

IRM PROCEDURAL UPDATE

DATE: 05/16/2025

NUMBER: sbse-04-0525-3293

SUBJECT: Delinquent Return Procedures

AFFECTED IRM(s)/SUBSECTION(s): 4.23.12

CHANGE(s):

IRM 4.23.12.1(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)
- Specialty Examination Policy, Employment Tax Policy (CTCO:S:E:HQ:SEP:EMTP)

IRM 4.23.12.1.3 Updated the subsection title to "Roles and Responsibilities."

Roles and Responsibilities

(1) Director, Specialty Examination Policy, is responsible for the procedures and updates addressed in this IRM.

(2) Director, Examination Specialty, is the executive responsible for examination operational compliance.

(3) Chief, Employment Tax Examination, is responsible for ensuring examiners follow the guidance included in this IRM.

IRM 4.23.12.1.4 Updated the subsection title to "Program Management and Review."

Program Management and Review

(1) Program Goals: The processes and procedures provided in this IRM are consistent with the objectives or goals for:

- Employment Tax - Examination IRM 1.1.16.5.3.3, Employment Tax Examination and
- Employment Tax Policy that are addressed in IRM 1.1.16.5.5.2.2, Employment Tax Policy.

(2) Program Effectiveness: Program goals are measured with Employment Tax Embedded Quality Performance Reports that monitor whether quality attributes are applied uniformly and consistently.

(3) Annual Review: Program Manager of Employment Tax Policy is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.

IRM 4.23.12.1.5 Added new subsection titled "Program Controls" to document the reviews and quality assurance activities associated with the Employment Tax Program. This was added to comply with IRM 1.11.2.2.4, Address Management and Internal Controls. All subsequent subsections have been renumbered.

Program Controls

(1) All information management systems have safeguard measures in place that address key components of Information Technology (IT) security requirements to restrict access to sensitive data.

(2) The Employment Tax program has established a separation of duties of users' roles-

- Policy and procedures – Employment Tax Policy is within SB/SE Specialty Exam Policy
- Case selection – Employment Tax – Workload Selection and Delivery is within SB/SE Examination Case Selection
- Examination - Employment Tax Examination is within SB/SE Specialty Exam
- Quality and review - Embedded Quality is within SB/SE Field and Specialty Exam Quality

(3) The Issue Management System (IMS) is required to be used during employment tax examinations by examiners assigned to Specialty – Employment Tax Operations.

(4) Unless instructed otherwise, examiners will use the Employment Tax Lead Sheets (ETLS) developed specifically for employment tax cases.

(5) SB/SE ET examiners working ET Large Cases will use Large Case Lead Sheets (LCLS). LCLS are developed specifically for large case employment tax cases. Examiners working ET Large Cases will follow workpaper preparation, specific audit techniques, and case closing procedures unique to these types of audits.

IRM 4.23.12.1.6 Updated the acronym list.

(1) The following table lists commonly used acronyms and their definitions:

Acronym	Definition
AIMS	Audit Information Management Systems
ASED	Assessment Statute Expiration Date
CCP	Centralized Case Processing
EIN	Employer Identification Number
ERCS	Examination Returns Control System
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FUTA	Federal Unemployment Tax Act
ITG	Indian Tribal Governments
LB&I	Large Business & International
MFT	Master File Tax Code
NMF	Non-Master File
RCCMS	Reporting Compliance Case Management System
SC	Source Code
SFR	Substitute for Return
TC	Transaction Code
TCO	Tax Compliance Officer
TE	Tax Examiner

IRM 4.23.12.1.7(1) Added a IRM 4.12.1 as a new reference to the table. Updated the TE/GE IRM referenced in the table and provided additional detail in the description column.

IRM 4.23.12.1.7(2) Updated paragraph (2) for clarity and replaced URL/web address to internal sites with a hyperlink.

IRM 4.23.12.1.7(3) Updated paragraph (3) for clarity and replaced URL/web address to internal sites with a hyperlink.

IRM 4.23.12.1.7(4) Revised the contents of paragraph (4) based on comments provides by Taxpayer Advocate Service.

IRM 4.23.12.1.7(5) Updated paragraph (5) for clarity and replaced URL/web

address to internal sites with a hyperlink.

IRM 4.23.12.1.7(6) Added paragraph (6) that provides the responsibility for civil penalty programs is assigned to Office of Servicewide Penalties (OSP).

(1) The following table lists the primary sources of guidance:

Source	Title	Description of Guidance
IRM 4.12.1	Nonfiled Returns	This IRM discusses the examination procedures involved in handling nonfiled returns.
IRM 4.23	Employment Tax IRM	IRM sections, the majority of which are owned by SB/SE - Specialty Examination Policy. Provides Servicewide instructions for employees of all operating divisions involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.
IRM 4.70.13	TE/GE Examinations, Executing the Examination	Provides guidelines and techniques for TE/GE examiners to use during the execution phase of the examination
IRM 25.1.3.3	Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases	Provides guidance on the preparation of Form 2797 which is used by Compliance function personnel to refer potential criminal fraud cases to Criminal Investigation (CI) for appropriate action.
IRM 1.2.1.4.2	Policy Statement 3-2 (Formerly P-2-7)	Provides examples of sound causes for the delay in filing of a return or to deposit or pay tax when due.
IRM 1.2.1.4.5	Policy Statement 3-5 (Formerly P-2-11), Unsigned income tax returns will not be accepted for processing; delinquency penalty generally will not be imposed on timely filed unsigned income tax returns	An unsigned tax return is not a valid tax return. The IRS will return unsigned returns for signature. IRS will not impose the delinquency penalty when unsigned return is filed timely and subsequently returned.
IRM 1.2.1.6.18	Policy Statement 5-133, Delinquent returns—enforcement of filing requirements	The IRS will pursue enforcement of delinquent tax returns determined by factors ensuring compliance and evenhanded administration of staffing and other Service resources. The enforcement of delinquency procedures will not be more than 6 years.

(2) Other helpful information sources include:

- a. SB/SE Employment Tax Small Business Knowledge Base provides guidance, resources and information for examiners to aid in raising, developing, and resolving employment tax issues.
- b. Specialist Referral System (SRS) can be used by any employee, regardless of operating division. In addition to requesting assistance or a referral, SRS may be used to submit informal questions or to request a consultation with an employment tax specialist to discuss employment tax potential in an examination.
- c. Contacts, Tools, and Training provides the program assignments and contact information for subject matter experts, ET field groups areas of assignment and contact information, examination and report writing tools, and training materials.

(3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3). For additional information about the TBOR. See IRC 7803(a)(3). For additional information about TBOR, see Pub 5170, or Taxpayer Bill of Rights.

(4) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS, led by the National Taxpayer Advocate, that helps taxpayers and protects taxpayer rights. TAS offers free help to taxpayers when a tax problem is causing a financial difficulty, when they've tried and been unable to resolve their issue with the IRS, or when they believe an IRS system, process, or procedure just isn't working as it should. TAS strives to ensure that every taxpayer is treated fairly and knows and understands their rights under the TBOR. TAS has at least one taxpayer advocate office located in every state, the District of Columbia, and Puerto Rico.

(5) Examiners should consider the disclosure and privacy provisions when preparing agreed and unagreed case reports. For further information, see the Privacy, Government Liaison and Disclosure (PGLD) maintained knowledge base at Disclosure and Privacy Knowledge Base Homepage.

(6) Overall responsibility for civil penalty programs is assigned to the Office of Servicewide Penalties (OSP). OSP is charged with coordinating policy and procedures concerning the civil penalty program administration, ensuring consistency with the penalty policy statement, reviewing and analyzing penalty information, researching penalty effectiveness on compliance trends, and determining appropriate action necessary to promote voluntary compliance. For further understanding of the civil penalty program and penalty relief, refer to the Penalties Knowledge Base Homepage.

IRM 4.23.12.4 Updated the subsection title to "Controlling Delinquent and Substitute for Returns."

Controlling Delinquent and Substitute for Returns

(1) Employment tax non-filer cases can be processed using either Delinquent Return or Substitute for Return (SFR) procedures.

Note: Most employment tax non-filers worked by specialists within the SB/SE Employment Tax Program will follow the SFR procedures for assessments; however, this does not preclude the examiner from following the Delinquent Return procedures when appropriate. It is important to remember, however, that **once SFR procedures have been started, they cannot be changed**. The return controlled with an SFR must be processed as such to final closure. Procedures for using either Delinquent or SFR processes are detailed below.

IRM 4.23.12.4.1 Updated the subsection title to "Requesting Controls using either Delinquent or SFR Procedures."

IRM 4.23.12.4.1(1) Updated the TE/GE IRM reference in the note after paragraph (1). Removed the TE/GE references and clarified the existing content.

IRM 4.23.12.4.1(2) Updated the TE/GE IRM reference in the note after paragraph (2).

IRM 4.23.12.4.1(3) Updated the TE/GE IRM reference in the note after paragraph (3).

IRM 4.23.12.4.1(6) Revised the content to provide ET ERCS users do not have AMSOC permission. They must complete Form 10904 and submit it to the AIMS/ERCS Analyst. Updated the TE/GE references.

Requesting Controls using either Delinquent or SFR Procedures

(1) The procedures for requesting controls will vary depending on how the case will be worked:

- Delinquent returns secured by exam (IRM 4.23.12.4.1 (2)) or
- As a substitute for return (IRM 4.23.12.4.1 (3))

Note: Employment tax case files can include a combination of returns for processing using the Delinquent Return procedures or SFR procedures, as each tax period stands alone.

(2) For delinquent returns procedures, the examiner will complete Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, to establish a non-filer via ERCS and include the following entries:

Issue	Answer
Do you want the original return?:	"N" for "no", since there is no return to request.
Do you want Labels?:	"Y" for yes or "N" for no.
Special Message/Push Code:	Enter "020" to establish Delinquent Return controls. A push code must be used when establishing AIMS controls if there is no Transaction Code (TC) 150 posted on Master File. The Push Code holds the TC 424 at Master File until a TC 150 posts.
Source Code (SC):	Enter the appropriate source code which depends on the origination of the examination. If the employment tax return(s) are a referral via the Specialist Referral System, use SC "24" for the primary quarter and "44" for all related non-filed periods being established. If the non-filed periods are related to another case (for example income tax, other employment tax case), the examiner will use SC "44" for all periods.
Reason for Request:	Enter a reason consistent with the Push Code used. For Push Code "020" enter "DELINQUENT RETURN SECURED BY EXAMINATION".

Note: TE/GE will follow the delinquent returns procedures in IRM 4.70.13.9.5.5, Processing Delinquent Employment Tax Returns, IRM 4.70.13.9.5.6, Processing Delinquent Information Returns (Other than Form 5500 Series Returns), and establish controls in Reporting Compliance Case Management System (RCCMS).

(3) For SFR procedures, the examiner will complete Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, to establish a non-filer via ERCS and include the following entries:

Issue	Answer
Do you want the original return?:	"N" for "no", since there is no return to request.
Do you want Labels?:	"Y" for yes or "N" for no.
Special Message/Push Code:	Enter "036" if there is no TC 150 on the module. This push code will establish a TC 150 SFR. Enter "050" if there is a TC 150 SFR posted to the account but no return was secured and processed for the module. This will allow SFR non-filer controls to establish using an "EE" statute date.

Issue	Answer
Source Code (SC):	The appropriate source code will depend on the origination of the examination. If the employment tax return(s) are being opened as the original exam at the group level because it was received as a referral via the Specialist Referral System, the examiner will use SC "24" for the primary quarter and "44" for all related non-filed periods being established. If the non-filed periods are related to another case (for example income tax, other employment tax case), the examiner will use SC "44" for all periods.
Reason for Request:	Enter a reason consistent with the Push Code used. For Push Code "036" or "050", enter "EXAM/SFR".

Note: TE/GE employees will refer to the SFR procedures in IRM 4.70.13.9.8.8, Processing Employment Tax Substitute for Return, and establish controls in RCCMS.

(4) If the taxpayer refuses to request their own EIN, contact the campus Entity Control Section to obtain the assignment of a permanent EIN using procedures outlined in IRM 21.7.13.3.8, Receiving EIN Applications From Field Compliance.

(5) Once the EIN is secured, follow the procedures for establishing controls using either IRM 4.23.12.4.1 (2) or IRM 4.23.12.4.1 (3).

Reminder: SFR controls cannot be requested on a temporary or invalid EIN.

Reminder: The case cannot be forwarded to Centralized Case Processing (CCP) for closing unless an EIN has been secured.

(6) To secure controls when a taxpayer does not have a valid Employer Identification Number (EIN) for BMF:

- Request that the taxpayer submit Form SS-4, Application for Employer Identification Number, to secure an EIN.
- Establish Non-Master File (NMF) controls using the SSN of the primary owner of the business as follows: "XXXXXXXXXX-D". The NMF control provides AIMS/ERCS controls until an EIN is secured and allows the examiner to charge time to the case on ERCS.
- After the EIN is secured, close the NMF control with a Disposal Code (DC) "28" and establish master file controls using the EIN. Use the option on ERCS to "Change a Non-Master File Return to a Master File Return" (see the ERCS Group Handbook chapter entitled "Correct or Display Records"). This option on ERCS will automatically submit an AM424 to request controls on the master file record. ET ERCS users do not have AMSOC permission for DC 28, thus Form 10904 must be prepared. It must have manager's approval and be submit to your AIMS/ERCS Analyst for closure of the Non-master File AIMS record. This option allows the time reported on the non-master file

record and the start date of the non-master file record to automatically move to the master file record that is created.

Note: If a foreign entity is involved, see IRM 21.7.13.3.2.7, Foreign Entities - Definitions and Instructions, for procedures unique to these entities.

Note: TE/GE employees will refer to the SFR procedures in IRM 4.70.13.9.8.8, Processing Employment Tax Substitute for Return.

(7) If the taxpayer refuses to request their own EIN, contact the campus Entity Control Section to obtain the assignment of a permanent EIN using procedures outlined in IRM 21.7.13.3.8, Receiving EIN Applications From Field Compliance.

(8) Once the EIN is secured, follow the procedures for establishing controls using either (2) or (3) above.

- SFR controls cannot be requested on a temporary or invalid EIN.
- The case cannot be forwarded to Centralized Case Processing (CCP) for closing unless an EIN has been secured.

IRM 4.23.12.4.2 Renumbered this subsection to IRM 4.23.12.5.

IRM 4.23.12.5 The content of this subsection is from IRM 4.23.12.4.2. Updated the subsection title to "Securing and Processing Delinquent Returns under either Delinquent or SFR Controls." The existing content was updated to incorporate Electronic Case File procedures. All subsequent subsections will renumbered accordingly.

Securing and Processing Delinquent Return under either Delinquent or SFR Controls

(1) Examiners securing delinquent returns will advise the taxpayer that all taxes, penalties, and interest are immediately due.

- a. To constitute a valid return that is sufficient to start the running of the statute of limitations, more information is required than just a taxpayer signature. The return must satisfy the substantial compliance test of *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986). See also Rev. Rul. 2005-59, 2005-37 IRB, August 22, 2005, and IRM 25.6.1.6.14, Criteria for Establishing a Statute of Limitations Period. This is true whether the return is prepared and submitted by the taxpayer or is prepared by the IRS and signed by the taxpayer under IRC 6020(a).
- b. For the procedures on IRS received date stamping or postmark dated stamping refer to IRM 3.10.72.6.1, Received Date Stamp.
- c. Examiners should ensure that copies of all secured delinquent returns are retained in the case file. A copy of the delinquent return must be uploaded as

a workpaper in IMS and named using standard naming conventions. See IRM 4.23.4.5.5, File Naming Convention.

- d. Delinquent returns secured during an examination (for example, Form 940, Form 941, Form 943, Form 944, Form 945, etc.) can be received by fax if contact has been made with the taxpayer by phone or in-person and the case activity record is documented with the date of contact and notation is made that the taxpayer wants to send the delinquent returns by fax. A signature is only acceptable by fax if it shows the taxpayer physically signed the document, form, or letter with their handwritten signature prior to faxing. Examiners should request taxpayers sign with their handwritten signature prior to faxing and accept a signature on a faxed document as handwritten absent a reason to believe otherwise. Any IRS document signed and accepted through this method will be treated for all purposes as an original signature.

Caution: Returns which are not yet due to be filed, including extensions, should be filed in accordance with the instructions for the respective form.

(2) The processing of a secured delinquent return will vary depending on what exam controls (delinquent or SFR) were used when establishing the tax period. The type of controls used will determine how to proceed with working and closing the exam.

IRM 4.23.12.5.1 Added new subsection titled "Delinquent Return Secured - No SFR TC 150 Posted." The content was added to incorporate Electronic Case File procedures.

Delinquent Return Secured - No SFR TC 150 Posted

(1) If the examiner secures a delinquent return from the taxpayer after establishing controls using the Delinquent Return procedures outlined in IRM 4.23.12.4.1 (2), refer to IRM 4.4.9.4, Delinquent Return Secured - No TC 150 Posted, for initial processing instructions for the delinquent return.

(2) Once the steps contained in IRM 4.4.9.4, through IRM 4.4.9.4.12.2 are completed, mail the delinquent return with a Form 3210, Document Transmittal, to Submission Processing to the appropriate campus listed in Exhibit 4.23.12-1. A copy of the delinquent return must be uploaded as a workpaper in IMS and named using standard naming conventions. See IRM 4.23.4.5.5, File Naming Convention.

Note: For a secured delinquent return when there is no TC 150 posted, a completed Form 13133, Expedite Processing Cycle, must be attached to the **front** of each return. If the returns are combined into a single PDF file, the Form 13133 should be the in front of each digitized return. It is essential that a separate Form 13133 be prepared for each tax period.

(3) If additional adjustments are necessary process the delinquent return as noted above in IRM 4.23.12.5.1 (2) and continue to work on audit development. Wait until the delinquent return has posted (TC 150) before submitting the case for final closure.

IRM 4.23.12.5.2 Added new subsection titled "Processing Delinquent Returns Established under SFR Controls." The content was added to incorporate Electronic Case File procedures.

Processing Delinquent Returns Established under SFR Controls

(1) If a valid delinquent return is secured after establishing SFR controls and a TC 150 is posted to master file (IRM 4.23.12.4.1 (3)), the examiner must decide if the return submitted is substantially correct or if additional adjustments will be necessary to properly reflect wages.

Note: Any time a valid delinquent return is secured from the taxpayer after establishing SFR controls, **do not** follow IRC 6020(b) procedures outlined in IRM 4.23.12.5.3 **for that tax period**. Each employment tax period stands alone; therefore, some periods may fall under the IRC 6020(b) processing and others may not.

(2) Upon receipt of a delinquent return after a SFR TC 150 has been established:

- a. Prepare Form 3177, Notice of Action for Entry on Master File, for each delinquent return. Enter an "X" in the box marked other and write "TC-971 AC-282 – Return Received Date MM/DD/YYYY" to update the Master File. Refer to IRM 4.4.9.6.1, TC 971 Action Code (AC) 282.

Note: The Form 3177 will result in updates to Master File to show that exam secured a delinquent return and updated the statute to three years from the date received.

- b. Fax the Form 3177 to the CCP office at the number provided at CCP Exam E-Fax Numbers.

Note: For additional information, see IRM 4.4.9.6, Delinquent Return Received After SFR TC 150 Posted at Master File.

Note: Employment tax case files can include a combination of returns for processing using the Delinquent Return procedures or SFR procedures, as each tax period stands alone.

Caution: An original delinquent return must not be destroyed.

(3) If the return is substantially correct and the case can be closed within seven days of receipt see IRM 4.23.12.5.2.1.

(4) If a valid delinquent return is secured after establishing SFR controls and the case cannot be closed within seven days of receipt of the signed return, or if it is determined that the submitted return is not substantially correct, see IRM 4.23.12.5.2.2.

IRM 4.23.12.5.2.1 Content from IRM 4.23.12.4.2.1 was moved to this subsection and revised to incorporate Electronic Case File procedures.

Return is Substantially Correct and can Be Closed within Seven Days of Receipt

(1) If not already done, update the statute to properly reflect three years from the date of the delinquent return. Refer to IRM 4.23.12.5.2 (2) for guidance.

(2) Upload a copy of the delinquent return(s) as a workpaper in IMS using standard naming conventions. See IRM 4.23.4.5.5, File Naming Convention.

(3) For fully paperless case closures, examiners that receive a delinquent return containing an original, handwritten signature, will complete the following additional steps:

- a. Complete Form 3870, Request for Adjustment, requesting input of a Transaction Code (TC) 290 for \$0.00 tax with a "00" blocking series. See Exhibit 4.23.12-2 for instructions on how to prepare Form 3870.
- b. Scan the completed Form 3870 and send it with a copy of the scanned return through secured email to CCP at *SBSE CCP Exam Cincinnati or E-Fax at the number provided at CCP Exam E-Fax Numbers.
- c. Once CCP has processed the Form 3870 and the TC290 is showing as PN on TXMODA, the examiner will mail the original delinquent return to Files using the Document Locator Number (DLN) associated to the TC290 along with Form 3210.

Reminder: Original, handwritten signatures do not include alternative signatures which are images of the original signatures (scanned or photographed) or electronic or digital signatures. Alternative signatures are defined in IRM 10.10.1-3, Glossary and Acronyms.

Note: Processing Form 3870 will result in a TC290 with zero tax to post to the module. This creates a DLN under which the delinquent return can be filed. This procedure does not post an assessment, establish a statute date, or process the delinquent return. It is only a means to preserve the paper document in a way that it can later be retrieved via IDRS command code

ESTAB, if needed.

Caution: An original delinquent return must not be destroyed.

(4) Prepare an employment tax exam report using the appropriate Form 2504 to match the submitted return. This report does not need to be issued to the taxpayer provided the tax is equal to or less than the tax shown on the submitted returns.

Note: There is no need to obtain a signature on the exam report provided the computed tax on the report is equal to or less than the amount reported on the signed return submitted by the taxpayer.

(5) Close the case using the applicable agreed disposal code (DC).

Note: TCOs and TEs are to use DC "03" only. Revenue agents may use either DC "03" or DC "04."

(6) Letter 1024-T, Employment Tax Return Accepted as Filed, should be used when a taxpayer provides a delinquent return during an examination that is:

- a. Accepted as filed and processed within seven days of receipt, or
- b. Processed as a partial assessment with no additional tax assessment.

Reminder: After reviewing the case file, the group manager signs Letter 1024-T. A copy of the signed letter must be uploaded to the "Correspondence Letters" section of the IMS file.

Note: Letter 1024-T has a "Show Selectable Paragraph Pages" button at the top. Examiners should use this button to select the paragraph(s) most appropriate for the taxpayer's situation. For additional uses of the Letter 1024-T see IRM 4.23.10.4.2, Additional Uses of Letter 1024-T.

IRM 4.23.12.5.2.2 Added new subsection titled "Return is not Substantially Correct or cannot be Closed within Seven Days." The content was added to incorporate Electronic Case File procedures.

Return is not Substantially Correct or cannot be Closed within Seven Days

(1) If not already done, update the statute to properly reflect three years from the date of the delinquent return. Refer to IRM 4.23.12.5.2 (2) for guidance.

(2) Upload a scanned copy of the delinquent return(s) as a workpaper in IMS using standard naming conventions. See IRM 4.23.4.5.5, File Naming Convention.

(3) For fully paperless case closures, examiners that receive a delinquent return containing an original, handwritten signature, will complete the following additional steps:

- a. Complete Form 3870 requesting input of a Transaction Code (TC) 290 for \$0.00 tax with a "00" blocking series. See Exhibit 4.23.12-2 for instructions on how to prepare Form 3870.
- b. Scan the completed Form 3870 and send it with a copy of the scanned return through secured email to CCP at *SBSE CCP Exam Cincinnati or E-Fax at the number provided at CCP Exam E-Fax Numbers.
- c. Once CCP has processed the Form 3870 and the TC290 is showing as PN on TXMODA, the examiner will mail the original delinquent return to Files using the DLN associated to the TC290 along with Form 3210.

Note: Original, handwritten signatures do not include alternative signatures which are images of the original signatures (scanned or photographed) or electronic or digital signatures. Alternative signatures are defined in IRM 10.10.1-3, Glossary and Acronyms.

Note: Processing Form 3870 will result in a TC290 with zero tax to post to the module. This creates a DLN under which the delinquent return can be filed. This procedure does not post an assessment, establish a statute date, or process the delinquent return. It is only a means to preserve the paper document in a way that it can later be retrieved via IDRS command code ESTAB, if needed.

Caution: An original delinquent return must not be destroyed.

(4) Process the delinquent return as a partial assessment within seven days of receipt. See IRM 4.23.10.15, Partially Agreed Cases, for partial assessment procedures.

Exception: If the delinquent return shows zero tax due, then no partial assessment is necessary.

Note: The examiner must verify that the partial is posted before closing the case.

(5) Fully develop any additional issues identified. Prepare and issue a report via normal procedures reflecting appropriate adjustments or no-changes.

Note: Because the delinquent return was processed as a partial agreement, the additional adjustments examination report starting point (tax per return or previously adjusted) should be the delinquent return amounts.

(6) Close the case using the appropriate disposal code.

(7) Examiners will document in the comment section of the Form 3198, Special Handling Notice for Examination Case Processing, that the delinquent return was considered during the exam.

IRM 4.23.12.5.3 Content from IRM 4.23.12.5.2 was moved to this subsection.

IRM 4.23.12.5.3(1) Updated the TE/GE IRM reference in the note after paragraph (1).

IRM 4.23.12.5.3(3) The existing content of paragraph (3) was replaced to incorporate Electronic Case File procedures. The example in item 1 of paragraph (3) was moved to Exhibit 4.23.12-3.

IRM 4.23.12.5.3(4) The existing content of paragraph (4) was replaced to incorporate Electronic Case File procedures. The example in item 1 of paragraph (4) was moved to Exhibit 4.23.12-4

IRM 4.23.12.5.3(5) The existing content of paragraph (5) was replaced to incorporate Electronic Case File procedures.

IRC 6020(b) Procedures for SFR Employment Tax Cases

(1) IRC 6020(b) procedures **ONLY** apply when case files involving non-filed returns are closed without receipt of a signed return from the taxpayer. This is true no matter what type of controls (delinquent and/or SFR) were originally established.

Note: If delinquent return controls were originally established the examiner must establish SFR controls in order to close the case under 6020(b) procedures. Refer to IRM 4.4.9.5.2.2, Generating the SFR Using Form 5345, Examination Request (All Versions).

Note: TE/GE employees will follow the procedures in IRM 4.70.13.9.8, Substitute for Return Procedures.

(2) When signed returns are not received by the conclusion of the examination, the examiner must certify in accordance with IRC 6020(b) that the adjustments are to be treated as the return filed by the taxpayer for purposes of determining the Failure to Pay (FTP) penalty. See IRM 20.1.2.3.10, Substitute for Return—IRC 6651(g).

(3) In SFR cases where a valid delinquent return is **not** submitted during the examination, the examiner must follow the IRC 6020(b) Certification Procedures outlined below:

- a. Prepare one Form 13496-A, IRC Section 6020(b) Certification for Employment Tax Returns, for each examined tax period where a signed return has not been submitted. Each quarterly Form 941 (and/or yearly Form 940, Form 943, Form 944, Form 945) constitutes a separate tax period. All Forms 13496-A must be uploaded to IMS as a workpaper and named using standard naming conventions. See IRM 4.23.4.5.5, File Naming Convention. For an example of completing Form 13496-A see Exhibit 4.23.12-3.
- b. For electronic SB/SE Employment Tax case file closures, if closing the case to CCP (Disposal Codes 01-04, 08-10, 12, 13, or 34), Form(s) 13496-A must

be attached to Form 15292-A, Employment Tax Case Closing Cover Sheet, along with the full audit report and all other case closing documents. All Forms 13496-A should be combined into one Adobe document and uploaded to Form 15292-A.

Note: Form(s) 5344 and attachments used by CCP are no longer part of the SFR package. They are to be completed for use in final closing.

(4) It is no longer necessary to include a copy of the Form 886-A, Explanation of Items, when using the Form 13496-A. The examiner should attach Form 886-A to the Form 13496-A if it has relevant information from which you can compute the taxpayer's liability and is not provided in the Forms 4666, 4667, 4668, 4668-B, or 4668-C.

(5) For **paper case files**, the following additional procedures will be followed:

- a. Behind a Form 13496-A, place one copy of either Form 4667 or Form 4668 (whichever applicable) covering each examined tax period for which a Form 13496-A has been prepared. This becomes the SFR package. For an example SFR package for a one-year exam that includes four Forms 941 and one Form 940 refer to Exhibit 4.23.12-4.
- b. Staple, clip, or rubber-band the SFR package together.
- c. The entire SFR package will be placed on top of the remaining workpapers and documents.

Note: Form(s) 5344 and attachments used by CCP are no longer part of the SFR package. They are to be completed for use in final closing.

(6) It is not necessary to make multiple copies of the supporting Forms 4667 and Forms 4668. Refer to Exhibit 4.23.12-4.

(7) IRC 6020(b) procedures apply to all types of closures, in other words agreed, unagreed, or appealed.

Note: Normal appeal procedures apply to all unagreed SFR cases.

(8) IRC 6020(b) procedures will never apply when a valid return is received from the taxpayer. This applies even if SFR procedures have already been initiated or if the valid return does not fully report tax due.

(9) The SFR is treated as a return filed by the taxpayer under IRC 6651(g) for purposes of determining the amount of the failure to pay penalty under IRC 6651(a)(2) or IRC 6651(a)(3). See IRM 4.23.9.10, Assertion of Failure to Pay Penalty, and IRM 4.23.9.11, Penalty for Failure to Make Timely Deposits, for procedures on failure to pay and failure to deposit penalties.

(10) If the taxpayer executes a waiver the signature on the Form 2504 does not constitute a return under IRC 6020(a) and therefore does not commence the running

of the assessment statute of limitations. See Rev. Rul. 2005-59. A waiver consists of the following:

- Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436),
- Form 2504–T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), or
- 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 Issued Not Addressed in this Exam),

IRM 4.23.12.5.4 Added new subsection titled "Processing Request for Abatement or Claim for Refund After Assessment Under 6020(b)." Provides instruction and guidance in applying Policy Statement 3-15, Reconsideration of an Unpaid Assessment.

Processing Request for Abatement or Claim for Refund After Assessment Under 6020(b).

(1) For **erroneous assessments** of tax (and related penalties and interest) on a 6020(b) return, an examiner may consider the taxpayer's request for abatement or claim for refund without requiring the Payer file an original signed return.

Example: During an examination of a taxpayer's non-filed Form 945, the taxpayer does not provide a delinquent return and does not demonstrate that the taxpayer had secured payee TINs at the time reportable payments were made to payees. After the examiner assesses backup withholding under IRC 3406(a)(1)(A) on a 6020(b) return, the taxpayer provides a written statement requesting abatement and demonstrates that they possessed payee TINs at the time reportable payments were made to payees. Since the assessment on the 6020(b) return is erroneous, because the taxpayer possessed payee TINs at the time reportable payments were made to payees, the examiner may consider the taxpayer's request without requiring the Payer file an original signed return.

(2) For **correct assessments** of tax (and related penalties and interest) on a 6020(b) return, the examiner may not consider the taxpayer's request for abatement or claim for refund unless the taxpayer submits a signed original return for the amount of the correct assessment with their request for abatement. This is due to an IRS policy that prohibits abatements if a TC 150 is an IRC 6020(b) return, unless the taxpayer files an original signed return. See IRM 1.2.1.4.15, Policy Statement 3-15 (Formerly P-2-89), Reconsideration of an Unpaid Assessment.

Example: During an examination of a taxpayer's non-filed Form 945, the taxpayer does not provide a delinquent return and does not demonstrate that the taxpayer had secured payee TINs at the time reportable payments were made to payees. After the examiner assesses backup withholding under IRC 3406(a)(1)(A) on a 6020(b) return, the taxpayer provides Forms 4669 and 4670 to request relief under IRC 3402(d) relief, and the taxpayer requests penalty relief for First Time Abate or Reasonable Cause. Since the assessment on the 6020(b) return is correct, because the taxpayer did not demonstrate they possessed payee TINs at the time reportable payments were made to payees, the taxpayer must provide a signed original return for the amount of the correct assessment with their request for abatement.

(3) An original signed return submitted after 6020(b) assessment should be processed as follows:

- a. Do not send the return to Submission Processing, because it will create a duplicate return condition. Date stamp and retain the original signed return in the case files as described in IRM 4.23.12.5.
- b. Submit Form 3870 to CCP to correct the Assessment Statute Expiration Date (ASED) to reflect the correct return received date and start the running of the assessment statute. See Exhibit 4.23.12-5 on how to prepare Form 3870, Field 11, Reason for adjustment.

IRM 4.23.12.6 Content from IRM 4.23.12.5 was moved to this subsection.

IRM 4.23.12.6(2) The note after paragraph (2) was replaced to incorporate Electronic Case File procedures.

Delinquent Tax Returns Secured (Other than Employment Tax Returns)

(1) Stamp all secured delinquent returns with an official date stamp.

(2) If the secured delinquent returns are not within the examiner's responsibility (in other words no exam controls will be established), file the returns with the appropriate Campus address, as noted in the return instruction package for the secured return (for example Form 1040, Form 1120, and so on). Document the case activity record that the return(s) were secured and forwarded.

Note: A copy of the return(s) must be uploaded as a workpaper in IMS using standard naming conventions. See IRM 4.23.4.5.5, File Naming Convention.

Note: Examiners are responsible for assessing the audit potential of all returns within their area of expertise. See IRM 4.10.5.2.3, Assessing Audit Potential: Area of Expertise.

(3) **Referrals generated by SB/SE Employment Tax Examiners:** If the secured delinquent returns need to be screened further by the another function, complete Form 5346, Examination Information Report.

- a. For SB/SE income tax referrals, in a single file send Form 5346, copy of the tax return, and any other supporting documentation by secured email to *SBSE ET WSD Referrals.
- b. For any other referral, send directly to the appropriate function.
- c. For fraud referrals, see IRM 4.23.12.11, Referral to Criminal Investigation.

(4) Referrals generated by non-SB/SE examiners should follow their business-prescribed procedures.

IRM 4.23.12.7 Content from IRM 4.23.12.6 was moved to this subsection. Updated the title of the subsection to "Penalty Determinations in Delinquent Return Cases (No SFR TC 150)." Updated the contents of the subsection to reflect IRM 4.4.9.4.11.1, Penalties.

Penalty Determinations in Delinquent Return Cases (No SFR TC 150)

(1) In cases when a delinquent return is secured, determine whether to assert the failure to file and failure to pay penalties. See IRM 1.2.1.4.2, Policy Statement 3-2 (Formerly P-2-7), for guidance regarding acceptable reasonable causes for failure to file. Document the recommendation for assertion or non-assertion of the penalties in the case file.

(2) Penalty recommendations for delinquent returns must be made whether or not the taxpayer agrees to the assertion of the penalties.

(3) If penalties are to be assessed, make **no** notations in the penalty area of the Form 13133. Failure To Pay (FTP), Failure To Deposit (FTD), Failure To File (FTF), and Estimated Tax Penalty (ESP), are all automatically computer generated and assessed if applicable. See IRM 4.4.9.4.11.1, Penalties.

(4) If penalties are **not** to be assessed during the initial processing of the TC 150, notate this on the Form 13133 by putting an "X" in the box to the left of the applicable Computer Condition Codes/Return Processing Code.

IRM 4.23.12.8 Content from IRM 4.23.12.7 was moved to this subsection.

Delinquency Penalty on Timely But Unsigned Return

(1) It is the policy of the IRS not to assert a delinquency penalty if an unsigned tax return is timely filed by the taxpayer on the prescribed form and the form is accompanied by proper payment, provided that:

- a. The taxpayer upon request subsequently files a proper return,
- b. The facts surrounding the failure to sign the return clearly indicate there was no willful intent to disobey the taxing statute, and
- c. Gross negligence is not involved.

Note: See IRM 1.2.1.4.5, Policy Statement 3-5 (Formerly P-2-11), Unsigned income tax returns will not be accepted for processing; delinquency penalty generally will not be imposed on timely filed unsigned income tax returns.

(2) When it is necessary to rely upon a taxpayer's failure to sign a return in defense of the statute of limitations, the delinquency penalty may be asserted to support the IRS's position that the statutory period of limitations does not begin to run until a valid return has been filed.

IRM 4.23.12.9 Content from IRM 4.23.12.8 was moved to this subsection.

Refusal to File Delinquent Returns

(1) When a taxpayer is advised to file all required delinquent returns but refuses to file, states inability to file, or neglects to file within the time-frame set, a determination will be made as to the extent the filing requirements should be enforced. The application of enforcement procedures will depend upon the facts of each case. This determination must be consistent with the criteria in IRM 1.2.1.6.18, Policy Statement 5-133, Delinquent returns—enforcement of filing requirements, and the guidelines outlined in IRM 4.23.12.10.

IRM 4.23.12.10 Content from IRM 4.23.12.9 was moved to this subsection. Split paragraph (1) into paragraph (1) and (2) and all subsequent paragraphs were renumbered accordingly. Moved the contents of paragraphs (5) and (6) into paragraph (2) and they were removed.

Delinquent Return Enforcement

(1) The extent to which enforcement of delinquency procedures will be undertaken will depend upon the facts of each case. As a general rule, enforcement should not extend beyond six prior years.

(2) Enforcement for shorter or longer periods, or not at all, may be determined where such action appears to be in the best interest of the Government from the standpoint of reasonableness, salutary effect on compliance, and prudent deployment of

resources. (See IRM 1.2.1.6.18, Policy Statement 5-133, Delinquent returns—enforcement of filing requirements) The examiner will document the case file by outlining the facts of the case and the reasons why enforcement for a shorter or longer period is recommended. Such recommendations must receive managerial approval prior to enforcement.

Note: No managerial approval prior to enforcement is required in cases where there would be no net tax due for the years for which delinquency procedures are not to be enforced.

(3) Specific factors that should be taken into account include:

- a. Degree of flagrancy
- b. Special need to enforce compliance in a specific area
- c. Whether the delinquency involves trust fund monies collected but not paid over
- d. Special circumstances peculiar to a specific taxpayer, class, industry or type of tax
- e. Expenditure of resources required in relation to anticipated results in terms of revenue, provided there are no other overriding considerations
- f. Period of enforcement used by other IRS activities in return-compliance programs in the same tax area

(4) Delinquency procedures will generally be enforced if a taxpayer has failed to file a one-time return. In other cases when contact is made with a delinquent taxpayer, delinquency procedures should ordinarily be followed through for at least one period. However, the circumstances of each individual case must be taken into consideration. (Refusal-to-file cases referred to SB/SE Income Tax Examination or TE/GE after taxpayer contact has been made by examiners are required to be fully documented prior to such referral.)

IRM 4.23.12.11 Content from IRM 4.23.12.10 was moved to this subsection.

Referral to Criminal Investigation

(1) Cases are referred to Criminal Investigation by using Form 2797, Referral Report of Potential Criminal Fraud Cases. If a case involving a collateral examination results in a fraud referral, the affected examination areas will coordinate the referral. The general guidelines for fraud procedures are outlined in IRM 4.23.9.6, Employment Tax Fraud - General.

(2) Instructions for completing Form 2797 can be found in IRM 25.1.3.3, Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases.

IRM 4.23.12.12 Content from IRM 4.23.12.11 was moved to this subsection.

Referral to Tax Exempt and Government Entities

(1) If a responsible officer of a TE/GE organization refuses to file a required return, the employee should prepare Form 5666, TE/GE Referral Information Report, or Form 5346. After managerial approval, the Form 5666 or Form 5346 should be forwarded to TE/GE for necessary action.

Exhibit 4.23.12-1 Added an introduction to the table.

Mail the delinquent Form 940, Form 941, Form 943, Form 944 or Form 945 to the address listed for the location of the taxpayer in the table that follows:

If Return is filed in:	Then Mail to:
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, or Wyoming	Department of the Treasury Internal Revenue Service Ogden, UT 84201-0005
Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, or Wisconsin	Department of the Treasury Internal Revenue Service Kansas City, MO 64999-0005

Exhibit 4.23.12-2 Added a new exhibit to provide instructions to prepare Form 3870 to secure a DLN.

Preparing Form 3870 to secure a DLN

Processing Form 3870 by CCP will result in a TC290 with zero tax to post to the module. This creates a DLN under which the delinquent return can be filed. It provides a means to preserve the paper document in a way that it can later be retrieved via IDRS command code ESTAB, if needed. The following chart provides instructions on how to fill out Form 3870.

Item	Action
1	Enter the taxpayer's Employer Identification Number.
2	Enter the current name and address of the taxpayer.

Item	Action
4	Enter the Master File Tax account code.
5	Enter the period ending (YYYYMM) of the tax return.
6	Enter the date the taxpayer submitted the delinquent tax return.
7	Enter "Del Rtn" on the Other line.
10	Check the appropriate block.
11	Enter "Delinquent return secured by Exam, SFR TC 150 present. Return must be filed under the TC 290 DLN."
13	Enter signature, work telephone number, and FAX number of the employee preparing the request and date the request is completed; obtain the approving official's signature, title and date request is approved.
16	Enter Blocking Series "00."
21	If there is a credit balance on the taxpayer's account, enter Hold Code "2." Otherwise, leave blank.
29	Enter TC Number "290" and Increase/Decrease "0.00."
30	Enter Remarks "Paper Rtn."

Exhibit 4.23.12-3 Added new exhibit by moving the content of the example in IRM 4.23.12.5.3 paragraph (3) item 1.

Example of Completing Form 13496-A

If there are three years of employment taxes for which SFRs for Forms 940 and Forms 941 must be prepared, fifteen Forms 13496-A must be prepared (twelve for Forms 941 and three for Forms 940).

- a. On each Form 13496-A, complete the information requested in the top four boxes.
- b. On each Form 13496-A, check the box for the appropriate form (Form 4667 or Form 4668) that supports that SFR. For example, if an SFR is being prepared for a Form 940, the box for Form 4667 will be checked.
- c. Each Form 13496-A must be signed and dated. The date must be on or after the date of the 30-day letter or agreed report.

Exhibit 4.23.12-4 Added new exhibit by moving the contents of the example in IRM 4.23.12.5.3 paragraph (4) item 1.

Example of a Paper Case File of a One-Year SFR Package

The SFR package for a one-year exam that includes four Forms 941 and one Form 940 would look like this (listed top to bottom):

- Form 13496-A for Form 941 20XX03,
- Form 13496-A for Form 941 20XX06,
- Form 13496-A for Form 941 20XX09,
- Form 13496-A for Form 941 20XX12,
- Form 13496-A for Form 940 20XX12,
- Form 4668 covering the four Forms 941 quarters, and
- Form 4667 covering the one Form 940.

Exhibit 4.23.12-5 Added new exhibit to provide instruction to complete a Form 3870 to correct ASED to reflect the correct return received date after assessment under IRC 6020(b).

Correct ASED to Reflect Correct Return Received Date After Assessment
Under 6020(b)

Submit Form 3870 to CCP to correct the ASED to reflect the correct return received date and start the running of the assessment statute. In Form 3870, Field 11, Reason for adjustment, enter the following:

Input CC REQ77 for:
EIN: XX-XXXXXXX
MFT: XX
Tax Period: 20XXXX
TC: 560
Extension-Dt field: Return received date plus three years
DLN-CD field: 70 (to extend the ASED)
Remarks: NSD, Correct ASED

Editorial changes have been made throughout the IRM for clarity. Reviewed and updated grammar, plain language, titles, IRM references, and IRS organizational references and terminology.