



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.70.17

NOVEMBER 28, 2023

EFFECTIVE DATE

(11-28-2023)

PURPOSE

- (1) This transmits new IRM 4.70.17, TE/GE Examinations, Claims and Abatements.

MATERIAL CHANGES

- (1) Editorial changes have been made throughout, including for plain language.
- (2) This IRM includes context from the IGM's and obsolete IRM's listed below:

IGM	IRM
<ul style="list-style-type: none">• TEGE-04-0622-0018, Taxpayer Digital Communications Secure Messaging, dated June 23, 2022.• TEGE-04-0322-0009, Interim Guidance on Fully Electronic (100% Paperless Cases, dated March 15, 2022.• TEGE-04-0222-0008 Discussion and Documentation of Publication 1, Notice 609, Publication 5146 and the Examination Process, dated February 28, 2022.• TEGE-04-0222-0006 Elimination of requirement to post Form 3198-A as a separate workpaper in RCCMS Office Documents Folder, dated February 23, 2022.	<ul style="list-style-type: none">• IRM 4.71.8, EP Claims, dates December 17, 2019.• IRM 4.75.37, Claims, Requests for Abatement and Examination Reconsiderations, dated February, 2020.• IRM 4.75.38, Small Employer Health Care Tax Credit Under Section 45R, dated October 15, 2020.• IRM 4.81.14.3, Technical Assistance, dated August 28, 2018.• IRM 4.81.14.4, 30-day Letter, dated August 28, 2018.• IRM 4.81.14.5, Mandatory Review, dated October 17, 2019.• IRM 4.81.14.6, Final Adverse Determination, dated August 28, 2018.• IRM 4.82.2, Arbitrage Payment Refund Claim Procedures, dated March 18, 2021.• IRM 4.86.5.24, Claims for Refund or Abatement, Adjusted Returns and Audit Reconsiderations, dated March 28, 2019.• IRM 4.86.5.25, Surveyed Claims, dated March 28, 2019.• IRM 4.86.5.26, Claims Disallowance, dated March 28, 2019.

EFFECT ON OTHER DOCUMENTS

This obsoletes IRM 4.71.8, EP Claims, dated December 17, 2019, IRM 4.75.37, Claims, Requests for Abatement

and Examination Reconsiderations, dated February 7, 2020, IRM 4.75.38, Small Employer Health Care Tax Credit Under Section 45R, dated October 15, 2020, and IRM 4.82.2, Arbitrage Payment Refund Claim Procedures, dated March 18, 2021. This IRM supersedes IRM 4.81.14.3, Technical Assistance, dated August 28, 2018, IRM 4.81.14.4, 30-day Letter, dated August 28, 2018, IRM 4.81.14.5, Mandatory Review, dated October 17, 2019, IRM 4.81.14.6, Final Determination, dated August 28, 2018, IRM 4.86.5.24, Claims for Refund or Abatement, Adjusted Returns and Audit Reconsiderations, dated March 28, 2019, IRM 4.86.5.25, Surveyed Claims, dated March 28, 2019, and IRM 4.86.5.26, Claims Disallowance, dated March 28, 2019. This IRM incorporates IGM TEGE-04-0622-0018, Taxpayer Digital Communications Secure Messaging, dated June 23, 2022, IGM TEGE-04-0322-0009, Interim Guidance on Fully Electronic (100% Paperless) Cases, dated March 15, 2022, IGM TEGE-04-0222-0008 Discussion and Documentation of Publication 1, Notice 609, Publication 5146 and the Examination Process, dated February 28, 2022, and IGM TEGE-04-0222-0006, Elimination of requirement to post Form 3198-A as a separate workpaper in RCCMS Office Documents Folder, dated February 23, 2022.

AUDIENCE

Tax Exempt and Government Entities (TE/GE) Examination Employees and Managers

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Tax Exempt and Government Entities

4.70.17

Claims and Abatements

Table of Contents

4.70.17.1 Program, Scope and Objectives

4.70.17.1.1 Background

4.70.17.1.2 Authority

4.70.17.1.3 Responsibilities

4.70.17.1.4 Program Controls

4.70.17.1.5 Acronyms

4.70.17.1.6 Terms

4.70.17.1.7 Related Sources

4.70.17.2 Claims for Refund

4.70.17.2.1 Processing a TEB Rejected Refund Claim

4.70.17.3 Claims Received During an Examination

4.70.17.4 Statute of Limitations for Claims

4.70.17.4.1 Refunds Barred by the Statute of Limitations

4.70.17.5 Claim Survey Before or After Assignment

4.70.17.6 Examined Claims

4.70.17.6.1 Claim Allowed in Full

4.70.17.6.1.1 Employment Tax Cases: Claim Allowed in Full with no Additional Tax Adjustments

4.70.17.6.2 Claim Allowed in full with Offsetting Adjustments

4.70.17.6.2.1 Employment Tax Cases: Claim Allowed in Full with Additional Tax Adjustments

4.70.17.6.3 Claim Partially Disallowed without Additional Tax or Arbitrage Payment Due

4.70.17.6.3.1 Employment Tax Cases: Claim Partially Disallowed Without Additional Tax Adjustments

4.70.17.6.4 Claim Partially Disallowed with Additional Tax or Arbitrage Payment Due

4.70.17.6.4.1 Employment Tax Cases: Claim Partially Disallowed with Additional Tax Adjustments

4.70.17.6.5 Claim Disallowed in Full without Additional Tax or Arbitrage Payment Due

4.70.17.6.5.1 Employment Tax Cases: Claim Disallowed in Full without Additional Tax Adjustment

4.70.17.6.6 Claim Disallowed in Full with Additional Tax or Arbitrage Payment Due

4.70.17.6.6.1 Employment Tax Cases: Claim Disallowed in Full with Additional Tax Adjustments

4.70.17.6.7 Employment Tax Cases: Adjusted Amended Return Resulting in a Credit Balance

4.70.17.6.8 Completing Form 2297

4.70.17.6.9 Completing Form 3363

4.70.17.7 Other Claim Procedures

4.70.17.7.1 Claims in Cases Previously Considered by Appeals

4.70.17.7.2 Requests for Reconsideration of Disallowed Claims

4.70.17.7.3 Request for Withdrawal of a Claim

4.70.17.7.4 Employment Tax Cases: No Consideration Given To Certain Refund Claims

- 4.70.17.7.5 Effect of Claim on IRC 4971 or 4975 Tax
- 4.70.17.7.6 Adjudication of a Claim
- 4.70.17.7.7 Joint Committee Cases
- 4.70.17.8 Examination Reconsideration and Request for Abatement
 - 4.70.17.8.1 Examination Reconsideration
 - 4.70.17.8.1.1 Working the Examination Reconsideration and Request for Abatement
 - 4.70.17.8.2 Employment Tax Cases: Claim for Abatement of Employment Tax
 - 4.70.17.8.3 Request for Withdrawal of an Abatement Request
 - 4.70.17.8.4 Requests for Abatement under IRC 4962
 - 4.70.17.8.4.1 Working the Request for Abatement under IRC 4962
 - 4.70.17.8.4.2 Full Denial of Requests under IRC 4962
 - 4.70.17.8.4.3 Full Abatement of Requests under IRC 4962
 - 4.70.17.8.4.4 Partial Abatement of Requests under IRC 4962
 - 4.70.17.8.5 Informal Request for Abatement of UBIT or other Income Taxes
 - 4.70.17.8.6 Abatement of Interest Due to IRS Delay or Error by the IRS
 - 4.70.17.8.6.1 Claims for Abatement of Interest
 - 4.70.17.8.7 Abatement of Penalties in Claims Cases
- 4.70.17.9 Collection of Deficiencies and Installment Agreements
- 4.70.17.10 Offer in Compromise - Doubt as to Liability (OIC-DATL)
 - 4.70.17.10.1 OIC-DATL Terminology
 - 4.70.17.10.2 OIC-DATL Processing
 - 4.70.17.10.2.1 OIC – Adjustments
 - 4.70.17.10.2.2 Case Resolution - Returning an Offer
 - 4.70.17.10.2.3 Case Resolution - All Other Situations
 - 4.70.17.10.3 OIC-DATL Final Processing
 - 4.70.17.10.3.1 Case Resolution – Reviewer
 - 4.70.17.10.3.2 Case Resolution - Mandatory Review, Manager
 - 4.70.17.10.3.3 Returning Case to the Group – Reviewer
- 4.70.17.11 Valid Forms 2848 and 8821 for Issuer Representation in Arbitrage Payment Refund Claim Examinations
- 4.70.17.12 Small Employer Health Care Tax Credit Under Section 45R
 - 4.70.17.12.1 IRC 45R - Special Instructions
 - 4.70.17.12.1.1 IRC 45R - Amended/Revised/Corrected Returns
 - 4.70.17.12.1.2 IRC 45R - Fiscal/Calendar Year
 - 4.70.17.12.1.3 IRC 45R - Short Tax Periods
 - 4.70.17.12.1.4 IRC 45R - Returns with Unrelated Business Income (UBI)
 - 4.70.17.12.1.5 Governmental Entities
 - 4.70.17.12.1.7 IRC 45R - Credit From Flow-Through Entities

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- 4.70.17.12.2 IRC 45R - Relevant Authority and Guidance
 - 4.70.17.12.2.1 IRC 45R - Credit Eligibility Rules
 - 4.70.17.12.2.2 IRC 45R - Credit Amount Rules and Phase Outs
 - 4.70.17.12.2.3 IRC 45R - Credit Eligibility and Amount Rules
- 4.70.17.12.3 Examination Procedures for IRC 45R credit
 - 4.70.17.12.3.1 IRC 45R - Initial Examination Steps
 - 4.70.17.12.3.2 IRC 45R - Examining Prior and Subsequent Years
 - 4.70.17.12.3.3 IRC 45R - Determining Eligibility
 - 4.70.17.12.3.3.1 IRC 45R - Step 1 - Determining the Employees Taken into Account
 - 4.70.17.12.3.3.2 IRC 45R - Step 2 - Determining the Number of Hours of Service Worked by Employees for the Taxable Year
 - 4.70.17.12.3.3.3 IRC 45R - Step 3 - Calculating the Number of the Employer's FTEs
 - 4.70.17.12.3.3.4 IRC 45R - Step 4 - Determining the Employer's Average Annual Wages per FTE
 - 4.70.17.12.3.3.5 IRC 45R - Step 5 - Determining the Employer's Annual Premium Payments
 - 4.70.17.12.3.3.5.1 IRC 45R - Qualifying Arrangement Considerations
 - 4.70.17.12.3.3.5.2 ICR 45R - Considerations for Tax Years Beginning in 2014 and Forward (SHOP and QHP requirements)
 - 4.70.17.12.3.3.5.3 IRC 45R - Small Group Market Average Health Insurance Premium Limitation
 - 4.70.17.12.3.3.6 IRC 45R - Step 6 - Determining the Amount of Payroll Tax Withholding
 - 4.70.17.12.3.3.7 IRC 45R - Calculating the Credit - IRC 45R(c)(1) & (2)
 - 4.70.17.12.3.4 IRC 45R - Withdrawals
 - 4.70.17.12.3.5 IRC 45R - Reports
 - 4.70.17.12.3.6 IRC 45R - Disputed Reports
 - 4.70.17.12.3.7 IRC 45R - Case Closing or Surveyed Case

Exhibits

- 4.70.17-1 IRC 7122 Offer in Comprise (Doubt as to Liability) Checksheet
- 4.70.17-2 Examination Reconsideration Letter - Full Denial
- 4.70.17-3 Examination Reconsideration Letters - Partial Abatement
- 4.70.17-4 Amended/Revised/Corrected Return
- 4.70.17-5 # Filter Descriptions #
- 4.70.17-6 Third Party
- 4.70.17-7 Qualifying Arrangements - Uniform Percentage
- 4.70.17-8 Notices 2014-6, 2015-8 and 2016-75 Counties

4.70.17.1
(11-28-2023)
Program, Scope and Objectives

- (1) **Purpose:** This IRM section provides examination procedures to help TE/GE examiners process claims, abatements, and examination reconsiderations. Topics addressed include:
 - Surveying claims
 - Examining claims
 - Processing requests for abatements cases
 - Processing examination reconsiderations cases
 - Processing Offer in Compromise- Doubt as to Liability (OIC-DATL) cases
 - Collection of deficiencies and installment agreements
 - Interest abatement of claims
 - Penalty abatement in claims cases
- (2) **Audience:** The procedures are directed toward the IRS employees authorized to conduct examinations. This manual is also a key reference for their managers and reviewers, as well as other TE/GE employees in supporting roles. These employees are:
 - TE/GE examiners
 - Tax law specialists and reviewers
 - Tax examiners
 - Front-line examination group managers
- (3) **Policy Owner:** Directors, Employee Plans and Exempt Organizations / Government Entities.
- (4) **Program Owner:** Directors, Employee Plans Examinations, Exempt Organizations Examinations, and Government Entities.

4.70.17.1.1
(11-28-2023)
Background

- (1) This IRM provides an overview of the responsibilities that examiners should understand and apply in the performance of their duties in conducting examinations of claims, abatements, and examination reconsiderations.
- (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.

4.70.17.1.2
(11-28-2023)
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 *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) 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.
- (4) 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). The 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.
- (5) 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.
- (6) IRC 6201 - Assessment Authority, which falls under Chapter 63 - Assessment.
- (7) Additional authorities for the procedures outlined in this IRM are:
- a. *California Thoroughbred Breeders Association v. Commissioner*, 47 TC 355 (1966).
 - b. IRM 1.2.2.8.11 - Delegation Order 7-11 Abatement of Qualified First Tier Chapter 42 Taxes.
 - c. IRM 1.2.1.2.36 - Policy Statement 1-236 Fairness and Integrity in Enforcement Selection.
 - d. IRM 1.2.1.5.27 - Policy Statement 4-88 -Jeopardy assessments to be used sparingly and assessment to be reasonable in amount.
 - e. IRM 1.2.1.5.31 - Policy Statement 4-103 Abatement claims considered only in exceptional circumstances.
 - f. IRM 1.2.1.5.34 - Policy Statement 4-117 Examination authority to resolve issues.
 - g. IRC 148 - Arbitrage.
 - h. IRC 4962 - Abatement of First Tier Taxes in Certain Cases.
 - i. IRC 6201 - Assessment Authority.
 - j. IRC 6404 - Abatements.
 - k. IRC 6502 - Collections after assessment.
 - l. IRC 6511 - Limitations on Credit or Refund.
 - m. IRC 6513 - Time Return Deemed Filed And Tax Considered Paid.
 - n. IRC 6532 - Periods of Limitation On Suits.
 - o. IRC 7121 - Closing Agreements.
 - p. IRC 7122 - Compromises.
 - q. IRC 7429(a)(2) - Administrative Review.
 - r. IRC 7459 - Reports and Decisions.
 - s. IRC 7602 - Examination of Books and Witnesses.
 - t. Tax Increase Prevention and Reconciliation Act of 2005.
 - u. 26 CFR 1.148-5(c)(2)(i) permits the recovery of overpayment of yield reduction payments.
 - v. Rev. Proc. 2008-37 provides additional guidance to issuers of tax-exempt bonds regarding procedures for filing a refund claim.
 - w. Rev. Proc. 2017-50 modifies Rev. Proc. 2008-37 to extend the deadline for filing claims.
 - x. The Form 8038-R, Request for Recovery of Overpayment Under Arbitrage Rebate Provisions, instructions provide guidance to issuers for filing a refund claim.

4.70.17.1.3
(11-28-2023)
Responsibilities

- (1) 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.
- (5) The examiner must determine what type of request the taxpayer has made to properly examine, close and process the case. The following are the types of requests:
 - Claims for refund
 - Claims for abatement
 - Adjusted returns
 - Audit reconsideration requests
- (6) For a claim, examiners are responsible for:
 - a. Working claims as **high priority** cases. Taxpayers may sue for a refund if we don't take action within six months of a claim filing.
 - b. Opening claims within 30 days of receipt (put in status 12).
 - c. Limiting the scope of the examination to the claim issue.

Exception: If you find indications of non-compliance, discuss expanding the scope of the examination with your group manager.
 - d. Considering both the Assessment Statute Expiration Date (ASED) and Refund Statute Expiration Date (RSED).
 - e. Closing the claim:
 - Survey, after assignment (accepting claim as filed)
 - Allowed in full
 - Disallowed in full or part or
 - Assess additional tax
 - f. In addition to this IRM, see IRM 4.23.13, Employment Tax, Adjusted Returns, Abatements and Claims, when working claims that involve any employment tax.
 - g. In addition to this IRM, see IRM 4.24.8, Excise Tax, Examination Guidance for Excise Claims for Refund or Abatement, for excise tax claims.
- (7) For an abatement request, examiners are responsible for:
 - Reviewing the examination file.
 - Contacting the taxpayer and obtaining any necessary additional information.
 - Evaluating the information and fully documenting your work.
 - Making a final determination.
- (8) For an OIC-DATL case, examiners are responsible for:
 - a. Working the file as a **high priority** case.
 - b. Contacting taxpayer and obtain additional information, if necessary.
 - c. Adhering to time frames.
 - d. Fully documenting your work.
 - e. Completing OIC-DATL checksheet, when required.
 - f. Making final determination.

4.70.17.1.4
(11-28-2023)
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*.

4.70.17.1.5
(11-28-2023)
Acronyms

- (1) This IRM uses the following acronyms:

Acronym	Definition
ACA	Affordable Care Act
AIMS	Audit Information Management System
AM	Area Manager
AOIC	Automated Offer in Compromise
ASED	Assessment Statute Expiration Date
BMF	Business Master File
CP&C	Compliance Planning & Classification
DATL	Doubt As To Liability
DC	Disposal Code
EIN	Employer Identification Number
EO	Exempt Organizations
EP	Employee Plans
EPMF	Employee Plans Master File
FAC	Functional Assignment Coordinator
FAST	Compliance Planning & Classification, Field Assistance Support Team

Acronym	Definition
FICA	Federal Insurance Contributions Act
FSA	Flexible Spending Arrangement
FSL/ET	Federal State and Local / Employment Tax
FTE	Full-Time Equivalent
HRA	Health Reimbursement Arrangement
HSA	Health Savings Account
IAR	Independent Administrative Review
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ITG	Indian Tribal Governments
JC	Joint Committee
LB&I	Large Business and International
LUQs	Large, Unusual, Questionable Items
MFT	Master File Tax
NOL	Net Operating Loss
OCEP	Office/Correspondence Examination Program
OIC	Offer in Compromise
OSC	Ogden Service Campus
PARP	Pre-Approval Request Package
PM	Program Manager
POA	Power of Attorney
QHP	Qualified Health Plan
RBP	Revenue Base Protection
RCCMS	Reporting Compliance Case Management System
RGS	Report Generation Software
RSED	Refund Statute Expiration Date
SC	Source Code
SHOP	Small Business Health Options Program
SOL	Statute of Limitations

Acronym	Definition
SRS	Specialist Referral System
TC	Transaction Code
TEB	Tax Exempt Bonds
TE/GE	Taxpayer Identification Number
TEGEDC	Tax Exempt/Government Entities Division Counsel
TIN	Tax Increase Prevention and Reconciliation Act of 2005
TIPRA	Tax Law Specialist
UBI	Unrelated Business Income
XSF	Excess Collection File

4.70.17.1.6
(11-28-2023)
Terms

(1) General terms and definitions:

Term	Definition
Amended Return	Any subsequent return which changes information submitted on the original filed return. The taxpayer will send the amended return to the campus center where the original return was filed. A TC 976/977 will generally be posted to the taxpayers account to indicate an amended/duplicate return has been filed. These TCs will generate an - A freeze code. The examiner needs to determine whether the TC 976/977 indicates the filing of a claim.
Claim	Request for a refund or credit of an overpayment of amounts already assessed and paid. This includes tax, penalties, and interest. It may be a request for an adjustment of tax paid or credit not previously reported or allowed. A claim can be formal or informal.
Examination Reconsiderations	A taxpayer request to reevaluate the results of a prior examination with additional tax assessments that remain unpaid or with reversed tax credits. The taxpayer must provide information not previously considered during the original examination. In accord with IRM 1.2.1.5.31, Policy Statement 4-103, Abatement claims considered only in exceptional circumstances, when employment taxes are assessed based upon an examination, the taxpayer will generally be required to pay the assessment and file a claim for refund before receiving any further consideration on the case. However, some cases may warrant prior consideration. For additional guidance, refer to IRM 4.23.13.4, Audit Reconsideration and Requests for Abatement.

Term	Definition
Formal Claim	Claim submitted either on an amended return or on Form 843, Claim For Refund and Request for Abatement, for refund or credit of income, employment, gift, or estate tax that has been made following the statutory requirements of Federal Tax Regulation 301.6402. The claim must set forth in detail and facts sufficient to apprise the Commissioner of the exact basis, including the appropriate tax periods.
Informal Claim	Request for refund that does not satisfy all of the formal requirements, but that courts have found is sufficient to put the Service on notice of the claim and, thereby, to toll the period of limitations. The Service may require compliance with the formal requirements before allowing the claim. See IRM 25.6.1.10.2.6.3, Informal Claims. Also, see <i>United States v. Kales</i> , 314 U.S. 186 (1941); <i>Newton v. United States</i> , 163 F. Supp. 614 (Ct. Cl. 1958)
Protective Claim	Formal claim filed to preserve the taxpayer's right to claim a refund when the taxpayer's right to the refund is contingent on future events and may not be determinable until after the statute of limitations (SOL) expires. See IRM 25.6.1.10.2.6.5, Protective Claims. Taxpayers file protective claims based on expected changes in a: <ul style="list-style-type: none"> • Current IRC section • Current Regulation • Pending legislation • Current litigation
Requests for Abatement	Request where we've assessed the taxes, interest, or penalties but the taxpayer hasn't paid. It isn't a claim for refund because it doesn't include a request for credit or refund of an overpayment. A taxpayer can: <ol style="list-style-type: none"> File a request for abatement on a Form 843, Claim For Refund and Request for Abatement, or via an amended return. Make an informal request as long as we have all the necessary information including the tax year, issue, and amount. For requests relating to employment taxes, refer to IRM 4.23.13, Employment Tax, Adjusted Returns, Abatements and Claims. For requests relating to Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapter 41 and 42 of the IRC, excise taxes, see IRM 4.70.17.8.4, Requests for Abatement under IRC 4962.

Term	Definition
TEB Claim	A refund claim is a request for a refund of an overpayment of arbitrage payments, including arbitrage rebate amounts, yield reduction payments and penalty in lieu of rebate.

(2) Claims **don't** include:

- Requests for adjustments that increase the balance on an account, such as tax increases or credit decreases.
- Requests to correct math errors. See IRM 21.5.4, General Math Error Procedures.
- Requests for abatement.
- Amended returns increasing tax.

Note: A review of the transcript of account should disclose how the submission should be treated. Timely refund or credit of an overpayment may be made in the absence of a claim for refund.

4.70.17.1.7
(11-28-2023)
Related Sources

(1) The following are related sources that provide guidance on the procedures outlined in this IRM section:

- IRM 1.2.1, Servicewide Policies and Authorities, Servicewide Policy Statements.
- IRM 1.2.2, Servicewide Delegations of Authority.
- IRM 4.5.2, TE/GE Examined and Non-Examined Closures.
- IRM 4.10.8, Examination of Returns, Report Writing.
- IRM 4.23.13, Employment Tax, Adjusted Returns, Abatements and Claims.
- IRM 4.24.10, Excise Tax, Appeals Referral Procedures.
- IRM 4.36.3, Joint Committee Procedures, Examination Team Responsibilities.
- IRM 4.70.14, Resolving the Examination.
- IRM 5.8.8, Offer in Compromise, Acceptance Processing.
- IRM 5.19.7, Monitoring Offer in Compromise.
- IRM 8.7.7, Technical and Procedural Guidelines, Claim and Overassessment Cases.
- IRM 20.1.1, Penalty Handbook, Introduction and Penalty Relief.
- IRM 20.1.5, Penalty Handbook, Return Related Penalties.
- IRM 20.2.7, Abatement and Suspension of Debit Interest.
- IRM 21.5.4, General Math Error Procedures.
- IRM 21.5.9, Account Resolution, Carrybacks.
- IRM 21.6.6, Individual Tax Returns, Specific Claims and Other Issues.
- IRM 25.5.9, Summons Handbook, Fees and Costs for Summoned Witnesses.
- IRM 25.6.1, Statute of Limitations Processes and Procedures.
- IRM 25.6.23, Statute of Limitations, Examination Process-Assessment Statute of Limitations Controls.

4.70.17.2
(11-28-2023)

Claims for Refund

- (1) A claim is a request for a refund of a tax paid or for the abatement of tax and/or penalties that the IRS has previously assessed, or refund of a payment made under section 148 of the Code involving a claim for overpayment of arbitrage rebate, yield reduction or penalty in lieu of rebate. Taxpayers can file claims for refund on various forms:
 - a. Form 843, Claim For Refund and Request for Abatement.

Note: Taxpayers can use this form to request a refund and to abate taxes, interest and penalties.

Note: For EP: See *Employee Plans Examination Exhibits* for an example of a completed Form 843, Claim For Refund and Request for Abatement.
 - b. Form 1040-X, Amended U.S. Individual Income Tax Return.
 - c. Form 1045, Application for Tentative Refund.
 - d. Form 1120-X, Amended U.S. Corporation Income Tax Return.
 - e. Form 1139, Corporation Application for Tentative Refund.
 - f. Amended Form 5330, Return of Excise Taxes Related to Employee Benefit Plans.
 - g. Amended Form 990-T, Exempt Organization Business Income Tax Return, showing a decrease in tax liability.
 - h. Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund.
 - i. Form 945-X, Adjusted ANNUAL Return of Withheld Federal Income Tax or Claim for Refund.
 - j. Form 8038-R, Request for Recovery of Overpayment Under Arbitrage Rebate Provisions, to recover an overpayment of arbitrage rebate, a yield reduction payment, or a penalty in lieu of rebate.
 - k. Form 8849, Claim for Refund of Excise Taxes.
- (2) Taxpayers may also file a claim requesting a reduction in tax liability, by letter or other document, which contains all relevant facts for the requested reduction in tax liability. This is referred to as an informal claim and it must be in writing.
- (3) A claim for refund or request for abatement is classified when CP&C receives a claim case file in accordance with IRM 4.70.6.5.3, TE/GE Examinations, Classification and Case Assignment CP&C Procedures, Claims/Requests for Abatement.
- (4) For TEB, A refund claim includes an overpayment of arbitrage payments, arbitrage rebate amounts, yield reduction payments and penalty in lieu of rebate. An overpayment is the excess of the amount paid over the sum of the "rebate amount" (as defined in 26 CFR 1.141-3(b)) as of the most recent "computation date" (per 26 CFR 1.148-3(e)) and all amounts otherwise required to be paid under IRC 148 as of the refund claim date. Payments made under IRC 148 are **not** payments of tax.
- (5) In general, the examiner will work a claim as a limited scope correspondence examination. However, the examiner isn't limited to the issues raised in the claim. The scope of the examination can be expanded to make adjustments that can offset the claim in full which would result in additional tax deficiency. Discuss the expansion of the scope with and obtain approval from your manager.

- a. Complete workpapers for the scope of the claim case. At a minimum, include in your workpapers: a brief description of how the claim came about, what the issue was, what referrals were made (if any), who you contacted, what IDRS research you did, and what conclusions you reached.
 - b. Use a separate case file folder in RCCMS for each type of return.
- (6) Upon receipt of a claim, check IDRS to ensure that all claim years are properly established on RCCMS and AIMS, when appropriate, and that we haven't already paid, issued, or credited the claim.
- a. If the source code (SC) is 30 and the claim has been paid, the SC needs to be updated to 31. The examiner should verify that the allowance of the claim was correct. If the allowance of the claim appears to be correct, the claim can be surveyed, once updated to SC 31 because the claim has been refunded to the taxpayer. If the allowance of the claim does not appear to be correct, then the appropriate adjustment should be considered as part of the examination.
 - b. Get a current transcript (BMFOLT or IMFOLT for applicable tax years) of the taxpayer's account on all claims so that you can analyze the account activity. See section 8 of Document 6209, IRS Processing Codes and Information, for a description of Master File transaction codes. Contact the AIMS Coordinator if you need help reading the transcript. A refund appears with a transaction code of 840 or 846.

Note: A transaction code 740 means the previously issued refund claim refund check was undeliverable. Check the TXMOD transaction code for any actions taken on the undeliverable/returned refund claim check and follow-up as necessary.

- c. For TEB, verify the IRS receipt of payments including all arbitrage rebate, yield reduction, penalty in lieu of arbitrage rebate, any applicable underpayment interest and penalty purportedly paid according to the rebate report(s) and ancillary documents provided by the issuer. Resolve any discrepancies and recalculate any underpayment and penalty interest to determine if the payments are correct. Ensure all previously filed Forms 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, along with the related payments, are established on AIMS and RCCMS.
 - d. If the Ogden Service Campus (or other Campus) has already refunded the claim amount to the taxpayer and you agree that the claim should be allowed, close the case as a regular "no change" case. The group closes it under normal closing procedures.
- (7) Verify that the claim was timely filed.

Note: For TEB, Rev. Proc. 2017-50 provides that an issuer may file a claim in accordance with section 3 of Rev. Proc. 2017-50 for a refund of an overpayment, with respect to an issue of bonds, no later than two years after:

- a. The date that is 60 days after the final computation date of the issue to which the payment relates; or
- b. With respect to the portion of the overpayment paid more than 60 days after the final computation date, the date that the payment is made to the United States.

- (8) Review the original return, the claim, and notes from classifiers. Consider the issues raised by the claim. Decide if there is a basis for a change to the tax liability. Document your analysis of the claim in the case file.
- (9) For Employment Tax Cases: When reviewing claims, you should:
- Reconcile all assessments and adjustments beginning with the original Form 941, Employer's Quarterly Federal Tax Return, (or applicable amended return) and any subsequent abatements and assessments to determine the correct amount of tax.
 - Reconcile these with Form W-2, Wage and Tax Statement, and Form W-2c, Wage Corrected and Tax Statement, to ensure employees were issued correct Form W-2, Wage and Tax Statement. You may gather information from the taxpayer to do this.
 - Request documents related to all assessments and adjustments to the original TC 150 from RCCMS or the Campus to complete reconciliation. You can request the needed documents from the Campus by using IDRS command code ESTAB and the appropriate DLN (Document Locator Number) per TXMOD or BMFOLT.
 - When you receive a Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, directly from the Campus or the taxpayer, you must contact the CSP Coordinator to request any CSP or Ad Hoc Closing Agreements on file for the taxpayer. Any existing closing agreements will be reviewed by you to ensure the claim under consideration doesn't involve an issue that was the substance of a prior agreement.
- (10) Determine if the ASED is open. If open, include any other LUQs as warranted.
- Note:** The Service doesn't normally secure consents to extend the ASED in claim cases, unless there may be an additional deficiency. Exceptions to this are:
- Joint Committee cases
 - Closing Agreement cases
 - See IRM 8.7.7.3.2, Technical and Procedural Guidelines, Claim and Overassessment Cases: Securing Statute Consents in Claim and Overassessment Cases.
- (11) For Employment Tax cases: If the taxpayer presents a valid claim for refund, an examination can include any other LUQs that warrant examination and isn't limited to those issues raised in the claim. If the ASED has passed, the Service may net out the amount requested with adjustments, provided the refund involves the same taxpayer and the same tax period. Move the unassessable portion to XSF. See IRM 25.6.1.10.2, Erroneous Abatements, for more information.
- (12) Verify the claim amount shown on AMDISA and RCCMS. Using RCCMS, correct the amount if wrong or missing. (Check the Update AIMS box.) Prepare a Form 5598, TE/GE Correction Request, to correct AIMS manually, if needed.
- (13) You may disallow the claim (fully or partially) or allow the claim in full. The group manager reviews all closed claims.
- (14) A claim may be surveyed. Before deciding to survey, examiners and managers must consider all case facts. Only 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.

- (15) If revenue base protection applies (money is prevented from leaving the Treasury), complete the claim amount disallowed, claim hours and claim type in the corresponding fields on the Closing Record in RCCMS. See IRM 4.5.2.7.1.38, Revenue Base Protection Section (RBP).

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4.70.17.2.1
(11-28-2023)
**Processing a TEB
Rejected Refund Claim**

- (1) Refund claim rejections are described in Rev. Proc. 2008-37 section 3.03(2)(b) and 26 CFR 1.148-3(i)(3). Generally, an issuer's failure to follow proper procedures for filing a refund claim or to provide sufficient information to enable TEB to determine that an overpayment occurred can result in a refund claim rejection.
- (2) When you receive a refund claim not meeting the initial processing requirements in IRM 21.7.7.7.4.7.1, Business Tax Returns and Non-Master File Accounts, Exempt Organizations and Tax Exempt Bonds, TEB Claim Procedures, prepare a refund claim rejection.
- (3) Also prepare a refund claim rejection when:
 - a. The refund claim relates to issues that were the subject of a final closing agreement under IRC 7121.
 - b. The refund claim relates solely to issues considered in the issuer's previously examined returns and the issuer requests, in writing, the immediate issuance of Letter 5677, TEB Arbitrage Claim Notification of Final Adverse Determination (Full Disallowance).
 - c. The issuer failed to provide sufficient information for the examiner to determine that an overpayment occurred with respect to the refund claim.
- (4) A refund claim rejected based on a procedural deficiency or incomplete information is generally not a refund claim denial under Rev. Proc. 2008-37 section 3.03(2)(c). Notify the issuer of any deficiency or incomplete information and provide the issuer at least 21 days to supply additional information to support the claim. A refund claim rejection pursuant to a deficiency or incomplete information permits the issuer to resubmit the refund claim, together with the missing information, in compliance with the initial processing requirements, if they resubmit by the filing deadline under 26 CFR 1.148-3(i)(3)(i), as modified by Rev. Proc. 2017-50.
- (5) If the refund claim rejection occurs after the two-year deadline in 26 CFR 1.148-3(i)(3)(i), as modified by Rev. Proc. 2017-50, then the refund claim rejection is functionally a refund claim denial, and the issuer is entitled to appeal rights under 26 CFR 1.148-3(i)(3)(iii). In this case, you must process the refund claim as a fully denied claim under IRM 4.70.17.6.5, Claim Disallowed in Full without Additional Tax Due or Arbitrage Payment Due, allowing the IRS Independent Office of Appeals (Appeals) to review whether the issuer met the deadline requirements in the request for more information.

- (6) The examiner discusses the refund claim rejection with the issuer and any authorized representative and secure e-mails to the TEB Exam group manager:
- Letter 105-T, Arbitrage Claim Incomplete for Processing – No Consideration
 - Form 886-A, Explanation of Items
 - Any required Letter 937, Transmittal for Power of Attorney
- (7) TEB Exam group manager: when you receive the case:

If you don't agree with the examiner's recommendation	If you agree with the examiner's recommendation or are otherwise instructed to proceed
<ol style="list-style-type: none"> 1. Discuss any issues that need additional development. 2. If you don't agree, you may request technical assistance following the procedures in IRM 4.70.16, TE/GE Technical Assistance, Technical Advice Requests and Requests for 7805(b) Relief. 3. If you still don't agree, elevate the issue to the PM for resolution. 	<ol style="list-style-type: none"> 1. Sign the Letter 105-T, Arbitrage Claim Incomplete for Processing - No Consideration, for the PM and mail the letter and Form 886-A, Explanation of Items, to the issuer with a copy to any authorized representative, using Letter 937, Transmittal of Power of Attorney, via regular mail. 2. Send an electronic copy of the signed Letter 105-T, Arbitrage Claim Incomplete for Processing - No Consideration, and any Letter 937, Transmittal of Power of Attorney, to the examiner.

- (8) Examiner: when you receive the signed documents from the TEB Exam group manager:
1. Organize the refund claim case file in RCCMS by following the TE/GE RCCMS Naming Convention.
 2. If there is a paper case file, prepare Form 3210, Document Transmittal, and send the refund claim paper case file to the CP&C Planning & Monitoring Closing Group at the following address for closing:
Internal Revenue Service
TEGE Closing Unit MS 7700
1973 N. Rulon White Boulevard
Ogden, Utah 84201-1001
 3. Enter disposal code 01 in RCCMS, requests closure of the RCCMS file.

4.70.17.3

(11-28-2023)

Claims Received During an Examination

(1) If you receive a claim for refund during your examination:

- a. Verify the claim is timely filed.
- b. Continue your examination. Don't limit the scope of the examination.
- c. Verify whether the claim is on AIMS.

If on AIMS	If not on AIMS
Update via RCCMS or Form 5598, TE/GE Correction Request.	Establish on AIMS via RCCMS or Form 5597, TEGE IMF/BMF/ EPMF Request.
Input the claim amount.	Input the claim amount.
	Use source code 30.
	Statute of limitations alpha code "AA" if the taxpayer timely filed a claim for refund/credit, you decided there are no other issues on the return which warrant an additional assessment and the claimed refund has not been paid to the taxpayer. Alpha code "BB" is used for all carry back claims.

- d. If you receive an amended return, Form 843, Claim For Refund and Request for Abatement, or other claim for refund on an open examination (Status 12) showing a decrease in tax liability, you should request a current IDRS transcript, to determine whether the claim has been paid.

If the claim has been paid	If the claim hasn't been paid
It is no longer a claim. You should verify that the allowance of the claim was correct. If not correct, then the appropriate adjustment should be considered as part of the examination.	Consider the issues presented as part of the examination. If the claim issues will be disallowed, follow the appropriate disallowance procedure. If the claim issues will be allowed as part of the exam, follow normal examination procedures.

- e. If the claim received is a proactive claim, send the claim to Classification. Put into AIMS status code 38, Suspense, All Other. See IRM 25.6.1.10.2.6.5, Protective Claims.
- f. You may close claims you receive on returns not under examination separate from (and before) the rest of the examination.

4.70.17.4

(11-28-2023)

Statute of Limitations for Claims

(1) Per IRC 6511(a), a taxpayer generally must file a claim for credit or refund by the later of two periods:

- a. Three years from the date the original return was filed, or
- b. Two years from the date the tax was paid

Note: See IRM 25.6.1.6.15, When a Document Is Treated As Filed Under the IRC, for the rules for determining when a return is filed.

- (2) See revised IRM 21.5.9.5.10.3, Tax Cuts and Jobs Act of 2017 (P.L. 115-97), Sections Affecting Net Operating Losses and revised IRM 21.5.9.5.10.3, TCJA - NOL Carryback and Carryforward Periods, which provide important changes to the NOL rules. See IRM 25.6.1.10.2.8.1, Net Operating Loss (NOL) Carryback or Capital Loss Carryback, for additional guidance.
- (3) The amount credited or refunded is limited under IRC 6511(b)(2) to the tax paid (which includes penalties and interest) during period determine by when the claim was filed:
- For claims files within three years of the date that the return was filed, the amount is limited to the tax paid during the three years immediately preceding the filing of the claim (IRC 6511(b)(2)(A)).
- Note:** SOL on Form 990-T, Exempt Organization Business Income Tax Return, is governed by the SOL of the Form 990 series return, if filed. See, *California Thoroughbred Breeders Association v. Commissioner*, 47 TC 335 (1966).
- For claims filed more than three years after the date that the return was filed, the amount is limited to the tax paid during the two years immediately preceding the filing of the claim (IRC 6511(b)(2)(B)).
 - If a claim was not filed, the amount is limited to either the three year period or the two year period as if a claim had been filed on the date the allowance (i.e., the downward adjustment) is made (IRC 6511(b)(2)(C)).
- (4) Consider advance payments, prepayments of tax, income tax withholdings, social security tax withholding and payments, Medicare tax withholding, and tax, credits from prior years, and Federal unemployment tax payments as made on the due date of the tax return (without regard to any extensions) per IRC 6513. See IRM 25.6.1.7.2, Time When Payments and Credits Are Considered to be Made.

Note: An early return is deemed as filed on the due date (also without any extensions). See IRC 6513(a).

- (5) This chart shows general rules governing a refund claim:

Return Filed	Claim Filed	Maximum amount of refund or credit allowable
On or before due date	Within 3 years from due date of return	Taxes paid within the 3 years period.
On or before due date	More than 3 years from due date of return	Taxes paid within the 2 years prior to filing.

Return Filed	Claim Filed	Maximum amount of refund or credit allowable
On or before due date	None	If allowance is within 3 years from due date of return, limited to the taxes paid within the 3 years period. If allowance is more than 3 years from due date of return, limited to the taxes paid within the 2 years prior to the allowance.
After the due date	Within 3 years from filing of return	Taxes paid within the 3 years period.
After the due date	More than 3 years from filing of the original return	Taxes paid within the 2 years prior to filing.
After the due date	None	If allowance is within 3 years from filing of the return, limited to the taxes paid within the 3 years period. If allowance is more than 3 years from due date of return, limited to the taxes paid within the 2 years prior to the allowance.
None (such as, deficiency assessment)	Within 2 years from the date the tax was paid	Taxes paid within the 2 years prior to the filing
None (such as, deficiency assessment)	None	Taxes paid within the 2 years prior to the assessment.

- (6) The filing of a claim doesn't affect the ASED.

Note: If a return is filed within the last 60 days before expiration of the ASED, then we have 60 days from the date received to make the assessment.

- (7) The amount that may be claimed is limited. See IRM 25.6.1.10.2.7.3, Extension of Time by Agreement.
- (8) Timely filed claims provide an open statute for examining the claim, as reflected by the use of alpha codes, such as AA and BB. See IRM 25.6.23-3, Instructions for Updating the Statute on AIMS, for a list of alpha codes.
- (9) If you allow the claim, further action on that tax year is barred once the ASED expires. (For erroneous refunds, the government may bring suit to recover within the period provided in IRC 6532(b)).

- (10) When a taxpayer files a claim timely, the statute remains open for the IRS to examine it. If the IRS takes no action on the claim within six months from the time it was filed, the taxpayer can file suit in court to recover the amount claimed. The period for filing suit lasts until two years after the date a certified notice of claim disallowance is mailed to the taxpayer or the date the taxpayer signed Form 2297, Waiver of Statutory Notification of Claim Disallowance. Additional information for Employment Tax Cases, see IRM 4.23.13.2.2, Pre-Contact Analysis: Statue of Limitation Considerations.
- (11) An executed consent extends the time to file a claim. If a customer does not file for a claim within the time limits prescribed by IRC 6511(a), the taxpayer may still file a claim if the statute of limitation for assessment has been extended by agreement of the Service and the taxpayer (IRC 6511(c)). This filing period will last until six months after the expiration of the extension period.
- (12) If, after the execution of a consent and within six months after the expiration of the extension period, a claim is filed, or a credit or refund is allowed when no claim is filed, the amount of credit or refund is limited. This limit is the portion of the tax paid after the execution of the consent and before the filing of the claim (or making of the credit or refund), PLUS the portion of the tax paid within the period which would be applicable under IRC 6511(b)(2) if a claim had been filed on the date the consent was executed.
- (13) If the Service allows the claim (this could be done by the Campus prior to the case being sent to the field for examination), it is no longer a claim. Generally, the Service must assess tax within two years from making the refund. See IRC 6511(a) and IRC 6532(b).
- (14) When a claim is filed, it keeps the statute open only for the claim issues. If other issues exist and the statute on the original return is about to expire, secure a statute extension for the original return on which the claim is based. If the statute of limitations has expired, you may only make adjustments to the return up to the amount of the claim.
- (15) The statute of limitations for filing a claim is suspended for any period where the taxpayer was unable to manage their financial affairs by reason of a medically determinable physical or mental impairment unless another person (such as their spouse) was authorized to act on their behalf in financial matters. An individual deemed "financially disabled" is defined in IRC 6511(h)(2).

4.70.17.4.1
(11-28-2023)

**Refunds Barred by the
Statute of Limitations**

- (1) The filing of an original tax return reflecting an overpayment constitutes a claim for credit or refund. Accordingly, a tax return and claim for refund can be filed simultaneously through one document. The taxpayer who files an original tax return reflecting an overpayment is considered to have filed a claim within three years of filing a return, and a refund would be allowed if payment was made within three years of the date the original return/claim for refund is considered filed, as long as no petition is filed with the Tax Court.
- (2) Any tax withheld for a wage earner is deemed paid on the fifteenth day of the fourth month following the close of the wage earner's taxable year (individual returns only) (IRC 6511 and IRC 6513(b)(1)).

- (3) Any estimated tax payments made during any calendar year are deemed paid on the last day prescribed for filing the return for that year without considering any extensions (IRC 6513(b)(2)).
- (4) If a taxpayer files a tax return more than three years after the due date for the return (including valid extensions), any overpayment amount would be limited to the amount paid in the three years before the return was filed or paid within 2 years of the filing of a claim for refund. See Rev. Rul. 76-511.
- (5) Taxpayers can't carry forward or back barred refund amounts to offset delinquent accounts or future tax liabilities. The overpayments post to an excess collections account using Form 8758, Excess Collection File Addition.
- (6) If a taxpayer files a claim for refund after the RSED to perfect a claim filed before the RSED, the claim should be considered. A general claim may be amended after the RSED has expired, provided that the original claim has not been formally disallowed by the IRS at the time the amendment is filed, and the amendment merely makes clear the specific matters the Service has already considered by investigating the original defective claim. The supplemental claim will not generally be considered an amendment if the Service took final action on the original claim by rejecting the original claim or allowing it in whole or in part. A final action disallowing a claim does not occur until the notice of claim disallowance is sent. If no formal disallowance was made, there is no specific time period within which the supplemental claim must be filed.

Note: The limitation for filing a claim for arbitrage related payments is set forth in regulation section 1.148-3(i)(3) as extended by Rev. Proc. 2017-50, so paragraphs (1) – (7) above are not relevant to claims for arbitrage related payments.

- (7) To close a claim case with a barred refund:
 - a. For EO, issue Letter 3602, Claim Disallowance.
 - b. For EP, issue Letter 3602-A, 30-Day Letter - EP Claim Denied. See *Employee Plans Examination Exhibits* for an example of Letter 3602-A.
 - c. For Employment Taxes, issue Letter 5376, Full or Partial Claim Disallowance - Employment Tax, when disallowing employment tax claims in full or in part. This includes when a delinquent return seeks a claim for refund for withheld / estimated taxes, earned income credits, or payments that are barred by the period of limitations under IRC 6511.
 - d. For TEB, issue Letter 5684, Arbitrage Claim Notification of Proposed Claim Disallowance, with Form 886-A, Explanation of Reason(s) for Disallowance, Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit, Form 2297, Waiver of Statutory Notification of Claim Disallowance, Pub 5, Your Appeal Rights and How to Prepare a Protest If You Disagree and Letter 937, Transmittal for Power of Attorney, (if applicable).
 - e. If the taxpayer doesn't sign Form 2297, Waiver of Statutory Notification of Claim Disallowance, a certified notice of claim disallowance must be issued. Prepare Letter 906, Final Full Claim Disallowance, (For EP, use Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer) to notify the taxpayer of the full or partial disallowance of their claim. Include the reason for the disallowance in the letter. Annotate 3198-A, "Issue Letter 906, Certified Notice of Claim Disallowance - Trans-

fer barred refund to an excess collections account ", (For EP, use Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer).

- f. Mandatory Review issues Letter 906 Final Full Claim Disallowance on unprotested cases (For EP, use Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer). Check box next to *Prepare/Issue Letter* on 3198-A Checksheet in RCCMS, and type in "906 – Final Full Claim Disallowance" (For EP, use Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer).

4.70.17.5 (11-28-2023)

Claim Survey Before or After Assignment

- (1) Under rare circumstances, a TE/GE examination group may make the determination not to examine a return selected for examination and close it by survey. The examiner may close an assigned claim case without contacting the taxpayer or representative if the claim issue is clearly allowable in full and the return doesn't otherwise warrant examination. These are referred to as "surveyed" claims. Employees will carry out this duty per Policy Statement 1-236, Fairness and Integrity in Enforcement Selection. See IRM 1.2.1.2.36, Policy Statement 1-236, Fairness and Integrity in Enforcement Selection.
- (2) Don't survey the following claims:
 - a. Claims including interest and/or penalties. Close as a partial disallowance.
 - b. Claims received after an examination is closed, but still on AIMS. Return to the examiner. Consider the issues and include any allowable adjustment in the examination report.
 - c. Claims that require Appeals consideration, or which, if allowed would produce overpayments or credits requiring Joint Committee Review.
 - i. IRC 6405 provides that Joint Committee Review is required for refunds over \$2,000,000 (\$5,000,000 for C Corporations). See IRM 4.70.17.7.7 for Joint Committee procedures.
 - ii. In computing the IRC 6405 jurisdictional amount, combine proposed refunds of penalties and previously assessed and paid interest with proposed tax refunds.

Example: If a taxpayer files a claim for a tax assessment of \$1,950,000 and previously assessed interest of \$60,000, Joint Committee Review would be required since the combined amount exceeds \$2,000,000.

Note: You can't close Joint Committee cases without a Joint Committee Specialist's approval.

- (3) Prepare and mail Letter 570-A, Claim Allowed in Full, to inform the taxpayer of the claim allowance.

Note: For EP, see *Employee Plans Examination Exhibits* for an example of Letter 570-A.

- (4) Save copies of all workpapers, forms and letters you prepared in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.
- (5) Close claims allowed in full electronically (100% paperless). Complete the RCCMS closing record by inputting the following on each tab:

- a. The fields and entries of the RCCMS closing record are similar to the Form 5599 other than the disposal code.
- b. Ensure that the record is validated for closure and that all the fields highlighted in red are completed.

Note: All the required fields may not be enabled or highlighted when “validating for closure”.

- c. Complete the following fields of the “General Tab” of the closing record:

RCCMS Closing Record Field	Data Entry
ARDI Code	Select applicable code
Priority Code	Leave blank if the file contains an original return and BMFOLT doesn't contain an “A” Freeze or AMDIS does not show a 97X. Enter “1” if the file contains an original return and BMFOLT contains an “A” Freeze or AMDIS shows a 97X. Enter “2” if the file contains a copy of the original return and BMFOLT doesn't contain an “A” Freeze or AMDIS does not show a 97X. Enter “3” if the file contains a copy of the original return and BMFOLT contains an “A” Freeze or AMDIS shows a 97X.
Disposal Code	RCCMS disposal code 103, Claims Allowed in Full (Surveyed).
Surveyed Reason Code (SRC)	<ul style="list-style-type: none"> E – Other on the General Tab, Survey Reason Code field. 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” or “claim allowed in full” isn't acceptable. For ITG: If the General Welfare Exception Moratorium is one of the reasons for the survey, the document must also include a statement that the ITG Program Manager has approved the survey due to the GWE Moratorium.
Closing With	Select option 7 – Paperless Non-examined.

- d. Complete the following fields of the “Detail Tab” of the closing record:

Claim hours
Technique code
Examiner's name
Examiner's grade

Note: Do not input time in the “examiners time” box.

- (6) The group manager will document their review and approval of the survey closure on the case activity chronology tab in RCCMS. Manager's comments will include any applicable Special Handling instructions as required.
- (7) Manager will close the case to the TE/GE Closing Group, using status code 51.

4.70.17.6
(11-28-2023)
Examined Claims

- (1) Begin the claim examination as soon as possible, but no later than 30 days after receipt and note any delays on the Form 5464, Case Chronology Record, or Form 9984, Examining Officer's Activity Record.
 - a. Update the case to status 12 as soon as time is applied to the case.
 - b. Report your time working the claim on WebETS and list each year to which a claim applies with the applicable activity code and project code for the return.
- (2) Follow procedures in IRM 4.70.17.2, Claims for Refund, Verify the claim was timely filed.
- (3) Verify that the statute date alpha codes on AIMS and RCCMS are “AA” or “BB” (as applicable), using the month and year of the statute expiration (for example, 12/AA/2019).

Note: Document your statute date alpha code verification on the case chronology.

- (4) Send initial contact Letter 6031, Initial Exam Appointment. For employment tax cases, send initial contact Letter 3850, Employment Tax Appointment Letter, or Letter 3851, Employment Tax Call-in Appointment Letter. See IRM 4.70.12.7.1, Initial Contact Letter and Initial IDR, for additional details. For employment tax cases, send initial contact Letter 3850, Employment Tax Appointment Letter, or Letter 3851, Employment Tax Call-in Appointment Letter.
 - a. For TEB, send Letter 5678, Tax Exempt Bonds (TEB) Form 8038-R Examination Notification, notifying the issuer that its refund claim on Form 8038-R is being examined.
- (5) Contact the taxpayer and any authorized representative 14 calendar days after mailing the initial contact letter if the taxpayer hasn't contacted you. See IRM 4.70.12.7 Contacting the Taxpayer, and IRM 4.70.11.8, Communication with the Taxpayer or Representative for additional details.
- (6) Follow the IDR procedures in IRM 4.70.11.9, Information Document Request Process. As the examination continues, you may request additional documents necessary to determine whether the claim is allowable. Allow the taxpayer at least 21 days to provide additional information in support of the refund claim for procedural deficiencies or incomplete information.

- (7) Use the applicable Workpaper Summary (e.g., Form 5773, Form 5773-A, or Form 4318), and prepare supporting workpapers to properly document the issue. Save/upload all workpapers, forms and letters in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.
- (8) The scope of the examination is limited to the merits of the claim. However, if a potential violation/issue unrelated to the merits of the refund claim is identified during the exam, the examiner must notify the group manager and obtain approval to expand the scope of the examination.
- (9) To disallow a claim in full or in part, solicit:
 - a. Form 2297, Waiver of Statutory Notification of Claim Disallowance. See IRM 4.70.17.6.8 for instructions on completing Form 2297.
 - b. Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit. See IRM 4.70.17.6.9 for instructions on completing Form 3363.
- (10) To assess additional tax, see the table below for the type of tax and form to solicit:

Type of tax	Forms to use (agreed)	Forms to use (unagreed)
Income	Form 4621, Report of Examination - Exempt Organization, Form 4549, Report of Income Tax Examination Changes	Form 4549-A, Report of Income Tax Examination Changes (Without Taxpayer Signature), Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment
Excise Tax (Chapter 42)	Form 4883, Exempt Organizations Excise Tax Audit Changes, Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment	Form 4883, Exempt Organizations Excise Tax Audit Changes, Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment

Type of tax	Forms to use (agreed)	Forms to use (unagreed)
Excise Tax (Forms 720, 720-X, 2290, 730, 11-C, and 8849)	Form 5384, Excise Tax Examination Changes and Consent to Assessment & Collection	Form 5385, Excise Tax Examination Changes, Form 2504-E, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment
Excise Tax on Employee Plans (Chapter 43)	Form 870-EP, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, and Form 5438, Report of Examination - Excise Taxes on Employee Plans	Form 870-EP, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, and Form 5438, Report of Examination - Excise Taxes on Employee Plans

- (11) Use Report Generation Software (RGS) to generate:
- Form 4549, Income Tax Examination Changes.
 - Form 4549-E, Income Tax Discrepancy Adjustments.
- (12) Refer to the following table for the DC to use:

Claim	RCCMS Disposal Code
Allowed in full	03 (102)
Partially allowed - agreed	03 (102)
Partially allowed - unagreed	07 (601) or 10 (604) for unagreed cases
Disallowed in full	01 (210) for agreed cases, 07 (601) or 10 (604) for unagreed cases
Additional assessment	03 (102) for agreed cases, 07 (601) or 10 (604) for unagreed cases

Note: If multiple years are open, you may have a different DC for each year.

4.70.17.6.1
(11-28-2023)
Claim Allowed in Full

- (1) Follow the procedures in this section when the taxpayer/representative send you additional information for a claim, and it proves that the claim should be allowed in full.
- (2) Refer to the Joint Committee when the refund of tax, penalties and interest exceeds \$2,000,000 (\$5,000,000 for C corporations). See IRM 4.70.17.7.7 for Joint Committee procedures.

Note: A claim for refund of arbitrage rebate, yield reduction or penalty in lieu of rebate is not subject to Joint Committee review. TEB claims over \$2,000,000 are subject to mandatory review by TEB Technical.

- (3) For EO and EP, prepare and mail Letter 570-A, Claim Allowed in Full, to inform the taxpayer of the allowance of the claim.

Note: For EP, see *Employee Plans Examination Exhibits* for an example of Letter 570-A.

- a. The group will mail the closing letter after the group manager approves the case for closing and saves the letter in the Office Documents folder within the RCCMS activity.
- b. Document the case chronology that the closing letter was mailed.
- c. Forms 2297 and 3363 aren't required.
- d. Form 4549, Report of Income Tax Examination Changes, is required for income tax claims, Form 4621, Report of Examination - Exempt Organization, and Form 4883, Exempt Organizations Excise Tax Audit Changes, are required for Chapter 41 and 42 excise tax claims, and Form 5384, Excise Tax Examination Changes and Consent to Assessment & Collection, is required for Miscellaneous excise taxes (e.g., Form 11-C, Occupational Tax and Registration Return for Wagering, Form 730, Monthly Tax Return for Wagers, Form 8849, Claim for Refund of Excise Taxes). However, taxpayer signature is not necessary.

Exception: Joint Committee cases require a signature.

- (4) For TEB, prepare Letter 5761, TEB Arbitrage Claim Allowed in Full, notifying the issuer that the claim for refund has been allowed in full, and any required Letter 937, Transmittal for Power of Attorney.
 - a. Prepare Form 3753, Manual Refund Posting Voucher.
 - b. If the allowed claim is for more than \$2 million, the claim is subject to mandatory review by a TLS from TEB Technical (not Joint Committee).
 - c. If the group manager doesn't agree with the examiner's recommendation, discuss any issues with them that they must develop and return the RCCMS case file for further development. You may request technical assistance. If disagreement remains, elevate the issue(s) to the Program Manager for resolution.
 - d. If the group manager agrees with the examiner's recommendation or are otherwise instructed to proceed with processing the claim, the group manager will:

1. Review the Form 3753, Manual Refund Posting Voucher.

- | |
|--|
| 2. Sign Letter 5761, TEB Arbitrage Claim Allowed in Full, for the PM and mail it to the issuer, and to any authorized representative using Letter 937, Transmittal for Power of Attorney. |
| 3. Upload a copy of the signed Letter 5761, TEB Arbitrage Claim Allowed in Full, any Letter 937, Transmittal for Power of Attorney, and the reviewed Form 3753, Manual Refund Posting Voucher, into the RCCMS case file. |
| 4. Notify the examiner of final approval to close. |

- e. When the TEB examiner receives the final approval to close from the TEB Exam group manager:

- | |
|--|
| Return any hardcopy documents not necessary to support the examination conclusion to the issuer or the issuer's representative. |
| For any documents too large for scanning but necessary to support the conclusion in a case file, prepare Form 3210 retaining a copy in the Form 3210 logbook for one year, as required in Document 12990, IRS Records Control Schedule (RCS) 23, Item 36 and send the paper case file to the CP&C Planning & Monitoring Closing Unit at the following address for closing:
Internal Revenue Service
TEGE Closing Unit MS 7700
1973 N. Rulon White Boulevard
Ogden, Utah 87201-1001 |
| Upon receipt of a paper case file, the Manager, CP&C, Planning & Monitoring Closing Unit, or other designee, signs the Form 3753 when they receive the paper case file. |

- (5) Upload all workpapers, forms and letters you prepared in the RCCMS Office Documents folder using the RCCMS Naming Convention.
- (6) Close claims allowed in full electronically (100% paperless). Complete the RCCMS closing record by inputting the following on each tab:
- The fields and entries of the RCCMS closing record are similar to the Form 5599 other than the disposal code. The RCCMS disposal code for an agreed tax change is 03 (103).
 - Ensure that the record is validated for closure and that all the fields highlighted in red are completed.
- Note:** All the required fields may not be enabled or highlighted when “validating for closure”.
- Complete the following fields of the “General Tab” of the closing record:

RCCMS Field	Data Entry
ARDI Code	Select applicable code.

RCCMS Field	Data Entry
Priority Code	Leave blank if the file contains an original return and BMFOLT doesn't contain an "A" Freeze or AMDIS does not show a 97X. Enter "1" if the file contains an original return and BMFOLT contains an "A" Freeze or AMDIS shows a 97X. Enter "2" if the file contains a copy of the original return and BMFOLT doesn't contain an "A" Freeze or AMDIS does not show a 97X. Enter "3" if the file contains a copy of the original return and BMFOLT contains an "A" Freeze or AMDIS shows a 97X.
Disposal Code	RCCMS 03 (102) (AIMS 03), Agreed Tax Change or Penalty Change.
Closing With	Select option 4 – Paperless Examined.

d. Complete the following fields of the "Detail Tab" of the closing record:

Claim hours
Technique code
Examiner's name
Examiner's grade

e. Complete the following fields of the "Individual/Bus.Tab"(1 of 3) in the closing record:

Interest computation date: Entry is required for carry backs. Use the received date of the return with the loss.
Transaction code and amount. Note: This field represents item 12 of the Form 5599. See the instructions for the Form 5599, TE/GE Examined Closing Record, for guidance of appropriate transaction codes.
Reference number and amount. Note: This field represents item 15 of the Form 5599. See the instructions for the Form 5599, TE/GE Examined Closing Record, for guidance of appropriate reference numbers.

(7) The group manager will close the case to the TE/GE Closing Group, using status code 51.

4.70.17.6.1.1
(11-28-2023)

**Employment Tax Cases:
Claim Allowed in Full
with no Additional Tax
Adjustments**

- (1) Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), 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), and/or Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), Form 4666, Summary of Employment Tax Examination, and Form 4668, Employment Tax Examination Changes Report, will be issued to the taxpayer. On Form 4666, the following statement must be included: "On (date) you filed claim Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, or an informal claim for a refund of \$___ for (period/year). As a result of our examination, we allowed your claim in full as shown in the attached report".
- (2) When there are multiple claims, include a summary listing quarters and amounts on a Form 886-A, Explanation of Items. In addition, the appropriate Section 530 language must be included.
- (3) You will prepare Letter 570, Claim Allowed in Full. The manager will mail the letter if subject to sample review. If subject to mandatory review, reviewer will issue the letter.
- (4) Use DC 03 (102).
- (5) The case file may be closed 100% electronically. If SC 30, the following fields in RCCMS, in addition to normal examination fields need to be completed:
 - a. On the Compliance Activities Record: Claim Type and Claim Amount.
 - b. On the Closing Record: Claim Hrs., Claim Amount Disallowed of \$0, Examiner's Time (at least 1 hour), Assessment Information on RCCMS (TC 301 and Amount allowed) and Credit and Tax Computation Adjustment (Reference Numbers) based on the tax and wage adjusted amounts.
- (6) If the amended return is an "adjusted" overreported amount (Box 1), you will use the special procedures described in IRM 4.70.17.6.7, Employment Tax Cases: Adjusted Amended Return Resulting in a Credit Balance, to complete Form 3870, Request for Adjustment.
- (7) If during the examination of a refund claim, the examiner determines that a refund in an amount more than originally requested is due, secure an amended return, or an informal claim to address the additional overassessments. If the taxpayer doesn't agree with the additional refund amount, the examiner allows the original refund claim as filed.

4.70.17.6.2
(11-28-2023)

**Claim Allowed in full
with Offsetting
Adjustments**

- (1) When allowing a claim in full, if proposing offsetting adjustments which reduce the amount refundable, treat the claim as a partially or fully disallowed claim. Follow the procedures for claims disallowed in full or in part as applicable.
- (2) See IRM 25.6.1.10.2.5.6.1, Claim for an Amount Paid Before the ASER, for the offset of a refund with a time-barred upward adjustment from the same time period.

4.70.17.6.2.1
(11-28-2023)

**Employment Tax Cases:
Claim Allowed in Full
with Additional Tax
Adjustments**

- (1) When examining claims, you may encounter LUQs that result in additional tax assessments not related to the claim. If it is determined that the claim isn't the primary examination issue, then you need to change the SC from 30 to 92, or other applicable SC. If the SC is changed from 30, the RCCMS claim information fields discussed below aren't required but, the forms and letters discussed below will remain applicable.
- (2) Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), 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), and/or Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), Form 4666, Summary of Employment Tax Examination, and Form 4668, Employment Tax Examination Changes Report, will be issued to the taxpayer for the net tax adjustments (the net of claim and additional tax adjustments). On Form 4666, the following statement must be included: "On (date) you filed claim Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, or an informal claim for a refund of \$___ for (period/year). As a result of our examination, we allowed your claim in full. The total amount of the refund is, however, decreased by other adjustments, as shown in the attached report."
- (3) When there are multiple claims, include a summary listing quarters and amounts on a Form 886-A. In addition, the appropriate Section 530 language must be included.
 - a. If the taxpayer signs Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), you will prepare Letter 3382, Agreed Employment Tax Change Cases Notification. The manager will mail the letter if subject to sample review. If subject to mandatory review, reviewer will issue the letter. You will use DC 03 (102).
 - b. If the taxpayer refuses to sign Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), the case will be processed in the same manner as a partial unagreed case. You will use DC 10 (604) or DC 07 (601), depending on whether the case is appealed.
- (4) If SC 30, the following fields in RCCMS, in addition to normal examination fields, must be completed:
 - a. On the Compliance Activities Record: Claim Type and Claim Amount.
 - b. On the Closing Record: Claim Hrs., Claim Amount Disallowed of \$0, Examiner's Time (time related to additional assessment), and Assessment Information on RCCMS (TC 308 if net increase in tax (or TC 300, if net increase is not interest-free, or TC 301 - if a net decrease in tax) and Amount of Adjustment and Credit and Tax Computation Adjustment (Reference Numbers) based on the tax and wage adjusted amounts.
- (5) If the amended return is an "adjusted" overreported amount (Box 1), the examiner will use the special procedures described in IRM 4.70.17.6.7, Employment Tax Cases: Adjusted Amended Return Resulting in a Credit Balance, to complete the Form 3870, Request for Adjustment.

4.70.17.6.3
(11-28-2023)

**Claim Partially
Disallowed without
Additional Tax or
Arbitrage Payment Due**

- (1) Issue the report and the following letter proposing partial disallowance of the claim.

Function	Letter
EO	Letter 3602, Claim Disallowance without Additional Tax
EP	Letter 569-A, Claim Disallowance Notification Letter, or Letter 3602-A, 30-Day Letter - EP Claim Denied, if the taxpayer doesn't sign and return Form 3363 and Form 2297 in response to Letter 569-A. Note: See <i>Employee Plans Examination Exhibits</i> for an example of Letter 569-A. Note: See <i>Employee Plans Examination Exhibits</i> for an example of Letter 3602-A.
ITG	Letter 569, Full/Partial Preliminary Claim Disallowance Letter
TEB	Letter 5684, TEB Arbitrage Claim Notification of Proposed Claim Disallowance, with Pub 5. <ul style="list-style-type: none"> If help is warranted, the group manager should contact the TEB Technical group manager for assistance. Consider whether the legal issue warrants tech advice. The issuer may also request tech advice on an identified area of noncompliance. Follow the procedures in the most recent revenue procedures on tech advice, Rev. Proc. 2018-2 (updated annually).

- Select language for partial disallowance.
 - Insert the applicable form number in the letter.
 - For initial reports, give the taxpayer up to 15 days to respond.
 - Attach Pub 1, and Pub 594, when applicable.
 - Include a copy of the claim for refund.
 - Attach all relevant forms as specified in paragraphs (2) through (5) below.
 - Get your manager's approval before you sign and mail the letter.
- Prepare Form 886-A, Explanation of Items, if the case is unagreed. Include the issue, a description of the facts surrounding the issue, an explanation of the law for the issue, an explanation of the government's position, including calculations clearly showing how you determined the partial disallowance, the taxpayer's position and a conclusion.
 - Prepare Form 2297, Waiver of Statutory Notification of Claim Disallowance. See IRM 4.70.17.6.8 for instructions on completing Form 2297.
 - Prepare Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit. See IRM 4.70.17.6.9 for instructions on completing Form 3363.
 - Prepare the applicable report of examination changes and waiver form based on the type of tax. See IRM 4.70.14, Resolving the Examination.

- (6) Update the RCCMS case status to 13 (30-Day Letter) and hold the case file for up to 45 days pending the taxpayer's response or until a signed Form 2297 and Form 3363 are received, if earlier.
- (7) In the table below, substitute Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment, Form 870-EP, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, Form 2504-E, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment, Form 5384, Excise Tax Examination Changes and Consent to Assessment & Collection, or other waiver form for Form 4549, Report of Income Tax Examination Changes, as appropriate.

If Form 2297 is...	If Form 3363...	If Form 4549 is...	Then...
Signed	Signed	Signed	Close as agreed.
Signed	Signed	Not signed	Close as agreed.
Signed	Not signed	Signed	Close as agreed.
Signed	Not signed	Not signed	Close as disagreed without protest.
Not signed	Signed	Signed	Close as disagreed without protest.
Not signed	Signed	Not signed	Close as disagreed without protest.
Not signed	Not signed	Signed	Close as disagreed without protest.
Not signed	Not signed	Not signed	Close as disagreed without protest. See <i>Note below</i> .

- (8) If the taxpayer agrees, issue Letter 2841-A, Agreed Claim Disallowance Closing Letter, and attach a copy of the examination report with a copy of the signed Form 2297, Waiver of Statutory Notification of Claim Disallowance, and Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit.

Note: For EP, see *Employee Plans Examination Exhibits* for an example of Letter 2841-A, Agreed Claim Disallowance Closing Letter.

- a. For TEB, Include the completed Form 3753, Manual Refund Posting Voucher, in the case for the allowable portion of the refund claim. Manager, CP&C Planning & Monitoring Closing Unit, or other designee will sign the Form 3753.

Note: For TEB, allowed refund arbitration claims over \$2 million are subject to mandatory review.

- (9) If the taxpayer files a protest to Appeals, issue a rebuttal to the protest, and close the case as unagreed - protest to Appeals. Follow the closing procedures in IRM 4.70.14, Resolving the Examination.
- TEB Examiner: notify the TEB Exam group manager that the issuer has appealed the proposed partial denial and, unless technical review is not required, request transfer of the RCCMS case file to the TLS assigned to conduct the review. If technical review is not required, inform the TEB Exam group manager that the refund claim is ready for transfer to Appeals and e-mail Letter 5918, Protest Received Rebuttal / Transfer to Appeals, issuer's protest, rebuttal to the protest and any required Letter 937, Transmittal for Power of Attorney.
 - TEB Group Manager: Follow the procedures in IRM 4.70.14, Resolving the Examination, for unagreed issues. If you agree with the prepared rebuttal or are otherwise instructed to proceed.
 - Sign Letter 5918, Protest Received Rebuttal/Transfer to Appeals for the PM and mail it with the rebuttal to the issuer, and any authorized representative using Letter 937 informing the issuer that you've forwarded the refund claim to Appeals.
 - Secure e-mail a copy of the signed Letter 5918, the rebuttal, and any Letter 937 to the examiner.
- (10) If no response is received after 30 days, close the case as unagreed without protest. All unagreed claim disallowances (full or partial) without protest to Appeals are closed to Mandatory Review for issuance of the final claim disallowance letter. On the RCCMS 3198-A Checksheet:
- Check the "Mandatory Review, Unagreed Case, and Proposed Adverse boxes".
 - Check the "Claim Case" box under "Expedited Processing".
 - Check the box "Prepare/Issue Letter" and write in the blank to the right "905 – Final Partial Claim Disallowance", or "Letter 5677, TEB Arbitrage Claim Notification of Final Adverse Determination (Full Disallowance)".
- Note:** Mandatory Review will prepare and issue the Letter 905, Final Partial Claim Disallowance, or Letter 5677, TEB Arbitrage Claim Notification of Final Adverse Determination (Full Disallowance).
- (11) Close claims allowed in full electronically (100% paperless). Complete the RCCMS closing record by inputting the following on each tab:
- The fields and entries of the RCCMS closing record are similar to the Form 5599 other than the disposal code.
 - Ensure that the record is validated for closure and that all the fields highlighted in red are completed.
- Note:** All the required fields may not be enabled or highlighted when "validating for closure".
- Complete the following fields of the "General Tab" of the closing record:

RCCMS Field	Data Entry
ARDI Code	Select applicable code.

Priority Code	Leave blank if the file contains an original return and BMFOLT doesn't contain an "A" Freeze or AMDIS does not show a 97X. Enter "1" if the file contains an original return and BMFOLT contains an "A" Freeze or AMDIS shows a 97X. Enter "2" if the file contains a copy of the original return and BMFOLT doesn't contain an "A" Freeze or AMDIS does not show a 97X. Enter "3" if the file contains a copy of the original return and BMFOLT contains an "A" Freeze or AMDIS shows a 97X.
Disposal Code	Use disposal code 03 (102) if partially disallowed – agreed, disposal code 07 (601) if unagreed with protest to Appeals, or 10 (604) for partially disallowed – unagreed without protest.
Closing With	Select option 4 – Paperless Examined.

d. Complete the following fields of the "Detail Tab" of the closing record:

- Claim hours
- Claim amount disallowed
- Technique code
- Examiner's name
- Examiner's grade

Note: Do not input time in the "examiner's time" box.

e. Complete the following fields of the "Individual/Bus.Tab" (1 of 3) in the closing record:

- Interest computation date: Entry is required for carry backs. Use the received date of the return with the loss.
- Transaction code and amount.

Note: This field represents item 12 of the Form 5599. See the instructions for the Form 5599, TE/GE Examined Closing Record, for guidance of appropriate transaction codes.

- Reference number and amount

Note: This field represents item 15 of the Form 5599. See the instructions for the Form 5599, TE/GE Examined Closing Record, for guidance of appropriate reference numbers.

4.70.17.6.3.1

(11-28-2023)

**Employment Tax Cases:
Claim Partially
Disallowed Without
Additional Tax
Adjustments**

- (1) Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), 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), and/or Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), Form 4666, Summary of Employment Tax Examination, and Form 4668, Employment Tax Examination Changes Report, will be issued to the taxpayer for the net tax adjustments (the net of claim and additional tax adjustments), will be issued to the taxpayer. On Form 4666, the following statement must be included: "On (date) you filed claim Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, or an informal claim for a refund of \$____ for (period/year). As a result of our examination, we allowed your claim in part as shown in the attached report".
- (2) When there are multiple claims, include a summary listing quarters and amounts on a Form 886-A, Explanation of Items. In addition, the appropriate Section 530 language must be included.
- (3) You will solicit Form 3363 and Form 2297 using Letter 5376, Form 4666, Form 4668 and Form 886-A.
 - a. If the taxpayer signs both the Form 3363 and Form 2297, you will use DC 03 (102).
 - b. If the taxpayer refuses to sign Form 2297, the case can still be closed agreed if the agreement is secured on Form 3363. You will use DC 03 (102).
 - c. If there is no reply from the taxpayer after thirty days or the taxpayer doesn't agree, the examiner will close the case using DC 10 (604).
 - d. If the taxpayer doesn't agree with the disallowance of the claim and files a protest, you will prepare a written rebuttal, if necessary, or make a copy of the unagreed issue workpapers. The rebuttal or workpapers should be given to the taxpayer. You will prepare a Form 4665, Report Transmittal, which can provide additional confidential information or a summary of the unagreed issues. See IRM 4.23.10.16, Unagreed Employment Tax - Examination Reports. You will close the case using DC 07 (601).
- (4) If SC 30, the following RCCMS fields, in addition to normal examination fields, need to be completed:
 - a. If SC 30, the following RCCMS fields, in addition to normal examination fields, need to be completed.
 - b. On the Closing Record: Claim Rejection Date, Claim Hrs., Claim Amount Disallowed of \$X, Examiner's Time (at least 1 hour), Assessment Information on RCCMS (TC 301 and Amount allowed) and Credit and Tax Computation Adjustment (Reference Numbers) based on the tax and wage adjusted amounts.

4.70.17.6.4

(11-28-2023)

**Claim Partially
Disallowed with
Additional Tax or
Arbitrage Payment Due**

- (1) Process partially disallowed claims with additional amounts due the same way as partially disallowed claims without additional amounts as described in IRM 4.70.17.6.3, Claim Partially Disallowed without Additional Tax or Arbitrage Payment Due, with the following exceptions for EO:
 - a. Issue Letter 3602-B, Claim Disallowance with Additional Tax Due.
 - b. Prepare Form 4621, Report of Examination or Form 4883, Exempt Organizations Excise Tax Audit Changes, as appropriate.
- (2) In the table below substitute Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment, Form 870-EP, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, Form 2504-E, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment, Form 5384, Excise Tax Examination Changes and Consent to Assessment & Collection, or other waiver form for Form 4549, Report of Income Tax Examination Changes, as appropriate.

Note: Statutory notices of deficiency are not issued for arbitrage claims since arbitrage related payments are **not** taxes.

If Form 2297 is...	If Form 3363 is...	If Form 4549 is...	Then...
Signed	Signed	Signed	Close as agreed.
Signed	Signed	Not signed	Close as unagreed without protest. See Notes 1 and 3.
Signed	Not signed	Signed	Close as agreed. See Note 1.
Signed	Not signed	Not signed	Close as unagreed without protest. See Notes 1 and 3.
Not signed	Signed	Signed	Close as unagreed without protest. See Notes 1 and 2.
Not signed	Signed	Not signed	Close as unagreed without protest. See Notes 1, 2, and 3.
Not signed	Not signed	Signed	Close as unagreed without protest. See Notes 1 and 2.
Not signed	Not signed	Not signed	Close as unagreed without protest. See Notes 1 2, and 3.

1. If the taxpayer files a protest, close the case as unagreed - protest to Appeals. On the RCCMS 3198-A Checksheet, check "Forward to Appeals".
 2. If the claim disallowance is unagreed, Mandatory Review issues a statutory notice of claim disallowance. On the RCCMS 3198-A Checksheet, check "Prepare/Issue Letter". To the right, write "905 - Final Partial Claim Disallowance".
 3. If the additional tax is unagreed, Mandatory Review issues a statutory notice of deficiency. On the RCCMS 3198-A Checksheet, check "Prepare/Issue Letter". To the right, write "Statutory Notice of Deficiency".
- (3) Complete the following fields of the "Individual/Bus.Tab"(1 of 3) in the closing record:
- Interest computation date: Entry is required for carry backs. Use the received date of the return with the loss.
 - Transaction code and amount.
- Note:** This field represents item 12 of the Form 5599. See the instructions for the Form 5599, TE/GE Examined Closing Record, for guidance of appropriate transaction codes.
- Reference number and amount.
- Note:** This field represents item 15 of the Form 5599. See the instructions for the Form 5599, TE/GE Examined Closing Record, for guidance of appropriate reference numbers.

4.70.17.6.4.1
(11-28-2023)

**Employment Tax Cases:
Claim Partially
Disallowed with
Additional Tax
Adjustments**

- (1) When examining claims, examiners may encounter items that result in additional tax assessments not related to the claim. If it is determined that the claim is not the primary examination issue, then the examiner needs to change the SC from 30 to 92, or other applicable SC. If the SC is changed from 30, the RCCMS claim information fields discussed below are not required. But the forms and letters discussed below will remain applicable.
- (2) The examiner will solicit Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit, and Form 2297, Waiver of Statutory Notification of Claim Disallowance, using Letter 5376, Full or Partial Claim Disallowance - Employment Tax, Form 4666, Summary of Employment Tax Examination, Form 4668, Employment Tax Examination Changes Report, and Form 886-A, Explanation of Items.
 - a. If the taxpayer refuses to sign Form 2297, Waiver of Statutory Notification of Claim Disallowance, the case can still be closed agreed if the agreement is secured on Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit. You will indicate on the RCCMS 3198-A Checksheet: "Issue Letter 905, Final Partial Claim Disallowance".
 - b. If there is no reply from the taxpayer after 30 days or the taxpayer doesn't agree and provide a protest, you will close the case.
 - c. If the taxpayer doesn't agree with the disallowance of the claim and files a protest, you will prepare a written rebuttal, if necessary, and Form 4665, Report Transmittal, to provide any additional information rebutting the taxpayer's protest. See IRM 4.23.10.16, Unagreed Employment Tax - Examination Reports.

- (3) Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), 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), and/or Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), Form 4666, Summary of Employment Tax Examination, and Form 4668, Employment Tax Examination Changes Report, will be issued to the taxpayer for the net tax adjustments (net of claim and additional adjustments). On Form 4666, Summary of Employment Tax Examination, the following statement must be included: "On (date) you filed claim Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, or an informal claim for a refund of \$___ for (period/year). As a result of our examination, we allowed your claim in part as shown in the attached report."
 - a. If the taxpayer signs, Form 2504, Form 2504-S, and/or Form 2504-T, you will prepare Letter 3382, Agreed Employment Tax Change Cases Notification. The manager will mail the letter if subject to sample review. If subject to mandatory review, reviewer will issue the letter.
 - b. If the taxpayer refuses to sign Form 2504, the case will be processed in the same manner as an unagreed case. The manager will mail the letter if subject to sample review. If subject to mandatory review, reviewer will issue the letter.
- (4) When there are multiple claims, include a summary listing quarters and amounts on a Form 886-A, Explanation of Items. In addition, the appropriate Section 530 language must be included.
- (5) If the taxpayer agrees to only a portion of the additional tax adjustments or the claim disallowance, the case will be closed as a partially agreed case. The manager will mail the letter if subject to sample review. If subject to mandatory review, reviewer will issue the letter.
- (6) If SC 30, the following RCCMS fields, in addition to normal examination fields, must be completed:
 - a. On the Compliance Activities Record: Claim Type and Claim Amount.
 - b. On the Closing Record: Claim Rejection Date, Claim Hrs., Claim Amount, Examiner's Time (time related to additional assessment), Assessment Information on RCCMS (TC 308 - if net increase in tax or 300, if net increase is not interest-free, or 301, if a net decrease in tax) and Amount of Adjustment and Credit and Tax Computation Adjustment (Reference Numbers) based on the tax and wage adjusted amounts.
 - c. If all issues (claim and additional tax adjustments) are agreed, you will use DC 03 (102). If there are unagreed issues, either related to the claim or the additional tax adjustments, you will use DC 10 (604) or DC 07 (601), depending on whether the case is appealed.

4.70.17.6.5
(11-28-2023)

**Claim Disallowed in Full
without Additional Tax
or Arbitrage Payment
Due**

- (1) Issue the report and the following letter proposing claim disallowed in full.

Function	Letter
EO	Letter 3602, Claim Disallowance without Additional Tax.
EP	Letter 569-A, Claim Disallowance Notification Letter, or Letter 3602-A, 30-Day Letter - EP Claim Denied, if the taxpayer doesn't sign and return Form 3363 and Form 2297 in response to Letter 569-A. Note: See <i>Employee Plans Examination Exhibits</i> for an example of Letter 569 and Letter 3602-A.
ITG	Letter 569, Full/Partial Preliminary Claim Disallowance Letter.
TEB	Letter 5684, TEB Arbitrage Claim Notification of Proposed Claim Disallowance, with Pub 5, TEB 8038-CP Notice of Claim Disallowance. Letter 4143-C, 30-day Letter for IRC Section 6676 Penalty, if applicable. Note: If help is warranted, the TEB Technical group manager should contact the Technical group manager for assistance. Note: Consider whether the legal issue warrants tech advice. The issuer may also request tech advice on an identified area of noncompliance. Follow the procedures in the most recent revenue procedures on tech advice, Rev. Proc. 2018-2 (updated annually).

- a. Select language for full disallowance.
 - b. Insert the applicable form number in the letter.
 - c. For initial reports, give the taxpayer up to 15 days to respond.
 - d. Attach Pub 1, and Pub 594, when applicable.
 - e. Include a copy of the claim for refund.
 - f. Attach all relevant forms as specified in paragraphs (2) through (5) below.
 - g. Get your manager's approval before you sign and mail the letter.
- (2) Prepare Form 886-A Explanation of Items, if the case is unagreed. Include the issue, a description of the facts surrounding the issue, an explanation of the law for the issue, an explanation of the government's position, including calculations clearly showing how you determined the partial disallowance, the taxpayer's position, and a conclusion.
- (3) Prepare Form 2297, Waiver of Statutory Notification of Claim Disallowance.

See IRM 4.70.17.6.8 for instructions on completing Form 2297.

- (4) Prepare Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit. See IRM 4.70.17.6.9 for instructions on completing Form 3363.
- (5) Prepare the applicable report of examination changes and waiver form based on the type of tax, see IRM 4.70.14, Resolving the Examination. The taxpayer doesn't need to sign an agreement/waiver form (Forms 870, 870-E, 870-EP, 2504-E, 4549, 4549-E, or 5384) for an agreed closure. However, the Closing Unit needs the form for input onto IDRS.
- (6) Update the RCCMS case status to 13 (30-Day Letter) and hold the case file for up to 45 days pending the taxpayer's response or until a signed Form 2297 and Form 3363 are received, if earlier.

If Form 2297 is...	If Form 3363 is...	Then...
Signed	Signed	Close as agreed.
Signed	Not signed	Close as agreed. <i>See note below.</i>
Not signed	Signed	Close as unagreed without protest.
Not signed	Not signed	Close as unagreed without protest. <i>See note below.</i>

Note: If the taxpayer files a protest, close the case as unagreed - protest to Appeals.

- (7) If the taxpayer agrees:
 - a. For EO and EP, issue Letter 2841-A, Agreed Claim Disallowance Closing Letter, and attach a copy of the examination report with a copy of the signed Form 2297 and Form 3363.

Note: For EP, see *Employee Plans Examination Exhibits* for an example of Letter 2841-A.
 - b. For TEB, prepare Letter 5677, Arbitrage Claim Notification of Final Adverse Determination (Full Disallowance) and any Letter 937. The Group manager will sign and mail Letter 5677, to the issuer and upload a copy of the signed letter into the RCCMS case file.

Note: For TEB, allowed refund arbitrage claims over \$2 million are subject to mandatory review.
- (8) If the taxpayer files a protest to Appeals, issue a rebuttal to the protest, and close the case as unagreed - protest to Appeals. Follow the closing procedures in IRM 4.70.14, Resolving the Examination.
 - a. For TEB, if technical review is required, request a transfer of the RCCMS case to the TLS assigned to conduct the review.

- (9) If no response is received after 30 days, close the case as unagreed without protest. All unagreed claim disallowances (full or partial) without protest to Appeals are closed to Mandatory Review for issuance of the final claim disallowance letter. On the RCCMS 3198-A Checksheet:

- a. Check the “Mandatory Review, Unagreed Case, and Proposed Adverse” boxes.
- b. Check the “Claim Case” box under “Expedited Processing”.
- c. Check the box “Prepare/Issue Letter” and write in the blank to the right “906 – Final Full Claim Disallowance,” or “Letter 5677, TEB Arbitrage Claim Notification of Final Adverse Determination (Full Disallowance)”.

Note: Mandatory Review will prepare and issue Letter 906, Final Full Claim Disallowance (For EP, use Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer), or Letter 5677, TEB Arbitrage Claim Notification of Final Adverse Determination (Full Disallowance).

- (10) Close claims allowed in full electronically (100% paperless). Complete the RCCMS closing record by inputting the following on each tab:
- a. The fields and entries of the RCCMS closing record are similar to the Form 5599 other than the disposal code.
 - b. Ensure that the record is validated for closure and that all the fields highlighted in red are completed.
 - c. Complete the following fields of the “General Tab” of the closing record:

RCCMS Field	Data Entry
ARDI Code	Select applicable code.
Priority Code	Leave blank if the file contains an original return and BMFOLT doesn’t contain an “A” Freeze or AMDIS does not show a 97X. Enter “1” if the file contains an original return and BMFOLT contains an “A” Freeze or AMDIS shows a 97X. Enter “2” if the file contains a copy of the original return and BMFOLT doesn’t contain an “A” Freeze or AMDIS does not show a 97X. Enter “3” if the file contains a copy of the original return and BMFOLT contains an “A” Freeze or AMDIS shows a 97X.
Disposal Code	Regulatory/Revenue Protection if disallowed in full – agreed, 07 if unagreed with protest to Appeals, or 10 for partially disallowed – unagreed without protest.
Closing With	Select option 4 – Paperless Examined.

- d. Complete the following fields of the “Detail Tab” of the closing record:

Claim hours

Claim amount disallowed
Technique code
Examiner's name
Examiner's grade

Note: Do not input time in the “examiner’s time” box.

4.70.17.6.5.1
(11-28-2023)

**Employment Tax Cases:
Claim Disallowed in Full
without Additional Tax
Adjustment**

- (1) Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), 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), and/or Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), Form 4666, Summary of Employment Tax Examination, and Form 4668, Employment Tax Examination Changes Report, will be issued to the taxpayer. On Form 4666, the following statement must be included: “On (date) you filed claim Form 941-X, Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund, or an informal claim for a refund of \$___ for (period/year). As a result of our examination, the claim was disallowed in full.”
- (2) When there are multiple claims, include a summary listing quarters and amounts on a Form 886-A, Explanation of Items. In addition, the appropriate Section 530 language must be included.
- (3) You will solicit Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit, and Form 2297, Waiver of Statutory Notification of Claim Disallowance, using Letter 5376, Full or Partial Claim Disallowance - Employment Tax, Form 4666, Summary of Employment Tax Examination, and Form 886-A, Explanation of Items:
 - a. If the taxpayer signs both forms, you will use DC 01 (210). No other closing letter will be issued.
 - b. If the taxpayer refuses to sign Form 2297, the case can still be closed agreed, if the agreement is secured on Form 3363. You will type on the RCCMS 3198-A Checksheet: “Issue Letter 906”. (For EP, “Issue Letter 906-A.”) You will use DC 01 (210).
 - c. If there is no reply from the taxpayer after 30 days or the taxpayer doesn’t agree but doesn’t provide a protest, you will close the case. You will use DC 01 (210).
 - d. If the taxpayer doesn’t agree with the disallowance of the claim and files a protest, you will prepare a written rebuttal, if necessary or make a copy of the unagreed issue workpapers. The rebuttal or workpapers should be given to the taxpayer. You will prepare Form 4665, Report Transmittal, which can provide additional confidential information or a summary of the unagreed issues. See IRM 4.23.10.16, Unagreed Employment Tax - Examination Reports. You will close the case using DC 07 (601).
- (4) If SC 30 and if using DC 01 (210), the following RCCMS fields, in addition to normal examination fields, need to be completed:

- a. On the Compliance Activities Record: Claim Type and Claim Amount.
 - b. On the Closing Record: Claim Rejection Date, Claim Hours, Claim Amount Disallowed of \$X, Examiner's Time (leave blank), Assessment Information on RCCMS (TC 300 and \$0). There are no Adjustments (Reference Numbers) required.
- (5) If SC 30 and if using DC 07 (601), the following RCCMS fields, in addition to normal examination fields, need to be completed:
- a. On the Compliance Activities Record: Claim Type and Claim Amount.
 - b. On the Closing Record: Claim Rejection Date, Claim Hours, Claim Amount Disallowed of \$X, Examiner's Time (time related to additional assessment), and Assessment Information on RCCMS (TC 300 and \$0). There are no Adjustments (Reference Numbers) required.

4.70.17.6.6
(11-28-2023)

**Claim Disallowed in Full
with Additional Tax or
Arbitrage Payment Due**

- (1) Process claims disallowed in full with additional amounts due the same way as claims disallowed in full without additional amounts as described in IRM 4.70.17.6.5, Claim Disallowed in Full without Additional Tax Due or Arbitrage Payment Due, with the following exceptions:

- a. For EO, Issue Letter 3602-B, Claim Disallowance with Additional Tax Due. Check the box for full disallowance with additional tax due. Prepare Form 4621, Report of Examination or Form 4883, Exempt Organizations Excise Tax Audit Changes, as appropriate.
- b. For EO & EP, If the taxpayer has a balance due, and the taxpayer has signed and returned Form 2297 and Form 3363, prepare and mail Letter 2511, TE/GE Agreed Examination Changes, and attach a copy of the examination report with a copy of the signed Form 2297 and Form 3363.

Note: For EP, see *Employee Plans Examination Exhibits* for an example of Letter 2511.

- c. For TEB, if during the course of a refund claim examination, you determine that a delinquent or amended Form 8038-T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate, with an additional payment is required, expand the scope to include securing the delinquent or amended Form 8038-T and additional payment. Consult the TEB Exam group manager for their agreement.

- (2) In the table below substitute Form 870, Form 870-E, Form 2504-E, Form 5384, or other waiver form for Form 4549 as appropriate.

Note: Statutory notices of deficiency are not issued for arbitrage claims since arbitrage related payments are **not** taxes.

If Form 2297 is...	If Form 3363 is...	If Form 4549 is...	Then
Signed	Signed	Signed	Close as agreed.
Signed	Signed	Not signed	Close as unagreed without protest. See Notes 1 and 3.
Signed	Not signed	Signed	Close as agreed. See Note 1.

If Form 2297 is...	If Form 3363 is...	If Form 4549 is...	Then
Signed	Not signed	Not signed	Close as unagreed without protest. See Notes ¹ and ³ .
Not signed	Signed	Signed	Close as unagreed without protest. See Notes ¹ and ² .
Not signed	Signed	Not signed	Close as unagreed without protest. See Notes ¹ , ² , and ³ .
Not signed	Not signed	Signed	Close as unagreed without protest. See Notes ¹ and ² .
Not signed	Not signed	Not signed	Close as unagreed without protest. See Notes ¹ , ² , and ³ .

Note: ¹ If the taxpayer files a protest, close the case as unagreed - protest to Appeals. On the RCCMS 3198-A Checksheet, check "Forward to Appeals".

Note: ² If the claim disallowance is unagreed, Mandatory Review issues a statutory notice of claim disallowance. On the RCCMS 3198-A Checksheet, check "Prepare/Issue Letter". To the right, write "906 - Final Full Claim Disallowance (For EP, write "Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer".

Note: ³ If the additional tax is unagreed, Mandatory Review issues a statutory notice of discrepancy. On the RCCMS 3198-A Checksheet, check "Prepare/Issue Letter". To the right, write "Statutory Notice of Deficiency".

Note: Close the case as unagreed without protest, if no response is received after 30 days.

(3) Complete the following fields of the "Individual/Bus.Tab" (1 of 3) in the closing record:

- Interest computation date: Entry is required for carry backs. Use the received date of the return with the loss.
- Transaction code and amount.

Note: This field represents item 12 of the Form 5599. See the instructions for the Form 5599, TE/GE Examined Closing Record, for guidance of appropriate transaction codes.

- Reference number and amount.

Note: This field represents item 15 of the Form 5599. See the instructions for the Form 5599, TE/GE Examined Closing Record, for guidance of appropriate reference numbers.

4.70.17.6.6.1
(11-28-2023)

**Employment Tax Cases:
Claim Disallowed in Full
with Additional Tax
Adjustments**

- (1) When examining claims, you may encounter LUQs that result in additional tax assessments not related to the claim. If it is determined that the claim isn't the primary examination issue, then you need to change the SC from 30 to 92 or other applicable SC. If SC is changed from 30, the RCCMS claim information fields discussed below aren't required. But, the forms and letters discussed below will remain applicable.
- (2) You will solicit Form 3363 and 2297 using Letter 5376, Full or Partial Claim Disallowance - Employment Tax, Form 4666 and 886-A.
 - a. If the taxpayer refuses to sign Form 2297, Waiver of Statutory Notification of Claim Disallowance, the case can still be closed agreed if the agreement is secured on Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit. However, Letter 906, Final Full Claim Disallowance (For EP, use Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer), will need to be prepared and issued by Mandatory Review.
 - b. If there is no reply from the taxpayer after 30 days or the taxpayer doesn't agree and doesn't provide a protest, you will close the case.
 - c. If the taxpayer doesn't agree with the disallowance of the claim and files a protest, you will prepare a written rebuttal, if necessary or make a copy of the unagreed issue workpapers. The rebuttal or workpapers should be given to the TP. You will prepare a Form 4665, Report Transmittal, which can provide additional confidential information or a summary of the unagreed issues. See IRM 4.23.10.16, Unagreed Employment Tax - Examination Reports.
- (3) Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), 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), and/or Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), Form 4666, Summary of Employment Tax Examination, and Form 4668, Employment Tax Examination Changes Report, will be issued to the taxpayer for the net tax adjustments (net of claim and additional adjustments). On Form 4666, the following statement must be included: "On (date) you filed claim Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, or an informal claim for a refund of \$___ for (period/year). As a result of our examination, we disallowed your claim in full." When there are multiple claims, include a summary listing quarters and amounts on a Form 886-A, Explanation of Items. In addition, the appropriate Section 530 language must be included.
 - a. If the taxpayer signs Form 2504, you will prepare Letter 3382, Agreed Employment Tax Change Cases Notification. The manager will mail the letter if subject to sample review. If subject to mandatory review, the reviewer will issue the letter.
 - b. If the taxpayer refuses to sign Form 2504, the case will be processed in the same manner as an unagreed case.
- (4) If SC 30, the following RCCMS fields, in addition to normal examination fields, must be completed:
 - a. On the Compliance Activities Record: Claim Type and Claim Amount.

- b. On the Closing Record: Claim Rejection Date, Claim hrs., Claim Amount Disallowed of \$X, Examiner's Time (time related to additional assessment), Assessment Information on RCCMS (TC 308 (or 300 if not interest-free) and amount of adjustment and Credit and Tax Computation Adjustment (Reference Numbers) based on the tax and wage adjusted amounts.
- c. If all issues (claim and additional tax adjustments) are agreed, the examiner will use DC 03 (102). If there are unagreed issues, either related to the claim or the additional tax adjustments, you will use DC 10 (604), or DC 07 (601), depending on whether the case is appealed.

4.70.17.6.7

(11-28-2023)

**Employment Tax Cases:
Adjusted Amended
Return Resulting in a
Credit Balance**

- (1) See IRM 4.23.13.7, Adjusted Returns, for when there is an adjustment to an amended employment tax return (Forms 94x-X) which results in a credit balance.
- (2) If the "Claim box" is checked (Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, Part 1, box 2), or if the examination results will not create a credit balance (refund), the case will be processed using normal procedures.
- (3) The procedures in IRM 4.23.13.7, Adjusted Returns, will only apply when:
 - a. Line 1 - Adjusted Employment Tax Return box is checked. See explanation in Part 3 Line 21 - first bullet (941-X 1-2011 revision).
 - Note:** Line number is different for each Form 94x-X series and revision date) AND
 - b. Examination results will create a credit balance (amount to be refunded) on the module.
- (4) You will inform the taxpayer that the credit request will NOT be applied to the quarter for the tax period in which they filed the Form 94x-X until the examination is completed, and NOT to rely on the credit as a payment toward any taxes due.
- (5) If an amended return is received on which Line 1, Adjusted Employment Tax Return, is checked and is related to a quarter of an on-going exam, the examiner should explain to the taxpayer that this may affect the credit request- ing to be applied to the quarter the Form 94x-X was received.
- (6) Upon completion of the examination:
 - a. Prepare case for final closure from the group.
 - b. Prepare a Form 3870, Request for Adjustment, for each separate quarter of the Form 94x-X (i.e., 03, 06, 09, and 12). See IRM 4.23.13-2, Instructions for Completion of Form 3870 by the Examiner.
 - If multiple Form 94x-X for the same quarter (e.g., 201709) are filed in the same "tax period" (e.g., filed January 1, 2018 and February 2, 2018) in which the form is filed/received, then one Form 3870, Request for Ad-justment, is prepared to transfer the funds to the same tax period (201803).
 - If multiple Form 94x-X for the same quarter (e.g., 201709) are filed in different tax periods (January 1, 2018 and November 30, 2018) in which the form is filed/received, one Form 3870 can be prepared to transfer the funds to the different tax periods (201803 and 201812).

- c. The “tax period” in which the form is filed is determined by the received date stamp on the front of the Form 94x-X.
 - d. You and your manager must digitally sign the Form 3870.
 - e. Place the Form 3870 at the front of the case file and upload into RCCMS Office Documents. The naming convention for the Form 3870 should start with “2” for RCCMS purposes.
 - f. Enter Hold Code 2 in the Closing Records General tab on RCCMS. This will keep the credit balance from being refunded to the taxpayer.
 - g. Enter “Adjusted Return involving a Credit Balance” in the comment section on the RCCMS 3198-A Checksheet and on the Comments tab on the RCCMS Closing Record.
 - h. Closing Unit will monitor the accounts to verify the necessary postings were made and review the Form 3870 for accuracy.
- (7) If you determine that the credit is no longer needed to pay an employment tax liability in the quarter to which the money was moved, then an additional Form 3870, Request for Adjustment, will be needed to release the credit. TC 290 for \$0 will be used.

4.70.17.6.8
(11-28-2023)

Completing Form 2297

- (1) Complete Form 2297, Waiver of Statutory Notification of Claim Disallowance, for cases that have a full or partial claim disallowance.
- (2) Attach Form 2297 to the applicable claim or amended return.

Note: If you’re disallowing claims for multiple years, attach Form 2297 covering all years to the claim or amended return for the most recent year.

- (3) When completing Form 2297:

- a. Enter the name, EIN or SSN, and address of taxpayer where indicated.
- b. **Taxable Period Ended:** List each year for which a claim has been filed and disallowed in part or in full on separate lines as follows: For a short period, show the beginning and ending date (for example, 01/01/2017–09/30/2017). For all other cases, list the period ending date (for example, 12/31/2017).
- c. **Kind of tax:** Enter the type of tax covered by the return under examination, such as income or excise. You don’t have to show the return under examination, form number, or the type of income.

Note: For TEB, this field is commonly left blank because Arbitrage Payments are not a tax.

- d. Enter the claim amount and the amount of the claim disallowed where indicated.
- e. See instructions for taxpayer’s signature at the bottom of the form.

Note: For EP, see *Employee Plans Examination Exhibits* for an example of a completed Form 2297.

4.70.17.6.9
(11-28-2023)

Completing Form 3363

- (1) Complete Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit, for cases in which you disallowed a claim in full or in part and don’t have other adjustments to the tax liability.
- (2) When completing Form 3363:
 - a. Enter the name, EIN or SSN, and address of taxpayer where indicated.

- b. **Year or period:** List each year for which a claim has been filed on separate lines as follows: For a short period, reflect the beginning and ending date (e.g., 01/01/2017– 09/30/2017). For all other cases, list the period ending date (for example, 12/31/2017).
- c. **Date claim filed:** Enter the date Form 843, Claim For Refund and Request for Abatement, or amended return was filed.
- d. **Kind of tax:** Enter the type of tax covered by the return under examination, such as income or excise. You don't have to show the form number of the return under examination or identify the type of income.

Note: For TEB, this field is commonly left blank because Arbitrage Payments are not a tax.

- e. **Amount of claim:** Enter the amount of refund requested in the claim filed by the taxpayer. Determine the amounts to enter as claims under the following circumstances:

If...	Then...
A claim states a definite amount as being claimed	Enter this amount in the "amount of claim" space.
An amended return shows the computation of the corrected amount as computed by the taxpayer	Enter the tax as shown on the original return in the "amount of claim" space.
A claim is filed for "\$1 or more" and no details are shown as to the amount of reduction in income	Enter \$1 as "amount of claim".
A claim is filed for "\$1 or more" and details are provided as to the amount of reduction in income but computation of amount of tax refund is not shown on the claim	Compute the amount of the claim based upon reduction of income shown by the taxpayer and enter this figure as "amount of claim".
A claim is filed for "entire amount of tax paid"	Enter the entire amount of tax shown on the return.
A claim is filed for "such amount as may be due" and details are shown as to the reduction in income and computation of the tax refund can be made	Enter the computed figure in "amount of claim space".

- f. **Amount of claim disallowed:** Enter the amount of claim disallowed per the RAR.
- g. **Amount of claim allowed:** Enter the amount of claim allowed per RAR.
- h. **Signature:** See the Form 3363 instructions.

Note: For EP, see *Employee Plans Examination Exhibits* for an example of a completed Form 3363.

- 4.70.17.7
(11-28-2023)
Other Claim Procedures
- (1) There are additional procedures related to reconsideration of a claim and withdrawal of a claim.
- 4.70.17.7.1
(11-28-2023)
Claims in Cases Previously Considered by Appeals
- (1) If a claim is received on a case that was previously closed by Appeals, the examiners will need to determine whether the claim issue is related to the issues considered by Appeals.
- (2) If Appeals has not previously considered a matter raised in the claim, process the refund claim according to the procedures in this IRM.
- (3) If the refund claim relates to a matter that Appeals fully or partially sustained, but the matter was not resolved under a closing agreement, treat the refund claim as a reconsideration of a disallowed claim.
- (4) For employment tax claims, see IRM 4.23.13.5, Claims Received or Cases Previously Considered by Appeals.
- 4.70.17.7.2
(11-28-2023)
Requests for Reconsideration of Disallowed Claims
- (1) Don't treat requests for reconsideration as original claims.
- The issuance of the final notice of claim disallowance starts the two year period of limitations in IRC 6532(a) for a taxpayer to file suit.
 - There's no provision in the law or regulations authorizing or requiring the issuance of a certified notice of the denial or disallowance of a customer's request for reconsideration of a claim for refund previously disallowed by certified notice.
 - Under no circumstances should the examiner issue another final adverse determination letter or any letter containing language that might lead the taxpayer to believe that a certified notice of disallowance will be issued. Any reports issued must **not** state or imply that the IRS will issue a certified notice of disallowance.
- (2) A request to reconsider a disallowed refund claim generally results in one of the following actions:
- The request is rejected with no appeal rights, if the request presents no new information and/or new additional facts, or if the taxpayer files the request after the statutory period for instituting a suit under IRC 6532 has expired.
- Note:** The taxpayer's two-year period for bringing suit may be extended by agreement in writing between the taxpayer and the Service under IRC 6532(a)(2). See IRM 8.7.7.3.3, Form 907, Agreement to Extend the Time to Bring Suit. Form 907, Agreement to Extend the Time to Bring Suit, may be executed when either of the following is true: the IRS has under consideration a change in position requiring the suspension of action in all similar cases, or the conclusion on the merits of the request is contingent on the findings of one or more pending court cases.
- For TEB, the request is denied because the issuer filed it after the filing deadline in 26 CFR 1.148-3(i)(3)(i), as modified by Rev. Proc. 2017-50, has expired. In this case the issuer is permitted the right of appeal provided in 26 CFR 1.148-3(i)(3)(iii).
 - The request is accepted and the claim is approved in whole or in part, requiring the issuance of a letter facilitating the allowance.

- d. The request is accepted (based on new information) but the claim is disallowed (denied) in whole or in part. The taxpayer is permitted the right of appeal within the IRS for this denial. However, if the period of limitation for instituting suit on the disallowed refund claim will expire in less than six months, the refund claim case is not referred to Appeals unless that office agrees to accept jurisdiction.
- (3) For employment tax claims, see IRM 4.23.13.6, Request for Reconsideration of Disallowed Employment Tax Claims.
- (4) For TEB, generally, under Rev. Proc. 2008-37, Section 3.03(2)(c), an issuer may not refile a refund claim after a refund claim denial becomes final. However, a refund claim that has been disallowed (denied) in whole or in part may be reconsidered if the issuer submits additional facts, if those facts are received before the filing deadline under 26 CFR 1.148-3(i)(3)(i), as modified by Rev. Proc. 2017-50, and (if the time for filing a claim has not run) the time to institute a suit under IRC 6532.
- (5) If the request for reconsideration concerns a refund claim that Appeals previously considered and disallowed in whole or in part, the request and the refund claim case file are forwarded Appeals.

4.70.17.7.3
(11-28-2023)
**Request for Withdrawal
of a Claim**

- (1) If a taxpayer files a request for withdrawal of a claim, the only action required is issuance of a certified notice of claim disallowance, Letter 906, Final Full Claim Disallowance, which starts the two-year statute (For EP, use Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer).
- (2) If the taxpayer advises that they filed the claim for the sole purpose of instituting suit and that they don't wish to exercise appellate rights, state this in the "Other Information" section of the examination report.
- (3) Close the case to Mandatory Review to issue Letter 906, Final Full Claim Disallowance (For EP, use Letter 906-A, Unagreed Claim: 30 Day Letter Issued and No Response from Taxpayer). In the letter, Mandatory Review lists as the reason for disallowance "the taxpayer withdrew the claim request".
- (4) Use DC 01 (210). The following RCCMS fields, in addition to normal examination fields, need to be completed:
 - a. On the Compliance Activities Record: Claim Type and Claim Amount.
 - b. On the Closing Record: Claim Rejection Date, Claim Hrs., Claim Amount Disallowed, Examiner's Time (leave blank), Assessment Information on RCCMS (TC 300 and \$0). There are no Adjustments (Reference Numbers) required.
- (5) For EO, if this is a church tax inquiry, create a memo to the file to explain the circumstances of the closing. Approval from TEGEDC, area manager, Mandatory Review manager, and the group manager is required on the memo. Also, when the TE/GE Closing Unit receives the file, the manager of the TE/GE Closing Unit initials the use of DC 01 (210).

4.70.17.7.4
(11-28-2023)

**Employment Tax Cases:
No Consideration Given
To Certain Refund
Claims**

- (1) There are instances where claims will not be considered. Requests for Reconsideration of Disallowed Claims, and Requests for Withdrawal of a Claim, are the two that will most likely be encountered by examiners. For other instances, refer to IRM 4.23.13.6, Request for Reconsideration of Disallowed Employment Tax Claims.

4.70.17.7.5
(11-28-2023)

**Effect of Claim on IRC
4971 or 4975 Tax**

- (1) The IRS is prohibited from any levy or court proceeding for the collection of the 100% tax under IRC 4971 or IRC 4975 pending the final resolution of court proceedings on the first-tier tax under those Code sections if the taxpayer timely pays the first-tier tax and files a claim for refund (IRC 4961).
- (2) IRC 6512(a) provides that where a taxpayer has filed a timely Tax Court petition, the IRS can't make a refund or allow a credit for the tax that was ever an issue in the Tax Court petition unless there were a mathematical error reference IRC 6513.
- (3) If you determine that the first tier tax under IRC 4971 or IRC 4975 should be imposed, solicit a delinquent Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, and request payment of the tax.
- (4) If the IRC 4971 or IRC 4975 issue hasn't been corrected, advise the taxpayer that even if they don't timely correct, the IRS can't levy or have a court proceeding to collect the 100% tax when there is a pending court proceeding to resolve the first-tier tax if the taxpayer both.
 - a. Pays the first-tier tax.
 - b. Files a claim for refund of the first-tier tax within 90 days after the date the 100% tax is assessed.
- (5) IRC 4971(b) tax may be waived in certain situations.

Note: Excise taxes imposed by IRC 4975 and IRC 4971 are dependent on whether a plan that was ever qualified under IRC 401(a) (*or was determined by the Secretary to have been qualified*) under IRC 401(a), or IRC 401(2) satisfied (or was determined by the Secretary to have satisfied) the requirements of IRC 403(a). The term "if ever qualified" can take on many meanings dependent on the facts and circumstances. Generally, any plan that has ever had a determination letter regardless of whether the plan later ceased to be a qualified plan because of a form or operational defect and whether or not the determination letter is subsequently revoked meets the definition of "if ever qualified". Other considerations are whether the employer ever took a deduction for contributions to a plan or made rollovers from the plan reference PLR 9724001. Accordingly, a claim filed requesting an abatement or refund of excise tax imposed by IRC 4975(a) and IRC 4971(a) is likely not allowable. There is nothing in the Code that provides relief from the first-tier tax. If there is a question as to whether the plan was ever qualified, contact TEGEDC.

4.70.17.7.6
(11-28-2023)

Adjudication of a Claim

- (1) If a claim under examination is placed in suspense pending adjudication of an issue upon which the claim was based, and Counsel or a Campus processes the claim outside of the examination process as ordered by the federal courts, there is no further examining of the claim issue. Assuming there are no other issues, close the examination as follows:

- a. If allowing the claim in full or in part, verify payment of the claim using IDRS command code BMFOLT.
- b. Notify any project or program analysts or team leaders of the IRS posting of the court order or settlement in IDRS.
- c. Indicate a zero claim amount by processing Form 5598, TE/GE Correction Request, CC AMAXUO.
- d. If in Status 12, close the claim as a no-change, DC 02 (107).
- e. If in Status 10, delete the claim account using Form 10904, Request for Record Deletion from AIMS/ERCS, with DC 33 (901).

Example: An example of a claim issue previously placed in suspense pending judicial decision was the medical resident FICA claims issue. See IRM 21.6.6.4.42, Federal Insurance Compensation Act (FICA) Claims from Medical Residents.

4.70.17.7.7 (11-28-2023)

Joint Committee Cases

- (1) You are responsible for determining whether a claim case falls under Joint Committee (JC) jurisdiction. A case with a refund or credit in excess of \$2 million (\$5 million for C corporations) is a JC case. Refer to IRM 4.36.2, Identification of Joint Committee Cases.

Note: Always use Form 4549-A, Report of Income Tax Examination Changes (Without Taxpayer Signature), and Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, instead of Form 4549 for JC income tax cases.

- (2) See IRM 4.36.1.1.1, Joint Committee Process Overview and following subsections for background information on the Joint Committee Review (JCR) program.
- (3) The JCR Knowledge Base Homepage can be accessed at *Joint Committee Cases*. Tools are available on the JCR Knowledge Base Homepage to help the examiner determine if the case meets JC criteria. These tools should be used before making referrals.
- (4) You are responsible for the SOL. If a case has a short statute, the JC Specialist won't be able to update the case to their status code. Consequently, the case stays in AIMS status 12 while the JC Specialist works the case.
- (5) Refer to IRM 4.36.1, Joint Committee Process Overview, which describes the entire process.

Note: An inquiry from the Joint Committee on Taxation (JCT) is treated as a congressional inquiry. Therefore, treat any inquiry from the JC Specialist, JC Review Staff or the JCT as a high priority.

- (6) Additional sources for information on Joint Committee procedures include the following:
 - Examiner's responsibilities are provided in IRM 4.36.3, Joint Committee Procedures, Examination Team Responsibilities.
 - Refer to *KM - Geographic*, Special Case Types.
 - E-mail your inquiry to the mailbox at **LB&I Joint Committee Assistance*.

- (7) Close all JC cases to Mandatory Review. Mandatory Review doesn't review these cases unless you indicate on the RCCMS 3198-A Checksheet that the case is subject to review for one of the other reasons.
 - Note on the RCCMS 3198-A Checksheet, the case is a Joint Committee case.
 - Check the restricted interest box on the RCCMS 3198-A Checksheet if applicable.
- (8) Claims for refund of arbitrage rebate, yield reduction or penalty in lieu of rebate are not subject to Joint Committee review, however, claims in excess of \$2,000,000 are subject to mandatory review by TEB Technical. See IRM 4.70.14.2.4.5.4, TEB – Cases Subject to Mandatory Review.

4.70.17.8
(11-28-2023)
**Examination
Reconsideration and
Request for Abatement**

- (1) Examination reconsiderations and requests for abatement are administrative procedures available to the taxpayer by the Internal Revenue Service in order to reduce taxpayer burden. The IRS does not want to require the taxpayer to pay the assessment and file a claim if there is additional information to be considered.
- (2) The purpose of the audit reconsideration or request for abatement process is to examine information that was not previously considered:
 - a. If the taxpayer presents new information that was not previously considered, evaluate that information and determine if a change to the assessment is warranted. Document workpapers and the activity record. If a change to the assessment is warranted, make that change.
 - b. If the taxpayer cannot or does not present new information in support of their position, do not abate any tax.
- (3) Requests for abatement of assessment can be an examination reconsideration (if based on a previous TC30X or TC29X assessment) or a simple request to abate unpaid tax. The main difference in how requests for abatement are processed is the letters used in the closing process.
- (4) Both examination reconsiderations and requests for abatements require the use of the appropriate report forms by the examiner (for example, Form 4549 series, Form 2504 series, Form 4666, Form 4668, Form 4667).

Note: Form 3363 and Form 2297 are not used.

4.70.17.8.1
(11-28-2023)
**Examination
Reconsideration**

- (1) To meet examination reconsideration criteria, the IRS must have assessed currently unpaid amounts, or the IRS reversed tax credits the taxpayer is disputing, and the taxpayer must:
 - a. Have filed a return.
 - b. State they did not receive the initial appointment letter, 30-Day Letter with the report, statutory notice of deficiency, or Letter 3523, Notice of Employment Tax Determination Under IRC 7436.
 - c. Provide additional information not previously considered during the original examination, or identify the disputed adjustments, which if considered, would change the original assessment.
 - d. Show the assessment was made as a jeopardy assessment. (See IRM 1.2.1.5.27, Policy Statement 4-88, Jeopardy assessments to be used sparingly and assessment to be reasonable in amount).

Reminder: Additional information on Examination Reconsiderations can be found in IRM 4.13.4, Audit Reconsideration - Area Office Examination.

Note: If the taxpayer is filing the request under IRC 4962, see IRM 4.70.17.8.4, Requests for Abatement under IRC 4962.

- (2) Consider a request for reconsideration if any of the following apply:
 - a. The taxpayer submits information not previously considered.
 - b. The taxpayer files an original delinquent return as a result of a Substitute for Return assessment.
 - c. There was a computational or processing error by the IRS.
- (3) Don't consider a request for reconsideration if:
 - a. We've already granted the taxpayer an examination reconsideration, and the taxpayer didn't provide any additional information with their current request that would change the results.
 - b. We made the assessment, and pursuant to the compromise, the IRS agrees not to collect the full tax liability per IRC 7122. These agreements use Form 906, Closing Agreements on Final Determination Covering Specific Matters, or Form 866, Agreement as to Final Determination of Tax Liability, or some combination of the two forms.
 - c. We made the assessment as a result of a compromise under IRC 7122. These agreements are final and conclusive. You can identify a final compromise determination on IDRS by the posting of a TC 788.
 - d. We made the assessment and pursuant to the compromise, the IRS agrees not to collect the full tax liability as the result of final TEFRA administrative proceedings. This applies to joint ventures and partnerships that the EO may be part of.
 - e. We made the assessment as a result of the taxpayer entering into an agreement on Form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax. (Appeals and LB&I use this form).
 - f. The United States Tax Court entered a decision that becomes final, or a District Court or the United States Court of Federal Claims rendered a judgment on the merits that becomes final.

Note: Forward to the TEGEDC any request for reconsideration on cases settled by Tax Court, District Court, or Court of Federal Claims. When the Tax Court dismisses a case for lack of jurisdiction, it doesn't enter a decision and doesn't dismiss the case on the merits. See IRC 7459(d). Likewise, when a District Court or the United States Court of Federal Claims dismisses a case for lack of jurisdiction, the court doesn't dismiss the case on the merits.

- (4) Per Policy Statement 4-103, (IRM 1.2.1.5.31, Policy Statement 4-103 - Abatement claims considered only in exceptional circumstances) where we made an assessment of excise or employment tax as a result of an examination action, the taxpayer generally must pay the assessment and file a claim for refund prior to any further consideration of his/her case. Consider abatement requests only if:

- a. A jeopardy assessment is involved. See IRM 1.2.1.5.27, Policy Statement 4-88, Jeopardy assessments to be used sparingly and assessment to be reasonable in amount. For certain excise taxes subject to the deficiency procedures, see IRC 7429(a)(2).
- b. The taxpayer establishes a meritorious reason for considering the request, such as failure to receive a proposed tax change (30-day letter).

Note: For employment tax cases, refer to IRM 4.23.13, Employment Tax Refund or Abatement Claims, for additional information.

4.70.17.8.1.1
(11-28-2023)

**Working the
Examination
Reconsideration and
Request for Abatement**

- (1) Classification assigns the case with a SC of 73, Taxpayer Request. If the prior case was on RCCMS, Classification asks the AIMS Analyst to retrieve the prior case file from the RCCMS Closed Case Library.
- (2) Your manager reviews the case upon receipt and assigns it within 15 days.
- (3) Review the case. Verify on IDRS any payments the taxpayer made. If the taxpayer paid all of the prior assessments, follow the regular claim procedures.
- (4) Call or write the taxpayer within 15 days of receipt. Inform them that TE/GE received their case.
- (5) Document your work in your workpapers.
- (6) Evaluate the information and make a determination. Request additional documentation if necessary:
 - a. Schedule an appointment when appropriate.
 - b. Send a letter to the taxpayer confirming the appointment.
 - c. Use Letter 3399, Audit Reconsideration-Request for Further Documentation, to obtain additional information.
- (7) Close the case using DC 01 (210) if the taxpayer doesn't:
 - a. Furnish the additional information by the agreed upon deadline.
 - b. Keep the scheduled appointment without adequate explanation.

Note: Use DC 01 (210) to close the examination reconsideration request.
- (8) The taxpayer may request a conference with your manager if they disagree with your findings.
- (9) The taxpayer may submit a formal protest to Appeals for full or partial disallowances.
- (10) Refer to the following table to determine the correct letter and DC to issue:

Closing as...	Closing Letter	Actions:
Full Abatement	Letter 2738, Audit Reconsideration - Allowed in Full, with the report.	<ol style="list-style-type: none"> Prepare the appropriate waiver/agreement form. Because we're reducing the tax, the taxpayer's signature isn't required. See note below for further instructions. Use DC 03 (102), Agreed Tax or Penalty Change. Follow normal case closing procedures.
Full Denial	Issue Full Denial - IRC 4962 30-day Letter 6277, 30 Day Letter - Full Denial and Partial Abatement IRC 4962, with Form 886-A, Explanation of Items.	<ol style="list-style-type: none"> Prepare Form 886-A, Explanation of Items. Use DC 01 (210), Regulatory/Revenue Protection, if the taxpayer doesn't file a protest. If taxpayer: <ul style="list-style-type: none"> Files a protest, close the case to the TEGE Closing Unit. Doesn't file a protest, close the case to the EO Closing Unit.
Partial Abatement	Issue Examination Reconsideration - Partial Abatement 30-day Letter 6277.	<ol style="list-style-type: none"> Prepare the appropriate waiver/agreement form. Because we're reducing the tax, the taxpayer's signature isn't required. See note below for further instructions. Use DC 03 (102), Agreed Tax or Penalty Change, if the taxpayer doesn't file a protest. If taxpayer: <ul style="list-style-type: none"> Files a protest, close the case to the TEGE Closing Unit. Doesn't file a protest, close the case to the EO Closing Unit.

Note: For partial or full abatements, make sure the taxpayer understands the amount won't be refunded, because it's unpaid. The report simply reduces the existing balance due. Clearly reflect the reduction in amounts in your report. The "Per Return or As Previously Adjusted" amounts for both the taxable income and tax are the amounts shown on the previous report or notice of deficiency. Enter only adjustments to the previous report or notice of deficiency as adjustments

- (11) For agreed partial or full abatements, notate on the RCCMS 3198-A Checksheet in the Other section: "Supplemental Report - Reduction of Previously Assessed Amounts".

4.70.17.8.2
(11-28-2023)

**Employment Tax Cases:
Claim for Abatement of
Employment Tax**

- (1) A claim for abatement of an employment tax examination assessment (Examination Reconsideration) will be considered on its merits after employment taxes have been assessed and the circumstances in IRM 4.23.13.4, Audit Reconsideration And Requests for Abatement, have been met. When it is determined that an examination reconsideration request should be considered on its merits, the taxpayer will be afforded consideration by Appeals. Refer to IRM 4.23.13.4, Audit Reconsideration And Requests for Abatement.
- (2) When it is determined that an abatement (or Examination Reconsideration) request should not be considered on its merits, or there has been no previous examination action, the taxpayer will be issued a no-consideration letter and will not be afforded consideration by Appeals. Use Letter 924, No Consideration Letter on Abatement Claim, for all claims for abatement of employment taxes that are not considered. Never use Letter 5376, Form 3363 and Form 2297, or any other letter that explains appeal rights. The customer has no appeal rights beyond the group level without paying the tax and filing a formal claim. This should be explained to the customer with the following paragraph: "If you do not agree with our determination, you may, after paying the additional tax due, file an amended return or claim for refund. If you file a claim or amended return, you should do so within three years from the date your return was filed or, if later, two years from the time the tax was paid,"

4.70.17.8.3
(11-28-2023)

**Request for Withdrawal
of an Abatement
Request**

- (1) If a taxpayer files a request for withdrawal of an abatement request:
- The taxpayer must provide a signed statement of withdrawal.
 - Upon receipt, prepare and issue Letter 693, Reply to Request for Abatement of Assessment. Check the box, "You didn't provide the information we requested, therefore, we can take no further action on your request."
 - Prepare Form 886-A, Explanation of Items.
 - Provide the date of the withdrawal.
 - State that the taxpayer is withdrawing their abatement request.
 - List the effected returns and year of the returns.
 - Complete Form 5598, TE/GE Correction Request.
 - Complete Form 10904, Request for Record Deletion from AIMS/ERCS.

4.70.17.8.4
(11-28-2023)

**Requests for Abatement
under IRC 4962**

- (1) The IRS has discretionary authority under IRC 4962(a) to not assess, or to abate or refund, any "qualified first-tier tax" (including interest) as long as the taxable event was:
- Due to reasonable cause.
 - Not due to willful neglect.
 - Corrected within the appropriate correction period.
- (2) Qualified First-tier Chapter 42 Excise Taxes described under IRC 4962(b) include the sections listed below:
- IRC 4942(a)
 - IRC 4932(a)

- IRC 4944(a)
- IRC 4945(a)
- IRC 4955(a)
- IRC 4958(a)
- IRC 4966(a)
- IRC 4967(a)

Note: These requests don't apply to taxes assessed under IRC 4941(a). If a taxpayer or their POA makes a request for abatement for IRC 4941(a) taxes, deny the request. Also, for other Chapter 42 taxes, if neither the taxpayer nor the POA submitted the request, deny it. Prepare and issue Letter 6264, Improper Request Under IRC 4962. Close the case with DC 01 (210). These cases are **not** subject to mandatory review.

Note: Form 5774-A, IRC 4962 Abatements, Private Foundation - IRC 4962 Abatements don't include IRC sections 4966 and 4967 taxes. Write-in or enter these taxes anywhere in the Applicable Internal Revenue Code Sections portion of the form.

- (3) A taxpayer's requests under IRC 4962 must be worked as an abatement, whether the tax has or hasn't been paid.
- (4) Taxpayers file these requests for abatement by filing a Form 843, Claim for Refund and Request for Abatement, or an amended return. The taxpayer may also make an informal request as long as we have all the necessary information including the tax year, issue, and amount.

4.70.17.8.4.1 (11-28-2023)

Working the Request for Abatement under IRC 4962

- (1) CP&C: Classification & Case Assignment assigns the case with a SC of 30, Claims for Refund.
- (2) If the taxpayer paid any part of the tax for which an abatement is sought, treat the request as a claim. Approval of abatements under IRC 4962 are required.
- (3) Use project definer code 8499, Request for Abatement. The project code is 8089, Claims.
- (4) Contact the taxpayer and obtain any necessary additional information.
- (5) Evaluate the information and make a determination. Fully document your work in your workpapers.
- (6) See IRM 20.1.1.3.2, Penalty Handbook, Introduction and Penalty Relief, for discussion on reasonable cause.
- (7) **The Director, Exempt Organizations and Government Entities** holds the authority to abate a qualified first-tier Chapter 42 excise tax **over \$200,000**, as per Delegation Order 7-11 (IRM 1.2.2.8.11, Delegation Order 7-11 (Rev. 1)), revised July 2, 2018.
- (8) **The Manager, FSL/ET; Area Managers, EO Examinations, and Manager, Compliance Planning & Classification (CP&C) Classification & Case Assignment** hold the authority to abate a qualified first-tier Chapter 42 excise tax of **\$200,000 or less**, as per Delegation Order 7-11 (IRM 1.2.2.8.11, Delegation Order 7-11 (Rev. 1)), revised July 2, 2018.

- (9) As a result of the changes to Delegation Order 7-11, field groups should follow the instructions in the table below:

If	Then	IRM reference
Full abatement <\$200,000	<ul style="list-style-type: none"> • Examiner prepares PARP. • Manager secure emails PARP to Area Manager (AM). • AM secure emails approval or denial to manager. 	<ul style="list-style-type: none"> • If abatement is denied, see IRM 4.70.17.8.4.2, Full Denial. • If abatement is approved, see IRM 4.70.17.8.4.3(8), Full Abatement.
Full Abatement >\$200,000	<ul style="list-style-type: none"> • Examiner prepares PARP. • Manager secure emails PARP to AM. • AM secure emails PARP to the Sr. Program Analyst for Director, EO Exam. • Sr. Program Analyst secure emails PARP to Technical Advisor for the Director, EO/GE. • Technical Advisor secure emails PARP to Director, EO/GE for final approval. • AM informs manager of approval or denial. 	<ul style="list-style-type: none"> • If abatement is denied, see IRM 4.70.17.8.4.2, Full Denial. • If abatement is approved, by EO/GE Director.
Partial Abatement <\$200,000	<ul style="list-style-type: none"> • Examiner prepares PARP. • Manager secure emails PARP to AM. • AM secure emails approval or denial to manager. 	<ul style="list-style-type: none"> • If abatement is denied, see IRM 4.70.17.8.4.2, Full Denial. • If abatement is approved, see IRM 4.70.17.8.4.4(7), Partial Abatement.

If	Then	IRM reference
Partial Abatement >\$200,000	<ul style="list-style-type: none"> Examiner prepares PARP. Manager secure emails PARP to AM. AM secure emails PARP to the Sr. Program Analyst for Director, EO Exam. Sr. Program Analyst secure emails PARP to Technical Advisor for the Director, EO/GE. Technical Advisor secure emails PARP to Director, EO/GE for final approval. AM informs manager of approval or denial. 	<ul style="list-style-type: none"> If abatement is denied, see IRM 4.70.17.8.4.2, Full Denial. If abatement is approved, see IRM 4.70.17.8.4.4(7), Partial Abatement.

Note: Abatement requests packages **do not** need to be routed through Mandatory Review.

4.70.17.8.4.2
(11-28-2023)

**Full Denial of Requests
under IRC 4962**

- (1) Prepare Form 886-A, Explanation of Items.
- (2) Prepare and issue Letter 6277, 30 Day Letter - Full Denial and Partial Abatement IRC 4962, along with Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment. Indicate Request for IRC 4962 Abatement Denied in Full, in the IRC section column. Indicate zeros in the amount of tax and penalty columns.
- (3) If the taxpayer:
 - a. Signs Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment, prepare and issue Letter 6292, Closing Letter - Agreed Full or Partial Denial of Abatement IRC 4962. Use DC 01 (210), Regulatory/Revenue Protection. Follow normal case closing procedures.
 - b. Files a formal protest, follow the normal case closing procedures.
 - c. Doesn't respond to the 30-day letter or doesn't file a formal protest, close the case with DC 10 (604), Unagreed-Without Protest. Close the case to TE/GE Closing Unit.

4.70.17.8.4.3
(11-28-2023)

**Full Abatement of
Requests under IRC
4962**

- (1) Prepare an examination report including:
 - Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment.
 - Form 4621, Report of Examination - Exempt Organization.
 - Form 4883, Exempt Organizations Excise Tax Audit Changes.
 - Form 886-A, Explanation of Items.
- (2) The taxpayer's signature on Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment, isn't necessary because we're giving a full abatement.
- (3) Form 886-A, Explanation of Items, shows the amount of the decrease in tax.
- (4) Ensure the taxpayer understands we won't issue a refund because the amount wasn't paid.
- (5) Obtain the abatement approval before issuing a report to the taxpayer by submitting a Pre-Approval Request Package (**PARP**).
- (6) A **PARP** consists of the following:
 - Form 5774-A, IRC 4962 Abatements.
 - For abatement requests of \$200,000 or less, prepare a memo to your Area Manager (AM), or manager indicated in Delegation Order 7-11, stating the amount to be abated (labeled as either in full or in part), and explaining the reasons for allowing the abatement.
 - For abatement request of more than \$200,000, prepare a memo to the Director, EO/GE, stating the amount to be abated (labeled as either in full or in part), and explaining the reasons for allowing the abatement.
 - A copy of the draft examination report.
- (7) If the abatement request of **\$200,000 or less** is **denied**, follow the steps in IRM 4.70.17.8.4.2, Full Denial of Requests under IRC 4962.
- (8) If the abatement request of **\$200,000 or less** is **approved**, follow the steps below:
 - a. Prepare and issue Letter 2738, Audit Reconsideration - Complete Abatement. Inclusion of the reports for full abatement is optional.
 - b. If the taxpayer signs Form 870-E, prepare and issue Letter 6292, Closing Letter - Agreed Full or Partial Denial of Abatement IRC 4962. Close the case with DC is 03 (102), Agreed Tax or Penalty Change. Follow normal case closing procedures.
 - c. If the taxpayer files a formal protest, follow the normal case closing procedures.
 - d. If the taxpayer doesn't respond to the 30-day letter or doesn't file a formal protest, close the case with disposal code 10 (604), Unagreed – Without Protest. Close the case to the TE/GE Closing Unit.
- (9) If the abatement request of **over \$200,000** is **denied**, follow the steps in IRM 4.70.17.8.4.2, Full Denial of Requests under IRC 4962.
- (10) If the abatement request of **over \$200,000** is **approved**, follow the steps below:

- a. Prepare and issue Letter 2738, Audit Reconsideration - Complete Abatement. Inclusion of the reports prepared for full abatement is optional.
- b. If the taxpayer signs Form 870-E, prepare and issue Letter 6292, Closing Letter - Agreed Full or Partial Denial of Abatement IRC 4962. Close the case with DC is 03 (102), Agreed Tax or Penalty Change. Follow normal case closing procedures.
- c. If the taxpayer files a formal protest, follow the normal case closing procedures.
- d. If the taxpayer doesn't respond to the 30-day letter or doesn't file a formal protest, close the case with disposal code 10 (604), Unagreed – Without Protest. Close the case to the TE/GE Closing Unit.

4.70.17.8.4.4
(11-28-2023)

**Partial Abatement of
Requests under IRC
4962**

- (1) Prepare an examination report including:
 - Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment.
 - Form 4621, Report of Examination - Exempt Organization.
 - Form 4883, Exempt Organizations Excise Tax Audit Changes.
 - Form 886-A, Explanation of Items.
- (2) Form 886-A, Explanation of Items, is to show the amount of the decrease in tax.
- (3) Ensure the taxpayer understands we won't issue a refund because the amount wasn't paid.
- (4) Obtain the abatement approval prior to issuing a report to the taxpayer, by submitting a PARP.
- (5) A PARP consists of the following:
 - Form 5774-A, IRC 4962 Abatements.
 - For abatement requests of \$200,000 or less, prepare a memo to your Area Manager (AM), or manager indicated in Delegation Order 7-11, (IRM 1.2.2.8.11, Delegation Order 7-11 (Rev. 1), revised July 2, 2018)) stating the amount to be abated (labeled as either in full or in part), and explaining the reasons for allowing the abatement.
 - For abatement request of more than \$200,000, prepare a memo to the Director, EO/GE, stating the amount to be abated (labeled as either in full or in part), and explaining the reasons for allowing the abatement.
- (6) If the abatement request of **\$200,000 or less** is **denied**, follow the steps in IRM 4.70.17.8.4.2, Full Denial of Requests under IRC 4962.
- (7) If the abatement request of **\$200,000 or less** is **approved**, follow the steps below:
 - a. Prepare and issue Letter 6277, 30 Day Letter - Full Denial and Partial Abatement IRC 4962.
 - b. If the taxpayer signs Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment, prepare and issue Letter 6292, Closing Letter - Agreed Full or Partial Denial of Abatement IRC 4962. Close the case with DC is 03 (102), Agreed Tax or Penalty Change. Follow normal case closing procedures.

- c. If the taxpayer files a formal protest, follow the normal case closing procedures.
 - d. If the taxpayer doesn't respond to the 30-day letter or doesn't file a formal protest, close the case with disposal code 10 (RCCMS - 10), Unagreed – Without Protest. Close the case to the TE/GE Closing Unit.
- (8) If the abatement request of **over \$200,000** is **denied**, follow the steps for full denial.
- (9) If the abatement request of **over \$200,000** is **approved**, follow the steps below:
 - a. Prepare and issue Letter 6277, 30 Day Letter - Full Denial and Partial Abatement IRC 4962.
 - b. If the taxpayer signs Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment, prepare and issue Letter 6292, Closing Letter - Agreed Full or Partial Denial of Abatement IRC 4962. Close the case with DC is 03 (102), Agreed Tax or Penalty Change. Follow normal case closing procedures.
 - c. If the taxpayer files a formal protest, follow the normal case closing procedures.
 - d. If the taxpayer doesn't respond to the 30-day letter or doesn't file a formal protest, close the case with disposal code 10 (604), Unagreed – Without Protest. Close the case to the TE/GE Closing Unit.

4.70.17.8.5
(11-28-2023)
**Informal Request for
Abatement of UBIT or
other Income Taxes**

- (1) A taxpayer can't file a claim for abatement of income tax under IRC 6404(b). However, because the IRS has the authority to abate the unpaid portion of tax under IRC 6404(a), the IRS may still consider an informal request filed by a taxpayer, for abatement of income taxes. See IRM 25.6.1.10.1, Requests for Abatement. This informal request should include the tax period involved, issue, and request to abate the tax.
- (2) When assigned, the case has a SC of 30, Claims for Refund.
- (3) Verify on IDRS any payments the taxpayer made. If the taxpayer paid all of the prior assessments, follow the regular claim procedures.
- (4) The project code is 8089 Claims (EO), 6070 Claims (EP), 4300 FSL Claims (FSL/ET), 4164 ITG-Claims (ITG), and 4111 Claims for refund of Arbitrage (TEB). For EO, use project definer code 8499 for Request for Abatement.
- (5) Contact the taxpayer and obtain any necessary additional information.
- (6) Evaluate the information and make a determination. Document your work in your workpapers.
- (7) Prepare Form 4549, Income Tax Examination Changes, to reflect any adjustments to be made. If you determine there was an overassessment, your report should reflect a reduction in the unpaid tax. Clearly explain to the taxpayer that the overassessment won't be refunded and that it will only reduce or eliminate the existing balance due.
- (8) If there is a reduction in any penalties, the "Other Information" section of the report should clearly explain the reduction:

Other Information Section Entries	Amounts
Accuracy Related Penalty as Corrected	\$200
Amount Previously Assessed	\$500
Adjustment (reduction) in Accuracy Related Penalty	\$300

- (9) The taxpayer receives no judicial rights because IRC 6404(b) indicates the taxpayer can't file a claim for abatement of income taxes. The taxpayer's recourse if the tax isn't abated is to pay the tax, and then file a claim for refund, or file an amended return.
- (10) Prepare and issue Letter 693, Reply to Request for Reconsideration of Assessment. Select the appropriate box. No signature is required on the Form 4549, Income Tax Examination Changes, because any adjustments are in the taxpayer's favor.
- (11) If making an adjustment:
 - a. Notate on RCCMS 3198-A Checksheet, Supplemental Report - Reduction of Previously Assessed Tax.
 - b. Use DC 03 (102), Agreed Tax or Penalty Change.
- (12) If disallowing the request for abatement, use DC 01 (210), No Change with Adjustments.

4.70.17.8.6
(11-28-2023)
**Abatement of Interest
Due to IRS Delay or
Error by the IRS**

- (1) Interest on deficiencies or payments may be abated when the IRS makes an error or delays performing a ministerial or managerial act (IRC 6404(e)(1)).
Note: See IRM 20.2.7, Abatement and Suspension of Debit Interest, for additional information on this provision.
- (2) A "ministerial act" is a procedural act or mechanical act that doesn't involve the exercise of judgment or discretion and occurs when the IRS processes a taxpayer's case after we've completed all prerequisites to the act, such as conferences and reviews by supervisors.

Example: The IRS sends an examination selection letter to the taxpayer's old address, and it's forwarded to the new address. In response to the appointment letter, the taxpayer notifies the IRS of the new address and requests a transfer of the audit to an office closer to the new address. The group manager approves the transfer request. The IRS, in its discretion, may abate interest attributable to any unreasonable delay in transferring the case.

- (3) A "managerial act" is an administrative act that occurs during the IRS's processing of a taxpayer's case. It involves the temporary or permanent loss of records or the exercise of judgment or discretion of the IRS management.

Example: Continuing with the example in (2) above, after the manager approves the transfer of the case, the clerk misplaces the case file. The "misplac-

ing of the file” is a managerial act. The IRS, at its discretion, may abate interest attributable to any unreasonable delay caused by the file’s misplacement.

- (4) The IRS has the authority to abate the amount of interest that accrued during the period in which the **unreasonable** error or delay in performing a ministerial or managerial act occurred (IRC 6404(e)(1)).
 - a. It applies only when an unreasonable error or delay occurred after the date the IRS contacts the taxpayer in writing for an audit deficiency or payment.
 - b. Interest which already accrued from the return due date to when the IRS first contacts the taxpayer isn’t abated under this provision because the taxpayer is aware of the tax liability reported on the filed return as well as the consequences (which are penalties and interest) if they don’t pay the liability by the return due date.
- (5) The IRS has discretionary authority to allow claims for abatement of interest when **all** of the following conditions are met:
 - a. The statutory period of limitations under IRC 6511 on filing a claim has not expired.
 - b. The claim relates to interest on IRC 6212(a) taxes, such as income, estate, gift and excise taxes under Chapters 41, 42, 43, and 44.

Note: IRC 6404(e)(1) does not allow abatement of interest on employment tax deficiencies or payments.

- c. An unreasonable error or delay occurred in relation to the performance of a ministerial or managerial act.
- d. Error or delay occurred **after** the taxpayer was contacted in writing with respect to the examination, deficiency, or payment.
- e. No significant aspect of the error or delay can be attributed to the taxpayer/representative.

Note: An interest abatement claim under IRC 6404(e)(1) not meeting **all** of the above criteria is automatically disallowed by law.

4.70.17.8.6.1
(11-28-2023)

Claims for Abatement of Interest

- (1) Taxpayers must request abatement of interest on Form 843, Claim For Refund and Request for Abatement. They should complete the claim as follows:
 - a. File with the Campus where the tax return was filed, or, if unknown, with the Campus where the taxpayer’s most recent tax return was filed.
 - b. Clearly state across the top “Request for Abatement of Interest under Rev. Proc. 87-42”.
- (2) If the interest assessed resulted from the IRS’s error or delay in performing a single ministerial or managerial act that affected a tax assessment for multiple tax years or types of tax (for example, where two or more tax years were under examination), the taxpayer only needs to file one Form 843, Claim For Refund and Request for Abatement.
 - a. Otherwise, the taxpayer should file a separate Form 843, Claim For Refund and Request for Abatement, for each tax period for each type of tax.

- b. The taxpayer doesn't have to compute the dollar amount of interest for which they're requesting abatement.
- c. Find instructions to complete Form 843 at the Electronic Publishing Product Catalog Information website at *Find a product (irs.gov)*.

4.70.17.8.7
(11-28-2023)

**Abatement of Penalties
in Claims Cases**

- (1) IRC 6651(a)(1) and IRC 6651(a)(2) penalties may be abated for reasonable cause. See IRM 20.1.1, Introduction and Penalty Relief.
- (2) All penalty abatement or waiver requests must be in writing and, if not part of the return, must be signed by the taxpayer. See IRM 20.1.3.3.2.1, Evaluating Claims for Abatement or Waiver of Estimated Tax.
- (3) The taxpayer may request the refund or abatement of penalty assessments in a written letter and/or on Form 843, Claim For Refund and Request for Abatement. Find Form 843 instructions at the *Find a product (irs.gov)*.
- (4) If the taxpayer provides evidence that the penalty was computed incorrectly, verify the penalty computed by the taxpayer and adjust as necessary.
- (5) To prepare the case for penalty abatement:
 - a. Enter TC 161 for IRC 6651(a)(1) penalties, and TC 271 for IRC 6651(a)(2) penalties, with the corresponding amount of penalties that are being abated for each penalty in the RCCMS closing record (or on Form 5599, Item 12 - *Penalties (-)*), and
 - b. Enter TC 300 and \$0 in the RCCMS closing record (or on Form 5599, Item 12 - *Tax Liability Adjustment (+)*).
- (6) For EP, see the Penalty Relief - Reasonable Cause Lead Sheet to help you determine whether penalties should be waived or abated. See *Employee Plans Examination Exhibits* for an example of the Penalty Relief - Reasonable Cause Lead Sheet, which you may also incorporate into the examination workpapers.

4.70.17.9
(11-28-2023)

**Collection of
Deficiencies and
Installment Agreements**

- (1) See IRM 4.70.14.3, Payment Processing, for payment processing guidelines.
- (2) See IRM 5.14, Installment Agreements, for procedures for installment agreements.

4.70.17.10
(11-28-2023)

**Offer in Compromise -
Doubt as to Liability
(OIC-DATL)**

- (1) If a taxpayer has a **legitimate doubt** that he/she owes part or all of the tax debt, he/she completes a Form 656-L, Offer in Compromise (Doubt as to Liability). A taxpayer's offer to compromise a tax liability should:
 - a. Set forth the legal grounds for compromise.
 - b. Provide enough information for the IRS to determine whether the offer fits within its acceptance policies.

Note: Generally, the taxpayer submits the Form 656-L after a tax liability has been assessed in response to a balance due notice. Generally, this will not occur during the examination process. TE/GE examiners will not initiate the OIC request or submit Form 656-L. See IRM 4.18.1, Offers in Compromise Received in Exam, for additional details

- (2) Doubt as to Liability:
- Exists when there is a genuine dispute as to the existence or amount of the correct tax debt under the law.
 - Doesn't exist if a final court decision or judgement or closing agreement determines the existence and amount of the debt.
- (3) The Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005 enacted IRC 7122(f), providing that an offer is deemed accepted if the IRS does not reject the offer within 24 months of the submission date. Subsequently, Notice 2006-68 added that the offer is not deemed accepted, if the offer is returns, rejected, or withdrawn during the 24-month period. Any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken into account in determining the expiration of the 24-month period.
- (4) If the 24-month period expires while an employee works the offer, the employee coordinates with their manager and the FSL/ET Staff Assistant to prepare the paperwork required to accept the offer. See IRM 5.8.8.12.1(1), Employee Responsibilities for 24-Month Mandatory Acceptance under IRC § 7122(f), and IRM 5.8.8.12.2, Acceptance Letter Issued under IRC § 7122(f), for directions.

4.70.17.10.1
(11-28-2023)

OIC-DATL Terminology

- (1) General OIC-DATL terms and definitions:

Terms	Definition
Acceptance	The IRS accepts a DATL offer when there is a genuine dispute as to the existence or amount of the correct tax liability under the law and the offer amount reasonably reflects the amount the IRS would expect to collect through litigation. A DATL offer is not accepted until the IRS issues a written notification.
Rejection	If you believe the tax is correct as assessed, reject the offer if the taxpayer doesn't agree with the proposed adjustment (or non-adjustment). Rejections confer appeal rights.
Returning an Offer	An offer may be returned for a variety of reasons, including incomplete information. See IRM 5.8.2.4.1, Determining Processability. Note that even when the offer contains complete information, it must be returned in certain situations, e.g., taxpayer has filed bankruptcy. Also, in a collection due process case, when an offer is returned, the Independent Office of Appeals has jurisdiction over the case and will determine if the offer was properly returned. If the return is upheld, then the taxpayer may petition the Tax Court to determine whether the settlement officer abused its discretion.

Terms	Definition
Submission	<p>A valid submitted DATL offer package consists of:</p> <ul style="list-style-type: none"> • A Form 656-L, Offer in Compromise (Doubt as to Liability), signed under penalties of perjury. • A written statement explaining why the tax debt or portion of the tax debt is incorrect. • Supporting documentation or evidence that identifies the reason(s) for the doubt. • The taxpayer must offer more than zero (\$0). <p>Note: No deposit or application fee is required for a DATL offer. If the IRS rejects or returns the offer or the taxpayer withdraws the offer, the IRS will return a deposit or application fee mistakenly paid with the offer. If the taxpayer agrees in writing, the IRS applies the amount paid with the offer to the amount owed.</p>
Withdrawal	<p>If you can resolve the issue to the mutual satisfaction of the taxpayer and the IRS, a compromise is unnecessary. In these cases, take the appropriate action as agreed and request that the TP withdraw the offer. See IRM 5.19.24.14, Withdrawn DATL Offers.</p>

4.70.17.10.2
(11-28-2023)
OIC-DATL Processing

(1) **Exam Group Manager:**

- Assign the case to an examiner of appropriate grade level, within 15 days of receipt of an Offer case file from Classification.
- Don't return cases to the CP&C Classification Group 3.
- If unable to handle the case in your group, coordinate with your Area Manager to transfer the Offer to another group in the same area.
- For FSL/ET, notify the FSL/ET Staff Assistant of the case assignment, any reassignment and updates of case status, every 60 days.

(2) **Examiner:**

- Process the Offer case file as a high priority case. Delay all other actions on other cases. Postpone and reschedule any upcoming examination appointments for at least a month. Document all actions on the case chronology (i.e., Form 5464, Case Chronology Record, Form 9984, Examining Officer's Activity Record, or equivalent).
- Review the prior examination file and the proposed offer. Evaluate supporting documents. Determine whether the taxpayer needs to provide additional documentation.
- Contact taxpayer within 30 days of receipt of the Offer case file. Notify them that you're reviewing the Offer.
- Request additional documentation, as needed.

- e. If you don't need additional documents, you have 30 days from the date of contact to render your decision as to whether to adjust the tax.

Note: This includes any calculations needed to arrive at the new debt amount.

- f. If needed, prepare Form 4564, Information Document Request (IDR), and send to the taxpayer.
- g. Give taxpayer up to 30 days to provide additional documents.
- h. If the taxpayer doesn't provide the requested documents within 30 days, you may provide an extension of another 15 days, with your manager's approval.
- i. Schedule an appointment to meet with the taxpayer if preferable to receiving the documents by mail. Schedule appointments within 60 days from current date.
- j. Within 30 days from the date of receipt of the additional documents, decide either by mail or in person and complete any calculations.
- k. If the taxpayer fails to provide the requested documents by the end of the second time frame, determine whether the taxpayer's argument and documentation merits an adjustment to the tax liability within 30 days from the second deadline. If the lack of documentation prevents an adjustment, return the Offer as incomplete.

Note: All deadlines are in calendar days.

4.70.17.10.2.1
(11-28-2023)

OIC – Adjustments

- (1) Offer considerations normally involve reductions of assessed liabilities based on additional taxpayer supplied documentation. If unable to determine the correctness of the tax liability, advise the taxpayer that we may accept the offer, pending further review.
- (2) If proposing a reduction in liability other than down to the amount offered, determine whether the taxpayer agrees with the adjustment. If the taxpayer:
 - a. Agrees: Ask the taxpayer to submit or fax a written request to **withdraw** the offer.
 - b. Doesn't agree: Advise the taxpayer that further review is required and treat the case as a **rejection**.
- (3) If the amount of the offer is greater than the final adjusted tax liability, solicit a **withdrawal** of the offer.
- (4) If the taxpayer doesn't submit a request to **withdraw** the Offer, treat the case as a **rejection**.
- (5) If the documents provided with the Offer or in response to any IDR don't support as doubt as to liability offer, reject the offer.
- (6) If the IRS rejects or returns the offer or if the taxpayer withdraws the offer, the IRS will return a deposit or application fee mistakenly paid with the offer. If the taxpayer agrees in writing, the IRS applies the amount paid with offer to the amount owed.

4.70.17.10.2.2
(11-28-2023)

Case Resolution - Returning an Offer

- (1) **Examiner:**
 - a. Complete the OIC Checksheet attached to the folder.
 - b. Create a new closing record.

- c. Use DC 45 (802) to close the case and closing with "7- Paperless Non-Examined".
- d. Close the case to your manager.

(2) **Manager:**

- a. Review the case.
- b. For FSL/ET, send the paper file to the FSL/ET Staff Assistant.
- c. Approve the case closure on RCCMS.

(3) **FSL/ET Staff Assistant:**

- a. Update the AOIC to reflect the return of the offer to the DATL Unit.
- b. Send case to the DATL Unit.

4.70.17.10.2.3

(11-28-2023)

Case Resolution - All Other Situations

(1) **Examiner:**

- a. Complete Form 1271, Rejection or Withdrawal Memorandum for withdrawals and rejections.
- b. Complete Form 7249, Offer Acceptance Report for accepted offers.
- c. Prepare Form 3870, Request for Adjustment, for all cases. Complete the form to adjust the liability to the correct amount regardless of whether the taxpayer withdraws the offer. Only one tax year per Form 3870, Request for Adjustment. Instructions for the completion of Form 3870, Request for Adjustment, are provided on the back of the form. Ensure that lines 6 and 11 provide the specific information shown below.
 - Line 6. Assessment date: TC 300 assessment date.
 - Line 11. Reason for Adjustment: "Abate TC 300 \$ (amount of abatement) for OIC acceptance" (or withdrawal or rejection).
- d. Prepare the following forms to reflect the adjustments for the Closing Unit input as applicable:
 - Form 4549, Income Tax Examination Changes
 - Form 4883, Exempt Organizations Excise Tax Audit Changes
 - Form 4667, Examination Changes - Federal Unemployment Tax
 - Form 4668, Employment Tax Examination Changes Report, and/or
 - Form 5384, Excise Tax Examination Changes and Consent to Assessment & Collection.

(2) **Manager:**

- a. Review the Offer case file in 10 days.
- b. Upon approval of the closure, send the case to Mandatory Review.
- c. Close the RCCMS controls to Mandatory Review.
- d. If Form 7249, Offer Acceptance Report is present, sign the form if you agree with the examiner.
- e. For FSL/ET, notify the FSL/ET Staff Assistant of the case disposition.

Note: All deadlines are in calendar days.

4.70.17.10.3

(11-28-2023)

OIC-DATL Final Processing

- (1) The IRS is required under IRC 7122(e) to provide an independent administrative review of all proposed rejections of an offer in compromise before communicating the rejection to the taxpayer. Mandatory Review serves in this role.

- (2) The Mandatory Review Manager will assign the case to a reviewer within 15 days of receipt of the offer case file.
- (3) For FSL/ET, notify the FSL/ET Staff Assistant of the case assignment.

Note: All deadlines are in calendar days.

4.70.17.10.3.1
(11-28-2023)

**Case Resolution –
Reviewer**

- (1) Treat the case as your **highest priority work** item.
- (2) Review the Offer case file, within 15 days. Determine the following:
 - Did the taxpayer establish sufficient doubt as to the correctness of the liability?
 - Did the examiner follow the IRM requirements?
 - Did the examiner correctly consider and apply the tax law?
 - Did the examiner thoroughly develop/document the facts and circumstances?
- (3) Verify the accuracy of any adjustments.
- (4) Ensure the following documents are in the file:
 - Form 656-L, Offer in Compromise (Doubt as to Liability).
 - Withdrawal letter from the taxpayer, if applicable.
 - AOIC Exam Case Checklist.
 - Form 1271, Rejection or Withdrawal Memorandum or Form 7249, Offer Acceptance Report, for accepted offers.
 - Form 2848, Power of Attorney and Declaration of Representative, if applicable.
 - Tax return (original, copy, TRDBV print).
 - Original examination case file.
 - Form 3870, Request for Adjustment
 - Form 4549, Income Tax Examination Changes
 - Form 4883, Exempt Organizations Excise Tax Audit Changes
 - Form 4667, Examination Changes - Federal Unemployment Tax
 - Form 4668, Employment Tax Examination Changes Report, and/or
 - Form 5384, Excise Tax Examination Changes and Consent to Assessment & Collection.
- (5) If the 24-month period expired, verify the acceptance paperwork required under IRM 5.8.8.12, 24-Month Mandatory Acceptance under IRC § 7122(f), is in the file.
- (6) Sign Form 1271, Rejection Memorandum, in the field marked “Signature of Reviewer” or Form 7249, Offer Acceptance Report, in the field marked “Signature (2nd level review)” if approving the examiner’s determination.
- (7) Prepare a second folder containing: a copy of the Form 2848, Power of Attorney and Declaration of Representative, (if applicable), the tax return, the original examination case file, Forms 656-L (copy), 3870, 4549 (4883/4667/4668/5384).
- (8) Write your name in the field for “Independent Administrative Reviewer (IAR)/ Technical Reviewer”. Write the date you complete your review. Check the box for sustained or not sustained. Verify the field examiner completed the disposition of deposit and remarks fields.

- (9) If the Offer involves a total liability of \$50,000 or more (before or after adjustment), send the case files to TEGEDC for approval.
- (10) Forward the closed case to the Manager, Mandatory Review.

4.70.17.10.3.2
(11-28-2023)

**Case Resolution -
Mandatory Review,
Manager**

- (1) Review case. If the 24-month period expired, forward the case file to the National Offer in Compromise Program Director.
- (2) If issues remain, return the files to the Reviewer.
- (3) If no issues remain, forward the first file folder to the DATL Unit for issuance of the closing letter.
- (4) For cases involving rejections, wait for the Doubt as to Liability (DATL) unit to notify you as whether the taxpayer is appealing the rejection. If the taxpayer files an appeal, forward the second folder to the DATL Unit for association with the first folder before the DATL Unit sends the files to Appeals.
- (5) For cases involving acceptances, non-appealed rejections, and withdrawals, forward the second folder to TE/GE Closing Unit for input.
- (6) For FSL/ET, notify the FSL/ET Staff Assistant of the case's disposition.

4.70.17.10.3.3
(11-28-2023)

**Returning Case to the
Group – Reviewer**

- (1) Prepare Form 5456, Reviewer's Memorandum - TE/GE, if issues are present that require returning the case to the group.
- (2) Sign the Form 5456, Reviewer's Memorandum - TE/GE, and obtain the Manager, Mandatory Review's counter signature.
- (3) Place the signed Form 5456, Reviewer's Memorandum - TE/GE, on top of the files and ship them to either:
 - The field group that reviewed the Offer.
 - CP&C Classification Group 3 for assignment if the Classifier rejected the Offer.
- (4) Have the case controls on RCCMS transferred to the appropriate unit.

4.70.17.11
(11-28-2023)
**Valid Forms 2848 and
8821 for Issuer
Representation in
Arbitrage Payment
Refund Claim
Examinations**

- (1) Examiners should first refer to IRM 4.70.11, TE/GE Examinations, Administrative Matters, for guidance on Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization.
- (2) The following applies to a rebate preparer who is not an attorney, CPA, enrolled agent, enrolled retirement plan agent, or enrolled actuary. The rebate preparer:
 - a. Who prepares a rebate report but doesn't prepare the correlating form (for example, Form 8038-R, Request for Recovery of Overpayment Under Arbitrage Rebate Provisions, or Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate) can't be a designated representative of the issuer on Form 2848, Power of Attorney and Declaration of Representative.
 - b. Can only be designated as an unenrolled return preparer on Form 2848, Power of Attorney and Declaration of Representative, for a Form 8038-R or Form 8038-T that the rebate preparer actually prepared and signed.

Note: Even if a rebate preparer who was paid compensation to prepare Form 8038-R, Request for Recovery of Overpayment Under Arbitrage Rebate Provision, or Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, actually signed the return and was eligible to be designated as an unenrolled return preparer on Form 2848, Power of Attorney and Declaration of Representative, the rebate preparer would only be permitted to provide limited representation for the issuer.

- c. May be designated on Form 8821, Tax Information Authorization, as an appointee to inspect and/or receive the issuer's confidential information for the type of tax and the years or periods listed on Form 8821, Tax Information Authorization. If designated as an appointee, they aren't authorized to:
 - 1. Advocate the issuer's position on federal tax laws.
 - 2. Execute waivers, consents, or closing agreements.
 - 3. Otherwise represent the issuer before the IRS.

4.70.17.12
(11-28-2023)
**Small Employer Health
Care Tax Credit Under
Section 45R**

- (1) The small employer health care tax credit is included in the Affordable Care Act enacted in March 2010. It's designed to encourage both small businesses and small tax-exempt organizations to offer health insurance coverage to their employees for the first time or maintain coverage they already have.
- (2) In general, small employers who pay at least half of the premiums for single health insurance coverage for their employees may take the credit. It's specifically targeted to help small businesses and tax-exempt organizations who mostly employ moderate- and lower-income workers. The credit amount available to tax-exempt employers differs from the amount available to small businesses.
- (3) Eligible tax-exempt organizations can claim the credit for their 2010 through 2013 tax years and for any two consecutive years after that. For tax years 2010 to 2013, the maximum credit is 25 percent of premiums paid. Beginning in 2014, their maximum tax credit increases to 35 percent.
- (4) The maximum credit goes to smaller employers – those with 10 or fewer full-time equivalent (FTE) employees – paying annual average wages of \$25,000 (adjusted for inflation for tax years beginning after December 31, 2013) or less. The credit is completely phased out for employers who have 25 or more FTEs or pay average wages of \$50,000 (adjusted for inflation for tax years beginning after December 31, 2013) or more per year. Because the eligibility rules are based in part on the number of FTEs, not the number of employees, employers who use part-time workers may qualify even if they employ more than 25 individuals.
- (5) Tax-exempt organizations use Form 8941, Credit for Small Employer Health Insurance Premiums, to calculate their refundable credit, and claim the credit on the specified line on Form 990-T, Exempt Organization Business Income Tax Return. Though Form 990-T is primarily filed by those organizations liable for the tax on unrelated business income, Form 990-T is also used by any eligible tax-exempt organization to claim the credit, regardless of whether they are subject to this tax.
- (6) This IRM section discusses only the credits for which tax-exempt organizations apply.

- (7) The credit rules in this IRM generally apply to all tax years for which the credit is claimed. However, statutory changes to certain credit rules (for example, increase in maximum credit rate from 25 percent to 35 percent described above) take effect for tax years beginning after December 31, 2013.
- (8) Examiners are responsible for:
 - a. Determining if an employer is eligible for a credit under IRC 45R.
 - b. Calculating the allowable credit.
 - c. Ensuring taxpayer rights afforded in IRC 7803(a)(3).
- (9) Cases for this program are:
 - a. Identified systemically using project code 1073.
 - b. Controlled on AIMS.
 - c. Worked using RCCMS.
 - d. Closed through the TE/GE Closing Unit
- (10) Examiners (i.e., TCOs and Revenue Agents) examine these cases using existing examination procedures and methods.

4.70.17.12.1
(11-28-2023)
**IRC 45R - Special
Instructions**

- (1) Track case time as follows:
 - WebETS: Charge technical time using normal procedures.
 - SETR: Charge time to this project according to separate instructions from the TE/GE Director of Finance as it is part of the ACA implementation.

4.70.17.12.1.1
(11-28-2023)
**IRC 45R - Amended/
Revised/Corrected
Returns**

- (1) When an employer submits subsequent returns to the IRS Campus, they're considered amended returns.
 - Groups receive amended returns from Accounts Management. Accounts Management establishes AIMS controls and sends to CP&C for review.
 - Examiners must verify the tax module is adjusted to show the amended return.

Note: Corrected or revised returns that employers submit in response to an IDR aren't considered amended returns. See Exhibit 4.70.17-4, Amended/Revised/Corrected Return.

4.70.17.12.1.2
(11-28-2023)
**IRC 45R -
Fiscal/Calendar Year**

- (1) Calendar-year Filers: Use calendar-year amounts/figures for all components of the credit calculation, including calculating payroll tax withholding.
- (2) Fiscal-Year Filers: Use fiscal-year amounts/figures to calculate FTEs, Average Annual Wage, and Insurance Premiums. The examiner is always required to substantiate computations using payroll records because Forms W-3 and W-2 won't reconcile for fiscal-year filers.

4.70.17.12.1.3
(11-28-2023)
**IRC 45R - Short Tax
Periods**

- (1) Under general accounting principles, the examiner must prorate or annualize average annual wages and FTEs in calculating the credit.

Example: A small employer has only been in business and paying premiums for six months during its first taxable year. Therefore, it must prorate or annualize the employee hours worked and wages earned to reflect the six months the employer has been in operation.

- (1) If any portion of the 45R credit is claimed on the copy of the Form 8941 Line 15 the examiner receives with a response, request a copy of the organization's Schedule K-1.
 - a. Verify that the credit claimed on Line 15 is the amount shown on the Schedule K-1.
 - b. Verify that the employer has payroll tax withholding to sufficiently cover the amount of the credit. If the employer is claiming a credit of their own in addition to the flow-through credit, they must have paid sufficient payroll taxes to cover their credit as well as the flow-through amount.
 - c. If the employer is claiming **only** a flow-through credit, examiners **don't** need to analyze FTEs, average annual wages, and insurance premiums.
 - d. If the employer is claiming its own credit **in addition** to a flow-through credit, fully analyze the non-flow-through credit (FTEs, average annual wages, insurance premiums, etc.).

4.70.17.12.2
(11-28-2023)

**IRC 45R - Relevant
Authority and Guidance**

- (1) The Patient Protection and Affordable Care Act (ACA), P.L. 111-148, Section 1421 added IRC 45R.
- (2) The Treasury Department and IRS issued the following guidance on IRC 45R:

Guidance Issued	Guidance Provides	Effective date
Notice 2010-44	Explanation on how to apply IRC 45R.	Taxable years beginning before January 1, 2014, includes transition relief for taxable years beginning in 2010 for a qualifying arrangement.
Notice 2010-82	Expansion of Notice 2010-44. Guidance on additional issues.	Taxable years beginning before 2014.
Final regulations under IRC 45R (79 CFR 36640 (June 30, 2014))	Guidance on determining eligibility for the credit, calculating and claiming the credit.	Taxable years beginning after 2013. Employers may rely on the provisions of proposed regulations (REG-113792-13, 78 Fed. Reg. 52719 (Aug. 26, 2013)) for tax years beginning in 2014.
Notice 2014-6	Transition relief for certain small employers that can't offer a qualified health plan through a SHOP exchange for 2014	2014
Notice 2015-08	Relief for certain small employers that can't offer a qualified health plan through a SHOP exchange for all or part of 2015.	All or part of 2015.
Notice 2016-75	Relief for certain small employers that can't offer a qualified health plan through a SHOP exchange for all or part of 2016.	All or part of 2016.

Guidance Issued	Guidance Provides	Effective date
Notice 2018-27	Relief is available where SHOP is not available for the second year of the credit period	For 2017 and later years.

4.70.17.12.2.1
(11-28-2023)
IRC 45R - Credit Eligibility Rules

- (1) IRC 45R offers a tax credit to eligible small employers that provide health insurance coverage to their employees. It's effective for taxable years beginning in 2010. Both taxable employers and tax-exempt employers may be eligible for the IRC 45R credit.
- (2) To be a tax-exempt "eligible small employer" the employer must:
 - a. Be described in IRC 501(c) and exempt from tax under IRC 501(a).
 - b. Have fewer than 25 FTEs for the taxable year.
 - c. Have an average annual employee wage for the year less than \$50,000 per FTE (adjusted for inflation for tax years beginning after December 31, 2013).
 - d. Pay premiums for each employee enrolled in health insurance coverage offered by the employer equal to a uniform percentage (not less than 50 percent) of the premium cost of employee-only coverage (a qualifying arrangement).
- (3) Certain changes to these requirements take effect for tax years beginning in 2014 and after. See IRM 4.70.17.12.2.3, Credit Eligibility and Amount Rules.
- (4) For taxable years beginning in 2010:
 - a. Notice 2010-44, Section V provides transition relief in applying the uniformity requirement.
 - b. Notice 2010-82, Section III, Part G gives rules for applying the uniformity requirement in taxable years beginning after December 31, 2009, and before 2014.
 - c. An employer may satisfy the uniformity requirement either by meeting the requirements of either of the notices listed above.
- (5) The 45R credit for **tax-exempt** eligible small employers is significantly different from the credit for eligible small employers that are **not tax-exempt** eligible small employers. For tax-exempt organizations the credit:
 - a. Must be claimed on a Form 8941 attached to a Form 990-T. There is no other allowable return.
 - b. Percentage is 25 percent (35 percent for tax years beginning in 2014 and after).
 - c. Amount can't be more than the total amount of income and Medicare tax the employer is required to withhold from the employees' wages, and the employer share of Medicare tax on employees' wages, for the calendar year in which the taxable year begins.
 - d. Is refundable.

Note: Refundable credits issued to small tax-exempt employers are subject to sequestration. Refundable credits are reduced by the applicable sequestration rate according to the date the credit is processed for refund, regardless of when the IRS received the

original or amended return. The sequestration reduction rate will apply until a law is enacted that cancels the sequester.

4.70.17.12.2.2
(11-28-2023)

**IRC 45R - Credit Amount
Rules and Phase Outs**

- (1) For taxable years beginning in 2010 through 2013, the maximum credit for a tax-exempt eligible small employer is 25 percent of the employer's premium payments made for its employees for health insurance coverage under a qualifying arrangement.
- (2) In calculating the credit, the employer's premium payments are limited to the premium payments the employers would've made if the average premium for the small group market in the state or rating area, in which the employee enrolls for coverage were substituted for the actual premium the employer paid. The average premiums are published in the Form 8941 Instructions.
- (3) The credit phases out for eligible small employers if the number of FTEs exceeds 10 or if the FTEs average annual wages exceed \$25,000 (adjusted for inflation beginning in 2014). For example:
 - a. If the number of FTEs exceeds 10, multiply the otherwise applicable credit by this reduction calculated as:

FTE's in excess of 10	=	result
15		

- b. If the average annual FTE wages exceed \$25,000 (adjusted for inflation beginning in 2014), multiply the otherwise applicable credit by this reduction, calculated as:

amount FTEs exceed \$25,000	=	result
\$25,000		

Note: Adjust the numerator and denominator for inflation beginning in 2014.

4.70.17.12.2.3
(11-28-2023)

**IRC 45R - Credit
Eligibility and Amount
Rules**

- (1) For tax years beginning in 2014 and later, a few statutory changes affect the definition of an eligible small employer and other credit rules:
 - a. Cost-of-living adjustments are made to the wage phase-out amount.
 - b. The eligible small employer generally must contribute toward premiums on behalf of each employee enrolled in a QHP through a Small Business Health Options Program (SHOP Marketplace).

Exception: Some exceptions apply to the requirement to offer health coverage through the SHOP Marketplace in 26 CFR 1.45R-3(i) (for certain employers whose plan year and tax year do not match) and in Notices 2014-6, 2015-8, 2016-75 and 2018-27 (for certain employers located where QHPs aren't available through a SHOP in the time periods specified in these notices. See the notices for more details).
 - c. The maximum credit amount increases to 35 percent of employer premiums paid for tax-exempt eligible small employers.

- d. An employer may claim the credit for up to two-consecutive taxable years, beginning with the first taxable year in or after 2014 in which the eligible small employer claims the credit.

4.70.17.12.3
(11-28-2023)
**Examination Procedures
for IRC 45R credit**

- (1) Requests for the 45R credit are similar to claims. Therefore, in addition to the information below, consider claim and abatement procedures when working these cases.
- (2) Refer to IRM 4.70.17.4, Statute of Limitations for Claims, for, and IRM 4.70.17.4.2, Refunds Barred by Statute of Limitations, for barred statute requirements.
- (3) Use the following documents when reviewing Forms 8941 and 990-T for the Small Employer Health Care Tax Credit. This package allows you to do a pre-exam review and prepare the examination report, workpapers, letters, IDRs and forms you need to close the case. The package contains:
 - a. RCCMS 3198-A Checksheet
 - b. Letter 6031, Initial Exam Appointment
 - c. Form 4564, Information document request (IDR)
 - d. Letter 937-A, Transmittal of Information to Power of Attorney
 - e. Form 4700, Examination Workbook
 - f. Workpaper B-1, to research IDRS to verify organizational status and other information
 - g. Form 5773, EO Workpaper Summary
 - h. Form 5464, Case Chronology Record
 - i. Supplemental worksheets to calculate allowed credit amount
 - j. Form 4549, Income Tax Examination Changes
 - k. Form 4549-A, Income Tax Examination Changes (Unagreed and Excepted Agreed)
 - l. Form 2297, Waiver of Statutory Notification of Claim Disallowance
 - m. Form 3363, Acceptance of Proposed Disallowance of Claim of Refund or Credit
 - n. Form 886-A, Explanation of Items
 - o. Form 13683, Statement of Disputed Issues
 - p. Examination Letters
 - q. Sequestration Notice
 - r. Form 3870, for Sequestration
 - s. Form 5666, TE/GE Referral Information Report
 - t. Pub 1, Your Rights as a Taxpayer
 - u. Pub 3498-A, The Examination Process (Audits by Mail)
 - v. Pub 5, Your Appeal Rights and How to Prepare a Protest If You Disagree
 - w. Pub 556, Examination of Returns, Appeal Rights, and Claims for Refund

4.70.17.12.3.1
(11-28-2023)
**IRC 45R - Initial
Examination Steps**

- (1) Take these initial steps (not necessarily in this order) for each case:

Step	Action	Additional Instructions
1	Verify assignment in RCCMS. When time is charged to the case, update to status 12.	Sync RCCMS. If still not in RCCMS, check with group clerk and manager

Step	Action	Additional Instructions
2		
3	<p>Start Form 4700, Case Chronology:</p> <ol style="list-style-type: none"> Change the pre-populated entries to the dates of your initial letter and response due date for your case. Change comments if the amended return was selected for examination rather than the original return. Document all actions you take on the case, including dates and time spent. Work case timely. Document lapses in which you haven't acted on case in over 30 days (vacation, training, case in suspense, etc.). 	<ul style="list-style-type: none"> Write clear, concise, and correct information. Don't include the IRS employees' names. Use their title and position. Don't include proce- etc. Don't express personal opinions on the case chronology.
4	<p>Complete Form 4700, page 1:</p> <ol style="list-style-type: none"> Entity Information. Section A, "Expand scope of examination" after you determine whether you'll include UBI in the exam. Sections B and C after you do IDRS research. 	<p>Note: Form 4700 references individuals, not businesses</p>
5	<p>Complete Form 4700, B-1 Workpaper:</p> <ul style="list-style-type: none"> Do a pre-exam analysis. Save IDRS prints researched during the pre-exam as one document in RCCMS. 	
6	<p>Create and send Initial Letter and IDR to employer within 30 days of case assignment. Save documents in RCCMS case folder</p>	<p>See IRM 4.70.12, Planning the Examination, for instructions on preparing IDR.</p>

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Step	Action	Additional Instructions
7	<ol style="list-style-type: none"> a. Analyze the employer's response to the initial IDR and determine the allowable credit amount based on documentation provided. b. Do NOT rely solely on the employer's worksheets to determine the credit. c. Verify and compare the employer's worksheets and information with the documentation provided. 	If the employer documentation is insufficient to analyze, either call them or send a supplemental IDR to obtain additional documentation.

4.70.17.12.3.2
(11-28-2023)
**IRC 45R - Examining
Prior and Subsequent
Years**

- (1) If you need to open a prior or subsequent year for examination, you must get your manager's approval.
- (2) After you receive approval to open a prior or subsequent year for examination:
 - a. Establish the case on RCCMS using Source Code 79.
 - b. When time is charged to the case, update RCCMS to status 12.
 - c. Send the Initial Letter and IDR to employer.

4.70.17.12.3.3
(11-28-2023)
**IRC 45R - Determining
Eligibility**

- (1) To determine eligibility for credit under Section 45R, examiners will:
 1. Determine the employees who are considered for the credit.
 2. Determine the number of hours of service performed by those employees (maximum of 2080 hours per employee per year).
 3. Calculate the number of the employer's FTEs.
 4. Determine the average annual wages paid per FTE.
 5. Determine the premiums paid by the employer that are taken into account for purposes of the credit. Specifically, the premiums must be paid by an employer under a qualifying arrangement and must be paid for health insurance that meets the requirements under Section 45R.
 6. Determine the amount of payroll tax withholding.
 7. Calculate the credit.

4.70.17.12.3.3.1
(11-28-2023)
**IRC 45R - Step 1 -
Determining the
Employees Taken into
Account**

- (1) Generally, employees are workers who perform services for the employer during the taxable year.
- (2) These individuals aren't considered employees for purposes of the credit:
 - Owners of the small business, such as sole proprietors, partners, shareholders owning more than 2 percent of an S corporation or more than 5 percent of a C corporation.
 - Spouses of these owners.

- Family members of these owners: a child, grandchild, sibling or stepsibling, parent or ancestor of a parent, a step-parent, niece or nephew, aunt or uncle, son-in-law or daughter-in-law, father-in-law, mother-in-law, brother-in-law.
 - Spouses of any of the above family members.
- (3) Look for identifiable discrepancies by comparing employer's worksheets with documentation such as Forms W-2, payroll records, and the IRS records documented on the B-1 Workpaper.
 - (4) If the employer attempts to omit certain workers from its calculations or doesn't consider certain workers to be employees, refer to IRM 4.23.5.6, Categories of Employees, IRC 3121(d) and Rev. Rul. 87-41. The issuance of a Form W-2 is not the sole factor in determining employee status. You must also examine direction and control.
 - (5) Workers who are volunteers with an organization **and** are classified under the law as **federal** employees are **not** considered employees of the organization claiming the credit.
 - (6) A leased employee who isn't a common law employee is considered an employee for credit purposes if he or she:
 - Provides services to employer under an agreement with a leasing organization.
 - Performed services for an employer or related person substantially for at least a year.
 - Performs services under the employer's primary direction and control.
 - (7) If the employer **leases** workers who aren't common law employees, don't use hours, wages or premiums paid for their initial year of service.
 - (8) If the employer uses a third party for payroll liabilities and/or health insurance, see Exhibit 4.70.17-6, Third Party Job Aid.
 - (9) Factors to determine if you should consider certain workers for the credit:

Worker Category	Determining factor	Employee for the credit	Include/exclude from wage calculation	Count hours worked	Count employer premiums paid toward the 45R credit
Ministers ¹	determined to be an employee using	yes	exclude	yes	yes
	common law standard				
Ministers ¹	not determined to be an employee using common law standard	no	exclude	no	no
Seasonal workers ²	who work for the employer more than 120 days during the taxable year	yes	include	yes	yes

Worker Category	Determining factor	Employee for the credit	Include/exclude from wage calculation	Count hours worked	Count employer premiums paid toward the 45R credit
Seasonal workers ²	who work for the employer less than 120 days during the taxable year	yes	exclude	no	yes
Part-time workers	regardless of days worked	yes	include	yes	yes
Religious workers	who have taken a vow of poverty	yes	include only if the worker(s) has wages subject to Medicare on Form W-2	yes	yes
Workers working under a J-1 VISA	who have been issued a Form W-2	yes	include only if the wages are subject to Medicare on Form W-2	yes	yes

Note: ¹ See 26 CFR 1.45R-1(a)(5)(v) and Notice 2010-82.

Note: ² Department of Labor 29 CFR 500.20(s)(1): Workers **may be** considered seasonal if labor is performed on a seasonal basis **where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.** Employers may apply a reasonable, good faith interpretation of the term seasonal worker. **Determine whether or not a worker is seasonal on a case-by-case basis, considering the particular facts and circumstances.** Items to consider are: the reason they were hired, their duties, and range of time-periods worked. A retail worker who is employed **exclusively** for the holidays would be considered to be a seasonal worker. A substitute teacher who may be called upon to work through-out the school year wouldn't be considered to be a seasonal worker. They would be considered a part- or full-time worker.

4.70.17.12.3.3.2
(11-28-2023)
**IRC 45R - Step 2 -
Determining the Number
of Hours of Service
Worked by Employees
for the Taxable Year**

- (1) An employee's hours of service during the employer's taxable year includes:
- Each hour for which they were paid, or entitled to payment, for the performance of duties.
 - Each hour for which they were paid, or entitled to payment, for the tax year during which no duties were performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence (except that no more than 160 hours of service are

required to be counted for an employee on account of any single continuous period during which the employee performs no duties).

- (2) Don't include an employee's hours of service in excess of 2,080 for a year.
- (3) Employers may use one of these three methods to calculate hours of service for any employee:
 1. **Actual Hours Worked Method:** Determine actual hours of service from records of hours worked and hours for which payment is made or due (payment is made or due for vacation, holiday, illness, incapacity, etc.)
 2. **Days Worked Equivalency Method:** Use a days-worked equivalency method in which you credit the employee with 8 hours of service for each day for which the employee would be required to be credited with at least one hour of service per actual hours worked method.
 3. **Weeks Worked Equivalency Method:** Use a weeks-worked equivalency in which you credit the employee with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service per actual hours worked method.

4.70.17.12.3.3.3

(11-28-2023)

IRC 45R - Step 3 -

Calculating the Number of the Employer's FTEs

- (1) **FTE Worksheet in Form 4700 Workbook:** The worksheet is formulated to make these calculations. However, you're responsible to accurately complete all fields in the workbook.

Column/ Section	Instructions
Employee Column	<ol style="list-style-type: none"> a. Calendar-year filers: Input the names per Forms W-2 provided by the employer. Compare the number of Forms W-2 to the number reported and shown on PMFOL. b. Fiscal-year filers: Input the names per the payroll records provided by the employer. Compare the names provided by the employer to the names appearing on the payroll records. Compare the number of names to the Forms W-2 and PMFOL and the totals reported on the quarterly filings to identify potential discrepancies.
Hours & FTEs Per F8941 Column	Enter Full Time Equivalents number as it appears on the original Form 8941 filed with the Form 990-T (BRTVU). This is the only entry that you should make in this column.
Hours Per IDR Response Column	<ol style="list-style-type: none"> 1. Enter the hours worked by each employee that the employer used in calculating their credit on the original Form 8941 filed with the Form 990-T (BRTVU). 2. If the organization provides any additional information showing they didn't include any employees' hours or they are making a correction, show that information in the following "Per Exam" column. See "Hours Per Exam Column" below.

Column/ Section	Instructions
Hours Per Exam Column	Enter the hours worked for each employee as determined during your examination. Include these hours worked by: <ol style="list-style-type: none"> Full-time and part-time employees. Religious workers who have taken a vow of poverty and ministers that are common-law employees. Seasonal employees who worked more than 120 days. Leased employees who provided services for the employer for at least a year.
Comments Column	Enter comments for employees if they further clarify (i.e., “minister”, “seasonal”) or explain discrepancies.
Comments Section Below Table	<ol style="list-style-type: none"> Enter comments that show the documentation the employer provided and you reviewed to make your determination. Notate any errors the employer made and how correcting those errors will affect the credit.

- (2) Divide the employer’s total hours of service per Step 1 (but not more than 2,080 hours for any employee) by 2,080 hours. If the result isn’t a whole number, round down to next lowest whole number. If the result is less than 1 FTE, round up to 1 FTE.

4.70.17.12.3.3.4
(11-28-2023)
**IRC 45R - Step 4 -
Determining the
Employer’s Average
Annual Wages per FTE**

- Use **wages subject to Medicare tax withholding**, for the credit, NOT gross wages.
- Aggregate total wages (wages subject to Medicare tax withholding) the employer paid for the taxable year to all employees used in Step 1 above.
- Divide the aggregate total wages by the number of FTEs for the year as calculated under Step 3 above.
- Round the result down to the nearest \$1,000 (if not otherwise a multiple of \$1,000).
- Average Annual Wages Worksheet in Form 4700 Workbook:** The worksheet is formulated to make these calculations. However, you are responsible to accurately complete all of the workbook’s fields.

Column/ Section	Instructions
Employee Column	The names of employees you entered on the FTE Worksheet are formulated to flow to this worksheet. If you deleted a name line on the FTE Worksheet, delete the same line on the Average Annual Wages Worksheet.

Column/ Section	Instructions
Pay Per Form 8941 Column	Enter Average Annual Wages amount as it appears on the original Form 8941 filed with the original Form 990-T (BRTVUE). This is the only entry you should make in this column.
Pay Per IDR Response Column	<ol style="list-style-type: none"> 1. Enter the wages for each employee that the employer used to calculate their credit on the original Form 8941 filed with the Form 990-T (BRTVU). 2. If the organization provides any additional information showing they didn't include any employees' wages or they are making a correction, show that information in the following Per Exam Column. (See Pay Per Exam Column below).
Pay Per Exam Column	<ol style="list-style-type: none"> 1. Enter the wages subject to Medicare tax withholding for each employee as determined during the exam. Calendar-year filers must provide copies of Forms W-2. Forms W-2, Box 5 (not Box 1) reports the relevant wages for calendar-year filers. Fiscal-year filers must provide payroll records for the fiscal tax period. Don't use Forms W-2 to determine wages for fiscal-year filers. Include Medicare wages in the calculations earned by: <ol style="list-style-type: none"> a. full-time and part-time employees b. seasonal employees who worked more than 120 days c. leased employees who provided services for the employer for at least a year 2. Don't include wages earned by employees designated as ministers (even if the Form W-2 has an amount for Medicare wages) unless you've determined that they also performed non-ministerial duties. Indications that a minister might have also performed non-ministerial duties: <ol style="list-style-type: none"> a. Two Forms W-2 were issued to that employee, and one of the Forms W-2 has a wage amount in Box 5. b. The Medicare Wages is less than gross wages and/or has an amount for Medicare Tax Withheld on the Form W-2. <p>Note: In either case, ask the employer and document that information in the Comments Column or the Comment Section below the table. Refer to Pub 517.</p>

Column/ Section	Instructions
Comments Column	Enter comments for employees if they further clarify (i.e., “minister”, “seasonal”) or explain discrepancies.
Comments Section Below Table	<ol style="list-style-type: none"> 1. Enter comments that show the documentation the employer provided, and you reviewed to make your determination. 2. Notate any errors the employer made and how correcting those errors will affect the credit.

4.70.17.12.3.3.5
(11-28-2023)

**IRC 45R - Step 5 -
Determining the
Employer’s Annual
Premium Payments**

- (1) Count premiums the employer paid for health insurance coverage for employees employed during the tax period in calculating the credit.

Note: For tax years beginning in 2014, count only premiums the employer paid for employees enrolled in a qualified health plan (QHP) offered through a Small Business Health Options Program (SHOP) Marketplace in calculating the credit.

- (2) You may treat premiums paid on behalf of a former employee as paid on behalf of an employee to calculate the credit if you also treat the former employee as an employee for purposes of the uniform percentage requirement. See 26 CFR 1.45R-1(a)(5)(vii).
- (3) The employer must meet the qualifications in IRC 414(f) if the employer states that their premiums are paid through a multiemployer plan. One hundred percent of the cost of coverage for all employees covered by the plan must be paid from employer contributions (not by employee contributions). This only applies for taxable years 2010-2013. For tax years 2014 and after, using a multiemployer plan doesn’t qualify for the credit.
- (4) If an employer pays only a part of the premiums for the coverage provided to employees (with employees paying the rest), use only the part the employer paid.
- (5) Don’t treat any premium paid under a Section 125 cafeteria plan as paid by the employer.
- (6) Include only health insurance premiums the employer paid under a qualifying arrangement.
- (7) Don’t include the payments for **reimbursements** for an insurance policy which the employer doesn’t offer or offers through a third party in the employer paid insurance amount; they don’t qualify.
- (8) **Medicare Supplemental Insurance Plans** may be an individual plan or may be a group —employer provided plan. Premiums reimbursed to an employee for the employee’s own individual Medicare supplement insurance plan **don’t** qualify for the 45R credit.
- (9) Don’t include administrative or service fees in the computation of the credit.

- (10) Employers that are religious organizations and self-insured can qualify for the credit for tax years 2010-2013 only.
- (11) Employers that aren't religious organizations that are self-insured can qualify for the credit **ONLY** if they provide proof that their self-insured plan is licensed by their State for tax years 2010-2013 only.
- (12) Health insurance coverage for this purpose means benefits consisting of medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer. See IRC 9832(b)(1). This section is only relevant to tax years 2010-2013. For tax years 2014 and after, further restrictions apply.
- (13) Health insurance coverage for this purpose also includes the following plans:
 - Limited scope dental or vision
 - Long-term care
 - Nursing home care
 - Home health care
 - Community-based care
 - Coverage only for a specified disease or illness
 - Hospital indemnity or other fixed indemnity insurance
 - Medicare supplemental health insurance
 - Certain other supplemental coverage
 - Similar supplemental coverage provided under a group health plan

Note: See IRC 9832(c)(2), IRC 9832(c)(3), and IRC 9832(c)(4).
- (14) Health insurance doesn't include the following benefits:
 - Automobile medical payment insurance
 - Coverage for on-site medical clinics
 - Coverage issued as a supplement to liability insurance
 - Coverage only for accident, or disability income insurance, or any combination thereof
 - Credit-only insurance
 - Liability insurance, including general liability insurance, and automobile liability insurance
 - Worker's compensation or similar insurance
 - Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits
- (15) Don't use employer contributions to, or amounts made available under, **HSAs**, **HRAs**, and health **FSAs** in determining the employer's premium payment for a taxable year.

Caution: The words "**HSA-Compliant**" in the **health insurance plan name** does **not** affect the employer's ability to claim the 45R credit

- (16) If an eligible small employer offers any of the plans described in IRC 9832(b)(1), IRC 9832(c)(2), IRC 9832(b)(3), or IRC 9832(b)(4) you can count the premiums the employer paid for these plans only if they're paid under a qualifying arrangement.

Example: If an employer offers a major medical insurance plan under IRC 9832(b)(1) and a stand-alone vision plan under IRC 9832(c)(2), the employer must separately satisfy the requirements for a qualifying arrangement for each plan offered. Different plans are **NOT** aggregated for the purpose of meeting the qualifying arrangement requirement.

4.70.17.12.3.3.5.1
(11-28-2023)

**IRC 45R - Qualifying
Arrangement
Considerations**

(1) Consider these items to determine if the employer has paid premiums under a qualifying arrangement:

- a. Did the employer provide health insurance coverage?
- b. Is the employer the policy holder of the insurance?
- c. If the employer is not the policy holder of the insurance, did the employer pay insurance premiums through a third party?
- d. Did the employer provide more than one health insurance plan for employees?
- e. Specifically, what types of health insurance coverage did the employer provide?
- f. Are there any indications in response to the IDR that the employees paid any portion of their health insurance premiums? (IRC 125 Cafeteria Plan, payroll deductions, etc.) Did the employer report the non-taxable health insurance premiums on the employees W-2s?

Note: Most qualifying employers are not required to list the cost of employee health insurance on Forms W-2.

- g. Did the employer receive any state subsidies or state tax credits for health insurance? Did the state provide any state subsidies or tax credits that were paid directly to the insurance provider?
- h. Did the employer have any self-insured plans, such as HRAs and health FSAs, or contribute to HSAs? These arrangements are **NOT** health insurance coverage.
- i. Did the employer pay for each employee participating in the plan an amount equal to at least 50 percent of the single (employee-only) coverage premium amount?
- j. Did the employer offer more than one “tier” of coverage, i.e., coverage under a benefits package that varies only by the number of individuals covered? For example, self-only coverage, self plus one coverage, and family coverage would constitute three separate tiers of coverage.

(2) **Consider these additional items for tax periods ending December 2011, and after:**

- a. Did the employer offer the employees a plan for which the insurance provider lists the **same** premium for each employee enrolled in a particular tier of coverage, referred to as “composite billing”?
- b. Did the employer offer the employees a plan for which the insurance provider lists a **separate** premium for each employee based on the age of the employee or other factors, referred to as using “list billing”?
- c. Did the employer meet the uniformity requirements for each plan for the applicable tax year? See Exhibit 4.70.17-7, Qualifying Arrangement-Uniformity Percentage Job Aid.
- d. Did the employer offer **dependent-only coverage**? Dependent-only coverage is different than family coverage in that it provides coverage only to the employee’s dependents and doesn’t include the employee. Don’t take into account a coverage purchased that doesn’t include the

employee for purposes of applying the uniformity requirement nor the 50 percent qualifying arrangement requirement. However, you may count premiums paid for dependent coverage in determining the amount of the credit.

- e. **Ineligible employees for insurance:** An employee who may participate in the health plan only by paying 100 percent of the cost of the coverage is not “enrolled” in the plan as that term is used in Section 45R. The employee is purchasing the insurance entirely on their own as an **ineligible** employee. Don’t factor payments for an employee who is not eligible to participate in the employer’s health insurance coverage into uniformity.

4.70.17.12.3.3.5.2
(11-28-2023)

ICR 45R -

**Considerations for Tax
Years Beginning in 2014
and Forward (SHOP and
QHP requirements)**

- (1) The maximum credit increases from 25 to 35 percent of premiums paid for small tax-exempt employers.
- (2) The credit is available only for an additional two consecutive taxable years. Starting with the first taxable year that begins in 2014 or later in which the eligible small employer attaches a Form 8941, Credit for Small Employer Health Insurance Premiums, to its income tax return, an employer may claim the credit for up to and including two-consecutive taxable years. If an eligible small employer takes the credit for tax years beginning in 2010 through 2013, you wouldn’t count those years toward the two-consecutive taxable year period.

Note: The two-consecutive-taxable-year period begins with the year in which the eligible small employer attaches Form 8941 to its income tax return, regardless of whether the eligible small employer actually claims the credit in the following year.

Example: If an employer files a Form 8941 with their Form 990-T in 2014, the two consecutive year period begins in 2014 regardless of whether or not they file the Form 8941 in 2015. They cannot claim the credit in 2016.

- (3) Generally, for tax years 2014 and forward, an employer must offer a QHP through a SHOP Marketplace.

Exception: There are limited exceptions to the requirement to offer SHOP coverage. Refer to Notice 2014-06 , Notice 2015-8 ,Notice 2016-75 and Notice 2018-27.

- (4) For the 2014 taxable year, an eligible small tax-exempt employer doesn’t need to switch plans mid-year to comply with the requirement that an employer offer coverage to its employees through a SHOP Marketplace. If, as of August 26, 2013, the tax-exempt employer has a plan year that begins after its taxable year starts, they may claim the credit for premiums paid for the entire 2014 taxable year at up to the maximum 35 percent rate if the employer:
 - Begins offering coverage through a SHOP Marketplace on the first day of the plan year.
 - Offers coverage during the period before the first day of the plan year that would’ve qualified the employer for the credit under the rules that applied to years before 2014.

(5) A small employer with a principal business address in one of the counties listed in Exhibit 4.70.17-8, Notices 2014-6, 2015-8 and 2016-75 Counties, where QHPs aren't available through the SHOP Marketplace in 2014, may claim the credit under the pre-tax year 2014 rules. Calculate the credit at the maximum 35 percent rate for tax-exempt eligible small employers for the entire 2014 taxable year, and the 2014 taxable year will be the first year of the two-consecutive-taxable-year-credit period. For a detailed description of this transition relief, see Notice 2014-6.

- a. The Treasury Department and the IRS issued Notice 2015-08, which provides relief for certain small employers that can't offer a qualified health plan through a SHOP exchange for all or part of 2015. A small tax-exempt employer with a principal business address in one of the counties listed in Exhibit 4.70.17-8, where QHPs aren't available through the SHOP Marketplace for all or part of 2015, may claim the credit under the pre-tax year 2014 rules. Calculate the credit at the maximum 35 percent rate for the entire 2015 taxable year. If the eligible small tax-exempt employer doesn't claim the credit for the 2014 taxable year, but claims the credit for the 2015 taxable year, then the 2015 taxable year will be the first year of the two-consecutive-taxable-year-credit period. If the eligible small tax-exempt employer first claims the section 45R credit for the 2014 taxable year, then the 2015 taxable year is the second year of the two-consecutive-taxable-year-credit-period, regardless of whether they take advantage of the relief described in this paragraph. For a detailed description of this relief, see Notice 2015-08.

Example: The employer is an eligible small tax-exempt employer and a calendar year taxpayer. As of Aug. 26, 2014, the employer's health plan year runs from July 1 through June 30. The tax-exempt employer offers a QHP to its employees through the SHOP Marketplace on July 1, 2014. If, from Jan. 1, 2014, through June 30, 2014, the tax-exempt employer has been offering coverage to its employees under the rules applicable to years before 2014, then the tax-exempt employer may claim the credit for premiums paid on behalf of each employee enrolled in coverage for the entire 2014 taxable year at up to the 35 percent for tax-exempt employers, even though the employer did not offer coverage through a SHOP Marketplace for the first six months of 2014.

- b. A small employer with a principal business address in one of the counties listed in Exhibit 4.70.17-8, Notices 2014-6, 2015-8 and 2016-75 Counties, where QHPs are not available through the SHOP Marketplace for all or part of 2016, may claim the credit under the pre-tax year 2014 rules. The credit will be calculated at the maximum 50% rate (35% rate for tax-exempt eligible small employers) for the entire 2016 taxable year. If the eligible small employer does not claim the credit for the 2015 taxable year, but claims the credit for the 2016 taxable year, then the 2016 taxable year will be the first year of the two consecutive taxable year credit period. If the eligible small employer first claims the section 45R credit for the 2015 taxable year, then the 2016 taxable year is the second year of the two-consecutive taxable year credit period, regardless of whether the eligible small employer takes advantage of the relief described in this paragraph. Refer to Notice 2016-75.
- c. A small employer that properly claims the credit for all or part of the 2016 taxable year or a later taxable year may still claim the credit for all or part

of the remainder of the two-year credit period, even if the employer has a principal business address in a county where QHPs are not available through the SHOP Marketplace. In that case, employers may calculate the credit for the remainder of the credit period by treating health insurance coverage provided for the plan year(s) in which a QHP is not available through a SHOP Marketplace as qualifying for the credit if that coverage would have qualified for the credit under the section 45R rules applicable before January 1, 2014. To properly claim the credit, the employer must offer coverage through a SHOP Marketplace or coverage meeting the requirements for relief under Notice 2016-75, if applicable, and must comply with all other applicable guidance. Refer to Notice 2018-27.

- (6) Church welfare benefit plans: For taxable years 2014 and after, employers are required to offer a QHP to its employees through a SHOP Marketplace to claim the credit. Church welfare benefit plans may not be available through a SHOP.
- (7) Dental health plans: A stand-alone dental health plan offered through a SHOP Exchange is considered a QHP for purposes of the credit.
- (8) For state SHOP Marketplaces approved for a direct enrollment process, an employer may offer coverage through the SHOP Marketplace by offering a SHOP-approved QHP obtained directly from an insurance agent or broker. The employer or insurance agent or broker may request a certificate of employer eligibility from the SHOP Marketplace. An eligible small employer who is eligible for the SHOP Marketplace and who offers a SHOP-approved QHP meets the SHOP participation requirement. The employer must show that it (1) offered a SHOP-approved QHP and (2) the employer is eligible for SHOP to meet this requirement. A SHOP Marketplace approved for the direct enrollment process will generally issue the employer a certificate of SHOP eligibility upon request, but the employer may prove SHOP Marketplace eligibility using other documentation.
- (9) Cost-of-living adjustments are made annually to the average annual wage phase-out amounts beginning in 2014.
- (10) Premium limitations are applied by rating area (not state) for tax years beginning in 2014 and later.

4.70.17.12.3.3.5.3
(11-28-2023)
**IRC 45R - Small Group
Market Average Health
Insurance Premium
Limitation**

- (1) Use the lesser of these two amounts for an employer's premium payments:
 - a. The aggregate premiums paid by the employer, or
 - b. The aggregate Small Group Market Average Health Insurance Premiums.

Note: Calculate the Small Group Market Average Health Insurance Premiums on an employee-by-employee basis. See Rev. Rul. 2010-13. The average premium for the small group market in the State has an **overall cap** for **all health insurance coverage** provided by an eligible small employer.

Note: For tax years beginning in 2014 and after, the average premium for the small group market is determined by the rating area in which the employee enrolls for coverage. These amounts are determined by the Secretary of Health and Human Services and the IRS publishes them in the Form 8941 Instructions.

(2) Small Market Limitation Worksheet in the Form 4700 Workbook:

Column/Section	Instructions
Column F, Row 5 (highlighted in yellow)	Enter the applicable tax year in XXXX format. For fiscal-year filers, enter the year in which the fiscal year began. Example: If fiscal year ending is 201106, enter “2010” in this field because the fiscal year began 2010.
Enrolled Individuals Considered Employees	Enter the names of insured employees per insurance premium invoices.
State Where Employee is Employed	Enter the state in which the employee worked, not the state in which they resided.
County/Rating Area (applicable to Form 4700 Workbook for 201412 and later)	Enter the county/rating area in which the employer’s business is located. If the employer has multiple businesses or operations in multiple states, the average premiums may be different per employee.
Type of Coverage F=Dependent, Family or S=Employee Only	Enter “F” or “S”. Any tier of coverage that is not Single (Self-only) is considered Family Coverage in this column. Note: If an employee has coverage for more than one plan and the type of coverage differs per plan, enter the type of coverage for the plan that has the higher premium. Example: If the employee has family coverage for medical insurance and single coverage for dental insurance, and the medical insurance premiums are higher than the dental premiums, enter “F” for the type of coverage.

Column/Section	Instructions
Employer Premiums Paid Total	<ol style="list-style-type: none"> 1. Enter the employer-portion of insurance premiums paid, not the total cost of premiums. If the employer provides more than one plan, enter the total of the employer-portion insurance premiums paid for all plans that are a qualifying arrangement and meet the uniformity requirements. 2. The employer must provide documentation to substantiate the claimed credit amounts. 3. The employer must provide documentation that provides sufficient proof of payment. 4. Include employer payments for wellness programs. 5. Administrative or service fees cannot be included in the computation of the credit. 6. State subsidies are included in the amounts for premiums that the employer paid
Employer State Average Premiums Total or Average Premiums for Rating Area per F or S	<p>The average premiums for single and family for the applicable year and state or rating area are populated to make these calculations. If state or rating averages don't populate, enter amounts from Form 8941 Instructions for the tax year being examined.</p> <p>Reminder: A fiscal-year filer's tax year is the tax year in which fiscal year began.</p>
Percent Paid by Employer	Enter the percentage of total cost of insurance that the employer paid. If the employer provides more than one plan, enter the percentage of total cost of insurance that the employer paid for all plans that are a qualifying arrangement and meet the uniformity requirements
Prorated Average Premiums	The worksheet has been formulated to make these calculations. However, you're responsible to make sure the calculations are accurate.
Months of Year Covered	Enter number of months each employee was covered by insurance under a qualifying arrangement.
Prorated Average Premium	The worksheet has been formulated to make these calculations. However, you're responsible to make sure the calculations are accurate.
Tobacco Surcharge (applicable to F4700 Workbook for 201412 and later)	Enter amounts that the employer paid to cover tobacco surcharges so that these amounts are deducted from the total employer premium payments.

Column/Section	Instructions
Employer Premiums Paid Excluding Tobacco Surcharge (applicable to Form 4700 Workbook for 201412 and later)	The worksheet has been formulated to make these calculations. However, you're responsible to make sure the calculations are accurate.
Lower of Prorated Average Premiums vs Premiums Paid AGGREGATE	The worksheet has been formulated to make these calculations. However, you're responsible to accurately complete its fields and make sure the calculations are accurate.
Uniformity Dropdown (highlighted in yellow, column K row 209)	<ol style="list-style-type: none"> 1. Percentage differences of less than one percent are acceptable. If percentage differences are less than one percent, reformat column to include decimal points. 2. If percentage differences are more than one percent, but are relatively small because of timing differences in months of coverage or accounting errors, discuss the case with your manager. 3. Select "Yes" or "No" from the drop down menu. If "Yes" is selected then the total amount from Column K, Row 208 will flow over to Worksheets 5 and 6. 4. The uniformity requirement does not apply to dependent coverage. 5. Employer wellness program payments don't affect uniformity (whether due to a discount for employee participation or a surcharge for employee non-participation). 6. Exception to uniformity requirement: An employer is deemed to satisfy the uniformity requirement when failing to make uniform payments is due solely to additional employer contributions made to certain employees to comply with state or local law (e.g., state may require employer to pay a higher percentage for certain employees because the state may require that the employee contribution not exceed a certain percentage of the employee's monthly earnings).

Column/Section	Instructions
Comments Section	<ol style="list-style-type: none"> 1. Enter comments that show the employer provided documentation which you reviewed to make the determination. 2. Include comments about how or how not the employer met uniformity and qualifying arrangement requirements for plan(s).
Other	<ol style="list-style-type: none"> 1. Document the verification of costs of insurance plan(s) and number of months covered. Show month by month computations of insurance cost per invoices or other documentation for each insured employee, either below or to the side of the Comments Section or insert an additional worksheet in the workbook. 2. If the employer offered more than one plan, breakout computations showing how the separate plans meet/don't meet uniformity requirements, either below to the side of the Comments Section or insert an additional worksheet in the workbook.

4.70.17.12.3.3.6
(11-28-2023)

**IRC 45R - Step 6 -
Determining the Amount
of Payroll Tax
Withholding**

- (1) Limit the credit to the amount of certain payroll taxes required to be withheld and paid during the calendar year in which the taxable year begins. Payroll taxes for the purpose of this credit include Federal Income Taxes and Medicare Taxes (both the employer and employee portions).
- (2) If the employer paid these payroll taxes using its own EIN, the amounts input on the Form 4700 Workpaper B-1, BMFOLR Section, will flow over to the Form 4700 Withholding Calculation Worksheet, and then to the Worksheets 5 and 6. However, you're responsible to make sure the calculations are accurate.
- (3) If the employer paid these payroll taxes through another EIN, see Exhibit 4.70.17-6, Third Party Job Aid.
- (4) If you determine that payroll taxes paid through another EIN are allowed to be counted for the credit, manually enter Total Medicare Withholding and Total Federal Income Tax Withholding in the appropriate fields on the Withholding Calculation Worksheet. Enter comments on this worksheet notating what documentation the employer used to compute the payroll tax withholding.

Reminder: Calendar-year amounts should always be used for calculation of payroll tax withholding, even if employer is a fiscal-year filer.

4.70.17.12.3.3.7
(11-28-2023)

**IRC 45R - Calculating
the Credit - IRC
45R(c)(1) & (2)**

- (1) Form 4700 Workbook, Worksheets 5 and 6 have been formulated to make the following calculations, **except** for reducing the maximum credit for State subsidies or credits:
 - a. Calculate the maximum amount of the credit.
 - b. Reduce the maximum credit in step 1 under the phase-out rule (see below), if necessary.

- c. Reduce the maximum credit in step 1 for employers receiving a State subsidy or credit for health insurance, when applicable.
- d. Determine the employer's net premium payment. The amount of the credit may not exceed the amount of the employer's net premium payments.

Reminder: It's your responsibility to ensure that the workbook's fields are complete and accurate.

Step	Action	Additional Instructions / Information
1	Calculating the Maximum Credit	<p>For a tax-exempt eligible small employer, the maximum credit is 25 percent (35 percent for tax year 2014 and thereafter) of the employer's premium payments taken into account for this purpose, i.e., including State premium subsidies. (See below) However, for a tax-exempt employer, the amount of the credit can't exceed these total taxes withheld on employees' wages for the year:</p> <ul style="list-style-type: none"> a. Income tax under Section 3402 b. Employee share of Medicare tax under Section 3101(b) c. Employer's share of Medicare tax under Section 3111(b)

Step	Action	Additional Instructions / Information
2	Credit Phase-Out	<p>The credit phases out gradually (but not below zero) for eligible small employers if the number of FTEs exceeds 10 or if the average annual wages exceed \$25,000 (adjusted for inflation beginning in 2014). If the number of FTEs exceeds 10, determine the reduction by multiplying the otherwise applicable credit amount by a fraction: (FTEs in excess of 10)/15. If average annual wages exceed \$25,000 (adjusted for inflation beginning in 2014), determine the reduction by multiplying the otherwise applicable credit amount by a fraction: the numerator of which is the amount by which (average annual wages exceeding \$25,000)/ \$25,000 (adjusted for inflation beginning in 2014). In both cases, subtract the result from the otherwise applicable credit to determine the credit to which the employer is entitled. For an employer with both more than 10 FTEs and average annual wages exceeding \$25,000, the total reduction is the sum of the two reductions. This may reduce the credit to zero for some employers with fewer than 25 FTEs and average annual wages of less than \$50,000 (adjusted for inflation beginning in 2014).</p>

Step	Action	Additional Instructions / Information
3	State Subsidies and State Credits for Health Insurance	<p>Certain states assist eligible small employers by paying a portion of their health insurance premiums. They do this in three ways:</p> <p>a. State Subsidies paid directly to an insurance company: Generally, if a State makes payments directly to an insurance company, to pay a portion of the premium for coverage of an employee under employer-provided health insurance (State direct payments), the State is treated as making these payments on behalf of the employer for purposes of determining whether the employer has satisfied the “qualifying arrangement” requirement.</p> <p>b. State Subsidies paid directly to an employer: Generally, if a State makes payments directly to an employer to pay a portion of the premium for coverage of an employee under employer-provided health insurance, the State is treated as making these payments on behalf of the employer for purposes of determining whether the employer has satisfied the “qualifying arrangement” requirement.</p> <p>Note: Both types of State subsidies are generally treated as an employer contribution for purposes of calculating the maximum credit. See 26 CFR 1.45R-3(d) and Notice 2010-44, Section III. D, examples 13 and 14.</p> <p>c. State Income Tax Credits: Instead of subsidy payments, some States choose to reimburse employers for a portion of their health insurance premiums through State tax credits. These State tax credits may be refundable or nonrefundable.</p>

Step	Action	Additional Instructions / Information
4	Determining the Employer's Net Premium Payment	<ol style="list-style-type: none"> Although a state tax credit or premium subsidy paid directly to an employer does not reduce the amount of that employer's premiums paid, and although a state premium subsidy paid directly to an insurance provider is treated as a premium paid by the employer, the amount of an employer's credit cannot be more than the employer's net premium payments. Net premium payments are employer premiums paid minus the amount of any state tax credits the employer received or will receive and any state premium subsidies paid either to the employer or directly to the employer's insurance provider for premiums for health insurance coverage the employer provides under a "qualifying arrangement" to individuals considered employees. Compare the net premium payments to the allowed credit. The amount of credit can't exceed the net premium payment.

(2) Credit Characteristics and Limitations:

- For a tax-exempt eligible small employer, the credit is a **refundable** credit, so even if the employer has no taxable income, the employer may receive a refund.

Note: The refundable portion of the credit is subject to a sequestration reduction.

Example: If a tax-exempt eligible small employer has no taxable income and a corresponding Section 45R credit of \$1,500, that employer would receive a refund less the sequestration amount.

Example: If a tax-exempt eligible small employer has taxable income with a resultant 2010 federal income tax liability of \$1,000, and a corresponding Section 45R credit of \$1,500, that employer could offset the credit against its 2010 tax liability, and would receive a \$500 credit for the amount by which the credit exceeded its tax liability for 2010. A refund would be issued for the remaining credit less the sequestration reduction.

Reminder: For a tax-exempt employer, the amount of the credit can't exceed the total amount of income tax under IRC 3402 and Medicare tax under IRC 3101(b) that the employer is required

to withhold from employees’ wages for the year and the employer share of Medicare tax under IRC 3111(b) on employees’ wages for the year.

4.70.17.12.3.4
(11-28-2023)
IRC 45R - Withdrawals

- (1) If an employer wants to withdraw their claim for the credit, they must provide a signed statement. After you receive the employer’s signed statement, send a full-disallowance report. Include information regarding the employer’s statement of withdrawal on the Form 886-A, Explanation of Items.

4.70.17.12.3.5
(11-28-2023)
IRC 45R - Reports

- (1) Prepare a report for **ALL** cases in the Form 4700 Workbook.
- (2) There are two reports in the workbook, Form 4549, Report of Income Tax Examination Changes, and Form 4549-A, Report of Income Tax Examination Changes (Without Taxpayer Signature):
 - Use Form 4549-A, Report of Income Tax Examination Changes (Without Taxpayer Signature), for partial and full disallowances, no changes, and change due to correction of operations.
 - Use Form 4549, Report of Income Tax Examination Changes, for everything else.
- (3) Form 4549-A, Report of Income Tax Examination Changes (Without Taxpayer Signature), for no change cases should not be sent to the organization.
- (4) Change Due to Correction of Operations:

b. If the taxpayer made an error(s), close case as change due to correction of operations and prepare and send:

Document	Instructions
Letter 1744, TE/GE Change due to Correction of Operations	Add Form “886-A, Explanation of Items” to the list of enclosures.
Form 4549A	Add the following to page 2, Other Information Section: “We identified a de minimis discrepancy in one or more of the calculations made to determine your credit. These de minimis discrepancies resulted in no change to the credit amount you claimed. Please refer to the accompanying Form 886-A”.

#

Document	Instructions
Form 886-A	Add a brief statement about the error(s). Use the words “de minimis error”. Don’t use the words, “under tolerance”. The Form 886-A doesn’t have to contain the usual required sections, (i.e., Issue, Facts, etc.) Note: Form 886-A for change due to correction of operations cases must be reviewed by the manager.
Sequestration Notice	Send with all letters.

- (5) If you discover an error in your report after it has been sent, or if the employer responds to the first report with additional information that would change the first report, prepare and send a revised report to the employer (See note below). Enter the comment, “Revised report, supersedes report dated xx/xx/xxxx”, in the appropriate places on Forms 4549/4549-A and 886-A.

Note: Before revising a report, save the original report electronically or in paper form. The Form 4700 Workbook will not save multiple versions of the same Form/report.

Form 4700 Worksheets for Reports / Letters/Tabs	Instructions / Information
Input for F4549-F4549-A	<ol style="list-style-type: none"> Entity information flows from tab <i>Form 4700 page 1</i>, except for the Tax Period Ending Date. Examiner’s Name and Employee ID flow from tab <i>Form 4700 page 1</i>. Verify the accuracy of the information that flows over from other worksheets. Enter Tax Period Ending Date, Examiner’s Title, Examiner’s POD, and Date of Report/Letter.
Form 4549 or Form 4549-A, Page 1	<ol style="list-style-type: none"> Entity information flows from tab <i>Form 4700 page 1</i>. Verify the accuracy of the information that flows over from other worksheets. Generally, all amounts will be “0.00”, unless there is UBI and you determine that the employer made errors in calculating its tax.

Form 4700 Worksheets for Reports / Letters/Tabs	Instructions / Information
Form 4549 or Form 4549-A, Page 2, Other Information Section	<ol style="list-style-type: none"> Paragraph 1: Replace tax year showing in “red” with applicable tax year and re-format so that the color is “black”. Paragraph 2: Replace amount and tax period ending showing in “red” with applicable amount and tax year ending, and re-format so that the color is “black”. Paragraph 2: Replace sample explanation with appropriate explanation that matches the case scenario. Find examples of explanation statements on the lower portion of the tab <i>Input for F4549-4549A Worksheet</i>. Amounts in the remaining rows of the worksheet flow from other worksheets in the workbook. Verify this information’s accuracy.
Form 2297 and Form 3363	<ol style="list-style-type: none"> Send these forms with Letter 3602, Claim Disallowance without Additional Tax, to the employer if your determination is a partial or full disallowance. The employer signs these forms if in agreement with our proposal. Information on tab Form 2297 flows from tabs <i>Form 4700, page 1; Form 4700, page 2, Section L, and input for F4549-4549A</i>. Information on tab <i>Form 3363</i> flows from tabs <i>Form 4700, page 1; Input for F4549-4549A; Workpaper B-1; and Form 2297</i>. Verify the accuracy of the information in all fields of the tabs Form 2297 and Form 3363.
Form 13683	Send this form with all reports.
Blank Form 886-A	<ol style="list-style-type: none"> Prepare Form 886-A for all reports that are sent to the employer. Prepare Form 886-A inside the Form 4700 Workbook or in a separate Word document.
Form 886-A Charts	<ol style="list-style-type: none"> Charts (i.e., index) are pre-populated from other worksheets. Copy and paste charts to the Form 886-A as attachments showing calculations per exam. Verify charts for accuracy.
Letter Summary Chart	Don’t use the Letter Summary Chart. Refer to closing letters for Claims, Requests for Abatement and Audit Reconsiderations as listed in this IRM, and IRM 4.70.14, Resolving the Examination, and use appropriate letters.

Form 4700 Worksheets for Reports / Letters/Tabs	Instructions / Information
Letters	<ul style="list-style-type: none"> Don't use the letters in the Form 4700 Workbook. Use the letters from the <i>Find a product (irs.gov)</i> Forms/Pub/Publication Repository. Send the Sequestration Notice with ALL letters.

- (6) Follow up on the case if you don't receive a response by the due date.

4.70.17.12.3.6
(11-28-2023)
**IRC 45R - Disputed
Reports**

- (1) If the employer responds to the report with a completed Form 13683, Statement of Disputed Issues, or a written statement in lieu of the form, disagreeing to the proposed credit allowance/disallowance:
- Review the statement of dispute and the attached documentation.
 - If the additional documentation results in a change to the previous determination, send a revised report package reflecting the change. Include the taxpayer's position on Form 886-A in the Taxpayer's Position section.
 - If the additional documentation does **not** change your previous determination, refer to IRM 4.70.17.12.3.7, IRC 45R - Case Closing or Surveyed Case.

4.70.17.12.3.7
(11-28-2023)
**IRC 45R - Case Closing
or Surveyed Case**

- (1) Follow IRM 4.70.14, Resolving the Examination.
- (2) After you have conducted your initial research and no issues are present, consider surveying the case. Discuss the case with your manager.
- (3) If IDRS research and employer correspondence indicate that there is a problem with an EIN or tax period, discuss the case with your manager. If your manager instructs you to close out the existing case on RCCMS/AIMS:
- Establish the correct account in RCCMS.
 - Place documents in the new case folder. You can do this manually or move activities from one case to another using RCCMS procedures.
 - Complete Form 10904, Request for Record Deletion from AIMS/ERCS, and upload it to the case in RCCMS being closed as the error case. Also, upload the applicable IDRS prints.
 - Close the case established in error in RCCMS using Disposal Code 901. The Disposal Code for Form 10904 is 33.
- (4) If the employer disagrees with the report, close the case as unagreed with disposal code 07. Use disposal code 10 if the employer did not send a response. Refer to IRM 4.70.14, Resolving the Examination.

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Exhibit 4.70.17-1 (11-28-2023)
IRC 7122 Offer in Compromise (Doubt as to Liability) Checksheet

IRC 7122 Offer In Compromise (Doubt As Liability)		
Name of Organization		
Year(s) of Offer		
Action	Date	Initials
Form 656-L Stamped As Received:		
Form 656-L Transferred to Classification: (≤ 15 Days)		
Form 656-L Received by Classification:		
Form 656-L Assigned to Classifier: (≤ 15 Days)		
Form 656-L Sent to Field: (≤ 15 Days)		
Form 656-L Received in Field Group:		
Form 656-L Assigned to Examiner: (≤ 15 Days)		
Initial Contact Made With Taxpayer: (≤ 30 Days)		
A	Additional Documents Due By: (≤ 30 Days)	
	Second Document Deadline: (≤ 30 Days)	
B	Appointment Scheduled For: (≤ 60 Days)	
Case Closed to Manager: (≤ 30 Days)		
Case Forwarded to Mandatory Review (MR): (≤ 10 Days)		
Case Received in MR:		

Exhibit 4.70.17-1 (Cont. 1) (11-28-2023)**IRC 7122 Offer in Comprise (Doubt as to Liability) Checksheet**

Case Assigned to MR: (≤ 15 Days)			
Case Returned to Field: (≤ 15 Days)			
Case Received In Field Group:			
Case Reassigned to Examiner: (≤ 15 Days)			
Secondary Contact With Taxpayer: (≤ 30 Days)			
A	Additional Documents Due By: (≤ 30 Days)		
	Second Document Deadline: (≤ 30 Days)		
B	Appointment Scheduled For: (≤ 60 Days)		
Case Closed to Manager: (≤ 15 Days)			
Case Forwarded to MR: (≤ 10 Days)			
Case Received in MR:			
Case Assigned to MR: (≤ 15 Days)			
Case Sent to Manager, MR: (≤ 15 Days)			
Form 656-L Package Sent to COIC: (≤ 10 Days)			
Case Closed to EO Closing Unit: (≤ 10 Days)			
Adjustments Input into IDRS:			
Checksheet Given to FSL/ET Staff Assistant:			

Examination Reconsideration Letter - Full Denial

Cat. No. 93355G (11-28-2023) Any line marked with a # is for Official Use Only	Internal Revenue Manual	Exhibit 4.70.17-2
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Exhibit 4.70.17-2 (Cont. 1) (11-28-2023)**Examination Reconsideration Letter - Full Denial**

1.	You may request a meeting or telephone conference with the manager identified above.	
2.	You may file a protest with the IRS Independent Office of Appeals by submitting a written request within 30 calendar days from the date of this letter to the contact person at the address listed above. A valid protest must contain:	
	•	a statement of the facts you don't agree with, if any
	•	the applicable law, if any, on which you are relying
	•	arguments in support of your position
	•	a penalty of perjury statement
<p>For more detailed information regarding what is required for a valid protest, see Publication 3498, The Examination Process.</p> <p>The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498, generally doesn't apply after issuance of this letter.</p>		
3.	Pay the full amount due and file a claim for refund. You must file your claim within three years from the date the return was filed or two years from the date you paid the tax, whichever is later.	
<p>If you don't respond to this letter</p> <p>If we don't hear from you within 30 calendar days from the date on this letter, this letter will become final and we will continue with Collection.</p> <p>Contacting the Taxpayer Advocate Office is a taxpayer right</p> <p>The IRS office whose phone number appears at the top of this notice can best address and access your tax information and help get you answers. However, you may be eligible for free help from the Taxpayer Advocate Service (TAS) if you can't resolve your tax problem with the IRS, or you believe an IRS procedure just isn't working as it should. TAS is an independent organization within the IRS that helps taxpayers and protects taxpayer rights. Find the location and phone number of your local Taxpayer Advocate shown in the enclosed Notice 1214, Helpful Contacts for Your "Notice of Deficiency" or at www.taxpayeradvocate.irs.gov/contact-us, or by calling the TAS toll-free number at 877-777-4778 or TTY/TDD 800-829-4059.</p> <p>For more information about TAS and your rights under the Taxpayer Bill of Rights, go to www.taxpayeradvocate.irs.gov. Do not send your Tax Court petition to TAS. Use the Tax Court address provided earlier in this letter. Contacting TAS does not extend the time to file a petition.</p> <p>For additional information</p> <p>If you have any questions, contact the person listed at the top of the letter.</p>		

Exhibit 4.70.17-2 (Cont. 2) (11-28-2023)
Examination Reconsideration Letter - Full Denial

Sincerely,
[Insert name] Director, Exempt Organizations Examinations
Enclosures: Form 886-A Form 870-E Form 4621 Form 4883

Examination Reconsideration Letters - Partial Abatement

<p>Internal Revenue Service</p> <p>Tax Exempt and Government Entities Division</p> <p>Exempt Organizations: Examinations</p> <p>[Insert examiner's street address]</p> <p>[Insert city, state, and zip code]</p> <p>Date: [Insert date]</p> <p>[Insert name of entity]</p> <p>[Insert c/o or Attn: and name]</p> <p>[Insert street address]</p> <p>[Insert city, state, and zip code]</p>	<p>Department of the Treasury</p> <p>Taxpayer Identification Number:</p> <p>[Insert TIN]</p> <p>Form:</p> <p>[Insert Form Number]</p> <p>Tax Periods Ended:</p> <p>[Insert Periods]</p> <p>Person to Contact/ID Number:</p> <p>[Insert name]</p> <p>[Insert ID number]</p> <p>Contact Numbers:</p> <p>Telephone: [Insert phone number]</p> <p>Fax: [Insert fax number]</p> <p>Manager's Name/ID Number:</p> <p>[Insert name]</p> <p>[Insert ID Number]</p> <p>Manager's Contact Number:</p> <p>[Insert phone number]</p> <p>Response Due Date:</p> <p>[Insert date]</p>
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Dear [Enter name]:

Why you're receiving this letter

We reviewed the request for examination reconsideration for the periods shown above. We've determined that the information provided justifies a partial abatement. The attached report explains the amount of the abatement as well as how and why we made our decision. Because we reduced the original amount owed, you don't need to sign and return the report.

What you need to do if you agree

If you agree, please pay the amount due. Please make your check or money order payable to the **United States Treasury**. Publication 3498, The Examination Process, provides additional payment information.

If you can't pay the full amount, please call the contact person at the telephone number shown above to discuss different methods of paying, such as in installments. If you don't enclose payment, we'll bill you for any unpaid amounts. See Publication 594, The IRS Collection Process.

Exhibit 4.70.17-3 (Cont. 1) (11-28-2023)

Examination Reconsideration Letters - Partial Abatement

What you need to do if you disagree		
1.	You may request a meeting or telephone conference with the manager identified above.	
2.	You may file a protest with the IRS Independent Office of Appeals by submitting a written request within 30 calendar days from the date of this letter to the contact person at the address listed above. A valid protest must contain:	
	•	a statement of the facts you don't agree with, if any
	•	the applicable law, if any, on which you are relying
	•	arguments in support of your position
	•	a penalty of perjury statement
<p>For more detailed information regarding what is required for a valid protest, see Publication 3498, The Examination Process.</p> <p>The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498, generally doesn't apply after issuance of this letter.</p>		
3.	Pay the full amount due and file a claim for refund. You must file your claim within three years from the date the return was filed or two years from the date you paid the tax, whichever is later.	
<p>If you don't respond to this letter</p> <p>If we don't hear from you within 30 calendar days from the date on this letter, we will process your case based on the recommendations shown in the report of examination and this letter will become final.</p> <p>Contacting the Taxpayer Advocate Office is a taxpayer right</p> <p>The IRS office whose phone number appears at the top of this notice can best address and access your tax information and help get you answers. However, you may be eligible for free help from the Taxpayer Advocate Service (TAS) if you can't resolve your tax problem with the IRS, or you believe an IRS procedure just isn't working as it should. TAS is an independent organization within the IRS that helps taxpayers and protects taxpayer rights. Find the location and phone number of your local Taxpayer Advocate shown in the enclosed Notice 1214, Helpful Contacts for Your "Notice of Deficiency" or at www.taxpayeradvocate.irs.gov/contact-us, or by calling the TAS toll-free number at 877-777-4778 or TTY/TDD 800-829-4059.</p> <p>For more information about TAS and your rights under the Taxpayer Bill of Rights, go to www.taxpayeradvocate.irs.gov. Do not send your Tax Court petition to TAS. Use the Tax Court address provided earlier in this letter. Contacting TAS does not extend the time to file a petition.</p> <p>For additional information</p> <p>If you have any questions, contact the person listed at the top of the letter.</p>		

Exhibit 4.70.17-3 (Cont. 2) (11-28-2023)**Examination Reconsideration Letters - Partial Abatement**

Sincerely,
[Insert name] Director, Exempt Organizations Examinations
Enclosures: Form 886-A

Exhibit 4.70.17-4 (11-28-2023)
Amended/Revised/Corrected Return

Amended Returns: Subsequent returns an employer submitted to the IRS Service Center are considered to be Amended Returns.

1. A TC 976 with a “-A” Freeze Code is an indicator that the amended return has been received by the IRS.
2. Contact the FAST team to obtain a copy of the amended return.
3. Review IDRS BRTVU for any discrepancies. If BRTVU matches the return in the file it may be the original rather than the amended return.
4. Write in red ink on the left hand side of return, “Considered during examination on XX-XX-XXXX.” (Enter the date that you reviewed the return).
5. Address the amended return in workpapers, reports and forms.
6. Comment on RCCMS 3198A Checksheet (and paper Form 3198-A see IRM 4.70.13.9.6): “-A freeze on account. Amended return was considered during this examination.”

Revised/Corrected Returns: Corrected or revised returns submitted by the employer in their response to Form 4564, Information Document Request, are **NOT** considered to be Amended Returns.

1. Write in red ink on the left hand side of return, “Considered during examination on XX-XX-XXXX”. (Enter the date that you reviewed the return.)
2. Consider the return as part of the employer’s correspondence.
3. Do **not** refer to it as an Amended Return, regardless of how the employer refers to it.
4. Address the revised/corrected return in workpapers and reports.

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Exhibit 4.70.17-6 (11-28-2023)**Third Party**

Use this job aid when a tax-exempt employer's payroll liabilities were reported under another EIN.

Scenarios covered by Exhibit:

- A tax-exempt employer's payroll tax liability is filed under another EIN, such as when the employer is a client of a payroll agency and the payroll agency files an employment tax return in the name and EIN of the payroll agency.
- A religious organization claiming the 45R credit when the parent religious organization files the employment tax return on behalf of the church.
- Any other tax-exempt organization's payroll tax liability is filed under another EIN, such as an affiliation, related party, or a third party acting as a fiscal agent.

The employer 45R credit is allowable if the employer meets other 45R requirements and if the employer can provide documentation showing:

- the employer paid health insurance premiums reported on Form 8941. This includes payments the employer paid through a third party, who then paid the insurer. The employer must show the amount the employer paid, not the total combined amount paid by the third party. The employer does **not** have to be the policy holder.
- the employer paid the portion of the payroll tax liability as reported by the third party.
- the employer paid the wages as reported by the third party.
- the employees on which the 45R credit is based are employees of the employer.

Examples of acceptable documentation:

- Paid invoices from the third party showing payment of insurance premiums and payroll tax liability.
- Bank account statements and/or cancelled checks showing that the employer paid the third party for payroll taxes and insurance premiums.
- Any other documentation that supports that the employer paid the third party for the health insurance premiums, payroll tax, and employees' wages.

Payments for reimbursements for an insurance policy which the employer **does not offer** itself or through a third party still do **NOT** qualify to be included in the amount the employer paid for insurance.

Exhibit 4.70.17-7 (11-28-2023)
Qualifying Arrangements - Uniform Percentage
DEFINITIONS:

- **Tier of coverage:** Tier of coverage is coverage under a benefits package that varies only by the number of individuals covered. For example, Self, Self-plus-one, Dependent, and Family. Age/Gender brackets do not constitute separate tiers and **should not** be considered in application of uniformity rules. Classification of positions or duties of employees, years of service, and hours worked **do not** constitute separate tiers and **should not** be considered in application of uniformity rules. *Notice 2010-82 page 11, Section G.1(d).*
- **Dependent-only coverage:** Dependent-only coverage is different than family coverage in that it provides coverage only to the employee's dependents and does not include the employee. A coverage purchased that does not include the employee is not taken into account for purposes of applying the uniformity requirement nor the 50 percent qualifying arrangement requirement. However, premiums paid for dependent coverage may be counted in determining the amount of the credit. Use the following link to refer to the *CFR 45R Final Regulations, 26 CFR 1 (TD 9672 RIN 1545-BL55):* <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit:-Questions-and-Answers> (refer specifically to pages, 16, 19, 20, 31, 34, 42,43, 48, 52, and 57).
- **Multiple Plans:** Multiple, separate plans may be offered by the employer to its employees during the tax year. Separate plans may be identified by different insurance providers. In addition, the same insurance provider may offer more than one plan and may designate them as Basic, Standard, High, Low, etc. The multiple plans may have been for the same type of coverage – major medical, dental, vision, etc. Examples: (1) Employer had major medical coverage with Insurance Company A for part of the year and then with Insurance Company B for the remainder of the year. (2) Employer used Insurance Company A for some employees and Insurance Company B for other employees. (3) Employees were allowed to choose among two or more plans offered by the same insurance company. The multiple plans may also have been for different types of coverage. Example: one provider offered major medical coverage and the other provider offered dental coverage.
- **Employer-computed composite rate:** The average rate determined by adding the premiums for that tier of coverage for all employees eligible to participate in the health insurance plan (whether or not they actually receive coverage under the plan or under that tier of coverage) and dividing by the total number of such eligible employees. *Notice 2010-82 page 11, Section G.1(e).*

Type of Arrangement	Tier of Coverage	Qualification Requirements
Employers offering only one plan – COMPOSITE billing: <ul style="list-style-type: none"> • An arrangement that requires employer to pay a uniform premium for each enrolled employee. • <i>Notice 2010-82 page 10, Section G.1(b).</i> 	Self-only plan	Employer pays the same percentage or amount (not less than 50 percent) of the premium cost for each employee enrolled in self-only coverage. <i>Notice 2010-82 page 10, Section G and Notice 2010-82 page 14, Section G, Example 1.</i>
	Self-plus-one or family plan	Employer pays the same percentage or amount for each enrolled employee and this amount is no less than 50 percent of the premium cost of self-only coverage. <i>Notice 2010-82 pages 11-12, Section G.2(a) & (b) and Notice 2010-82 page 14, Section G, Example 2.</i>

Exhibit 4.70.17-7 (Cont. 1) (11-28-2023)**Qualifying Arrangements - Uniform Percentage**

Type of Arrangement	Tier of Coverage	Qualification Requirements
<p>Employers offering multiple plans – COMPOSITE billing:</p> <ul style="list-style-type: none"> • An arrangement that requires employer to pay a uniform premium for each enrolled employee. • <i>Notice 2010-82 pages 14-15, Section G, Examples 3, 4, & 5.</i> 		<ul style="list-style-type: none"> • Using the tests above for a single plan, the employer may meet the qualifying arrangement requirements on a plan-by-plan basis. • If all the employer's plans do not meet the above tests, then the plans may still be qualifying arrangements if one plan meets the requirements above (the reference plan) and if the self-only composite rate for the reference plan is at least 66 percent of the self-only composite rate of the other plans.
<p>Employers offering only one plan - LIST billing:</p> <ul style="list-style-type: none"> • An arrangement that requires employer to pay a separate premium for each employee based on age or other factors. • <i>Notice 2010-82 page 11, Section G.1(c) & (d).</i> 	Self-only plan	<ol style="list-style-type: none"> 1. Employer pays the same percentage or amount (not less than 50 percent) of premium cost for each employee enrolled in self-only coverage. <i>Notice 2010-82 page 10, Section G. §IRC 45R(d)(4). Notice 2010-44, Section V.</i> 2. OR Employer pays the same percentage or amount (not less than 50 percent) of the -computed composite rate* for each employee enrolled in self-only coverage OR each employee pays the same percentage or amount (but not more than 50 percent) of the employer-computed composite rate for each employee enrolled in self-only coverage. <i>Notice 2010-82 page 11, Section G.1(e); page 12, Section G.2(c); and pages 15-16, Section G, Example 6.</i>

Exhibit 4.70.17-7 (Cont. 2) (11-28-2023)

Qualifying Arrangements - Uniform Percentage

Type of Arrangement	Tier of Coverage	Qualification Requirements
	Self-plus-one or family plan	<ol style="list-style-type: none"> 1. Employer pays an amount (not less than 50 percent of the premium cost of self-only coverage), AND either the employer OR the employee pays the same percentage or amount for each employee enrolled in a particular tier of coverage. <i>Notice 2010-82 page 10, Section G. §IRC 45R(d)(4). Notice 2010-44, Section V.</i> 2. OR Employer pays an amount (not less than 50 percent of the premium cost using the employer-computed composite rate for each employee enrolled in self-only coverage), AND either the employer OR the employee pays the same percentage or amount for each employee enrolled in a particular tier of coverage. <i>Notice 2010-82 pages 12-13, Section G.2(d) and pages 15-16, Section G, Example 6.</i> 3. OR Employer pays an amount (not less than 50 percent of their employer-computed composite rate for each employee enrolled in a particular tier of coverage for each employee enrolled in that particular tier of coverage) AND either the employer OR the employee pays the same percentage or amount for each employee enrolled in a particular tier of coverage. <i>Notice 2010-82 pages 12-13, Section G.2(d) and page 16, Section G, Example 7.</i>
Employers offering multiple plans – LIST billing		<ul style="list-style-type: none"> • Using any of the requirements above for a single plan, the employer may meet the qualifying arrangement requirements on a plan-by-plan basis. • If not all the employer's plans meet the above requirements, then the plans may still be qualifying arrangements if one plan meets one of the requirements above (the reference plan) and the self-only employer-computed composite rate for the reference plan is at least 66 percent of the self-only computed composite rate of the other plans. <i>Notice 2010-82, pages 13-14, Sections G.3 and G.4, and pages 16-17, Section G, Example 8.</i>

Exhibit 4.70.17-8 (11-28-2023)**Notices 2014-6, 2015-8 and 2016-75 Counties*****Notice 2014-6 Counties***

State	County
Washington	Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, Yakima
Wisconsin	Green Lake, Lafayette, Marquette, Florence, Menominee

Notice 2015-8 Counties

State	County
Iowa	Adair, Adams, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, Page, Palo Alto, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Scott, Shelby, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Worth, Wright

Notice 2015-8 Counties

State	County
Wisconsin	Pierce, Polk, St. Croix