

IRM PROCEDURAL UPDATE

DATE: 04/11/2025

NUMBER: sbse-04-0425-0438

SUBJECT: Adjusted Returns; Abatements and Claims

AFFECTED IRM(s)/SUBSECTION(s): 4.23.13

CHANGE(s):

IRM 4.23.13.1(5) Updated paragraph (5) due to changes in SB/SE organizational symbols to reflect the new Chief Tax Compliance Officer Organization.

(5) Primary Stakeholders:

- Employment Tax – Workload Selection and Delivery (CTCO:S:E:HQ:ECS:S:ETEGCS:EWSD)
- Specialty Examination - Employment Tax (CTCO:S:E:SE:ET)
- Examination - Specialty Policy, Employment Tax Policy (CTCO:S:E:HQ:SEP:EMTP)
- Tax Exempt/Governmental Entities (TE/GE)
- Large Business and International (LB&I)
- The Independent Office of Appeals (Appeals)

IRM 4.23.13.1.6(1) Added the definition of a protective claim and resolved claim for refund. Add clarification to the definition of adjusted return that any credit balance resulting from the exam or processing of the adjusted return must be moved to the tax period in which the adjusted return was filed.

(1) General terms and definitions:

Term	Definition
Abatement	An abatement is a request where the IRS assessed the tax but the taxpayer has not paid. It is not a claim for refund because it does not include a request for credit or refund of an overpayment.
Additional Adjustment	An additional adjustment is when a claim for refund is examined and adjustment (increase in tax) to the original Form 94X is proposed.
Adjusted Return	An adjusted return is a request to correct a previously filed Form 94x. The correction can be either an overpayment of tax (taxpayer

Term	Definition
	is due a credit) or underpayment of tax (taxpayer owes additional tax). Adjusted returns can not result in a refund issued to the taxpayer. Any credit balance resulting from the exam or processing of the adjusted return must be moved to the tax period in which the adjusted return was filed.
Administrative Error	An administrative error is only a transposition or basic math error, such as addition, subtraction and multiplication computations. For example, the amount reported on Form 941, line 3 (Federal income tax withheld from wages, tips, and other compensation), does not agree with the amount the employer withheld from an employee's wages. For additional examples refer to IRM 21.7.2.4.6.3.1, <i>Administrative Errors</i> .
Amended Return	Any subsequent return which changes information submitted on the original filed return.
Audit Reconsideration	An audit reconsideration is either a claim for refund (tax paid) or request for abatement of assessment (tax unpaid) made due to an examination. An audit reconsideration may be a request for abatement, but not all requests for abatement are audit reconsiderations. The purpose of the audit reconsideration is to examine information that was not considered in a previously completed audit.
Claim for Refund	A claim is a request for a refund or credit of an overpayment of amounts already assessed and paid.
Offsetting Adjustment	An offsetting adjustment is an adjustment having an opposite tax effect. For example, an adjustment increasing tax "offsets" the amount requested in a claim for refund.
Protective Claim	Protective claims are filed to preserve a taxpayer's right to claim a refund when the refund is contingent on future events that may not be ascertainable until after the period of limitation expires. AmBase v. United States , 731 F.3d 109, 118 (2d Cir. 2013); United States v. Kales , 314 U.S. 186, 196 (1941). Protective claims are filed when there is active litigation or expected changes in the law, where one element of the claim (usually the amount of the claim) is not certain within the limitations period.
Resolved Claim for Refund	Is when the refund has been paid or applied to a period with an outstanding balance or transfer to the tax period an adjusted return was filed.

IRM 4.23.13.2(4) Add paragraph (4) to add clarity to the procedures and guidelines of the pre-contact analysis, required filing checks, scope of the examination, and scheduling the initial appointment.

(4) Before determining whether to survey or examine an assigned claim for refund, examiners are responsible for evaluating the audit potential of the entire return. Examiners must follow the procedures outlined in IRM 4.23.3.6, *Employment Tax Examination Procedures*, which include a thorough review of the return and case file to identify large, unusual, or questionable items (LUQs), required filing checks, scope of the examination, and scheduling the initial appointment. The examination need not be limited to the issues raised in the claim for refund if there are other issues that warrant examination or further consideration.

Note: The amount of the allowable claim for refund can be offset in part or in full by other adjustments without consideration of the statute of limitations for assessment. However, there must be an open assessment statute if a deficiency is proposed (for example, other adjustments more than offset the allowable amount of the claim for refund).

IRM 4.23.13.2.1 Added a new IRM subsection titled "Form 94x-X with Original Return Information with No Underlying Original Return was Filed." Provided guidance that is both a valid return and a valid Form 94x-X.

(1) Where a Form 94x-X includes all information that would have appeared on an original Form 94x, but there is no original underlying return, the Form 94x-X may constitute a valid return for purposes of beginning the period of limitations for assessment, and be considered a valid claim for assessment, abatement, refund and claim disallowance purposes, so long as the return is signed by the taxpayer (or a person with requisite authority to sign the Form 94x-X) under penalties of perjury.

Note: This is a valid return under the tests set forth in *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986).

(2) Any refunds issued, however, would be limited to only those amounts paid within the 3 years prior to filing the Form 94x-X pursuant to IRC 6511(a).

IRM 4.23.13.2.2 Added a new IRM subsection titled "Form 94x-X with No Original Return Information and No Underlying Original Return." Provided guidance that is not a valid return and the claim is to be disallowed in full. Provides guidance If there is a statute date on the IDRS, Audit Information Management System (AIMS), and Examination Return Control System (ERCS). All subsequent subsections are renumber accordingly.

(1) A Form 94x-X filed with no underlying original return and without original return information is an invalid return under the tests set forth in *Beard v. Commissioner*.

(2) The Form 94x-X should be rejected as an invalid return or alternatively, the examiner may simply disallow the claim in full using claim disallowance procedures

following the procedures in IRM 4.23.13.3.1.1. See IRM 4.23.12.4.2, *Processing Delinquent Returns under either Delinquent or SFR Controls*, paragraph (1), and IRM 25.6.1.6.14, *Criteria for Establishing a Statute of Limitations Period*.

(3) If there is a statute date on the IDRS, Audit Information Management System (AIMS), and Examination Return Control System (ERCS) when a Form 94x-X is filed with no underlying original return, this not a live statute date. The statute date is to be ignored. The examiner must document their case file of this finding.

Example: The statement in the case file may be similar to this - "Accounts Management or Campus updated statute upon receipt of claim. No live statute since the taxpayer filed an invalid return"

IRM 4.23.13.2.4.1(2) Clarified paragraph (2) that an underlying original return or Form 94x-X with original return information is needed to use the alpha code AA. Moved caution, reminder, and note content in paragraph (2) to paragraph (3) as content.

IRM 4.23.13.2.4.1(3) Paragraph (3) was revised for clarify when the alpha code AA cannot be used. Moved caution, reminder, and note content in paragraph (2) to paragraph (3) as content.

(1) Alpha statute AA holds open the statute date up to the amount of the claim, thus the Independent Office of Appeals (Appeals) will accept a claim for refund with an AA alpha statute.

(2) Alpha statute AA **is only used** when:

- a. The examiner has determined there are no additional issues warranting examination and the examiner is not taking steps to protect the assessment statute expiration date (ASED).
- b. An underlying original return was filed or a Form 94x-X is filed with original return information (see IRM 4.23.13.2.1)
- c. There are less than 180 days remaining on the ASED, and
- d. The claimed refund or abatement has not been made.

Reminder: For further information see IRM 25.6.23-3, *Instructions for Updating the Statute on AIMS*.

Caution: If the offsetting adjustments reduce or eliminate the claim for refund or abatement amount the alpha statute AA can be used.

(3) The alpha code AA cannot be use in the following situations:

- a. A Form 94x-X is filed with no underlying original return and without original return information (see IRM 4.23.13.2.2),

- b. It is a "resolved claim for refund" or abatement,
- c. If there are issues which could result in assessment of additional tax or penalties, or

Reminder: Inspect the amended return for adjustments which result in tax increases, which warrant protecting the statute of limitations.

- d. If there are more than 180 days on the normal statute date.

Note: To close the case to Technical Services (and Appeals) with more than 180 days but less than 425 days the examiner must notate on Form 3210, *Document Transmittal*, that this is a claim with more than 180 days on the statute so Technical Services (and Appeals) does not return the case.

IRM 4.23.13.2.4.2(1) Paragraph (1) is revised for clarity.

IRM 4.23.13.2.4.2(2) Moved paragraph (3) ahead of paragraph (2) and renumber the paragraphs. Paragraph (2) was revised to clarify the guidance and instructions provided.

IRM 4.23.13.2.4.2(3) Moved paragraph (3) ahead of paragraph (2) and renumber the paragraphs. Paragraph (3) was revised to clarify the guidance and instructions provided.

IRM 4.23.13.2.4.2(4) Paragraph (4) was revised to clarify the guidance and instructions provided. The note in paragraph (4) is the new paragraph (5) because it provided instruction to examiners.

IRM 4.23.13.2.4.2(5) The note in paragraph (4) is the new paragraph (5) because it provided instruction to examiners.

IRM 4.23.13.2.4.2(6) Paragraph (6) was added to provide clarification and examples when alpha code RR generally does not apply.

(1) The American Rescue Plan (ARP) allows for a five-year statute of limitations for the following credits in the following applicable quarters:

COVID-19 Credit	2nd Quarter 2021	3rd Quarter 2021	4th Quarter 2021
Employee Retention Credit (IRC 3134)	No	Yes	Yes
COBRA Premium Assistance Credit (IRC 6432)	Yes	Yes	Yes
Sick and Family Leave Credit (IRC 3131 and IRC 3132)	See IRM 4.23.13.2.4.2 (2)	See IRM 4.23.13.2.4.2 (2)	See IRM 4.23.13.2.4.2 (2)

(2) For the sick and family leave credit, a five-year statute of limitations on assessment applies to the ARP credit taken for paid leave wages when the qualified leave was provided to employees during the period beginning April 1, 2021, through September 30, 2021. Accordingly, an examiner must determine when the leave was taken to determine whether there is a three-year or five-year period of limitations for the return claiming the credit. A taxpayer may have applied for both the non-ARP and ARP sick and family leave credits on the same tax return, so a careful review is needed when applying paragraph IRM 4.23.13.2.2.2 paragraph (3).

(3) The statute limitation on assessment for the ARP employer credits is five years after the later of:

- a. The date on which the original return that includes the calendar quarter with respect to which the credit is determined is filed, or
- b. The date on which the return is treated as filed under IRC 6501(b)(2).

Note: See IRC 3134(l), IRC 6432(f), or IRC 3131(f)(6) and IRC 3132(f)(6), as applicable to the specific credit.

Reminder: For other tax periods and other issues, the normal three-year period of limitations on assessment under IRC 6501 applies. Since an examination may involve issues other than entitlement to COVID-19 credits, examiners should operate under the general presumption that the regular three-year period for assessment applies.

(4) If the five-year statute of limitation applies to your examination and there are 180 days or less on the normal statute date, the ASER can be updated on AIMS and ERCS to alpha code RR. See IRM 25.6.23-3, *Instructions for Updating the Statute on AIMS*.

- a. The month (MM) position of the statute field should reflect the normal ASER month. Alpha code RR will be entered into the day (DD) position. The year (YYYY) position will reflect the five-year expiration date.
- b. The five-year statute of limitations allowable under the ARP is considered live and is extended only for tax attributable to the relevant ARP credit. The related assessment must be made before the five-year statute expires. Examiners and managers must be aware of, and protect, the live statute.

Example: A Form 941 filed timely for third quarter of 2021 claiming Employee Retention Credit has a normal statute date of April 15, 2025. The Employee Retention Credit would have a five-year statute of limitation on assessment for the recapture of excess employment tax credits of April 15, 2027. The alpha code would be 04/RR/2027.

Reminder: Examiners will follow IRM 4.23.14.3.1, *Form 895 and Statute Control Procedures*, for proper statute control and monitoring procedures.

(5) If the case is closed to Technical Services (and Appeals) with **more than 180 days** on the existing normal ASER the examiner must notate on Form 3210 that this is an examination (or claim) has more than 180 days on the statute and a live five-year statute so Technical Services (and Appeals) does not return the case.

(6) The alpha statute RR would generally not be used for:

- a. Annual tax returns for tax year 2021 (Form 943, Form 944, and CT-1). These returns may report wages paid or leave taken in non-ARP quarters that the five-year statute of limitations would not apply and for ARP quarters that the five-year statute of limitation would apply. It is problematic to apply the alpha code RR in this situation.

Example: There is a five-year statute of limitation for ARP ERC for credits claimed on a Form 944 for wages paid for the last two quarters of tax year 2021, but not for the wages paid for the first two quarters of tax year 2021.

- b. Quarterly tax returns (Form 941) where there are both non-ARP COVID-19 Credits and ARP COVID-19 Credits in the same tax period (unless the examination issue is limited to the ARP COVID-19 credits).
- c. Unpaid claims for refund of COVID-19 Credits. The taxpayer has three-years to file a claim for refund from the date the return was filed or two-years from the payment of tax. There is no period of limitations for the IRS to render a determination on the unpaid claim for refund. Taxpayers may file suit in District Court or the Court of Federal Claims if the IRS has not rendered a final determination within 180 days of the filing of the claim for refund.
- d. Non-COVID-19 Credit issues or adjustments.

IRM 4.23.13.2.4.3 Moved content of this subsection to IRM 4.23.13.2.5.

IRM 4.23.13.2.5 New subsection was created when the content of IRM 4.23.13.2.2.3, Resolved Claim Issues, moved to this subsection. All subsequent subsections were renumbered accordingly.

IRM 4.23.13.2.5(1) Revised paragraph (1) for clarity.

IRM 4.23.13.2.5(2) Revised paragraph (2) for clarity.

IRM 4.23.13.2.5(3) Revised paragraph (3) for clarity. Removed the note in paragraph (3). Added two new notes to paragraph (3) to provide additional resources for employment tax examiners.

Resolved Claim Issues

(1) A claim for refund that is resolved is no longer a claim for refund or adjusted return.

(2) If it is determined the refund or abatement was not allowed or paid incorrectly, include this as issue in your examination so it can be recovered.

(3) The recovery by assessment must be done within the assessment statute period and must be assessed by the ASSED. The statute of limitations for assessment must be protected. The use of alpha code AA, as discussed in IRM 4.23.13.2.4.1, is not appropriate.

Note: The procedures and guidelines an ET examiner should follow when an abatement is made but not paid is in IRM 25.6.1.10.2.1, *Corrective Action for an Erroneous Abatement*.

Note: The procedures and guidelines an ET examiner should follow when claim is paid in error is in IRM 21.4.5.5, *Erroneous Refund Categories and Procedures*.

IRM 4.23.13.2.6(1) Paragraph (1) was revised for clarification and moved information regarding recording time to paragraph (5).

IRM 4.23.13.2.6(2) Added an example to paragraph (2) for clarification.

IRM 4.23.13.2.6(4) Revised paragraph (4) by updating IRM citation from IRM 4.4.12.5.34 to IRM 4.38.1.7.3.1.32.

IRM 4.23.13.2.6(5) Added paragraph (5) by adding information regarding time spent examining the Revenue Base Protection issue in paragraph (1), provided additional clarification, and added reference information.

(1) Examinations frequently involve examiners attempting to prevent the erroneous refund of money or transfer of credit. It is important for the IRS to capture the examiner time spent on these activities, as well as any results associated with them. We refer to this as "Protection of the Revenue Base (P of RB)", or "Revenue Base Protection (RBP)." The most common example of this would be time spent working a claim for refund.

(2) The definition of "claim" is a request made by a taxpayer that alleges an overassessment, an overpayment, or both. A claim that alleges an overpayment is a claim for refund, whether the taxpayer also alleges an overassessment. A claim that alleges an overassessment and that does not allege any overpayment, for example, in an underpayment situation, is a claim for abatement. These definitions apply regardless of whether the assessment was made from a filed return or as a result of an examination. Examiners use Source Code "30" for a claim for refund or an adjusted return where some amount of the tax previously assessed and paid would be refunded to the taxpayer or the credit would be transferred to the period in which the "X" adjusted return was filed. These returns require RBP procedures.

Example: In instances whereby the previous tax assessment was paid in full by the taxpayer (the tax module reflects a zero balance), there would be a refund due back to the taxpayer if any portion of the claim were to be allowed. Time spent examining "claims for refund" prior to the release of any money back to the taxpayer is considered time spent protecting the revenue base.

(3) If the assessed liability was not paid in full and the taxpayer does not allege an overpayment, then the claim would be a claim for abatement or an audit reconsideration case. RBP procedures do not apply in these situations. Examiners use Source Code "73" for claims for abatement and audit reconsiderations. RBP Procedures do not apply if the amounts reflected on the Form 94x-X have already been paid to the taxpayer, since there is no longer a claim.

(4) When a Form 94x-X is received during an in-process examination and is for the same tax period that is already open, it is up to the examiner to determine if the issues on the Form 94x-X are significant in comparison to the other audit issues being addressed, because the proper allocation of time spent on the case must be allocated between RBP and non-RBP time. IRM 4.38.1.7.3.1.32, *Revenue Base Protection Section (Claim for Refund Disallowed)*, provides further clarification when making the determination on whether the Form 94x-X should be considered as RBP.

Note: Generally, the source code will not be changed if a claim for refund or request for abatement is received during an open examination. For more information refer to IRM 4.10.11-5, *Source Codes - Claims for Refund and Requests for Abatement*.

(5) Time spent examining the RBP issue must be kept separate from regular examination time. This is accomplished through the use of the RPB indicator in ERCS and on the case activity record. These indicators are referred to as Revenue Protection Codes (RPCs). See IRM 4.9.1.5.6, *Protection of Revenue Base*. Examination data is captured on AIMS via Form 5344, *Examination Closing Record*. Data specific to RBP activities should be reflected on items 20 through 24. See IRM 4.38.1.7.3.1.32, *Revenue Base Protection Section (Claim for Refund Disallowed)* and

Form 5344	IRM Reference
Item 20: Claim Rejection Date	IRM 4.38.1.7.3.1.30
Item 21: Amount Claimed	IRM 4.38.1.7.3.1.31
Item 22: Dollars Protected	IRM 4.38.1.7.3.1.33
Item 23: RBP Hours	IRM 4.38.1.7.3.1.34
Item 24: Claim Type	IRM 4.38.1.7.3.1.35

IRM 4.23.13.3.3.1(3) A note was added to paragraph (3).

IRM 4.23.13.3.3.1(4) New paragraph (4) was added. Subsequent paragraphs were renumbered accordingly.

IRM 4.23.13.3.3.1(5) Paragraph (5) was revised to clarify the instruction provided.

IRM 4.23.13.3.3.1(6) Paragraph (6) was revised to clarify the instruction provided.

(1) Claims for refund may be surveyed after assignment if it is determined that the **claim issue is clearly allowable in full** and the return does not otherwise warrant examination.

(2) Examiners will prepare Form 2503, *Survey – Excise or Employment Tax*, to briefly explain why the claim is being surveyed.

(3) Claims must be stamped "Survey after Assignment" and signed/dated by both the examiner and the group manager.

Note: This can be completed digitally for electronic returns using Adobe Acrobat. See instructions to add digital survey after assignment stamp and link to digital stamp to the Adobe copy of the return.

(4) On Form 3198, *Special Handling Notice for Examination Case Processing*, examiners must check the "Surveyed Claim" box in the "Special Features" section. Under "Letter Instructions for CCP," check the box "No letter required to be sent by CCP."

(5) Letter 570, *Claim Allowed in Full*, is prepared by the examiner, signed by the group manager on behalf of the Chief, Employment Tax. Upon notification from the group manager that the case has been closed, a copy of Letter 570 must be provided to the taxpayer and the taxpayer's authorized representative. A copy of the signed letter must be included in the electronic case file. The examiner must update Form 9984, *Examining Officer's Activity Record*, to document the date Letter 570 was sent and to whom.

(6) The examiner must prepare Form 5344 for cases closed "Survey after Assignment". A surveyed claim is considered an "examined closure" for AIMS purposes and requires a Form 5344 with a DC 34. A Survey Reason Code is not required. See Exhibit 4.23.13-1, *Form 5344*. For electronic case closures, block number 40X must be added to field P38-40.

Note: If the tax module for the period of the claim shows an FTD penalty was assessed, the examiner should inform the taxpayer to submit a Schedule B (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*, (or Form 943-A, *Agricultural Employer's Record of Federal Tax Liability*, or Form 945-A, *Annual*

Record of Federal Tax Liability, as appropriate), so the Failure to Deposit (FTD) penalty can be recomputed at the Campus if the tax is decreased.

Note: TE/GE examiners are to refer to IRM 4.70.17.5, *Claim Survey Before or After Assignment*, for guidance.

Reminder: TE/GE employees are no longer required to complete Forms 2503, 5596, 5599 or 3198-A or post the forms as separate documents to the RCCMS when surveying a case or claims allowed in full.

IRM 4.23.13.3.2(2) New paragraph (2) was added. Subsequent paragraphs are renumbered accordingly.

IRM 4.23.13.3.2(3) Paragraph (3) was revised to clarify the instruction provided.

IRM 4.23.13.3.2(4) Paragraph (4) was revised to clarify the instruction provided.

(1) Case files containing claims for refund that are examined and allowed in full, **with no additional adjustments**, must include:

Item	Additional Information
Form 4666	Refer to IRM 4.23.13.3.6, <i>Form 4666</i> , for language in the "Other information" section.
Form 4667	If applicable.
Form 4668	If applicable.
Form 4668-B	If applicable.
Form 4668-C	If applicable.

Note: TE/GE examiners are to refer to IRM 4.70.17.6.1.1, *Employment Tax Cases: Claim Allowed in Full with no Additional Tax Adjustments*, for guidance.

(2) On Form 3198 under "Letter Instructions for CCP", check the box "No letter required to be sent by CCP."

(3) Letter 570 is prepared by the examiner and signed by the group manager on behalf of the Chief, Employment Tax. Upon notification from the group manager that the case has been closed, the Letter 570 must be provided to both the taxpayer and the taxpayer's authorized representative. A copy of the signed letter must be uploaded to the electronic case file. The examiner must update Form 9984 to document the date the letter was sent and to whom.

(4) The examiner must prepare Form 5344 for cases closed with no additional audit adjustments. Examiners will use DC "03." See Exhibit 4.23.13-1, *Form 5344*. For electronic case closures, block number 40X must be added to field P38-40.

Note: TE/GE examiners will complete the RCCMS closing record and refer to IRM 4.70.17.6.1, *Claim Allowed in Full*, for further guidance.

IRM 4.23.13.6(1) Paragraph (1) was revised to clarify the instruction provided.

IRM 4.23.13.6(3) Paragraph (3) was revised to clarify the instruction provided.

IRM 4.23.13.6(4) The IRM reference in the note was updated.

IRM 4.23.13.6(5) Paragraph (5) was revised to clarify the instruction provided.

IRM 4.23.13.6(7) Paragraph (7) was revised to clarify the instruction provided.

(1) A claim that has been disallowed in whole or in part will be reconsidered upon submission of additional facts by the taxpayer, provided such facts are received prior to the expiration of the statute of limitations for bringing suit. If the additional facts submitted warrant reopening of the claim, the claim will be reopened and appropriate adjustments will be made.

(2) The disposition of a request for reconsideration of a disallowed claim will generally require one of the following types of action:

- a. Denial of the request for reconsideration.
- b. Allowance of the issue in whole or in part.
- c. Entering into an agreement to extend the running of the statutory period of limitations under IRC 6532(a)(2), on a properly executed Form 907. For additional information see IRM 4.23.13.8, *Form 907 - Agreement to Extend the Time to Bring Suit*.

(3) There is no provision in the IRC or regulations requiring the issuance of a certified notice of denial or disallowance of a taxpayer's request for reconsideration. Therefore, requests for reconsideration of disallowed claims made on any "X" form, or made otherwise, (such as in a letter, brief, or affidavit), **will not** be treated as original claims. Examiners' reports on requests for reconsideration of disallowed claims must not contain any language from which the taxpayer may infer that a certified notice of the denial or disallowance will be issued.

(4) Letter 917, *Reply to Taxpayers Request for Reconsideration of Claim*, is a multipurpose letter. This letter is prepared (with applicable box checked) and issued to inform the taxpayer that the IRS:

- a. Has received their request for reconsideration of a claim.
- b. Can not consider their request because it did not include any new documentation or information.
- c. Disallowed the request since the taxpayer entered a final action (for example, a closing agreement, a court order, etc.).

- d. Can not consider their request since there is insufficient time to complete the reconsideration of your claim before the deadline of filing suit.
- e. Can not consider their request since it was filed after the deadline for filing suit.
- f. Is recommending approval of the claim in whole or part.

Note: No action can be taken on a request for reconsidering the claim if the request is based on IRM 4.23.13.3.1.1, *Full Disallowance with no Audit Development*.

(5) If there are no changes to the previous determination, a Letter 917 is issued with the appropriate paragraph chosen, a copy will be included in the case file and the case closed to CCP. This letter is not considered a certified notice of claim disallowance; Letter 905 and Letter 906 are considered statutory notices of disallowance.

(6) If the request for reconsideration concerns a liability issue previously considered by Appeals, determine how Appeals closed the case and whether the liability issue was closed with finality. See IRM 8.7.7.2.2, *Liability Issues Previously Closed with Finality*. If the liability issue was not previously closed with finality and the taxpayer provides new information, consider the new information and decide whether to allow the claim. If disallowed and unagreed, follow normal 30-day letter procedures. If protested, following Pub 5 requirements, forward the case to Appeals if there is at least 6 months on the period of limitations for instituting suit. If the period of limitations for instituting suit on the disallowed claim will expire in less than 6 months, the case will not be referred to Appeals unless that office agrees to accept jurisdiction or a Form 907, *Agreement to Extend the Time to Bring Suit*, is secured. See IRM 4.23.13.8, *Form 907 - Agreement to Extend the Time to Bring Suit*. The request for reconsideration will be disallowed and a Letter 917 is issued with the appropriate paragraph chosen if either applies: (1) the liability issue was previously closed with finality, or (2) the liability issue was not previously closed with finality, but no new information was provided.

(7) When the examiner or group manager is notified that a taxpayer has filed suit for recovery of taxes paid in a case involving an open claim for refund of employment tax, the case will be expeditiously sent to Technical Services. SB/SE ET examiners will include a Form 3198 with the file instructing Technical Services to issue a statutory notice of claim disallowance before sending the case file to Area Counsel and/or the Office of Chief Counsel. TE/GE will send their cases to Mandatory Review to prepare and issue the statutory notice of claim disallowance before sending the case to Area counsel and/or the Office of Chief Counsel.

IRM 4.23.13.8(5) Paragraph (5) was revised to clarify the instruction provided.

IRM 4.23.13.8(6) Paragraph (6) was revised to clarify the instruction provided.

(5) The Form 907 must be prepared in duplicate. They must be signed by:

- The taxpayer or an attorney, agent, trustee, or other fiduciary acting on the taxpayer's behalf pursuant to Form 2848, *Power of Attorney*, and
- The IRS. See IRM 1.2.65.3.9, *SBSE 1-23-24, Authority to Sign Agreements to Extend the Running of the Period of Time to Bring Suit for signature authority and delegation*, for information on the delegation of signing authority.

Note: Rev. Rul. 76-60, 1976-1, C.B. 367, requires the inclusion of special language on Form 2848 to authorize an individual to sign Form 907 on the taxpayer's behalf.

(6) The duplicate original signed by both the taxpayer (or duly authorized representative with proper authority to do so) and delegated IRS official is sent to the taxpayer.