



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.7.4

JULY 1, 2025

EFFECTIVE DATE

(07-01-2025)

PURPOSE

- (1) This transmits revised IRM 5.7.4, Trust Fund Compliance, Investigation and Recommendation of the TFRP.

MATERIAL CHANGES

- (1) IRM 5.7.4 has been updated to include language consistent with presidential executive order 14151.
- (2) Added exception note to IRM 5.7.4.3(7) with guidance on how to address reversals of employer tax credits, per IGM SBSE-05-0225-0011.
- (3) Fixed formatting errors throughout the IRM.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.7.4, dated July 14, 2023. This IRM revision incorporates Interim Guidance Memorandum (IGM) SBSE-05-0225-0011, Guidance for Application of Payments When Calculating the Trust Fund Recovery Penalty (TFRP) on Tax Periods with Reduced or Fully Reversed Employer Tax Credits, dated February 11, 2025 .

AUDIENCE

Small Business/Self-Employed Collection Employees

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5.7.4

Investigation and Recommendation of the TFRP

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5.7.4.1
(07-14-2023)
Program Scope and Objectives

- (1) **Purpose:** This IRM section provides instructions to Collection employees conducting Trust Fund Recovery Penalty (TFRP) determinations, investigations and recommendations.
 - (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
 - Specialty Collection - Offer in Compromise (SCOIC) employees
 - Specialty Collection - Insolvency (SCI) employees
 - Centralized Case Processing (CCP) 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 correctly identify all individuals liable for the TFRP, conduct a timely and complete investigation, assemble the required supporting documentation, and appropriately notify said individuals about the proposed TFRP assessment.
- (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.*

5.7.4.1.1
(07-14-2023)
Background

- (1) The Trust Fund Recovery Penalty (TFRP) is based on IRC 6672 Failure to collect and pay over tax, or attempt to evade or defeat tax, and facilitates the collection of tax and enhances voluntary compliance. The TFRP serves as an alternative means of collecting unpaid trust fund taxes when taxes are not fully collectible from the company/business that failed to pay the withheld taxes. Internal Revenue Manual (IRM) 5.7.4, Investigation and Recommendation of the Trust Fund Recovery Penalty, contains procedures and guidance for the investigation, recommendation and approval of the TFRP against individuals who are potentially responsible for the non payment of the business trust fund taxes.

5.7.4.1.2
(07-14-2023)
Authority

- (1) IRC 3505, Liability of third parties paying or providing for wages.
- (2) IRC 3509, Determination of employer's liability for certain employment taxes.
- (3) IRC 6103, Confidentiality and disclosure of returns and return information.
- (4) IRC 6672, Failure to collect and pay over tax or attempt to evade or defeat tax.
- (5) IRC 7521, Procedures involving taxpayer interviews.
- (6) IRC 7602, Examination of books and witnesses.
- (7) IRC 7609, Special procedures for third party summonses.
- (8) Rev. Proc. 2012-18, Ex Parte Communications Between Appeals and Other Internal Revenue Service Employees.
- (9) U.S. Code, Performance Bond Provisions of the Miller Act.
- (10) *Treas. Reg 301.7602-2*, Third party contacts.
- (11) IRM 1.2.1.6.3, Policy Statement 5-14 (Formerly P-5-60), Trust Fund Recovery Penalty Assessments.
- (12) IRM 1.2.65.3, SB/SE Functional Delegation Orders - Collection.

5.7.4.1.3
(07-14-2023)
**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.

5.7.4.1.4
(07-14-2023)
**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 with monitoring the progress of TFRP investigations as well as identifying potential issues on cases with imminent Assessment Statute Expiration Dates (ASED), so the appropriate case actions can be taken 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)
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.

5.7.4.1.5
(07-14-2023)
Program Controls

- (1) ATFR tracks and records TFRP assessment actions and history. Field 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, Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid.

5.7.4.1.6
(07-14-2023)
Acronyms

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

Acronym	Definition
ASED	Assessment Statute Expiration Date

Acronym	Definition
ATFR	Automated Trust Fund Recovery Penalty Program
BMF	Business Master File
CAC	Collection Automation Coordinator
CAWR	Combined Annual Wage Reconciliation
CCP	Centralized Case Processing
CSED	Collection Statute Expiration Date
DUT	Document Upload Tool
EIN	Employer Identification Number
ETAP	Employment Tax Adjustment Program
ETE	Employment Tax Examination
FASS	Functional Automation Support Specialist
FC	Field Collection
FTD	Federal Tax Deposit
GM	Group Manager
IBTF-IA	In-Business Trust Fund Installment Agreement
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IRM	Internal Revenue Manual
POA	Power of Attorney
PSD	Portable Storage Device
RO	Revenue Officer
SB/SE	Small Business/Self Employed
SERP	Servicewide Electronic Research Program
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*

5.7.4.1.7

(07-14-2023)

Related Resources

(1) IRM resources

IRM	Title
IRM 1.4.50	Collection Group Manager, Field Compliance Manager and Area Director Operational Aid
IRM 5.1.1.12.1	TPC Advance Notification Procedures
IRM 5.1.10	Taxpayer Contacts
IRM 5.1.15.7.2	IRS-Combined Annual Wage Reconciliation (IRS-CAWR)
IRM 5.1.18	Locating Taxpayers and Their Assets
IRM 5.1.24	Third-Party Payer Arrangements for Employment Taxes
IRM 5.4.11.8.2	IBTF and PPIA Default Procedures
IRM 5.7.3	Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP)
IRM 5.7.5	Collectibility Determination
IRM 5.7.6	Trust Fund Penalty Assessment Action
IRM 5.7.7	Payment Application and Refund Claims
IRM 5.14.5	Streamlined, Guaranteed and In-Business Trust Fund Express Installment Agreements
IRM 5.14.7	BMF Installment Agreements
IRM 5.17.7	Liability of Third Parties for Unpaid Employment Taxes
IRM 5.19.14	Trust fund Recovery Penalty (TFRP)
IRM 20.2.5.2.1	Application of Payments
IRM 25.5	Summons
IRM 25.27.1	Third-Party Contact Program

- (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.

5.7.4.2

(07-14-2023)

**TFRP Determinations,
Interviews and
Investigations**

- (1) The decision whether to pursue the TFRP should be made:

- After the initial contact with the BMF trust fund taxpayer.
- As soon as possible, but no later than 120 calendar days after assignment of the balance due account(s) to an RO (ICS will provide a notification when there are 60 days remaining on the determination date and when the determination date has expired).

Note: The determination date should be shortened if there is an imminent assessment statute expiration date (ASED). See IRM 5.7.3.6, Statutory Assessment Period, for information on the ASED.

- (2) The 120-day determination date will appear on the Automated Trust Fund Recovery Penalty (ATFR) program. A decision to pursue or not pursue the TFRP must be made within this time period, unless the trust fund tax balance

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Balance Owed Amounts) or the GM authorizes a delay to the TFRP determination timeframe (e.g., when the taxpayer/potentially responsible persons cannot be located or identified) prior to its expiration. GMs must document on ATFR and ICS why a **delay determination** (or reset of a past due **delay determination**) is warranted before approval. The decision to pursue or not pursue the TFRP will also be documented in the ICS history.

Note: Cases must be worked on the ATFR system whenever possible. This ensures 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 (IRM 5.7.3.3(4), Automated Trust Fund Recovery (ATFR) Program).

- (3) Don't Pursue Determinations should be limited to:

- The taxpayer is out of business and a responsible person cannot be identified or located. (See IRM 5.1.18, Locating Taxpayers and Their Assets), for guidance on locating taxpayers.
- The taxpayer meets the criteria for an In-Business Trust Fund Express Installment Agreements (IBTF-IA) and the decision has been made to grant the agreement. (See IRM 5.14.5.4, In-Business Trust Fund Express Installment Agreements.)

- (4) Before the RO may decide not to pursue the TFRP in IBTF-IA situations, the taxpayer must meet **all** the following conditions:

- Unpaid Balance of Assessment (UBA) is \$25,000 or less
- Outstanding liabilities only include current year or prior calendar year periods
- Entire liability will be paid in 24 months

- (5) Regardless of any authorized delay or exception listed in (3) and (4) above, the RO is expected to follow initial contact procedures for trust fund investigations found in IRM 5.1.10.3.2, Effective Initial Contact.

Note: If the RO determines during pre-contact analysis that the outstanding trust

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ties and is current on employment tax filing requirements, the RO may waive the requirement to secure Form 4180, Report of Interview with Individual

Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes, if a resolution for immediate full payment, short term (less than 120 days) full payment, or IBTF-IA meeting the criteria in (3) above is agreed upon during the initial contact with the taxpayer.

- (6) If the determination to pursue the TFRP is delayed beyond the 120-day period, the determination screen on the ATFR system must be updated to request the delay. If the delay option is selected, the user must enter an explanation and provide a new determination date. The request must be made prior to the expiration of the 120-day determination period. GMs must document on ATFR and ICS why a **delay determination** (or reset of a past due **delay determination**) is warranted before approval.
- (7) If the delay request is approved by the GM, the determination date will change on the ATFR screen.

Note: If the request is not approved, a notification will appear on the ATFR corporate screen, GM will document the reason for the disapproval on ICS and ATFR.

- (8) If the case cannot be processed on ATFR, the request to delay the TFRP determination beyond the 120-day time period should be requested via Form 8213, Recommendation to Delay Decision re: Assessment of Trust Fund Recovery Penalty or Personal Liability for Excise Tax. The GM will sign Form 8213 approving the request and document the justification on ICS. If the GM disapproves the request, they must also document their reasoning on ATFR and ICS and notify the RO.

Note: In rare instances (e.g., excise taxes, see IRM 5.7.3.2.1, Personal Liability for Excise Taxable Fuel Taxes, for Form 720, Quarterly Federal Excise Tax Return), you cannot use ATFR to propose and process the TFRP assessment. **Contact your Collection Automation Coordinator (CAC) to verify the action cannot be completed on ATFR and obtain procedural guidance to complete the process manually** (IRM 5.7.3.2(4)). Locate contact information for your Area CAC or FASS on the ATFR website at: *Functional Automation Support (FAS) Contacts*. The CAC or FASS will verify the action cannot be completed on ATFR before you begin the process manually (IRM 5.7.3.3(4) Note.) You will need to use ICS Templates to generate all necessary letters and forms, including Form 2749, Request for Trust Fund Recovery Penalty Assessment(s), and Form 2859, Request for Quick or Prompt Assessment, for actual assessment, and seek manual manager approval.

- (9) If the RO's decision is to pursue the TFRP, Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, will be submitted to the GM for approval. The GM will make an approval determination no later than 120 calendar days from the date the decision was made to pursue the TFRP, unless the GM determines circumstances exist to warrant more time. **GMs will grant additional time for recommendation to assert or not assert the TFRP by making an entry in the ICS and ATFR histories documenting the circumstances that justify approval of the delay.** See IRM 5.7.4.8, Determining Whether to Pursue the TFRP in Installment Agreement or Bankruptcy Situations, for situations in which the business wishes to enter into an installment agreement or the business or a responsible person has filed bankruptcy.

Note: Allow sufficient lead time for managerial review and timely approval of Form 4183.

5.7.4.2.1
(07-14-2023)

**Factors When
Considering Trust Fund
Balance Owed Amounts**

- (1) Regardless of the amount of the trust fund, ROs will make a reasonable attempt to collect the entire liability in full.
- (2) ROs are not to solicit partial designated payments to bring the amount of the TFRP under any circumstances. #
- (3) There is no prohibition against assessing the TFRP if the amount is below #
#
- (4) There may be situations that warrant the assertion of the TFRP when the #
factors:
 - a. Potential to incur additional liabilities on an in-business taxpayer who is not remaining current.
 - b. Potential for additional liabilities from unfiled returns.
 - c. Taxpayer's history of non-compliance that extends beyond the open balance due accounts.
 - d. Responsible person's history of employment tax non-compliance.
 - e. Refund Offset on the responsible person's account, that may facilitate repayment of the taxes.
- (5) Take into consideration all previously assessed and/or unassessed TFRP amounts when determining the total aggregate trust fund. This includes all the unpaid TFRP for the account (not just the open ATFR case) and includes potential tax liabilities resulting after securing unfiled returns. ROs and GMs should use discretion if the unassessed amount does not justify the additional expense and effort to prepare a TFRP assertion package.
- (6) GMs should verify that ROs complete full compliance checks for business taxpayers before approving an ATFR disposal of a case as "Below IRM Criteria", this step is to ensure ROs considered all factors described in IRM 5.7.4.2.1(4) above.

5.7.4.2.2
(06-29-2017)

**Additional Actions to
Consider**

- (1) Certain facts may surface indicating that transfers of corporate stock and/or capital assets have occurred. If this is the case, in addition to pursuing the TFRP, consider recovery of the unpaid corporate liability by recommending:
 - Suit to establish a transferee liability.
 - Suit to set aside a fraudulent transfer.
 - Examination referral.
- (2) See IRM 5.17.4, Suits by the United States, to determine which of these actions may be appropriate based on the facts of a particular case.

5.7.4.2.3
(07-14-2023)

**TFRP Interviews and
Investigations**

- (1) During the initial contact with the taxpayer (IRM 5.1.10.3.2, Effective Initial Contact), the RO will **attempt** to conduct interviews with all available potentially responsible persons. The RO will take the following actions during the interview:

- a. Provide Pub 1, Your Rights as a Taxpayer, and document in the history the publication was delivered.
- b. Explain the TFRP.
- c. Present a copy of the TFRP calculation (Page 4 of Form 4183, see IRM 5.1.10.2(6), Pre-Contact) to all potentially responsible persons and advise them the IRS can assess the TFRP against those individuals determined to be liable for the penalty for the unpaid trust fund amount and collect the liability from their personal income and assets. Also, see IRM 5.7.4.4, Payments by Responsible Person on Behalf of the Employer.

Note: ROs should also provide and discuss ATFR's calculation sheet, in addition to page 4 of Form 4183, with potentially responsible persons. The calculation sheet breaks down all transactions for each tax period.

- d. Explain how the TFRP was calculated and if the taxpayer provides payroll records showing the composition of the FTD and that it was timely, it may lower the TFRP calculation. See IRM 5.7.4.3(9). Calculating the TFRP.
- e. Provide Notice 784, Could You be Personally Liable for Certain Unpaid Federal Taxes?, to each person being interviewed and provide sufficient copies of Notice 784 to allow distribution to all other persons associated with the business who, based on the interview and other preliminary investigation, may be liable.
- f. Advise the person(s) being interviewed of the proper actions to take to avoid such liability.
- g. Begin asking questions and securing core documentation items from the taxpayer in support of assertion of the penalty (See IRM 5.7.4.2.7(1), Evidence That May Support Recommendations). If the documents are not secured, establish deadlines for the information and documents.
- h. Attempt to secure Form 4180, Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes, from all potentially responsible persons to the extent possible (See IRM 5.7.4.2.4, Form 4180, and IRM 5.7.4.2.7).
- i. If a potentially responsible person states during any interview that they wish to consult with an authorized representative, the employee will suspend the interview to permit such consultation. See IRM 5.1.10.7.1, Rights During Interviews.

5.7.4.2.4
(03-27-2023)
Form 4180

- (1) Form 4180 is the form to be used for conducting TFRP interviews. It is intended to be used as a record of a **personal interview** with a potentially responsible person. During the initial contact, attempt to personally secure Form 4180 from all potentially responsible persons. If Form 4180 cannot be secured, document the case history with the reasons why it was not secured.
- (2) The purpose of the personal interview and completion of Form 4180 is to secure direct, detailed information regarding the individual's or other person's involvement in the business in order to determine if they meet the criteria for responsibility (IRM 5.7.3.4.1, Establishing Responsibility) and willfulness (IRM 5.7.3.4.2, Establishing Willfulness). The questions on the form are intended as a guide and are not all inclusive; supplemental questions may be asked.

Note: Notice 609, Privacy Act Notice, should be provided to the individual during the interview.

- (3) **Do not** give or mail Form 4180 to the potentially responsible person(s) or representative for completion by that person or for review prior to the interview. The form must be completed in person or over the phone. Letter 3586, Meeting Scheduled with Individual for TFRP Interview, can be used to schedule an appointment to conduct a 4180 interview.
 - (4) A summons may be necessary to require the potentially responsible person's presence at the interview (See IRM 25.5, Summons and IRM 5.17.6, Summonses, for summons procedures, rights, and privileges).
 - (5) Enter "unknown" in the appropriate block on the form if the person interviewed cannot answer a specific question.
 - (6) Enter "not applicable" in the appropriate block on the form if a question does not apply. **If any information has already been completed on Form 433-B, Collection Information Statement for Businesses, the RO can enter "See 433-B" in the applicable blocks.**
 - (7) Form 4180 is formatted to allow for an abbreviated interview when an individual is determined to be the only responsible person or in situations when a business structure is not complicated. This format allows the RO to more easily tailor the depth of their TFRP investigation based upon the complexity of the business entity/ownership structure. Form 4180 should be used as follows:
 - a. Page 1 incorporates core willfulness and responsibility questions to support assertion recommendations and may be used as an abbreviated interview when there is only one responsible person or in situations when the business entity and ownership structure is not complex.
- Note:** Question responses on page 1 will prompt ROs to make determinations as to whether the TFRP interview should be continued on subsequent pages. For example, if the person being interviewed indicates they used the services of a third party payer, or if the person being interviewed is the third party payer, the form will direct the RO to complete subsequent section(s) on page 3 related to third party payers. If the person being interviewed indicates other individuals had the responsibility or authority to perform the core responsibilities in Section II, the form will direct the RO to complete Section IV and V on page 2. If the RO determines that page 1 of the form sufficiently addresses willfulness and responsibility, and is not prompted to complete additional sections of the form, the taxpayer's signature may be obtained on page 1.
- b. Section VI on page 3 has Payroll Service Provider (PSP) or Professional Employer Organization (PEO) questions to assist the RO in TFRP investigations when a PSP or PEO is involved. If the business has never used the services of a PSP or PEO, Section VI will not require completion.
 - c. Section VII on page 3 will only require completion for excise tax case investigations.
 - d. Page 4 provides narrative space to record any additional information provided by the taxpayer.
 - e. If the RO determines page(s) 2 and/or 3 of the form must be completed, the taxpayer's signature should be obtained on page 4.
- (8) After the interview is completed, ask the potentially responsible person to sign Form 4180. The RO will also sign the form.

Note: Make a copy of the signed Form 4180 and provide it to the potentially responsible person and/or authorized representative, when feasible.

- (9) If the form can only be partially completed, determine whether to add a statement to page 4 indicating which portions of the form are incomplete.

Note: A statement can be updated at a later date with the changes initialed by the RO and the person interviewed.

- (10) If the potentially responsible person agrees to the assessment during an interview:
- Advise the individual of their appeal rights and document the history accordingly.
 - Secure their signature on Form 2751, Proposed Assessment of Trust Fund Recovery Penalty.

Reminder: A Form 4180 interview must still be completed, even if the responsible person or persons sign Form 2751.

- Advise the responsible person interest will accrue on the TFRP from the date of assessment to the date of payment on the underlying trust fund liability and on any unpaid interest. (See IRM 5.7.7.3, Pre-Assessment Payment, for information on processing payments received prior to the assessment of the TFRP).

Note: Provide Letter 1153 to the responsible person (IRM 5.7.4.7, Notification of Proposed Assessment) as soon as possible when Form 2751 is executed during an interview. Do not treat the signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible person may change their mind after signing the waiver. A signature on Form 2751 does not extinguish a responsible person's appeal rights. See IRM 5.7.6.3, Agreed Cases, for actions on agreed cases.

5.7.4.2.5
(07-14-2023)
**Third Party Interviews
and Third Party Contact
Considerations**

- It may be necessary to contact a third party for the purpose of gathering information concerning officers or employees. In these cases, be sure all potentially responsible persons have received the advance notice (Letter 3164-A, Third Party Contact, or Letter 3164-Y, Third Party Contact - Excise Taxes) notifying them that a third party contact may be made. See IRM 25.27.1.3, Notification Requirements for additional information. These letters will be personally delivered or mailed to all persons who may be investigated as soon as they are identified and once it is determined a third party contact will be necessary (see IRM 5.1.1.12.1, TPC Advance Notification Procedures). Letter 3164-A is available as an ICS template, Letter 3164-Y can only be accessed at this time through the Published Products Catalog link, *Find a Product*.
- ROs may secure authorization from potentially responsible person(s) to waive the 45-day waiting period by securing the potentially responsible person's signature on Form 12180, Third Party Contact Authorization Form. This authorization applies **only** to the third parties listed on Form 12180 and **only** waives the advanced notice periods for the potentially responsible person who signed it (multiple forms may be secured, if necessary). Therefore, if the RO intends to issue a bank summons for core documentation, they must list the bank's full

name, address and telephone number on the form. Copies of all signed Forms 12180 should be kept in both corporate and TFRP case files. See IRM 25.27.1.3.6, Taxpayer Authorizes Contact with a Third Party for reference.

Note: Once the RO knows the identity of potentially responsible persons or other parties, such as a third party payer, and intends to contact third parties (bank summons) to secure documentation to determine willfulness and responsibility, Letter 3164-A must be issued to all potentially responsible persons before any interviews are conducted. Completing the Form 4180 interview should not be viewed as a third party contact with respect to persons who are being identified for the first time during the interview. If during the Form 4180 interview, the RO becomes aware of additional potentially responsible persons, the RO will continue conducting the interview and completing Form 4180. The RO does not need to stop in the middle of an interview whenever another potentially responsible person is identified. However, the RO should refrain from asking the interviewee specific probing questions concerning the identified potentially responsible person. If the RO intends to contact third parties to investigate the additional potentially responsible person identified during the interview, they must mail or personally deliver Letter 3164-A and wait for the 45-day to expire prior to making any further third party contacts investigating their willfulness and responsibility.

- (3) If an interview cannot be conducted with the third party, send Form 4181, Questionnaire Relating to Federal Trust Fund Tax Matters of Employer. Form 4181 can be used to interview non-responsible parties who have knowledge of the business and its decision making processes. (See IRM 5.17.7.2.5, Interview of Witnesses).
- (4) If the third party is subsequently implicated as potentially responsible and willful, a personal interview will be recorded on Form 4180.

5.7.4.2.6 (07-14-2023)

Courtesy Investigations

- (1) If one or more potentially responsible persons are located in another area or territory and it is necessary to secure Form 4180 in order to determine responsibility and willfulness, it may be necessary to issue an ICS Other Investigation (OI).
- (2) An ICS OI should not be issued if the information necessary to recommend assertion is available where the employer balance due accounts are assigned.
- (3) The initiating office will furnish the receiving area or territory with all information and documents which relate to the responsibility of the person to be interviewed, including page 4 of Form 4183, calculation sheets, Form 2751, and information regarding issuance of Letter 3164-A.
- (4) The receiving office will:
 - a. Initiate all appropriate correspondence, conduct the necessary interviews, and secure Form 4180.
 - b. Ensure compliance with third party notice requirements.
 - c. Secure Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals.
 - d. Secure waivers (IRM 5.7.3.7.1, Form 2750 Waiver), if appropriate.
 - e. Secure the responsible person's signature on Form 2751 if the responsible person agrees to the assessment following the guidelines in IRM 5.7.4.2.4(10), Form 4180.

- f. Secure and include in the file documentation of sources of income and assets and all necessary supporting documents in order for the initiating RO to make a recommendation for assertion or nonassertion of the TFRP, including nonassertion due to collectibility.
- g. Close the courtesy investigation and submit the documentation to the initiating office for the TFRP determination to be completed.

Reminder: Do not treat the signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible person may change their mind after signing the waiver. A signature on Form 2751 does not extinguish a responsible person's appeal rights. See IRM 5.7.6.3, Agreed Cases, for actions on agreed cases.

5.7.4.2.7
(07-14-2023)
**Evidence That May
Support
Recommendations**

- (1) In the majority of cases, the core evidence necessary to support a TFRP recommendation will be:

- Form 4180 interviews
- Articles of Incorporation
- Bank signature cards **or** electronic PINs/Passwords assignment information
- Copies of a sampling of cancelled checks demonstrating payment to other creditors in preference to the government **or**
- **(Only if the taxpayer predominately uses electronic banking)** bank statements demonstrating debit transaction payments in preference to the government.

Note: If any of the core items listed above are not secured, the ICS case history must document why the items were not secured.

Reminder: Core documentation should be secured and reviewed before sending Form 4183 for managerial approval.

- (2) The documentation, including bank records, will be requested from the business entity whenever possible. If the business entity does not provide the requested records by the deadline provided, a summons will be served on either the business entity, the bank, or both, to secure the required documents (See IRM 25.5, Summons, and IRM 5.17.6.7, Third-Party Contact Requirements of IRC 7602(c), for summons procedures).

Reminder: ROs must ensure and document Letter 3164-A issuance (and expiration of the waiting period) prior to submitting Form 6639, Financial Records Summons, for manager approval to comply with IRC 7602(c).

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 is available at [IRS.gov/connect](https://irs.gov/connect).

Note: See IRM 25.5.1.3.1, Documents from Financial Institutions in the Tenth Circuit, for summons issues specifically related to Kansas, Oklahoma, Wyoming, Utah, Colorado, and New Mexico.

- (3) ICS Form 6639, Financial Records Summons, template provides the option of summoning a bank for additional data, such as bank statements, loan applications and related records, corporate resolutions, and signature cards if not previously secured. These additional documents should not be routinely requested if responsibility and willfulness is supported by the core documents listed in (1) above. The time frames for the documents requested should relate to the tax periods associated with the TFRP investigation. In most instances, only the front of the cancelled checks will need to be secured. **Do not use Form 2039, Summons, to summons a third party record keeper, such as a financial institution, for documents to support a TFRP assessment. All documents related to Form 6639 issuance, including evidence of quash notification delivery, should be maintained in the TFRP case file.**

Reminder: ROs must ensure Part D of Form 6639 is issued to all named parties on the summons, including the business entity, to comply with IRC 7609(a). See IRM 25.5.6.4.1, Procedures for Summonses Issued to Investigate Liabilities for the Trust Fund Recovery Penalty.

- (4) Individual case factors will influence the amount of additional documentation needed to support the TFRP determination. The RO must exercise judgment to determine if documentation beyond the core items is needed prior to submitting the TFRP recommendation for managerial approval. Photocopies of the documentation should be maintained in the TFRP case file as evidence to support the recommendation to assert the TFRP. **Documentation received electronically and saved on CDs does not have to be printed. Document the ICS history that the summonsed information was received via digital media and saved on a portable storage device (PSD), and that the PSD is being placed in the case file. (IRM 25.5.3.6.2.2, Saving Records for Administrative Case File, provides guidance for passwords and placement in file.)**
- (5) There must be sufficient documentation in the TFRP case file to support **each** recommendation, for each specific period of the liability. See IRM 5.7.4.2.7(1) for the core documentation requirements. The example below shows an appropriate assertion recommendation based upon the core documentation items:

Example: An RO completes an initial analysis and identifies potentially responsible persons through the information in the Articles of Incorporation. RO makes a field visit to the business, speaks to the one officer present and secures Form 4180 and Form 433-A, Collection Information Statement. RO requests bank documents from the taxpayer and establishes a deadline for the information. RO schedules and completes a 4180 interview with the officer who was not present during the initial field visit. When officers fail to submit the requested documents, RO delivers Letter 3164-A to both potentially responsible persons, allows the 45-day response time to expire and then prepares Form 6639 requesting bank signature cards and a sampling of the front copy of checks for the periods of the liability. Following the expiration of the bank summons quash period, RO reviews the bank records and determines there are no additional signature authorities on the account. Based upon review of the cancelled checks, RO determines payments were made by both officers to other creditors in preference to the accruing taxes. RO determines both officers possessed the duty, status, and authority to ensure the trust fund taxes were paid. As a result, RO documents the ICS case history with the evidence secured throughout the course of the TFRP investiga-

tion that led to the determination to support recommendation of the TFRP against both officers. RO has secured the core documentation items and has sufficient documentation to support recommendation of the TFRP against both persons.

- (6) If a business is a large or mid-sized corporation, or a business with a multi-layered or complicated ownership structure, or uses the services of a third party payer, the RO may determine additional documentation beyond the core items is necessary to support a TFRP assertion. The more convoluted the corporate structure (multiple potentially responsible persons and/or multiple periods, intricate corporate structure) the more documentation is needed to support the assertion.
- (7) ROs must exercise judgment in determining if documentary evidence beyond the core items is necessary to support a TFRP assertion. Additional business records that may be reviewed include:
- Partnership Agreements; or other documents establishing/forming the business entity.
 - Minute Books.
 - Forms 941, Employer's Quarterly Federal Tax Return; 1120, 1065, U.S. Return of Partnership Income; or, 1040 (for disregarded LLCs).

Note: For cases in which the employment tax returns were submitted in an electronic format (E-file or TeleFile), the signature information is not available on the printed document because the forms are signed via an IRS issued PIN. The Reporting Agent File (RAF) database holds the Reporting Agent Records and related taxpayer/client records. Reporting Agents (RAs) are companies (not individuals) that perform payroll services for other businesses. In connection with the payroll services, RAs may file their client's employment tax returns on magnetic tape or electronically. Taxpayers designate authorization to the RA using Form 8655, Reporting Agent Authorization. IDRS Command Code RFINK will identify the forms and tax periods authorized for the Reporting Agent. The information obtained is mainly to establish a relationship existed between the taxpayer and the payroll service provider. RFINK data could necessitate a deeper investigation of the potentially responsible persons and the payroll service provider(s) to ensure we have addressed all potentially responsible persons. The RO's investigation of who is authorizing payroll and payment of other creditors will provide the most important elements of who is responsible and willful. See IRM 21.3.9, Processing Reporting Agents File Authorizations and IRM 5.1.23.4.4, Authority Granted by Form 8655, for additional information on Reporting Agents.

- Payroll records.
- Copy of the contract or agreement for service between the taxpayer and a third party payer.
- Any other records that may be relevant to determining the roles and responsibilities of individuals involved with the business entity.

Note: 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.

(8) The business records may be reviewed to determine:

- Duties (and changes to duties) of officers, directors, etc.
- Appointments and resignations of officers, directors, etc.
- Responsibilities of individuals to file and pay tax returns.
- Issuance of stock to officers, directors, etc.
- Assets transferred to officers, directors, etc.
- Loans made to officers, directors, etc.
- Unreported payroll and other taxes.
- Diversion of funds.
- Borrowing of funds not used to pay taxes.
- Potentially responsible persons within a Payroll Service Provider (PSP).
- Potentially responsible persons within a Professional Employer Organization (PEO).

(9) Additional bank records that may be reviewed include:

- Correspondence to the bank relative to changes affecting the signature cards or PIN assignment information.
- Loan applications and records of loans.
- Any other records that may be relevant to determining which individuals were involved in the financial affairs of the business.

(10) The bank records can be reviewed to determine:

- Authority of persons to sign checks and deposit funds.
- Authority of persons to obligate the business by borrowing.
- Diversion of funds to officers, members, etc.
- Deposits and withdrawals of alleged loans to business by officers, members, directors, etc.
- Excessive salaries, expenses, etc.
- Payment of other obligations.
- Deposit records for monies received for sale of assets.
- Deposit records of payments for stock, membership, or other ownership rights in the business.
- Payments to third party payers.
- Any other relevant records.

5.7.4.3 (07-01-2025)

Calculating the TFRP

- (1) If a taxpayer submits a partial payment of a liability when there are assessments for more than one taxable period, and does not provide specific written instructions as to the application of the partial payment, then apply the payment in a manner serving the best interests of the government. The payment will generally be applied to satisfy the liability for successive periods in descending order of priority until the payment is absorbed. When considering the best interests of the government and period of priority, in addition to statute and lien priority issues, consideration will be given to applying payments first to non-trust fund modules such as Form 1120, U.S. Corporation Income Tax Return, Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 1040, U.S. Individual Income Tax Return (for disregarded LLCs). If the amount applied to a period is less than the liability for the period, the amount will be applied to tax, penalty, and interest, in that order, until the amount is absorbed (Rev. Proc. 2002-26, 2002-1 C.B. 746, Sec. 3.02). This procedure also applies if there are unassessed amounts for which the IRS and taxpayer agree taxpayer is liable.

- (2) Do not solicit partial designated payments for the sole purpose of reducing the
- (3) The ATFR system should be used to calculate the TFRP balance. The system interfaces with IDRS and receives from IDRS all open trust fund modules with a balance due when it is calculating the trust fund amount. In addition, the user has the ability to add pre-assessed periods and local payments. ATFR may be used at any time during the investigation to determine the current outstanding TFRP balance.

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Reminder: If returns were calculated under IRC 6020(b) and the liability is being included as part of the TFRP assessment, these returns must be submitted for processing and added to ATFR as pre-assessed modules if the assessment has not yet posted. This will allow for the appropriate cross referencing and reconciliation of the trust fund balances required for financial reporting requirements.

- (4) The following TFRP assessments can and should be processed on ATFR:
- Form 941, Employer's Quarterly Federal Tax Return - TFRP is equal to the amount of the employees' share of FICA and withholding.
 - Form 943, Employer's Annual Tax Return for Agricultural Employees - TFRP is equal to the amount of the employees' share of FICA and withholding.
 - Form 944, Employer's ANNUAL Federal Tax Return - TFRP is equal to the amount of the employees' share of FICA and withholding.
 - Form 945, Annual Return of Withheld Federal Income Tax - TFRP is one hundred percent of the tax.
 - Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons - TFRP is one hundred percent of tax.
 - Form CT-1, Employer's Annual Railroad Retirement Tax Return - Due to the different rates on Tier 1 versus Tier II, the ATFR FICA and Withholding amounts downloaded from IDRS will require adjustment. Please seek assistance from your Collection Automation Coordinator (CAC) .

Note: In rare instances (e.g., excise taxes, see IRM 5.7.3.2.1, Personal Liability for Excise Taxable Fuel Taxes, for Form 720, Quarterly Federal Excise Tax Return), you cannot use ATFR to propose and process the TFRP assessment. **Contact your Collection Automation Coordinator (CAC) to verify the action cannot be completed on ATFR and obtain procedural guidance to complete the process manually** (IRM 5.7.3.2(4)).

Locate contact information for your Area CAC or FASS on the ATFR website at: *Functional Automation Support (FAS) Contacts*..

- (5) To determine if there are trust fund taxes owed on Form 720, review TXMODA for abstract numbers or "ABST-NUM 022, 026, 027, 028, and/or 140". These numbers correspond to the IRS numbers listed on Form 720. If TXMODA lists any of these numbers, then the entity has trust fund taxes. Calculate the amount of the TFRP on Form 720 by adding all amounts owed from abstract numbers 022, 026, 027, 028, and 140. Next, subtract any credits. On rare occasions, Form 720 could have a mix of trust fund and non-trust fund abstract number amounts in addition to payments/credits. In this case, the non-trust fund amount should be paid first (see IRM 5.7.4.3.2). The TC 150 amount on Form 720 is comprised of the sum of all abstract numbers. TFRP assessments

on excise tax cases must be completed manually. Contact your Area CAC or FASS for assistance.

- (6) When the single member owner (SMO) and the LLC are the liable taxpayers for different tax periods under the same Employer Identification Number, contact the Area CAC or FASS to create two cases on ATFR. When there are separate cases on ATFR, separate actions may be taken:

If the ...	And there are ...	Then ...
LLC is liable	any individuals subject to the TFRP	complete TFRP using normal processing
SMO is liable	other individuals subject to the TFRP	complete TFRP using normal processing for assessment against responsible persons
SMO is liable	no other individuals subject to the TFRP	close the case on ATFR using the Closed – LLC disposition

- (7) When the original trust fund amount reported (i.e., TC 150) on a return has been satisfied and there is a subsequent assessment of additional tax (e.g., TC 290, 294 or 298, Additional Tax Assessment; TC 300, TC 304, TC 308, Additional Tax or Deficiency Assessment by Examination Division or Collection Division) on the module, any payments made towards the previously satisfied tax may not be reapplied to any part of the additional tax assessment for purposes of the TFRP calculation. There is no distinction if the original assessment was satisfied by Federal Tax Deposit(s) or subsequent payment(s), as the operative fact is that the original tax had been satisfied prior to the additional assessment. The ATFR system has been programmed to take this situation into account and will ask if the user wants the additional assessment included in the TFRP calculation. Refer to IRM 5.7.3.4.2, Establishing Willfulness, for guidance when determining if an additional assessment should be included in the TFRP calculation. Under certain circumstances the previously unfiled return that resulted in a CAWR (Combined Annual Wage Reconciliation) assessment (TC 290) may have been filed by the taxpayer after the CAWR assessment. ROs should do further research to determine if the TC 290 should be excluded from TFRP calculation, as the wages/taxes reported on these previously missing returns, may no longer need to be considered for TFRP assessment purposes (See IRM 5.1.15.7.2, IRS-Combined Annual Wage Reconciliation (IRS-CAWR) for more information).

Exception: If the additional tax assessment (TC 290/298/300) is the result of the reduction or full reversal of an employer tax credit the taxpayer was not entitled to receive and which reduced the non-trust fund portion and/or trust fund portion of tax, and **only** when the assessment statute expiration date (ASED) on the original assessment has not expired, then the IRS may reallocate any previously applied payments in the best interest of the Government in accordance with Revenue Procedure 2002-26 and the sequence of payment application in employment tax cases, as described in IRM 5.7.4.3.1, Sequence of Payment Application in Employment Tax Cases. Employees can identify the reduction or

full reversal of an employer tax credit on IDRS CC TXMODA via TC 767 followed by the related Credit Reference Number (CRN). Please refer to IRM 21.7.2.7.6, COVID-19 Related Employment Tax Relief and Forms 94XX, for a list of Item Reference Numbers (IRN) and CRNs that will assist with identifying the type of employer tax credit being reversed. If the additional tax assessment is related to the reversal of an employer tax credit **and** additional, unreported wages (e.g., CAWR assessment), then the IRS may only reallocate previously applied payments to the amount of tax that increased due to the reversal of the employer tax credit. As with any TFRP investigation, employees must establish and document willfulness existed before recommending assessment of the TFRP.

Reminder: An additional tax assessment does not create a new ASED for the purpose of assessing the TFRP. See IRM 5.7.3.6, Statutory Assessment Period, for more information on TFRP ASEDs.

Note: You should use this same payment application methodology when manually calculating the TFRP for modules involving additional tax assessments.

- (8) Before submitting Form 4183 , for approval, the TFRP calculation must be updated.
- (9) Consider the sequence in the application of payments in employment tax cases, as described in IRM 5.7.4.3.1, when determining the TFRP balance.

5.7.4.3.1

(07-14-2023)

Sequence of Payment Application in Employment Tax Cases

- (1) All undesignated payments on a tax period are applied following the guidelines below:

Sequence of Payment Application	
1.	Non-trust fund portion of tax (employer's share of FICA, or the non-trust fund reported on Form 720)
2.	Trust fund portion of tax (withholding and employee's share of FICA, or the trust fund (collected) excise tax under IRC 6672 on communications or air transportation)
3.	Assessed lien fees and collection costs
4.	Assessed penalty
5.	Assessed interest
6.	Accrued penalty to date of payment
7.	Accrued interest to date of payment.

- (2) Payments listed in the table below will be applied in accordance with the Sequence of Payment Application table, above.

Category of Payment	Apply to
<ul style="list-style-type: none"> Federal Tax Deposit (timely or late), Partial payment on or before due date, or Full payment of tax on or before date return is filed. 	1 and 2
<ul style="list-style-type: none"> Partial payment after due date and before date of assessment. 	1, 2, 6 and 7
<ul style="list-style-type: none"> Partial payment on or after date of assessment, or Involuntary payment. 	1 through 7
<ul style="list-style-type: none"> Designated payment. 	Apply as designated (see IRM 5.1.2.9, Designated Payments)

5.7.4.3.2
(06-26-2012)
**Special Payment
Application Rules**

- (1) Proceeds from an offset or a levy on a contract are applied to the liability incurred during the period of the contract even though the application may not serve the best interests of the government.
- (2) For payments from court proceedings, i.e., bankruptcy, insolvency, or decedents, contact Insolvency (see IRM 5.5, Decedent, Estate and Gift Taxes).

Note: If the Field Insolvency assignment is unknown, research the Insolvency (Bankruptcy) National Field/Centralized Site Directory on Servicewide Electronic Research Program (SERP) under the Who/Where Tab.

5.7.4.4
(07-14-2023)
**Payments by
Responsible Person on
Behalf of the Employer**

- (1) When efforts to collect the tax, penalty, and interest from the employer have been unsuccessful, advise the responsible persons they have two options:
 - Pay the withheld tax liability on behalf of the business. This is the total amount of the tax withheld (trust fund balance) and not a portion to
 - Have the TFRP assessed against them.
- (2) If a responsible person chooses to pay on behalf of the business then:
 - a. Payment will be made by cash, cashier's check, certified check, or other acceptable payment form.
 - b. The responsible person may provide the funds to the business and pay with a business check. Undesignated payments will be applied in the government's best interests, usually against the tax period with the earliest Collection Statute Expiration Date (CSED). See IRM 20.2.5.2.1, Application of Payments, and Rev. Proc 2002-26 .
 - c. If the payment is not made with a business check, the responsible person(s) will provide a signed statement certifying payment is being made on behalf of the business for application to the trust fund tax liability.

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- d. The statement will read as follows: "I/We {Name(s)}, hereby tender payment of \${Amount} and specifically request that such funds be applied to the trust fund tax liability of {Business Name}, {Business EIN} for the period(s) ending {List Each Period}."
- e. This statement protects the government's position in cases in which a responsible person later files a claim for refund of the TFRP, claiming their personal tax payment was misapplied or applied against their wishes to the business liability. ROs may obtain a trust fund designation template on the Trust Fund Recovery section of ICS' Template Listings and provide it for the responsible person to complete.
- f. Retain the signed statement along with a copy of Form 4183 as part of both the balance due and any TFRP case files.

Note: If statements accompanying unsolicited payments are to be accepted as adequate, they must clearly indicate the intent to designate payments, similar to the statement in (d) above.

- g. The TFRP investigation will continue while awaiting designated payments from a responsible person.
- (3) If the payment is not made with a business check and the statement described in IRM 5.7.4.4 (2) above is not provided, the employee will:
- a. Apply the payment to the trust fund portion of tax for the employer business in question;
 - b. Send the person who made the payment a letter stating "in accordance with our understanding of your specific intention to pay the trust fund tax liability on behalf of {insert name of the employer business}, {insert EIN of the employer business}, we have applied your payment of \${insert amount} received on {insert date} toward that company's trust fund tax liability for the period(s) ending {list each period}. If our understanding is incorrect and you intended the payment for a different liability, please respond in writing within thirty days of the date of this letter to the person and address that appear above stating to which liability you wanted the payment applied;"
 - c. Retain the letter (and any written response) or copy as part of both the balance due and TFRP case files;
 - d. Initiate credit transfer action according to the payor's direction, move the payment(s), and continue with the TFRP assessment process if the person timely responds in writing that we have applied the payment incorrectly against their wishes.

- (4) If the business taxpayer submits a payment with a blanket designation to "trust fund," without also supplying a specific tax period(s), this is not a specific designation. If the RO receives a check from the business bank account that contains this instruction and no employment tax period is specified, the RO will apply the payment to oldest CSED employment tax period (usually MFT 01) using DPC 02.

Reminder: The payment must be voluntary. The request or designation for the application of the payment must be specific, in writing, and made at the time of the payment.

- (5) If a responsible person pays the entire withheld tax liability in full **after** approval of Form 4183 and issuance of Letter 1153, once the payment clears and posts to accounts, the TC 130 should be reviewed to determine if TC 131,

Reversal of TC 130 Refund Freeze, is appropriate. The TC 130 may remain appropriate on an individual account, if there are additional pending TFRP assessments from a different business, or related sole proprietor liabilities. If appropriate, the RO will prepare Form 3177, Notice of Action for Entry on Master File, to request input of the TC 131 to release the freeze of any potential refunds for all individuals determined to be responsible for the TFRP.

5.7.4.5
(07-14-2023)
**Form 4183 Penalty
Assessment
Recommendation**

- (1) Review all of the documentation in the case file as well as all Forms 4180 in order to make a determination regarding responsibility (IRM 5.7.3.4.1, Establishing Responsibility) and willfulness (IRM 5.7.3.4.2, Establishing Willfulness) for each responsible person.
- (2) A collectibility determination must be completed (IRM 5.7.5, Collectibility Determination) for each responsible person determined to be both responsible and willful. If the TFRP will not be recommended based on collectibility, prepare Form 9327, Nonassertion Recommendation of Uncollectible Trust Fund Recovery Penalty or of Uncollectible Personal Liability for Excise Tax, prior to submitting Form 4183 for approval.
- (3) The RO must address all person(s) considered for assertion of the TFRP on Form 4183 and must state the reasons for assertion or nonassertion for each person considered. This will include all individuals who were in a position that would warrant consideration. The RO must also indicate whether the individual is fully responsible for all periods or partially responsible for some periods.

Note: When there are multiple officers and one or more are partially responsible for a particular quarter, the Form 4183 narrative section should also address any unique cross-referencing issues by outlining how much of the liability should be cross-referenced upon payment from a partially responsible officer.

- (4) The Form 4183 narrative will include a statement of facts concerning responsibility and willfulness for each person listed, including those persons considered but not recommended for assertion. Do not routinely target all of the principals in the business or prepare the narrative with no specific reasoning for each person listed (including those considered but not recommended for assertion) that Appeals should consider making a final determination as to responsibility and willfulness. An example of a statement to support the recommendation for assessment is as follows:

Example: The Articles of Incorporation indicate that a potentially responsible person was president of the corporation from (date) to (date). They were responsible for filing the tax returns, making financial decisions for the business, and exercised their signature authority on corporate checks at the (Bank name). They stated during the Form 4180 interview that they were aware of the liability but allowed other creditors to be paid so they could remain in business. A review of a sampling of checks for the periods of the liability indicate that the potentially responsible person paid payroll as well as other creditors in preference to the government, such as vehicle, utility and personal vacation expenses. They are both responsible and willful. A review of their financial statement shows equity in assets reflecting collection potential if the TFRP is assessed.

Note: In complex cases, ensure that the willfulness and responsibility factors are fully explained and supported with specific detail in the Form 4183 narrative.

- (5) The following statement is not adequate to support a recommendation for assessment:

Example: A potentially responsible person was an officer, they should have known the taxes had not been paid. They were also authorized to sign corporate checks. They are responsible and willful.

- (6) The TFRP case file must contain adequate information to support the recommendation for assertion of the penalty. The core documentation items listed in IRM 5.7.4.2.7(1) will be secured in most cases. An ICS history addressing missing core documentation items should be made prior to sending the TFRP file to the GM for approval of the Form 4183. A notation in the TFRP case file regarding the missing documentation is insufficient.
- (7) Prepare and submit a completed Form 4183 recommending assertion or non-assertion to the GM for approval as soon as possible after the investigation has been completed. Before submitting the file for approval, the RO will consider the following:
- Are all periods addressed, including unfiled returns?
 - Is the computation correct? Are all payment applications in compliance with IRM guidelines?
 - Are the core documentation items included in the TFRP case file, or has a reason for their absence been documented in the ICS history?
 - Is documentation beyond the core items required to support the assertion?
 - Does the TFRP case file contain evidence covering all periods of the liability?
 - Have all potentially responsible individuals been considered?
 - Has collectibility been addressed on each responsible person?
 - Was all information submitted by the responsible person considered before making the recommendation?
 - Have all issues been adequately addressed?
- (8) If collection appears to be in jeopardy based on the reasons identified in IRM 5.1.4.2, Jeopardy and Termination Assessment Overview, the RO will prepare and submit Form 2644, Recommendation for Jeopardy/Termination Assessment, for approval.

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being recommended, update the calculation of the unpaid trust fund balance on page four of Form 4183. The potential liability of any unfiled returns and previously assessed and/or unassessed trust fund balances must be considered prior to closing the TFRP account based on the dollar criteria.

- (10) ROs must ensure the Form 4183 narrative and ICS history entry made **at the time** of the Form 4183 submission to the GM for approval provides sufficient detail to support a TFRP assertion recommendation. Due to ex parte communication restrictions on supplemental documentation to support TFRP assertions **after** receipt of a taxpayer protest, GMs must ensure the TFRP assertion is fully supported and documented **prior** to approving the assertion on ATFR and

documenting concurrence in ICS. The TFRP case file must contain the necessary core documentation items, or the reason for their absence must be documented in ICS.

- (11) TFRP case files are assembled using either Document 9600-C, Key File Trust Fund Recovery Penalty Case File Tabs (Other than Appeals Cases), or Document 9526, Supplemental File on Other Responsible Officers - Trust Fund Recovery Penalty Case File Tabs (Other than Appeal Cases). Timely protested (Appeals Cases) are assembled in Document 9708, Trust Fund Recovery Penalty Case File Tabs (Appeals Cases). Single responsible person investigations only require use of Document 9600-C (Key File). Use Document 9526 for additional responsible persons. Document 9526 is not a substitute for the Key Case file when there was a prior TFRP assessment against the responsible person.
- (12) It is Field Collection's (FC) responsibility to ensure all required documentation is in the TFRP case file. Control Point Monitoring (CPM) will not review case files to address missing documentation. See IRM 5.7.6-1, TFRP Case File Check Sheet, to assist in case accuracy and completeness.

5.7.4.6

(07-14-2023)

Manager's Review of Trust Fund Recommendations

- (1) The GM must complete a thorough review of the TFRP recommendation to determine the adequacy of the TFRP recommendation prior to the RO issuing Letter 1153. Due to ex parte related restrictions on supplemental documentation to support TFRP assertions after receipt of a taxpayer protest, the GM must ensure prior to Form 4183 approval that the assertion is fully supported and documented. The GM must document their review and agreement with RO's actions. **CPM will not review case files to address missing documentation.**
- (2) The GM must also review and approve any related Forms 9327 for nonassertion due to collectibility prior to approving Form 4183. If the Form 9327 is not approved, Form 4183 must be updated before it can be approved.
- (3) The manager's review of the recommendation must address the same issues the RO addressed before submitting Form 4183 for approval (, IRM 5.7.4.5 Form 4183 Penalty Assessment Recommendation). When the answer to any of the questions is "no," the manager will consider whether to return the recommendation to the RO for corrective action and/or further development. Managers must ensure all required documents are in the case file, that the absence of core documentation has been properly justified, and that a collectibility determination has been made on each responsible person (see IRM 1.4.50, Collection Group Manager, Territory Manager and Area Director Operational Aid; specifically IRM 1.4.50-2, Criteria for Review of Completed Work - Trust Fund Recovery Penalty, IRM 5.7.4.2.7, Evidence That May Support Recommendations and IRM 5.7.5, Collectibility Determination). The GM should verify that the RO completed a full compliance check to confirm additional, subsequent tax liabilities (including unfiled returns) are being considered and document their reasoning for disapproving a Form 4183. ATFR will send a history entry to ICS when Form 4183 is approved by the GM.
- (4) If the Form 4183 is approved by an acting group manager (AGM), then the AGM must provide the RO with their signed Form 10247, Designation to Act, to include with the signed Form 4183 in the TFRP case file. A copy of the Form 10247 should also be included in the business case file.

5.7.4.7

(03-27-2023)

Notification of Proposed Assessment

- (1) Once Form 4183 is approved by the GM, the RO can issue Letter 1153. **Do not** issue Letter 1153 before GM approval of Form 4183.
- (2) Letter 1153 and Form 2751 should be prepared on ATFR whenever possible. Either hand deliver or mail certified (return receipt requested) Letter 1153 and Form 2751 to the responsible person or person(s) **only**, within 20 calendar days of Form 4183 approval. ATFR does not input a date on Letter 1153; therefore **it is important that RO either date stamp or hand write the date of service on Letter 1153, as well as document ATFR and ICS histories regarding service of Letter 1153. It is important to also date the copy of Letter 1153 maintained in the TFRP case file.** Include Publication 1 when delivering Letter 1153 and Form 2751 to the responsible person or persons (see (3) below for the recommended method of delivery). Copies of page 4 of Form 4183 and ATFR's calculation sheets, showing the penalty computation, should also be included with the documents delivered to the responsible person or persons so that they are aware of how payments were applied to the account. ATFR will systemically upload TC 130, Entire Account Frozen from Refunding, to freeze any potential refunds when a Letter 1153 delivery date is entered on ATFR.

Reminder: If a responsible person or corporate entity pays the withheld tax (trust fund) liability in full **after** approval of Form 4183 and issuance of Letter 1153, once the payment clears and posts to accounts, review TC 130 to determine if input of TC 131, Reversal of TC 130 Refund Freeze, is appropriate. TC 130 may remain on an individual account, as there may be additional pending TFRP assessments from a different business, or related sole proprietor liabilities.

Letter 1153	Form 2751
<ul style="list-style-type: none"> • Notifies the responsible person of the proposed assessment • Contains a description of the available appeal rights • Affords the responsible person the opportunity to agree to or to appeal the assessment • Will be modified if the responsible person has filed a bankruptcy proceeding and the automatic stay is still in effect, to delete any references to the IRS collecting the TFRP, any actions the responsible person should take to delay collection activity by the IRS and any collections the IRS may take in Jeopardy circumstances. <p>Note: The modified version will print from ATFR if the responsible person's bankruptcy information is input into ATFR.</p>	<ul style="list-style-type: none"> • Provides a report of the business liability • Provides a breakdown of the proposed TFRP assessment for each quarter for which the TFRP assessment is proposed • Allows the responsible person to agree to the proposed assessment • May be signed by the responsible person at any time during the TFRP investigation or after the IRS has issued Letter 1153. • May be signed by an authorized representative on behalf of a responsible person if Form 2848, Power of Attorney and Declaration of Representative, is executed by that responsible person and completed properly. Item 3 of Form 2848 must say Trust Fund Recovery Penalty (TFRP) under Description of Matter Form 2751 under Tax Form Number and all periods proposed for TFRP assessment must be listed. <p>Note: Do not treat a signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible person may change their mind after signing the waiver. A responsible person's signature on Form 2751 does not extinguish their appeal rights.</p>

- (3) For assessments made under the provisions of IRC 6672 after the enactment of the Taxpayer Bill of Rights 2 on July 30, 1996, the following actions are required:

Note: Document the method of delivery and any discussions with the responsible person related to receipt of Letter 1153 in the ICS history for the corporate's case. These procedures are recommended to ensure the responsible person learns of the IRS' proposed TFRP assessment and has an opportunity to question RO about potential appeal opportunities. If the responsible person later forgets having received Letter 1153, then the ICS history notes regarding the method of delivery may help show that the responsible person is not entitled to another opportunity to contest the correctness or amount of the TFRP in a Collection Due Process (CDP) hearing.

Required Action	Recommendations/ Exceptions
<ul style="list-style-type: none"> A 60-day preliminary notice of proposed TFRP assessment, Letter 1153, must be delivered in person to the responsible person only or mailed certified, return receipt requested, to the responsible person's last known address before giving notice of assessment and demand for payment to the responsible person. See IRM 5.7.3.7.2, Impact of Letter 1153 on Assessment Statute. 	<ul style="list-style-type: none"> It is preferred that RO hand delivers Letter 1153 to the responsible person or persons only, whenever practical For domestic mail delivery, if direct hand delivery is not possible, use U.S. Postal Service Certified Mail Receipt Form 3800 requesting a return receipt. Use registered mail for international delivery of Letter 1153. See IRM 5.7.4.7(4) below regarding certified mail procedures.
<ul style="list-style-type: none"> The IRS must wait 60 days (75 days if the letter is addressed to the responsible person outside the United States), plus an additional five days for receipt and processing of timely mailed protests, after proper delivery of Letter 1153 before issuing notice and demand for payment (Form 3552, Prompt Assessment Billing Assembly). <p>Note: Do not treat a signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible person may change their mind after signing the waiver. A responsible person's signature on Form 2751 does not extinguish their appeal rights.</p>	<ul style="list-style-type: none"> The 60-day rule does not apply to a jeopardy assessment (From 2644).

- (4) For mail delivery, the RO should use U.S. Postal Form 3800, U.S. Postal Certified Mail Receipt, and U.S. Postal Form 3811, Return Receipt, requesting a return receipt. Form 3800 is the small green and white form that is affixed to the front of the mailing envelope. The RO should staple the bottom half of Form 3800 (with the Post Office stamp certifying proof of mailing if possible) to Letter 1153 IRM 5.7.6.14(1), Case File Documentation, states the TFRP file should contain a copy of Letter 1153 with proof of mailing if not personally

delivered. Actual proof of mailing is Form 3800 **but both Form 3800 and Form 3811 should be included in the TFRP case file.**

- (5) If the IRS discovers an individual determined to have been responsible is deceased prior to issuing Letter 1153, determine if a fiduciary exists. Do not assume a surviving spouse is the personal representative of the decedent. A fiduciary is required to give notice to the IRS of the fiduciary relationship. Form 56, Notice Concerning Fiduciary Relationship, may be used for this purpose. Other legal documents establishing fiduciary relationships may be substituted for Form 56. If a fiduciary relationship is unknown, the Letter should reflect the pattern "John Doe (deceased)" and be mailed to the taxpayer's last known address. If a fiduciary relationship is known, the letter should reflect the pattern "John Doe (deceased), Richard Doe, Executor" and be sent to the executor's address as well as to the taxpayer's last known address via certified mail.
- (6) The ATFR program will be updated when Letter 1153 is delivered. Include a copy of Letter 1153 and part 3 of Form 2751 in the TFRP case file. Process the case file according to the instructions in IRM 5.7.6.2, Responsible Person's Response to Letter 1153, based on the responsible person's response to the Letter 1153.

5.7.4.7.1
(07-14-2023)
**Increases to TFRP
Amount after Letter 1153
Issuance**

- (1) When the originally proposed TFRP amount is increased after the issuance of a Letter 1153 and Form 2751, but prior to the TFRP assessment, a new Letter 1153 Form 2751 must be issued to the taxpayer to advise them of the proposed increase. The new Letter 1153 and Form 2751 shall reflect the entire amount being proposed for the affected period(s) only.

Note: A new Letter 1153 and Form 2751 will still be issued on protest cases sustained in Appeals.

- (2) If multiple periods were reflected in the original Letter 1153 and Form 2751, only the period(s) affected by the increase shall be included in the new Letter 1153 and reflected on a new Form 2751. Periods not affected by the increase will continue to be processed in accordance with established procedures and time frames.
- (3) The determination of whether a protest for the period(s) not affected by an increase is timely shall remain based on the date the initial Letter 1153 and Form 2751 were issued, as will all processing time frames for periods not affected by the increase.
- (4) To facilitate the issuance of the new Letter 1153 and Form 2751 for the period(s) affected, you must contact your Collection Automation Coordinator (CAC). The CAC will remove the affected period(s) from the current case and note the reason for the removal in the ATFR history. The CAC will then create a new case for the new issuance and processing. This action will enable the periods not affected by the increase to continue to be processed.
- (5) When a new case is created to address the need to issue a new Letter 1153 and Form 2751 because of an increase in the proposed TFRP amount for a period(s) included in an earlier Letter 1153 and Form 2751, additional periods not previously addressed may be due and subject to a Letter 1153 and Form 2751. These new periods not included in a previous Letter 1153 and Form 2751 may be included in the new Letter 1153 and Form 2751 with the period(s) subject to the increase.

Note: The RO should contact the taxpayer to ensure they recognize the period(s) affected by the increase and the time frame associated with a timely protest.

5.7.4.7.2
(07-14-2023)

Rescission of Proposed Assessment

- (1) Letter 1153-W, Proposed Trust Fund Recovery Penalty Rescission Notification, is used to rescind issuance of Letter 1153.
- (2) If information that was not available prior to the issuance of Letter 1153 is received before the assessment of a TFRP and results in a decision by the RO to reverse all or a portion of the periods on Letter 1153, the RO will take the following actions:
 - Document ICS history with the facts supporting the decision to reverse the prior recommendation.
 - Amend Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, on ATFR and submit the TFRP case file for managerial review and approval.
 - After GM approval of the amended Form 4183, edit the narrative of the responsible person, set periods to **Not Responsible** and secure GM approval of new Form 4183.
 - Generate Letter 1153-W using ATFR for the applicable periods no longer recommended for assertion.
 - Deliver Letter 1153-W and a copy of Letter 1153 to the responsible person(s).
 - Retain a copy of Letter 1153-W in the TFRP case file.
 - If the assessment recommendation is reversed for all periods, the TFRP file should not be forwarded to CPM. Retain the information in the business case file.

Example: An RO conducts a TFRP investigation, secures managerial approval of Form 4183, and issues Letter 1153. After issuing Letter 1153, the RO receives additional information resulting in a decision to reverse the recommendation in whole. The RO documents ICS, prepares an amended Form 4183, and submits the TFRP case file for managerial review and approval. Following managerial approval of the amended Form 4183, the RO generates and issues Letter 1153-W to the taxpayer.

Caution: Letter 1153-W cannot be issued after a protest has been forwarded to Appeals. See IRM 5.7.6.4, Appealing the Proposed Assessment, for procedures when a protest has been received.

- (3) If Letter 1153-W is issued, it will nullify Letter 1153) for the periods listed on Letter 1153-W, and there will be no effect on the Assessment Statute Expiration Date (ASED).
- (4) If the TFRP will not be assessed on any periods, the TC 130, Entire Account Frozen from Refunding, which is systemically generated following input of a Letter 1153 delivery date on ATFR, must be reviewed to determine if reversal of the TC 130 is appropriate. The TC 130 may remain appropriate on an individual account, as there may be additional pending TFRP assessments from a different business or related sole proprietor liabilities. If none of these circumstances are present, initiate action to input TC 131, Reversal of TC 130 Refund Freeze.

5.7.4.8

(06-29-2017)

Determining Whether to Pursue the TFRP in Installment Agreement or Bankruptcy Situations

- (1) The TFRP will normally be pursued when efforts to collect the unpaid tax, penalty, and interest from the employer have been unsuccessful.
- (2) In certain situations, the IRS may decide to withhold assertion of the TFRP while the employer is attempting to resolve the liability through another method. These situations could involve an in-business installment agreement (IRM 5.7.4.8.1, Considerations for In-Business Installment Agreements) or bankruptcy (IRM 5.7.4.8.2, Trust Fund Taxpayer in Bankruptcy), and IRM 5.7.4.8.3, Responsible Person in Bankruptcy).

Note: If the RO determines during pre-contact analysis that the outstanding trust

liabilities, the RO may waive the requirement to secure Form 4180 if a resolution for immediate full payment, short term (less than 120 days) full payment, or IBTF-IA meeting the criteria in IRM 5.7.4.2(3), TFRP Determinations, Interviews and Investigations, is agreed upon during the initial contact with the taxpayer.

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5.7.4.8.1

(07-14-2023)

Considerations for In-Business Installment Agreements

- (1) An RO can secure an in-business installment agreement rather than recommending immediate assertion of the TFRP, as long as:

- The taxpayer qualifies for an in-business installment agreement (IRM 5.14.7, BMF Installment Agreements).
- The TFRP assessment statute expiration date (ASED) is appropriately extended.
- The investigative aspects of the TFRP inquiry are documented and preserved.

Exception: No TFRP determination is required on cases meeting the requirements for In-Business Trust Fund Express Installment Agreements (see IRM 5.14.5.4, In-Business Trust Fund Express Installment Agreements, and IRM 5.7.4.2(3)).

- (2) If an RO determines an in-business installment agreement is the appropriate case action, generally the TFRP will not be assessed if the taxpayer meets the terms of the installment agreement. However, based on the taxpayer's prior history as a repeater or because of the length of the proposed installment agreement, the RO may determine assertion of the TFRP is in the best interests of the government. If the TFRP is not being assessed, the following actions **must be taken relative to the TFRP** if the agreement will not fully pay all balances due at least one year prior to the earliest ASED:

- a. Complete interviews for all potentially responsible persons and any other interviews necessary to determine responsibility and willfulness.
- b. Secure the appropriate Collection Information Statement from all responsible persons and complete the collectibility determination (IRM 5.7.5, Collectibility Determination).
- c. Request a signature on Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, from all responsible persons (see IRM 5.7.3.7.1, Form 2750 Waiver, for the actions required when securing a waiver) to extend the statute to the expected end-date of the agreement plus one year.
- d. Assemble all documentation for completion of the penalty to the point of assessment (including securing approval of Form 4183).

Note: If a responsible person refuses to extend the ASED and their TFRP is determined to be collectible, or if Appeals has already upheld the TFRP recommendation, submit the TFRP file for assessment. After assessment, collection may be withheld on these cases if appropriate (IRM 5.14.7.4.1, Trust Fund Recovery Penalties and Installment Agreements).

- (3) For cases where the installment agreement will fully pay all balances due at least one year prior to the earliest ASED, the RO and the GM should determine how far to proceed with the TFRP investigation in the event the agreement defaults. The decision should be based on the facts of the case, including:
 - Financial condition of the business.
 - Financial position and actions by the responsible persons.
 - Length of the agreement compared to the ASED.
 - Ability to secure documentation in the future to support the recommendation.
- (4) Inform the responsible persons whether or not the penalty will be assessed. If the assessment of the TFRP is being held pending completion of the terms of an installment agreement, advise the responsible persons that default of the agreement will result in the processing of the recommendation for assessment.
- (5) When an in-business trust fund (IBTF) installment agreement is granted, and the TFRP is not being assessed, the TFRP file must be sent along with the IBTF installment agreement to Centralized Case Processing where the agreement is being monitored. Label the TFRP file, "Unassessed TFRP-IBTF IA Backup Documents - Earliest ASED is: {insert date}" Additional information on processing and monitoring these cases is contained in IRM 5.14.7.4, In-Business Trust Fund Installment Agreements Requiring Financial Analysis and Determining Ability to Pay.

Note: While under an approved installment agreement, a corporation may not designate its monthly installment payment be applied to the trust fund portion of the tax (See IRM 5.14.7.5, Payments on Trust Fund Accounts During Approved In-Business Trust Fund Installment Agreements).

- (6) When taxpayers do not meet the terms of their installment agreement, the agreement will be terminated. Centralized Case Processing (CCP) will transfer the case back to FC via ICS. If the case file contains TFRP supporting documents, the assigned RO should request the case file from CCP (see also IRM 5.4.11.8.2, IBTF and PPIA Default Procedures)
- (7) If the responsible person was not previously given appeal rights, follow the procedures in IRM 5.7.4.7, Notification of Proposed Assessment, for notifying the responsible person of the proposed assessment and of their appeal rights.
- (8) If the responsible person was already given appeal rights and Form 2751 was previously secured:
 - a. Compute the new balance using ATFR (no assessment may be made for periods or balances for which the taxpayer was not previously given appeal rights).
 - b. Update the assessment information on the ATFR system.
 - c. Advise the taxpayer of the pending assessment.

- d. Process the case according to IRM 5.7.6.12, Revenue Officer Assessment Actions. If the TFRP account is not resolved (pre-assessed CNC or IA, full pay, etc.), the RO should request assignment of the TFRP assessment when possible (IRM 5.7.6.2.1(6), No Response (Unagreed) Cases and IRM 5.7.6.3(8), Agreed Cases).

5.7.4.8.2
(11-12-2015)
**Trust Fund Taxpayer in
Bankruptcy**

- (1) If an employer who owes trust fund taxes files bankruptcy, the TFRP ASERD is **not** suspended with respect to the assessment. When an RO learns an employer who owes trust fund taxes has filed bankruptcy, they should immediately contact Insolvency. Also, see IRM 5.9.3.10, Trust Fund Recovery Penalty.

Note: If the Field Insolvency assignment is unknown, research the Insolvency (Bankruptcy) National Field/Centralized Site Directory on Servicewide Electronic Research Program (SERP) under the Who/Where Tab.

- (2) If the TFRP determination and investigation have not been completed, the field GM will review the facts of the case and determine whether to issue an ICS OI, Other Investigation, to conduct the TFRP investigation. The determination should be based on the dollar amounts involved, collection potential of the TFRP assessments, effect on compliance, and any other relevant factors.
- (3) In making the TFRP assessment determination, consider all available information including:
 - Refusal of responsible individuals to sign Form 2750 waivers.
 - Pyramiding of additional unpaid liabilities after the petition date.
 - Business continuing to operate at a loss.
 - Liquidation of assets.
 - Excessive compensation to officers, directors, etc. during the proceeding.
 - Inability to effectuate a plan.
 - Unreasonable delay in proposing a plan.
 - Default occurring on plan (e.g., pattern of late payments, missing or sporadic plan payments, plan in arrears, etc.).
- (4) Once it is determined assessment of the TFRP is appropriate, collection may or may not be suspended against responsible persons if a filed bankruptcy limits collection actions. See IRM 5.9.3.10, Trust Fund Recovery Penalty, for a list of relevant factors. ROs must contact the controlling Insolvency office for local guidelines addressing NFTL determination decisions to file, not file, or defer filing, and conditions under which the TFRP accounts are to be suspended, if applicable.
- (5) Secure waivers whenever possible from all responsible persons to protect the TFRP assessment statute (see IRM 5.7.3.6.1, Form 2750 Waiver, for the actions required when securing a waiver). A waiver will be secured if the assessment statute will expire within one year following the scheduled full payment date of the plan. If a responsible person refuses to sign the waiver, continue with the investigation and assertion of the penalty.

5.7.4.8.3
(07-14-2023)
**Responsible Person in
Bankruptcy**

- (1) If a responsible person files a bankruptcy petition after October 21, 1994, the statutory period for assessment will **not** be automatically extended by the bankruptcy filing.

- (2) If the responsible person has filed bankruptcy, immediately contact Insolvency and advise them of the potential liability so a proof of claim may be filed. See IRM 5.9.3.10, Trust Fund Recovery Penalty.
- (3) Although the TFRP is nondischargeable in all bankruptcy cases filed on or after October 17, 2005, it is important to file a timely proof of claim to receive payment through the bankruptcy case.

Reminder: Use the appropriate Letter 1153 when a responsible person is in bankruptcy (IRM 5.7.4.7(2)). The modified version will print from the ATFR system when entering "Y" when asked if the responsible person is in bankruptcy during the Letter 1153 generation process on ATFR.

5.7.4.9
(11-12-2015)
**TFRP and Offers in
Compromise**

- (1) It is the IRS' policy that before an offer to compromise trust fund tax will be investigated for entities in which the TFRP is applicable, i.e. determined to be responsible and willful in regard to the unpaid employment taxes (in business or out of business), the trust fund portion of the taxes must be paid, the TFRP must be assessed against all responsible persons, the trust fund package forwarded for assessment, or a determination has been made by an RO to not assert due to collectibility. See (2) **Note** below, in circumstances when the

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Note: See IRM 5.8.11.6, Documentation and Verification, for circumstances when an offer in compromise is submitted by an entity impacted by the fraudulent acts of a Payroll Service Provider. See also IRM 5.1.24.5.7, Offers in Compromise, for RO actions.

- (2) The amount offered by an entity to compromise unpaid trust fund liabilities will represent what can be collected from that entity. If the IRS enters into a compromise for a portion of the trust fund tax liability, the remainder of the trust fund taxes may still be collected from a responsible person pursuant to Section 6672 of the Internal Revenue Code and *Treas. Reg. 301.7122-1(e)(5)*. See IRM 5.8.4.22.1, Trust Fund Liabilities.

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the business is out of business with no potential to incur additional liabilities, and the RO determines no other prior TFRP assertions (from unrelated entities) were made against the responsible persons, a determination may be made by an RO to not assert the TFRP.

Reminder: TFRP collectibility determinations are still required if the trust fund portion of the taxes was not paid.