



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.7.16

JANUARY 14, 2025

## EFFECTIVE DATE

(01-14-2025)

## PURPOSE

- (1) This transmits IRM 8.7.16, Technical and Procedural Guidelines, Appeals Employment Tax Procedures.

## MATERIAL CHANGES

- (1) Revised IRM 8.7.16.1.5, Terms and Acronyms, to replace the “Online 5081” term with the “BEARS” acronym for gaining access to the Issue Management System (IMS).
- (2) Revised IRM 8.7.16.1.6, Related Resources, as follows:
  - a. Added information on the Taxpayer Bill of Rights (TBOR), based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration)
  - b. Updated the links and directions to Appeals’ Employment Tax Program intranet page and the IRS online version of Document 6209, IRS Processing Codes and Information
  - c. Added reference to IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service
- (3) Revised IRM 8.7.16.2, Using Issue Management System (IMS), to identify the Business Entitlement Access Request System (BEARS), that replaced the “Online 5081” system, for gaining access to IMS and also updated the location of Appeals’ IMS intranet page.
- (4) Revised IRM 8.7.16.5.4, Classification Settlement Program (CSP), to incorporate guidance from IGM # AP-08-0922-0013, Emailing Appeals’ Classification Settlement Program (CSP) Agreements for Compliance Monitoring.
- (5) Revised IRM 8.7.16.9, Agreement Forms and Transmittal Letter, Non Docketed Cases, and IRM 8.7.16.9.1, Form 2504-AD, to remove references to excise tax. See revised Form 2504-AD for reaching employment tax settlements. For excise tax agreements, see new Form 2506-AD, Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment (Excise Tax). In IRM 8.7.16.9.1, converted table with Form 2504-AD language options to paragraph format.
- (6) Revised Exhibit 8.7.16-2, Sample Form 885-T, Line 4 (Largest Amount of Wages Subject to Social Security Act), to include the 2023 year’s maximum amount subject to Social Security tax, resulting in an automatic change to Line 6 (Balance). Also, corrected Line 15 (Total Amount Due).
- (7) Updated references and made editorial changes (including grammar, spelling, and minor clarification) throughout this IRM section.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.7.16, Appeals Employment Tax Procedures, dated August 26, 2020. This IRM also incorporates interim guidance memorandum # AP-08-0922-0013, Emailing Appeals’ Classification Settlement Program (CSP) Agreements for Compliance Monitoring.

**AUDIENCE**

IRS Independent Office of Appeals

Patrick E. McGuire  
Acting Director, Operations Support

8.7.16

Appeals Employment Tax Procedures

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8.7.16.1  
(08-26-2020)  
**Program Scope and Objectives**

- (1) *Purpose:* The Internal Revenue Code Subtitle C, Employment Taxes and Collection of Income Tax, is the primary source for employees determining employment tax liability issues. This IRM section provides procedural guidance for Appeals Technical Employees (ATEs), as defined in Exhibit 8.1.1-1, working these cases. Specifically, IRM 8.7.16 provides guidance on the following:
  - a. Completing initial case actions, including statute protection that might involve FICA taxes reportable on Form 1040
  - b. Distinguishing employment tax liability issues reviewable by the United States Tax Court from non-reviewable issues (i.e. IRC 7436 issues versus non- IRC 7436 issues)
  - c. Settling employment tax liability cases consistent with guidance in IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form
  - d. Identifying the appropriate letters and forms for closing an employment tax liability case
  - e. Using the Issue Management System (IMS) for providing feedback on employment tax liability case decisions
- (2) *Audience:* The primary users of this IRM section are Appeals Officers, Appeals Team Case Leaders, and Appeals Tax Computation Specialists.
- (3) *Policy Owner:* Director, Operations Support
- (4) *Program Owner:* Director, Policy, Planning, Quality and Analysis
- (5) *Contact Information:* Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM section.

8.7.16.1.1  
(08-26-2020)  
**Background**

- (1) Appeals' mission is to resolve tax controversies without litigation on a basis which is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with the Federal tax laws, and enhances public confidence in the integrity and efficiency of the Service. See IRC 7803(e)(3), Purpose and Duties of Office. Appeals accomplishes this mission by considering protested and Tax Court cases and negotiating settlements in a manner which ensures Appeals employees act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. See Pub 5170, Taxpayer Bill of Rights, IRM 8.1.1.2, Accomplishing the Appeals Mission, and IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights.
- (2) Most employment tax liability cases received in Appeals involve "employee vs. independent contractor" issues; however, a wide range of employment tax disputes can be considered. Employment tax returns and their due dates include the following:

<b>Tax Return Form No.</b>	<b>Tax</b>	<b>Period Covered</b>	<b>Due date of Return</b>
Form 940	FUTA	Calendar Year	January 31 of following year
Form 941	FICA and Income Tax Withheld (non-agricultural)	Calendar Quarter	Last day of month following end of quarter
Form 943	FICA and Income Tax Withheld for Agricultural Employers	Calendar Year	January 31 of following year
Form 944	FICA and Income Tax Withheld for Small Employers	Calendar Year	January 31 of following year
Form 945	Income Tax Withheld from Non-Payroll Payments	Calendar Year	January 31 of following year
<i>Form CT-1</i>	RRTA	Calendar Year	February 28 of following year
<i>Form CT-2</i>	RRTA	Calendar Quarter	Last day of second month following end of quarter

- (3) For additional information on types of original and amended returns, see the following:
- IRM 4.23.1, Employment Tax - Employment Tax Objectives, Organization, and IRM 4.23
  - IRM 21.7.2, Employment and Railroad Tax Returns
- (4) Individuals must report federal employment taxes for household employees on Schedule H (Form 1040), Household Employment Taxes. Schedule H is generally filed as an attachment to an income tax return; however, if the employer does not otherwise have an obligation to file an income tax return, Schedule H may be filed as a separate return. The Schedule H filing requirement does not apply in the case of an employer who has chosen to use Form 941, Employer's QUARTERLY Federal Tax Return, Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, or Form 944, Employer's ANNUAL Federal Tax Return.

**Note:** For more information on due dates, see 26 CFR 31.6011(a)-4, Returns of Income Tax Withheld.

8.7.16.1.2  
(08-26-2020)

**Authority**

- (1) Federal employment taxes are imposed by Subtitle C of the Internal Revenue Code under the following chapters:
- Chapter 21 - Federal Insurance Contributions Act [FICA]
  - Chapter 22 - Railroad Retirement Tax Act [RRTA]
  - Chapter 23 - Federal Unemployment Tax Act [FUTA]
  - Chapter 24 - Collection of Income Tax at Source [Federal Income Tax Withholding (FITW)]
  - Chapter 25 - General Provisions Relating to Employment Taxes and Collections of Income Taxes at Source

**Note:** Section 530 of the Revenue Act of 1978, as amended, provides relief from federal employment tax liability if certain conditions are met.

- (2) IRC 7436, Proceedings for Determination of Employment Status, provides for Tax Court review of certain IRS employment tax determinations in connection with the audit of the taxpayer. See IRM 8.7.16.4, Tax Court Jurisdiction.
- (3) If the taxpayer does not file Schedule H (Form 1040), Household Employment Taxes, and instead takes the position that the household worker is not an employee and/or that the taxpayer is entitled to employment tax relief under Section 530, the IRC 7436 procedures apply.
- (4) The authority to settle protested and Tax Court cases is delegated to Appeals Team Managers (ATMs) and Appeals Team Case Leaders (ATCLs) as to their respective cases, but does not include the authority to set aside a closing agreement. For details, see IRM 1.2.2.9.8, Delegation Order 8-8 (Rev. 1), and IRM 1.2.2.9.1 for Delegation Order 8-1. This includes the authority to sign Letter 3523-A , a Notice of Employment Tax Determination Under IRC 7436, as supplemented by Delegation Order 4-26 (Rev. 2) shown in IRM 1.2.2.5.22.
- (5) The authority to enter into a closing agreement, including accepting a Classification Settlement Program (CSP) offer, is delegated to ATMs and ATCLs as to their respective cases. See IRM 1.2.2.9.3, Delegation Order 8-3, and IRM 1.2.2.8.13, Delegation Order 7-13 (Rev. 2), that supplements the authority contained in Delegation order 8-3.

## 8.7.16.1.3 (08-26-2020) Responsibilities

- (1) The Director, Operations Support, is the executive responsible for Appeals' policy and procedural guidance for working employment tax liability cases.
- (2) The Director, Policy, Planning, Quality, and Analysis (PPQA) is the program manager responsible for program oversight.
- (3) The assigned Employment Tax Policy Program analyst is responsible for the content and updates to this IRM section.

## 8.7.16.1.4 (08-26-2020) Program Reports

- (1) PPQA provides trend and data analyses and detailed summary reports for Appeals.

## 8.7.16.1.5 (01-14-2025) Terms and Acronyms

- (1) See Exhibit 8.1.1-1, Common Terms Used by Appeals, for common terms and definitions used in Part 8. Also, the table below lists commonly used acronyms and their definitions:

Term or Acronym	Definition
ACDS	Appeals Centralized Database System is Appeals' computerized case control system (IRM 8.20.3)
ACM	Appeals Case Memo is prepared by the Appeals Technical Employee to explain and support the basis for settlement (IRM 8.6.2)
ASED	Assessment Statute Expiration Date
BEARS	Business Entitlement Access Request System

Term or Acronym	Definition
Form 5402	Appeals Transmittal and Case Memo (IRM 8.6.2)
IDRS	Integrated Data Retrieval System (IRM 10.8.34.3)
RGS	Report Generation Software (IRM 4.10.9.3)
VTS	Validation Tracking System allows user to confirm critical data in ACDS, including ASERD, is accurate at time of validation (IRM 8.10.3)

8.7.16.1.6  
(01-14-2025)

#### Related Resources

- (1) This IRM is the primary source of policy and procedural guidance for Appeals employees working employment tax liability cases. The following table lists related resources:

Reference	Title
IRM 4.23.1	Employment Tax - Employment Tax Objectives, Organization, and IRM 4.23
IRM 4.23.5	Technical Guidelines for Employment Tax Issues
IRM 4.23.6	Classification Settlement Program (CSP)
IRM 4.23.7	Employment Tax on Tip Income
IRM 21.7.2	Employment and Railroad Tax Returns
IRM 21.7.4.4.10	Federal Income Tax Withheld (FITW) / Backup Withholding (BUWH) on Income Tax Returns
Pub 15	(Circular E), Employer's Tax Guide

- (2) For Master File and Non-Master File Tax (MFT) Account Codes, see Section 4(9) of Document 6209, IRS Processing Codes and Information. An online version, *SERP Document 6209*, is available via intranet.
- (3) Appeals *Employment Tax Program* intranet page, under Guidance and Procedures > Examination Policy Resources > Examination Programs (A-Z).
- (4) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.
- (5) In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals will work collaboratively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience. For more information, see IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.



8.7.16.2  
(01-14-2025)  
**Using Issue  
Management System  
(IMS)**

- (1) Use of the Issue Management System (IMS) is mandatory for providing Compliance with feedback on Appeals' employment tax liability case decisions by uploading the settlement determination documents (e.g. Form 5402, Appeals Case Memorandum, computations, agreements, etc.) on the IMS system. Appeals employees who work these cases will have "read" and "print" access through the IMS Team Website for cases in Appeals' inventory. If the case is not in IMS, Appeals will follow the current Feedback Loop process. ACDS remains the Appeals system of record for case management and recording time spent on cases. To gain access to IMS, the employee must submit a request through the Business Entitlement Access Request System (BEARS).
  - a. Each user should request the "PROD USER APPEALS EMPLOYEE ACCESS IMS (ISSUE MANAGEMENT SYSTEM (IMS))." For more information on gaining and modifying access to IMS, visit the Appeals "Issue Management System" intranet page, under Systems Technology > Appeals Applications > IMS-Issue Management System.
  - b. Verify the case is in IMS. If the case is not in IMS, ask your ATM to search the Account and Processing Support (APS) inventory in IMS for cases not currently in your Appeals IMS case inventory.

(2) Account and Processing Support Employee

The primary role of the APS employee in IMS is to assign a case to the Appeals Team Manager, re-assign a case, and (when necessary) re-open a closed case. The APS user has permissions to view Appeals cases to be assigned, open (currently assigned), and closed on the web portal.

(3) Appeals Team Manager

The primary role of the Appeals Team Manager (ATM) and Appeals Team Case Leader Team Manager (ATCLTM) in IMS is to manage and assign LB&I and SB/SE cases, including viewing IMS case documents, assigning Team Lead role, uploading Appeals documents into IMS, and closing an Appeals case in IMS.

(4) Appeals Team Leader

The Team Leader role can be assigned to anyone who supports the resolution of an LB&I or SB/SE case. The primary functions of the Team Leader in IMS includes viewing and downloading case documents, building the team, and uploading Appeals documents.

(5) Appeals Team Member

The Team Member role can be assigned to anyone who supports the resolution of an LB&I or SB/SE case. The primary functions of the Team Leader in IMS includes viewing and downloading case documents, collaborating with the Team Leader and Team Members, and uploading Appeals documents when authorized by the Team Leader.

- (6) Visit the Appeals **Issue Management System** intranet page for additional information, including training modules on the IMS roles for the Appeals employees identified in paragraphs (2) through (5).

8.7.16.3  
(08-26-2020)  
**Appeals Technical  
Employee (ATE) Receipt  
of Newly Assigned Case**

- (1) Follow the procedures detailed in IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE), requiring statute verification within 45 days, initial contact procedures that identify the appropriate initial letter and enclosures, guidance on returning a case to Examination, and closing actions for a premature referral. Appeals will not accept a pre-assessed liability case if the number of days remaining on the ASER for a new receipt is less than 365 days. See IRM 8.21.3, Appeals Technical Employees Statute Responsibility, and IRM 8.7.16.3.1, Verifying the Statutory Period of Limitations. See IRM 8.6.1, Conference and Issue Resolution, that includes Appeals' policies on new issues, new information, and new arguments raised by taxpayers.
- (2) Verify the case is carded-in on ACDS following the same procedures used when a regular income tax case is received, except the **ACDS TYPE = EMPL**. See IRM 8.20.5, Carding New Receipts.
- (3) In addition to the examiner's workpapers, tax returns, 30-day letter (i.e. Letter 950 series), taxpayer's protest, examiner's rebuttal (if applicable), look for the following:
  - a. Consent forms for extending statutes of limitations (if applicable)
  - b. Power of Attorney (if applicable)
  - c. Form 886-A, Explanation of Items (as needed)
  - d. Examination report, including the following:

Form 4665, Report Transmittal (See IRM 8.1.10.4.2, Administrative File)

Form 4666, Summary of Employment Tax Examination

Form 4667, Examination Changes - Federal Unemployment Tax (if applicable)

Form 4668, Employment Tax Examination Changes Report

- (4) Tax returns may be original, copies, or Substitutes for Returns (SFRs). Confirm that all IDRS account modules have been established (with Transaction Code 150 posted) for the liability periods under Appeals' jurisdiction, including modules for alternative positions [e.g. Backup withholding Tax (MFT 16) as an alternative to "worker reclassification"]. See IRM 4.23.10.16.3, Alternative and Whipsaw Positions in Unagreed Cases, and IRM 4.23.12.4.3, IRC 6020(b) Procedures for SFR Employment Tax Cases. For cases with return copies, review transcripts and verify the copies are accurate.
- (5) Confirm managerial approval of penalties, as required by IRC 6751(b), Approval of Assessment. See IRM 8.11.1.2.1, Supervisory Approval of Penalties Before Appeals' Consideration.
- (6) Where there is a failure to comply with significant requirements of the IRM, see IRM 8.2.1.5, Returning a Case to Examination - ATE.

8.7.16.3.1  
(08-26-2020)  
**Verifying the Statutory  
Period of Limitations**

- (1) Ensure that at least 365 days remain on the ASER when a pre-assessed liability case is received by Appeals. The statute review includes verifying the original statute, as well as validating all extensions. Make an entry on the case activity record to indicate the statute date was verified. Use the VTS to update the statute critical data fields on ACDS, if necessary. See IRM 8.21.3.2.1.1, Procedures to Update Statutes on ACDS.
- (2) The statutory period of limitations on assessment of FICA and income tax withholding is three years from April 15 of the year following the year for which the return was due or three years after the date the return was filed, whichever is

later. For RRTA and FUTA taxes, the statutory period is three years from the return's due date for filing or the date the return was filed, whichever is later. If no return was filed, the statute remains open for the assessment of these taxes. [IRC 6501(c)(3)]

- (3) Use Form SS-10, Consent to Extend the Time to Assess Employment Taxes, to extend the period for assessing taxes imposed by FICA, including FICA tax on tip income (for exceptions, see IRM 25.6.22.6.10, Employment Taxes), FUTA, RRTA, and Code provisions relating to withholding of income tax on wages at the source.
- (4) Form 1040, U.S. Individual Income Tax Return, is a multi-purpose tax return reporting both income and FICA taxes. The income tax imposed by IRC 1 (subtitle A) and the Social Security and Medicare taxes imposed by IRC 3101 (under subtitle C) are separate and distinct taxes. If the employee filed Form 1040, but did not report any FICA tax, the ASED for FICA tax has not started to run. The FICA tax may be assessed even if the ASED for income taxes has expired. See Rev. Rul. 79-39, 1979-1 C.B. 435, and IRM 25.6.22.6.10.2, FICA Tax on Tips Not Reported to Employer. However, this rule about the start of the ASED does not apply to an individual's Additional Medicare tax imposed under IRC 3101(b)(2). The filing of Form 1040 **will** start the running of the individual's ASED for the Additional Medicare tax because the calculation of the Form 1040 Additional Medicare tax depends on the individual's filing status. Form 1040 attachments for reporting FICA tax (as a separate and distinct tax under subtitle C) include the following:
  - Form 4137, Social Security and Medicare Tax on Unreported Tip Income
  - Form 8919, Uncollected Social Security and Medicare Tax on Wages
  - Form 8959, Additional Medicare Tax
- (5) Form 1040 Schedule H, Household Employment Taxes, carries its own ASED that is not based on the filing requirements of the taxpayer's Form 1040. An employee has not made a valid return for purposes of the household employment taxes if no entry for the taxes is made on Form 1040. If Schedule H is filed with Form 1040, the ASED begins with the filing of the Schedule H.
- (6) The ASED for self-employment tax begins with the filing of the Form 1040, even if no entry with respect to self-employment tax is made on Form 1040. The Self-Employment Contribution Act (SECA) imposed by chapter 2 of the Code and the individual income tax imposed by chapter 1 are not separate and distinct taxes. Both fall under subtitle A, Income Taxes. Per 26 CFR 1.1401-1 (a), tax on self-employment income shall be assessed, collected, and levied as part of the income tax imposed by subtitle A of the Code and included with the income tax imposed by IRC 1 or IRC 3, except as otherwise expressly provided. See also Rev. Rul. 82-185, 1982-2 C.B. 395.
- (7) Consolidated Returns - When a parent in a consolidated income tax return executes consent Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax, covering Chapter 1 Income Taxes (as discussed in IRM 25.6.22.6.2.1 , Consolidated Returns), the authority of the parent does not automatically extend to taxes outside Chapter 1 Income Taxes, such as excise taxes and employment taxes.

8.7.16.3.2  
(08-26-2020)  
**Authority to Refuse  
Jurisdiction of  
Non-Docketed Cases  
During 90-Day Period**

- (1) Delegation Order No. 8-8 (Rev.1) delegates to Appeals the authority to settle protested and Tax Court cases, as described in IRM 8.7.16.1.2 (4). The Appeals Area Director has the authority to refuse jurisdiction of any non docketed case in which a notice of deficiency was issued by an originating office and the taxpayer requests Appeals' consideration. See IRM 1.2.2.9.8, Delegation Order 8-8 (Rev.1). This "authority to refuse jurisdiction" also applies to non docketed employment tax liability cases for which Compliance issued Letter 3523, Notice of Employment Tax Determination Under IRC 7436, and the taxpayer requests Appeals' consideration during the 90-day period.
- (2) If Appeals accepts the case, any revised report does not nullify or supersede the original notice (Letter 3523), nor does it extend the statutory period for filing a petition with the Tax Court. The ATE should clearly label the revised examination report (i.e. Forms 4666, 4667, 4668) as follows: "Supplement to Notice of Employment Tax Determination Under IRC §7436."

8.7.16.4  
(08-26-2020)  
**Tax Court Jurisdiction**

- (1) IRC 7436, Proceedings for Determination of Employment Status, allows the taxpayer to petition the United States Tax Court if in connection with an audit of the taxpayer there is an actual controversy involving the Service's determination that as part of the examination
  - One or more individuals performing services for the taxpayers are employees of the taxpayer, or
  - The taxpayer is not entitled to treatment under section 530 of the Revenue Act of 1978 (section 530 relief)
- (2) As reflected in IRM 4.23.5, Technical Guidelines for Employment Tax Issues, "IRC 7436 Issue" is an umbrella term that includes:
  - a. Worker classification: Whether a worker is an employee,
  - b. Section 530: Whether a taxpayer is entitled to section 530 relief, and
  - c. Wage issues subject to IRC 7436: Where a taxpayer raises either a worker classification or a section 530 argument with respect to a wage issue.
- (3) "Employment tax" under the statutory language includes the additions to tax, additional amounts, and penalties imposed under subchapter 68A of the Code (IRC 6651 through IRC 6665). The Tax Court has jurisdiction to determine the proper amount of the additions to tax, additional amounts, and penalties that relate to the employment tax imposed by subtitle C with respect to determinations of worker classification and section 530 treatment.

8.7.16.5  
(08-26-2020)  
**Settling an Employment  
Tax Case**

- (1) Appeals has the primary responsibility for resolving disputes without litigation to the maximum extent possible. For guidance on settlement options, see IRM 1.2.1.9.6, Policy Statement 8-47, and IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form. For guidance on preparing an ACM that adequately explains and supports the basis for settlement, see IRM 8.6.2, Appeals Case Memo Procedures.
- (2) IRM 4.23.5, Technical Guidelines for Employment Tax Issues, contains detailed information on employment tax liability issues, including the following:
  - a. Classification of Employment Tax Issues
  - b. Types of Issues - Two Types of Returns Issued
  - c. IRC 7436 Issues

- d. Section 530 of the Revenue Act of 1978
- e. Categories of Employees
- f. Common Law Standard
- g. Government Entities
- h. Social Security Coverage of Employees of Nonprofit Organizations
- i. Fringe Benefits
- j. Accountable Plans

8.7.16.5.1  
(08-26-2020)

## **Distinguishing IRC 7436 Issues From Non-IRC 7436 Issues**

- (1) Some employment tax liability issues are reviewable by Tax Court and some are not. See IRM 8.7.16.4, Tax Court Jurisdiction. Identifying which employment tax liability issues are reviewable by the Tax Court (IRC 7436 Issues) is critical for determining the appropriate closing documents.
- (2) See the following table for types of employment tax liability issues considered by Appeals, along with IRM references and titles:

Issue	IRM Reference	IRM Title
Whether a worker is an independent contractor or employee (common law, statutory, corporate officer, or "Section 218"); or a statutory non-employee	IRM 4.23.5.6	Categories of Employees
Whether certain payments are excepted from the definition of "wages" (e.g. a fringe benefit is excludable from the employee's gross income under IRC 132)	IRM 4.23.5.15.2	Fringe Benefits Under IRC 132 and Definitions
Whether certain services are excepted from the definition of "employment"	IRM 4.23.5.7.3	Corporate Officers
Whether IRC 3509 rates apply	IRM 8.7.16.6.1.4.1	Tax Rates Under IRC 3509
Whether Section 530 applies	IRM 8.7.16.5.2	Section 530 Relief
Whether the taxpayer is entitled to an interest-free adjustment under IRC 6205	IRM 8.7.16.13	Interest-Free Adjustment under Section 6205
Whether issues are subject to Tax Court review under IRC 7436 (worker classification issues and/or wage issues subject to IRC 7436) or non-IRC 7436 wage issues.	IRM 8.7.16.5.1.1 IRM 8.7.16.5.1.2 IRM 8.7.16.5.1.3	Worker Classification Issue Wage Issue IRC 7436 Issue
Whether the taxpayer (not eligible for Section 530 relief) qualifies for a settlement under the Classification Settlement Program (CSP)	IRM 8.7.16.5.4	Classification Settlement Program (CSP)

Issue	IRM Reference	IRM Title
Whether a <i>modified</i> CSP settlement is appropriate for a worker reclassification issue, with a concession of all or a greater portion of the proposed employment taxes than allowed in Compliance's <i>standard CSP settlements</i> <b>Note:</b> This includes a government concession of the liability for tax in the intervening years in consideration of a Closing Agreement for future compliance.	IRM 8.7.16.5.3	ATE's Determination of a Settlement Range
Whether to allow an additional credit against the FUTA if the taxpayer (payor) files corrected reports with the State and pays the additional State unemployment taxes due	IRM 8.7.16.6.1.3 (2)	Form 4667, Examination Changes - Federal Unemployment Tax
Whether to recompute the proposed Federal Income Tax due by the taxpayer (payor) on wages, based on information showing a more accurate effective income tax rate for some or all employees involved	IRM 4.23.8.8	Computing Income Tax Withholding
Whether to concede or sustain proposed penalties based on reasonable effort of the taxpayer to comply with the employment tax rules.	IRM 8.11.1	Return Related Penalties in Appeals

8.7.16.5.1.1  
(08-26-2020)

**Worker Classification Issue**

- (1) The issue is a “worker classification issue” if one of the following applies:
  - a. The worker received compensation reported only on Form 1099-MISC
  - b. The worker was paid, but received no information return, and the taxpayer did not withhold employment taxes
  - c. The worker received both Form W-2 and Form 1099-MISC, but they were for two distinct periods of time or two separate and distinct services performed;

**Exception:** The issue is not a worker classification issue if it is clear the payments were for services performed as an employee in a prior year.
- (2) Worker classification issues are always IRC 7436 issues. For worker classification issues,
  - a. Section 530 Relief applies if conditions are met (see IRM 8.7.16.5.2);
  - b. IRC 3509 rates apply for computing the tax adjustment at reduced or full rates (see IRM 8.7.16.6.1.4.1); and
  - c. The taxpayer is eligible for CSP consideration (see IRM 8.7.16.5.4).

8.7.16.5.1.2  
(08-26-2020)

**Wage Issue**

- (1) The issue is a “wage issue” if the worker was already treated as an employee, but received **additional compensation** that was not included as wages. Examples include the following:
  - a. Payments under non-accountable plans
  - b. Payments in property, such as stock



- c. Payments of non-qualified deferred compensation
- d. Severance payments
- e. Fringe benefits

**Note:** Some “wage issues” could fall under the Tax Court’s jurisdiction. Section 530 Relief and IRC 3509 rates do not apply, and the taxpayer is not eligible for CSP.

8.7.16.5.1.3  
(08-26-2020)  
**IRC 7436 Issue**

- (1) An issue will fall under IRC 7436 if:
  - a. It is a worker classification issue
  - b. It is a wage issue where **either** the payment was reported on Form 1099-MISC, the taxpayer raises the argument that the worker was not an employee, **or** the taxpayer raises an argument that Section 530 applies
  - c. The taxpayer raises Section 530 relief (see IRM 8.7.16.5.2)

**Note:** See also IRM 4.23.5.2.1, Classification of Employment Tax Issues.

8.7.16.5.2  
(08-26-2020)  
**Section 530 Relief**

- (1) Section 530 is a safe harbor provision that prevents the IRS from retroactively and prospectively reclassifying a taxpayer’s workers from “non-employee” (e.g. independent contractor) to “employee” subject to federal employment taxes. Where there are controversies involving whether individuals are employees for purposes of employment taxes, Section 530 of the Revenue Act of 1978 [P.L. No. 95-600, 92 Stat. 2885, (1978)] provides employers (and not the workers) with relief from federal employment tax obligations if certain requirements are met. This relief provision applies to employment tax liabilities under Internal Revenue Code Subtitle C:
  - Chapter 21 - Federal Insurance Contributions Act [FICA]
  - Chapter 22 - Railroad Retirement Tax Act [RRTA]
  - Chapter 23 - Federal Unemployment Tax Act [FUTA]
  - Chapter 24 - Collection of Income Tax at Source for wages [Federal Income Tax Withholding (FITW)]
  - Chapter 25 - General Provisions Relating to Employment Taxes and Collection of Income Taxes at Source
- (2) If for purposes of employment taxes, the taxpayer did not treat an individual as an employee for the period(s) in question and if all federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis *consistent* with the taxpayer’s treatment of such individual as not being an employee, then for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be “deemed not to be an employee” unless the taxpayer had no **reasonable basis** for not treating such individual as an employee. A method for satisfying the “reasonable basis” requirement for not treating an individual as an employee for a period will be met if the taxpayer’s treatment for such period was in reasonable reliance on any of the following “safe harbors”:
  - a. Judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

- b. A past IRS audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions “substantially similar” to the position held by this individual; or
- c. Long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

**Note:** A taxpayer that fails to meet any of the three “safe havens” may still be entitled to relief if the taxpayer can demonstrate reliance on some **other reasonable basis** for not treating a worker as an employee. See IRM 4.23.5.3.3.7, Other Reasonable Basis.

- (3) The taxpayer has not met the “reporting consistency” requirement (i.e. to file all required returns **consistent** with the taxpayer’s treatment of the worker as not being an employee) if the taxpayer (or a predecessor) has treated any individual holding a “substantially similar” position as an employee for purposes of employment taxes for the period (referred to as the “substantive consistency” requirement). For information regarding a “predecessor,” see IRM 4.23.5.12.1, Wages Paid by Predecessor Attributed to Successor.
- (4) If a taxpayer is not required to file, relief will not be denied on the basis that the return was not filed. Rev. Rul. 81-224, Information Returns; Relief Under Section 530 of the Revenue Act of 1978, addresses specific questions about timely filing of Forms 1099–MISC. It provides that:
  - a. Taxpayers that do not file timely all federal tax returns, including information returns such as Form 1099–MISC, consistent with their treatment of the worker as not being an employee may not obtain relief under the provisions of section 530 for that worker for that period.
  - b. Taxpayers that mistakenly, in good faith, file the wrong type of Form 1099 may still be entitled to section 530 relief.

**Note:** IRM 2.3.53, Command Code PMFOL, contains information for requesting IDRS transcripts to determine whether Forms 1099 were timely filed.

- (5) For additional IRM guidance on Section 530 relief, see the following:
  - a. IRM 4.23.5.3, Section 530 of the Revenue Act of 1978
  - b. IRM 4.23.5.3.3.1, Consistency Requirement - Reporting Consistency
  - c. IRM 4.23.5.3.3.2, Consistency Requirement - Substantive Consistency
  - d. IRM 4.23.5.3.3.3, Section 530 - Reasonable Basis
  - e. IRM 4.23.5.3.3.4, Safe Haven - Judicial Precedent or Published Rulings
  - f. IRM 4.23.5.3.3.5, Safe Haven - Prior Audit
  - g. IRM 4.23.5.3.3.6, Safe Haven - Industry Practice
  - h. IRM 4.23.5.3.3.7, Other Reasonable Basis
  - i. IRM 4.23.5.3.4, Effect of Section 530 on Workers
  - j. IRM 4.23.5.3.4.1, State and Local Employees

8.7.16.5.2.1  
(08-26-2020)

**No Section 530 Relief in  
the Case of Certain  
Technical Personnel**

- (1) Section 1706 of the Tax Reform Act of 1986 (P.L. 99-514) amended Section 530 of the Revenue Act of 1978 to add subsection (d) that identifies certain technical workers not eligible for Section 530 relief. See IRM 4.23.5.3.4.2, Workers Not Covered by Section 530. Section 530 relief does not apply in the case of third party arrangements for the following workers:
  - a. Engineer



- b. Designer
- c. Drafter
- d. Computer programmer
- e. Systems analyst
- f. Other similarly skilled worker engaged in a similar line of work

8.7.16.5.2.2

(08-26-2020)

**Burden of Proof for  
Section 530 Relief**

- (1) Section 1122 of the Small Business Job Protection Act of 1996 (P.L. 104-188) amended Section 530 of the Revenue Act of 1978 to add subsection (e) that provides a special “burden of proof” rule for Section 530 relief. Per Section 530(e)(4), the business has the initial burden of proof in demonstrating it is entitled to Section 530 relief. The burden of proof shifts to the government, if the following two requirements are satisfied:

- a. The taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee; and
- b. The taxpayer has fully cooperated with reasonable requests from Service employees.

**Note:** The shift applies to the “reporting consistency” requirement; the “substantive consistency” requirement; and the “three safe harbors” (judicial precedent, prior audit, and industry practice) contained in Section 530(a)(2). The shift does not apply in determining whether the taxpayer had any “other reasonable basis” for treating the worker as an independent contractor.

8.7.16.5.3

(08-26-2020)

**ATE’s Determination of a  
Settlement Range**

- (1) IRM 8.6.4.2, Fair and Impartial Settlements per Appeals Mission, contains guidance on reaching settlement. In worker classification cases, the use of a settlement approach, where a “percentage of payments” is considered “employee wages” and the remaining payments considered “independent contractor payments” directly contradicts the philosophy of employment taxes. However, there are no specific restrictions against using a percentage type settlement.

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- (3) Consider the following factors when attempting to determine a “settlement range” for worker classification cases:

- a. Type of work performed by worker
- b. Type of individuals performing the work
- c. Prevailing treatment of workers within the industry
- d. Common law standard (see IRM 4.23.5.7, Common Law Standard) and the quality of the underlying evidence (availability and credibility);
- e. Current and past position of the Service with respect to type of worker and particular industry as well as potential impact of section 530
- f. History and trend of case law and the same or similar type of worker and industry

**Note:** While the above list is not all inclusive, it can be used as a starting point in determining a settlement range.

- (4) Attempt to settle the case based strictly on the merits if the taxpayer is not willing to enter into a closing agreement with full future compliance. While a settlement does not “lock-in” a commitment from the taxpayer for future years, an agreement to an assessment for the periods under consideration may prevent the taxpayer from later receiving (in subsequent periods) Section 530 relief, based on the “prior audit safe harbor”.
- (5) The taxpayer either files or adjusts (if previously filed) employment tax returns for the intervening periods. Inform the taxpayer that Compliance will be notified of the settlement and may follow-up to confirm that returns with adjustments are filed. If the taxpayer has previously filed employment tax returns, consider the statute of limitations for such periods.

8.7.16.5.4  
(01-14-2025)

**Classification Settlement  
Program (CSP)**

- (1) If the taxpayer does not qualify for “Section 530 relief,” consider whether the taxpayer qualifies for the “Classification Settlement Program (CSP)” described in IRM 4.23.6, Classification Settlement Program (CSP), if the taxpayer timely filed all required Forms 1099 for the particular class of workers in question for the tax periods at issue. The IRS can offer businesses under examination a “worker classification settlement” using a closing agreement, when a worker who was “treated as an independent contractor” is determined to be an “employee”.

(2) **100% CSP Offer**

If the taxpayer timely filed Form 1099's, but fails the “substantive consistency” test or does not have a “reasonable basis,” the CSP offer provides that the taxpayer “begins to treat the workers correctly” and agrees to an assessment equal to one year's tax for the latest audit year, computed using IRC 3509(a) rates, if applicable.

(3) **25% CSP Offer**

If the taxpayer timely filed Form 1099's and has both a “substantive consistency” argument and a “reasonable basis” argument with some merit, the CSP offer must require future compliance and agreement to an assessment equal to 25% of the FICA tax and federal income tax withholding for the latest audit year, computed using IRC 3509(a) rates, if applicable. FUTA is assessed at 100%.

(4) **No Assessment CSP Offer (Section 530 Applied)**

Taxpayers qualify for Section 530 relief but choose to enter into an agreement to treat the workers as employees prospectively.

- (5) If the Form 1099's are **not** timely filed, then the taxpayer is not entitled to a CSP offer - but the case may be appropriate for a settlement based on hazards of litigation.
- (6) Use one the following CSP standard closing agreements depending on the situation:

Form	Title	Situation
Form 14490	Closing Agreement On Final Determination Covering Specific Matters For Taxpayers Entitled To Section 530 Relief	Taxpayers qualify for Section 530 relief but choose to treat the workers as employees prospectively
Form 14491	Closing Agreement On Final Determination Covering Specific Matters Regarding Worker Classification	Taxpayers do not qualify for Section 530 relief, are currently treating the workers as non-employees, and are eligible for a CSP offer
Form 14492	Closing Agreement On Final Determination Covering Specific Matters Regarding The Classification of Workers Currently Treated As Employees	Taxpayers do not qualify for Section 530 relief, are currently treating the workers as employees, and are eligible for a CSP offer.

- (7) Appeals employees will follow guidance in IRM 8.13.1, Processing Closing Agreements in Appeals, for preparing the CSP agreement. This includes guidance in IRM 8.13.1.6.2, Procedure, on completing Form 4222, Closing Agreement Checklist, and contacting a Closing Agreement reviewer. For a list of Closing Agreement reviewers, visit Appeals "Closing Agreement" intranet page, under Guidance and Procedures > Examination Policy Resources > Examination Programs (A - Z). A power of attorney is required when a taxpayer wishes to authorize a representative to execute a closing agreement on behalf of the taxpayer. See IRM 8.13.1.3.5.2, Power Attorney Holder.
- (8) If a CSP agreement is executed, use Form 5402, Appeals Transmittal and Case Memo, to instruct APS that a Closing Agreement is enclosed to ensure APS follows the guidance in IRM 8.13.1.6.2.3, Returns and Files. Also, include instructions for APS to send a copy of the executed CSP agreement, ACM, and Form 5402, **preferably combined in one PDF file**, via encrypted email to *\*SBSE ET-WSD Case Closing Packages* with the subject "**CSP Agreement - Tax Periods 20XX03 - 20XX12.**" The IRS Employment Tax-Workload Section and Delivery (ET-WSD) unit is responsible for monitoring CSP agreements. See IRM 4.23.6.17, Monitoring CSP Agreements, and IRM 4.23.6.18, CSP Compliance Follow-Up.

8.7.16.6  
(08-26-2020)  
**Closing Documents**

- (1) This section provides information on documents needed for closing employment tax liability cases. An Appeals Case Memo (ACM) and Form 5402 are required for each work unit. Locate Form 5402 instructions by accessing the ACDS "Utilities", selecting "Customized 5402 Instructions"; and then select "Customized Form 5402-EMPL" for employment tax liability cases. For key and related cases, prepare consolidated ACMs to avoid duplication of information. The ACM must adequately explain and support the basis of the settlement. See IRM 8.6.2, Appeals Case Memo Procedures. If the correct employment status of a worker is an issue, it is essential to have a detailed and complete description of the work relationship. Per IRM 8.6.2.3.3, Using Form 5402 as an Alert, use Form 5402 to alert the ATM and/or APS employee of significant items in the case to be addressed. Alerts could include information on the following:
  - a. Imminent statute date
  - b. Amounts of advance payments and payment periods
  - c. IRC 6603 deposits and deposit periods
  - d. Special assessment and/or processing instructions

- e. Interest Free Periods under IRC 6205
- f. Agreement secured with closing agreement
- g. Routing Information for CSP agreement

**Reminder:** For cases on IMS, the use of IMS is mandatory for providing Compliance with feedback on Appeals' employment tax liability case decisions by uploading the settlement determination documents (e.g. Form 5402, ACM, computations, agreements, etc.) on the IMS system. If the case is not in IMS, Appeals will follow the current Feedback Loop process. See IRM 8.7.16.2, Using Issue Management System (IMS).

- (2) The required closing documents are shown below for agreed, unagreed, docketed, and non-docketed closures:

Resolution	Closing Documents
Agreed Non Docketed	<ul style="list-style-type: none"> <li>a. Form 5402</li> <li>b. ACM</li> <li>c. Letter 4452 (IRM 8.7.16.11) - <i>APS will mail to taxpayer</i></li> <li>d. Agreement Forms (IRM 8.7.16.9)</li> <li>e. Settlement Computations (IRM 8.7.16.6.1) - <i>Letter 4452 enclosure</i></li> </ul>
Agreed Docketed	<ul style="list-style-type: none"> <li>a. Form 5402</li> <li>b. ACM</li> <li>c. Settlement Computations (IRM 8.7.16.6.1)</li> <li>d. Decision/Stipulation Document (IRM 8.7.16.10)</li> </ul>
Unagreed Non Docketed IRC 7436 Issues	<ul style="list-style-type: none"> <li>a. Form 5402</li> <li>b. ACM</li> <li>c. Letter 3523-A for IRC 7436 issues (IRM 8.7.16.11.1) - <i>APS will mail to taxpayer</i></li> <li>d. Settlement Computations for IRC 7436 adjustments - Letter 3523-A enclosure (IRM 8.7.16.6.1)</li> <li>e. Agreement Form 2504-T - <i>Letter 3523-A enclosure</i></li> <li>f. Pub 3953 - <i>Letter 3523- A enclosure</i></li> </ul> <p><b>Note:</b> See IRM 8.7.16.11.1 (5) for Letter 3523-A enclosures.</p>
Unagreed Non Docketed Non IRC 7436 Issues	<ul style="list-style-type: none"> <li>a. Form 5402</li> <li>b. ACM</li> <li>c. Letter 4451 for non-IRC 7436 issues - (IRM 8.7.16.11) - <i>APS will mail to taxpayer</i></li> <li>d. Settlement Computations for non - IRC 7436 adjustments - (IRM 8.7.16.6.1) - <i>Letter 4451 enclosure</i></li> </ul>

**Note:** For unagreed closures, separate reports MUST be prepared if both Section 7436 issues and non-IRC 7436 issues are present for pre-assessed liabilities. For refund claims and audit reconsideration case closures, see IRM 8.7.7.5, Closing Refund Claim Cases (No Additional Tax), and IRM 8.7.7.17.1, Audit Reconsideration Case Closing Procedures.

- (3) Follow the closing procedures in IRM 8.2.1.11, Preparing the Case File for Closing to APS. Provide APS with Form 5403 Instructions for AIMS controlled cases or Form 3870, Request for Adjustments, for non-AIMS cases to process IDRS account adjustments.

8.7.16.6.1  
(08-26-2020)  
**Settlement  
Computations on  
Employment Tax Cases**

- (1) The Tax Computation Specialist (TCS) is responsible for preparing settlement computations for employment tax cases. Separate reports **MUST** be prepared if both IRC 7436 issues and non-IRC 7436 issues are present. The ATE must identify the worker classification and/or Section 530 issues for the TCS's preparation of the following settlement computation report documents:

- a. Form 3610, Audit Statement (use as needed)
- b. Form 4666, Summary of Employment Tax Examination
- c. Form 4667, Examination Changes - Federal Unemployment Tax (use as needed)
- d. Form 4668, Employment Tax Examination Changes Report

**Note:** For exceptions to using Form 4668, see IRM 8.7.16.6.1.4 (2) regarding Form 4668-C and IRM 8.7.16.6.1.5 regarding Form 4668-B.

8.7.16.6.1.1  
(08-26-2020)  
**Face Sheet of  
Settlement  
Computations**

- (1) Per IRM 8.6.2.7, Settlement Computations as Part of the Appeals Case Memo (ACM), Form 3610, Audit Statement, is used as needed in settlement computations. Form 3610 is recommended for employment tax cases, but not required. If using a Form 3610 as a face sheet, identify the "Kind of Tax" or "Type of Tax". See Exhibit 8.7.16-1 for a sample Form 3610. If Form 3610 is not used, Form 4666 is the face sheet.

8.7.16.6.1.2  
(08-26-2020)  
**Form 4666, Summary of  
Employment Tax  
Examination**

- (1) Form 4666, Summary of Employment Tax Examination, is used as a cover and reference sheet and summarizes the FICA taxes, RRTA, income tax withholding, and FUTA adjustments. It also summarizes tax credits and penalties. Form 4666 is the first page of the settlement computation report and will be numbered "1 of xx". Form 4667, Form 4668, Form 4668-B, and Form 4668-C will also be numbered and the numbers shown in column (g) of Form 4666.
- (2) Compliance's Excel employment tax workbook includes Form 4666. A link to the workbook can be found by clicking on "Spreadsheets" on the *Appeals Tax Computation Specialists* intranet page, and then look for the "Employment Tax - SBSE" folder.
- (3) For Form 4666 instructions, see Exhibit 4.23.10-1, Form 4666, Summary of Employment Tax Examination. If an examination involves both IRC 7436 and non-IRC 7436 issues, separate reports are prepared. Each Form 4666, 4667, 4668, 4668-B, 4668-C will be noted whether the adjustments are "Non-7436 adjustments," "7436 adjustments (worker classification issues)," or "7436 adjustments (wage issues)."

8.7.16.6.1.3  
(08-26-2020)  
**Form 4667, Examination  
Changes - Federal  
Unemployment Tax**

- (1) Form 4667, Examination Changes - Federal Unemployment Tax, is used for FUTA tax liability audits of Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, resulting in additional tax, overassessments, or delinquent tax. Adjustments to Form 1040 Schedule H, Household Employment Taxes, may require preparation of Form 4667. Household employers must pay FUTA taxes only if they pay cash wages to all household employees totaling \$1,000 or more in any calendar quarter in the current or prior calendar year.

See IRM 8.7.16.21, Computations Involving Adjustment to Household Employment Taxes (Schedule H).

- (2) IRC 3302, Credits Against Tax, allows for credits against the FUTA tax for payments of State Unemployment Taxes (SUTA) if the taxpayer reports the additional tax and provides proof of payment of the state taxes due. The burden of “proof of payment” is on the taxpayer for securing the state’s certification of the amount of additional state wages reported and the amount of tax paid on the additional wages. Employers whose payments are received by the state after the due date of the federal return plus extensions are “allowed 90% of the credit that would have been allowed” had the payments been made on time. For additional information on the FUTA tax credit, see IRM 4.23.10.11, Credit for FUTA Tax in Examination.
- (3) Compliance’s Excel employment tax workbook includes Form 4667. A link to the workbook can be found by clicking on “Spreadsheets” on the *Appeals Tax Computation Specialists* intranet page, and then look for the “Employment Tax - SBSE” folder.
- (4) For Form 4667 instructions, see Exhibit 4.23.10–2, Form 4667, Examination Changes - Federal Unemployment Tax.

8.7.16.6.1.4  
(08-26-2020)

**Form 4668, Employment  
Tax Examination  
Changes Report**

- (1) Form 4668, Employment Tax Examination Changes Report, is the basic report form used for all Form 941, Form 943, Form 944, and Form 1040 - Schedule H examinations resulting in additional tax, overassessments, or delinquent tax. For Form 4668 instructions, see Exhibit 4.23.10-3, Form 4668, Employment Tax Examination Changes Report. Adjustments to Form 1040 Schedule H, Household Employment Taxes, may require preparation of Form 4668. See IRM 8.7.16.21, Computations Involving Adjustment to Household Employment Taxes (Schedule H).
- (2) Form 4668-C, Employment Tax Examination Changes Report - Railroad, is the basic report form for examinations for Railroad Retirement Act (RRTA) adjustments on *Form CT-1*, Employer’s Annual Railroad Retirement Tax Return, and *Form CT-2*, Employee Representative’s Quarterly Railroad Tax Return. For Form 4668-C instructions, see Exhibit 4.23.10–5, Form 4668-C, Employment Tax Examination Changes Report - Railroad.
- (3) Use a separate Form 4668 for:
  - a. Each calendar year;
  - b. Unagreed cases that involve wage issues and worker classification issues; and
  - c. Agreed cases that involve wage issues and worker classification issues when the worker classification issue is resolved with a CSP agreement.

(4) **Form 4668, Line 8 - Penalty Code Section 6656**

Failure to Deposit (FTD) Penalties are only computed on taxes actually withheld plus the employer’s share. For examples, see Rev. Rul. 75-191.

(5) **Form 4668, Line 11 - Maximum tax available for abatement under IRC 3402(d)** - “If not applicable, enter none.” (DO NOT LEAVE BLANK.)

IRC 3402(d), Tax Paid by Recipient, provides that when an employer fails to withhold “Income Tax” from employees’ wages, the employer is liable for payment of



the tax “required to be withheld”, unless the employer can show that the tax “not withheld, as required” has been paid by the employee. Enter on Line 11 the “maximum amount of tax available for abatement under IRC 3402(d)” and attach to Form 4668 a schedule listing the workers and related income tax withholding amounts available for abatement that reconciles to the totals on Line 11. See IRM 8.7.16.12, Forms 4669 and 4670, for information on the process for the taxpayer (payor) to request this type of abatement.

**Caution:** If an employment tax assessment is made using IRC 3509(a) or (b) rates, a taxpayer will not be entitled to an abatement under IRC 3402(d). See IRM 8.7.16.6.1.4.1 (4).

(6) **Form 4668, Line 12 - Maximum tax available for abatement under IRC 3102(f)(3)** - “If not applicable, enter none.” (DO NOT LEAVE BLANK)

IRC 3102(f)(3), Special Rules for Additional Tax, provides that when an employer fails to withhold “Additional Medicare Tax” from employees’ wages, the employer is liable for payment of the tax “required to be withheld,” unless the employer can show that the tax “not withheld, as required” has been paid by the employee. Enter on Line 12 the “maximum amount of tax available for abatement under IRC 3102(f)(3),” and attach to Form 4668 a schedule listing the workers and related Additional Medicare Tax amounts “not withheld, as required” that reconciles to the totals on Line 12. See IRM 8.7.16.12, Forms 4669 and 4670, for information on the process for the taxpayer (payor) to request this type of abatement.

(7) IRM 4.23.10.12, Securing Form W-2 or W-2C, requires examiners in agreed cases involving non-CSP issues to instruct employers to submit Form W-2, Wage and Tax Statement, and/or Form W-2C, Corrected Wage and Tax Statement for each employee whose wages are adjusted by this report, along with the appropriate transmittal form(s) (i.e. Form W-3, Transmittal of Wage and Tax Statements, and/or Form W-3C, Transmittal of Corrected Wage and Tax Statements). These instructions are shown at the bottom of Form 4668, page 1.

(8) Form 4668 - “Schedule of Adjustments” contains IRS Reference (**IRS Ref**) codes to be posted to IDRS for adjustments to FICA wages and tax. For more information on these codes, see the following:

- Document 6209, IRS Processing Codes and Information, Section 8C(3), Item Adjustment Codes & Credit Reference Numbers
- *Exhibit 3.14.2.23*, Credit Reference Numbers
- *Exhibit 8.20.7-1*, Form 5403, Appeals Closing Record (Instructions), Item 15

**Note:** As shown on Form 4668, Adjustment to FICA Wages and Tax, adjustments must be entered next to the applicable code sections for full rates (IRC 3101 and IRC 3111), reduced rates under IRC 3509 or other applicable code sections listed on this form. For more information on IRC 3509 rates, see IRM 8.7.16.6.1.4.1, Tax Rates Under IRC 3509.

(9) Compliance’s Excel employment tax workbook includes Form 4668. A link to the workbook can be found by clicking on “Spreadsheets” on the *Appeals Tax Computation Specialist* intranet page, and then look for the “Employment Tax - SBSE” folder.

8.7.16.6.1.4.1  
(08-26-2020)

**Tax Rates Under IRC 3509**

- (1) When an employer erroneously treats an “employee” as a “non-employee” and does not withhold federal employment taxes, the employer is liable under IRC 3102, Deduction of Tax From Wages, and IRC 3403, Liability For Tax, for the employee’s share of social security and Medicare tax and FITW.
- (2) IRC 3509, Determination of Employer’s Liability For Certain Employment Taxes, provides for reduced rates for FITW and the **employee’s share** of social security and Medicare tax if an employer failed to withhold employment taxes by reason of treating such “employee” as a “non-employee.”
  - a. If Forms 1099-MISC (or other information reporting returns were filed consistent with the taxpayer’s treatment of the workers) were timely filed with respect to workers who were reclassified as employees, an employer is entitled to IRC 3509(a) rates.
  - b. An employer who failed to timely file the appropriate information returns is entitled to less favorable rates under IRC 3509(b), unless such failure to file is due to the “employer’s intentional disregard of the requirement to deduct and withhold such tax.” See IRC 3509(c).
  - c. If IRC 3509(c) or (d) applies, the full rates (under IRC 3101 and IRC 3111) must be used for computing the tax adjustments.
  - d. IRC 3509(d), Special Rules, provides that IRC 3509 does not apply to certain statutory employees [see IRC 3121(d)(3)] or to an employer with respect to wages where the employer deducted and withheld income taxes on such wages, but failed to deduct and withhold FICA tax.

**Reminder:** The provision for reduced rates does not relieve the employer of any portion of the **employer’s share** of social security and Medicare and FUTA taxes.

- (3) IRC 3509 applies only to worker classification adjustments. When a “wage issue” falls under IRC 7436, it does not become a worker classification issue; it remains a “wage issue” and IRC 3509 rates are not applicable. See IRM 8.7.16.5.1.1, Worker Classification Issue, and IRM 8.7.16.5.1.2, Wage Issue, for guidance on when employment tax issues are considered “wage” or “worker classification” issues.
- (4) If IRC 3509 applies, the offset provisions of IRC 3402(d), Tax Paid by Recipient, and IRC 6521, Mitigation Effect of Limitation in Case of Related Taxes Under Different Chapters, do not apply.

**Reminder:** Application of IRC 3509 is mandatory if the criteria are satisfied.

- (5) IRM 2.3.53, Command Code PMFOL, contains information for requesting IDRS transcripts to determine whether Forms 1099 were timely filed.
- (6) See IRM 4.23.8.5, IRC Section 3509, and its related subsections.

8.7.16.6.1.5  
(08-26-2020)

**Form 4668-B, Report of Examination of Withheld Federal Income Tax for Withholding Reported on Forms 1099 and W-2G**

- (1) Form 945, Annual Return of Withheld Federal Income Tax, is used for non-payroll income tax withholding. Non-payroll items include the following:
  - Pensions
  - Annuities and IRA’s
  - Military retirement
  - Gambling winnings
  - Indian gaming profits



- Backup withholding

- (2) Adjustments of “back-up withholding” and “income tax withholding” reportable on Form 945 are reflected on Form 4668–B, Report of Examination of Withheld Federal Income Tax. As stated in IRM 8.7.16.6.1.4 (8), this report form contains **IRS Ref** codes to be posted to IDRS.
- (3) Compliance’s Excel employment tax workbook includes Form 4668-B. A link to the workbook can be found by clicking on the “Spreadsheets” on the *Appeals Tax Computation Specialists*, and then look for the *Employment Tax - SBSE* folder.
- (4) For Form 4668-B instructions, see *Exhibit 4.23.10–4*, Report of Examination of Withheld Federal Income Tax.

8.7.16.7  
(10-01-2015)  
**Adjustments to Form 944, Employer’s ANNUAL Federal Tax Return**

- (1) Form 944, Employer’s ANNUAL Federal Tax Return, is designed so the smallest employers can file and pay their employment tax liabilities only once a year, instead of quarterly. If the IRS notified an employer to file Form 944, the employer must file this form. If the employer did not receive written IRS notification to file Form 944, an employer could qualify for the program if one of the following applies:
  - The taxpayer is a new employer who expects to have less than \$1,000 in employment tax liability for the calendar year, or
  - The taxpayer filed Form 944 for the prior year and reported \$1,000 or less in total tax liability.

**Note:** Additional information regarding Form 944, the Form 944 Program, and the transition of current filers may be found in IRM 21.7.2.4.9, Form 944, Employer’s ANNUAL Federal Tax Return.

- (2) Any adjustments to items reported on Form 944 are made to the 4th quarter on Form 4668, Employment Tax Examination Changes Report.

8.7.16.8  
(08-26-2020)  
**Adjustments to Form 945, Annual Return of Withheld Federal Income Tax**

- (1) Form 945, Annual Return of Withheld Federal Income Tax, must be filed to report backup withholding (BUWH) and income tax withheld from non-payroll items, such as:
  - Pensions
  - Annuities
  - IRA distributions
  - Military retirement
  - Gambling winnings
  - Indian Gaming Profits
  - Payments subject to backup withholding
  - Certain government payments on which the recipient elected voluntary income tax withholding

**Note:** All income tax withholding and BUWH reported on Form 1099 or W-2G must be reported on one Form 945.

- (2) Form 945 is an annual return - due January 31 following the close of the calendar year.

**Exception:** The return due date for Form 945 is extended 10 days if timely deposits are made which full pay the amount of tax reported.

- (3) Adjustments to non-payroll items reported on Form 945 are made using Form 4668–B, Report of Examination of Withheld Federal Income Tax.

8.7.16.9  
(01-14-2025)

**Agreement Forms and Transmittal Letter, Non Docketed Cases**

- (1) For an agreed case, the ATE will mail to the taxpayer and authorized representative (if applicable) the following to secure written agreement:

- Letter 4450, Employment Tax Agreed Form 2504 (types) Transmittal
- Form 2504 type agreement form (see table below)
- CSP Closing Agreement, if applicable - (see IRM 8.7.16.5.4, Classification Settlement Program (CSP))
- Computations- (see IRM 8.7.16.6, Closing Documents, and related subsections)

- (2) The Form 2504 type agreements are identified below:

Agreement Form Number	Form Title	IRM Reference
Form 2504-AD	Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment (Employment Tax)	IRM 8.7.16.9.1
Form 2504-T	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436)	IRM 8.7.16.9.2
Form 2504	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436)	IRM 8.7.16.9.3
Form 2504-S	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436; Worker Classification or Section 530 Issues Not Addressed in this Exam)	IRM 8.7.16.9.4

**Note:** For report documents, see IRM 8.7.16.6.1, Settlement Computations on Employment Tax Cases, and its related subsections.

- (3) Form 906, Closing Agreement on Final Determination Covering Specific Matters, is also available for entering into agreements involving non-worker classification/Section 530 employment tax disputes, along with the appropriate Form 2504 type agreement. See IRM 8.13.1, Processing Closing Agreements in Appeals. A power of attorney is required when a taxpayer wishes to authorize a representative to execute a closing agreement on behalf of the taxpayer. See IRM 8.13.1.3.5.2, Power of Attorney Holder.

8.7.16.9.1  
(01-14-2025)  
**Form 2504-AD**

- (1) Form 2504-AD, Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment (Employment Tax), is used when there is a need for more finality than that provided by execution of Form 2504, Form 2504-S or Form 2504-T and most often occurs when the settlement involves a partial concession by the government based on hazards of litigation. See IRM 8.6.4.4, Agreement Forms Secured in Appeals Cases, IRM 8.6.4.4.1, Distinction Between General and Special Agreement Forms, and IRM 8.6.4.4.3, Agreement Used When Taxpayer Requests Greater Finality. This form, as all other agreement or waiver forms ending in **AD** (for “Appeals Division”), is only used by Appeals. While not having the effect of a final closing agreement (per IRC 7121, Closing Agreements), this form precludes the IRS reopening of the case except for fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculation of the tax. See IRM 1.2.1.9.3, Policy Statement 8-3 (Formerly P-8-50).
- (2) When using Form 2504-AD the user must select Option 1, 2, or 3 from this form’s selectable paragraphs, depending on the circumstances of each case. The three possible options for employment tax adjustments are shown below in paragraphs (3) through (5):
- (3) **Form 2504-AD Language Option 1** - Select for employment tax adjustments involving employment status or Section 530 (7436 Issues) to add the following language to this form:
  - a. “I consent to the immediate assessment (increase in tax and penalties and/or decrease in credits) and collection of any such amounts. In addition, I accept any overassessment (decrease in tax and penalties and/or increase in credits) shown below, plus any interest provided by law. I understand that by signing this agreement, I am waiving the restrictions on assessment provided in section 7436(d) and 6213(a) of the Internal Revenue Code 1986.”
- (4) **Form 2504-AD Language Option 2** Select for employment tax adjustments not subject to IRC 7436, only if Examination did not address worker classification or Section 530 issues in the employment tax examination. This selection will add the following two paragraphs to this form:
  - a. “I consent to the immediate assessment (increase in tax and penalties and/or decrease in credits) and collection of any such amounts. In addition, I accept any overassessment (decrease in tax and penalties and/or increase in credits) shown above, plus any interest provided by law.”
  - b. “The examination of your employment tax returns as reflected on this agreement did not include an examination for employment tax purposes of whether any individuals should be treated as employees of the taxpayer pursuant to Section 530 of the Revenue Act of 1978 as amended by Section 1122 of the Small Business Job Protection Act of 1996.”
- (5) **Form 2504-AD Language Option 3** - Select for employment tax adjustments not subject to IRC 7436 where Examination also addressed worker classification or Section 530 issues although no adjustments were proposed for these issues. This selection will add the following paragraph:
  - a. “I consent to the immediate assessment (increase in tax and penalties and/or decrease in credits) and collection of any such amounts. In

addition, I accept any overassessment (decrease in tax and penalties and/or increase in credits) shown above, plus any interest provided by law.”

8.7.16.9.2  
(08-26-2020)  
**Form 2504-T**

- (1) If the settlement is not based on hazards of litigation, secure an agreement to adjustments for all IRC 7436 issues on Form 2504-T, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment. Form 2504-T replaced Form 2504-WC, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases, and is used for worker classification and Section 530 issues either before or after a “Notice of Employment Tax Determination under IRC 7436” is issued to allow for immediate assessment of the tax liability or over assessment without waiting for the time for petitioning the Tax Court to expire. For non-7436 issues not based on hazards settlements, secure agreement Form 2504 or Form 2504-S for these issues based on whether or not the examination of worker status was also part of the examination. See IRM 8.7.16.9.3, Form 2504, and IRM 8.7.16.9.4, Form 2504-S. Form 2504-T, Form 2504, and Form 2504-S do not have the finality that a Form 2504-AD has, and the taxpayer may file a claim for refund (after paying the tax).
- (2) For additional information on agreement Form 2504-T, see the following:
  - a. IRM 4.23.10.10.4, Employment Tax Change Report
  - b. IRM 4.23.10.10.10, Form 2504, Form 2504-S, and Form 2504-T
  - c. Exhibit 4.23.10-8, Form 2504-T, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436)

**Reminder:** For Form 2504-T, check the box at the top of the form if the employment tax did not include an examination of whether any individual should be treated as employees. This will result in the inclusion of the following language:

*“The examination of your employment tax returns as reflected on this agreement did not include an examination for employment tax purposes of whether any individuals should be treated as employees.”*

8.7.16.9.3  
(08-26-2020)  
**Form 2504**

- (1) Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436), is used for adjustments to the non-IRC 7436 portion of an employment tax examination where a worker classification issue was also part of the examination, whether or not the examination of worker status resulted in re-classification. Use Form 2504-T for the IRC 7436 portion, if applicable.
- (2) For additional information on agreement Form 2504, see the following:
  - a. IRM 4.23.10.10.4, Employment Tax Change Report
  - b. IRM 4.23.10.10.10, Form 2504, Form 2504-S, and Form 2504-T
  - c. Exhibit 4.23.10-6, Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436)

8.7.16.9.4  
(08-26-2020)  
**Form 2504-S**

- (1) Form 2504-S, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436; Worker Classification or Section 530 Issues Not Addressed in this Exam), is used when other employment tax issues not related to worker classification and section 530 are adjusted and worker classification is not addressed.
- (2) For additional information on agreement Form 2504-S, see the following:
  - a. IRM 4.23.10.10.4, Employment Tax Change Report
  - b. IRM 4.23.10.10.10, Form 2504, Form 2504-S, and Form 2504-T
  - c. Exhibit 4.23.10-7, Form 2504-S, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436; Worker Classification or Section 530 Issues Not Addressed in this Exam))

8.7.16.10  
(08-26-2020)  
**Agreement Form and Transmittal Letter - Docketed Cases**

- (1) The Decision/Stipulation Document is the agreement form for docketed cases used for a no-change settlement, additional tax due from the taxpayer, or a refund due the taxpayer. Contact TEGEDC Area Counsel for assistance in preparing the Decision/Stipulation document. See IRM 8.4.1.11.2, Stipulation/Decision Preparation. The Decision Document is prepared according to U.S. Tax Court requirements and is signed by the taxpayer or authorized representative and the appropriate Counsel official as a representative of the Chief Counsel. Follow the guidance in IRM 8.4.1, Procedures for Processing and Settling Docketed Cases.
- (2) Use Letter 1220, Docketed Case Decision Document Transmittal - Deficiency, or Letter 1220-A, Docketed Case Decision Document Transmittal - No Amount Due, to send settlement documents to the taxpayer and authorized representative (if applicable). See IRM 8.4.1.16, Letters Used on Docketed Cases.
- (3) Letter 971, Letter Advising No Settlement - Docketed Case, is available to notify a petitioner that no settlement has been reached and that the case has been referred to Counsel for trial preparation.

8.7.16.11  
(08-26-2020)  
**Closing Letters - Non Docketed Cases**

- (1) Prepare one of the closing letters below, depending on the circumstances:

Letter	Title	Situation
Letter 4452	Employment Tax Closing Letter Agreed	Used by Appeals to close agreed employment tax cases
Letter 4451	Employment Tax - Unagreed Non Worker Classification	Used for unagreed excise and employment tax cases with no Tax Court rights
Letter 3523-A	Notice of Employment Tax Determination Under IRC 7436	Used for unagreed employment tax cases with Tax Court rights (7436 issues)

- (2) APS will date and mail the closing letter(s) when processing the case for closure or interim action, such as mailing Letter 3523-A. If unagreed IRC 7436 and non IRC 7436 issues are involved, APS will mail Letter 4451 for the non

7436 issues and process those closing adjustments as an interim action. APS will send Letter 3523-A by certified or registered mail (if sent outside the United States) and suspense the case, following the same procedures for issuing a Statutory Notice of Deficiency. See IRM 8.20.6, Account and Processing Support (APS), Interim Actions. The mailing of the Notice of Employment Tax Determination Under IRC 7436 does not suspend the ASER for the non IRC 7436 issues.

8.7.16.11.1  
(08-26-2020)  
**Letter 3523-A, Notice of  
Employment Tax  
Determination Under IRC  
7436**

- (1) The TCS is responsible for preparing Letter 3523-A, Notice of Employment Tax Determination Under IRC §7436, for issues subject to Tax Court review in unagreed cases. On Letter 3523-A, check the box or boxes that apply to identify the employment tax determinations made under IRC 7436. See IRM 8.7.16.4, Tax Court Jurisdiction, and IRM 8.7.16.5.1, Distinguishing IRC 7436 Issues From Non-IRC 7436 Issues. The ATE is responsible for ensuring Letter 3523-A (with enclosures) are correct, complete, and consistent with the basis for settlement. Letter 3523-A contains tables to list the workers for which employment taxes are determined and the amounts of those employment taxes.

- (2) Names of Reclassified Workers (Table 1)

Use to list the names of workers being reclassified from **non-employees** to **employees** and to mark **(using an “x” or “✓”)** the quarters for which the workers are being reclassified. If some or all of the names of the workers are unknown or there is confusion among similarly named individuals, job categories may be used (i.e. janitors, instructors). Examples of identifying information include the shift worked, the specific job performed, etc. Include the names of each reclassified worker in Table 1 to the extent they are known. The use of Social Security numbers for identification of workers is not allowed on a Notice of Employment Tax Determination Under IRC 7436. Place an “x” in the Calendar Year column to indicate the reclassified wages are subject to FUTA. **Do not list dollar amounts in Table 1.**

- (3) Names of Workers for IRC 7436 Wage Issues (Table 2)

Use to list the names of workers who received additional wages where the issue is an IRC 7436 wage issue and to mark **(using an “x” or “✓”)** the quarters for which the workers received the IRC 7436 wages. If some or all of the names of the workers are unknown or there is confusion among similarly named individuals, job categories may be used (i.e. janitors, instructors). Examples of identifying information include the shift worked, the specific job performed, etc. Include the names of each worker who received these additional wages (where the issue is an IRC 7436 wage issue) in Table 2 to the extent they are known. The use of Social Security numbers for identification of workers is not allowed on a Notice of Employment Tax Determination Under IRC § 7436. Place an x in the Calendar Year column to indicate the 7436 wages are subject to FUTA. **Do not list dollar amounts in Table 2.**

- (4) Amount of Tax (Table 3 and Table 4)

Include the Service’s determination of the proper amount of employment tax, additions to tax, and/or penalties that arise from treating the workers listed in Table 1 as employees. Table 4 must include the Service’s determination of the proper amount of employment tax, additions to tax, and/or penalties that arise from treating the workers listed in Table 2 as employees.



- a. The amount of employment tax, additions to tax, and/or penalties must be taken from the attachments (Form 4667 and/or Form 4668) and inserted in Table 3 and/or Table 4 of the Letter 3523-A.
- b. The amounts must be organized by type of employment tax (Old Age, Survivor, & Disability Insurance, Hospital Insurance, Additional Medicare Tax, Income Tax Withholding, and FUTA), rather than by type of return, and listed separately for each period (quarter or year for annual returns).
- c. The total FUTA tax is reported in the December 31 period.
- d. Copies of Forms 4666, 4667, and 4668 must be attached to the Letter 3523-A to show the taxpayer which rates were used in calculating the employment taxes.

(5) Letter 3523-A Enclosures

Enclose the following documents with Letter 3523-A and list them at the end of the letter under "Enclosures":

- a. Form 2504-T, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436) (**Check box at top of form, if applicable**)
- b. Form 4666, Summary of Employment Tax Examination
- c. Form 4667, Examination Changes - Federal Unemployment Tax (*if applicable*)
- d. Form 4668, Employment Tax Examination Changes Report
- e. Schedules with explanations of proposed assessments
- f. Pub 3953, Questions and Answers About Tax Court and the Notice of Employment Tax Determination Under IRC § 7436

8.7.16.12  
(08-26-2020)  
**Forms 4669 and 4670**

- (1) An employment tax case received in Appeals could contain Form 4669, Statement of Payments Received, with a Form 4670, Request for Relief of Payment of Certain Withholding Taxes, filed with the examiner. IRM 4.23.8.4.2, Forms 4669/4670, and IRM 4.23.8.4.3, Procedures for Relief Under IRC 3402(d) and/or IRC 3102(f)(3) in Examination, provide examiners with guidance on processing Forms 4669 and 4670, as described below:
  - a. Form 4669, Statement of Payments Received, is used to show that the payee has reported the payments and paid the tax. A separate, completed Form 4669 must be obtained by the payor from each payee for each year relief is requested.
  - b. Form 4670, Request for Relief of Payment of Certain Withholding Taxes, is used by the taxpayer (payor) to submit Forms 4669 to the IRS for the payor to be relieved of the payment of some taxes provided the payor can show the payee has reported the payments and paid the tax. Form 4670 contains instructions to the payor on where to file Forms 4669 and 4670.
- (2) After the case is closed from the examination group, the taxpayer (payor) can send the completed Forms 4669 and 4670 to the IRS Campus address identified on Form 4670 under "**Where to File**" to be processed as described in IRM 21.7.2.5.8.1, Processing Procedures for Forms 4669 and 4670.

**Caution:** Allowing or disallowing an abatement based upon IDRS research could cause a possible disclosure violation because it could disclose to the taxpayer (payor) that the workers did not report the income.

8.7.16.13  
(08-26-2020)  
**Interest-Free Adjustment  
under Section 6205**

- (1) IRC 6205, Special Rules Applicable to Certain Employment Taxes, provides that an employer who makes, or has made an under collection or underpayment of FICA/RRTA tax or income tax withholding, may make interest-free payments of the tax due when certain conditions are met in accordance with 26 CFR 31.6205-1 effective for adjustments on or after January 1, 2009.

**Reminder:** This provision does not apply to FUTA.

- (2) IRC 6205 allows employers to report and pay additional liability for FICA/RRTA tax and withheld income taxes as an interest-free adjustment, if certain requirements are met. The regulations under IRC 6205 provide that to be interest-free, the adjustment must be made by the due date of the return for the return period in which the error is ascertained and the amount of the underpayment must be paid by the time the adjusted return (e.g., Form 941-X) is filed or interest will accrue from that date. An interest-free adjustment cannot be made for any Income Tax or Additional Medicare Tax withheld in a prior calendar year - unless it is to correct an administrative error, IRC 3509 applies, or the adjustment is reported on a Form 2504 type agreement or other prescribed form.
- (3) The **discovery date** is when the employer has sufficient knowledge of the error to be able to correct it. Such knowledge may be obtained, for example, in the course of an examination. In an agreed case, this is when the employer signs a Form 2504 type agreement. For a protested case, it is at the conclusion of an Appeals conference. See Rev. Rul. 2009-39, 2009-52, I.R.B. 951.
- (4) If an agreement is reached in Appeals, the taxpayer (if eligible) receives complete interest-free treatment for the FICA and federal income tax withholding liability when full paid by the time Appeals receives the signed Form 2504 type agreement. If Appeals receives a signed Form 2504-type agreement and the taxpayer doesn't pay, interest starts the day after the date the agreement is received.

**Reminder:** The ATE must include instructions in their closing documents to APS regarding the availability of the IRC 6205(a) interest-free adjustment and the applicable dates. See IRM 8.7.16.6, Closing Documents, regarding Customized 5402 Instructions, and IRM 8.20.7.30.3, IRC §.6205 Interest-Free Adjustments Form 941.

- (5) If the case is unagreed in Appeals, the availability of an interest-free adjustment ends when the taxpayer has exhausted appeal rights. This occurs when the Service issues the "Notice of Employment Tax Determination Under IRC 7436" to the taxpayer on cases involving IRC 7436 issues. Once a taxpayer has received a "Notice of Employment Tax Determination Under IRC 7436", an interest-free adjustment is no longer permitted. Thus, if the Service prevails in Tax Court, interest accrues from the due date of the return on which the tax was required to be reported and paid. For non IRC 7436 adjustments, an interest-free adjustment is no longer available once the taxpayer receives a "notice and demand" for payment based upon the assessment.



**Note:** If the case is closed “unagreed” but the taxpayer subsequently sends in a signed Form 2504 type agreement before the taxpayer receives a “notice of demand” for payment or “Notice of Employment Tax Determination Under IRC 7436”, and before the due date of the return for the period in which you closed the case, interest-free treatment is available.

- (6) Interest-free adjustments are not allowed if the taxpayer knowingly underreports the employment tax liability or if the amounts underreported relate to an issue that was raised in an examination of a prior period. See 26 CFR 31.6205-1, effective for errors discovered on or after January 1, 2009, and Rev. Rul. 2009-39, 2009–52, I.R.B. 951 for rules relating to interest-free adjustments.

8.7.16.14  
(08-26-2020)  
**Bankruptcy Procedures  
and IRC 7436 Notices**

- (1) If the taxpayer is a debtor in bankruptcy, the “automatic stay” provision (i.e. 11 USC. 362(a)(8)), precludes “the commencement or continuation of a proceeding before the United States Tax Court,” unless certain conditions are met (when the debtor is an individual taxpayer) as described in IRM 8.7.6.2.1, The Automatic Stay.
- (2) Thus, the taxpayer may not file a petition contesting the IRS’ “Notice of Employment Tax Determination Under IRC 7436” without first obtaining relief from the “automatic stay” in bankruptcy court. For rules on how a bankruptcy proceeding affects the Tax Court, see Publication 3953, Questions and Answers About Tax Court and the Notice of Employment Tax Determination Under IRC §7436.
- (3) However, the IRS is permitted to issue a “Notice of Employment Tax Determination Under IRC 7436” while the “automatic stay” is in effect and should do so to prevent expiration of the statute of limitations on assessment, which continues to run during the bankruptcy proceeding.

8.7.16.15  
(08-26-2020)  
**Adjustment for  
Employee FICA Tax**

- (1) An employee’s share of the FICA taxes might be adjusted as discussed below:
  - a. There will be instances when only a worker is examined. When a worker verifies that the services the worker performed for someone else (i.e. an individual, partnership, corporation, etc.) were carried out as an “employee,” rather than an “independent contractor,” yet the worker was treated as an independent contractor, the worker’s return is adjusted to include the employee’s share of the FICA tax.
  - b. There may be instances where a worker was determined to be an employee, but the employer received “Section 530 Relief” under Section 530 of the Revenue Act of 1978 which terminated the employer’s employment tax liabilities. The worker is still liable for the employee’s share of the FICA tax.
  - c. If a worker receives a Form W-2 from an employer as a result of a worker status determination (after an audit of the payor), the worker is liable for the employee’s share of the FICA tax. The employee’s share is not reduced as a result of the employer’s liability determined at a reduced rate under IRC 3509.

**Note:** When a worker is liable for the employee’s share of the FICA tax, the worker should use Form 8919, Uncollected Social Security and Medicare Tax on Wages, to report their share of uncollected Social Security and Medicare taxes due on their compensation.

- (2) If an employee's share of FICA is adjusted, then:
  - a. Prepare a settlement computation if the compensation was not properly reported as "wages" on the employee's return. For example: An employee reported earnings as "self employment income" (SE Income) and reported "self employment tax" (SE Tax), with no self-employment deductions. The settlement computation would include reductions to eliminate the SE Income and SE Tax. In addition, the computation would include an increase for the amount of the earnings now shown as "wages". Include the adjustments on the usual income tax computation forms such as Form 5278, Form 4549, etc. Use Form 3610 (if prepared) for the tax computation forms (Form 5278, Form 4549, etc.).

**Note:** Inform the taxpayer of the separate FICA tax computation by including language similar to the following: "Tax adjustments for FICA taxes on unreported tip income are shown on a separate settlement computation. FICA taxes are comprised of the Old-Age, Survivors, and Disability Insurance taxes (also known as Social Security Tax), the Hospital Insurance Tax (also known as Medicare tax), and the Additional Medicare Tax."
- (3) Since the adjustment for employee FICA tax is **not an income tax adjustment**, a Form 2504 type agreement form must be used to solicit agreement to the adjustment for employee's share of FICA.
- (4) Should it be necessary to issue a statutory notice of deficiency, instruct APS to assess the additional FICA tax because FICA tax is not subject to the deficiency procedures and to issue the Notice of Deficiency for the income tax portion of the individual liability. See IRM 8.17.4.3, Adjustments Requested by AO Prior to Issuing Notice of Deficiency.
- (5) For information on FICA tax rates, see Document 6209, IRS Processing Codes and Information, Section 3.16, Social Security Tax Rate Table (Formerly FICA).

8.7.16.16  
(08-26-2020)

**Appeals Consideration  
of FICA and SECA  
Issues**

- (1) Appeals considers protested issues involving FICA or SECA, except as provided below:
  - a. Protests received from taxpayers disagreeing with a coordinated determination that there is no liability for taxes under the FICA with respect to one or more employees, based upon a finding that no bona fide employer-employee relationship existed.
  - b. Protests disagreeing with a coordinated determination that there is no liability for taxes under the SECA based upon a finding that the taxpayer had no self-employment income subject to the tax.
- (2) The Social Security Administration (SSA) does not give an opinion on an employment tax issue raised by the IRS. SSA uses Form SSA-7000, Notice of Determination of Self-Employment Income, and Form SSA-7010, Notice of Determination of FICA Wages, to advise the IRS of its findings resulting from claims for correction of the earnings posted to their social security record submitted by a self-employed person or employees.
- (3) If the Compliance Area Director does not agree with those findings, IRM 4.23.15.5, Coordination of Employment Tax Rulings with Social Security Administration, provides for coordination between the Area Compliance function

and the field office of the SSA to resolve the differences. If preliminary review of the file in an employment tax case discloses unresolved divergent views, promptly return the case for compliance with IRM 4.23.15.5.

- (4) If Appeals disagrees with a coordinated determination made by Compliance and the SSA in an employment tax case, the Appeals Area Director or the Appeals Team Manager notifies the Chief, Appeals. To provide prompt identification for the SSA, the memorandum will supply the taxpayer's social security number or date of birth when the number is not available.
- (5) This procedure also applies in a case where, prior to final action, the decision reached by Appeals is in conflict with the views of the SSA, whether or not the case was previously made the subject of coordination procedure.

8.7.16.17  
(08-26-2020)  
**Coordinating  
Employment Tax with  
Social Security  
Administration (SSA)**

- (1) The Office of Division Counsel (CC:TEGEDC) has responsibility for all coordination procedures between National Office and the General Counsel of the SSA.
- (2) If Appeals reaches a conclusion different from the SSA with respect to the same factual situation in an employment tax case, Appeals will notify the Office of Division Counsel (CC:TEGEDC). The TEGE Division Counsel office will contact the General Counsel of the SSA and present the views of Appeals for reconciliation. Any disclosure of taxpayer information must be through authorized persons in the IRS.
  - a. If the SSA agrees with Appeals, the Office of Division Counsel (CC:TEGEDC) will advise the Appeals office, through the Chief, Appeals, and the case is closed accordingly.
  - b. If the SSA disagrees, the Office of Division Counsel (CC:TEGEDC) advises Appeals of this also. The Appeals office then reconsiders its position and decides whether to alter it, or request that coordination efforts be continued through Chief Counsel for reconciliation of views with the General Counsel of the SSA.

8.7.16.18  
(08-26-2020)  
**Computation for  
Unreported Tip Income  
Cases**

- (1) Employees who receive cash tips of \$20 or more in a month must report the total amount of tips to their employer. Cash tips include tips received directly from customers, tips from other employees under a tip-sharing arrangement, and charged tips distributed to the employee. These tips are **wages** subject to FICA tax. Although tips are treated in the same way for employee RRTA tax as FICA tax, IRC 3231(e)(3) excludes tips from "compensation" for employer RRTA tax.
- (2) IRC 6053(a) requires that the employee provide a written statement of tip income to the employer by the 10th day of the month following the employee's receipt of tips. No particular form is required to be used in reporting tip income. 26 CFR 31.6053-1 requires that the employee sign the form and disclose:
  - a. The name, address, and social security number of the employee;
  - b. The name and address of the employer;
  - c. The total amount of tip income; and
  - d. The period for which, and the date on which, the statement is furnished. If the statement is for a calendar month, the month and year should be specified. If the statement is for a period of less than one calendar month, the beginning and ending dates of the period should be shown (for example, Jan. 1 through Jan. 8, 2017).

**Note:** Employees may use Form 4070, Employee's Report of Tips to Employer, for the written statement of tip income. Form 4070 and Form 4070A, Employees Report of Tips to Employer, are included in Pub 1244, Employee's Daily Record of Tips and Report of Tips to Employer.

- (3) The employer withholds the employee portion of the FICA or RRTA, to the extent the employee has wages or other funds available to cover the amount of tax. At times, the employee may not have sufficient funds to cover their share of the FICA or RRTA tax on tips. In this instance, adjustments to the portion uncollected from the employee must be reported on Form 941, line 5b (Taxable social security tips) and line 5c (Taxable Medicare wages & tips) or Form 944, line 4b (Taxable social security tips) and line 4c (Taxable Medicare wages & tips). The employer is still liable for the employer portion of FICA on the tips reported. The employer is not required to have supporting documentation for this reduction in tax.
- (4) On Form W-2, box 8, an employer must report, if applicable, the
- **A** - amount of the employee's uncollected social security tax or RRTA on tips
  - **B** - amount of the employee's uncollected Medicare tax or RRTA Medicare tax on tips

**Note:** An employee includes these taxes on Form 1040. See **Other Taxes** in the Form 1040 instructions.

- (5) Employers that operate a large food or beverage establishment are required to calculate and report allocated tips on Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips. Employers withhold federal income tax, FICA or RRTA tax only on tips reported by employees, not on allocated tips. Allocated tips are not reported on Form 941, but are included in Box 8 of Form W-2 and must be reported as additional wages on the employee's tax return (unless the employee can prove a smaller amount with adequate records).
- (6) If an employee subject to FICA tax does not report all of the tip income to the employer, the employee is required to file Form 4137, Social Security and Medicare Tax on Unreported Tip Income. Unreported tip income (including allocated tips), reported on Form 4137, is carried over to Form 8959, Additional Medicare Tax, only if the Additional Medicare Tax is applicable. The Form 4137 and Form 8959 are filed with the Form 1040. A railroad employee who does not report all tips received to his or her employer is required to contact the Railroad Retirement Board. The Railroad Retirement Board computes the amount of railroad retirement tax to be reported on Form 1040.
- (7) Returns with income tax under Subtitle A of the Internal Revenue Code (IRC) and employment tax on unreported tips under Subtitle C of the IRC are processed, assessed, and billed as if both taxes were under Subtitle A of the IRC.
- a. Therefore, the FICA tax and IRC 6652(b) penalty on the unreported tip income are assessed on the taxpayer's MFT 30 individual income tax account. See IRM 8.17.4.3, Adjustments Requested by AO Prior to Issuing Notice of Deficiency, and IRM 8.17.4.26, Tip Income Cases and FICA Tax Informational Notice.

- (8) For cases involving unreported tip income, two settlement computations are prepared:
  - a. One settlement computation is a normal income tax computation to compute the income tax due on the unreported tip income. The unreported tip income is included as an adjustment to the taxpayer's taxable income, using Form 5278, Form 4549, etc. Use Form 3610 or the tax computation forms (Form 5278, 4549, etc.) to inform the taxpayer of the separate FICA tax computation with language similar to the following: "Tax adjustments for FICA taxes on unreported tip income are shown on a separate settlement computation. FICA taxes are comprised of the old-age, survivors, and disability insurance (also known as social security taxes), the hospital insurance tax (also known as Medicare tax), and the Additional Medicare Tax."
  - b. The second settlement computation computes the FICA tax due on the unreported tip income using the RGS version of Form 885-T, Adjustment of Social Security Tax on Tip Income Not Reported to Employer. Prepare Form 885-T similar to the example shown in Exhibit 8.7.16-2, Sample Form 885-T, Adjustment of Social Security Tax on Tip Income Not Reported to Employer. This settlement computation is *separate* from the settlement computation prepared on the income tax portion of the case.
- (9) Form 885-T is used to show the taxpayer how the FICA tax on tips is computed. All adjustments to tip income are electronically provided through the use of reference codes on the "Form 5403 Instructions to APS", (also referred to as the "Form 5403 Worksheet") that APS will include on Form 5403, Appeals Closing Record. See IRM 8.17.5.2.7, Tip Income Adjustments (FICA), for the required reference codes. Also see Document 6209, IRS Processing Codes and Information, Section 8C.3, Item Adjustment Codes & Credit Reference Numbers.
- (10) Should it be necessary to issue a statutory notice of deficiency, the ATE must direct APS to assess the additional FICA or RRTA with applicable IRC 6652 penalty before issuing the Notice of "Deficiency, as though it were an income tax mathematical error. See IRM 8.17.4.3, Adjustments Requested by AO Prior to Issuing Notice of Deficiency, and IRM 8.17.4.26, Tip Income Cases and FICA Tax Informational Notice.

8.7.16.19  
(08-26-2020)  
**Railroad Retirement Tax  
on Tip Income**

- (1) IRC 6103(l)(1)(C) authorizes IRS disclosure of returns and return information concerning Railroad Retirement Tax (IRC - Chapter 22) to the Railroad Retirement Board (RRB) for administering the RRTA. Only RRTA information is permitted to be disclosed to the RRB. For example, FICA changes, FIT changes, FUTA changes, and 1099 penalty results are not permitted to be disclosed. If assistance is required, contact the "Disclosure Office." See IRM 11.3.29.5, Disclosure of Certain Returns and Return Information to Railroad Retirement Board - IRC 6103(1)(1)(C).
- (2) For all closed cases involving adjustments to the RRTA, the ATE must prepare a memorandum to the RRB. The memorandum will include the employee's name, Social Security number, name of the railroad employer, and the amount of the adjustment subject to railroad retirement tax.
- (3) On Form 5402, include instructions for APS to mail the package to:



Chief Financial Officer  
 Railroad Retirement Board  
 844 N. Rush Street North  
 Chicago, IL 60611

8.7.16.20  
 (08-26-2020)  
**Self Employment  
 Adjustments**

- (1) For self-employment adjustments, include on the “Form 5403 Instructions to APS” the appropriate reference numbers and amounts. APS will enter this information on Form 5403, Appeals Closing Record, and on IDRS to identify any changes to the primary and/or secondary taxpayer’s self-employment income, Medicare income, and self-employment tax adjustments. For reference codes related to self-employment adjustments, see the following:
  - a. **Reference Number 878** - Adjusts Primary Self-Employment Income  
 Net increase/decrease of self-employment income for “primary” taxpayer that is subject to social security tax. This amount cannot bring the taxpayer’s total self-employment income over the maximum amount subject to the social security portion of self-employment tax.
  - b. **Reference Number 879** - Adjusts Secondary Self-Employment Income  
 Net increase/decrease of self-employment income for “secondary” taxpayer that is subject to social security tax. This amount cannot bring the taxpayer’s total self-employment income over the maximum amount subject to the social security portion of self-employment tax.
  - c. **Reference Number 895** - Adjustment to primary Medicare Income  
 Net increase/decrease in self-employment income for “primary” taxpayer that is subject to Medicare tax (there is no maximum amount).
  - d. **Reference Number 896** - Adjustment to secondary Medicare Income.  
 Net increase/decrease in self-employment income for “secondary” taxpayer that is subject to Medicare tax (there is no maximum amount).
  - e. **Reference Number 889** – Self-Employment Tax Adjustment  
 Total net increase/decrease in self-employment tax for both primary taxpayer and secondary taxpayer. If self-employment income is less than \$400, Form 5403 - Item 15 is left blank. If the adjustment reduces the self-employment income to less than \$400, enter the amount needed to reduce the income to zero.
  - f. To adjust Additional Medicare Tax, the correct reference numbers include the following:
    - Reference Number 863** - Additional Medicare Tax on Medicare Wages PLUS the Additional Medicare Tax on SE Income
    - Reference Number 864** - Additional Medicare Tax on RRTA compensation
    - Reference 806** - W-2 Withholding Tax and/or Excess FICA Contribution Credit
    - Reference 807** - W-2 Withholding Tax and/or Excess FICA Contribution Debit

**Note:** See IRM 21.6.4.4.18, Additional Medicare Tax, for more information.

- (2) Reference Number 889 is required when “reference numbers” 878 or 879 are entered. If “reference number” 878 or 879 is entered but adjustments made to income did not change the self-employment tax, “reference number” 889 must be entered with a “zero” amount.

- (3) See also IRM 8.17.5.2.8, Self Employment Tax Adjustments, and its subsections.

8.7.16.21  
(08-26-2020)  
**Computations Involving  
Adjustment to  
Household Employment  
Taxes (Schedule H)**

- (1) An individual who employs domestic workers generally reports employment tax payments annually on Schedule H, Household Employment Taxes, which is attached to Form 1040, Form 1040-NR, Form 1040-SS, or Form 1041.
- (2) However, instead of filing a Schedule H, an individual who employs both household employees and non-household employees may choose to report employment taxes for all employees (household and other employees) on Form 941, Employer's QUARTERLY Federal Tax Return, or Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, or Form 944, Employer's ANNUAL Federal Tax Return, and report FUTA taxes annually for all employees on Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return.
- (3) If an individual is not required to file an income tax return (i.e. the individual's income doesn't exceed the filing threshold for the filing status), Schedule H must be filed by itself.
- (4) The employer's use of Schedule H to report these taxes does not change the character of the taxes that are withheld and paid by household employers from "employment taxes" to "income taxes."
  - a. Do not include employment tax audit adjustments on income tax Forms 5278, 4549, etc.
  - b. Do not include Schedule H adjustments in a statutory notice of deficiency because these adjustments are not subject to deficiency procedures.
  - c. Use Form 4668 and Form 4667 for all employment tax adjustments for household employees. Adjustments to Schedule H are made to the 4th quarter on Form 4668.
  - d. If the employer does not have an EIN, the ATE can have the employer complete and file a Form SS-4, Application for Employer Identification Number, to obtain one. If the employer will not obtain one, the ATE can obtain an EIN for the employer in order to complete the necessary processing of the case.

**Note:** An EIN can be obtained by following the instructions on Form SS-4 under the heading "How to Apply for an EIN".

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**Exhibit 8.7.16-1 (08-26-2020)**

**Sample Form 3610 for Form 941 Employment Tax Examination Changes**

<b>Tax Period Ended</b>	<b>Tax</b>	<b>Addition to Tax Section 6656</b>	<b>Penalty Section IRC 6662(a)</b>
3/31/2018	5,757.94	251.59	1,151.59
6/30/2018	700.93	21.53	140.19
9/30/2018	889.39	15.71	177.88
12/31/2018	5,558.95	161.57	1,111.79
<b>Totals</b>	<b>12,907.21</b>	<b>450.40</b>	<b>2,581.45</b>

Interest for (Tax Period Ended) will be computed under \_\_\_\_\_ of the Internal Revenue Code.

The amount shown above for (Tax Period Ended) does not take into account a payment of \$\_\_\_\_\_ made on (date).

**Exhibit 8.7.16-2 (01-14-2025)****Sample Form 885-T, Adjustment of Social Security Tax on Tip Income Not Reported to Employer**

<b>On</b>	<b>The amount is</b>
Line 1 - Tip income reported on Form 4137 (line 6) or as previously adjusted	0.00
Line 2 - Increase in tips not reported to employer	3,000.00
Line 3 - Total tip income not reported to employer	3,000.00
Line 4 - Largest amount of wages (including tips) subject to Social Security Tax <b>(in 2023)</b>	160,200.00
Line 5(a) - Total security wages shown on all Forms W-2 or railroad retirement compensation shown on a statement (including Self-Employment Income)	28,000.00
Line 5(b) - Total unreported tips per Form 4137 filed with return, if any	0.00
Line 6 - Balance (Subtract total of lines 5(a) and 5(b) from line 4)	132,200.00
Line 7 - Tips subject to increase (decrease) in social security tax (smaller of line 2 or line 6)	3,000.00
Line 8- Applicable Social Security Rate	6.20%
Line 9 - Social Security Tax adjustment (line 7 multiplied by line 8)	186.00
Line 10 - Increase in tips not reported to employer that are subject to Medicare Tax	3,000.00
Line 11 - Applicable Medicare Rate	1.45%
Line 12 - Medicare Tax Adjustment	43.50
Line 13 - Total Adjustment to Social Security and Medicare Tax	229.50
Line 14 - 50% Penalty for failure to report tips (section 6652(b) of the Internal Revenue Code)	114.75
Line 15 - Total Amount Due (line 13 plus line 14)	344.25