. However, there are no defining codes for these entities, so it's your responsibility to determine whether or not to contact ITG.
- (4) Area manager: Monitor these cases monthly as sensitive cases, once they are identified.

4.70.12.3.10.3
(11-22-2023)
**General Guidance
Related to Federal
Government Entities**

- (1) The critical concerns with federal entities are employment tax issues and information return reporting. While the number of federal entities is few, they have significant revenue impact due to their.
 - a. High volume of expenditures, both payroll and non-payroll.
 - b. Involvement with public sector employers and employees.
- (2) Section 530 of the Revenue Act of 1978 and Section 218 of the Social Security Act do not apply to federal entities.

- (3) Federal entities are excluded from penalty and interest provisions under Policy Statement 20-2 (formerly P-2-4), Penalties are used to Enhance Voluntary Compliance, IRM 1.2.1.12.2.
- (4) There are unique protocols for working with federal entities, including the military.

4.70.12.3.10.4
(11-22-2023)

**General Guidance
Related to State and
Local Government
Entities**

- (1) State and local government employees are covered for Social Security and Medicare (FICA) in one of two ways:
 - a. Section 218 Agreements.
 - b. Mandatory 1991 Social Security provisions for those who aren't members of a public retirement system.
 - c. Mandatory Medicare.
- (2) State and local governments make up a majority of FSL's customers.
- (3) Section 218 is one of the primary issues FSL addresses.

4.70.12.3.11
(11-22-2023)

**Decision to Survey a
Return**

- (1) Under rare circumstances, a TE/GE group may make the determination to not examine a return selected for examination and close it by survey. Employees will carry out this duty per Policy Statement 1-236, "Fairness and Integrity in Enforcement Selection". See IRM 1.2.1.2.36. You and your group manager have the authority to determine whether to survey a return instead of conducting an examination.
 - 1. The group manager must review and approve all surveys.
 - 2. Surveyed returns will be closed electronically, 100% paperless.
- (2) Before surveying a return, examiners and managers must consider all case facts. Analyze the following factors (not all-inclusive) to help you strategically decide whether to survey the return. While the group manager approves the decision to survey a return and must document it in the RCCMS case file, both managers and examiners must document the case file with all case actions:
 - Consideration of existence and/or non-existence of classified issues and Large, Unusual, or Questionable (LUQs) items.
 - Completion of return and related return reconciliation.
 - Completion of required filing checks.
 - Evaluation of examination potential, whether an exam would likely result in a material change.
 - Repetitive examination or compliance activity - prior examination or compliance activity resulted in no change or minimal adjustments for same issue.
 - Consider surveying returns with less than 12 months until ASER, and whether the same issue is present in subsequent years. If so, consider establishing the subsequent year for examination.
 - Consider whether the case should be reassigned to another group/area if your group lacks the resources.
 - Consider whether an organization/entity has already taken steps to correct an identified issue, as reflected in subsequent years' return.
- (3) When you decide to survey a case, use the appropriate disposal codes (DC):

Type of Survey Closing	DC AIMS/ RCCMS	Use when
Survey Before Assignment (SBA)	31/910	<u>Manager</u> : you analyze the return before assigning it to or contacting the taxpayer/ representative (rep) and determine an exam isn't warranted.
Survey After Assignment (SAA)	32/908	<u>Examiner</u> : you analyze the return and without contacting the taxpayer/rep. or reviewing any books and records and you believe that examining the return wouldn't result in material change in exempt status, foundation status, plan qualification, tax-advantaged bond status or tax liability.
Surveyed After Initial Contact	36/909	<u>Examiner</u> : you determine, after contacting the taxpayer or rep. but before inspecting records that: <ul style="list-style-type: none"> Examining the return wouldn't result in a material change in exempt status, foundation status, plan qualification, tax-advantaged bond status or tax liability. The taxpayer is deceased, has a terminal illness, is in a disaster area or other extraordinary circumstances exist. <p>Note: Issue Letter 1024-A "Survey After Assignment -Taxpayer Contact Made" to the Taxpayer</p>
Claims Allowed in Full (Surveyed)	34/103	<u>Examiner</u> : you determine the claim issue is clearly allowable in full and the return doesn't otherwise warrant examination.

- (4) All determinations to survey will be treated with the same level of review.

4.70.12.3.11.1
(11-22-2023)

**Documenting the
Surveyed
Exam/Compliance
Activity**

- (1) Capture all case survey information on the RCCMS closing record:

- | |
|---|
| 1. Complete the designated mandatory fields for a surveyed closure. |
| 2. Select the appropriate SRC from the drop-down menu. |

3. When appropriate, provide a narrative explanation supporting your decision to survey in the General tab, Remarks and Comments field.
- Note:** For ITG Specialists - If the General Welfare Exception (GWE) Moratorium is one of the reasons for survey, the narrative must include a statement the ITG Program Manager has approved the survey due to the GWE Moratorium.
4. Managers will document their review and approval of the survey closure on the RCCMS chronology tab.
5. Manager's comments will include any applicable Special Handling instructions as required.
6. To add a manual chronology entry, click on the Chronology tab and select the new chronology button. The untitled - chronology box opens and allows you to input various entries. Complete the required red asterisk fields. Click save and close to save your entry
- Note:** To have an electronic 100% paperless closing, the return must have been established using Return Requisition Code 3 - Return, Chargeout & Labels not requested. Additionally, the closing field on the General Tab of the Closing Record must be completed by selecting option 7 - Paperless Non-Examined.

4.70.12.3.11.1.1
(11-22-2023)

Surveyed Reason Codes

- (1) Use the following SRCs on the RCCMS Closing Record, General Tab, Survey Reason Code field for all surveys:

SCR	Description	Use when
A	No LUQ items	The main reason for the survey is: 1. classified issues don't exist and 2. the return contains no LUQ items..
B	No change in prior year	The main reason for the survey is that the same issues identified on the current year return were just as significant in any of the four preceding years and were no-changed or had a small tax change.
C	Beyond cycle (includes statute issues)	The main reason for the survey is based upon currency and/or statute considerations
D	Lack of resources	The main reason for the survey is due to a lack of resources. Managers should exercise due diligence, with their area manager's agreement, to assess whether they can reassign the return to another group/area before surveying it.

SCR	Description	Use when
E	Other	The main reason for the survey is other than A through D. Justification is critical as to the reasons why, therefore detailed statement is required.

(2) SRC A - No LUQ items:

- Include a clear and concise narrative statement on the RCCMS Closing Record, General Tab, Remarks and Comments (field is limited to 250 characters).
- Explain why we aren't examining the return. The justification is critical, so we can monitor and analyze trends as to why cases are being surveyed to improve our processes. A generic entry such as "survey" isn't acceptable.

Example: Include specific details as to why you have determined the classified issues doesn't exist. This will help in refining the workload selection process.

(3) SRC E - Other:

- Include a clear and concise narrative statement on the RCCMS Closing Record, General Tab, Remarks and Comments (field is limited to 250 characters).
- Explain why we aren't examining the return. The justification is critical, so we can monitor and analyze trends as to why cases are being surveyed to improve our processes. A generic entry such as "survey" isn't acceptable.

(4) Examples of "Other" category:

- Claim allowed in full.
- Auto-revocation: Organization auto-revoked while open for examination because of IRC 6033(j). EO BMF status 97 posted on [date]. The effective date of auto-revocation is [due date of return for 3rd tax year].
- During pre-examination research it was determined that the taxpayer has self-corrected the issue as reflected in subsequent years.
- CSP in place for the tax period assigned and case assigned for reclassification of same class of workers.
- Prior examination for reclassification and IRC 530 applies.
- Case assigned for potential Back-up withholding liability, but review of Form 1099-MISC show no missing TINs.
- IRE case assigned for unreported or underreported income tax withholding on per capita payments. Further analysis showed per capita payments are under IRC 3402(r) withholding requirements.

- (1) The goal of the examination plan is to further develop and refine identified issues and contact the taxpayer.

4.70.12.4.1
(11-22-2023)
**Elements of an
Examination Plan**

- (1) An examination is a review of a return, and supporting books and records, to determine compliance. It requires you to:
 - Fully consider classified (pre-selected) issues, and large, unusual or questionable (LUQ) issues, and
 - Address mandatory items (Required Filing Check).
- (2) Although every identified issue requires a written comment, only certain issues will require full development. Examiners apply scope and risk assessments to make that judgement with the approval of their manager. Perform an in-depth review only when:
 - Facts and circumstances warrant review (such as fraud, egregious non-compliance, undisclosed transactions, and certain training cases)
 - Identify LUQ's
 - Are otherwise directed
- (3) You may expand or contract the scope of any examination as deemed appropriate or necessary with your managers' concurrence.

4.70.12.4.1.1
(11-22-2023)
Scope of Examination

- (1) Determining the scope of your exam is the process of selecting issues and related returns that warrant examination. Establish the initial scope of your exam as part of completing your pre-contact analysis: review of the return and related returns, research IDRS and the internet, review of the case information coversheet, and review any applicable third party or supplemental documentation in the case file.
 - Thoroughly review the case information coversheet. Select issues after you've considered all items to determine compliance substantially and correctly with reasonable certainty. Document your assessment of classified issues for development potential after applying scope, risk and materiality parameters.
 - Use your professional judgment to set the scope of the examination. Document your decisions in terms of materiality, scope, and risk parameters.
 - Get your manager's agreement when setting the scope of the examination.
 - Adjust scope by meeting with your manager after your initial interview and review of books and records.
- (2) Work only issues of merit and conclude the examination when appropriate. Examining in the most efficient way and the degree to which you use examination techniques to verify an item's accuracy. Consider these factors when determining your exam scope:
 - The risk that the taxpayer has made material errors - either individual or collective. Consider this factor when you evaluate the taxpayer's internal controls.
 - The risk the exam tests won't uncover material errors. Consider the examination techniques you're using, the nature of the errors (intentional or unintentional), and the reliability of available evidence.

4.70.12.4.1.2
(11-22-2023)
**Scope Adjustment
Criteria**

- (1) Examiners and managers must consider these minimum criteria when determining how to conduct an exam and whether to expand or contract an exam's scope:
 - a. Reason exam was selected
 - b. Materiality of the issue (dollar amount, permanency, timing)
 - c. Impact on taxpayer compliance or taxpayer behavior
 - d. Risk analysis: resource requirements (costs) vs. expected return on pursuing (benefits)
- (2) Document the scope and any modification to the scope on the CCR.

4.70.12.4.1.3
(11-22-2023)
Risk Analysis

- (1) Evaluate tools needed (K-Net, IRAS, etc.), including whether you need to visit the site.
- (2) Definition of Risk Analysis; A subjective process which evaluates the potential benefits derived from examining an issue or a return, compared to the cost of resources required to perform the examination. The entity's or organization's internal control systems and the accuracy and reliability of their processes' are important items to consider when you complete a risk analysis.
- (3) Both the examiner and the manager are responsible for completing a risk analysis on every examination case. The level of the sophistication of risk analysis depends on the case's size and complexity and resources being considered for the examination. Depending upon the circumstances, this may range from notations in the case chronology record (CCR) to a formal risk analysis document.
- (4) There is no standard format for a risk analysis. However, risk analysis includes considering the following:

Key element	Description
Workpaper reference	This ties the risk analysis to the examination plan and/or workpapers.
Description of the LUQ	A brief, but clear description of the issue should be provided.
Materiality of the issue	An assessment of the various relevant materiality factors considered.
Estimated time of complete	An estimate of the time it may take to examine the issue.
Estimated completion time	The estimated date by which the examination of the item should be completed.
Prioritization	The prioritization of the LUQs, often from highest to lowest priority based upon materiality.
Decision to or not to examine an LUQ	A clear yes or no as to whether the issue is to be examined.

Key element	Description
Reasons for selection or non-selection of LUQ for examination	Comments and information on why an issue was or wasn't selected for examination. This is also an excellent place to provide any materiality thresholds that are to be applied to LUQs selected for examination.

(5) Risk analysis provides the follow benefits:

- Increased productivity
- Improved exam planning process
- Reduced cycle time
- Increased exam coverage
- Reduced taxpayer burden

(6) Consider these factors, which include:

- Fraud potential
- Materiality
- Collectability
- Corollary effect of adjustment (e.g., whipsaw, NOL, related returns)
- Compliance impact (e.g., strategic or emerging issue)
- Type of adjustment (permanent or timing)
- Accuracy of books and records
- Hours required

(7) Determine if you'll need specialists such as an actuary, computer audit specialist, valuation specialist, or international specialist and submit SRS request if applicable.

(8) Determine if an examination of financial records is required. If so, request in your initial IDR, the Quickbooks/Sage backup file if organization is using that software.

(9) Risk Analysis Techniques:

- a. **80/20 Concept:** The goal of any examination is to determine compliance and/or the substantially correct tax liability. The "80/20 concept" is "value-added" decision making that weighs the impact of our decisions (potential results) with our investment of additional case time (cost). Apply the 80/20 concept throughout the exam to reevaluate the examination scope. Consider the facts and circumstances, evaluate internal controls, and use professional judgment to determine whether to expand or contract the scope. Document the reasons for expanding or contracting the scope on the case chronology record (CCR) (Form 9984, or Form 5464).
- b. **Mid-Exam Decision Point (50% Rule):** This refers to performing a risk-based analysis of the examination at its mid-point. Determine the mid-point of the examination based on the number of issues classified/identified or the number of hours you've spent. At the mid-point of the examination, determine whether to examine the remaining classified/identified issues based on the facts and circumstances, evaluating internal controls and your judgment.

Example: If the resulting additional tax or change isn't expected to be material, or your time to develop additional issues isn't justified, based on the potential for additional tax, you might decide not to examine that issue.

4.70.12.4.1.4
(11-22-2023)

**Bond Redemption
During Examination**

- (1) If an issuer redeems 100% of the outstanding principal amount of the bonds during an exam, consider closing the exam without further action if your group manager concurs and obtains written approval from the PM.
- (2) Factors for consideration in whether to close the examination pursuant to this subsection:
 - What are the reasons for noncompliance?
 - Is the transaction abusive?
 - Were interested parties involved in aspects of the transaction that resulted in noncompliance?
 - Were reasonable steps taken by the issuer/borrower to ensure compliance with the law?
 - Did the issuer/borrower take steps to self-correct prior to the start of the exam?
- (3) If your manager concurs and the PM approves closing the case pursuant to this subsection, and you have a basis to conclude that the bonds **do not** comply with the law:
 - a. Issue Letter 5859, Full Bond Redemption - Compliance Issue Identified.
 - b. Report the Principal amount of bonds redeemed and the present value of the tax on the interest that would have accrued on the bonds to their stated redemption date in the RCCMS closing record.
 - c. On RCCMS, use disposal code 115, Full Bond Redemption Without Agreement, and ARDI Code 1-Fully Paid.

Note: There may be circumstances that warrant referring a bondholder or other party to the transaction to another business unit under current referral procedures. Consider, among other factors, whether the bondholder holds a significant amount or percentage of the bonds. Consult your manager to determine if a referral is warranted.
- (4) If your manager concurs and the PM approves closing the case pursuant to this subsection, and there is no indication that there is a compliance problem with the bonds:
 - a. Issue closing letter (Letter 6089, Examination Closed - No Change).
 - b. Close on RCCMS with disposal code 107, No Change.
- (5) Close on RCCMS with disposal code 107, No Change:
 - The bonds are redeemed with other tax-advantaged bonds.
 - The bonds are direct pay bonds.
 - The issuer did not make appropriate rebate payments on the bonds.
 - The issuer asks to negotiate or enter into a closing agreement.

4.70.12.4.2
(11-22-2023)
**Revising the
Examination Plan**

- (1) Use risk-based decision making throughout your examination. At a minimum, consider it during these parts of your examination:
 - During the pre-contact analysis
 - At the midpoint (50% rule)
 - When a significant event occurs

4.70.12.4.3
(11-22-2023)
**Materiality/Significance
of an Issue**

- (1) Materiality is a relative, not an absolute, concept for the significance of an amount, transaction or discrepancy.
- (2) The definition of “significant” or “material” depends on your evaluation of a return as a whole and the particular items that make up the return. However, you must consider the following factors when determining whether an item is significant:
 - Comparative and/or absolute size of the item
 - Inherent character of the item
 - Evidence of intent to mislead
 - Beneficial effect of the way an item is reported
 - Relationship to other item(s) on return
 - Permanency of the potential adjustment
 - Comparative multi-year analysis
 - Promotion of future voluntary compliance

4.70.12.4.4
(11-22-2023)
Issue Code Data Grid

- (1) Get your manager’s concurrence of exam plan through the RCCMS Issue Code Data Grid. The Issue Data Grid:
 - a. Helps TE/GE track the development of examinations and specific compliance issues from when the case is selected in CP&C through the entire examination process.
 - b. Ensures a consistent level of manager involvement in the process of making key decisions during our examinations. Those decisions include, but are not limited to, establishment and/or revision of the exam plan and modifications to the scope.
- (2) Review issue codes entered by CP&C as a classified (i.e. pre-identified) issue, if any.
 - a. If you determine there’s no proposed change for the classified issues during the planning phase, then input a “0” in the dollar amount or percentage of overall impact columns and check the issue closed box.
- (3) If you identify additional/new issues, input the new issue code, and request manager approval as soon as the issue is identified. The Issue code list is published in functional computer systems codes books (Docs 6379, 6476, 11308). The following steps need to be taken to enter an issue in the RCCMS data grid.

4.70.12.5
(11-22-2023)
Workpaper Development

- (1) This section provides guidance on developing workpaper content, format, organization, and case file documentation. Examiners should generate workpapers from the start to the finish of an examination, and the workpapers should be prepared contemporaneously. Record your actions as soon as you take them.

- (2) The workpapers consist of correspondence to and from the taxpayer/representative, standardized forms (such as the CCR, Workpaper Summary/Examination Workpaper Index, etc.), leadsheets, (if completed according to IRM 4.70.12.5.2, Workpaper Format) examiner generated supporting workpapers, and when appropriate, copies of documents, records or other materials secured during the examination.
- (3) Workpapers should be clear, concise, legible, organized, labeled, dated, indexed and cross-referenced. Quality workpapers have the following characteristics:

Workpaper Quality	Action
Accurate	Use the RGS system for adjustments to Forms 1040 and 990-T, and SB/SE employment tax Excel templates for employment tax assessments.
Legible	Generate all workpapers electronically, as they can be imported into RCCMS. Handwritten workpapers, while still permissible, are required to be legible to other readers. Scan (or digitally photograph) these workpapers to import them into RCCMS.
Clear	Note all steps taken to explain how the conclusion was reached.
Concise	Write concise entries in the CCR and Workpaper Summary/Examination Workpaper Index. If an entry requires in-depth explanations, document the explanation on the workpaper for the applicable issue or create a separate workpaper and index it.
Organized	Assemble case files appropriately.
Properly Labeled	Use the TE/GE RCCMS Naming Convention, see IRM 4.70.12.5.2(4), Workpaper Format and TE/GE RCCMS Naming Convention.
Professional	Avoid prejudice, bias, or animus in any statements concerning any organizations or individuals. The organization can request a copy of the examiner's workpapers through the Freedom of Information Act. Additionally, a court review of the workpapers and other IRS employee statements which are part of an administrative file could result in a finding against the IRS.

- (4) Workpapers prepared electronically are generally prepared in Microsoft Word (Word), Excel, or Adobe.
- Word is generally used when preparing workpapers that will mostly contain text.
 - Excel is used when preparing workpapers that include calculations.
 - Adobe is used when pro-forma forms are being used or when other electronic files are to be attached as a comment to the workpaper.

- (5) To make sure RCCMS case files are correct and up to date, post your workpapers and taxpayer provided documents in electronic format in RCCMS within seven (7) workdays of creation/receipt. Complete workpaper updates within RCCMS during the exam. Any subsequent changes to workpapers and documents in RCCMS will be completed using the system check-out/check-in functionality.

Note: There are circumstances that may require an employee to be given more time to upload and synchronize their files. If the employee needs additional time, then he/she should request it from his/her manager in accordance with the MOU.

- (6) Paper documents deemed relevant for the compliance activities should be converted to an electronic format using current technology as soon as possible, but no later than seven (7) workdays after receipt. Once converted to an electronic format, store the documents in the RCCMS Electronic Case File.

Note: There may be extenuating circumstances where you're in the field or on approved leave and can't convert the documents timely. In those instances, you should notify management that additional time is needed, and Timelines should be extended for at least an equal amount of time that the circumstance(s) exist.

- (7) Once you scan the paper documents and add them to the RCCMS Electronic Case File, you can properly destroy the originals. This includes taxpayer and Service signed documents.
- Ensure the scanned documents are legible and contain the entire paper documents.
 - Before destroying any originals, confirm that you uploaded the electronic document into RCCMS and synced to the central server successfully.
 - Note this action in the CCR.
 - Securely dispose of the paper documents in designated shred bins (IRM 10.5.1, Privacy Policy).

Note: Counsel's position is that an electronic copy of an original signature document is admissible evidence if needed in litigation.

- (8) Workpapers are used to:
- a. Document the pre-contact analysis (such as an analysis of internal documents and other research) completed to plan the examination.
 - b. Substantiate the examination's scope. Verify examination issues listed on the return classification record. If the issue was selected in error, or the issue will not be developed, note this on your workpapers, based on the facts found during the examination.
 - c. Record the evidence of the documents and information secured and reviewed, procedures completed, tests performed, and analyses conducted during the examination.
 - d. Provide support for technical conclusions and preparation of the RAR.
- (9) Workpapers also provide a basis for:
- a. Managerial and technical reviews.
 - b. Submitting cases to Appeals.
 - c. Preparing technical advice requests.

- d. Possible use in a court of law. Such as becoming a part of the administrative record, if shared with the organization, in the event the case is litigated.
 - e. Potential reviews by the Taxpayer Advocate Service or the Government Accounting Office.
 - f. Providing a source of information for subsequent year examinations.
- (10) Each case folder should have its own Workpaper Summary/Examination Workpaper Index, CCR, supporting workpapers and copies of correspondence to and from the taxpayer/representative.
- a. If there are multiple types of returns or tax periods in the same case folder in RCCMS, only one set of forms per folder is necessary.
 - b. If you examine multiple types of returns and have them established in separate case folders in RCCMS, or will be closing related returns separately, then you must have separate workpapers in each case folder.
 - c. Prepare a separate set of workpapers for each plan examined and for each type of related return examined. For example, if both plan #001 and plan #002 are examined and Forms 5330 related to each plan are also examined, you must prepare four sets of workpapers.

4.70.12.5.1
(11-22-2023)

**Workpaper Summary
and Examination
Workpapers Index**

- (1) Form 5773 EO Workpaper Summary, Form 5773-A Employee Plans (EP) Workpaper Summary, Form 4318, Examination Workpapers Index (for FSL/ET and ITG cases), and Tax Exempt Bond Workpaper Summary ("TWS", also known as the Pushpin Workpaper) are vital elements of the entire examination process. Use these forms as a cover sheet to:
- Provide summaries of the planned actions (pre-contact comments),
 - Record the procedures performed,
 - Discuss findings reached,
 - Document examination conclusions, and
 - Index/Reference the workpapers
- (2) Complete the relevant sections of the workpaper summary or index as you complete each workpaper. If you later revise the workpaper, update the summary or index to make it consistent with the workpaper.
- (3) The workpaper summary is not a substitute for administrative workpapers or supporting workpapers to document the identification, development and resolution of selected examination issues.
- (4) For EO & EP complete Form 5773 or as follows:

Section	Enter / Complete
Header	Complete all fields, such as: <ul style="list-style-type: none"> • name of the organization, plan sponsor, or the taxpayer • Taxpayer Identification Number (TIN) • Tax Years • Form • Disposal Code & Description • Letter

Section	Enter / Complete
Main Body / Subsections: <ul style="list-style-type: none"> Form 5773, Sections A – L Form 5773-A, Sections A – L 	<p>The table that makes up the main body of the Form 5773 and Form 5773-A is split into four columns:</p> <ol style="list-style-type: none"> 1. The workpaper index, 2. The items to be verified, 3. The examination conclusions, and 4. Workpaper/References. <p>Each section of the main body of the Form 5773 and Form 5773-A contains pre-contact comments in each examination topic.</p> <ol style="list-style-type: none"> 1. If blank, add proposed pre-contact comments on planned examination procedures. 2. If comments are listed, revise the comments, as applicable, to the type of examination, entity, and/or issues you expect to encounter. <p>Caution: When using a pro forma pre-contact plan developed for organizations exempt under a specific IRC section, customize the pre-contact for the organization and return under examination.</p> <p>In the subsections of Form 5773 and Form 5773-A, summarize the procedures you took and conclusions reached and have fully documented in a separate workpaper. Sometimes, you may not have a separate workpaper, as the findings may be summarized in a single sentence.</p> <p>Caution: Do not use Form 5773 or Form 5773-A in lieu of a workpaper when you've performed an in-depth process. Generally, if the summary takes more than five brief sentences, include a separate workpaper in the file.</p> <p>Note: If an examination subtopic doesn't apply, enter "Not applicable" or "N/A" in the blank examination conclusion cell and explain briefly why it's not applicable.</p>
Workpaper/Reference	Use the fourth column to reference workpapers using an index.

- (5) For TEB, the Tax Exempt Bond Workpaper Summary ("TWS") serves as the organizing case file document for TEB examination cases.
- The TWS is an Adobe portable document file (PDF) template used to organize electronic case file documents.
 - You may attach electronic documents to the TWS file, such as Work Excel or other PDF files. Attach them by using a pushpin or paperclip icon.

- c. Using these icons on the TWS template allows electronic case file documents to be organized within five basic sections: Case Identification; Return Information; Case History; Examination Conclusion; and Examination Documentation.
- d. While the TWS and all attached files are organized into a single PDF electronic file, the individual documents and workpaper files retain their original file characteristics.
- e. The TWS is designed as a working tool for: Pre-examination planning, setting the scope of the exam, using as an audit plan during the examination, and presenting supporting workpaper materials in order.
- f. A single TWS may include 100 or more attached files including: a PDF copy of the return, Form 2848, Case Chronology Record, correspondence, Information Document Requests, closing letter, closing agreement, Form 5701-TEB, the Proposed Adverse Letter, referrals, and examination workpapers describing: the exam scope, procedures, work performed, documentation obtained and conclusions reached.

4.70.12.5.2
(11-22-2023)

**Workpaper Format and
TE/GE RCCMS Naming
Convention**

- (1) Examiner's workpapers format can vary. However, generally, each workpaper generated by the examiner has the following:

- A heading.
- A body and conclusion.
- An index and file name.

- (2) Every schedule and workpaper in the case file should contain the following information in the heading:

- Taxpayer's name.
- Subject heading.

Note: The subject can match a subsection title (item to be verified) from the Form 5773, 5773-A or Form 4318, or can identify an account or item examined.

- Form number.
- Year examined.
- Examiner's initials (or name) and date prepared.

- (3) State in the body of the workpaper the examination steps and techniques you performed. Document the tests performed, procedures applied, and/or oral testimony received.

- a. Include in the body of the workpaper any analysis of issues.

Example: When developing a case for assessing unrelated business income tax, the examiner's workpaper is titled Unrelated Business Income Computations. In the body of the document, the examiner identifies the taxable revenues and related expenses, computes allocations of overhead expenses that are used for both exempt and non-exempt purposes and calculates the total tax due.

- b. Include in each workpaper, a conclusion summarizing the issue or line item verified and state what action, if any, is needed. If you have multiple workpapers for an issue or line item, state the conclusion on the last workpaper.

- (4) Index all electronic case file documents with a file name that starts with numbers 1 – 7.

RCCMS file name	Types of documents
1. FILE NAME	Cover documents - This includes special handling notices, transmittal documents, reviewer's memos, and responses to reviewer's memos. If there is a paper case file, include those documents on the front outside of the case file folder and transmittal documents.
2. FILE NAME	Non-disclosure/administrative documents and check sheets - This includes internal administrative documents, referral documents, case check sheets, and other miscellaneous forms or documents not indexed to the workpaper summary sheet in the workpaper section, etc. If there is a paper case file, include those documents on the left inside of the case file folder. Note: Do not include whistleblower documents in RCCMS and continue to maintain them separately from the examination case file (paper or electronic)
3. FILE NAME	Closing letter and/or RAR and attachments - This includes closing letters, 30-day letters for unagreed cases, taxpayer protests to Appeals, rebuttals to protests, closing agreements, and all attachments to the closing letter and/or revenue agent report (RAR) (e.g., Forms 4549, 4549-E, 2504, 886-A, 870, etc.). Note: If there is a paper case file, include those documents on the right inside of the case file folder.
4. FILE NAME	Working return, POA, statute extensions, remittances, and related documents - This includes an original return/RICS return under examination, taxpayer's copy of return, substitute for return package (SFR), dummy return, Forms 2848/8821, statute extensions (Forms 872, SS-10, etc.), Form 3244-A, current IDRS prints (within 30 days of closure), etc. If there is a paper case file, include those documents on the right inside of the case file folder after the closing letter and/or RAR.

RCCMS file name	Types of documents
5. FILE NAME	CCR/activity record, workpaper summary, and case file workpapers - This includes the case chronology record (CCR), workpaper summary and all workpapers referenced on the workpaper summary sheets (Forms 5773, 5773-A, 4318 and TEB's workpaper summary document). Your internal correspondence/ emails with your manager, Counsel, K-Net and specialists go here. If there is a paper case file, include those documents on the right inside of the case file folder after the working return documents.
6. FILE NAME	<p>Correspondence with taxpayer/representative - This includes your correspondence to and from the taxpayer/representative, information document requests (IDRs), taxpayer documents, summons, etc. The correspondence files named in chronological order (e.g., "6.01", "6.02", "6.03", etc.).</p> <p>Example: Name an initial contact letter and IDR file "6.01.L6031" and "6.01.F4564 IDR# (Date issued)", and name your follow up letter and/or IDR "6.02.File Name". If the taxpayer/representative provides a response to the letter or IDR, save their response and any attachments as "6.03.File Name". If the taxpayer provides correspondence that is not tied to a specific IDR, then name the file with the next chronological number (e.g., "6.04.File Name", "6.05.File Name", etc.) If there is a paper case file, include those documents on the right inside of the case file folder after the workpapers. As noted above, closing letters, unagreed 30-day letters/RARs, protests to Appeals and rebuttals to protests go in section 3.</p>
7. FILE NAME	Administrative record (for EO and EP only) - This is the administrative record for EO and EP cases, where applicable. If there is a paper case file, those documents are kept in a separate paper case file folder.

- a. For TEB only – You may continue to attach electronic documents on the TWS file using the pushpin or paperclip icon, on the Tax Exempt Bond Workpaper Summary (TWS) per IRM 4.70.12.5.1(4) Workpaper Summary and Examination Workpapers Index.

- b. There are circumstances when you may need to rename a file to organize the files appropriately within an index section. You can modify the file names, as long as the name starts with numbers 1 – 7, as described above. When you need to name a file not listed in the RCCMS documents, or when needing to rename a file because it makes more sense in a different section for certain situations, then use the index numbers 1-7 as described above. For example, there might be a letter currently named “6.FILE NAME”, but if it ends up being the closing letter or an unagreed 30-day letter, then rename it as “3. FILE NAME”.
- c. Best Practice: Use the sub-folders in Office Documents or Case File Documents to organize the case file documents in RCCMS. Refer to the RCCMS Comprehensive Course Guide (rev. 07_15), pages 6-24 through 6-38.
- d. Index all workpapers. Use an index reference on the supporting workpapers that matches the Form 5773, 5773-A or 4318.

4.70.12.5.3
(11-22-2023)
**Content of Supporting
Workpapers**

- (1) The examiner’s workpapers document the examination trail and support the conclusion of the examination. The workpapers must include the following:
 - a. Descriptions of the issues identified during the planning phase or the execution phase.
 - b. Evidence or information gathered to develop the issues.
 - c. A list, or copies when appropriate, of the taxpayer’s records and source documents reviewed. Be specific as to what records you reviewed and maintain copies of applicable source documents as supplemental workpapers if there is a proposed change.
 - d. Documentation of examination procedures and techniques applied you used to develop and resolve identified issues (such as summaries of taxpayer interviews, tests performed, sampling, review of minutes, analysis of financial statements, etc.).
 - e. Documentation of actions taken.
 - f. Relevant portions of the IRM.
 - g. Tax law research supporting legal authority for conclusions reached.
 - h. Conclusions reached.
- (2) Explain any large, unusual or questionable items appearing on the return which might raise doubt to the accuracy of the information reported. If you initially conclude that a change or adjustment is required and the taxpayer supplies further information that changes your conclusions, provide an explanation in the workpapers.
- (3) When changes are necessary, record the details to substantiate the changes and the actions you took. Explain the circumstances when there was a change, but no corrective measures were taken.
- (4) The work you do is subjected to the Freedom of Information Act (FOIA) and open to public scrutiny. Keep workpapers free of personal feelings about taxpayers, managers, co-workers, and others. Your workpapers should be unbiased, professional, accurate, and ready for scrutiny at any level. Your workpapers belong to the public and are official agency records under the law. Use judgement in determining workpaper content. Every workpaper in the file should have some relevance to accomplishing the examination plan.
- (5) It’s rarely necessary to have a large amount of transcriptions of minutes or governing instruments in your file. Prepare a brief description of the information

in the governing instruments, minutes, etc. Documents can be scanned and saved as supporting documents, if necessary.

- (6) During the Appeals process, conferences are usually held without the examiner being present to explain and substantiate the findings. The workpapers are the proper place for recording and clarifying all that the examiner knows about the issue(s).

4.70.12.6
(11-22-2023)
**Case Chronology
Content**

- (1) Include on the CCR all direct examination time charged to the case. The time must agree with the direct examination time as reported on WebETS. When you are ready to close the case, reconcile the total time on the CCR and WebETS to the total time on the official closing record.
- (2) Include in the CCR, at a minimum, the following entries for work completed prior to initial taxpayer contact:
 - a. Date you received the case.
 - b. Date(s) of pre-contact planning activities.
 - c. Date you put the case in status 12 on AIMS.
 - d. Date(s) research is conducted and reviewed or is requested, received, and reviewed, including the source of the information (e.g. IDRS, AIMS, Accurint, internet, etc.).
 - e. Dates of contacts or conversations with the organization's contact persons, representatives, or third parties and their phone numbers.
 - f. Date you mail initial contact letter, initial IDR, and other applicable enclosures, such as the Pub 1, Your Rights as a Taxpayer, Notice 609, Privacy Act Notice, Pub 3498, The Exam Process, or Pub 5146, Employment Tax Returns, Examination & Appeal Rights.
 - g. Appointments or conferences scheduled, including the date, location, time and contact names.
- (3) See IRM 4.70.11.2.4 Case Chronology Record CCR and Examining Officer's Activity Record (EOAR), for additional information about what should be documented on the CCR.

4.70.12.7
(11-22-2023)
Contacting the Taxpayer

- (1) Employees working tax related inquiries must provide taxpayers with information to identify the appropriate employee who can address any further questions (RRA section 3705). See IRM 4.70.11.8 Communication with the Taxpayer or Representative, for procedures to follow when contacting the Taxpayer.

4.70.12.7.1
(11-22-2023)
**Initial Contact Letter and
Initial IDR**

- (1) The initial contact is the first contact with the taxpayer after the pre-contact analysis. The initial contact notifies the taxpayer of the examination.
- (2) Your initial contact with the taxpayer must be in writing using Letter 6031, TE/GE Opening Examination Letter.

Exception: For employment tax examinations, examiners will use the approved initial contact letters provided for your function (Letter 3850 series).

Caution: **DO NOT** make first contact in any other form. **DO NOT** call the taxpayer before sending Letter 6031 or 3850 and wait at least 10 business or 14 calendar days, whichever is longer.

4.70.12.7.1.1

(12-01-2022)

Preparation of Letter 6031, TE/GE Opening Examination Letter or Letter 3050 (employment taxes) Initial Appointment Letter

- (1) In preparation of Letter 6031 or Letter 3850 initial appointment letter:

- a. Address the letter to the taxpayer or issuer at the last known address. Unless another reliable source is available, get an INOLES print to determine the taxpayer's last known address.

Note: (ITG) Examiners should identify the tribal leader (chairman, president, chief) for the tribe or tribal entity and mail the initial contact letter to the tribal leader at the taxpayer's last known address. If a tribe has a particular protocol, they have designated for IRS contact, you must follow that protocol. This may mean that the initial letter will be mailed to someone other than the tribal leader.

- b. List the date as the date it's mailed to the taxpayer.
- c. List forms and years covered under examination.
- d. Include your and your manager's contact information.
- e. Select and/or fill the reference line pertaining to your examination.

EP	Plan name, Plan number, Plan years ended
EO/FSL	Entity name
ITG	Tribe name
TEB	Bond Issue (formatted as \$[Par Amount], [Issuer's Name] [Type of Bonds] ([Project N]), [Series], dated [Dated Date] and issued [Issue Date], including CUSIP [CUSIP Number of the last maturity])
Other	Taxpayer name

- (2) For Letter 6031, select the "selectable paragraphs" that pertain to your examination. This includes options to specify:

- a. The date, time and location of the examination.

Note: As a best practice, set a scheduled appointment in Letter 6031. IRC 7605(a) gives the IRS the authority to set the time and place of the examination under reasonable circumstances. Field examinations are normally conducted at the taxpayer's place of business or where the books and records are maintained. Consult your manager when you find it appropriate to set the appointment after initial contact is made with Letter 6031. Document your CCR with this consultation.

Note: Examinations done through correspondence may have a set date and time for a follow-up phone conversation. If not, you may list the response date on the front of Letter 6031 to match the date you list as due on the initial IDR.

- b. An IDR is enclosed.
- c. Enclosed documents for either field or correspondence examinations.
- d. Items for specific TE/GE functions.

- (3) Ensure all enclosures are listed:

- a. Pub 1, Your Rights as a Taxpayer

- b. Notice 609, Privacy Act Notice
- c. Pub 3498, The Examination Process (field exams) (optional)
- d. Pub 3498-A, The Examination Process (correspondence exams) (optional)
- e. Pub 4324, Employee Plan Examination Process (EP exams) (optional)
- f. Pub 5146, Employment Tax Returns: Examinations and Appeal Rights (employment tax exams)
- g. Pub 5295, Secure Messaging for Tax Exempt and Government Entities. See IRM 4.70.11.8.4.1, Taxpayer Digital Communication Secure Messaging (TDC SM)
- h. Information Document Request(s)

Note: Do not send a copy of the publications or notice to any representatives.

- (4) If research indicates a valid power of attorney is on file, mail the proper initial contact letter to the taxpayer and a copy of the letter to the representative with Letter 937-A, TE/GE Transmittal of Information to Power of Attorney. Save Letter 6031 or 3850 initial appointment letter, and enclosures in RCCMS per the RCCMS Naming Convention and if applicable to the appropriate subfolder for your function.
- (5) Document your CCR for generation and mailing of Letter 6031 or 3850 initial appointment letter, and enclosures to the taxpayer and any valid power of attorney. Make note of appointment date, location and time if indicated in the letter.

4.70.12.7.1.2
(11-22-2023)
**Initial Documentation
Request**

- (1) As a best practice, mail your initial Information Document Request (IDR), Form 4564, with Letter 6031 or 3850 initial appointment letter. Consult your manager if you find it may not be appropriate to send the initial IDR with Letter 6031 or 3850 for a specific examination. Document the consultation in your CCR.
- (2) Generate the initial IDR by following procedures in IRM 4.70.11.9.1, Preparation and Discussion of the Initial IDR.

4.70.12.7.2
(11-22-2023)
**Follow-Up to Initial
Contact Letter**

- (1) After mailing initial contact letter, call the taxpayer or designated representative:
 - a. No earlier than ten business days after the Letter 6031 or Letter 3850 (for employment tax) is mailed, and
 - b. No later than fifteen business days after the letter is mailed.

Note: The taxpayer must be given ample time to receive the letter before the examiner calls to discuss the examination.
- (2) Whether the taxpayer contacts you or you call following the appropriate waiting period, ensure to provide the required information in IRM 4.70.11.8.1 Employee Contact – RRA Section 3705, and determine the person you are speaking with is authorized to receive and discuss confidential information. The individuals who have authority to receive confidential tax information include:
 - a. A current officer of a corporation, association, tribe, government entity or organized group has authority under applicable state law to legally bind the entity.
 - b. A fiduciary, for example, a trustee or receiver.

- c. An individual, usually a director, officer, or an employee of the entity specifically authorized to bind the entity in accordance with the entity's organizing document, a resolution, or other legally binding document.
- d. An individual who has a valid POA or TIA on file with the Service for the type of return and years included in the examination. See IRM 4.70.11.10 Power of Attorney (POA) and Tax Information Authorization (TIA).

Note: If the person contacted doesn't have the proper authority to receive confidential tax information, limit the conversation to determining the name and phone number of an individual who does have authority. The questions asked and responses received must be document in the workpapers.

Note: If you cannot determine if the individual has authority to receive confidential tax information, generally a written statement by the individual, on stationary bearing the taxpayer's letterhead, stating he or she has the authority to legally bind the taxpayer is sufficient to permit disclosure.

- (3) If BMFOLT and/or CFINK indicates a valid POA, you normally must contact the representative before you call the taxpayer.
- (4) Plan to discuss the following items during the first phone contact with the taxpayer or POA after mailing the initial contact letter:
 - a. Verify the taxpayer's receipt of Publication 1 and Notice 609.
 - b. If conducting an employment tax examination, verify the taxpayer's receipt of Publication 5146.
 - c. Briefly describe the rights discussed in Publication 1 and Notice 609 and respond to any questions.
 - d. Briefly describe the examination process and inform the taxpayer and/or representative of the resolution options available for unagreed cases (e.g., managerial conference, Fast Track Settlement, formal appeal, right to petition the United States Tax Court, etc.).
 - e. Document the confirmation of receipt of Publication 1, Notice 609, and Publication 5146 if applicable, and the discussion held with the taxpayer and/or representative on your CCR.

Note: Do not send a copy of the publications or notice to any representatives.

Note: You may also document the confirmation and discussion in any initial interview workpapers.

- f. **Field examinations** - The appointment date, time and place. If you inserted a date, time and location on Letter 6031 or Letter 3850 (employment tax), confirm the taxpayer will be available with the requested documentation. If not, work with the taxpayer to schedule the initial appointment, approximately 30 to 45 days from the first contact. Specific circumstances documented in your CCR may be acceptable to allow up to an additional 45 days. If the taxpayer or representative attempts to further postpone the appointment, discuss with your group manager.
- g. **Correspondence examinations** - The response date for correspondence examinations. Confirm the taxpayer will be able to provide the requested documentation to you by the response date stated on Letter 6031 or Letter 3850 (employment tax). If not, work with the taxpayer to

determine a reasonable date allowing up to an additional 45 days. If the taxpayer or representative attempts to further postpone the appointment, discuss with your group manager.

- h. The examination process.
- i. The scope of the examination. Identify returns being examined and tax periods involved..
- j. Type and location of books and records to ensure the initial appointment is in a location which you will be able to receive and review requested documentation. Determine if they use electronic records and how you may receive the responses in electronic form. **(EO)** Determine if they use electronic accounting systems (QuickBooks, Quicken, etc.) and if are able to provide a backup or working copy.
- k. The taxpayer's business activity and familiarity with applicable tax law in order to help you and the taxpayer identify specific documentation to meet requests.
- l. The items requested in the initial IDR to be sent ahead of the initial appointment and those to be provided on-site. Be ready to revise the IDR if needed as a result of this conversation.
- m. Type of questions to be included in the initial interview. Identify the person(s) to be present at the initial interview. Schedule a phone or other electronic interview for correspondence examinations.
- n. Whether the taxpayer plans to secure representation. If so, a form 2848 will be required. If they plan to permit someone to obtain their tax information from the IRS without representation, then a Form 8821 is needed. Allow the taxpayer a minimum of 10 business days to secure a representative before taking any follow-up action to schedule the appointment. See IRM 4.70.11.10, Power of Attorney (POA) and Tax Information Authorization (TIA).

Caution: The examiner should not ask questions during this initial conversation as this may give the impression of attempting to by-pass a representative. See IRM 4.10.3.3.7.2, Request for Representation - Suspension of Interview.

- o. Inform the taxpayer or representative that a letter confirming any scheduling or IDR changes will be mailed to them.
 - p. Document the invitation to use TDC SM and the taxpayer's and their representative's response in the CCR.
 - q. Answer any questions the taxpayer or representative may have.
 - r. **(ITG)** Establish a communication agreement with the tribe. It may be in writing but doesn't have to be. Each tribe has different protocols for handling examinations and correspondence. Document this information in the file. Recognize the government-to-government relationship of federally recognized Indian tribes with the Federal Government. If you don't establish a communication agreement, confirm with the tribal leader who should receive original correspondence and who should receive copies.
- (5) Keep in mind that examiners are not authorized to assure taxpayers that their books and records will be used solely for civil purposes.
- a. If a taxpayer insists on an assurance or provides a statement that their books and records are only being made available for limited purposes, determine the taxpayer's reasons for refusing to furnish the records without restriction.
 - b. Document the taxpayer's response in the CCR record.

- c. If a taxpayer or authorized representative asks if fraud is being considered, the IRS has a duty to respond if not answering the inquiry would be intentionally misleading.
- d. Your response must include a statement that fraud is considered in every case and we must fully develop every issue to ensure that any proposed tax and penalty adjustments are justified.
- e. Your response must also include a statement that we share information between civil and criminal authorities when indications of fraud are identified.

Note: If you deceive or mislead a taxpayer, the criminal fraud case may be jeopardized.

- (6) If both the taxpayer and the representative claim they didn't receive the initial contact letter:
 - a. Secure the organization's correct address.
 - b. Resend a copy of the initial contact letter and attachments to the correct address.
 - c. You can resend by faxing the letter and attachments if they are willing to accept the fax.
- (7) If there is, in view of all known factors including the taxpayer's refusal to furnish records, an indication that fraud may exist:
 - a. Discuss the fraud indicators and a possible fraud referral with your group manager.
 - b. Do not propose any type of civil settlement prior to discussing the issue(s) with your manager. A civil proposal jeopardizes criminal prosecution.
 - c. If your manager concurs, contact your functional Fraud Subject Matter Expert (Fraud SME) or the TE/GE Fraud Specialist.

Note: See the *Fraud Contacts* link on the on the TE/GE Home Page. See IRM 4.70.13.12, Fraud and Abusive Transaction Procedures for procedural guidance.

- (8) Document the conversation including all actions, questions and changes to appointments in your CCR and save in RCCMS.

4.70.12.7.3
(11-22-2023)
**Power of Attorney and
Tax Information
Authorization**

- (1) If at any time a taxpayer requests an examination be conducted with a person who doesn't have the authority to receive confidential tax information, request them to send proper authorization before you discuss any confidential tax information with the designated individual.
 - a. A Power of Attorney (POA) authorizes the designated individual to represent the taxpayer in certain circumstances. Form 2848 Power of Attorney and Declaration of Representative is the standard IRS form to designate a POA.
 - b. A written or verbal Tax Information Authorization (TIA) authorizes the designated individual to receive or inspect the taxpayer's tax information, but it doesn't authorize the designated individual to represent the taxpayer before the IRS. Form 8821 Tax Information Authorization is the standard IRS form to designate a TIA.

Note: See IRM 4.70.11.10, Power of Attorney (Form 2848) and Tax Information Authorization (Form 8821) for required information and procedures.

4.70.12.7.4
(11-22-2023)
**Power of Attorney
By-Pass Procedures**

- (1) IRC 7521(c) states that an examiner, with the approval of the group manager, “may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an IRS examination or investigation of the taxpayer.”
- (2) If taxpayer notification does not resolve the delays, the procedures to by-pass the power of attorney (POA) permit the examiner to contact the taxpayer directly and to request any information necessary to complete the examination. See IRM 4.70.11.11.8, By-Pass Procedures.

4.70.12.7.5
(11-22-2023)
Third Party Contacts

- (1) IRC 6103(k)(6) provides that IRS employees may disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected.
- (2) IRC 7602(c) stipulates that IRS personnel may not contact third parties with respect to the determination or collection of the tax liability without providing reasonable notice in advance to the taxpayer that contact with persons other than the taxpayer may be made. IRC 7602(c) also requires IRS personnel to maintain a record of such contacts and provide taxpayers with this record upon request.
- (3) Generally, third party contacts are made whenever the IRS is unable to obtain or to verify the accuracy of the information received from the taxpayer/representative. However, employees should make every effort to first obtain information from the taxpayer/representative.

Note: See IRM 4.70.11.11, Third Party Contacts for guidance.

Exhibit 4.70.12-1 (11-22-2023)
EO Filing Check Guidance Table

Return Categories (including prior/subsequent year returns)	Filing Check Requirement (regardless of exam scope)
Form 990, 990-EZ, or 990-N (not a return) for all exams of IRC 501(c), 4947(a)(1) and 527 organizations. Form 990-PF, only for exams of private foundations Form 990-BL, only for exams of IRC 501(c)(21) trusts Form 5227, only for exams of IRC 4947(a)(2) split interest trusts Form 1065, only for exams of IRC 501(d) religious and apostolic associations	Always Required)*
Form 990-T, for all exams of IRC 501(c) organizations and government-owned colleges and universities. Form 1120, only for exams of taxable private foundations (PFs) Form 1041, only for exams of IRC 4947(a)(1), IRC 4947(a)(2) charitable lead trusts, taxable PFs (trusts)	
Employment Tax Returns and Withholding (Forms 940, 941, 944, 945 and 1042)	
Information Returns (Forms W-2, W-2G, 1042-S, 1094-B, 1094-C, 1095-B, 1095-C, 1098-series, 1099-series, 8027, 8282, 8300, 8870, 8871, 8872, 8886, 8886-T, or 8899)	Required but Waiver Eligible**
Bond Returns (8038-series)	
Employee Benefit Returns (Form 5500-series)	
Other Related Tax Returns (Forms 4720, 4720-A, 1120-POL, 730, 11-C, 1042)	
FBAR (Title 31) Don't discuss filing of FBAR with taxpayer.	
Related Persons' Returns (including "controlled organizations") (Forms 1040, 1041, 1120-series, 1065)	Optional/Not Required***
Withholding Compliance Program (Questionable W-4s)	

Legend:

*** Always Required** - Complete the filing check per IRM guidelines. Document your conclusions on Form 5773, Section G. These filing checks can't be waived.

**** Required but Waiver-Eligible** - These filing checks are required, but can be waived with managerial approval. Documentation of the authorization and reason is required on Form 5773, Section G.

Exhibit 4.70.12-1 (Cont. 1) (11-22-2023)**EO Filing Check Guidance Table**

***** Optional/Not Required** - These filing checks aren't required; explanations aren't needed. However, if information developed during the examination indicates a potential for noncompliance, you may conduct the filing check and document actions taken.

Related Return - Any return of the same taxpayer. However, a return subject to a discrepancy adjustment, such as a Form 1040 or 1120, and any Form 4720-A, filed by a disqualified person with respect to the organization under exam, is *treated as* a "related return."