



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.7.3

JUNE 6, 2025

EFFECTIVE DATE

(06-06-2025)

PURPOSE

- (1) This transmits revised IRM 5.7.3, Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP).

MATERIAL CHANGES

- (1) IRM 5.7.3 has been updated to include language consistent with presidential executive order 14151.
- (2) Fixed formatting errors throughout the IRM.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.7.3, dated July 24, 2023.

AUDIENCE

Small Business/Self-Employed Collection Employees

Thomas Kramer
Director, Collection Policy
Small Business/Self-Employed

5.7.3

Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP)

Table of Contents

5.7.3.1 Program Scope and Objectives

5.7.3.1.1 Background

5.7.3.1.2 Authority

5.7.3.1.3 Roles and Responsibilities

5.7.3.1.4 Program Management and Review

5.7.3.1.5 Program Controls

5.7.3.1.6 Acronyms

5.7.3.1.7 Related Resources

5.7.3.2 TFRP For Collected Excise Taxes

5.7.3.2.1 Personal Liability for Excise Taxable Fuel Taxes

5.7.3.3 Automated Trust Fund Recovery (ATFR) Program

5.7.3.3.1 Monitoring TFRP Cases

5.7.3.4 Basis for Liability Under IRC 6672

5.7.3.4.1 Establishing Responsibility

5.7.3.4.1.1 Indicators of Responsibility

5.7.3.4.1.2 Non-Owner Employees

5.7.3.4.2 Establishing Willfulness

5.7.3.4.3 Third-Party Payers and Common Law Employers/Clients

5.7.3.5 Considerations for Employment Tax Examination (ETE) Assessments

5.7.3.5.1 Referral from Examination

5.7.3.6 Statutory Assessment Period

5.7.3.7 Extension of Statutory Assessment Period

5.7.3.7.1 Form 2750 Waiver

5.7.3.7.2 Impact of Letter 1153 on Assessment Statute

5.7.3.7.3 Disposition of Executed Waivers

5.7.3.7.4 Waivers on Examination Cases

5.7.3.8 Cases Received With Less Than Six Months Remaining on the Assessment Statute

5.7.3.9 Reporting Expiration of the TFRP Statute

5.7.3.10 Issuance of Imminent Statute Notices

5.7.3.10.1 Input of ASEDR Definer Codes

Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP) 5.7.3

page 1

5.7.3.1 (07-24-2023) Program Scope and Objectives

- (1) **Purpose:** This IRM section provides instructions for Collection employees on the basis of the Trust Fund Recovery Penalty (TFRP) liability and personal liability for excise taxable fuel taxes. The section also provides information on the TFRP assessment statute expiration date (ASED).
 - (2) **Audience:** The primary users of this IRM are Field Collection revenue officers (RO) and their group managers (GM).
 - (3) **Policy Owner:** Director, Collection Policy, SB/SE.
 - (4) **Program Owner:** Collection Policy, SB/SE, Employment Tax (ET) is the program owner of this IRM.
 - (5) **Primary Stakeholders:** Revenue officers (RO).
 - Revenue officer group managers (GM).
 - Civil Enforcement Advice and Support Operations (CEASO) employees.
 - (6) **Program Goals:** The Trust Fund Recovery Penalty (TFRP) is based on IRC 6672. It serves three purposes:
 - encourages prompt payment of income and employment taxes withheld from employees and other collected taxes;
 - makes the responsible person liable for 100% of the unpaid trust fund taxes; and
 - facilitates collection of trust fund taxes from secondary sources.
- Note:** By following the procedures in this IRM, users will be able to recognize instances where a TFRP investigation is warranted, correctly identify all individuals liable for the TFRP, identify and follow proper activities timeframes, and take actions to protect the assessment statute from expiring.
- (7) **Contact Information:** Email recommendations and suggested changes for this IRM to the Content Product Owner. The owner is listed on the Product Catalog Information page which is found in the Forms/Pubs/Products IRM listing of the Media and Publications web site. *Find a Product.*

5.7.3.1.1 (07-24-2023) Background

- (1) The Trust Fund Recovery Penalty (TFRP) is a penalty imposed by IRC 6672 against any individual or business entity required to collect, account for, and pay over taxes held in trust, who willfully fails to perform any of these activities. It facilitates the collection of tax and enhances voluntary compliance. The TFRP serves as an additional means of collecting unpaid trust fund taxes when taxes are not fully collectible from the company/business that failed to pay the withheld taxes. The penalty is equal to the total amount of tax evaded, not collected, or not accounted for and paid over. TFRP assessments are based on liabilities for the following tax forms:
 - Form 941, Employer's Quarterly Federal Tax Return
 - Form 720, Quarterly Federal Excise Tax Return (see IRM 5.7.3.2, TFRP For Collected Excise Taxes
 - Form CT-1, Employer's Annual Railroad Retirement Tax Return
 - Form 943, Employer's Annual Tax Return for Agricultural Employees
 - Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons

- Form 944, Employer's ANNUAL Federal Tax Return
 - Form 945, Annual Return of Withheld Federal Income Tax
 - Form 8288, U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons of U.S. Real Property Interests
 - Form 8804, Annual Return for Partnership Withholding Tax (Section 1446)
- (2) TFRP assessments against individuals are assessed on the Individual Master File (IMF) using Master File Tax Account Code (MFT) 55 and reference number 618. TFRP assessments against business entities are assessed on the Non-Master File (NMF) using MFT 17 and reference number 618.
- (3) The TFRP may be imposed, with respect to the taxes described in (3) above for:
- Willful failure to collect tax
 - Willful failure to account for and pay over tax
 - Willful attempt in any manner to evade or defeat tax or the payment thereof
- (4) Although the TFRP is normally applied to employment tax returns for withheld income tax, Social Security and Medicare tax, or withheld Railroad Retirement Tax, the TFRP provided by IRC 6672 also applies to those excise taxes which are commonly referred to as "collected excise taxes" (see IRM 5.7.3.2, TFRP for Collected Excise Taxes). "Collected excise taxes" are those which are imposed on persons other than the person who is required by law to collect the tax and pay it over to the Government (a collecting agent). In other words, "collected excise taxes" are those for which the collector, not the taxpayer, must file a return and remit the tax. The business entity that was required to collect the tax (corporations, S corporations, LLPs etc) will be considered the "responsible person" and that same business entity could be the "collecting agency."
- (5) The RO will explore the possibility of asserting the TFRP against the collecting agent's responsible persons and will follow the same procedures for investigation and recommendation of the TFRP on employment taxes or "collected excise taxes".
- (6) Each responsible person is jointly and severally liable for the entire unpaid trust fund tax liability, plus interest and penalties; however, the full unpaid trust fund amount will be collected only once in a particular case, whether it is collected from the employer/collecting agent, from one or more of its responsible persons, or from a combination of the employer/collecting agent and one or more of its responsible persons.

5.7.3.1.2
(07-24-2023)
Authority

- (1) IRC 3505, Liability of third parties paying or providing for wages.
- (2) IRC 4041, Imposition of tax ("Diesel Fuel And Special Motor Fuels").
- (3) IRC 4081, Imposition of tax ("Tax On Removal, Entry, Or Sale" of taxable fuel)
- (4) IRC 4103, Certain additional persons liable for tax where willful failure to pay.
- (5) IRC 4251, Imposition of tax ("communication services")
- (6) IRC 4261, Imposition of tax ("taxable transportation by air" tax equal to 7.5 percent of the amount so paid).

- (7) IRC 4271, Imposition of tax ("taxable transportation" tax equal to 6.25 percent of the amount so paid).
- (8) IRC 5000B, Taxes on indoor tanning services.
- (9) IRC 6020, Returns prepared for or executed by Secretary.
- (10) IRC 6103, Confidentiality and disclosure of returns and return information.
- (11) IRC 6501, Limitations on assessment and collection.
- (12) IRC 6672, Failure to collect and pay over tax or attempt to evade or defeat tax.
- (13) IRM 1.2.1.6.3, Policy Statement 5-14 (Formerly P-5-60), Trust Fund Recovery Penalty Assessments.
- (14) IRM 1.2.65.3, SB/SE Functional Delegation Orders - Collection.

5.7.3.1.3 (07-24-2023) Roles and Responsibilities

- (1) The Director, Collection Policy, is the executive responsible for the policies and procedures utilized by collection personnel.
- (2) Field Collection group managers and revenue officers are responsible for ensuring compliance with the guidance and procedures described in this IRM.
- (3) Group managers have the authority to review and approve TFRP recommendations.
- (4) Revenue officers are responsible for making a complete and thorough TFRP investigation, including ensuring TFRP case files contain all documentation needed to support assessment recommendation.
- (5) Field Collection is responsible for ensuring taxpayers are informed of their rights in accordance with the Taxpayer Bill of Rights (TBOR) adopted in June of 2014.

5.7.3.1.4 (07-24-2023) Program Management and Review

- (1) Program Reports: The Automated Trust Fund Recovery (ATFR) program is used for group controls of imminent assessment statutes and timely TFRP case actions. ATFR pulls data from the Integrated Collection System (ICS) and the Integrated Data Retrieval System (IDRS). ATFR is also supplemented by the ENTITY Case Management System (ENTITY). The following reports assist GMs and ROs to monitor the progress of TFRP investigations as well as identifying potential issues on cases with imminent Assessment Statute Expiration Date (ASED) and take the appropriate actions to protect the statute:

Report Type	Report Name
ATFR	<ul style="list-style-type: none"> • ASED Report • Pending Determination Report • Pending 1153 Report • Pending 2749 Report • Pending 4183 Report • HQ Reports (Managerial reports)

Report Type	Report Name
ENTITY	<ul style="list-style-type: none"> Imminent Statute Report Trust Fund Recovery Control Report ASED Query 04/15/YYYY ASED Query Uncommon

Note: IRM 1.4.50.11.3, ASED Accounts, provides additional guidance on ATFR and ENTITY reports.

- (2) Program Effectiveness: Embedded Quality (EQ) reviews conducted by GMs assess the timeliness of TFRP case actions. Collection Automation Support and Security (CASS) provides monthly ATFR timeliness reports that measure TFRP program timeliness goals. These reports provide the information necessary to allow ROs the opportunity to make timely and appropriate TFRP recommendations and assessment actions. Collection Policy does periodic program reviews to identify trends and opportunities to improve timely and effective TFRP case actions.

5.7.3.1.5 (07-24-2023)

Program Controls

- (1) ATFR tracks and records TFRP assessment actions and history. Field Collection employees are generally the primary users of ATFR based on the employees' duties and responsibilities.
- (2) Field Collection employees use ICS for inventory control and history documentation.
- (3) Managers approve TFRP determinations and assessment recommendations.
- (4) Territory Managers (TM) and Area Directors (AD) include TFRP timeliness trends in operational reviews.
- (5) Managers are required to follow program management procedures and controls addressed in IRM 1.4.50, Collection Group Manager, Territory Manager and Area Director Operational Aid.

5.7.3.1.6 (07-24-2023)

Acronyms

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

Acronym	Definition
AMS	Account Management Services
ASED	Assessment Statute Expiration Date
ATFR	Automated Trust Fund Recovery Penalty Program
ATFR-AO	Area Office Application
ATFR-CC	Compliance Center Application - Service Center side
ATFR-CPM	Control Point Monitoring - CEASO tax examiners
BMF	Business Master File

Acronym	Definition
CAC	Collection Automation Coordinator
CAF	Centralized Authorization File
CAWR	Combined Annual Wage Reconciliation
CEASO	Civil Enforcement Advice and Support Operations
CSED	Collection Statute Expiration Date
DUT	Document Upload Tool
FASS	Functional Automation Security Specialist
FICA	Federal Insurance Contribution Act
GM	Group Manager
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
LLC	Limited Liability Company
MFT	Master File Tax
NMF	Non-Master File
PEO	Professional Employer Organization
PSP	Payroll Service Provider
RO	Revenue Officer
RRA '98	Restructuring and Reform Act of 1998
RRD	Return Received Date
RRTA	Railroad Retirement Tax Act
SB/SE	Small Business/Self Employed
SFR	Substitute for Return
SMO	Single Member Owner
TBOR	Taxpayer Bill of Rights
TFRP	Trust Fund Recovery Penalty

- (2) Additional acceptable acronyms and abbreviations are found in the ReferenceNet Acronym Database, which may be viewed at: *ReferenceNet Legal and Tax Research Services*

5.7.3.1.7
(07-24-2023)

Related Resources

(1) IRM resources

IRM	Title
IRM 1.2.1.6	Policy Statements for the Collecting Process
IRM 1.2.2	Service-wide Delegations of Authority
IRM 1.4.50	Collection Group Manager, Territory Manager and Area Director Operational Aid
IRM 5.1.14	Field Collection Techniques and Other Assignments
IRM 5.1.15.7.2	IRS-Combined Annual Wage Reconciliation (IRS-CAWR)
IRM 5.1.21	Collecting from Limited Liability Companies
IRM 5.1.24	Third-Party Payer Arrangements for Employment Taxes
IRM 5.7.4	Investigation and Recommendation of the TFRP
IRM 5.7.5	Collectibility Determination
IRM 5.7.6	Trust Fund Penalty Assessment Action
IRM 5.17.7	Liability of Third Parties for Unpaid Employment Taxes
IRM 5.19.14	Trust Fund Recovery Penalty (TFRP)

- (2) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about TBOR see: *Taxpayer Bill of Rights*. and Policy Statement 1-236 in IRM 1.2.1.2.36, Policy Statement 1-236, Fairness and Integrity in Enforcement Selection

5.7.3.2
(07-24-2023)
**TFRP For Collected
Excise Taxes**

- (1) Although most TFRPs are asserted for failure to pay over withheld employment taxes, the penalty also applies to “collected excise taxes”. Penalties on collected excise taxes may be asserted on persons responsible for collecting, accounting for, and paying over the taxes to the Government. Taxes in this category and their Code sections are:

- Tax on certain communication services (IRC 4251)
- Tax on certain transportation by air (IRC 4261 or 4271)
- Taxes on indoor tanning services (IRC 5000B)

- (2) Excise taxes imposed by IRC 4251, 4261, and 4271 are reported on Form 720, IRS Nos. 22, 26, 27 and 28.
- (3) Excise tax imposed by the Affordable Care Act IRC 5000B is reported on Form 720, IRS No. 140.

5.7.3.2.1
(07-24-2023)
**Personal Liability for
Excise Taxable Fuel
Taxes**

- (1) IRC 4103 creates personal liability for certain people who are under a duty to assure payments of tax under IRC 4041(a)(1) or 4081, reported on Form 720, who either willfully fail to perform that duty or willfully cause the taxpayer to fail to pay such tax. Once a willful failure under either IRC 4041(a)(1) or 4081 has occurred, IRC 4103 imposes personal liability for willful failure to perform (IRC 4103(1)) or for willfully causing the taxpayer to fail to pay the tax (IRC 4103(2)). The main difference between the TFRP for collected excise taxes and the personal liability for excise taxes is that the TFRP is an assessment of a civil penalty under MFT code 55, while the personal liability for excise taxes is an assessment of the actual unpaid tax as either transaction code (TC) 150 or 290 under the responsible person's Social Security number.
- (2) Taxes reported on Form 720 that are imposed by IRC 4041(a)(1) and IRC 4081 are:
 - 060 - Diesel
 - 104 - Diesel-water fuel emulsion
 - 105 - Dyed diesel, Leaking Underground Storage Tank (LUST) tax
 - 107 - Dyed kerosene, LUST tax
 - 119 - LUST tax, other exempt removals
 - 035 - Kerosene
 - 069 - Kerosene for use in Aviation
 - 077 - Kerosene fuel for use in commercial aviation (other than foreign trade)
 - 111 - Kerosene for use in aviation, LUST tax on non-taxable uses
 - 079 - Other fuels - Caution: only those taxed under 4041(a)(1)
 - 062 - Gasoline
 - 014 - Aviation gasoline
- (3) Responsible and willful persons can become jointly liable with the business taxpayer for the excise taxes listed above which the business has reported on BMF Form 720. When assessed against an individual, they will owe the same tax liability as the business taxpayer who filed the Form 720. The responsible person will also be liable for interest and certain penalties from the same date as the business taxpayer.
- (4) The following IRM procedures should be followed for investigating both TFRP and personal liability for excise tax cases:
 - IRM 5.7.3.4.1, Establishing Responsibility
 - IRM 5.7.3.4.2, Establishing Willfulness
 - IRM 5.7.4.2.4, Form 4180
 - IRM 5.7.5, Collectibility Determination

5.7.3.3
(07-24-2023)
**Automated Trust Fund
Recovery (ATFR)
Program**

- (1) The Automated Trust Fund Recovery (ATFR) program is a National Standard Application used to control TFRP case inventories.
- (2) ROs use the program to:
 - Systemically download from IDRS the business master file name, address, and tax period data to establish a case
 - Manually add cases assigned on ICS that did not upload to ATFR
 - Control TFRP case inventories
 - Calculate the TFRP
 - Monitor assessment statute expiration dates (ASED) and case action dates
 - Make recommendations regarding assertion and non-assertion of the penalty
 - Systemically generate and control managerial approvals
 - Generate required forms and letters
- (3) The application is divided into the following components:
 - Area Office Application (ATFR-AO)
 - Control Point Monitoring (ATFR-CPM)
 - Compliance Center Application (ATFR-CC)
- (4) Cases must be worked on the ATFR system whenever possible. This ensures that the correct means of calculation and the current procedures have been followed in case processing, and that systemic records are created of the determination and assessment.

Note: In those rare instances (e.g., excise taxes) when you cannot use ATFR, contact your Collection Automation Coordinator (CAC) or Functional Automation Support Specialist (FASS) to verify the action cannot be completed on ATFR before completing the process manually.

5.7.3.3.1
(12-02-2021)
Monitoring TFRP Cases

- (1) The ATFR system is used by ROs to:
 - Review cases for imminent statute concerns
Note: A case with an imminent statute is one with less than one year remaining on the ASED.
 - Calculate the TFRP for presentation during initial contact (Page 4 of Form 4183 and ATFR's calculation sheet)
 - Ensure the decision whether to pursue the TFRP is made within 120 calendar days after assignment of the balance due account on ICS
 - Ensure the GM approves Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, within 120 calendar days, from the date the RO made the determination to pursue the assessment in ATFR.
 - Ensure Letter 1153, Proposed Trust Fund Recovery Penalty Notification is issued within 20 calendar days of the Form 4183 approval
 - Ensure TFRP cases are forwarded to CPM for processing within 30 calendar days after the required response period allowed in the Letter 1153 (See IRM 5.7.6.2.1(1), No Response (Unagreed) Cases)
 - Update the TFRP calculation

Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP) 5.7.3

page 9

- (2) The GM uses the ATFR system to approve RO case actions and review ATFR reports monthly (See IRM 1.4.50.11, Group Controls) to ensure timely TFRP actions as follows:
 - Monitor the period within which the RO must determine whether to pursue the TFRP (Pending Determination Report)
 - Monitor the timely approval of Form 4183 (Pending 4183 Report)
 - Monitor the issuance of Letter 1153 following approval of Form 4183 (Pending 1153 Report)
 - Determine if imminent statute cases have been addressed (ATFR ASER Report)
 - Monitor timely submission of TFRP case files to CPM (Pending 2749 to CPM Report)
- (3) Control Point Monitoring (CPM) uses the ATFR system to:
 - Track and monitor TFRP cases received from Field Collection
 - Release Form 2749, Request for Trust Fund Recovery Penalty Assessment(s), to the Service Center
 - Monitor cases assigned to Appeals
 - Input pertinent bankruptcy information
 - Set the final case disposition

5.7.3.4 (11-12-2010) Basis for Liability Under IRC 6672

- (1) The RO must establish responsibility and willfulness when determining whether to proceed with assertion of the TFRP. A person is liable for the TFRP if the two statutory requirements below are met:
 - a. The person against whom the penalty is assessed must be “responsible” (IRM 5.7.3.4.1, Establishing Responsibility).
 - b. The responsible person must have “willfully” failed to collect or pay over trust fund taxes to the government (IRM 5.7.3.4.2, Establishing Willfulness).
- (2) Unpaid withholding taxes may also be pursued under the provisions of:
 - Section 3131 of Title 40 of the United States Code.(IRM 5.1.14.4, Performance Bond Provisions of the Miller Act)
 - IRC 3505 (IRM 5.1.14.3, Liability for Third Party Paying Wages or Supplying Funds for Payment of Taxes)

5.7.3.4.1 (08-06-2015) Establishing Responsibility

- (1) Responsibility is a matter of status, duty, and authority. A determination of responsibility is dependent on the facts and circumstances of each case.

Potential responsible persons:
Officer or employee of a corporation
Partner or employee of a partnership
Corporate director or shareholder
Another corporation
Employee of a sole proprietorship

Potential responsible persons:
Limited liability company (LLC) member, manager or employee
Surety lender
Other person or entity outside the delinquent business organization
Payroll Service Provider (PSP)
Responsible persons within a PSP
Professional Employer Organization (PEO)
Responsible persons within a PEO
Responsible persons within the common law employer (client of PSP/ PEO)
Business entities (including corporations, S corporations, LLC, etc.) that are determined to be the collection agency in the case of certain collected excise taxes

Note: See IRM 5.7.3.4.3, Third-Party Payers and Common Law Employers/Clients, for additional information.

(2) A responsible person has:

- Duty to perform
- Power to direct the act of collecting trust fund taxes
- Accountability for and authority to pay trust fund taxes
- Authority to determine which creditors will or will not be paid

(3) To determine whether a person has the status, duty and authority to ensure that the trust fund taxes are paid, consider the duties of the officers as set forth in the corporate by-laws as well as the ability of the individual(s) to sign checks. In addition, determine the identity of the individuals who:

- Are officers, directors, or shareholders of the corporation
- Hire and fire employees
- Exercise authority to determine which creditors to pay
- Sign and file the excise tax or employment tax returns, such as Form 941, Employer's Quarterly Federal Tax Return
- Control payroll/disbursements
- Control the corporation's voting stock
- Make federal tax deposits

(4) The TFRP is available and may be appropriately asserted when the taxpayer is organized as a Limited Liability Company (LLC). The need for a TFRP investigation is based on how the LLC is classified for tax purposes and when the liability accrued. See IRM 5.1.21.6.5, Trust Fund Recovery Penalty, for additional information on LLCs.

(5) When the LLC is a disregarded entity:

- a. For certain excise taxes that accrue prior to January 1, 2008, and for employment taxes on wages paid before January 1, 2009, a single member LLC that did not elect to be treated as a corporation is disregarded as an

entity separate from its owner, and the owner (SMO) is personally and fully liable for all employment taxes, not just the trust fund portion.

However, a TFRP investigation may need to be conducted for other potentially responsible individuals under IRC 6672, such as a manager.

- b. A TFRP investigation is required under regulation changes that provide for the otherwise disregarded LLC to be treated as a corporation for certain excise taxes that accrue on or after January 1, 2008, and for employment taxes on wages paid on or after January 1, 2009.
- c. If the SMO and the LLC are the liable taxpayers for different tax periods under the same Employer Identification Number, see IRM 5.7.4.3, Calculating the TFRP.

- (6) When the LLC is classified as a corporation or partnership for tax purposes, the usual procedures for determining responsibility and willfulness apply.

Note: The TFRP determination must be made on an LLC classified as a partnership. Under state law the members of an LLC classified as a partnership are not liable for the debts of the partnership.

5.7.3.4.1.1 (04-13-2006) Indicators of Responsibility

- (1) The full scope of authority and responsibility is contingent upon whether the person had the ability to exercise independent judgment with respect to the financial affairs of the business.
- (2) If a person is an officer or owns stock in the corporation, this cannot be the sole basis for a responsibility determination.
- (3) If a person has the authority to sign checks, the exercise of that authority does not, in and of itself, establish responsibility.

Note: Signatory authority may be merely a convenience.

- (4) Persons with ultimate authority over financial affairs may generally not avoid responsibility by delegating that authority to someone else. If a potentially responsible person asserts that the duty to pay taxes or otherwise handle the financial affairs of the business was delegated to an employee:

- Evaluate the facts and circumstances of the case
- Determine whether the delegation rendered the person (delegator) powerless to disburse funds or dictate fiscal policy

Note: Delegation may be relevant when determining willfulness.

- (5) Persons serving as volunteers solely in an honorary capacity as directors and trustees of tax-exempt organizations will generally not be considered responsible persons unless they participated in the day-to-day or financial operations of the organization and had actual knowledge of the failure to withhold or pay over the trust fund taxes. This does not apply if it would result in there being no person responsible for the TFRP. Refer to IRC 6672(e).

5.7.3.4.1.2
(06-06-2025)

Non-Owner Employees

- (1) IRM 1.2.1.6.3, Policy Statement 5-14 (Formerly P-5-60), Trust Fund Recovery Penalty Assessments states individuals performing ministerial acts without exercising independent judgment will not be deemed responsible. In general, non-owner employees who act solely under the dominion and control of others, and who are not in a position to make independent decisions on behalf of the business entity, will not be assessed the TFRP. Non-owner employees are those who do not own any stock, interest, or other entrepreneurial stake in the company that employs them.
- (2) Ministerial acts are performed under the supervision of someone else and do not require independent judgment or decision-making ability.

Note: The bookkeeper of a company is not an owner and is not related to an owner. She has check signing authority and pays all of the bills the treasurer gives them. She is not permitted to pay any other bills, and when there are not sufficient funds in the bank account to pay all of the bills, She must ask the treasurer which bills to pay. The bookkeeper is performing a ministerial act and should generally not be held responsible for the TFRP.

- (3) A person is “responsible” for purposes of the TFRP if that person has “significant control” over the company’s finances. “Significant control” means more than having the mere mechanical duty of signing checks or preparing tax returns or having a title that appears to have authority. However, a responsible person need not have the final word in the company regarding the payment of creditors. Officers and higher-level employees of a company who are non-owners may still be required to sacrifice their jobs (i.e., quit) to avoid being responsible for the TFRP, rather than obey the orders of an owner to pay other creditors but not to pay current federal trust fund taxes as they become due. See *Brounstein v. United States*, 979 F.2d 952, 956 (3rd Cir. 1992).
- (4) A non-owner employee is generally not a “responsible person” if the employee’s function was solely to pay the bills as directed by a superior, rather than to determine which creditors would or would not be paid. However, if a non-owner employee, such as an officer, has significant control over making the company’s other financial decisions about who to pay or has the ability to obtain financing for the company, then such an employee cannot avoid being responsible for the TFRP by merely showing that an owner or a lender limited their discretion on the specific matter of paying taxes that the company owed. See the examples below.

Note: A non-owner employee works as a clerical secretary in the office. She signs checks and tax returns at the direction of and for the convenience of the owner or a supervisor who is a non-owner. She is directed to pay other vendors, even though payroll taxes are unpaid. The secretary is not a responsible person for the TFRP because she works under the dominion and control of the owner or of a supervisor who is a non-owner and she is not permitted to exercise independent judgment.

Example: The long-time controller of a company was never a shareholder, director, or officer of the company, but he was responsible for overseeing the finances of the company, including the preparation of the payroll and filing the company’s federal employment tax returns. He had the authority to sign checks in any amount and dealt with the company’s lender on a regular basis when the company experienced financial troubles, though he did not arrange or sign the lending agreement on the

company's behalf. When the lender directed the company to pursue an orderly liquidation of its assets, the controller requested funds from the lender to make full payroll and pay the taxes due on the remaining employees, but the lender forwarded only enough funds for the company to make net payrolls. The controller made out net payroll checks to the remaining employees and paid none of the taxes due, rather than prorate the funds available to the company between payroll and taxes. The controller could be a responsible person for the TFRP. See *Hochstein v. United States*, 900 F.2d 543 (2nd Cir. 1990).

Example: An experienced businessman was never a shareholder, director, or officer of a new company, but served as the general manager of the new company during a seven-month period. As general manager, he signed most of the company's checks to creditors, as well as signing net payroll checks to employees, and there was no monetary limit placed on their check signing authority. He told the bookkeeper which bills to pay. When the company was experiencing cash flow problems, he spoke to one of the owners about the company's delinquent payroll taxes. The owner told the general manager that these unpaid taxes were none of the general manager's business and he should not worry about paying the company's net payroll and missing its tax payments. Both the general manager and the owner believed that the general manager could not be held liable for the TFRP because he was not an owner or officer of the company; the general manager turned down an offer to become the company's president specifically because he was worried about the company's tax situation. The general manager could be a responsible person for the TFRP. See *Gephardt v. United States*, 818 F.2d 469 (6th Cir. 1987).

5.7.3.4.2 (07-24-2023) Establishing Willfulness

- (1) Willful means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
- (2) To show willfulness, the government generally must demonstrate that a responsible person was aware, or should have been aware, of the outstanding taxes and either intentionally disregarded the law or was plainly indifferent to its requirements. A responsible person's failure to investigate or correct mismanagement after being notified that withholding taxes have not been paid satisfies the TFRP "willfulness" element. See IRM 5.17.7.2.3, Willfulness.
- (3) It is difficult to establish "willfulness" in the types of assessments shown below:

#####

5.7.3.4.3

(07-19-2012)

Third-Party Payers and Common Law Employers/Clients

- (1) Common law employers may designate a third party who is not the common law employer or a statutory employer under IRC 3401(d)(1) to take over some or all of the employer's Federal employment tax withholding, reporting, and payment responsibilities and obligations. The common law employer becomes the "client" of the third party. A common law employer is any person who has the status of employer under the usual common law rules applicable in determining the employer-employee relationship. Generally an employer-employee relationship exists when the person for whom the services are performed has the right to direct and control the worker who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. Some common third-party arrangements include:

- Payroll Service Provider (PSP)
- Professional Employer Organization (PEO) that is not the common law employer or statutory employer

Note: Professional Employer Organizations may also be referred to as employee leasing companies.

- (2) Each recommendation for assertion of the TFRP against a third-party payer, i.e., a responsible person, must stand on its own merits based on the facts the RO discovers during the TFRP investigation regarding "responsibility" and "willfulness."
- (3) The factors to be considered when determining the potential "responsibility" and "willfulness" of a third-party payer are:
- Responsibility - Identification of the person(s) within the third-party payer who had significant control over the payment of the client's employment taxes.
 - Willfulness - Willful means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
- (4) The factors to be considered for establishing "responsibility" and "willfulness" of a responsible person within a common law employer/client where there is a third-party payer arrangement are:
- Responsibility - The use of a third-party payer such as a PSP or a PEO does not relieve the common law employer and employees of the common law employer who are responsible for collecting, accounting for, and paying over the common law employer's employment taxes from the responsibility of ensuring that all of the common law employer's Federal employment tax obligations are met.
 - Willfulness - Willful means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
- (5) Additional factors to be considered when determining "willfulness" include:
- Whether the responsible person had knowledge of a pattern of noncompliance by the third-party payer at the time the delinquencies were accruing.

- Whether the third-party payer used fraud or deception to conceal the noncompliance from detection by the client.
- Whether the client had received prior IRS notices indicating that employment tax returns have not been filed, or are inaccurate, or that employment taxes have not been paid.
- The actions the client has taken to ensure its Federal employment tax obligations have been met after becoming aware of the tax delinquencies, e.g. timely reporting the problem(s) to the IRS and the proper authorities, ensuring current tax debts have been timely reported and paid, and working with the IRS on a reasonable plan to resolve past debts.

- (6) Consult with your local Area Counsel in any case involving whether a third-party payer is a responsible person(s) under IRC 6672 for the TFRP.

Note: The same guidance for contacting third parties and for issuing Letter 3164-A, Third Party Contact as outlined in IRM 5.7.4.2.5, Third-Party Interviews and Third-Party Contact Considerations, applies when working TFRP investigations involving third-party payers.

5.7.3.5
(08-06-2015)
**Considerations for
Employment Tax
Examination (ETE)
Assessments**

- (1) IRC 3509 applies to an audit or adjustment procedure reclassifying workers from independent contractors to employees. Under this section, the tax is assessed at a lower rate.
- (2) The TFRP assessment would not be applicable on Section 3509 balance due accounts unless there is a combination of full and IRC 3509 rates. The TFRP could be asserted against that portion of the ETE assessment that represents full rates.

Note: Because willfulness cannot be proven where a determination has been made that intentional disregard of the law did not exist, TFRP investigations, as they relate to employment tax assessments made under IRC 3509 only, need not be conducted.

- (3) To determine the portion of the ETE assessment that represents full rates for assertion of the TFRP:

- Request Form 941 for the last quarter of each year of the audit
- Review the attached Form 4668, Employment Tax Examination Changes Report, to determine the amount assessed at the full rate

- (4) To determine the portion of the Employment Tax Adjustment Program (ETAP) assessment that represents full rates upon which the TFRP can be asserted:

- Request the Form 941 for the first quarter of each year of the adjustment
- Review ETAP under-reporter or full rate issues

Note: No combination of rates applies to ETAP adjustments.

- (5) By comparing the balance due assessment amounts with the rates as shown below, the RO will be able to determine if the assessment is at the reduced rate or full rate, as long as the assessment is not a mixture of IRC 3509 rates:

Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP) 5.7.3

page 17

- Single rate (all applicable returns filed timely by the employer) – Employer’s portion of FICA; 20 percent of the employee’s portion of FICA plus 1.5 percent of the wages as income tax withholding
- Double rate (no applicable returns filed timely by the employer) – Employer’s portion of FICA; 40 percent of the employee’s portion of FICA plus 3 percent of the wages as income tax withholding

5.7.3.5.1 (11-12-2010) Referral from Examination

- (1) If during examination of the employment tax returns, the examiner finds that the TFRP may apply, the examiner should secure Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, if the ASED is within one year on both agreed cases and on unagreed cases to allow sufficient time for the case to go through the appeal process plus one year. The examiner should also request input of TC 971-330 on the corporate account to indicate that the responsible person has signed Form 2750. If Form 2750 cannot be secured, Form 6238, Referral Report for Potential Trust Fund Recovery Penalty Cases, should be completed by the Examiner and sent to Advisory.
- (2) Advisory will determine within 30 days whether or not an investigation will be opened by Field Collection and notify Examination of that determination.
- (3) If an investigation is to be opened, Advisory will issue a Courtesy Investigation to Field Collection with a copy of the Form 6238.

5.7.3.6 (11-12-2010) Statutory Assessment Period

- (1) Before beginning a full investigation for the assertion of the penalty, determine whether the statutory period for assessment is still open.
- (2) The usual limitation period for assessment of the TFRP is as follows:

Type of Tax	Statutory Assessment Period
Withholding or Federal Insurance Contribution Act (FICA)	With respect to any taxable period within a calendar year, three years from the succeeding April 15 or from the date the return was filed, whichever is later.
Excise or Railroad Retirement Tax Act (RRTA)	Three years from the due date of the return (without regard to any extension) or from the date the return was filed, whichever is later.

- (3) There is no limitation period for assessing the TFRP on withholding, FICA, excise, or RRTA until a return is filed; however, the following returns do not start the limitations period:

- Substitutes for returns prepared by the IRS under IRC 6020(b)(1)

Note: The statutory assessment period **does** apply to a return that the taxpayer files after the IRS had created a liability for the same period under IRC 6020(b)(1).

- False return or fraudulent return (IRC 6501(c)(1))
- A filing made in connection with a willful attempt to evade tax (IRC 6501(c)(2))

- (4) See IRM 5.7.3.7, Extension of Statutory Assessment Period, for actions that extend the statutory period for assessment.

5.7.3.7
(07-24-2023)

**Extension of Statutory
Assessment Period**

- (1) The table below identifies whether or not a particular action extends the TFRP assessment statute.

If. . .	Then. . .
A responsible person filed a bankruptcy petition after October 21, 1994	The statutory period for assessment of the TFRP will not be automatically extended by the bankruptcy filing.
A responsible person filed a bankruptcy petition before October 22, 1994	The statutory period for assessment is automatically suspended for the period the automatic stay is in effect, plus 60 days.
The corporation is in a bankruptcy proceeding	The statutory period for assessing the TFRP against potential responsible persons is not automatically extended.
An Offer in Compromise is submitted for the corporate tax liability	The corporate offer does not automatically extend the statute for assessing the TFRP against any responsible corporate officer, employee, or other responsible person.

- (2) ATFR will calculate the TFRP ASED based upon the return received date (RRD) shown on IDRS for the underlying employer module. The RO will verify that the ASED is correct and applicable to potentially responsible persons since certain actions, such as a Substitute for Return (SFR) (RCC 4 on TXMODA with TC 150 \$0.00) prepared by examination or agreed examination assessments affect the actual ASED. SFRs prepared by examination create a return receive date used by ATFR. This return received date does not start the actual ASED. Only an actual return filed by the taxpayer, or an agreed assessment, indicated by a TC 300 Disposal Code 03, 04 and 09, begins the ASED.

Note: In these instances contact your local CAC or FASS for assistance to update ATFR to reflect the correct ASED.

5.7.3.7.1
(07-24-2023)

Form 2750 Waiver

- (1) In order to extend the ASED, a potentially responsible person may sign Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty. This waiver can extend:

- The ASED to a date where the TFRP investigation may reasonably be expected to be resolved
- An ASED already extended by a previous waiver

Reminder: If you have not secured a signed Form 2750 from all responsible persons, then you must take quick assessment action when there is less than 30 days remaining on the ASED (see IRM 5.7.6.13, Quick and Prompt Assessment Actions, for quick assessment procedures.)

- (2) Form 2750 extends the ASED only for the person who signs the waiver; therefore, a waiver must be secured from all potentially responsible persons in order to properly protect the statute.
- (3) The law does not impose a maximum limit on the time period the assessment statute for TFRP may be extended by a potentially responsible person and the IRS, however the ASED cannot be extended beyond the Collection Statute Expiration Date (CSED) of the underlying tax assessment.
 - a. In the case of approved and adhered to business installment agreements and bankruptcy payment plans, it is ordinarily the IRS' policy to withhold TFRP assertion recommendations if there are no statute considerations. If there are statute concerns, Form 2750 can be secured to extend the assessment limitation period beyond the projected length of the business installment agreement or bankruptcy payment plan. See IRM 5.7.4.8.1(2)(c), Considerations for In-Business Installment Agreements, for additional guidance on Form 2750 waivers secured in conjunction with an installment agreement. See Policy Statement P-5-14.
 - b. Otherwise, unless there are unusual circumstances, the IRS ordinarily should not seek extension dates of the TFRP assessment period beyond December 31 of the year following the year in which the ASED will expire (e.g., 1 year and 260 days after the April 15 statutory due date of the Form 941 returns for statute of limitation period purposes).

Note: This policy, ordinarily applicable outside of business installment agreement or bankruptcy payment plan circumstances, allows the IRS to make its TFRP determinations when the evidence is still likely to be available.

- (4) The IRS Restructuring and Reform Act of 1998 (RRA 98) states the IRS must:
 - Ensure that taxpayers are aware that they have the right to refuse to extend the limitations period for tax assessments
 - Notify the potentially responsible person of such right
- (5) Every time an extension is requested (IRC 6501(c)(4) as amended by RRA 98), the IRS must notify the taxpayer that they may:
 - Refuse to extend the period of limitations
 - Limit the extension to particular issues or a particular period of time
- (6) If a third party is authorized to act on behalf of the potentially responsible person, Form 2750 may be solicited from and signed by the authorized representative. If the third-party information is not available on the Centralized Authorization File (CAF), the instrument which authorizes the representative to act for the responsible person should be attached to Form 2750 or included in the TFRP case file.
- (7) After the potentially responsible person or representative executes the waiver:
 - a. Have the authorized delegate for the IRS manually sign and date the waiver and include the authorized delegate's title.

Note: Form 2750 is considered invalid if it is not signed by an authorized IRS representative (GS 9 (and above) revenue officer; GS 9 (and above) bankruptcy specialists). See IRM 1.2.2.15.2, Delegation Order 25-2 (Rev. 3) (formerly DO-25-2 and DO-42, Rev. 28), Authority to Execute Agree-

ments to Extend the Period of Limitations on Assessment or Collection and to Accept Form 900, Tax Collection Waiver).

- b. Write, type or stamp the Collection Area Director's name. Refer to IRM 1.2.2.15.2.
- c. Give Part 2 to the responsible person or authorized representative.
- d. Follow the procedures in IRM 5.7.3.7.3, Disposition of Executed Waivers.

5.7.3.7.2
(07-24-2023)

**Impact of Letter 1153 on
Assessment Statute**

- (1) For IRC 6672 assessments made after the enactment of the Taxpayer Bill of Rights 2 on July 30, 1996, the following actions are required:
 - a. A 60-day preliminary notice, Letter 1153, must either be mailed to the responsible person's last known address or, after July 22, 1998, delivered in-person to the responsible person only.

Note: See IRM 5.7.4.7, Notification of Proposed Assessment, for instructions on proper delivery and documentation regarding the delivery of Letter 1153.

- b. The IRS must wait 60 days after issuance of Letter 1153 before issuing notice and demand for payment (Form 3552, Prompt Assessment Billing Assembly).

Note: See IRM 5.7.4.7, Notification of Proposed Assessment, for exceptions to the 60-day requirement for jeopardy situations only. Because responsible persons could change their minds after signing Form 2751, Proposed Assessment of Trust Fund Recovery Penalty (and therefore request Appeals review before the deadline listed in Letter 1153), do not treat a case as agreed until that deadline expires, 60 days (plus five days). A responsible person's signature on the Form 2751 does not extinguish their appeal rights.

- (2) If the 60-day notice was properly mailed or delivered in person to the responsible person before the expiration of the assessment limitation period for the TFRP, then the assessment statute will not expire before the later of:

- The date 90 days after the date on which the 60-day notice was mailed (or delivered in person)
- 30 days after Appeals' "final administrative determination" if the potentially responsible person files a timely protest (mailed, faxed, or via secure message) if applicable, on or before the 60th day after the proper mailing or personal delivery of Letter 1153)

Note: Encourage taxpayers and Powers of Attorney (POA) to use secure messaging through the Document Upload Tool (DUT) when submitting the required documentation. Taxpayers and POAs can also sign up for the eGain system. More information on DUT available at irs.gov/reply. More information on eGain available at IRS.gov/connect.

5.7.3.7.3
(07-24-2023)

**Disposition of Executed
Waivers**

- (1) The RO will take the following actions when a waiver is secured:
 - a. Update the ATFR-AO application with the date the waiver was signed.
 - b. Include Part 1 of Form 2750 in the TFRP recommendation file.
 - c. Retain Part 3 in the balance due case file.

- (2) After a waiver has been secured, request input of transaction code TC 971 AC 330 on the corporate account to indicate that the responsible person has signed a waiver. The transaction code will include the Social Security number of the responsible person and the date the ASED is extended to for that individual. This will allow the information to be readily available on IDRS in order to determine if the ASED has been extended for a particular person. The transaction code must be input for each responsible person for each period for which a waiver was secured. If the extension cannot be input on ATFR (e.g., in the case of manual TFRP assessments, such as in excise tax cases), request input using Form 4844, Request for Terminal Action.

Reminder: Securing a waiver from one or more responsible persons will not change the corporate ASED shown on IDRS or ATFR.

5.7.3.7.4
(11-12-2010)
Waivers on Examination Cases

- (1) In order to determine if Examination has already secured a waiver to extend the TFRP assessment statute:
 - a. Request the return and examination papers; the waiver will be in the file if secured by examination.
 - b. Check IDRS for TC 971 AC 330 indicating the responsible person signed a waiver.
- (2) If a waiver is appropriate and was not previously secured, follow the instructions in IRM 5.7.3.7.1, Form 2750 Waiver, for securing Form 2750.

5.7.3.8
(07-24-2023)
Cases Received With Less Than Six Months Remaining on the Assessment Statute

- (1) When a balance due account is assigned on ICS with less than six months remaining on the assessment statute, immediately bring it to the attention of the GM. The RO and the GM should discuss the circumstances of the case and determine:
 - Priority of the case.
 - Whether there is adequate time to conduct the TFRP investigation.
 - The compliance history of the taxpayer, including unfiled returns and previous TFRP investigations and/or assessments.
 - A strategy to protect the assessment statute from expiring. Such as request full payment of at least the trust fund portion (See IRM 5.7.4.4, Payments by Responsible Person on Behalf of the Employer) of the liability on the module(s) with an imminent ASED and/or secure a signature on Form 2750 from all potentially responsible persons in accordance with IRM 5.7.3.7.1, Form 2750 Waiver.
- (2) Regardless the case assignment date, a reasonable effort should be made to conduct the TFRP investigation. ROs should conduct an in-depth initial analysis, including carefully reviewing prior and/or archived ICS, ATFR and AMS histories to identify potentially responsible person(s) (See IRM 5.1.10.2, Pre-Contact). ROs should also try to establish initial contact as soon as possible (See IRM 5.1.10.3.1(3), Initial Contact Time Frames).
- (3) If there are no indicators of willfulness and responsibility on a potentially responsible person to support an assessment before the statute expires, then do not assess the penalty against that particular potentially responsible person.

- a. If all modules will expire in less than six months and no indicators of willfulness and responsibility exist, prepare Form 4183 outlining the facts and circumstances. Set the responsible person indicator on ATFR to “all modules not responsible” (N) and submit the form for approval (IRM 5.7.4.5, Form 4183 Penalty Assessment Recommendation). The ATFR system will automatically upload the ASEDR with the appropriate definer code (generally definer code “2” - see IRM 5.7.3.10.1, Input of ASEDR Definer Codes) when the “Not Assert” request is approved by the manager.
- b. If not all modules will expire in less than six months, then document the ICS and ATFR histories regarding the ASEDs that will expire in inventory and continue the investigation on the remaining modules. Do not dispose of an open ICS case on ATFR when there are remaining modules with trust fund balances, under any circumstances.

Note: ASEDR-5 is not to be used to close an expiring module on ATFR. ASEDR-5 (TFRP Not Applicable) is only reserved for situations such as sole proprietorships, after it is determined there are no other responsible persons, as well as for partnerships and LLC for which the TFRP is precluded. Also, ASEDR-5 is not to be used on modules being closed as In-Business Trust Fund Installment Agreements as the potential exists for additional liabilities to accrue.

- (4) If there are indicators of willfulness and responsibility but not all core documentation has been secured, attempt to secure a waiver (IRM 5.7.3.7.1). If the waiver cannot be secured, then:
 - Secure Form 4183 approval from GM for all responsible persons.
 - Issue Letter 1153 and Form 2751 by certified mail or hand-deliver to the responsible person’s last known address.
 - Confirm all responsible persons have received Letter 3164-A (See IRM 5.7.4.2.5, Third-Party Interviews and Third-Party Contact Considerations),
 - Continue gathering core documentation, and
 - Wait 60 days, plus five additional days for receipt and processing of timely mailed protests, (See IRM 5.7.6.2.1) for assessment of the TFRP.

Note: The quality of the investigation and determination should not be compromised because of an imminent statute. If additional documentation is needed, the investigation should continue during this 60-day time period.

5.7.3.9
(07-24-2023)
**Reporting Expiration of
the TFRP Statute**

- (1) When a balance due account is received after the assessment statute has expired, document the case file that the case was received after expiration of the ASED.
- (2) When a statute expires on a case assigned to an RO, the RO will:
 - a. Report the expiration of the statute by memorandum.
 - b. Forward the memorandum through appropriate management channels to the Field Collection Area Director - Group Manager, Territory Manager, Area Director.

Note: Managers will attach any comments they may have to the RO’s report, including indications of performance deficiencies and what corrective actions have or will be taken.

(3) A report is not required for the following types of cases:

- Aggregate trust fund below the dollar criterion in IRM 5.7.4.2, TFRP Determinations, Interviews and Investigations (always consider the potential liability on unfiled returns and previously assessed and/or un-assessed TFRP amounts when making this determination)
- CAWR assessment and willfulness cannot be established
- Employment Tax Assessment under IRC 3509 where willfulness cannot be established
- Received by the RO with less than six months remaining on the assessment statute and the TFRP assessment could not be completed (See IRM 5.7.3.8, Cases Received With Less Than Six Months Remaining on the Assessment Statute)

5.7.3.10
(08-06-2015)
**Issuance of Imminent
Statute Notices**

- (1) CP 527 Notices are no longer issued in paper format as electronic notifications are made.
- (2) ICS will provide notification of imminent ASEDs. Upon receipt of the ICS ASED notification, the RO will determine if the notification is valid or if an ASEDR indicator (IRM 5.7.3.10.1, Input of ASEDR Definer Codes) should be input.

Note: ASED notices are issued on partnership entities as well as for corporations (IRM 5.17.7.2.1.3, Partners/Members). Since the assessment is not precluded in certain partnership situations, processing of ASED notices on these cases is required.

(3) If the notification is valid, the RO will ensure the:

- Investigation is proceeding properly
- The potentially responsible person will receive all required pre-assessment appeal rights
- Final decision on the penalty will be made before the assessment statute expires
- A waiver will be secured (IRM 5.7.3.7.1, Form 2750 Waiver) when appropriate

- (4) If the notification is not valid, follow the procedures in IRM 5.7.3.10.1, Input of ASEDR Definer Codes, for input of the appropriate ASEDR indicator.

5.7.3.10.1
(07-24-2023)
**Input of ASEDR Definer
Codes**

- (1) The ASEDR indicator should be selected as follows:

ASEDR Definer Code	Definition
0	No TFRP Determination has been made.
1	TFRP Assessed and the corporate account is not being closed
2	Unable to locate any responsible person(s)
3	No collection potential exists for any responsible person(s)
4	All trust fund amounts paid
5	TFRP is not applicable

Note: ASEDR-5 is not to be used on a module closed from ATFR as “Below IRM 5.7.4 criteria.” ASEDR-5 (TFRP Not Applicable) is reserved for situations such as sole proprietorships, after it is determined there are no other responsible persons, as well as for partnerships and LLC for which the TFRP is precluded. ASEDR-5 is also not to be used on modules being closed as In-Business Trust Fund Installment Agreements as the potential exists for additional liabilities to accrue. Managers should monitor that ASEDR-5 is not used indiscriminately.

- (2) ASEDR indicators of 2, 3, 4, or 5 should be input via Form 4844, Request for Terminal Action, with managerial approval, if the related action has already been completed and the ASEDR did not automatically upload from ATFR. Complete the entity and employee information blocks and enter in the Remarks section “Request input of Command Code ASEDR” with the appropriate indicator shown. Managers are responsible for verifying that the ASEDR input request is appropriate to the circumstances of each case.

Note: The ASEDR with the appropriate indicators should automatically be uploaded from ATFR after the “2749 to SC” date is input.

- (3) An ASEDR indicator 1 is systemically uploaded by ATFR when an assessment is made.
- (4) Only one indicator can be requested per module. Select the most appropriate indicator based on the facts of the case.
- (5) ASEDR indicators will appear on ICS Module Summary Screen.
- (6) If an ASEDR indicator of 1, 2, 3, 4, or 5 is input to IDRS, the appropriate indicator will appear on Entity and on the ATFR reports.