



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.70.14

NOVEMBER 24, 2023

EFFECTIVE DATE

(11-24-2023)

PURPOSE

- (1) This transmits new IRM 4.70.14, Resolving the Examination.

MATERIAL CHANGES

- (1) The TE/GE Examinations process was created to provide a consistent and streamlined examination process across TE/GE.
- (2) Editorial changes have been made throughout, including for plain language.
- (3) Incorporated Mandatory Review Alert issued on August 3, 2023.
- (4) This IRM was extracted from the Internal Guidance Memos (IGMs) and IRM sections tabled here:

IGM	IRM Section
TEGE-04-0820-0015, TE/GE CSP Agreements, dates August 17, 2020	4.71.1, Overview of Form 5500 Examination Procedures, dated February 25, 2022
TEGE-04-0920-0007, Modification of Department of Labor (DOL)/ Pension Benefit Guarantee Corporation (PBGC) Referral Processes, dated September 24, 2020	4.71.3, Unagreed Form 5500 Examinations and EP Examinations Closing Agreements, dated March 18, 2022
TEGE-04-1220-0005, Change in Signatures on Various Examination Letters, dated December 12, 2020	4.71.4, Discrepancy Adjustments, dated December 8, 2020
TEGE-04-0221-0003, Interim Guidance on Letter Consolidation, dated February 2, 2021	4.71.5, Form 5330 Examinations, dated February 14, 2022
TEGE-04-0621-0009, Cases Protested to Appeals through the EO Closing Unit, dated June 22, 2021	4.71.6, Employee Plans Referrals, dated October 29, 2019
TEGE-04-0921-0018, Activity, Disposal, Source and Status Codes, dated September 28, 2021	4.71.8, EP Claims, dated December 17, 2019

IGM	IRM Section
TEGE-04-0322-0009, Interim Guidance on Fully Electronic (100% Paperless) Cases, dated March 15, 2022	4.71.9, Statute Control Procedures, dated August 12, 2021
TEGE-04-0422-0013, TE/GE RCCMS Naming Convention, dated April 26, 2022	4.71.10, Form 990-T Processing, dated October 29, 2019
TEGE-04-0522-0014, Interim Guidance on Establishment of Form 5330 Returns, dated May 3, 2022	4.71.12, Case File Assembly Guidelines, dated November 5, 2019
TEGE-04-0622-0015, Cases Subject to Mandatory Review, dated June 1, 2022	4.71.13, Technical Assistance, Technical Advice and Requests for Relief under IRC Section 7805(b), dated July 12, 2019
TEGE-04-0622-0025, Discontinue using paper Forms 895/895-EP, dated June 21, 2022	4.71.14, EP Mandatory Review, dated August 26, 2021
TEGE-04-0622-0027, Tax Exempt and Government Entities Examination Process, dated June 21, 2022	4.71.17, Non-Return Unit Examinations, dated December 2, 2021
TEGE-04-0722-0024, Fully Electronic (100% Paperless) Cases, dated July 13, 2022	4.71.19, Fast Track Settlement Procedures, dated October 28, 2019
TEGE-04-1122-0033, Letter Consolidation for Change due to Correction of Operations Closing Letter, dated November 15, 2022	4.71.27, Form 5329 Examination Procedures, dated December 23, 2020
TEGE-04-1122-0003, Letter Consolidation for Change due to Correction of Operations Closing Letter, dated November 15, 2022	4.75.15, Closing Letters and Examination Reports, dated January 14, 2020
TEGE-04-1122-0035, Interim Guidance on Certain Accepted as Filed Returns, dated November 28, 2022	4.75.16, Case Closing Procedures, dated February 5, 2020
TEGE-04-0123-0003, Interim Guidance on use of Standardized Letters and Forms, dated January 10, 2023	4.75.20, Final Case Processing, dated July 30, 2019
	4.75.21, EO Special Examination Procedures, dated November 5, 2019

IGM	IRM Section
	4.75.22, EO Delinquent, Amended and Substitute for Return Procedures, dated November 7, 2019
	4.75.24, Organizations Covered by a Group Ruling, dated May 18, 2021
	4.75.25, Exempt Organizations Examinations Closing Agreements, dated May 1, 2017
	4.75.31, Conversion of Returns, dated October 18, 2019
	4.75.32, Declaratory Judgment Cases and The Administrative Record, dated May 2, 2019
	4.75.34, Procedures for Disposition of IRC 501(p) Cases, dated May 29, 2019
	4.75.37, Claims, Requests for Abatement and Examination Reconsiderations, dated February 7, 2020
	4.75.40, Employment Tax Audit Procedures, dated December 18, 2019
	4.81.5, Tax Exempt Bonds (TEB) Examination Program and Procedures, Conducting the Examination, dated August 5, 2021
	4.81.6, Closing Agreements, dated February 20, 2019
	4.81.12, Compliance Review of Form 8038-CP, dated October 1, 2019
	4.81.14, Unagreed Issues, dated October 17, 2019
	4.82.2, Arbitrage Payment Refund Claim Procedures, dated March 18, 2021

IGM	IRM Section
	4.86.5, Indian Tribal Governments (ITG) Procedures, Conducting Indian Tribal Government Examination, dated December 15, 2020
	4.88.1, Examination Issues Pertaining to ITG Cases, dated December 10, 2021

EFFECT ON OTHER DOCUMENTS

This IRM supersedes and obsoletes:

IRM 4.71.1, Overview of Form 5500 Examination Procedures, dated February 25, 2022,
 IRM 4.71.3, Unagreed Form 5500 Examinations and EP Examinations Closing Agreements, dated March 18, 2022,
 IRM 4.71.4, Discrepancy Adjustments, dated December 8, 2020,
 IRM 4.71.5, Form 5330 Examinations, dated February 14, 2022,
 IRM 4.71.6, Employee Plans Referrals, dated October 29, 2019,
 IRM 4.71.7, Survey Returns, dated October 4, 2019,
 IRM 4.71.8, EP Claims, dated December 17, 2019,
 IRM 4.71.9, Statute Control Procedures, dated August 12, 2021,
 IRM 4.71.10, Form 990-T Processing, dated October 29, 2019,
 IRM 4.71.12, Case File Assembly Guidelines, dated November 5, 2019,
 IRM 4.71.13, Technical Assistance, Technical Advice Requests and Requests for Relief under IRC section 7805(b), dated July 12, 2019,
 IRM 4.71.14, EP Mandatory Review, dated August 26, 2021,
 IRM 4.71.17, Non-Return Unit Examinations, dated December 2, 2021,
 IRM 4.71.19, Fast Track Settlement Procedures, dated October 28, 2019,
 IRM 4.71.27, Form 5329 Examination Procedures, dated December 23, 2020,
 IRM 4.75.15, Closing Letters and Examination Reports, dated January 14, 2020,
 IRM 4.75.16, Case Closing Procedures, dated February 5, 2020,
 IRM 4.75.17, Mandatory Review, dated October 15, 2019,
 IRM 4.75.20, Final Case Processing, dated July 20, 2019,
 IRM 4.75.21, EO Special Examination Procedures, dated November 5, 2019,
 IRM 4.75.22, EO Delinquent, Amended and Substitute for Return Procedures, dated November 7, 2019,
 IRM 4.75.24, Organizations Covered by a Group Ruling, dated May 18, 2021,
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 IRM 4.81.12, Compliance Review of Form 8038-CP, dated October 1, 2019,
 IRM 4.81.14, Unagreed Issues, dated October 17, 2019, IRM 4.82.2, Arbitrage Payment Refund Claim Procedures, dated March 18, 2021,
 IRM 4.86.5, Indian Tribal Governments (ITG) Procedures, Conducting Indian Tribal Government Examination, dated December 15, 2020,
 IRM 4.88.1, Examination Issues Pertaining to ITG Cases, dated December 10, 2021, and
 IRM 7.11.2.6 EP Examination Case Grading Criteria, dated July 25, 2008.

This section incorporates Internal Guidance Memos

TEGE-04-0820-0015, TE/GE CSP Agreements, dated August 17, 2020,
TEGE-04-1220-0005, Change in Signatures on Various Examination Letters, dated December 12, 2020,
TEGE-04-0221-0003, Interim Guidance on Letter Consolidation, dated February 2, 2021,
TEGE-04-0621-0009, Cases Protested to Appeals through the EO Closing Unit, dated June 22, 2021,
TEGE-04-0921-0015, Mandatory Actuarial Input for Examination Cases Involving Defined Benefit Plans, dated September 15, 2021,
TEGE-04-0921-0018, Activity, Disposal, Source and Status Codes, dated September 28, 2021,
TEGE-04-0222-0006, Elimination of requirement to post Form 3198-A as a separate workpaper in RCCMS Office Documents folder, dated February 23, 2022,
TEGE-04-0322-0009, Interim Guidance on Fully Electronic (100% Paperless) Cases, dated March 15, 2022,
TEGE-04-0422-0013, TE/GE RCCMS Naming Convention, dated April 26, 2022,
TEGE-04-0522-0014, Interim Guidance on Establishment of Form 5330 Returns, dated May 3, 2022,
TEGE-04-0622-0015, Cases Subject to Mandatory Review, dated June 1, 2022,
TEGE-04-0622-0016, Checksheet for Employee Plans Compliance Activities, dated June 22, 2022,
TEGE-04-0622-0025, Discontinue using paper Forms 895/895-EP, dated June 21, 2022,
TEGE-04-0622-0026, Reporting Compliance Case Management System (RCCMS) Electronic Case Policy dated June 21, 2022,
TEGE-04-0622-0027, Tax Exempt and Government Entities Examination Process, dated June 21, 2022,
TEGE-04-0722-0024, Fully Electronic (100% Paperless) Cases, dated July 13, 2022,
TEGE-04-1122-0033, Letter Consolidation for Change due to Correction of Operations Closing Letter, dated November 15, 2022,
TEGE-04-1122-0035, Interim Guidance on Certain Accepted as Filed Returns, dated November 28, 2022, and
TEGE-04-0123-0003, Interim Guidance on Use of Standardized Letters and Forms, dated January 10, 2023.

AUDIENCE

Tax Exempt and Government Entities Examination Employees and Managers

Robert Choi
Deputy Commissioner
Tax Exempt and Government Entities

4.70.14

Resolving the Examination

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4.70.14.1
(11-24-2023)
**Program Scope and
Objectives**

- (1) **Purpose:** IRM 4.70.14, Resolving the Examination, provides guidelines for TE/GE examiners to use during the resolution phase of the examination. The resolution phase has three steps:
 - a. Final Determination
 - b. Resolve Case
 - c. Close Case

Note: Each of these steps will be discussed in further detail within IRM 4.70.14, Resolving the Examination.

- (2) **Audience:** This IRM provides procedures for examiners, managers, and support staff in TE/GE examination functions.
- (3) **Policy Owner:** The Directors, Employee Plans and Exempt Organization/ Government Entities.
- (4) **Program Owner:** The Directors, Employee Plans Examinations, Exempt Organizations Examinations, and Government Entities.

4.70.14.1.1
(11-24-2023)
Background

- (1) This IRM provides an overview of the responsibilities that examiners should understand and apply in the performance of their duties in executing the resolution phase of the TE/GE examination process.
- (2) Examination of exempt organizations will be conducted to determine whether such entities meet continued qualification of exempt status, compliance and the causes of noncompliance with the tax laws and applicable resolutions.
- (3) Examination of employee benefit plans is regulatory, with emphasis on continued qualification of employee benefit plans. The IRS selects and examines returns to:
 - a. Promote the highest degree of voluntary compliance with the tax laws governing plan qualification.
 - b. Determine the extent of compliance and the causes of noncompliance with the tax laws and applicable resolutions.
 - c. Determine whether such plans meet the applicable qualification requirements in operation.
- (4) Examination of governmental entities will be conducted to determine whether such entities are in compliance with their employment tax filing, reporting, and payment requirements.
- (5) The Tax Exempt Bond Examination Program is to identify and correct noncompliance in tax-advantaged bonds.
- (6) TE/GE Examiners should refer to IRM 4.23.3, Exam Program and Procedures, when examining employment tax cases in addition to this IRM section.
- (7) The procedures contained in this IRM are not intended to be all inclusive. Examiners must use their professional judgment in completing their exam cases and other compliance activities.

4.70.14.1.2
(11-24-2023)
Authority

- (1) Examinations are conducted according to Policy Statement 1-236 (IRM 1.2.1.2.36), Fairness and Integrity in Enforcement Selection, and the Taxpayer Bill of Rights per IRC Section 7803(a)(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), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.
- (2) Policy Statement 4-4 (IRM 1.2.1.5.2) provides package audit requirements, that:
 - a. Income tax examinations will include consideration of employment tax liability.
 - b. If warranted, employment tax returns will be examined concurrently with the income tax examination.
 - c. The examination of any return will include a check for filing other federal tax or information returns required to be filed.
- (3) Under Policy Statement 4-117 (IRM 1.2.1.5.34), examiners and managers:
 - a. Have broad authority to consider and weigh conflicting information, data, and opinions.
 - b. Use professional judgement when applying examination standards for findings of fact and application of tax law to determine the correct tax liability.
 - c. Exercise authority to get the greatest number of agreements to tax determinations without sacrificing the quality or integrity of those determinations.
 - d. Resolve tax differences at the lowest level.
- (4) Policy Statement 4-119 (IRM 1.2.1.5.36) provides that the primary objective of the TE/GE program is regulatory, with emphasis on the continued qualification of exempt organizations and employee benefit plans, and continued compliance of governmental entities (federal, state, and local governmental entities, Indian tribal governments and tribal entities, and entities or organizations that issue tax advantaged bonds). The IRS selects and examines returns to:
 - a. Promote the highest degree of voluntary compliance with the statutes governing qualification of plans and exemption of certain types of organizations from tax,
 - b. Determine the extent of compliance and the causes of noncompliance with the tax laws by plans, organizations, and governmental entities.
- (5) IRC 7602 gives examiners the authority to:
 - a. Examine any books, papers, records or other data necessary to complete an examination (includes electronic media).
 - b. Issue a summons for information necessary to complete an examination.
 - c. Take testimony under oath to secure additional information needed.
 - d. Ask about any offense connected to administering or enforcing the Internal Revenue laws.
- (6) IRC 6201 - Assessment Authority, which falls under Chapter 63 - Assessment.

4.70.14.1.3
(11-24-2023)
Responsibilities

- (1) The Directors, EO/GE and EP, are the executives responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.23, Tax Exempt and Government Entities Division, for additional information.
- (2) The Directors, EO Examinations, GE, and EP Examinations reports to the Directors, EO/GE and EP respectively, and are responsible for the delivery of policy and guidance that impacts the field examination process. See IRM 1.1.23, Tax Exempt and Government Entities Division, for additional information.
- (3) All examiners must perform their professional responsibilities in a way that supports the *IRS Mission*. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (4) Examiners and their managers should thoroughly acquaint themselves with the examination procedures and information contained in this IRM, as well as other resources.

4.70.14.1.4
(11-24-2023)
Program Controls

- (1) CP&C administers examination inventory control.
- (2) The FAC coordinates the assignment of examination inventory.
- (3) Two review groups make sure examiners conduct examinations per technical, procedural and administrative requirements:
 - a. Mandatory Review / Technical.
 - b. Special Review, see IRM 4.70.7, Special Review (SR) and Tax Exempt Quality Measurement System (TEQMS) Procedures.
- (4) In order to ensure a consistent level of managerial engagement in the process of making key strategic decisions during an exam, the examiner submits requests for approval by their manager through RCCMS.
- (5) The manager approves or rejects any request through RCCMS.
- (6) The IRS is fully committed to protecting the privacy rights of taxpayers and employees. Privacy laws are included in the IRC, the Privacy Act of 1974, the Freedom of Information Act, and the IRS policies and practices. For more information about these laws, visit the *IRS Freedom of Information / Internal Revenue Service*.
 - a. For questions about privacy, email **Privacy*.
 - b. For question about disclosure, email **Disclosure*.

4.70.14.1.5
(11-24-2023)
Acronyms and Abbreviations

(1)	<table border="1"> <thead> <tr> <th>Acronyms</th><th>Definition</th></tr> </thead> <tbody> <tr> <td>AIMS</td><td>Audit Information Management System</td></tr> <tr> <td>AMDISA</td><td>Audit Management Display Information System</td></tr> <tr> <td>ASED</td><td>Assessment Statute Expiration Date</td></tr> </tbody> </table>	Acronyms	Definition	AIMS	Audit Information Management System	AMDISA	Audit Management Display Information System	ASED	Assessment Statute Expiration Date
Acronyms	Definition								
AIMS	Audit Information Management System								
AMDISA	Audit Management Display Information System								
ASED	Assessment Statute Expiration Date								

Acronyms	Definition
ATAT	Abusive Tax Avoidance Transactions
Audit CAP	Audit Closing Agreement Program
BMF	Business Master File
BMFOLI	Business Master File Online Information
BOD	Business Operating Division
CA Coordinator	Business Operating Division
CAF	Centralized Authorization File
CAS	Computer Audit Specialist
CC	Closing Code
CCR	Case Chronology Record
CI	Criminal Investigation Division
CP&C	Compliance Planning & Classification
DC	Disposal Code
DLN	Document Locator Number
DOL	Department of Labor
EBSA	Employee Benefits Security Administration
EDS	EP/EO Determination System
EEE	Employee Benefits, Exempt Organizations, and Employment Taxes Office of Associate Chief Counsel
EEFax (e-fax)	Enterprise Electronic Facsimile
EFU	Exam Functional Unit
EIN	Employer Identification Number
EO	Exempt Organizations
EOCAC	Exempt Organizations Closing Agreement Coordinator
EP	Employee Plans
EPCU	Employee Plans Compliance Unit
ERISA	Employee Retirement Income Security Act of 1974
ESOP	Employee Stock Ownership Plan

Acronyms	Definition
FAC	Functional Assignment Coordinator
FAST	Field Agent Support Team
FICA	Federal Insurance Contributions Act
FMV	Fair Market Value
FSL/ET	Federal, State, Local Government / Employment Tax
FTS	Fast Track Settlement
GCM	General Counsel Memo
GE	Government Entities
GM	Group Manager
HCE	Highly Compensated Employee
IGM	Interim Guidance Memo
IRC	Internal Revenue Code
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
INOLES	Inquiry On-line Entity
IRA	Individual Retirement Account
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
JCT	Joint Committee on Taxation
LB&I	Large Business and International
MF	Master File
MFT	Master File Tax
NMF	Non-Master File
NRU	Non-Return Unit
OSC	Ogden Service Center
PBGC	Pension Benefit Guaranty Corporation
PII	Personally Identifiable Information
PLR	Private Letter Ruling
POA	Power of Attorney

Acronyms	Definition
POD	Post of Duty
PPA	Pension Protection Act of 2006
RCCMS	Reporting Compliance Case Management System
RGS	Report Generation Software
RICS	Returns Inventory Management System
SB/SE	Small Business and Self Employed
SEP	Simplified Employee Pension
SRCR	Substitute for Converted Return
SFR	Substitute for Return
SIMPLE	Savings Incentive Match Plan for Employees of Small Employers
SNOD	Statutory Notice of Deficiency
SOL	Statute of Limitations
SR	Special Review
SRS	Specialist Referral System
SSA	Social Security Administration
SSN	Social Security Number
TAM	Technical Advice Memorandum
TC	Transaction Code
T.C.	Tax Court
TE/GE	Tax Exempt and Government Entities
TEGEDC	TE/GE Division Counsel
TEB	Tax Exempt Bonds
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982
TEQMS	Tax Exempt Quality Measurement System
TIN	Taxpayer Identification Number
TP	Taxpayer
UBI / UBIT	Unrelated Business Income / Unrelated Business Income Tax
VCP	Voluntary Compliance Preparer

Acronyms	Definition
W&I	Wage and Investment

4.70.14.1.6
(11-24-2023)

Related Resources

- (1) Examiners should consult the Knowledge Management *Virtual Library* to ensure proper issue development and consistent application of the law.
- (2) To ensure that the IRM is always current, future revisions of the IRM will refer you to one of the books below for the correct codes to use in lieu of specifying an activity code, disposal code, source or status code. The IRM will specify the section of the document to reference and the type of activity, disposition, source and status code to look up.
 - Document 6379, Information Systems Codes FY 2023 Quick Reference for EO Employees
 - Document 6476, Information Systems Codes FY 2023 Quick Reference for EP Agents/Specialists
 - Document 11308, Information Systems Codes FY 2023 for GE Employees

Note: You can also get the current version of the documents at our *Business Systems Planning* page.

4.70.14.2
(11-24-2023)

Resolution vs. Settlement

- (1) The authority to conduct examinations, resolve issues and determine tax liability is derived from Title 26, Internal Revenue Code, Subtitle F – Procedure and Administration, which includes but is not limited to:

- a. IRC section 7602 - Examination of books and witnesses, which falls under Chapter 78 - Discovery of Liability and Enforcement of Title.

Note: IRC 7602 provides examiners with the authority to:

- Audit any books, papers, records or other data necessary to complete an audit.
- Take testimony under oath to secure additional information needed.
- Issue summons for information necessary to complete an audit.
- Ask about any offense connected to the administering or enforcing of the Internal Revenue laws.

- b. IRC section 6201- Assessment authority, which falls under Chapter 63 - Assessment.

Note: The authority to resolve issues is derived from its authority to make determinations of tax liability under IRC 6201.

- (2) **Resolution:** Managers have the broad authority to resolve issues based upon the application of the tax law to the facts and circumstances. Consideration and utilization of issue resolution tools can start at the earliest appropriate point and continue until the case is closed from examination's jurisdiction. Using appropriate issue resolution tools can potentially reduce examination time, save resources and lessen the burden on both parties.

- (3) **Settlement: The IRS Independent Office of Appeals** (Appeals) has the authority to settle cases based upon hazards of litigation. For example, in the event of litigation, there may be uncertainty as to how a court would interpret and apply the law or weigh the facts. Appeals utilizes techniques such as “mutual concession” and “split issue” settlements. Exam is not authorized to use these settlement techniques.

Note: There are various delegation orders available for settlement of issues at the examination level. See IRM 1.2.2.5, Servicewide Policies and Authorities, Delegations of Authority for the Examining Process.

- (4) Issues identified during an examination should be resolved at the lowest level possible. The group manager should be consulted on identified issues and proposed resolution to those issues as part of the on-going examination risk analysis.
- (5) Issues may be resolved utilizing various issue resolution tools (correction programs) that are offered depending on your function. These programs may be used to resolve agreed and disagreed issues. It is important to check the requirements of these programs and discuss the issue with your group manager before offering it to the taxpayer.
- (6) Available correction programs by function are:

TE/GE Function	Correction Program
EP	<ul style="list-style-type: none"> EPCRS and Closing Agreements – see IRM 4.70.14.2.1.2.2, EP – EPCRS and Closing Agreements Fast Track – see IRM 4.70.14.2.3, Fast Track Settlement Procedures Correction of Eligible IRC 457(b) Non-Governmental Plan Failures – see IRM 4.70.14.2.1.2.3, EP Procedures for Correction of Eligible IRC 457(b) Non-Governmental Plan Failures
EO	<ul style="list-style-type: none"> Exempt Organization Examinations Closing Agreements – see IRM 4.70.14.2.1.3.2, EO – Exempt Organizations Examinations Closing Agreements Fast Track – see IRM 4.70.14.2.3, Fast Track Settlement Procedures See below for ET Examination resulting in, Ad Hoc Closing Agreement, Classification Settlement Program, Tip Program and 3402(d) Tax Reduction

TE/GE Function	Correction Program
FSL/ITG	<ul style="list-style-type: none"> • Employment Tax Closing Agreements – see IRM 4.70.14.2.1.4.2, Employment Tax Closing Agreements • Ad Hoc Closing Agreement – see IRM 4.70.14.2.1.4.3, FSL/ET – AD Hoc Closing Agreement Procedures and Policy • Classification Settlement Program – see IRM 4.70.14.2.1.4.4, TE/GE – Classification Settlement Program • Tip Compliance Agreement – see IRM 4.70.14.2.1.4.5, TE/GE – Tip Compliance Agreements • IRC 3402(d) Tax Reduction – see IRM 4.70.14.2.1.4.6, TE/GE – IRC 3402(d) Tax Reduction Procedures • Fast Track – see IRM 4.70.14.2.3, Fast Track Settlement Procedures
TEB	<ul style="list-style-type: none"> • Closing Agreement – see IRM 4.70.14.2.1.5.6, TEB - Closing Agreement and IRM 4.70.14.2.1.5.9, TEB – Tax Exempt Bonds Closing Agreements

4.70.14.2.1
(11-24-2023)
Agreed Resolution

- (1) Agreed case resolution is achieved when the taxpayer and/or representative agree with the findings of the examination. The following are agreed resolutions:
- The examiner does not raise a tax or status/qualification issue. See IRM 4.70.14.4, Closing a Case for procedures on closing a “no change” case.
 - A status/qualification issue is raised and is resolved under a correction or settlement program.
 - The examiner solicits filing of returns due and/or payment of tax, interest and penalties.
 - If the taxpayer and/or representative responds by filing the returns due and/or with payment of tax, interest and penalties; all parties are in agreement.
 - If taxpayer indicates an inability to pay the tax due at closing, this is still an agreed resolution. Alternative payment methods should be discussed. An installment agreement should be offered if the taxpayer meets the requirements. Form 9465, Installment Agreement Request, can be used to solicit a payment agreement.
 - If the taxpayer and/or representative agree with the findings, but do not wish to pay the deficiency immediately, this is still an agreed resolution. Explain that a statement for the deficiency plus interest will be mailed. Their cancelled check will be their receipt. Secure appropriate waivers and close the case.
 - TE/GE functional agreed examination processing guidance is listed in the table below:

Functional Unit	Agreed Processing Guidance
EP & EO	<p>1. An agreed Discrepancy Adjustment is one for which:</p> <ol style="list-style-type: none"> There is an agreed tax change. In this case the taxpayer agrees with the proposed tax change by returning a signed Form 4549-E The taxpayer sends additional information that results in a “no change.” In this case, either examiner or the taxpayer provides information that no adjustment is warranted. <p>See IRM 4.70.15.5, for procedural guidance on agreed discrepancy adjustments.</p>
EP	<p>1. An agreed Form 5500, IRC 403(b)/457(b), SEP, SIMPLE or SARSEP examination is one for which:</p> <ol style="list-style-type: none"> The examiner does not raise a qualification issue. See IRM 4.70.14.4, Closing a Case, for procedures on closing a “no change” case. A qualification issue is raised but is resolved under the Employee Plans Compliance Resolution System (EPCRS) or through a Delegation Order 8-3 (DO 8-3) closing agreement. <p>See the following sections for specific procedural guidance:</p> <ul style="list-style-type: none"> IRM 4.70.14.2.1.2.2, EP - EPCRS and Closing Agreements IRM 4.70.14.2.1.2.3, EP - Procedures for Correction of Eligible IRC 457(b) Non-government Plan Failures <p>2. An agreed Form 5330 and 990-T examination is one for which:</p> <ol style="list-style-type: none"> The examiner does not raise issue with amounts reported on a filed return; The taxpayer agrees to adjustments on a filed return; or A delinquent return is filed and any required correction is complete. <p>See IRM 4.70.14.2.1.2.4, Processing Agreed Forms 5330 and 990-T, for procedural guidance.</p>

Functional Unit	Agreed Processing Guidance
EO	<p>An agreed Exempt Organization examination is one for which:</p> <ol style="list-style-type: none"> The examiner does not propose any adverse status change (revocation, disqualification of a status 36 organization, or reclassification from public charity to a private foundation) or tax adjustment. <p>Note: This includes cases where operational changes were made and did not result in a change to exempt status.</p> <ol style="list-style-type: none"> The examiner proposes and the Taxpayer agrees to an adverse status change, tax adjustment, and/or worker classification issues. The Taxpayer makes correction under a closing agreement program, fast track settlement or classification settlement program. <p>See the following sections for specific procedural guidance:</p> <ul style="list-style-type: none"> IRM 4.70.14.2.1.3 EO – Agreed Exempt Organization Examination Procedures IRM 4.70.14.2.1.3.1 EO – Examination Results and Reports IRM 4.70.14.2.1.3.2 EO – Exempt Organizations Examinations Closing Agreements IRM 4.70.14.2.1.3.3 EO – Conversion of Returns •IRM 4.70.14.2.1.3.4 EO – Revocation or Termination of Organizations Covered by a Group Ruling

Functional Unit	Agreed Processing Guidance
Employment Tax (EO, FSL/ET & ITG)	<p>An agreed examination is one for which:</p> <ol style="list-style-type: none"> The examiner does not propose any tax adjustments and/or change in worker classification. The examiner proposes and the Taxpayer agrees to tax adjustments and/or work classification determination. The Taxpayer participates in an agreement or settlement program. <p>See the following sections for specific procedural guidance:</p> <ul style="list-style-type: none"> IRM 4.70.14.2.1.4, Employment Tax Agreed Case Processing IRM 4.70.14.2.1.4.1, Employment Tax - Establishing Related, Prior and Subsequent Period Returns IRM 4.70.14.2.1.4.2, Employment tax - Closing Agreements IRM 4.70.14.2.1.4.3, FSL/ET – Ad-Hoc Closing Agreements Procedures and Policy IRM 4.70.14.2.1.4.4, TE/GE - Classification Settlement Program IRM 4.70.14.2.1.4.5, TE/GE - Tip Compliance Agreements IRM 4.70.14.2.1.4.6, TE/GE - IRC 3402(d) Tax Reduction Procedures IRM 4.70.14.2.1.4.7, Employment Tax - Report Writing IRM 4.70.14.2.1.4.8, Employment Tax – Remittance Processing Procedures

Functional Unit	Agreed Processing Guidance
TEB	<p>An agreed Tax-Exempt Bond examination is one for which:</p> <ol style="list-style-type: none"> The examiner concludes the bonds are in compliance. Operational changes were made and did not result in a change to bond qualification. A delinquent Form 8038 series or Form 8703 is received. An issuer agrees with proposed resolution of non-compliance determined in the examination and completed a closing agreement. <p>See the following sections for specific procedural guidance:</p> <ul style="list-style-type: none"> IRM 4.70.14.2.1.5.2, TEB - No Change Examinations IRM 4.70.14.2.1.5.3, TEB - Examinations Resulting in Change due to Correction of Operations IRM 4.70.14.2.1.5.4, TEB - Rebate or Yield Reduction Payment Due IRM 4.70.14.2.1.5.5, TEB - Annual Certification of a Residential Rental Project (Form 8703) IRM 4.70.14.2.1.5.6, TEB - Closing Agreement IRM 4.70.14.2.1.5.7, TEB - Unagreed Potential Noncompliance IRM 4.70.14.2.1.5.8, TEB - Secured Delinquent and Late Files Returns and Forms IRM 4.70.14.2.1.5.9, TEB - Tax Exempt Bonds Closing Agreements

4.70.14.2.1.1
(11-24-2023)
Revenue Agent Report

(1) RAR Form 886-A, Explanation of Items, is mandatory for:

- EP:
 - When proposing revocation or non-qualification.
 - When proposing income or excise tax.
 - When proposing a change to income or excise tax previously reported.
 - All unagreed cases.
- EO:
 - Unagreed cases.
 - Agreed revocation cases.
 - Agreed reclassification of foundation status cases.
 - Agreed modification of operating foundation status cases.
 - Other agreed issues where the explanation doesn't fit in the space provided on the agreement form.
- FSL/ITG: Refer to the following sections for report writing instruction for employment tax examinations:
 - IRM 4.70.14.2.1.4.7, Employment Tax Report Writing,
 - IRM 4.23.10, Report Writing Guide for Employment Tax Examinations,

- III. IRM 4.24.20, Excise Tax Report Writing Guide,
- IV. IRM 4.10.8, Examination of Returns, Report Writing.

(2) Fully explain the examination issues and/or changes in the RAR. Include only items that are relevant to the issues in the RAR. Organize the RAR into the following sections:

- a. Issues – The issue section lists the questions that the report intends to answer. This section informs the reader about the issues or proposed changes.
 - I. RARs may contain one or more issues, including alternative issues.
 - II. Clearly state and number each separate issue.
 - III. State alternative issues as options in the event that Mandatory Review, Appeals, or Counsel doesn't uphold the primary issues.
 - IV. Keep the issue statements simple. If the issue involves multiple considerations to arrive at the conclusion, break the statement into component issue statements. This method consists of tiered issue statements.

Example: EP Example: During an examination of the plan year ending December 31, 2018, you determined that the plan didn't comply with the top-heavy minimum contributions requirements and didn't make distributions to participants who separated from service under the top-heavy vesting schedule. Issue one would be: "Whether minimum contributions per IRC 416(c)(2) were made for a top-heavy plan for the plan year ending December 31, 2018." Issue two would be: "Whether the accelerated vesting provisions under IRC 416(b) were applied to all plan participants or former participants who received distributions during the plan year ending December 31, 2018."

Example: EO Example: A complex issue statement - Not the best way to present the issues. Are Z's payments to Y, the founder and president of X, a 501(c)(3) public charity, not reported on Form 1099 or W-2, subject to IRC 4958? A set of tiered issue statements - Best way to present the issues. Is X an applicable tax exempt organization for purposes of IRC 4958? Is Y, the founder and president of X, a disqualified person under IRC 4958? Are Z's payments to Y, not reported on Form 1099 or W-2, subject to IRC 4958?

- b. Facts – The fact section contains the facts identified during the examination. This section is to be devoid of bias or opinion. Provide a detailed explanation of the facts upon which each issue or change is based. Include facts relevant to both the government's position and the taxpayer's position. Don't attribute any reasoning for the taxpayer's actions in the fact pattern.

I. Facts are defined as:

- A thing done.
- The quality of being actual.
- Something that has actual existence.
- A piece of information presented as having objective reality.

II. Things to consider when writing the facts:

- Is this fact supported by testimony or a document?
- Is the statement neutral or does it show bias?
- Have I attributed reasons for an action?
- Are the calculations mine or the taxpayer's?
- Have I reported just the facts?
- Was the statement written in a factual manner?
- Will my statement of fact be disputed?

III. Facts include:

- Items written by the taxpayer or representative that don't include the taxpayer's arguments.
- Any third-party records referencing the taxpayer.
- Any items reported on a form submitted to the IRS (such as Form 1023, SS-4, 990, etc.)
- Any tax computations performed by the taxpayer or representative, regardless of whether they are correct.
- Any oral statements made by the taxpayer or representative, recorded in writing.

Note: In the government's position section, address and dispute any item of information presented by the taxpayer or representative that is incorrect.

Reminder: It's important to specify the source of oral or written statements or calculations, e.g., "Taxpayer stated, XXXX".

IV. EP: Include in the RAR facts section a brief history of the plan and provide pertinent details surrounding the qualification issues. Cite any plan provisions relevant to the issues raised. For the top-heavy issues stated above, you'd describe the plan sections dealing with top-heavy contributions and accelerated vesting. Examples of information that would be included (as applicable to the issues) are:

- The plan years under examination
- Type of business of the plan sponsor
- Date business started/incorporated
- Ownership of business sponsoring the plan
- Type of tax return filed by the plan sponsor and the tax year end
- Effective date of plan
- Type of plan
- Latest determination letter
- Number of plan participants
- Plan participants affected
- Contributions made to the plan for the years under examination
- Specific applicable plan sections and
- Other relevant case specific details.

- a. **Law** – The law section contains the list of legal references relied upon in the report. Set forth in a clear and concise manner the pertinent law, regulations, published ruling of the IRS, case law or other precedent. Cite all pertinent law regardless of whether it supports or opposes the government's position. Exercise care to ensure that cited law is current.

I.	<p>You may cite the following documents: The Internal Revenue Code (IRC), Temporary and Final Regulations, Revenue Rulings, Revenue Procedures, Court Decisions and Congressional Committee Reports.</p> <p>Note: You can reference Proposed Regulations for interpretive purposes, but can't cite them as authority.</p>
II.	<p>Do not cite General Counsel Memos (GCMs), Private Letter Rulings (PLRs), or the Internal Revenue Manual (IRM) as sources of authority in the RAR.</p>
III.	<p>To use a PLR, TAM or GCM in a case:</p> <ul style="list-style-type: none"> • Modify the issue statements to be similar. • Identify differences between the fact patterns. • Cite the law cited in the document. • Apply the analysis in the government's position. • Incorporate its conclusion into the conclusion.
IV.	<p>You don't need to recite the law in full. Research the revenue rulings, revenue procedures, PLR, TAM, the field service advice (FSA), and GCM to find condensed cites. Copy and paste these cites into the law section, if available. Don't attribute the abbreviated cite to the particular document, unless citing the document itself as law.</p> <p>Note: IRM 4.10.7.2, Researching Tax Law, provides additional details about types of law you can cite and how to cite it.</p>

- b. **Government's Position** – The government's position relates the facts to the cited law through a narrative discussion to support the IRS's position.

I.	<p>In the government's position, prepare and present:</p> <ul style="list-style-type: none"> • A separate argument for each issue. • A conclusion as to the relevant facts. • Any tax computations. • Interpretations of the law with respect to the issues. • The suggested outcome. • An initial rebuttal to the taxpayer's position, if known.
II.	<p>When preparing the report:</p> <ul style="list-style-type: none"> • Copy and paste the issue statements into the start of the government's position. • Address the specific issue on its own merits before moving onto the next issue. • Remember to incorporate the facts and law applicable to that issue.
III.	<p>EP: List in this section, the date on which the plan failed to qualify and explain why EPCRS was not used.</p>

- c. **Taxpayer's Position** – In this section, reflect the taxpayer's position including any rebuttals the taxpayer has made on the government's

position. If the taxpayer hasn't provided a position on the issues, write a simple statement to the effect that the taxpayer has not provided a response.

- d. **Rebuttal/Conclusion** – Include a rebuttal if the taxpayer provides a position on the issues during the examination or in response to the draft RAR. Briefly, restate the government's position as a conclusion in all cases. Don't restate the lengthy analysis presented in the government's position. State the proposed result and any impact, such as taxes to be paid, returns to be filed and the effective date of revocation or reclassification, as applicable.
- e. **Alternative Position** - Consider whether to develop an alternative position. Present the alternative position at the end of the RAR after the conclusion statement on the primary position. Label it as "Alternative Position" and follow the same issue, facts, law, taxpayer's position, government's position and conclusion format.

Note: EO - If proposing revocation and the Form 990-T, Exempt Organization Business Income Tax Return, is also open for examination, develop the alternative position for the Form 990-T. See IRM 4.70.14.2.1.3.3.22, EO - Revocations and Disqualifications - Alternative Positions. In all other revocation situations, indicate in your workpapers that you considered positions, such as UBIT.

- (3) Do not include information concerning different types of tax or issues such as revocations/non-qualification in the same RAR.
 - a. EP: In general, do not include Form 1040, Form 1120, or Form 5330 information in the RAR for the revocation/non-qualification, because they involve separate legal entities. If you open a:

I.	Discrepancy adjustment of a related Form 1040 and/or 1120 discrepancy adjustment, prepare a separate RAR(s) and a separate examination files.
II.	Form 5330 examination, prepare a separate RAR and a separate examination file.

Note: Do not include the above information in the administrative record.

Note: See IRM 4.70.15.7, Unagreed Case Procedures, for unagreed Form 1040/1120 discrepancy adjustments, and IRM 4.70.14.2.4.2.3, Unagreed Forms 5330 and 990-T. See *Employee Plans Examination Exhibits* for an example of a detailed RAR covering several possible qualification issues.

- (4) Name the RAR using the TE/GE RCCMS Naming Convention and save it in the RCCMS Office Documents folder. See IRM 4.70.12.5.2, Workpaper Format and TE/GE RCCMS Naming Convention.
- (5) A corrected report should be prepared as follows:
 - 1. Across the top of the corrected report, write "Corrected Report".
 - 2. In the other information or remarks section write, "This report supersedes report dated (date)."

Note: The taxpayer's signature is only required on the corrected report if the change is in the government's favor, i.e., more tax or less

refund. If the taxpayer disagrees with the corrected report, unagreed procedures are applicable. Consider each year separately with no netting of tax periods. New waivers may need to be solicited even though the net effect of the corrections may be in favor of the taxpayer.

3. In the original report, note across the top, "This report superseded by report dated (date)".
4. Include the original and corrected reports in the RCCMS case file.
5. Note on the 3198-A Special Handling checksheet in RCCMS "Corrected Report".

4.70.14.2.1.2

(11-24-2023)

EP- Agreed Form 5500, IRC 403(b)/457(b), SEP, SIMPLE or SARSEP examination resolution

- (1) Most qualification issues discovered on EP examinations are resolved under EPCRS. EPCRS guidelines are covered in IRM 4.70.14.2.1.2.2, EP - EPCRS and Closing Agreements, and Rev. Proc. 2021-30.
- (2) When qualification issues can't be resolved through EPCRS, they are either:
 - a. Resolved through a DO 8-3 Closing Agreement, or
 - b. Processed as an unagreed case. See IRM 4.70.14.2.4, Unagreed.
- (3) Determine if the issue is an issue requiring Mandatory Technical Advice. Certain issues such as violations of the exclusive benefit rule under IRC 401(a)(2) (for plans that fall under Title I of ERISA) require mandatory technical advice.

Note: See Rev. Proc. 2023-1 (as updated annually) and IRM 4.70.13.6.7.2, Technical Advice Memorandum (TAM) Procedures, for a complete list of issues requiring mandatory technical advice.

4.70.14.2.1.2.1

(11-24-2023)

EP – Addressing Issues that Effect Plan Qualification

- (1) When you discover an issue during an examination of a plan that could potentially result in a plan revocation or non-qualification, discuss the issue with your group manager before formally advising the taxpayer that the IRS is proposing disqualification of the plan.
 - a. The purpose of this discussion with your group manager is to confirm that you're properly analyzing the facts, to determine which issues you should pursue and to determine whether we can resolve the issues through EPCRS. See IRM 4.70.14.2.1.2.2, EP - EPCRS and Closing Agreements.
 - b. You shouldn't proceed with the proposed revocation/non-qualification until you and your group manager have determined that the issue can't be resolved through EPCRS.
 - c. Audit CAP is available to correct egregious failures.
- (2) When you determine a qualification issue exists, in most cases, you should expand the examination to include additional years.

Additional Years Defined	
Subsequent year	Review the subsequent year unless it hasn't been filed. Pursue a substitute for return when Forms 5500 series return is due but not yet filed.
Prior years	Establish prior years if you review them. It is possible to have change closure in one year and no change closure in another year.
Affected Years	Establish all years affected on AIMS/RCCMS. The group manager must make sure additional years are established if correction is secured in those years or if the EP examiner reviewed records to verify compliance. Sometimes, this may lead to an 02 closure in a prior year. Caution: If you review records, you must issue a closing letter.

Note: See IRM 4.70.13.9.7.1, for procedures to open an examination of a related Form 5500 that has been filed.

Note: If a Form 5500 return is due but hasn't been filed, solicit a delinquent return from the plan sponsor.

Note: See IRM 4.70.13.9.7.1.3, for procedures to establish a related year for an NRU plan.

- (3) Document managerial involvement and guidance on the CCR.
- (4) Use the CCR (or similar document) to record in clear, legible form, a factual accounting of all conferences and/or telephone conversations you had with the taxpayer or taxpayer's representative (representative).
 - a. Since the administrative record in declaratory judgment cases (which includes proposed revocation/non-qualification cases) consists only of the documentation that was submitted in writing and exchanged between the parties, it is vital that you formally document all discussions and conferences for the record and share them with the taxpayer/representative.
 - b. If you want pertinent portions of the CCR or similar documentation included in the administrative record, you must send them to the taxpayer/representative in letter format. The pertinent portions should include, but are not limited to, any discussions you had with the taxpayer or representative that are relevant to the examination scope, affirmation of tax liability or the plan's qualified status.

- (5) After you fully develop the relevant issues, present proposals for resolution to the taxpayer/representative in light of the information provided to date.
 - a. This allows the taxpayer/representative an opportunity to agree with your proposals, make changes to resolve the issues, present additional facts for consideration, and/or present his/her position.
 - b. Make every effort to resolve the issues at the lowest possible level.
 - c. Advise the taxpayer/representative that their additional facts won't be considered a part of the administrative record, unless they submit them to the IRS in writing.
- (6) If the plan qualification issue can be resolved through EPCRS or through a DO 8-3 closing agreement, offer the taxpayer the opportunity to enter into negotiations for a closing agreement.
 - a. See Rev. Proc. 2021-30 for EPCRS.
 - b. See IRM 4.70.14.2.1.2.2.1, EPCRS - Self Correction Program (SCP).
 - c. See IRM 4.70.14.2.1.2.2.2, EP - EPCRS Closing Agreements.
 - d. See IRM 4.70.14.2.1.2.2.3, EP - DO 8-3 Closing Agreements.
- (7) When you have a qualification issue, you must clearly explain the qualification issues to the taxpayer in writing by issuing a preliminary Revenue Agent's Report (RAR).
 - a. Note that the preliminary RAR should satisfy parts "a" through "d" of the final RAR, but should be clearly notated as a "Draft" or "Preliminary" copy. See IRM 4.70.14.2.1.1, Revenue Agent Report.
 - b. Realize that the preliminary RAR is important for two reasons:
 - i. It's written documentation that the IRS clearly discussed (and cited adequate authority) specific issues with the taxpayer.
 - ii. It places the document in the administrative record for declaratory judgment purposes.
 - c. Mail the preliminary RAR with Letter 1477, Information Document Request Cover Letter – EP and EO, to the taxpayer and give them sufficient time to provide a response before you close the case unagreed to Mandatory Review. Use selectable paragraph 4, which provides, **"Thank you for the information you provided; however, we need additional information. Provide the information requested on the enclosed Form 4564, Information Document Request, by the above response due date."**
 - d. Generate a Form 4564, Information Document Request to go with the Letter 1477 and the Form 886-A, Revenue Agents Report, clearly marked as "Draft" or "Preliminary." Alternatively, send a properly completed Form 4564, Information Document Request and the Draft 886-A without a cover letter to address the qualification issue.
 - e. Customize the wording contained in the "Description of documents requested" section of the Information Document Request to explain the sharing of the potential qualification issues and the opportunity to supply any information or explanations that may clarify or resolve an issue by the stated due date. The same concept of sharing a draft or preliminary RAR before issuance of the 30-day letter also applies to initial communications for Form 5330 examinations, and Form 1040 / 5329 discrepancy adjustments.
- (8) If the qualification issues can't be resolved, propose plan revocation/non-qualification and process the case unagreed, following the procedures IRM

4.70.14.2.4.2.1, EP - Unagreed Form 5500 Examination Procedures.

4.70.14.2.1.2.1.1
(11-24-2023)

**EP – Tax Effect of Plan
Revocation/Non-
Qualification**

- (1) Disqualification of a plan in any given year causes the plan to be disqualified in that year and in all subsequent years.

- a. In general, once a plan is disqualified, it remains non-qualified until the qualification issues is corrected and the plan is re-qualified through a closing agreement.
- b. A plan may be disqualified in a year for which the Form 5500/1041 statute has already expired. Although the IRS can't assess tax in a barred year, the consequences of disqualification continue for all subsequent years and IRS can assess tax in subsequent years for which the statute is still open.
- c. The IRS's ability to pursue a qualification issue in any year is not impacted by the Form 1041 statute of limitations. The expiration of the statute of limitations for Form 1041 for any given year doesn't prevent the IRS from pursuing a qualification issue in that year (see Christy and Swan Profit Sharing Plan v. Commissioner, T.C. Memo 2011-62).

Note: Protect statute of the 1041 tax return when proposing to disqualify a qualified plan until either:

A Form 1041 is secured and TE/GE forwards the case for closure, or,
A referral to the appropriate EFU using F5666 is forwarded. See: IRM 4.70.12.3.7, Statute of Limitations and Statute Control Procedures, for instructions on protecting the statute of limitations.

- (2) The tax effect of revocation/non-qualification includes the following:

- a. **Trust assets' realized earnings** are taxable each year the plan is not qualified (if the assessment of tax is not barred by statute). Trust earnings must be reported on Form 1041, which the trustee must file annually, on a calendar year basis.
- b. **HCE income tax** - if the plan is disqualified for failure to meet IRC 401(a)(26) (participation failure) or IRC 410(b) (coverage failure), each highly compensated employee (HCE) must include in income his/her entire vested accrued benefit (or account balance) not yet included in income per IRC 402(b)(4).
- c. **Nonforfeitable contributions are taxable** - If the plan is disqualified for any reason, plan contributions allocated in a given year to any plan participant (HCE or NHCE) in a defined contribution plan, (in a defined benefit plan the increase in the present value of the accrued benefit) are taxable on the plan participant's Form 1040 to the extent to the extent they become nonforfeitable in that year per IRC 402(b)(1).

Reminder: Normally, discrepancy adjustments are limited to only the HCEs. However, you and your group manager may determine that an NHCE discrepancy adjustment is appropriate.

Note: If a participant is not fully vested, amounts that become vested in a subsequent year will be taxable in the subsequent year to the extent they become vested.

- d. **Forfeitable contributions are non-deductible** - In a defined contribution plan, contributions allocated to participant accounts aren't deductible on the plan sponsor's tax return (for example, Form 1120) to the extent they are forfeitable by the participant.

- e. **Contributions are non-deductible** - In a defined benefit plan, in most cases, none of the contributions made are deductible on the plan sponsor's tax return (for example, Form 1120), because separate accounts are not maintained in a defined benefit plan. If there's only one participant, the employer can deduct the contribution to the extent the participant includes the contribution into income.

Note: The employer can deduct the amount of the employer's contribution in the non-qualified year to the extent that the amount is includible in the employees participating in the plan gross income, only if separate accounts are maintained for each employee where there is more than one employee (IRC 404(a)(5) and 26 CFR 1.404(a)-12).

- f. **Ineligible rollover distributions** - distributions made from the plan are ineligible for rollover to another qualified plan or to an IRA, and therefore, are taxable to the individual on his/her Form 1040 in the year of the distribution per IRC 402(b)(2).
- g. **Excise tax on ineligible rollovers** - Any funds rolled into an IRA from a plan determined to be not qualified under IRC 401(a) are subject to excise tax on excess contributions under IRC 4973.

Note: IRC 4973 excise tax is due each year until the excess contributions are distributed from the IRA.

- h. **Rollovers from non-qualified to qualified plan taints the qualified plan** - Any funds rolled from a non-qualified plan to a qualified plan can potentially cause the recipient plan to be non-qualified.
- i. **FICA taxes due** - Employer contributions allocated to each participant's account in a defined contribution plan become subject to FICA taxes.

- (3) Compute the tax effect of the revocation/non-qualification for all open years, beginning with the year under examination and going forward and include a copy of the tax calculations in the case file with the RAR when you close the case.

Note: With your manager's approval, you may also consider prior years in your calculations.

4.70.14.2.1.2.2
(11-24-2023)
**EP – EPCRS and
Closing Agreements**

- (1) You may resolve qualification issues discovered on examination via the Self-Correction Program (SCP) or closing agreements according to the Employee Plans Compliance Resolution System (EPCRS).
- (2) SCP is designed to allow the plan to retain its qualified status for:
 - a. Insignificant issues found on examination.
 - b. If the operational failures is significant, SCP is available only if the correction is completed or substantially completed by the date the plan or the sponsor is notified of a pending examination. Substantially completed generally means that: the correction is completed for 65% of all participants affected before the sponsor is notified of your exam, and is completed thereafter in a diligent manner or during the correction period the failure is identified, correction initiated and completed within 120 days after the last day of the correction period.
 - c. SCP is only available if the taxpayer has practices and procedures in place to promote compliance.

Note: See Rev. Proc. 2021-30 Part IV for a description of SCP.

- (3) Qualification issues may be resolved through different types of closing agreements:
 - a. Audit Closing Agreement Program (Audit CAP) Closing Agreements – Designed to allow the plan to retain its qualified status and developed under the EPCRS principles outlined in Rev. Proc. 2021-30. Audit CAP is available for plans under IRC section 401(a), 403(b), SEPs, SARSEPs and SIMPLE IRAs, for correction of all qualification failures found on examination that haven't been corrected under SCP or VCP. See Rev. Proc. 2021-30.
 - b. DO 8-3 Closing Agreements – Designed to resolve issues that do not fall under EPCRS. In most cases, the taxpayer(s) and the Commissioner formally agree that the plan under examination is not qualified, officially making the proposed revocation or proposed non-qualification an "agreed revocation" or "agreed nonqualification." These closing agreements often include income tax, penalties and interest as part of the sanction, and in some limited instances, can be used to resolve excise tax matters.
- (4) If the plan qualification issue can't be resolved through SCP, offer the taxpayer the opportunity to enter into negotiations for a closing agreement. See IRM 4.70.14.2.1.2.2, EP - EPCRS Closing Agreements.

Note: Find additional information on EPCRS on the Retirement Knowledge Management Base site or contact your group manager for help.

4.70.14.2.1.2.2.1
(11-24-2023)
**EP – Self Correction
Program (SCP)**

- (1) The EPCRS SCP allows a plan sponsor to correct plan errors without contacting the IRS or paying a fee.
 - (2) Find important resources on SCP on the Retirement Knowledge Management Base site:
 - a. Rev. Proc. 2021-30
 - b. EPCRS Self-Correction Program
 - c. Self-Correction Program Desk Guide
 - d. Self-Correction Program Checksheet
 - (3) To be eligible for SCP, the plan sponsor or administrator must have established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with the law.
- Note:** Having a plan document alone doesn't constitute evidence of established procedures.
- (4) Plan sponsors may fix certain operational failures and plan document failures through SCP as described in Part IV of Rev. Proc. 2021-30. Plan sponsors satisfy the SCP requirements for an:
 - a. Operational Failure if the plan sponsor of a qualified plan (an IRC 401(a) plan), a 403(b) Plan, a SEP, or a SIMPLE IRA Plan satisfies the requirements of Rev. Proc. 2021-30 Section 7.02, and either section 8 (for insignificant Operational Failures) or section 9 (for significant Operational Failures).

- b. Eligible Plan Document Failure if the plan sponsor of a qualified plan or a 403(b) Plan satisfies the requirements of section 7.03 and section 9.
- (5) As soon as you discover operational failures that affects the plan qualification, you must fully develop the facts surrounding the failures before discussing the case with your group manager.
- (6) After you develop the facts, review and become familiar with the requirements of SCP. The Self-Correction Program Desk Guide is a great resource for understanding SCP procedures. If you determine that:
 - a. SCP is appropriate to resolve the failures, before the plan sponsor corrects the operational failures, prepare the Self-Correction Program Checksheet for review and approval by your group manager.
 - b. The failure is ineligible to be corrected under SCP, contact your group manager to determine whether the failures can be resolved under the Audit CAP procedures.
- (7) A key factor in SCP is the method of correction of the failure. Determine whether or not correction of the failure is in accordance with Appendix A or B of Rev. Proc. 2021-30.
- (8) Follow these procedures if the plan sponsor uses a correction method in accordance with Rev. Proc. 2021-30 Appendix A or B:

Step	Responsible Employee	Required Action
1	Group Manager	<p>If the case is otherwise eligible for SCP, and the plan sponsor is using a proposed correction methods strictly in accordance with Rev. Proc. 2021-30 Appendix A or Appendix B, you may approve the correction method for the case being closed under SCP.</p> <p>Note: The plan's eligible operational failure is that the plan sponsor didn't follow the plan document and correction of this failure is to retroactively follow the plan document and put the participants in the exact position they would be had no violation had occurred. You may approve the case for SCP and don't need the Manager, EP Mandatory Review's approval.</p>
2	Group Manager	Confirm that all years affected were established on AIMS and RCCMS. This means all years the examiner reviewed are established.

Step	Responsible Employee	Required Action
3	Group Manager	<p>Approve the SCP proposal by signing the EP examiner prepared Self-Correction Program Checksheet, return a copy to the EP examiner and forward a copy the Area Manager within five business days of receipt.</p> <p>Caution: You can't close the case until after five days from when you sent the checksheet to the Area Manager</p>
4	Examiner	<p>If there are no other issues outstanding, verify that the agreed correction has been fully completed, record in the CCR () that you've verified correction, and close the case.</p>
5	Examiner	<p>Close the case using:</p> <ol style="list-style-type: none"> Letter 1744 containing a statement specifically indicating the operational failure was resolved under SCP. Disposal code 404 in RCCMS (SCP - Self Correction), and follow the closing procedures in IRM 4.70.14.4, Closing A Case.

- (9) Follow these procedures if the correction method is not in Rev. Proc. 2021-30 Appendix A or Appendix B:

Step	Responsible Employee	Required Action
1	Group manager	<p>If the plan sponsor is using a proposed correction method that isn't strictly according to Rev. Proc. 2021-30 Appendix A or B, sign the Self-Correction Program Checksheet within five business days of receiving it from the EP examiner, and secure email to the manager, EP Mandatory Review for approval.</p> <p>Exception: You don't have to send an SCP check-sheet to Mandatory Review and can approve the SCP if the correction of the operational failure is to follow the plan document and put the participants in the exact position they would've been, had no violation occurred.</p> <p>Example: The plan sponsor has an eligible operational failure of not following the plan document and corrects it by retroactively following the plan document and putting the participants in the exact position they would be had no violation occurred. You can approve the case for SCP and don't need the manager, EP Mandatory Review's approval.</p>

Step	Responsible Employee	Required Action
2	Mandatory Review	<p>Respond to the group manager/ examiner within seven business days of receiving the checksheet with a recommendation of an acceptable correction method or that the examiner resolve the issues through Audit CAP.</p> <p>Reminder: In certain cases, Mandatory Review may determine, after discussions with the group manager/ examiner, and in order to achieve consistency, that the case is inappropriate for SCP and recommend resolving the failures under the Audit CAP procedures.</p> <p>Reminder: The area manager resolves any disagreement between the group manager/ examiner and Mandatory Review on the correction methods or the appropriateness of SCP.</p>
3	Examiner	When you receive the approved SCP checksheet as agreed to by your manager, you should present the correction methods to the plan sponsor and/or POA within seven days.
4	Examiner/Manager	If the plan sponsor or POA disagree with the recommended correction method, notify your manager, who will help you as needed, to reach an agreement on an acceptable correction method. If the parties still don't agree on the correction method, the group manager will discuss the issue with the area manager with case jurisdiction.

Step	Responsible Employee	Required Action
5	Examiner	<p>If the issues can't be resolved through SCP under this section, consider an Audit CAP closing agreement. See IRM 4.70.14.2.1.2.2, EP - EPCRS and Closing Agreements.</p> <p>Note: If correction is not secured using a closing agreement, close the case unagreed. See IRM 4.70.14.2.4.2.1, EP - Unagreed Form 5500 Examination Procedures.</p>
6	Examiner	<p>When all issues are resolved under SCP, verify that the agreed correction has been fully completed, record in the CCR (Form 5464) that you verified correction, and prepare the case for closing.</p>
7	Group Manager	<p>When closing the case under SCP, send a copy of the SCP Checksheet to the area manager for their review. Hold the case five business days before closing the case.</p>
8	Examiner	<p>When you close the case under SCP:</p> <ul style="list-style-type: none"> a. Issue the appropriate closing letter (Letter 1744, Letter 1744A or Letter 174B as applicable) with a statement specifically indicating the plan sponsor resolved the operational failures under SCP. b. Use disposal code 404 in RCCMS (SCP - Self Correction), and follow the closing procedures in IRM 4.70.14.4, Closing A Case.

4.70.14.2.1.2.2.2
(11-24-2023)

EP – EPCRS Closing Agreements

(1) Audit CAP closing agreements are available to:

- a. Plans under IRC 401(a), IRC 403(b), SEPs, SARSEPs and SIMPLE IRAs, for correction of all qualification failures examiners find on examination that haven't been corrected under SCP or VCP.

Caution: IRC 457 plans are not eligible for correction using an EPCRS Audit CAP closing agreement. A DO 8-3 closing agreement must be used to correct IRC 457 plan failures.

- b. Correct egregious failures.

Note: See Rev. Proc. 2021-30 Part II, Section 4.10.

Caution: Audit CAP may not be available to correct diversion or misuse of plan assets or abusive transactions. See Rev. Proc. 2021-30 Part II, Sections 4.11 and 4.12 respectively.

- (2) Find important resources on Audit CAP on the Retirement Knowledge Management Base site:

- a. Rev. Proc. 2021-30
- b. Audit CAP Desk Guide

Note: EP R&A examiners may find the R&A CAP Desk Guide on the Determinations Shared Drive.

- c. Audit CAP Checksheet
- d. Audit CAP MPA

- (3) Examiners: Follow these initial Audit CAP processing procedures:

Caution: Discuss all potential EPCRS resolutions with your group manager before you discuss them with the taxpayer.

- a. Fully develop the issues before you discuss the facts with your group manager.
- b. Prepare the Audit CAP Checksheet listing case information.
- c. Spell out correction methods in writing, including any proposing retroactive amendments.

Note: This may involve directing the plan sponsor to amend the plan retroactively.

- d. Determine the Maximum Payment Amount (MPA). See the Audit CAP MPA Worksheet.

- (4) Send the completed Audit CAP Checksheet, Audit CAP MPA Worksheet, and any relevant work papers to your group manager.

- (5) Group manager: follow these procedures:

- a. Rev. Proc. 2021-30 Appendix A & B Failures: Within five business days from receiving the Audit CAP Checksheet, contact the examiner to discuss the issues for the failures, proposed correction methods, and the sanction. Prepare the CAP Sanction Memo (See Exhibit 4 of the Audit CAP Desk Guide) and return it to the examiner (with a copy to the area manager) with the approved Audit CAP Checksheet within five business days of receipt.
- b. Rev. Proc. 2021-30 Non-Appendix A & B Failures: Within five business days from receiving the Audit CAP Checksheet, forward the checksheet to the Manager, EP Mandatory Review (EP Exam) or EP R&A Quality Assurance (EP R&A Examiners)

Note: Mandatory Review will return the checksheet to the group manager within seven business days outlining the proposed correction methods. Return the CAP Sanction Memo and correction methods to the examiner within three business days of when you received it from Mandatory Review (with a copy to the area manager).

Reminder: The area manager with jurisdiction will resolve any disagreements between Mandatory Review and the group on the recommended sanction and/or the correction method(s).

- c. Plan Document Failures: You may approve prototype late or non-amenders and do not have to send them to Mandatory Review. Also, you do not have to send nonamender cases coordinated with or approved by EP Determinations to Mandatory Review.
- d. For Operational Failures for not following the terms of the plan document and related corrections made by retroactively following the terms of the plan document, putting the participants in the exact position they would be had no violation occurred, you do not have to send to Mandatory Review.

(6) EP examiner:

- a. Follow the procedures in the Audit CAP Desk Guide or R&A CAP Desk Guide (for R&A Examiners).
- b. Discuss the qualification failures discovered and the option of resolving the failures with the taxpayer/POA.

Note: If the taxpayer doesn't agree on both the corrections and sanction, document the case chronology record and the workpapers with the reason an agreement was not reached and close the case unagreed per IRM 4.70.14.2.4.2.1, EP - Unagreed Form 5500 Examination Procedures.

- c. Prepare a draft closing agreement.

Reminder: Example agreement templates are located on the Retirement Knowledge Management base.

- d. EP Exam: Send the draft agreement to your manager.

Note: The group manager will help prepare the closing agreement.

- e. EP R&A: Send the draft agreement to the Area Manager.

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- (8) Examiner: When you receive approval from your manager and/or Mandatory Review, send to the taxpayer/POA, the following:
 - a. Letter 1595
 - b. One copy of the draft closing agreement
 - c. Audit CAP Instructions for Execution of Closing Agreement
 - d. F3244-A ACH Transfer Instructions
- (9) If the taxpayer/POA requests changes to the template closing agreement language, get the group manager's approval.

Note: Area TEGEDC is available to review and approve any changes to the agreement's standard language.

- (10) Secure documentation that the plan sponsor has corrected the qualification issues before you send the final closing agreement to the taxpayer/POA.
- (11) Send one copy of the final closing agreement to the taxpayer/POA using Letter 1595 or Letter 1595-B along with execution and payment instructions (if appropriate).
- (12) You may receive the signed closing agreement from the taxpayer in hard copy (via mail) or electronic via EEFax, TDC, or secured email.

Note: You can accept them by EEFax if you have contacted the taxpayer by phone or in-person and documented the case chronology record with the contact date and noted that the taxpayer wishes to send the closing agreement by E.

- (13) Tax Examiner: Follow these steps only for electronic payments made through *pay.gov*.
 - a. When payments are submitted through *pay.gov*, use *pay.gov/agency* to access data/documents needed to process the sanction payment.
 - b. You'll receive an email when payments are received with the *pay.gov* tracking ID number.

- c. Make sure that the payment has been validated and give the EP examiner/group manager the deposit ticket number that they must insert on the Form 3210 to the Kansas City Submissions Processing Center in place of a check number.
 - d. Send the following items to the EP Examiner working the case:
 - i. Form 3244-A pay.gov that was completed by the taxpayer
 - ii. Detailed record entitled "ACH Transaction Detail"
- (14) EP Examiner/group manager: When you receive the executed closing agreement and sanction (in the form of a cashier's check, certified check made payable to the U.S. Treasury or ACH payment) from the plan sponsor, inspect both for errors.

Note: If the representative signs the closing agreement, there must be a valid Form 2848 specifically authorizing him/her to do so.

- a. If you discover any errors, return the documents and the monetary sanction to the plan sponsor for correction using Letter 1595-B.
- b. If there are no errors with the documents or the sanction payment, scan and EEFax or email the executed closing agreement, the check and completed Letter 1595-D to the area manager for signature.

Note: The plan years listed on Letter 1595-D are the plan years covered by the closing agreement.

- (15) Area manager/designee: Within five business days:
- a. Sign the closing agreement and Letter 1595-D.
 - b. Secure email the signed closing agreement and Letter 1595-D to the EP examiner and group manager.
- (16) Group manager/examiner: Process the check within one business day of receiving the signed agreement from the area manager.
- a. Follow your group's procedures for payments and remittances via overnight delivery, including using the log book.
 - b. Prepare the following package:
 - i. Form 3210 with package contents listed
 - ii. Cover memorandum
 - iii. A fully executed copy of the closing agreement
 - iv. Form 5734
 - v. Form 3244-A (if a physical check was received) or Form 3244-A pay.gov (if electronic pay)
 - vi. Remittance (check or ACH Transaction Detail)
- Note:** Examples of the items listed above can be found at Audit CAP Resources.
- c. Send the package listed above to the Manual Deposit Unit located at the Kansas City Submissions Processing Center:

If the payment was made using:	Then send package using:
A physical check	Next day, express mail
An electronic payment	Encrypted email

Note: See Employee Plans Examination Exhibits, Contact Information for the physical address and email address to use.

- (17) Examiner: Within three business days of receiving the fully executed closing agreement from the area manager, send a fully executed copy of the closing agreement to the plan sponsor/POA with Letter 1595-D.
- (18) Examiner: Save all documents forms and letters in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention. See IRM 4.70.12.5.2, TE/GE RCCMS Naming Convention.
- (19) Examiner: Prepare the examination for closing. Include the following entries on the RCCMS Closing Record:
 - General Tab - Disposal Code - Enter 106 – Closing Agreement.
 - Details Tab – Closing Agreement Result - Enter the amount of the closing agreement monetary sanction.

Note: If more than one year is on RCCMS, enter the amount of the sanction on the earliest year and for each of the subsequent years enter \$1.

 - General Tab - ARDI Code - Enter 1- Fully Paid.
- (20) Prepare and mail the applicable closing letter per IRM 4.70.14.4.3.2, Functionally Unique Letters and Procedures.
- (21) Close the case as an agreed case per IRM 4.70.14.4, Closing A Case, and its subsections.

4.70.14.2.1.2.2.3
(11-24-2023)
EP – DO 8-3 Closing Agreements

- (1) TE/GE Directors are delegated the authority “to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he or she acts) for a taxable period or periods ended before the date of agreement and related specific items affecting other taxable periods”. (Delegation Order (DO 8-3)).
- (2) DO 8-3 closing agreements are used to resolve issues that aren’t permitted through EPCRS.

Note: The Audit CAP Desk Guide has a section on DO 8-3 Closing Agreements.

- (3) In most DO 8-3 closing agreements, the taxpayers and the Commissioner formally agree that the plan under examination is not qualified, officially making the proposed revocation or proposed non-qualification an “agreed revocation” or “agreed non-qualification.”
 - a. The taxpayer is legally forgoing their right to an Appeals hearing and their right to petition the Tax Court.
 - b. When a DO 8-3 closing agreement is fully executed by the taxpayer and the IRS, the case becomes an agreed case in every respect, just like a case resolved under EPCRS.

Note: In very limited situations, excise tax and/or unrelated business income (UBI) issues may be resolved through a DO 8-3 closing agreement; however, you must obtain pre-approval from the Director, EP Examinations.

- (4) Examiners and managers are required to coordinate DO 8-3 closing agreements with Tax Exempt and Government Entities Division Counsel (TE/GEDC), as noted in the steps below.
- (5) EP Examiner: Before making a submission for a DO 8-3 agreement, make sure that you took proper actions to protect the applicable statute of limitations for all relevant tax returns, such as Forms 1040, 1120, 1065 and 5330.
- (6) When doing a DO 8-3 closing agreement, follow EPCRS closing agreement procedures in IRM 4.70.14.2.1.2.2, EP - EPCRS and Closing Agreements, with these exceptions:
 - a. The Director, EP Examinations (for EP R&A: Director, Employee Plans Rulings and Agreements) signs the closing agreement for the IRS.
 - b. You must get approval from your group manager, area manager, and the Director, EP Examinations (for EP R&A: Director, Employee Plans Rulings and Agreements) before you propose a DO 8-3 agreement.

Note: You may discuss the D.O. 8-3 program as a potential option, but the specific terms and proposed resolution need to be cleared through management before offering it to the taxpayer.
 - c. Return a fully executed closing agreement with Letter 1595-D.
 - d. When closing agreements are fully executed, use closing Letter 1745 or Letter 1745-A, as applicable.

- (7) Contact the group manager to discuss resolving the case under DO 8-3.

- (8) Group Manager: Within five business days of the discussion above, contact your area manager to discuss the facts of the case. If the area manager disagrees with the processing of the case under a DO 8-3 closing agreement, inform the examiner that it is not an option.

- (9) EP Examiner: When the area manager decides that a DO 8-3 closing agreement is proper:

- a. Calculate all applicable taxes, penalties and interest (including Form 4549-E).
- b. Draft the DO 8-3 Transmittal Checksheet. See exhibit 20 of the Audit CAP Desk Guide.
- c. Prepare an Executive Summary (Includes: background, facts, issues, resolution and must address penalties (especially if not assessing)).

Note: Includes the case background, facts, issues, specific legal citations, proposed resolution. It must address the assessment/non-assessment of penalties. Do not include exhibits or attachments. The executive summary itself should have all the information needed to support the DO 8-3 request.

- d. Prepare the draft DO 8-3 closing agreement. Include all responsible parties in the draft. Summarize the errors and proposed resolution. Name the violated statutory and regulatory requirements, but do not recite them. Ensure all parties to the agreement are also signatories to the agreement.

Note: Ask your group manager for sample DO 8-3 closing agreements or find an example on the EPCRS Knowledge Management base site.

- e. Secure email the Form 4549-E, DO 8-3 transmittal check sheet, executive summary, and draft DO 8-3 closing agreement to your group manager for approval. Do not include any other documents.
- (10) Group manager: For DO 8-3 closing agreements for IRC 457(b) plans, contact the FSL/ET Program Manager as early as possible in the process for comment if there is an open, concurrent examination of the sponsor or if any proposed changes will affect employment taxes.
- (11) Group manager: If you agree with resolving the case through a DO 8-3 closing agreement, within five business days of receiving the documents listed in item 9 from the examiner:
 - a. Review the DO 8-3 agreement and executive summary.
 - b. Sign the transmittal.
 - c. Secure email the four documents to your area manager with your recommendation.
- (12) Area manager: If you agree with the recommendation, review the draft DO 8-3 and executive summary. Forward the draft DO 8-3 closing agreement, Form 4549-E, and executive summary to the assigned contact points in TE/GE Division Counsel by sending the request to **CC TEGEDC Employee Plans Counsel Assistance*.
- (13) TEGEDC review: TEGEDC reviews the DO 8-3 closing agreement and executive summary for legal sufficiency and substantial legal error. TEGE DC does not review the entire case. The TEGEDC review is limited to the issues that the DO 8-3 agreement proposes to resolve. TE/GE DC may approve the closing agreement package or return it to the examiner and group manager for further development.
- (14) Area manager: Upon receipt of TEGEDC's approval of the agreement and executive summary, sign the transmittal and send it, along with the executive summary, Form 4549-E, and draft DO 8-3 closing agreement, to the functional assignment coordinator (FAC) and the Director, EP Examinations. Do not include more than the four just-listed documents unless otherwise directed by the FAC.
- (15) Director, EP Examinations or the FAC (for EP R&A: Director, EP R&A): either sign and return the transmittal check sheet accepting the draft closing agreement or respond to the area manager with any questions or concerns.
- (16) All EP Examinations employees: Use these letters in the DO 8-3 process:
 - a. Letter 1595 - to mail draft closing agreements to the taxpayer/representative for review and signature.
 - b. Letter 1595-B - to return a closing agreement to the taxpayer/representative because of improper payment or improper execution.
 - c. Letter 1595-D - to mail fully executed DO 8-3 closing agreements back to the taxpayer/representative.
 - d. Letter 1745 - as the closing letter for the 5500 examination when a DO 8-3 closing agreement is secured and the IRS determined the plan is disqualified from inception and remains disqualified.

Note: Use Letter 1745-A when you're coordinating the examination with SB/SE or LB&I.

- (17) You may accept the signed closing agreements from the taxpayer by mail, fax, or secure mail. See Letter 1595 for details.

Note: You can accept them by EEFax, if you have contacted the taxpayer by phone or in-person and documented the CCR with the contact date and noted that the taxpayer wishes to send the closing agreement by EEFax.

- (18) Group manager: When the taxpayer/POA returns the signed closing agreement and verification of the sanction payment (Form 3244-A) to the examiner:
- Notify the FAC and the Director, EP Examinations that you're sending a closing agreement for countersignature.
 - Send via secure email the closing agreement, the cover memorandum, verification of the sanction payment and the transmittal check sheet to the Director, EP Examinations and the FAC.
- (19) The Director, EP Examinations or FAC (for EP R&A: Director, EP R&A): return the fully executed closing agreement within five business days to the group manager and examiner via secure email.
- (20) Group manager/examiner: Process the check within one business day of receiving the signed agreement from the Director, EP Examinations or the FAC.
- Follow your group's procedures for payments and remittances via overnight delivery, including using the log book.
 - Prepare and forward a closing agreement package per IRM 4.70.14.2.1.2.2.2(16), EP – EPCRS Closing Agreements.

Note: See *Employee Plans Examination Exhibits*, Contact Information for the physical address and email address to use.

- (21) Group manager/examiner: Once you receive the signed closing agreement, email a copy of the agreement, the remittance (ACH transaction detail) and Form 3244-A to: **cfo.cfm.pay.gov.closing.agreements.racs.anmf@irs.gov*
- (22) EP examiner: mail the following to the taxpayer/representative:
- Letter 1595-D along with a copy of the fully executed closing agreement.
 - Closing Letter 1745 or Letter 1745-A, as applicable, if the DO 8-3 agreement is secured, we determined the plan is disqualified from inception and it remains disqualified.

4.70.14.2.1.2.2.4
(11-24-2023)

**EP – Electronic
Payments of Closing
Agreement Sanctions**

- (1) Taxpayers should pay the sanction electronically in lieu of a check on *pay.gov*.
- Answer the question – “Was the closing agreement the result of an employee plans audit or determination letter application as “yes”.
 - Input the social security number or business EIN as listed in the closing agreement.
 - Click the “Continue to the Form” button to get to the F3244-A.
 - Complete the highlighted portions of the on-line Form 3244-A.
- Note:** Give the taxpayer the Form 3244-A pay.gov instructions.
- Submit the payment.

- (2) The taxpayer receives a tracking number when they complete the submission process. They must record the tracking number and provide this number to the EP examiner with the executed closing agreement.
- (3) EP examiner: include the tracking number in lieu of the check when you send the closing agreement package to your group manager per IRM 4.70.14.2.1.2.2.2, EP – EPCRS Closing Agreements.

4.70.14.2.1.2.3

(11-24-2023)

**EP - Procedures for
Correction of Eligible
IRC 457(b)
Non-Government Plan
Failures**

- (1) When you examine an IRC 457 plan and determine that the plan doesn't satisfy the eligible plan requirements under IRC 457(b), generally correction is not available. See Issue Resource Guide, IRC 457 Examination Guidelines.
- (2) If the facts and circumstances of a 457 plan failure lead you to seek an alternative to treating an eligible 457(b) top-hat plan as an ineligible 457(f) plan, you can consider a closing agreement under Delegation Order 8-3.
- (3) Do not offer or discuss resolutions using a DO 8-3 closing agreement until your manager, area manager and Director EP Examination have all approved a proposed agreement.
- (4) Follow the procedures in IRM 4.70.14.2.1.2.2.3, EP – DO 8-3 Closing Agreements, to propose use of a DO 8-3 closing agreement to your manager, area manager and Director, EP Examinations.
- (5) If the case is resolved through a DO 8-3 closing agreement, use Letter 1744-E to close the examination. The "Form Number" in the header of the letter should be "Non-Return Unit". The first sentence in the body of the letter should be revised to read, "We have completed our examination of your plan for the above year(s)."
- (6) If the manager, area manager, and Director, EP Examinations do not approve resolving the issue via a DO 8-3 closing agreement, apply the ineligible plan rules per IRC 457(f). See Issue Resource Guide, IRC 457 Examination Guidelines.

4.70.14.2.1.2.4

(11-24-2023)

**EP - Processing Agreed
Forms 5330 and 990-T**

- (1) This section provides procedures for examining and closing agreed Form 5330, and Form 990-T exams.
- (2) Form 5330, or 990-T examinations are generally initiated:
 - a. Form 5330:
 - I. During a Form 5500 series (Form 5500, Form 5500-SF, and Form 5500-EZ) exam.
 - II. A DOL referral.
 - III. A filed Form 5330 may be assigned without the related Form 5500.
 - IV. EPCU secures a delinquent Form 5330 during a compliance check.
 - b. Form 990-T:
 - I. During the examination of a Form 5500 series return when it is discovered that the trust assets have produced income that is taxable under IRC 511 as UBI.
 - i. IRC 512(a)(1) defines UBI as the gross income derived from any unrelated trade or business regularly carried on, less the deductions which are directly connected with the carrying on of the trade or business.
 - ii. IRC 513(a) defines an unrelated trade or business as any trade or

business, the conduct of which is not substantially related to the exercise of the purpose for the trust's exemption under IRC 501(a).

iii. IRC 513(b) defines an unrelated trade or business for purposes of a trust under IRC 501(a) to be any trade or business regularly carried on by such trust or by a partnership of which the trust is a member.

iv. Some examples of an exempt trust engaging in UBI are:

a. Investing as a limited partner in a partnership carrying on an unrelated trade or business

b. Purchasing securities on margin

c. Investing in a partnership set up to invest in securities

d. When an S Corporation maintains an ESOP and the ESOP fails IRC 409(p), Schedule K-1 income flowing to the ESOP is UBI

II. The determination of a trade or business is based on a facts and circumstances basis. The regulations under IRC 513 provide examples and guidance on what constitutes a trade or business.

i. Some examples of an unrelated trade or business are:

a. An organization involved in real estate construction and development invests some of its retirement plan trust assets in land adjacent or near its own development projects. After the subdivision and improvement of the land, it's sold with the belief that any gains will not be subject to taxation. If these sales are carried on in a regular and continuous manner, the trust could be in the real estate business and therefore subject to UBI taxation under IRC 511.

Note: To discover such activities, review the trust's books and records, any real estate closing statements, deeds or public records.

b. Rental of personal property (other than personal property leased with real property) is another example of UBI. The leasing of automobiles, office machines, computers, signs and vending machines are some examples of personal property that would constitute UBI.

Note: Any personal property (especially vending machines) in the trust would be an indication of UBI and should be carefully reviewed.

c. The trust could invest in real estate and use the land for farming, but income from the farmed land would be considered UBI. Such income is often part of the "other income" as shown on the 5500 return.

Note: All "other income" of a trust should be fully analyzed.

III. IRC 512(b) provides exceptions and limitations on UBI to exempt qualified retirement trusts.

i. Some examples of exceptions to UBI are:

a. Dividends, interest and annuities. All dividends, interest and annuities from regularly carried on trade or business and all deductions connected are not unrelated business income.

b. Royalties. An example of an exempt royalty would be if a trust owns real estate and another person drills for oil on the site. The other person incurs all of the costs for the drilling and excavation and pays a royalty to the trust. Such royalties would not be UBI to the trust. However, if the trust had paid 50% of the development cost for a 50% ownership in the regularly carried on trade or business, the income would be deemed UBI to the trust.

c. Gains or losses from the sale of property. Gains and losses from the sale, exchange, or disposition of property are generally not unrelated business income to the trust. This exception does not apply to stock in trade or other property of a kind which would be includible in inventory if on hand at the close of the taxable year, or property held primarily for sale to customers in the ordinary course of the trade or business.

d. Rents. Income derived from the rental of real property, as part of a regularly carried on trade or business, is excluded from UBI to the trust. Rental income from personal property is subject to UBI. When both real and personal property are rented there are specific rules that apply. See 26 CFR 1.512(b)-1(c).

e. Net operating losses. The net operating loss deduction provided in IRC 172 is allowed as a deduction when calculating unrelated business taxable income.

IV. Many qualified retirement trusts invest in commingled investments such as partnerships, joint ventures, pooled trusts, common trusts, real estate investment trusts (REIT) or some other type of combined investment. This gives the plan sponsor an opportunity to diversify the trust assets.

i. These types of investments may or may not be subject to UBI depending on the facts and circumstances.

a. Partnerships. Trusts can invest as either limited partners or general partners. The income derived by the trust is deemed to be of the same character and from the same source as if the trust, rather than the partnership, is the original recipient of the income. Therefore, a trust's share of any partnership income is treated by the trust as if it is carrying on the trade or business of the partnership. The partnership income passes through the partnership to the trust. This applies to limited partnerships as well as general partnerships.

1. For example, assume the trust is a partner in a partnership that specializes in REITs. The partnership's business is to research and then buy shares of REITs. Therefore, the income to the trust derived from the investment in the partnership is deemed to be income from an investment in a REIT. As noted below, a trust's investment income from a REIT is not considered to be UBI. In this example, any income the trust receives from the partnership would not be UBI.

2. A taxpayer may argue that an investment in a limited partnership is a passive investment and that any income would not be UBI since the trust has no active involvement in the management of the partnership. Rev. Rul. 79-222 explains that an investment by a trust in a limited partnership carrying on an unrelated trade or business will result in UBI.

3. Additional information on partnership investments can be found in Rev. Rul. 74-197 and 26 CFR 1.512(c)-1.

b. **Pooled Trusts.** Although a pooled trust is exempt from taxation, it may be subject to UBI. The tax is imposed at the trust level and is not taxed again when the UBI is distributed to the participating trust.

c. **Common Trusts.** These are essentially the same as pooled trusts except that common trusts must have a bank as the trustee.

d. **Real Estate Investment Trusts (REITs).** Rev. Rul. 66-106 and 26 CFR 1.856-1(e) provide that a trust's investment in a REIT is essentially the same as an investment in stock of a corporation. Therefore, any distributions from the profits or earnings from a REIT are deemed to be treated

as dividends. Dividends are not treated as UBI to the trust. Therefore, income received by a trust from a REIT is not considered to be UBI.

V. Unrelated debt-financed income, as defined in IRC 514, can be deemed to be UBI and subject to taxation. IRC 514(b)(1) defines debt-financed property as any property held to produce income and on which there is acquisition indebtedness at any time during the year.

i. Examples of exclusions from debt-financed income:

a. Debt-financed income that has already been taxed as a regularly carried on unrelated trade or business is not UBI. This is to prevent double taxation to the trust.

b. Debt-financed income related to the use of an Exempt Loan made to an ESOP is not UBI. Per IRC 514(b)(1)(A)(i), any income derived from property which is substantially related to the purpose of the trust's exemption would not be debt-financed income. Rev. Rul. 79-122 clarifies the exclusion of ESOP plans from being subject to debt-financed income.

c. Acquisition indebtedness incurred by a qualified plan in acquiring or improving any real property is not UBI, provided that all of the conditions of IRC 514(c)(9) are satisfied. Refer to the conditions contained in IRC 514(c)(9) to see if this exemption applies.

ii. IRC 514(c)(1) defines acquisition indebtedness as the outstanding amount of:

a. The indebtedness incurred by the trust in acquiring or improving property;

b. The indebtedness incurred before the acquisition or improvement of property if such indebtedness would not have been incurred but for such acquisition or improvement; and

c. The indebtedness incurred after the acquisition or improvement of property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

iii. Income from stocks purchased on margin would be debt-financed income.

iv. Any acquisition indebtedness incurred by a partnership flows through to the exempt trust the same way unrelated business taxable income flows through.

v. See 26 CFR 1.514(a)-1 and Schedule E of Form 990-T for guidance in calculating debt-financed income.

Note: In addition to the information contained in this IRM, you will find helpful information covering UBI and unrelated debt financed income in Pub 598.

(3) The Taxpayer that has the tax issue files Forms 5330 and 990-T.

a. Form 5330:

Excise Tax	Taxpayer
IRC 4971	Employer responsible for contributing to or under the plan. Each member of a controlled group shall be jointly and severally liable.

Excise Tax	Taxpayer
IRC 4972	Employer making the contributions.
IRC 4973(a)(3)	Owner of the custodial account treated as an annuity contract under IRC 403(b)(7)(A).
IRC 4975	Disqualified person who participates in the prohibited transaction.
IRC 4978	Employer or the eligible worker-owned cooperative, that made the written statement described in IRC 664(g)(1)(E) or in IRC 1042(b)(3).
IRC 4979	The Employer.
IRC 4979(A)	For allocations described in IRC 4979(A)(a)(1) or (2), the Employer sponsoring such plan, or the eligible worker-owned cooperative. For allocations or ownership described in IRC 4979(A)(a)(3) or (4), the S-Corporation the stock in which was so allocated or owned.
IRC 4980	Employer maintaining the plan.

- b. Form 990-T: A Form 990-T filed for UBI generated by trust assets should be filed by the trust using the trust EIN, not the plan sponsor's EIN. If the trust does not have a EIN, have the taxpayer complete and file a Form SS-4 or complete the application online at irs.gov to obtain one for the trust. See IRM 4.70.14.2.1.2.4.13, EP - Obtaining a Trust EIN.

Note: A Form 990-T sent to Ogden with an EIN that is used for any other purpose than for the filing of Form 990-T for the trust will not process at the Service Campus. The return will reject and a new trust EIN will have to be assigned causing a delay in the processing of the Form 990-T.

- (4) An agreed examination is one where the taxpayer has:

- a. Form 5330:
1. Filed Form 5330 reporting the correct amount of tax, and
 2. In the case of a prohibited transaction (IRC 4975) or minimum funding (IRC 4971), made correction.

Exception: If IRC 4971(b) tax is waived as permitted by Delegation Order 7-7-1, the case may be closed agreed if Forms 5330 are filed and reflect the correct amount of IRC 4971(a) tax for all years for which tax is due. See IRM 4.70.14.2.1.2.4.7, EP - Waiver of the 100% 4971(b) Excise Tax, for eligibility and procedures to waive the additional tax under IRC 4971(b).

Reminder: The taxpayer does not need to pay the additional excise tax assessed for the case to be considered agreed.

- b. Form 990-T:
1. Form 990-T is secured from the taxpayer reflecting the correct amount of tax,
 2. A signed Form 870-EP is secured reflecting an agreed upon change to the tax previously reflected on a filed Form 990-T return, or
 3. The examiner determines that no additional tax is due on a previously filed Form 990-T return that he or she examined.

Note: The tax doesn't need to be paid for a case to be "agreed".

- (5) See IRM 4.70.14.2.4.2.3, EP - Unagreed Forms 5330 and 990-T, (and subsections thereunder) for processing requirements for unagreed Forms 5330 and 990-T secured as part of the exam process.

4.70.14.2.1.2.4.1
(11-24-2023)
**EP - Form 5330 and
990-T Filing
Requirements**

- (1) Forms 5330 are filed to report excise tax under Chapter 43. The most common taxes are:
- a. Failure to meet minimum funding standards (IRC 4971)
 - b. Nondeductible contributions to qualified employer plans (IRC 4972)
 - c. Excess contributions to IRC 403(b)(7)(A) custodial accounts (IRC 4973(a)(3))
 - d. Prohibited transactions (IRC 4975)
 - e. Certain dispositions by ESOPs (IRC 4978)
 - f. Certain excess contributions (IRC 4979)
 - g. Certain prohibited allocation of employer stock in an ESOP that failed to meet the requirements of IRC 409(p) (IRC 4979A)
 - h. Certain reversions of plan assets (IRC 4980)
- (2) Forms 990-T are filed to report UBI generated by trust assets.

4.70.14.2.1.2.4.2
(11-24-2023)
**EP - Form 5330 and
990-T Due Dates**

- (1) The due date for filing a Form 5330 depends on the particular Chapter 43 excise tax involved. The table below indicates the due date by IRC section.

Excise Tax	Form 5330 Due Date	Examples
IRC 4971	Later of: <ul style="list-style-type: none"> • The last day of the 7th month after the employer's tax year end, or • 8 1/2 months after the last day of the plan year that ends with or within the employer's tax year. 	The employer's tax year ends March 31, and the plan is on a calendar year. If the applicable plan year ends 12/31/2019, the corresponding tax year would end 3/31/2020. The Form 5330 is due October 31, 2020.

Excise Tax	Form 5330 Due Date	Examples
IRC 4972, IRC 4973(a)(3), IRC 4975, IRC 4976, IRC 4978, and IRC 4979A	Last day of the 7th month after the end of the tax year of the employer or other person who must file the return.	If the employer (or other person required to file the return) has a tax year of December 31, 2019, the Form 5330 is due on July 31, 2020. If the employer (or other person required to file the return) has a fiscal tax year ending October 31, 2019, the Form 5330 is due on May 31, 2020.
IRC 4977	Last day of the 7th month after the end of the calendar year in which the excess fringe benefits were paid to the employees of the employer.	
IRC 4979	Last day of the 15th month after the close of the plan year to which the excess contributions or excess aggregate contributions relate.	Excess contributions were made to a plan for the plan year ending December 31, 2019. The Form 5330 for such excess contributions is due by March 31, 2020.
IRC 4980	Last day of the month following the month in which the reversion occurred.	Trust assets reverted back to an employer on May 16, 2019 from a plan having a plan year ending on December 31st. The Form 5330 is due for the reversion on June 30, 2020.
IRC 4980F	Last day of the month following the month in which the failure occurred.	

Note: Effective in 2024, Form 8868, Application for Extension of Time To File an Exempt Organization Return or Excise Taxes Related to Employee Benefit Plans, is used for a filer to request an extension of time to file Form 5330. Form 5558, Application for Extension of Time To File Certain Employee Plan

Returns, is no longer used for an extension of time to file Form 5330. If approved, the taxpayer may be granted an extension of up to 6 months after the normal due date of Form 5330.

Caution: Form 8868 does not extend the time to pay taxes

- (2) The final regulations under 26 CFR 54.6011-3 require that any employer or individual required to file an excise tax return on Form 5330 must file the excise tax return electronically using the IRS Modernized e-File (MeF) System through an IRS Authorized e-filing Provider for taxable years ending on or after December 31, 2023, if the filer is required to file at least 10 returns of any type with the IRS during the calendar year that the Form 5330 is due. See T.D. 9972 for more information.
- (3) Form 990-T is due on the 15th day of the fourth month following the close of the taxable year of the trust.

Note: The taxpayer may file Form 8868, Application for Extension of Time To File an Exempt Organization Return or Excise Taxes Related to Employee Benefit Plans, to request an extension of time to file. If approved, the taxpayer may be granted an extension of up to 6 months after the normal due date of Form 990-T.

4.70.14.2.1.2.4.3
(11-24-2023)

**EP – General
Procedures for Form
5330 and 990-T Exams**

- (1) See IRM 4.70.13, Executing the Examination, for exam techniques and guidelines that apply to all types of cases. A few basics include -
 - a. Securing and reviewing source documents substantiating the applicability of or additions to income, excise or UBI tax.
 - b. Use Form 5773-A, or its equivalent, and workpapers to document the exam findings regarding potential tax and penalty issues.
 - c. The procedures found in IRM 4.70.11.2.2.1, RCCMS, apply to Form 5330 and 990-T exams.
 - d. The procedures found in IRM 4.70.11.3.1, Case Suspense for Federally Declared Disaster, Significant Fire, or Terrorist or Military Action, and the subsections thereunder, apply to Form 5330 and 990-T exams.
- (2) Provide complete and accurate tax and penalty calculations to the taxpayer and POA. See IRM 4.70.13.12, Penalties Consideration for guidance.
- (3) For a return not yet due, the examiner must:
 - a. Notify the taxpayer of the requirements to file and pay the applicable tax when due.

Note: If the taxpayer files the return not yet due with the examiner, see IRM 4.70.13.9.5.2.1, EP Securing Forms 5330 and 990-T Not Yet Due.

- b. If the taxpayer does not file the return, prepare Form 5666 for a future year referral and send it to Classification. Form 5666 can be sent by email or by regular mail. See *Employee Plan Examination Exhibits* for Classification's contact information.

- c. If the taxpayer voluntarily files the return, verify its accuracy and mail it to the campus (Ogden Service Campus or Kansas City Service Campus). See *Employee Plan Examination Exhibits*, for the mailing address and stop number.

Note: If a discrepancy is found, notify your manager and discuss whether an examination of the return is warranted. The discussion and outcome must be documented in the CCR.

- (4) For claims filed on a Form 5330, or 990-T; follow the procedures in IRM 4.70.17, Claims and Abatements.

4.70.14.2.1.2.4.4
(11-24-2023)

EP – Initial Contact with the Taxpayer

- (1) In most instances, Form 5330, and 990-T exams are initiated based on information discovered during a related Form 5500 exam.
- (2) Once the examiner and group manager agree that the information discovered warrants a Form 5330, or 990-T to be filed, the applicable taxpayer must be notified in writing of that decision.

Reminder: The applicable taxpayer is not always the same as the 5500 taxpayer.

- a. Use Letter 1477 to inform the taxpayer that a Form 5330, or 990-T is due to be filed. If you have sufficient information, attach Form 886-A (RAR) with the pertinent facts, law, government position, tax calculations and IRC 6651(a) penalty calculations (if applicable). If additional information is needed, attach an IDR.

Note: When the issue involves a prohibited transaction that has not been corrected, the RAR should include an explanation of the assertion of IRC 4975(b) tax.

Similarly, when the issue involves a funding deficiency that has not been corrected, the RAR should include an explanation of the assertion of IRC 4971(b) tax.

Exception: In some situations, the assessment of 4971(b) may be waived.

See IRM 4.70.14.2.1.2.4.7, EP - Waiver of the 100% 4971(b) Excise Tax, for eligibility and procedures to waive the additional tax under IRC 4971(b).

- b. Request the taxpayer file Forms 5330, or 990-T for all years due and open by statute.

Note: If the return is not yet due, refer to IRM 4.70.13.9.5.2.1, EP Securing Forms 5330 and 990-T Not Yet Due.

- c. If additional tax is proposed on a previously filed Form 5330, or 990-T, and the manager has agreed to put the return under exam, use Letter 6031 to inform the taxpayer an examination has commenced. Use Form 870-EP to secure agreement of the additional tax. See *Employee Plan Examination Exhibits* for an example of a completed Form 870-EP.

Note: For purposes of UBI in a trust, Form 870-EP is signed by a trustee of the trust.

- d. If the taxable period extends into a taxable year for which a Form 5330 is not yet due, notify the taxpayer of the requirements to file the return and pay the tax for such taxable year. See IRM 4.70.13.9.5.3.1, Securing Forms 5330 and 990-T Not Yet Due.
- e. Include a penalty calculation sheet when penalties are being imposed. The failure to file and failure to pay penalties under IRC 6651(a) are applicable to delinquent Forms 5330 and 990-T.

Reminder: IRC 6651(a) penalties are the only penalties applicable to a delinquently filed Form 5330.

Note: See IRM 4.70.13.12.3, Common Penalties, for more information on IRC 6651(a) penalties.

- f. Solicit tax payment with applicable IRC 6651(a) penalties to stop interest from accruing further.
 - g. Send Pub 1, Your Rights as a Taxpayer, with the letter.
 - h. Send a copy of the letter to any authorized POA.
- (3) The examiner must call the taxpayer (and POA) to discuss the issue(s) raised and, if applicable, opening of the exam. The call should take place -
- a. No earlier than fourteen calendar days or ten business days (whichever is longer) after the letter referenced in item a. is mailed, and
 - b. No later than fifteen business days after the letter is mailed.

Note: The taxpayer must be given ample time to receive the letter before the examiner calls.

4.70.14.2.1.2.4.5
(11-24-2023)

**EP – Overview of
Establishing Forms 5330
and 990-T on RCCMS
and AIMS**

- (1) You no longer need to establish delinquent Forms 5330, Forms 5329, or Forms 990-T that you accept as filed on RCCMS and AIMS. You will still need to process the accepted as filed delinquent returns to the service center, but you will not need to establish these returns for examination on RCCMS and AIMS. In instances where you don't need to examine a secured return as you can accept it as filed, then after processing it to the Service Center, you only need to save a copy of the accepted return, the acknowledged Form 3210 received from the service center, or comparable record of confirmed receipt document (i.e., EEFax confirmation) in RCCMS.
- (2) Record the receipt of the return by completing the electronic RCCMS 3198-A Special Handling checksheet in the RCCMS compliance activity of the primary examination return.
- (3) Properly note in your workpapers that you accepted the returns as filed. Use the RCCMS 3198-A Special Handling checksheet to record the number and types of return secured in RCCMS to let CP&C capture the fact that you secured a return and accepted it without having to establish a related examination or create a Form 5329 discrepancy adjustment.
- (4) Delinquent Forms 5330, or 990-T received from the taxpayer that you are proposing adjustments to (not accepted as filed) are processed in accordance with IRM 4.70.13.9.5.2, EP Processing Delinquent Forms 5330 and 990-T.
- (5) Forms 5330, or 990-T received from the taxpayer for years not yet due are processed in accordance with IRM 4.70.13.9.5.2.1, EP Securing Forms 5330 and 990-T Not Yet Due.

- (6) In the instance a Form 5330 or 990-T was put under exam, Agreed Forms 5330 are processed in accordance with IRM 4.70.14.2.1.2.4, EP - Processing Agreed Forms 5330 and 990-T.
- (7) Establish a Substitute for Return (SFR) as soon as the examiner and manager believe the taxpayer will not voluntarily file the return(s) due. Form 5330 and 990-T Substitute for Returns can now be established electronically using RCCMS. It is no longer necessary to mail the paper substitute for return package to the Ogden Service Center. The SFR return(s) will be established using RCCMS after entity module verification. Follow the procedures in IRM 4.70.13.9.8.7, EP Processing Form 5330 or 990-T Substitute for Return.
- (8) When examining a Form 5330, or 990-T return previously filed by the taxpayer (such as a claim or when the tax reported is erroneous), conduct IDRS research.

Form Under Exam	IDRS Research
Form 5330 or 990-T	<p>a. Obtain a transcript (BMFOLT and BMFOLR prints) using the taxpayer's EIN/SSN for the applicable year (Form 5330 = MFT 76) (Form 990-T = MFT 34) Verify the filed status of the return and the amount of tax assessed. The return was processed on BMF if a TC "150" is present and dollar amounts are reflected.</p> <p>b. Verify the statute date on IDRS is accurate and considers the statute control items discussed in IRM 4.70.14.2.4.2.3.2, EP – Consideration of Statute of Limitations for Forms 5330, and 900-T</p> <p>c. In addition to checking BMFOLT, IDRS command code TXMOD should also be used to verify the type of tax reported.</p> <p>Note: When researching a Form 5330 with an EIN, do not put a file source (no "P" or "N") after the EIN.</p> <p>Note: When researching a Form 5330 with an SSN, use a file source of "V" after the SSN (for example, XXX-XX-XXXV).</p>

4.70.14.2.1.2.4.6

(11-24-2023)

EP – Processing Agreed Forms 5330 and 990-T

(1) A delinquent Form 5330, or 990-T is considered "agreed" when:

- a. Form 5330, or 990-T is filed,
- b. The amount of tax reported is correct (or Taxpayer agrees to your adjustment), and
- c. Correction is made (if the issue is minimum funding or a prohibited transaction).

Note: For purposes of IRC 4971, a case will also be processed as an agreed case for a specific year if the taxpayer files Form 5330 and reports the correct amount of IRC 4971(a) and IRC 4971(b) tax, even if the funding deficiency has not been corrected.

- (2) Follow the procedures in IRM 4.70.14.2.4.2.3, EP - Unagreed Forms 5330 and 990-T, if tax is due but the taxpayer refuses to:
- File Form 5330, or 990-T for any tax required to be reported on these forms.
 - File Forms 5330 and correct the funding deficiency in the case of IRC 4971 tax.

Exception: See IRM 4.70.14.2.1.2.4.7, EP - Waiver of the 100% 4971(b) Excise Tax, for eligibility and procedures to waive the additional tax under IRC 4971(b).

- File Form 5330 and correct the prohibited transaction in the case of IRC 4975 tax.
- (3) **Entity Module Verification**— The examiner is responsible for securing an INOLES print to determine if an entity module is present.

Note: The case will not establish on RCCMS and AIMS until an entity module has been established.

- When obtaining an INOLES print for an SSN, use a file source of “V” after the SSN (for example, INOLESXXX-XX-XXXXV).
- When obtaining an INOLES print for an EIN, do not use a file source (for example, INOLESXX-XXXXXXX).
- If INOLES produces a screen with at least the taxpayer’s name and address, an entity module has been established on the BMF or IMF.
- If INOLES produces a blank screen, the BMF or IMF entity has not been established.

Note: This happens frequently with an SSN.

- (4) If there is no entity module on the BMF, prepare Form 4442 as soon as possible to establish a module.
- EEfax or email the completed Form 4442 to the EP AIMS Coordinator. See *Employee Plans Examination Exhibits* for contact information and IRM 4.70.13.9.5.2.2, EP Preparation of Form 4442, for Form 4442 instructions.
 - The TE/GE Closing Group will notify the examiner by EEFax or email when the Form 4442 is processed.
- (5) Once a delinquent return is received from the taxpayer, process it in accordance with IRM 4.70.13.9.5.2, EP Processing Delinquent Forms 5330 and 990-T.
- You do not need to establish delinquent Forms 5330, Forms 5329, or Forms 990-T that you accept as filed on RCCMS and AIMS. You will still need to process the accepted as filed delinquent returns to the service center as outlined in IRM 4.70.13.9.5.2, EP Processing Delinquent Forms 5330 and 990-T for Forms 5330, but you will not need to establish these returns for examination on RCCMS and AIMS.
 - In instances where you don’t need to examine a secured return because it is accepted as filed, then after processing it to the Service Center, save a copy of the accepted return, the acknowledged Form 3210 received from the service center, or comparable record of confirmed receipt document (i.e., EEFax confirmation) in RCCMS.

- c. Record the receipt of the return by completing the electronic RCCMS 3198-A Special Handling checksheet in the RCCMS compliance activity of the primary examination return.
- d. Also, properly note in your workpapers that you accepted the returns as filed. Use the RCCMS 3198-A Special Handling checksheet to record the number and types of return secured in RCCMS to let CP&C capture the fact that you secured a return and accepted it without having to establish a related examination or create a Form 5329 discrepancy adjustment.

- (6) Periodically request a BMFOLT or IMFOLT print to confirm that the return has been processed and posted.

Note: A transaction code (TC) 150 indicates the return posted.

Note: It normally takes four to eight weeks for the OSC to process and post a return once received.

- (7) The manager will email the approved Form 5500, 5330 and 990-T Request Form, (the Form) to Classification at tege-cpc-classification@irs.gov. Classification will establish the Form 5330 or 990-T on RCCMS and AIMS upon receipt of the Form.

Note: After a TC 150 is reflected on the account, the Form should be completed by the examiner and forwarded to the group manager.

See Employee Plans Examination Exhibits for the Form.

Note: Within a few days, the AIMS account and RCCMS activity will be reflected in the group's organization code.

Note: The case must fully establish on RCCMS and AIMS before closed to the TE/GE Closing Group.

- (8) Process Forms 5330, or 990-T received from the taxpayer for years not yet due in accordance with IRM 4.70.13.9.5.2.1, EP Securing Forms 5330 and 990-T Not Yet Due.
- (9) To close agreed delinquent secured from the taxpayer, follow IRM 4.70.14.2.1.2.4.8, EP - Closing Agreed Form 5330 and 990-T Exams.

4.70.14.2.1.2.4.7
(11-24-2023)

**EP – Waiver of the 100%
4971(b) Excise Tax**

- (1) On a case-by-case basis and when circumstances warrant, all or part of the excise tax under 4971(b) (the "b" tax), may be waived by a delegated official.
- (2) After all relevant information and documentation is considered, the group manager can request approval from the appropriate official to waive all or part of the "b" tax. The group manager will use the IRC 4971(b) Tax Waiver Approval Memo for this purpose. See *Employee Plans Examination Exhibits* for the IRC 4971(b) Tax Waiver Approval Memo.
- (3) The delegated official is either the EP Examination Area Manager or the Director, EP Examinations and is determined by the amount of the unpaid minimum required contribution as follows:
 - For amounts equal to or less than \$5 million, the delegated official is the EP Examination Area Manager.

- For amounts greater than \$5 million but less than \$50 million, the delegated official is the Director, EP Examinations.

(4) When IRC 497(b) tax is waived in this manner, document the CCR and include the signed IRC 4971(b) Tax Waiver Approval Memo in your exam workpapers.

4.70.14.2.1.2.4.8
(11-24-2023)

**EP – Closing Agreed
Form 5330 and 990-T
Exams**

(1) Forms 5330 exams are considered agreed when:

- a. Form 5330, or 990-T is filed,
- b. The amount of tax reported is correct (or Taxpayer agrees to your adjustment), and
- c. Correction is made (if the issue is minimum funding or a prohibited transaction).

Note: For purposes of IRC 4971, a case will also be processed as an agreed case for a specific year if the taxpayer files Form 5330 and reports the correct amount of IRC 4971(a) and IRC 4971(b) tax, even if the funding deficiency has not been corrected.

Note: Follow the procedures in IRM 4.70.17, Claims and Abatements, when working a claim.

(2) Prepare Form 5773-A and workpapers to document exam procedures and findings and save them in the RCCMS Office Documents folder.

(3) Prepare a closing letter that covers all Form 5330 years examined.

- a. Use:

Form	Closing Letter
5330 or 990-T	<ul style="list-style-type: none"> Letter 6049 when the exam results in no change to the tax reported on a filed return. Note: Letter 6049 is the normal closing letter used to close a delinquent Form 5330 or 990-T picked up in conjunction with a Form 5500 exam and is to be mailed from the group Letter 2086 when the exam results in no change to the tax reported on the filed Form 5330, but additional restorative correction is made. Letter 2087 when a signed Form 870-EP is secured reflecting an agreed upon change to the tax previously reflected on a filed return. The letter can also be used if a delinquent return is secured and you have additional comments that you want to convey to the taxpayer.

- b. All closing letters will be mailed out by the exam group.
c. Scan and save a copy of the closing letter in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.

(4) Use the following disposal codes:

Disposal Codes	Conditions
AIMS 02 (RCCMS = 107), No Change	<p>When:</p> <ul style="list-style-type: none"> A previously filed return is examined and there is no change to the tax liability, or A timely filed return is secured and there is no change to the tax liability reported

Disposal Codes	Conditions
AIMS 03 (RCCMS = 102), Agreed Tax Change	The tax has been corrected on a previously filed return and the taxpayer agreed to the changes by signing a Form 870-EP or by amending a return.
AIMS 06 (RCCMS = 208), Delinquent Return Secured	A delinquent return was secured.

- (5) Close the agreed Form 5330, or 990-T exam case file(s) and any related Form 5500 series returns to the TE/GE Closing Group in Brooklyn when the RCCMS files are received from Classification and the return has fully posted on AIMS.

Note: The case must be fully established on RCCMS and AIMS before it is closed to the TE/GE Closing Group.

Note: Save an AMDISA print showing full establishment on AIMS in RCCMS.

- (6) You no longer need to establish delinquent Forms 5330, Forms 5329, or Forms 990-T that you accept as filed on RCCMS and AIMS. You will still need to process the accepted as filed delinquent returns to the service center, but you will not need to establish these returns for examination on RCCMS and AIMS.
- (7) In instances where you don't need to examine a secured return as you can accept it as filed, then after processing it to the Service Center, you only need to save a copy of the accepted return, the acknowledged Form 3210 received from the service center, or comparable record of confirmed receipt document (i.e., EEFax confirmation) in RCCMS.
- (8) Record the receipt of the return by completing the electronic RCCMS 3198-A Special Handling checksheet in the RCCMS compliance activity of the primary examination return. Use the RCCMS 3198-A Special Handling checksheet to record the number and types of return secured in RCCMS to let CP&C capture the fact that you secured a return and accepted it without having to establish a related examination or create a Form 5329 discrepancy adjustment.
- (9) For cases which are put under exam, prepare the RCCMS tabs in accordance with IRM 4.70.14.2.1.2.4.9, EP - Preparation of RCCMS Tabs for Agreed Form 5330 and 990-T Exams.
- (10) As applicable, the following documents must be scanned and saved into the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention:
- Form 10329
 - Form 872
 - Form 870-EP
 - Copy of the return mailed to the campus
 - A copy of the check for payment of tax, penalties or interest
 - Form 2848 or Form 8821
 - All correspondence received from the taxpayer or POA
 - Any other paper documents necessary to document the examination trail

- (11) Save all copies of workpapers, forms and letters that you prepare, in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.

Note: Documents scanned into RCCMS should be the final version of that document that includes the date and signature, if applicable.

For example, if the examination closing letter is scanned into RCCMS, it must be a copy that includes the date the letter was mailed and the signature of the Director, EP Examinations.

- (12) The closing letter will be mailed out by the group manager (or designee).

Note: Make sure the letter is dated and contains the signature of the Director, EP Examinations.

- (13) Close the case on RCCMS with the “Update AIMS” box checked. The case will be updated to status 51 by the group manager (or designee) when it is closed from the group.

- (14) Close all agreed Forms 5330, or 990-T on RCCMS and AIMS to the TE/GE Closing Group in Brooklyn.

4.70.14.2.1.2.4.9
(11-24-2023)

**EP – Preparation of
RCCMS Tabs for Agreed
Form 5330 and 990-T
Exams**

- (1) Validate cases for closure in the RCCMS closing record using the table below.

Note: All items highlighted in red are required to be completed.

Note: Refer to IRM 4.5.2, TE/GE Examined and Non-Examined Closures, and Document 6476 for additional Information.

<u>RCCMS TAB</u>	<u>ITEM</u>	<u>EXPLANATION</u>
General	Penalty Reason Code	No entry unless penalties previously assessed are being abated. See IRM Exhibit 4.5.2-2, TE/GE Penalty Reason Codes, of IRM 4.5.2, TE/GE Examined and Non-Examined Closures for applicable codes.
General	Disposal Code	102= “Agreed Tax Change” 107= “No Change” 208= “Delinquent Return Secured”
General	ARDI Code	An entry is required if the disposal code is “102” or “208”.
General	Closing With	Make the appropriate selection in the drop down menu, but in most cases select “electronic prints”
Details	Examiner’s Time	Time must be entered in whole hours and in tenths of hours.

<u>RCCMS TAB</u>	<u>ITEM</u>	<u>EXPLANATION</u>
Details	Technique Code	6- Office correspondence exam 7 – Field exam - limited scope
Details	Examiner's Name	Last Name, First Name
Details	Delinquent Return Code	If disposal code is 208 and entry is required.
Individual/Business (1 of 3)	Agreement Date	Insert the date the signed Form 870-EP is received (if applicable).
Individual/Business (1 of 3) Assessment Information	Tax	<p>Enter transaction code (TC) 300 and \$0 if no additional tax is being assessed above the amount reported by the taxpayer on the return secured by the examiner. If additional tax is being assessed on Form 870-EP above what was reported on a previously filed return, enter TC 300 and the additional amount of tax being assessed.</p> <p>Note: If you previously forwarded an agreed delinquent return that the taxpayer voluntarily filed with you to the campus, the tax assessment would have been made at the Service Campus when the return was processed.</p> <p>In order to avoid double assessment, do not reflect an additional tax amount.</p> <p>Note: With Form 870-EP, assessments are made by the TE/GE Closing Group.</p>

<u>RCCMS TAB</u>	<u>ITEM</u>	<u>EXPLANATION</u>
Individual/Business (1 of 3) Assessment Information	Penalties	<p>If Form 870-EP is signed by the taxpayer and IRC 6651 penalties are being assessed, enter TC 160 with the corresponding amount for the IRC 6651(a)(1) penalty, and TC 270 with the corresponding amount for the IRC 6651(a)(2) penalty.</p> <p>Note: If a delinquent return is secured and forwarded, the Service Campus will automatically assess the IRC 6651 penalties unless the examiner provides instructions to the contrary in the "Other Instruction" section of the RCCMS 3198-A Special Handling checksheet accompanying the delinquent return when it is mailed to the Service Campus.</p> <p>Note: If the Service Campus erroneously assesses IRC 6651 penalties, they can be abated by entering TC 161 (for IRC 6651(a)(1)) and TC 271 (for IRC 6651(a)(2)), as applicable, with the corresponding amounts.</p>
Individual/Business (1 of 3)	Reference Number	If additional tax is being assessed on a previously filed return (i.e., you entered TC 300 with an additional tax assessment), then a reference number (manual abstract code) should be listed here with the additional amount of tax being assessed. See the table in paragraph (2) for applicable reference numbers.
Individual/Business (1 of 3)	Interest	Leave blank. Interest will be assessed by the Service Campus.
Individual/Business	Delinquent	For disposal
(2 of 3)	Return Amount	Code 208, enter the amount of tax on Form 5330.

(2) Examples of reference numbers are:

Reference Number	Condition
159	Prohibited transaction (IRC 4975(a))
224	Prohibited transaction (IRC 4975(b))
160	Excess Contributions to Certain Tax-Favored Accounts and Annuities (IRC 4973(a)(1))
161	Nondeductible employer contributions (IRC 4972)
162	Excise Tax on Certain Accumulations in Qualified Retirement Plans (IRC 4974)
163	Minimum funding (IRC 4971(a))
225	Minimum funding (IRC 4971(b))
164	Excess contributions (IRC 4973)
200	Disqualified Benefits (IRC 4976)
201	Excess Fringe Benefits (IRC 4977)
202	Certain ESOP Distributions
203	ESOP prohibited allocations (IRC 4979A)
204	Reversions (IRC 4980)
205	Excess Contributions (IRC 4979)
209	ESOP Dispositions (IRC 4978)
226	Liquidity Shortfall (IRC 4971(f)(1))
227	Liquidity Shortfall (IRC 4971(f)(2))
228	Notice Failure - Benefit Accrual Reduction (IRC 4980(f))

4.70.14.2.1.2.4.10
(11-24-2023)

**EP – Consideration of
Statute of Limitations for
Forms 5330, and 900-T**

- (1) Except for prohibited transactions, the statute of limitations (SOL) for assessment of taxes expires three years from the later of the due date of the return, or the date the return is filed (See IRC 6501(a)).
- Generally, for any tax other than IRC 4975 excise tax and UBIT, there will not be a SOL date when a return is not filed.
 - A return is deemed filed on its due date if filed on or before its due date.
- (2) Forms 5330 filed for IRC 4975 excise tax:

- a. The three-year statute of limitations for assessment of taxes begins on the later of:
 - a. The date the related Form 5500 series return is filed, or
 - b. The date due, if the prohibited transaction is sufficiently disclosed (See IRC 6501(l)(1)).

Note: The statute of limitations for prohibited transactions is extended to six years if the prohibited transaction is not adequately disclosed on the related Form 5500.

Note: See *Employee Plans Examination Exhibits* for a matrix to help compute the statutes under IRC 4975.

- b. Involving a discrete act (one-time occurrence, such as a sale), even though the taxes are imposed annually, there is only one period of limitations applicable to all the tax attributable to the prohibited transaction. Therefore, the filed or due date to be used in determining the statute of limitations date is limited to that of the initial Form 5500 return filed for the period in which the discrete act occurred.
- c. For a prohibited transaction that is considered a continuing transaction, such as a loan or lease, the situation is different.
 - a. In addition to the original transaction, a new transaction is deemed to occur on the first day of each subsequent taxable year of the disqualified person.
 - b. The filing of the Form 5500 return for the year in which the prohibited transaction first occurred starts the running of the statute of limitations for purposes of the tax on the actual transaction occurring in that plan year.
 - c. The filing of the Form 5500 return for each subsequent plan year starts the running of the statutes for transactions deemed to reoccur in subsequent years.

(3) Forms 990-T reporting UBIT:

- a. The three-year statute of limitations for assessment of taxes begins:
 - 1. If the trust files a Form 990-T, the statute of limitations begins to run on its filing date.
 - 2. If the Form 990-T is not filed, the statute of limitations starts to run based upon the Form 5500 return if:
 - i. The plan administrator files the Form 5500 series return, and
 - ii. The Form 5500 discloses sufficient information to reveal the existence of UBI.
- b. If the trust reported UBI on the Form 5500 series return, and the amount of omitted gross income from unrelated business activity is greater than 25% of the reported gross income from unrelated business activity, the statute of limitations period is six years from the date the Form 5500 series return was filed. See IRC 6501(e).

Note: Before you pursue a six-year statute, secure the approval of your manager and TEGEDC.

- c. If the Form 990-T is not filed, and the criteria in item (a)(2) above are not met, the statute of limitations does not begin running.
- d. If the trust files Form 990-T and the amount of omitted gross income from unrelated business activity is greater than 25% of the reported gross income from unrelated business activity, the statute of limitations period is six years from the date the Form 990-T return was filed.

Note: Before you pursue a six-year statute, secure the approval of your manager and TEGEDC.

- e. See IRM 4.70.12.3.8.9, Securing Consents for Form 990-T, for guidance on completing Form 872-H, Consent to Extend the Time to Assess Tax on a Trust, to extend the statute of limitations for Form 990-T.

Note: Form 872-H can be accepted by fax if taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the consent to extend the time to assess tax.

- (4) In cases where the taxpayer omitted more than 25% of the excise tax due (other than prohibited transactions and UBIT), the statutory period to assess tax is six years from the later of:

- a. The date the return is filed, or
- b. Deemed filed.

Note: See IRC 6501(e)(3).

- (5) Consult TEGEDC before pursuing a six-year statute of limitations. Document discussions and responses with Counsel in the CCR.
- (6) Make sure the statute of limitations reflected in the RCCMS Compliance Activity, General tab (1 of 2), is completed and is correct. BMF and IMF will automatically calculate a statute of limitations date for a Forms established on AIMS. However, the calculated date cannot be relied upon to reflect the normal statute date for prohibited transactions or SFRs established for all other taxes.
 - 1. Presently, statute of limitation dates for all Forms are calculated on BMF and IMF as three years from the later of: The date the Form is filed, or the date due.
 - 2. Forms 5330 reporting IRC 4975 excise tax:
 - 1. BMF incorrectly calculates the statute of limitations date for prohibited transactions since there is no linkage to the Form 5500 series return statute date.

Note: The problem exists because the prohibited transaction statute of limitation date is based on the filing of the Form 5500 in which the prohibited transaction occurred or is deemed to have occurred, and not the filing of the Form 5330.

- 2. If a single Form 5330 contains both IRC 4975 excise tax and another type of excise tax (for example, IRC 4971), use the statute of limitations date for IRC 4975 since it will expire sooner.
- 3. All SFRs other than Forms 5330 for IRC 4975 excise tax: IMF and BMF incorrectly calculate a 3-year statute date for SFRs. When a return has not been filed by the Taxpayer, the statute of limitations has not begun to run. Update the statute of limitations to alpha code "EE" per IRM 4.70.12.3.7.7, Use of Alpha Codes, when no return has been filed and the statute of limitations has not begun to run.

Note: The year reflected should be six years from the date the SFR posted. For example, if the SFR posted on 10/21/2020, the statute date should be 10/EE/2026.

- (7) If AIMS and/or RCCMS reflects an incorrect statute date, notify your manager and update the statute of limitations through RCCMS with the "Update AIMS" box checked.

Note: If statute date reflected in RCCMS but different than the statute date reflected on AIMS, update of the statute date on AIMS must be done manually so that it agrees with RCCMS.

- (8) When the statute date is less than or equal to 270 days, complete the RCCMS Statute Validation Process:
- Check the "Statute Valid" check box in the RCCMS Compliance Activity, General tab (1 of 2).
 - Select "Actions", "Request Statute Validation", complete the "Comment" box and submit the request for your manager's approval.
- (9) Follow the statute control procedures discussed in IRM 4.70.12.3.8, EP Statute Control Procedures.

4.70.14.2.1.2.4.11
(11-24-2023)

**EP – Forms 5330, or
990-T Established on
AIMS and RCCMS in
Error**

- (1) Sometimes Forms 5330, or 990-T are established on AIMS and RCCMS in error (for example, the taxpayer provides additional information which shows that tax is not due.)
- (2) If a Form 5330, or 990-T is established in error on AIMS:
- To delete the incorrect AIMS account, prepare Form 10904, Request for Record Deletion from AIMS, as follows:

Field:	Entry:
Name of Taxpayer:	Input the plan name.
Name Control:	Input the four-digit name control.
Taxpayer Identification Number:	Input the EIN for the record being deleted.
Plan Num.:	Input the plan number for the record being deleted.
Tax Period:	Input the plan year for the record being deleted.
Disposal Code:	Select disposal code "33". Note: If the return has not posted (there is no TC 150 posting), make sure the box next to AM424D is checked.
Other:	Select "Error Account"; Select "AIMS".
Reason for Request:	Input a brief explanation of the requested correction.

Note: See **Employee Plans Examination Exhibits** for an example of a completed Form 10904.

- b. Secure group manager and Area Manager approval on an electronic Form 10904.
- c. Post the approved Form 10904 in the RCCMS Office Documents folder.
- d. Secure AMDISA, INOLES and BMFOLT/IMFOLT prints for the account being deleted and save them in the RCCMS Office Documents folder.
- e. The group manager (or designee) will update the case to status 51 on AIMS and RCCMS when it is closed.
- f. Close the examination on RCCMS (disposal code 901) and AIMS (disposal code 33) to the TE/GE Closing Group, requesting status "56" (Form 10904).
- g. The EP AIMS Coordinator will delete the account when the RCCMS record is received.

4.70.14.2.1.2.4.12

(11-24-2023)

EP – Referrals to the Department of Labor

- (1) For cases involving uncorrected minimum funding deficiencies or uncorrected prohibited transactions, the examiner will prepare a DOL referral package and forward it at the earliest possible time in the audit cycle.
- (2) The examiner will provide the group manager with the following items:
 - a. Completed Form 6212-B.

Note: Include a concise summary of the issue(s) referred on Line 12 "Remarks" of Form 6212-B.
 - b. Any relevant information pertaining to the issue referred, including a copy of the RAR if there is an unagreed IRC 4971, IRC 4975 issue or a proposed revocation.

Note: None of the Form 6212-B attachments are sent to DOL-EBSA, unless Classification receives a written request from DOL-EBSA for the information.

Classification will release relevant information as required by IRC 6103(l)(2).
- (3) The group manager or designee will send approved referrals to the FAC/EP DOL Coordinator. See *Employee Plans Examination Exhibits*, for addresses.
- (4) See IRM 4.70.11.15.6, Referrals to Other Agencies.

4.70.14.2.1.2.4.13

(11-24-2023)

EP – Obtaining a Trust EIN

- (1) Solicit the trust EIN from the plan sponsor.

Note: If the trust does not have an EIN, the plan sponsor must complete Form SS-4 and file or fax it to the appropriate the IRS office listed on the instructions.

Alternatively, the taxpayer can apply for an EIN for the trust online at irs.gov.
- (2) If the plan sponsor provides a trust EIN, secure a BMFOLI print to make sure the EIN is not being utilized to file returns other than trust returns (e.g., Form 990-T or Form 1041).

Note: A Form 990-T sent to Ogden with an EIN that is used for any other purpose than for the filing of Form 990-T for the trust will not process at the Service Campus. The return will reject and a new trust EIN will have to be assigned causing a delay in the processing of the Form 990-T.

- (3) If the trust does not have an EIN and the plan sponsor will not obtain one, obtain one by faxing Form 4442 to the EO Entity Unit at Ogden Campus. The e-fax number is 855-306-0953. See *Employee Plans Examination Exhibits* for an example of a completed Form 4442.
- (4) Obtaining a new EIN for the trust in a manner described in item (3) above will automatically establish an entity module.

4.70.14.2.1.2.4.14
(11-24-2023)

**EP – Requests for
Waivers or Exemption
from IRC 4971/4975
Excise Taxes**

- (1) During the exam of a Form 5330 or Form 5500 series return involving an accumulated funding deficiency or prohibited transaction, the employer or disqualified person may request or currently have pending:
 - a. A waiver of the funding deficiency before the IRS.
 - b. An administrative exemption from the prohibited transaction requirements before DOL.
- (2) These types of cases may be subject to mandatory technical advice procedures and require coordination with the Employee Benefits, Exempt Organizations, and Employment Taxes Office of Associate Chief Counsel (EEE Counsel) in Washington, D.C.

Note: See IRM 4.70.13.6.7.2, Technical Advice Memorandum (TAM) Procedures.

- (3) Waiver of the liquidity shortfall (as defined in IRC 430(j)(4)) excise tax under IRC 4971(f)(4) may need to be coordinated with EP Rulings and Agreements in Washington, DC.
- (4) EEE Counsel considers requests for waivers of the minimum funding standards under the following circumstances:
 - a. For a defined contribution plan accompanied by a request for a determination letter on the effect of an amendment necessary to satisfy section 3 of Rev. Rul. 78-223, IRB 1978-1 C.B. 125 (the case is subject to mandatory technical advice).
 - b. For a defined benefit plan, or a request for a waiver ruling for a defined contribution plan which is not accompanied by a request for a determination letter on the effect of an amendment necessary to satisfy section 3 of Rev. Rul. 78-223. Forward the waiver request to EP Technical in Washington, D.C. for consideration by an actuary.
- (5) As described in IRM 4.70.14.2.1.2.4.7, EP – Waiver of the 100% 4971(b) Excise Tax, the IRS may waive part or all of the tax under IRC 4971(b).
- (6) Under ERISA section 3003, the IRS may grant waivers of taxes under IRC 4975.

Example: A taxpayer may request such a waiver if DOL has negotiated a settlement of a prohibited transaction but the settlement does not constitute correction within the meaning of IRC 4975(i) and the regulations under that section.

- (7) All cases involving a taxpayer's request for the abatement or waiver of taxes under IRC 4975 are subject to mandatory technical advice. See IRM 4.70.13.6.7.2, Technical Advice Memorandum (TAM) Procedures, for instructions on processing Technical Advice cases.
- (8) Cases involving prohibited transaction exemption requests with DOL are coordinated with DOL by the FAC/EP DOL Coordinator. This includes, for example, cases in which either the conditions of the exemption were not met or the facts were materially misrepresented in obtaining the exemption.

Note: See *Employee Plans Examination Exhibits*, for addresses.

- (9) If DOL grants an exemption on a prohibited transaction, the IRS may not impose taxes under IRC 4975 on that transaction. If the IRS assessed tax before DOL granted the exemption, the tax must be abated.
- (10) Complete the exam to the extent possible and place the case in informal suspense in the group until such waiver or exemption request is approved or denied. See IRM 4.70.11.3, Case Suspense, regarding suspense cases.
- (11) See the following revenue procedures for additional guidance: Rev. Proc. 2023-1, Rev. Proc. 2023-2, Rev. Proc. 2023-3, Rev. Proc. 2023-4, Rev. Proc. 2000-17, Rev. Proc. 2004-15, and Rev. Proc. 81-44. The first four listed are revised annually, usually in January.

4.70.14.2.1.3
(11-24-2023)

**EO – Agreed Exempt
Organization
Examination Procedures**

- (1) An agreed Exempt Organization examination is one for which:
 - a. The examiner does not propose any adverse status change (revocation, disqualification of a status 36 organization, or reclassification from public charity to a private foundation) or tax adjustment.
 - b. The examiner proposes and the Taxpayer agrees to an adverse status change and/or tax adjustment.
 - c. The Taxpayer makes correction under a closing agreement program, fast track settlement or classification settlement program.

4.70.14.2.1.3.1
(11-24-2023)

**EO – Examination
Results and Reports**

- (1) This IRM section focuses on issuing examination reports and the proper use of examination related letters for examiners. It also provides a comprehensive list of examination results for which reports and letters are issued.

4.70.14.2.1.3.1.1
(11-24-2023)

**EO - Types of
Examination Results**

- (1) Close each examined return under EO jurisdiction using one of the examination results listed below:
 - No change.
 - Change due to correction of operations.
 - Revocation of tax-exempt status (IRC 501(c) or (d) organizations only) (IRC 7428 case.)
 - Reclassification of foundation status (IRC 501(c)(3) and IRC 4947(a)(1) organizations only) (IRC 7428 case).
 - Disqualification of tax-exempt status - Status 40 organizations (IRC 7428 case).
 - Disqualification of tax-exempt status - Status 36 organizations (IRC 7428 case).
 - Disqualification of tax-exempt status - IRC 501(c)(12) or IRC 501(c)(15) (IRC 7428 case).

- Closing agreement.
- Termination of tax-exempt status.
- Change in tax.
- Allowance of a claim in full.
- Allowance of a claim in full (surveyed claim).
- Disallowance of a claim in full or in part.
- Disallowance of a claim in full or in part, plus additional tax or penalty.
- Withdrawal of claim
- Allowance of an abatement request in full
- Disallowance of an abatement request in full or in part • Disallowance of an abatement request in full or in part, plus additional tax or penalty
- Withdrawal of abatement request

Note: Each change in tax or status must be either agreed or unagreed (except auto-revolutions and terminations).

Unagreed changes are further classified as either “with” or “without” the taxpayer’s protest for appeal.

- (2) **No Change** – An examination resulting in no change to exempt status, foundation status, or tax liability.
- (3) **Change due to Correction of Operations** – Examinations of primary returns, where the taxpayer took corrective actions during the examination to correct operational or other compliance issues that did not result in a change to exempt status.
- (4) **Change Cases** – Cases in which the examination results in a change (or adjustment) in the organization’s status or tax liability. Change cases are agreed, excepted agreed, unagreed with protest, or unagreed without protest. Tax changes can be partially agreed.
- (5) **Agreed Change or Agreed Disallowance** – The taxpayer signs a waiver and acceptance form agreeing to the changes in tax or status (or to any disallowance of a claim or abatement). An allowance of a claim or abatement in full as requested by the taxpayer without additional adjustments and without a signed waiver form is deemed to be an agreed change. In the case of two-tier Chapter 42 excise taxes (IRC 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, or 4958), a case remains unagreed until the act, or failure to act, giving rise to the tax is fully corrected.
- (6) **Excepted Agreed Change** – The taxpayer agrees to proposed changes in tax or status by signing a waiver, but the examination results are subject to review, such as changes to exempt status and foundation status. A signed waiver:
 - Waives the statutory restriction upon assessment and collection of the deficiency of tax.
 - Waives the ability to contest the assessment in the United States Tax Court (unless an additional deficiency is proposed).
 - Stops the running of interest 30 days from the date of receipt if the tax isn’t assessed within the 30-day period.
 - Doesn’t preclude assertion of a further deficiency.
 - Doesn’t preclude a request for further consideration of the issues by the taxpayer.

Note: The return is “excepted” from application of the case reopening criteria.

See IRM 4.10.8.5, Excepted Agreed Cases.

Example: You propose a revocation on a Form 990 examination of an IRC 501(c)(7) organization, and the revocation is agreed. All revocations are subject to Mandatory Review because Mandatory Review must concur with the revocation before finalizing it. The Form 990 examination is excepted-agreed.

Example: You propose a revocation on a Form 990 examination that is unagreed, but the organization agreed to additional UBIT by signing Form 4549 in the event Mandatory Review or Appeals sustains the exemption. Because you cannot finalize the agreed UBIT issue due to a pending revocation issue, treat the Form 990-T examination as excepted-agreed. Therefore, the Form 990-T case file will ride with the Form 990 file to Mandatory Review.

You must address an open Form 990-T examination as an alternative issue in a revocation RAR, whether the alternative Form 990-T issue was agreed or unagreed. See also IRM 4.70.14.2.1.3.3.22, EO - Revocations and Disqualifications - Alternative Positions.

- (7) Partially Agreed Change – At least one change issue is agreed and at least one change issue is unagreed, with respect to a specific type of tax (income, employment, or excise). Secure a signed waiver for the agreed issue for immediate processing by Mandatory Review, while the organization possibly contests the remaining issues in Appeals or in court. Partially agreed cases also include agreed changes in exempt status or foundation status, but the resulting tax isn't agreed. In the case of two-tier Chapter 42 excise taxes (IRC 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, or 4958), a case remains unagreed until the act or failure to act giving rise to the tax is fully corrected.

Example: You propose changes to the UBIT for operation of a concession stand in a bingo hall, sales of pull-tabs, and you propose a change to the gaming excise tax on the sale of the pull-tabs. The organization agrees to the concession stand and gaming excise tax issues but files a protest to Appeals over the sale of pull-tabs.

Example: An organization agrees to the revocation of its exempt status but doesn't agree to your conclusion that the contributions received were program service revenue.

- a. Partially agreed cases are considered excepted agreed cases. You must first process the agreed issue in an agreed report. Upon confirmation from the EO closing unit that the agreed issue is posted, proceed with the unagreed portion of the report using normal unagreed closing procedures.
- b. The Agreed Report: An agreed report will be processed as a partial closure of AIMS. A partial closure will allow an adjustment to be made to the tax module without closing the AIMS database. In the case of an income tax, prepare the agreed report as follows:
 - i. Prepare Form 4549-A using only the agreed adjustments.
 - ii. The additional tax computed will be reflected on Form 870.
 - iii. Indicate "Agreed Issues" on the top of the Form 4549-A.

- iv. Make a copy of the Form 4549-A and the signed Form 870 for the case file as a workpaper documenting the calculation of the tax.
 - c. Prepare and Process the Agreed Report:
 - i. On the 3198-A Checksheet in RCCMS, note "Partial Assessment Requested" and in the Other Instructions section, "Return via fax when completed."
 - ii. On the closing record in RCCMS, check partial assessment.
 - iii. The report created in the previous paragraph.
 - iv. Copy of the front page of the tax return with a BMFOLT transcript.
 - d. Upon receiving proof of processing by fax from the EO closing unit, prepare the unagreed report.
 - e. The Unagreed Report: The unagreed report will process toward a full closure of AIMS. In the case of an income tax, prepare the unagreed report and closing documents as follows:
 - i. Prepare a second Form 4549-A showing both agreed and unagreed adjustments.
 - ii. However, show the agreed adjustments by placing an asterisk (*) in front of the letter in Line 1 of Form 4549-A for each agreed adjustment.
 - iii. The "Total Tax Per Return or as Previously Adjusted" on Line 3 of Form 4549-A will include the tax on the agreed adjustments.
 - iv. The "Total Adjustments", Line 2 of Form 4549-A, will not include the agreed adjustment amounts.
 - v. The "Other Information" section of Form 4549-A will contain the following statement, "The adjustments with an asterisk have been agreed. The taxpayer is in agreement with the adjustment(s) indicated as agreed, and the applicable agreed deficiency is being assessed and is included in Total Tax as Previously Adjusted".
 - vi. Issue the second report to the taxpayer with the appropriate 30-day letter (Letter 3614 for UBIT and other EO income taxes).
 - f. In the case of excise and ETs, use the appropriate report forms corresponding to Form 4549-A and 870 used for income taxes. See report forms in Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases.
 - g. Final disposition of the case will require:
 - i. A second RCCMS closing record will follow normal closing procedures.
 - ii. A second 3198-A Special Handling checksheet in RCCMS for the case file indicating "Partial Agreement Case - Agreed Tax Previously Assessed".
- (8) Unagreed Change or Unagreed Disallowance – A change in tax or status (or a disallowance of a claim or abatement request) without a taxpayer's signed waiver and acceptance form. In the case of two-tier Chapter 42 excise taxes (IRC 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, or 4958), a case remains unagreed until the act, or failure to act, giving rise to the tax is fully corrected. Unagreed cases are either with or without protest. A taxpayer's failure to respond to a 30-day letter defaults to unagreed without protest treatment. Unagreed without protest cases are subject to Mandatory Review, except:
- Non-worker classification ET adjustments.
 - Gaming excise tax adjustments.
 - Disallowance of abatement requests.

4.70.14.2.1.3.1.2
(11-24-2023)
EO - No Change

- (1) Follow the instruction in IRM 4.70.14.4, Closing a Case, to close a no change case.

4.70.14.2.1.3.1.3
(11-24-2023)
**EO - Change Cases -
Proposing Adjustments**

- (1) Proposed adjustments apply to adjustments to status or tax. For purposes of this manual, proposed adjustments include disallowance of claims and abate-ments.
- (2) You're required to prepare a RAR for proposed adjustments. You can prepare an initial examination report, see IRM 4.70.14.2.1.3.1.32, EO – Initial Examination Reports, or a formal examination report. Initial examination reports **don't** apply to declaratory judgment cases.
- (3) The transmittal letter for the RAR solicits agreement to the proposal. For formal examination reports, this letter is a 30-day letter, which also informs an organization of their right to appeal.
- (4) There are many variations of reports depending on the type of tax or status change. See Exhibit 4.70.14-2, EO Reports and Closing Letters for Claims and Abatements and Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, for the many variations.
- (5) You must distinguish an examination report from a final closing letter that officially closes the examination. Final closing letters are issued by GMs.
 - a. A final closing letter will follow after the taxpayer replies or fails to reply to the 30-day letter.
 - b. In some cases the 30-day letter becomes a final closing letter if the organization fails to reply to the 30-day letter. This is the case for miscellaneous excise taxes, and non-worker classification ETs.
 - c. You will generally issue a final closing letter if the organization agrees with your adjustment (not applicable for declaratory judgment cases).
 - d. Mandatory Review or Appeals will issue a final closing letter for unagreed adjustment and declaratory judgment cases. These final closing letters generally take the form of a 90-day letter or statutory notice of claim disallowance if they agree with your position.
- (6) Fully develop the issues of your examination prior to preparing any RAR. Address your issues in the RAR in the order of significance.

Example: Examiner C has one report proposing revocation that addresses a political activity issue and the issue of not operating in furtherance of an exempt purpose. Examiner C spent most of her time addressing the political activity issue. The exempt purpose issue was incidental to the political activity issue. Examiner C must first present and address the political activity issue in the report.

- (7) The RAR should contain all the information necessary to ensure a clear understanding of the issues, the applicable law, and conclusions. The RAR, unlike workpapers, is a legally binding document and when executed, serves as the basis for tax law enforcement action. Prepare the RAR accurately and completely.
- (8) Reports are accompanied with a waiver and acceptance form, also known as agreement forms. These forms require a taxpayer's signature if they agree with the proposed adjustment:

Form Number/Purpose	Title
Form 870 use: <ul style="list-style-type: none"> To secure agreement to a deficiency or overassessment. With formal reports presented with Form 4549-A, Income Tax Examination Changes (Unagreed and Excepted Agreed). 	Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment
Form 870-E use to secure agreement for IRC Chapter 42 excise taxes	Waiver of Restrictions on Assessment and Collection of Deficiency and Acceptance of Overassessment
Form 2297 use for every claim disallowance.	Waiver of Statutory Notification of Claim Disallowance. See IRM 4.10.8.11.2.2.1, Claims for Refund - Forms.
Form 2504 use to secure agreement on ET adjustments, involving non IRC 7436 issues.	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436). See IRM Exhibit 4.23.10-6.
Form 2504-E use to secure agreement on gaming excise taxes.	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment. See IRM 4.24.20.
Form 2504-S use to secure agreement on ET adjustments not subject to IRC 7436 where no worker classification issues were addressed during the examination.	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). See IRM Exhibit 4.23.10-7.
Form 2504-T use to secure agreement on ET adjustments for adjustments subject to IRC 7436.	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436). See IRM Exhibit 4.23.10-8.
Form 3363 use for every claim disallowance.	Acceptance of Proposed Disallowance of Claim for Refund or Credit. See IRM 4.10.8.11.2.2.1, Claims for Refund - Forms.

Form Number/Purpose	Title
Form 4549 use with initial report for agreed income tax cases.	Income Tax Examination Changes.
Form 4549-E use to secure agreement in discrepancy adjustment cases.	Income Tax Discrepancy Adjustments.
Form 5384 use: <ul style="list-style-type: none"> To secure agreement on excise tax cases. When examining Form 720, 720-X, 2290, 730, 11-C, 8849 and any other miscellaneous excise tax form. 	Excise Tax Examination Changes and Consent to Assessment & Collection. See IRM Exhibit 4.24.20-1.
Form 6018 use for IRC 7428 declaratory judgment cases.	Consent to Proposed Action.
Form 886-A use for: <ul style="list-style-type: none"> Unagreed cases. Revocation cases. Reclassification of foundation status cases. Reclassification of operating foundation status cases. 	Explanation of Items.
Form 4549-A use to explain unagreed income tax change cases.	Income Tax Examination Changes (Unagreed and Excepted Agreed).
Form 4549-B use as a continuation sheet for Form 4549 or Form 4549-A.	Income Tax Examination Changes.
Form 4621 use to summarize excise tax adjustments under IRC: <ul style="list-style-type: none"> Chapter 41 and 42. IRC 507(c), IRC 170(f)(10)(F) and IRC 664(c)(2). 	Exempt Organizations - Report of Examination (Proposed Tax Changes. See IRM 4.70.14.2.1.3.1.7, EO - Form 4621 and Form 4621-A.
Form 4621-A use for: <ul style="list-style-type: none"> Revocations. Reclassifications of foundation status. Reclassification of operating foundation status. Disqualification of IRC 501(c)(12) or 501(c)(15) organizations. 	Exempt Organizations - Report of Examination (Proposed Status Change) See IRM 4.70.14.2.1.3.1.7, EO - Form 4621 and Form 4621-A.

Form Number/Purpose	Title
Form 4666 use as: <ul style="list-style-type: none"> • A cover and reference sheet. • Summarizes Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA), income tax withholding and Federal Unemployment Tax Act (FUTA) adjustments. 	Summary of ET Examination. See IRM Exhibit 4.23.10-1.
Form 4667 use to summarize the FUTA adjustments.	Examination Changes - FUTA. See IRM Exhibit 4.23.10-2.
Form 4668 use to reflect the additional tax or overassessments for FICA, RRTA, and income tax withholding.	ET Examination Changes Report. See IRM Exhibit 4.23.10-3.
Form 4668-B use to reflect adjustments of back-up withholding and income tax withholding reported on Form 945.	Report of Examination of Withheld Federal Income Tax for Withholding Reported on Form 1099 and Form W2-G. See IRM Exhibit 4.23.10-4.
Form 4883 use for: <ul style="list-style-type: none"> • Excise tax adjustments under IRC 41 and 42. • IRC 170(f)(10)(F). 	Exempt Organizations Excise Tax Audit Changes.
Form 5385 use: <ul style="list-style-type: none"> • As an excise tax report for unagreed cases. • With Form 2504 when submitting the 30-day package to the taxpayer and use with examining Form 720, 720-X, 2290, 730, 11-C and 8849 and any other excise tax form. 	Excise Tax Examination Changes. See IRM Exhibit 4.24.20-1.

4.70.14.2.1.3.1.4
(11-24-2023)

EO - Form 870 and Form 870-E

- (1) Issue Form 870 Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, in a formal examination report to secure agreement on income taxes. Use Form 4549-A, Income Tax Examination Changes (Unagreed and Excepted Agreed) with it.
- (2) Use Form 870-E, Waiver of Restriction on Assessment and Collection of Deficiency and Acceptance of Overassessment, to secure agreement for excise taxes under IRC Chapter 42.
- (3) When needing more than one line to reflect proposed recommendations for a year (such as multiple penalties) or the examination covers more than four years, you may have more than one Form 870 or 870-E in the case file.

4.70.14.2.1.3.1.5
(11-24-2023)
EO - Form 6018

- (1) Issue Form 6018, Consent to Proposed Action, for any change in the exemption or other status of the organization. See Exhibit 4.70.14-6, EO Status 36 Case: Form 6018 Instructions.
 - a. Status changes include those subject to declaratory judgment (Lines 1 - 9), and those not subject to declaratory judgment on Line 10 of the form.
 - b. For declaratory judgment cases, execution of the form serves only to memorialize the intent of the taxpayer at the time of signing the form.
 - c. Memorialization of the intent to agree isn't legally binding and doesn't waive the organization's declaratory judgment rights.
- (2) Write up all proposed status changes on cases subject to declaratory judgment similar to an unagreed case, even if the organization executed a Form 6018.
- (3) Declaratory judgment cases include:
 - Revocation of IRC 501(c) organizations that received a ruling or determination letter granting tax-exempt status.
 - Disqualification of a Status 36 organization for specified tax years.
 - Disqualification of an IRC 501(c)(12) organization that failed its 85 percent member income test for specified tax years.
 - Disqualification of an IRC 501(c)(15) organization that failed its gross receipts test for specified tax years.
 - Reclassification of PF status under IRC 509(a).
 - Modification of operating foundation status.
 - Reclassification as a non-operating foundation under IRC 4942(j)(3).
 - Reclassification of public charity status.
 - Reclassification as a type of IRC 509(a)(3) status.

Reminder: You can't reclassify a PF to public charity status. See IRC 507.
- (4) In cases where there are two or more declaratory judgment issues, such as revocation of IRC 501(c)(3) status and reclassification to a PF, use one Form 6018.
- (5) Under no circumstances will the IRS personnel alter a waiver after securing a signature from the organization, nor will the IRS request the organization to execute a blank waiver.
- (6) Don't solicit Form 6018 unless fully advising an organization of its appeal rights. You must include a positive statement to this effect in the workpapers.

4.70.14.2.1.3.1.6
(11-24-2023)
EO - Form 4549, Form 4549-A, Form 4549-B, Form 4549-E

- (1) Form 4549, Income Tax Examination Changes, is used for cases that result in:
 - a. Agreed income tax changes. Use the form for initial examination reports only, when you reasonably expect agreement.
 - b. Adjustments to income or deduction items don't affect or warrant a change in tax liability or refundable credits on the return examined. In such cases, notify the taxpayer of, or secure his agreement to any adjustments, which affect subsequent year returns of the taxpayer.

Example: An examination results in an adjustment to a net operating loss (NOL) that doesn't cause an additional tax liability, but may affect subsequent year returns. The disposal code for closing the examination would be 01 (RCCMS - 210).

- (2) If there are multiple issues or multiple years and some of them are agreed, encourage the taxpayer to enter into an agreement for the agreed issues or years by signing Form 4549.
- (3) Form 4549-A, Income Tax Examination Changes (Unagreed and Excepted Agreed), is used:
 - a. To explain unagreed and excepted agreed income tax change cases.
 - b. In a formal report and when unsure of the taxpayer's agreement.
 - c. With Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment.
- (4) Form 4549 and 4549-A are designed to cover three years. Regardless of the number of years examined, prepare one set of explanations. When reasons for an adjustment vary from year to year, detail them in one explanation. If examining more than three years, show additional years on Form 4549-B, Income Tax Examination Changes.
- (5) When multiple year examinations result in tax changes for some years and no tax change for other years, use Form 4549 or 4549-A (as applicable) for all years examined. Use a separate column for each no-change year and enter "None" on lines 2, 14, and 16.

4.70.14.2.1.3.1.7
(11-24-2023)

**EO - Form 4621 and
Form 4621-A**

- (1) Use Form 4621, Exempt Organizations - Report of Examination (Proposed Tax Changes), as a summary report for these cases:
 - a. Excise tax changes under IRC Chapter 41 and 42.
 - b. IRC 507(c) termination tax.
 - c. IRC 170(f)(10)(F).
 - d. IRC 664(c)(2).
- (2) Prepare this summary report in agreed and unagreed cases.
- (3) Use Form 4621-A, Exempt Organizations - Report of Examination (Proposed Status Changes), as the summary report for:
 - Revocations.
 - Reclassification of foundation status.
 - Reclassification of operating foundation status.
 - Disqualifications of Status 36 organizations for specified tax years.
 - Disqualifications of IRC 501(c)(12) or IRC 501(c)(15) organizations for specified tax years.

Caution: Modifications are unavailable for PFs seeking to convert to publicly supported organizations. PFs must terminate their status under IRC 507.

Note: In cases where there are two or more status issues, such as revocation of a IRC 501(c)(3) and reclassification to a PF, use one Form 4621-A. The RAR can address both issues.

- (4) Prepare this summary report in agreed and unagreed cases.

4.70.14.2.1.3.1.8
(11-24-2023)
EO - Form 4883

- (1) Use Form 4883, Exempt Organizations Excise Tax Audit Changes (Chapter 41, Chapter 42 and Section IRC 170(f)(10)(F) Excise Taxes), to set forth adjustments and calculate the tax for EO excise tax changes:

Internal Revenue Code section:	Reported on:
Chapter 41 taxes under IRC 4911 and IRC 4912	Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the IRC
IRC 4940 and IRC 4948 taxes	Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation
IRC 4941 to IRC 4945 private foundation excise taxes	Form 4720
IRC 4951 and IRC 4952 taxes related to black lung trusts	Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Person
IRC 4952 tax on political expenditures of IRC 501(c)(3) organizations	Form 4720
IRC 4958 tax on excess benefit transactions	Form 4720
IRC 501(c) termination tax for private foundations	A letter to the Manager, EO Determinations
IRC 170(f)(10)(F) tax on premiums paid for personal benefit contracts	Form 4720

- (2) Use Form 4883 for excise taxes imposed on:

- PF or other exempt organization.
- Disqualified persons.
- Self-dealers.
- Organization managers.
- Foundation managers.

- (3) Don't use Form 4883 for gaming excise taxes. See IRM 4.24.6.2.3, Excise Examinations with Wagering Issues, for report writing procedures in gaming excise tax cases.

4.70.14.2.1.3.1.9
(11-24-2023)
EO - Installment Agreements

- (1) You may offer an installment agreement to a taxpayer who is unable to pay the full amount owed if he/she is eligible. See eligibility criteria at IRM 4.20.4.2(6).
- (2) Send Form 9465, Installment Agreement Request, to the taxpayer with the 30-day letter package or after you have received the taxpayer's reply to the 30-day letter.

- (3) If the statute is imminent, secure Form 872 to ensure sufficient time to process the case.
- (4) If a taxpayer submits a request for an installment agreement:
 - a. Stamp the receipt date on the request.
 - b. Complete Form 3177, Notice of Action for Entry on Master File, with TC 971 AC 043, Pending Installment Agreements.
 - c. Fax or secure email Form 3177 to the FAST within 24 hours of the taxpayer's request.
 - d. Forward the request to the appropriate Campus Center address identified in the Form 9465 instructions.
- (5) Keep a copy of all forms in the work papers for information purposes.
- (6) Close the discrepancy adjustment case. The Campus collection function will contact the taxpayer about "setting up" an installment agreement.
- (7) Input the appropriate ARDI code for the installment agreement on the RCCMS closing record. Check the installment agreement box on the 3198-A Checksheet in RCCMS in the Mandatory Review section.
- (8) See IRM 4.20.4, Examination Collectibility, Installment Agreements, for more information on installment agreements.
- (9) If the taxpayer has filed bankruptcy, take the appropriate steps to protect the government's interest. See IRM 4.27, Bankruptcy, for further guidance.

4.70.14.2.1.3.1.10
(11-24-2023)

EO - Partially Agreed Cases

- (1) A partially agreed case contains more than one issue of which at least one issue is agreed and at least one issue is disagreed. Partially agreed cases are considered excepted agreed cases.
 - a. You must first process the agreed issue in an agreed report.
 - b. Upon confirmation from the EO closing unit that the agreed issue is posted, proceed with the disagreed portion of the report using normal disagreed closing procedures.
- (2) The Agreed Report: An agreed report will be processed as a partial closure of AIMS. A partial closure will allow an adjustment to be made to the tax module without closing the AIMS database. In the case of an income tax, prepare the agreed report as follows:
 - a. Prepare Form 4549-A using only the agreed adjustments.
 - b. The additional tax computed will be reflected on Form 870.
 - c. Indicate "Agreed Issues" on the top of the Form 4549-A.
 - d. Make a copy of the Form 4549-A and the signed Form 870 for the case file as a workpaper documenting the calculation of the tax.
- (3) Prepare and Process the Agreed Report Package: Send the agreed report to the EO closing unit as a package that consists of the following:
 - On the 3198-A Special Handling checksheet in RCCMS, annotated "Partial Assessment Requested" and in the Other Instructions section, "Return via fax when completed."
 - RCCMS, create a closing record for the partial agreed assessment. On the General Tab, ensure to check the box indicating this is a "Partial" agreement closing record.

- The report created in the previous paragraph.
 - Copy of the front page of the tax return with a BMFOLT transcript.
- (4) Upon receiving proof of processing by fax from the EO closing unit, prepare the unagreed report.
 - (5) The Unagreed Report: The unagreed report will process toward a full closure of AIMS. In the case of an income tax, prepare the unagreed report and closing documents as follows:
 - a. Prepare a second Form 4549-A showing both agreed and unagreed adjustments.
 - b. However, show the agreed adjustments by placing an asterisk (*) in front of the letter in Line 1 of Form 4549-A for each agreed adjustment.
 - c. The "Total Tax Per Return or as Previously Adjusted" on Line 3 of Form 4549-A will include the tax on the agreed adjustments.
 - d. The "Total Adjustments," Line 2 of Form 4549-A, will not include the agreed adjustment amounts.
 - e. The "Other Information" section of Form 4549-A will contain the following statement, "The adjustments with an asterisk have been agreed. The taxpayer is in agreement with the adjustment(s) indicated as agreed, and the applicable agreed deficiency is being assessed and is included in Total Tax as Previously Adjusted."
 - f. Issue the second report to the taxpayer with the appropriate 30-day letter (Letter 3614 for UBIT and other EO income taxes).
 - (6) In the case of excise and ETs, use the appropriate report forms corresponding to Form 4549-A and 870 used for income taxes. See report forms in Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases.

4.70.14.2.1.3.1.11
(11-24-2023)

**EO - Types of Status
and Tax Changes**

- (1) Examinations can result in several types of adjustments, including but not limited to:
 - Revocations (declaratory judgment case).
 - Disqualifications (declaratory judgment case)
 - Reclassifications of Foundation Status (declaratory judgment case).
 - Modifications of operating foundation status (declaratory judgment case).
 - Terminations.
 - Change in income taxes - UBIT or political organization income tax under IRC 527(b).
 - Change in income taxes - discrepancy adjustments.
 - Change in income taxes - converted returns.
 - Change in proxy taxes.
 - Change in Chapter 41 or 42 excise taxes.
 - Change in gaming taxes.
 - Change in ETs.
- (2) See IRM 4.70.14.2.4.1, EP & EO Declaratory Judgment Cases and the Administrative Record.
- (3) See IRM 4.70.15, Discrepancy Adjustments, for discrepancy adjustments.
- (4) See IRM 4.70.14.2.1.3.3, EO - Conversion of Returns.

4.70.14.2.1.3.1.12
(11-24-2023)
EO – Revocations

- (1) Proposed revocations are a change in status. Propose a revocation when the organization doesn't meet the requirements for the tax-exempt status granted to it by ruling or determination letter.

Note: A revocation for purposes of these procedures doesn't include an automatic revocation under IRC 6033(j), which requires a survey after assignment closing.

See IRM 4.70.14.4.11.2, EO Automatically Revoked Organizations.

- (2) Use the following letters and forms for proposed revocations:

Examination Result	Type of Report	Report Forms and Letters
Revocations - <ul style="list-style-type: none"> • IRC 501(c)(3) • IRC 501(c)(9) • IRC 501(c)(17) with an effective date	Formal examination reports only, issued by group	<ul style="list-style-type: none"> • Letter 3618, 30-day letter Pub. 1 • Form 6018, at Line 1 • Form 4621-A • Form 886-A, Pub. 1 • Pub 892 • Pub 3498
	Final closing letter issued by Mandatory Review or Appeals	<ul style="list-style-type: none"> • 90-day FADL
Revocations - All other IRC 501(c) or (d) for specified tax years	Formal examination reports only, issued by group	<ul style="list-style-type: none"> • Letter 3618, 30-day letter • Form 6018, at Line 2 • Form 4621-A • Form 886-A • Pub 892 • Pub 3498
	Final closing letter issued by Mandatory Review or Appeals	<ul style="list-style-type: none"> • 90-day FADL

- (3) If an organization fails to qualify for tax-exempt status, send the 30-day proposed revocation letter and RAR to the organization. Hold the case for up to 30 days pending the taxpayer's response. Update AIMS from Status 12 to Status 13 while in group suspense. If more time is needed for the taxpayer to reply or If the taxpayer **fails to reply** to a formal examination report and:

You sent the report...	You may...
More than 30 days ago	<i>In some tax cases</i> issue Letter 923, Letter Extending Time to File Protest, or Letter 923-E, Letter Extending Time to File Protest Excise See Notes 1, 2, and 3.
37 days ago (45 days if you issued Letter 923 or a comparable letter)	Close the case to Mandatory Review as unagreed without protest with DC 10 (RCCMS - 604) or DC 55 (RCCMS - 605). See Exception.

Note: 1. Letter 923 and Letter 923-E apply to Form 990-T income taxes and gaming excise taxes respectively.

Note: 2. For both Letters 923 and Letter 923-E, you must insert the GM's information in the contact section. The GM must approve the issuance of Letter 923 or Letter 923-E.

Note: 3. You may prepare a comparable letter to Letter 923 and Letter 923-E for other tax cases. The GM has discretion over issuance of the letter.

Exception: Close ET cases (other than worker classification issues) and gaming excise tax cases to the EO closing unit, unless otherwise subject to Mandatory Review.

- (4) For IRC 501(c)(3) revocations only, follow the instructions for IRC 6104(c) notification of certain states in IRM 4.70.14.4.11.8.2, IRC 6104(c) Disclosures: Proposed and Final Revocations.
- (5) A revocation is agreed only if the organization signs Form 6018. A signed Form 6018 for a revocation isn't legally binding and only serves to memorialize the agreement.
 - A signed Form 6018 doesn't waive the organization's right to seek declaratory judgment.
 - You're still required to close the case to Mandatory Review even if Form 6018 is signed.
 - Mandatory Review is still required to issue a 90-day FADL if Form 6018 is signed.
- (6) If the organization doesn't agree with the proposed revocation, it can submit a written protest in response to the 30-day letter. See IRM 4.70.14.7, Closing Cases to Appeals, for preparing a rebuttal.
- (7) Because revocations are declaratory judgment cases:
 - You must have an administrative record file and if the case is unagreed, a complete administrative record index.
 - You will not issue a final closing letter on the primary return examination.
- (8) Refer to the following references:

- See also Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, for the various report forms and letters.
- Refer to IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports, for more details on the formal report process. See IRM 4.70.14.2.1.3.1.13(8), EO – Reclassification of Foundation Status, for effective date in IRC 7805(b) relief cases.
- See IRM 4.70.14.2.1.3.3, EO – Conversion of Returns. for revocation procedures in the context of converted returns and bringing an organization current on tax obligations for the affected tax years.
- See IRM 4.70.14.2.4.1, EP & EO - Declaratory Judgment Cases and the Administrative Record.
- See IRM 4.70.14.2.1.3.1.29, EO – Inadequate Records – Revocation, for revocation due to inadequate records.

(9) Close all revocations to Mandatory Review (not auto-revocations). Use the following disposal codes on the primary return closing record unless a higher priority DC applies:

- DC 09 (RCCMS - 211) for agreed revocations.
- DC 07 (RCCMS - 601) for unagreed revocations with protest.
- DC 55 (RCCMS - 605) for unagreed revocations without protest.
- DC 15 (RCCMS - 602) for unagreed revocations of church.

4.70.14.2.1.3.1.13
(11-24-2023)

**EO - Reclassification of
Foundation Status**

(1) Proposed foundation reclassifications are a change in status. If an IRC 501(c)(3) organization or IRC 4947(a)(1) NECT doesn't qualify for the foundation status under which it is classified, propose a reclassification of foundation status.

(2) A reclassification of foundation status is an adverse status change subject to mandatory review.

- You can't reclassify a PF to a publicly supported organization. PFs must terminate their PF status under IRC 507.
- You can't reclassify an organization to an exempt operating foundation described under IRC 4940(d)(2). Organizations must request that status using procedures in Rev. Proc. 2019-2, Rev. Proc. 2019-1, I.R.B. 230, (updated annually).

(3) A reclassification of foundation status is subject to declaratory judgment under IRC 7428. Rev. Proc. 2019-5, section 10, 2019-01 IRB 230, (updated annually). It includes:

- Reclassification from one type of publicly supported organization to another type.
- Reclassification from a publicly supported organization to a PF.
- Reclassification from a private operating foundation to a non-operating foundation.
- Reclassification from a type I or II supporting organization to a type III supporting organization, within IRC 509(a)(3).
- Reclassification from a functionally integrated type III supporting organization to a non-functionally integrated type III supporting organization, within IRC 509(a)(3).

(4) Except as indicated in paragraphs (5) and (6), a reclassification of a foundation status is generally effective when the organization fails to qualify for the existing foundation status. If the organization ceased to qualify for the founda-

tion status during a year prior to the year of examination, obtain approval from the GM before expanding the examination. If the examination is not expanded to the prior tax years, the effective date of foundation reclassification is the first day of the first tax year under examination.

- a. For public charity reclassifications under IRC 509(a)(1) and IRC 170(b)(1)(A)(vi), and IRC 509(a)(2), verify the amounts on Form 990 Schedule A, Public Charity Status and Public Support.
 - b. If the calculation is incorrect, re-do the schedule.
 - c. Determine whether the organization meets the public support test.
 - d. If the organization fails a public support test for any two consecutive years beginning with its fifth year of existence, the effective date of reclassification is the first day of the second consecutive tax year the organization failed the public support test.
 - e. For special rules that apply to reclassifications of IRC 509(a)(1) and IRC 170(b)(1)(A)(vi), and IRC 509(a)(2) charities, IRM 4.70.14.2.1.3.1.13, EO - Reclassification of Foundation Status.
- (5) In the case of reclassifying a IRC 170(b)(1)(A)(vi) or IRC 509(a)(2) organization to a PF, reclassification is effective only if the organization:
- Has been in existence for more than five years,
 - Fails the public support test for any two consecutive tax years beginning with its fifth year of existence and
 - Doesn't otherwise qualify for another exclusion from PF status (such as IRC 509(a)(3)).
- (6) In the case of reclassifying a IRC 170(b)(1)(A)(vi) or IRC 509(a)(2) organization to a PF, the effects are as follows:
1. Reclassification of this type is effective the first day of the second consecutive tax year the organization fails the public support test.
 2. The organization will be a PF for that first tax year for IRC 507, IRC 4940 and IRC 6033 purposes only.
 3. For all succeeding tax years, the organization will be PF for all purposes.
- (7) Reclassifying a public charity to a PF constitutes a conversion of Form 990 to a tax return, Form 990-PF. Conversions are covered by IRM 4.70.14.2.1.3.3, EO - Conversion of Returns. Basic instructions on reclassifying a publicly supported organization to a PF are as follows:
- Prepare a formal examination report for the foundation reclassification issue in the Form 990 examination. See paragraph (8).
 - Either solicit Form 990-PF if the foundation reclassification is agreed, or prepare a Substitute For Return (SFR) reporting IRC 4940 tax initially established on NMF for a Form 990-PF adjustment. See instructions at IRM 4.70.14.2.1.3.3, EO – Conversion of Returns, for converted returns.
 - After considering paragraph (6)b above, determine whether other Chapter 42 excise taxes apply.
 - If other Chapter 42 excise taxes reportable on Form 4720 or 4720-A must be imposed, follow report procedures in IRM 4.70.14.2.1.3.1.6, EO – Form 4549, Form 4549-A, Form 4549-B, Form 4549-E.
- Note:** Regarding Form 990-PF at the second bullet above, if you prepare an SFR, establish Form 990-PF (MFT 44) on AIMS Non-Master File and on RCCMS in order to propose a deficiency for the IRC 4940 tax. Follow the formal report procedures. This

process is generally the same for converted Forms 1120 /1041, replacing Form 990-PF for Form 1120/1041 wherever it occurs, and replacing “foundation reclassification” for “revocation” wherever mentioned. Don’t refer any PF, exempt or taxable, to Small Business/Self-Employed (SB/SE).

(8) Effective Date in IRC 7805(b) Relief Cases:

- a. IRC 7805(b) provides discretionary authority to determine the extent to which any ruling may apply without retroactive effect. IRC 7805(b) relief applies to:

- Revocations.
- Determinations of liability for UBI.
- Determinations of liability for excise taxes.
- Private letter rulings.
- Technical advice issues.

- b. When an entity receives a determination letter or ruling, and later loses exemption due to a change in facts or law, revocation is effective the first day of the first tax year in which the change occurs. Under these circumstances, there is no need to request application of IRC 7805(b) relief.
- c. When an entity erroneously receives a determination letter or ruling due to an omission or misstatement of material facts, the effective date of revocation is the first day of the first tax year. In this case, don’t recommend relief under IRC 7805(b). It’s generally not available.
- d. When an entity erroneously receives a determination letter or ruling due to the IRS misinterpretation of the law, recommend IRC 7805(b) relief.
- e. The following table recaps the situations described above:

Entity’s Determination Letter revoked due to:	Revocation effective date:	IRC 7805(b) Applicability:
Change in tax law or organization alters its operation after initial recognition of exemption	First day of first tax year in which organization altered its operations or the law changed	Not necessary, but taxpayer may request a TAM if disputing whether it altered its operations
Omission or misstatement of material facts by the applicant organization	Retroactive to the first day of the first tax year	Not Available
Misinterpretation of law by IRS	Determined by IRC 7805(b) relief	Applies. Recommend requesting relief

- f. You or the organization may raise the question of IRC 7805(b) relief.

Note: In revocation cases, advise the organization of the provisions of IRC 7805(b).

- (9) Use the following letters and forms when preparing a formal report for reclassifying a foundation or public charity status:

Examination Result	Type of Report	Report Forms and Letters
Reclassification of foundation or public charity status - with an effective date	Formal reports only, issued by group	<ul style="list-style-type: none"> Letter 3620, 30-day letter Form 6018, Lines 4 through 9 Form 4621-A Form 886-A Pub 892 Pub 3498
	Final closing letter, issued by Mandatory Review or Appeals	<ul style="list-style-type: none"> 90-day FADL

- (10) If the organization's foundation status must be changed, send a 30-day letter (Letter 3620) and RAR to the organization. Hold the case for up to 30 days pending the taxpayer's response. Update AIMS from Status 12 to Status 13 while in group suspense. If more time is needed for the taxpayer to reply, see IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports.
- (11) A foundation reclassification is agreed only if the organization signs Form 6018. A signed Form 6018 isn't legally binding for foundation reclassifications and only serves to memorialize the agreement.
- A signed Form 6018 doesn't waive the organization's right to seek declaratory judgment.
 - You are still required to close the case to Mandatory Review even if Form 6018 is signed.
 - Mandatory Review is still required to issue a 90-day FADL if Form 6018 is signed.
- (12) If the organization doesn't agree with the proposed foundation reclassification, it can submit a written protest in response to the 30-day letter. See IRM 4.70.14.7, Closing Cases to Appeals, for preparing a rebuttal.
- (13) Because reclassifications of foundation status are declaratory judgment cases:
- You must have an administrative record file, and if the case is unagreed, a complete administrative record index.
 - You will not issue a final closing letter on foundation reclassification issue.
- (14) If you are examining a non-operating foundation contending to be an operating foundation on Form 990-PF

Private Operating Foundations	
If the EO:	Then:
Qualifies as an operating foundation for the tax year (and will continue to so qualify)	<ul style="list-style-type: none"> Verbally notify the organization that it can submit a request to EO Determinations in Cincinnati on Form 8940 to receive a determination letter granting private operating foundation status. Don't modify the foundation status. Instead, the foundation can continue to claim operating foundation status on Form 990-PF so long as it actually meets the requirements on a year-by-year basis.
Is not an operating foundation	<ul style="list-style-type: none"> Solicit an amended Form 990-PF and if necessary, solicit a delinquent Form 4720 (or establish an SFR and propose an excise tax adjustment). If you secure a substantially correct amended Form 990-PF, and determine there is no change to the organization's exempt status, describe the change due to correction of operations based on the secured amended return on Form 886-A as an attachment to closing Letter 1744. Prepare Form 5666 for a future examination. See IRM 4.70.13.9.6, Amended Returns Procedures, for processing amended returns.

Reminder: Consider the existence of fraud before soliciting any return.

(15) Refer to the following references:

- See also Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, for a list of the formal 30-day letters, report forms, and closing letters in general.
- Refer to IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports, for more details on the formal report process.

- See IRM 4.70.14.2.1.3.3.1, EO - Proposed Adverse Status Change.
- See IRM 4.70.14.2.4.1, EP & EO - Declaratory Judgment Cases and the Administrative Record.

- (16) Close all foundation reclassifications to Mandatory Review. Use the following disposal codes on the primary return closing record unless a higher priority disposal code applies:
- a. DC 17 (203) for agreed reclassifications of foundation status.
 - b. DC 07 (601) for unagreed reclassifications of foundation status if protested.
 - c. DC 10 (604) for unagreed reclassifications of foundation status without protest.
 - d. DC 15 (602) for unagreed reclassifications of foundation status of a church.

4.70.14.2.1.3.1.14
(11-24-2023)

EO – Disqualifications

- (1) Disqualification (or denial) of tax-exempt status applies to certain organizations under EO examination jurisdiction who have not applied for tax-exempt status or have not received a ruling or determination letter granting such status. Proposed disqualifications are a change in status. There are three types:
- Disqualification of organizations treated as tax-exempt that self-declared their tax-exempt status on a filed Form 990, (Status 36 organizations) for specific tax years.
 - Disqualification from tax-exemption of IRC 501(c)(12) or IRC 501(c)(15) organizations because they failed their respective 85 percent member income test or gross receipts test for specific tax years.
 - Disqualification of organizations treated as tax-exempt under IRC 501(c)(3) without a ruling or determination letter, such as an organization claiming to be a church or a small organization with gross receipts normally not more than \$5,000 per year.
- (2) Treat disqualification of IRC 508(c) organizations that don't apply for tax-exempt status and fail to qualify for exemption as revocations for all purposes (such as disposal code, etc.) for:
- a. Churches, their integrated auxiliaries, and conventions or associations of churches.
 - b. Subordinate organizations in a group exemption ruling. See Treas. Reg. 1.508-1(a)(3).
 - c. Other organizations not required to apply for tax-exempt status under IRC 508(c).
- (3) Status 36 organizations are treated as exempt under IRC 501(c) because the exempt status was declared on a filed Form 990. However, Status 36 doesn't include IRC 501(c)(3), 501(c)(9), 501(c)(17) and 501(c)(29), organizations, because those organizations are required to apply for tax-exempt status.
- (4) A Status 36 organizations are IRC 501(c) organizations (other than IRC 501(c)(3), IRC 501(c)(9), and IRC 501(c)(17)) that declare tax-exempt status by filing Form 990 or 990-EZ, and that would otherwise be a taxable entity. They are characterized by:

- Not having submitted a Form 1024, Application for Recognition of Exemption Under Section 501(a), or Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code and
 - Not having received a favorable ruling or determination letter granting tax-exempt status.
 - IRC 501(c)(4) organizations may also declare tax-exempt status by filing Form 8976. If they fail to meet the qualification of tax-exempt status, disqualify them for the examined tax years for which they declared exemption.
 - See IRM 4.70.14.2.1.3.1.31, EO - Status 36 Organizations.
- (5) Because the IRS never recognized a Status 36 organization as tax-exempt, there is no ruling or determination letter to revoke if the organization fails to qualify for exemption. You must therefore determine whether the self-declaring organization qualifies for tax-exempt status for the specified tax years exemption is declared.
- (6) Use the following letters and forms when preparing a formal report for disqualifications:

Examination Result	Type of Report	Report Forms and Letters
Disqualifications - Status 36 organizations for specified tax years	Formal reports only, issued by the group.	<ul style="list-style-type: none"> • Letter 3618, 30-day letter • Form 6018, at Line 3 • Form 4621-A • Form 886-A • Pub 892 • Pub 3498
	Final closing letter, issued by Mandatory Review or Appeals	<ul style="list-style-type: none"> • 90-day FADL
Disqualifications - IRC 501(c)(12) and IRC 501(c)(15) for specified tax years	Formal reports only, issued by the group.	<ul style="list-style-type: none"> • Letter 4700, 30-day letter • Form 6018, Line 3 • Form 4621-A • Form 886-A • Pub 892 • Pub 3498
	Final closing letter, issued by Mandatory Review or Appeals	<ul style="list-style-type: none"> • 90-day FADL

- (7) If an organization doesn't meet the requirements for exemption for the specified tax years under IRC 501(c), send a 30-day letter (Letter 3618 or Letter 4700) and a RAR to the organization. Hold the case for 30 days pending the taxpayer's response. Update AIMS from Status 12 to Status 13 while in group suspense. If more time is needed for the taxpayer to reply, see IRM

4.70.14.2.4.3.1, EO - Formal Examination Reports.

- (8) A disqualification is agreed only if the organization signs Form 6018. A signed Form 6018 isn't legally binding for a disqualifications and only serves to memorialize the agreement.
- A signed Form 6018 doesn't waive the organization's right to seek declaratory judgment.
 - You are still required to close the case to Mandatory Review even if Form 6018 is signed.
 - Mandatory Review is still required to issue a 90-day FADL if Form 6018 is signed.
- (9) If the organization doesn't agree with the proposed disqualification, it can submit a written protest in response to the 30-day letter. See IRM 4.70.14.7, Closing Cases to Appeals, for preparing a rebuttal.
- (10) Because disqualifications are declaratory judgment cases:
- You must have an administrative record file and if the case is unagreed, a complete administrative record index.
 - You will not issue a final closing letter on the primary return examination.
- (11) Refer to the following references:
- See Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, for a list of the formal 30-day letters, report forms, and closing letters in general.
 - Refer to IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports, for more details on the formal report process.
 - See IRM 4.70.14.2.1.3.3, EO – Conversion of Returns, for disqualification procedures in the context of converted returns and bringing an organization current on tax obligations for the affected tax years.
 - See IRM 4.70.14.2.4.1, EP & EO - Declaratory Judgment Cases and the Administrative Record.
 - See IRM 4.70.19, Church Tax Inquiries and Examinations Under IRC 7611.
- (12) Close all disqualifications to Mandatory Review. Use the following disposal codes on the primary return closing record unless a higher priority disposal code applies:
- a. DC 13 (501) for agreed disqualifications if you are referring the organization to SB/SE or Large Business and International (LB&I) (no converted return process).
 - b. DC 04 (205) or 05 (207) for agreed disqualifications if you are enforcing income taxes through a converted tax return process.
 - c. DC 07 (601) for unagreed disqualifications if protested.
 - d. DC 10 (604) for unagreed disqualifications without protest.
 - e. DC 15 (602) for unagreed disqualification of a church not recognized as tax-exempt (church without a ruling or determination letter).

4.70.14.2.1.3.1.15
(11-24-2023)

**EO - Termination of
Exempt Status**

- (1) Only an organization can terminate its own existence. An organization can terminate its existence in the following ways:

- A corporate EO files articles of dissolution with the state.
- A corporate EO files articles of merger with the state.
- An association adopts a board resolution terminating the association.
- Beneficiary interests (such as charitable interests) terminate in the case of a trust.

Note: Refer to Pub 4779, Facts about Terminating or Merging Your Exempt Organization.

- (2) While organizations voluntarily terminate their existence in accordance with state law, examinations terminate the tax-exempt status by issuing a termination letter after reviewing the following evidentiary documents:

a. Files a Final Return.

o Organization managers are responsible for filing final returns, subject to penalty under IRC 6652(c)(2)(B) for failing to file a final return upon written demand. See 90-day Demand Letter 5325. You can't recognize a termination of an exempt organization until you review the final return if the organization is required to file one.

Exception: Under IRC 6033(b)(1), a church, integrated auxiliary of a church, or a convention or association of churches, are not required to file a final return. Also, organizations described in Treas. Reg. 1.6033-2(g)(1) as supplemented by Rev. Proc. 95-48, 1995-2 C.B. 418, Rev. Proc. 96-10, 1996-1 C.B. 577, and Rev. Proc. 2011-15, 2011-3 I.R.B. 322, are excepted from filing annual information returns.

o The final return will cover the period from the beginning of the EO's fiscal year through the date of termination. In order to have the return processed prior to the end of the EO's fiscal year, prepare Form 2363-A to update the EO's fiscal year-end to the month of termination.

o Final returns are due the 15th day of the 5th month after the dissolution or termination is completed.

Exception: An EO can't file a final Form 990-N before the close of the tax year during which it terminated. You can verbally remind the organization it must file a final return or Form 990-N if so eligible.

o An IRC 509(a)(3) organization must file a final Form 990 or 990-EZ, even if it is described in Rev. Proc. 95-48 and Rev. Proc. 96-10.

Exception: IRC 509(a)(3) supporting organizations, the gross receipts of which are normally not more than \$5,000, that supports an IRC 501(c)(3) religious organization are not required to file an annual information return, but must file Form 990-N.

o A secured final return must be complete and substantively correct before recognizing a termination.

☐ A final return is not correct if the organization files a return that it is not eligible to file, such as Form 990-EZ.

☐ A Schedule N is required for a final Form 990 or 990-EZ.

- ☐ A terminating organization that files a substantively incorrect or incomplete final return without reasonable cause can be subject to penalties or revocation.
- b. Submits a Written Statement of Disposition of Assets.
 - o A principal officer of an EO may submit a written statement of disposition of assets to the examiner or in a final return. You can't recognize a termination of an exempt organization until you review the written statement of disposition of assets.
 - o Refer to the Instructions to Schedule N, Form 990 or 990-EZ for guidance on the type of information needed.
 - o For the following IRC sections, verify that the assets were distributed as required by the specific subsection:
 - ☐ IRC 501(c)(3).
 - ☐ IRC 501(c)(9).
 - ☐ IRC 501(c)(12).
 - ☐ IRC 501(c)(16).
 - ☐ IRC 501(c)(19).
 - ☐ IRC 501(c)(22).
 - ☐ IRC 501(c)(27).
 - ☐ IRC 501(e).
 - ☐ IRC 501(f).
 - o Valid distributions for IRC 501(c)(3) include distributions:
 - ☐ For exempt purposes within the meaning of IRC 501(c)(3).
 - ☐ To a state or local government for public purposes.
 - ☐ To the federal government.
 - ☐ To an organization or organizations exempt under IRC 501(c)(3).

Note: Consider the special distribution considerations for PFs.

o If any final distributions are improper, solicit correction. If no correction is made, consider revocation of tax-exempt status. For example, if the assets weren't distributed properly, tell the EO to recover the assets. Ask the EO to redistribute them properly.

If the EO	You are to
Recovers and redistributes the assets	Secure documentation of the re-distributions
Refuses to attempt to recover the assets	Propose revocation for the year (or years) in which the distributions were made
Tries to but can't recover the assets	Secure a written, signed statement by an officer of the actions taken by the EO. Discuss with your manager as to proposing revocation or accepting the termination.

o Improper distributions may be taxable income to recipients. If taxable, verify if they were reported on Forms 1099. If not reported, secure the delinquent information returns. Prepare a penalty file if you decide to impose penalties.

o Verify if the income was reported on the recipient's tax return. If not, propose a discrepancy adjustment. See IRM 4.70.15, Discrepancy Adjustments. For those recipients who are not yet required to report the income, prepare a referral (Form 5666) to SB/SE for a current year examination.

Note: If you use Form 5346 for this purpose, it won't be declined.

Note: If the organization was exempt under IRC 501(c)(3) or 501(c)(4), you can pursue intermediate sanctions.

- c. Submits a Dissolution Document. The organization may submit a dissolution document either to the examiner or in a final return. You can also obtain dissolution documents from certain state websites. You can't recognize termination of an exempt organization until you review the dissolution documents. o Appropriate dissolution documents for terminations vary based on the type of entity.

If the EO is...	Then secure...
a corporation, that has filed Articles of Dissolution with the state	a complete copy of the Articles of Dissolution, and proof of filing with the state, such as a "date-filed" stamp. If incorporated in multiple states, obtain the documents for each state. Note: Some states require all taxes be paid before dissolution. Check the state's requirements.
an association	a resolution signed by at least two officers of the entity. The resolution must state the date of dissolution.
a trust	a copy of the court order dissolving the trust. If there is no court order, a resolution signed by at least two trustees. The resolution must state the date of dissolution.
an organization chartered by a parent organization in a group exemption ruling	See IRM 4.70.14.2.1.3.4.2, Terminations

Note: Organizations excepted by law from filing a return or a notice under IRC 6033 need not file a final return.

- (3) Only organizations recognized as tax-exempt under IRC 501(c) or IRC 501(d) can receive a letter terminating their exempt status.
- (4) Verify whether a termination claimed by an EO actually occurred.
- (5) If the EO was automatically revoked, survey the return under examination. See IRM 4.70.14.4.11.2, EO Automatically Revoked Organizations.
- (6) If you are unable to locate the EO, follow Unable-to-Locate Scenario Guidance Table. See Exhibit 4.70.14-17, EO Unable-to-Locate Scenario Guidance Table.
- (7) If an EO claims to terminate while the examination is in process, continue the examination to closure like any other case.
 - If the examination results in a change in tax or status, issue a report of examination to the last known authorized officer like any other case
 - If there are no changes to tax or status, you may verbally notify the organization that they must file a final return by the 15th day of the 5th month after termination. Close the case as a no change if there are no additional compliance issues during the year under examination.
 - If there are no changes to tax or status, and the organization manages to provide the three evidentiary documents in paragraph (2) before you close the case, you may issue a termination letter.
- (8) If the EO properly terminated:
 - a. Issue the termination Letter 5426, Final Termination Closing Letter or Letter 5426-A, Termination Closing Letter.

Note: Corporations “administratively dissolved” by the state where rein-statement is possible are not terminated.
 - b. Prepare Form 2363-A, to update the EOBFM to Status 20, Termination.
 - c. Prepare the 3198-A Special Handling checksheet in RCCMS. Enter “Termination” in “Other Instructions” at the bottom of the form. On the blank line to the right of “Other Instructions” in the “Special Features” section, enter “IRC 6104(c) Notification Requirements” for IRC 501(c)(3) cases.
 - d. At closure, use RCCMS DC 212, Termination, unless a higher priority disposal code applies.
- (9) Close the case to the EO closing unit.

Reminder: Make sure you secured the three evidentiary documents in paragraph (2). Termination cases without these documents will be returned to the groups.

- (10) Some organizations are terminated by the Ogden Campus due to filing inactivity (EOBFM Status 20). That contrasts with an organization’s voluntary termination of its existence in paragraph (1). Terminations by Ogden Campus are reversible if the organization later becomes active.

4.70.14.2.1.3.1.16
(11-24-2023)

EO - Termination - Final Returns

- (1) Organization managers are responsible for filing final returns, subject to penalty under IRC 6652(c)(2)(B) for failing to file a final return upon written demand. See 90-day Demand Letter 5325. You can’t recognize a termination of an exempt organization until you review the final return if the organization is required to file one.

Exception: Under IRC 6033(b)(1), a church, integrated auxiliary of a church, or a convention or association of churches, are not required to file a final return.

Also, organizations described in Treas. Reg. 1.6033-2(g)(1) as supplemented by Rev. Proc. 95-48, 1995-2 C.B. 418, Rev. Proc. 96-10, 1996-1 C.B. 577, and Rev. Proc. 2011-15, 2011-3 I.R.B. 322, are excepted from filing annual information returns.

- (2) In those cases where a final return hasn't been filed, you must secure the final return. A PF must file a final return on Form 990-PF.
- (3) The final return will cover the period from the beginning of the EO's fiscal year through the date of termination. In order to have the return processed prior to the end of the EO's fiscal year, prepare Form 2363-A to update the EO's fiscal year-end to the month of termination.
- (4) Final returns are due the 15th day of the 5th month after the dissolution or termination is completed.

Exception: An EO can't file a final Form 990-N before the close of the tax year during which it terminated. You can verbally remind the organization it must file a final return or Form 990-N if so eligible.

- (5) An IRC 509(a)(3) organization must file a final Form 990 or 990-EZ, even if it is described in Rev. Proc. 95-48 and Rev. Proc. 96-10.

Exception: IRC 509(a)(3) supporting organizations, the gross receipts of which are normally not more than \$5,000, that supports an IRC 501(c)(3) religious organization are not required to file an annual information return, but must file Form 990-N.

- (6) A secured final return must be complete and substantively correct before recognizing a termination.
 - a. A final return is not correct if the organization files a return that it is not eligible to file, such as Form 990-EZ.
 - b. A Schedule N is required for a final Form 990 or 990-EZ.
 - c. A terminating organization that files a substantively incorrect or incomplete final return without reasonable cause can be subject to penalties or revocation.

4.70.14.2.1.3.1.17
(11-24-2023)

**EO - Termination -
Disposition of Assets**

- (1) A principal officer of an EO may submit a written statement of disposition of assets to the examiner or in a final return. You can't recognize a termination of an exempt organization until you review the written statement of disposition of assets.
- (2) Refer to the Instructions to Schedule N, Form 990 or 990-EZ for guidance on the type of information needed.
- (3) For the following IRC sections, verify that the assets were distributed as required by the specific subsection:
 - IRC 501(c)(3).
 - IRC 501(c)(9).
 - IRC 501(c)(12).

- IRC 501(c)(16).
- IRC 501(c)(19).
- IRC 501(c)(22).
- IRC 501(c)(27).
- IRC 501(c)(e).
- IRC 501(c)(f).

(4) Valid distributions for IRC 501(c)(3) include distributions:

- a. For exempt purposes within the meaning of IRC 501(c)(3).
- b. To a state or local government for public purposes.
- c. To the federal government.
- d. To an organization or organizations exempt under IRC 501(c)(3).

Note: Consider the special distribution considerations for PFs.

See IRM 4.70.14.2.1.3.1.18, EO – Termination – Disposition of Assets Involving Private Foundations, and the Exempt Organizations Technical Resource Guide, made available on *EO Knet Sharepoint site*.

(5) If any final distributions are improper, solicit correction. If no correction is made, consider revocation of tax-exempt status. For example, if the assets weren't distributed properly, tell the EO to recover the assets. Ask the EO to redistribute them properly.

If the EO:	You are to:
Recovers and redistributes the assets	Secure documentation of the re-distributions
Refuses to attempt to recover the assets	Propose revocation for the year (or years) in which the distributions were made
Tries to but can't recover the assets	Secure a written, signed statement by an officer of the actions taken by the EO. Discuss with your manager as to proposing revocation or accepting the termination.

- (6) Improper distributions may be taxable income to recipients. If taxable, verify if they were reported on Forms 1099. If not reported, secure the delinquent information returns. Prepare a penalty file if you decide to impose penalties.
- (7) Verify if the income was reported on the recipient's tax return. If not, propose a discrepancy adjustment. See IRM 4.70.15. For those recipients who are not yet required to report the income, prepare a referral (Form 5666) to SB/SE for a current year examination.

Note: If you use Form 5346 for this purpose, it won't be declined.

Note: If the organization was exempt under IRC 501(c)(3) or 501(c)(4), you can pursue intermediate sanctions.

4.70.14.2.1.3.1.18
(11-24-2023)

**EO - Termination -
Disposition of Assets
Involving Private
Foundations**

- (1) A PF may submit a written statement on the disposition of assets to the examiner or in a final return. You can't recognize a termination of a PF until you review a written statement of disposition of assets. Remaining assets of a PF may be distributed in the following ways:

- Making what would be a qualifying distribution under IRC 4942(g)(1)(A).
- Transferring them to certain public charities in accordance with IRC 507(b)(1)(A).
- Paying a termination tax under IRC 507(c) to the government.
- Transferring all remaining assets to another PF within the meaning of IRC 507(b)(2).

Note: Certain tax attributes and characteristics carryover to the transferee foundation. See Treas. Reg. 1.507-3(a)(1).

- (2) Refer to the General Instruction T in the Instructions to Form 990-PF for guidance on the type of information needed.
- (3) A transfer to another PF must satisfy the requirements of all pertinent provisions of Chapter 42 of the Code. For example, if the transfer constitutes a taxable expenditure as defined in IRC 4945, the transferor is liable for the Chapter 42 tax that is incurred. See Treas. Regs. 1.507-3(d). Consequently, no termination letter can be issued until the taxable expenditure is fully corrected, and the initial tax deficiency has been fully processed and assessed (or abated under IRC 4962).
- (4) A termination of existence can't be recognized until all Chapter 42 taxes against the foundation are assessed (or abated under IRC 4962) for acts or failures to act that occurred during the years of examination or as a result of the transfer, and such acts are corrected.
- (5) If a transfer described in IRC 507(b)(2) constitutes a willful and flagrant act in violation of Chapter 42, as described in IRC 507(a)(2)(A), then the provisions of IRC 507(a)(2) dealing with involuntary terminations are applicable, rather than the provisions of IRC 507(b)(2). In that event, the transferor foundation would be subject to IRC 507(c) tax. See Treas. Regs. 1.507-3(d) and 1.507-4(b).
- (6) For IRC 507(b)(2) transfers, the group may expand the examination or prepare Form 5666 for a future year examination of the transferee PF to ensure that the transferee properly assumed the Chapter 42 attributes of the transferred assets.

4.70.14.2.1.3.1.19
(11-24-2023)

**EO - Termination -
Dissolution Document**

- (1) The organization may submit a dissolution document either to the examiner or in a final return. You can also obtain dissolution documents from certain state websites. You can't recognize termination of an exempt organization until you review the dissolution documents.
- (2) Appropriate dissolution documents for terminations vary based on the type of entity.

If the EO is...	Then secure...
a corporation, that has filed Articles of Dissolution with the state	a complete copy of the Articles of Dissolution, and proof of filing with the state, such as a “date-filed” stamp. If incorporated in multiple states, obtain the documents for each state. Note: Some states require all taxes be paid before dissolution. Check the state’s requirements.
an association	a resolution signed by at least two officers of the entity. The resolution must state the date of dissolution.
a trust	a copy of the court order dissolving the trust. If there is no court order, a resolution signed by at least two trustees. The resolution must state the date of dissolution.
an organization chartered by a parent organization in a group exemption ruling	See IRM 4.70.14.2.1.3.4.2, Terminations.

4.70.14.2.1.3.1.20
(11-24-2023)

**EO - Termination - IRC
501(c)(3) Organizations**

- (1) A termination can only be recognized if all three documents in IRM 4.70.14.2.1.3.1.15 are secured.
- (2) For public charities, ensure there are no changes to exemption or reclassification to PF, and that the annual information return(s) under examination is accepted as filed before you recognize a termination.
- (3) For public charities, verify the correct foundation status. If an organization is described under IRC 170(b)(1)(A)(vi) or 509(a)(2) and it:
 - Has been in existence for more than five years.
 - Fails the public support test for any two consecutive tax years beginning with its fifth year of existence, and
 - Doesn’t otherwise qualify for another exclusion from PF status (such as IRC 509(a)(3). Propose a reclassification to a PF effective the first day of the second consecutive taxable year the organization failed the public support test.
- (4) Don’t recognize a termination if there are Chapter 42 tax deficiencies or corrections that must be proposed against the organization or PF.
- (5) Determine whether bonds were outstanding at the time of the termination. If so, prepare Form 5666, addressed to Tax Exempt Bonds (TEB), identifying the year of termination.

- (6) To the extent terminations apply to IRC 501(c)(3) organizations they are subject to the rules on state notification under IRC 6104(c). See IRM 4.70.14.4.11.8, State Notification of EO Examination Results.

4.70.14.2.1.3.1.21
(11-24-2023)

**EO - UBIT and Other
Income Taxes**

- (1) If the organization conducts an unrelated business activity, determine if the activity:
- Meets the definition of an regularly carried-on unrelated trade or business.
 - Has a tax effect.
 - Is large enough to jeopardize its exemption. If it jeopardizes exemption, consider revocation.
- (2) If you secure a delinquent EO income tax return (such as Form 990-T or Form 1120-POL) and you don't make an adjustment to that return, the following procedures don't apply. See IRM 4.70.13.9, Delinquent, Amended and Substitute for Returns, for delinquent return procedures.
- (3) If there are multiple unrelated businesses or multiple years involved and the EO agrees to some but not all of the proposed adjustments, attempt to secure a signed waiver form for the agreed items.
- (4) Use the following letters and forms when preparing a report for changes in UBIT or any other income tax required of EOs and IRC 4947 trusts:

Examination Result	Type of Report	Report Forms and Letters
Change to EO Income Taxes - Exempt Organizations, taxable PFs, IRC 527 organizations, or IRC 4947 Trusts: <ul style="list-style-type: none"> • Form 990-T also proxy tax • Form 1120 • Form 1120-POL • Form 1041 	Report	<ul style="list-style-type: none"> • Draft transmittal letter, IDR or Form 5701 (for initial examination reports only), or • Letter 3614, 30-day letter • Form 4549, for initial examination reports only • Form 870, for formal examination reports only • Form 4549-A, for formal examination reports only • Form 886-A, with either letter above • Pub 3498, with either letter above • Pub 594, with either letter above (issued by the group)
	Agreed closing letter	<ul style="list-style-type: none"> • Letter 2511 and • Copy of signed waiver form or • Letter 2656 or • Letter 5334 issued by the group)
	Unagreed closing letter	90-Day SNOD, (issued by Mandatory Review or Appeals)

Examination Result	Type of Report	Report Forms and Letters
Change in Income Taxes - Converted Tax Returns <ul style="list-style-type: none"> Form 1120 Form 1041 	Report	<ul style="list-style-type: none"> Letter 950-C or Letter 950-D, 30-day letter Form 870 Form 4549-A Form 886-A Pub 3498 Pub 594(issued by the group)
	Agreed closing letter	<ul style="list-style-type: none"> Letter 2511, and Copy of signed waiver form issued by the group)
	Unagreed closing letter	90-Day SNOD, (issued by Mandatory Review or Appeals)

Examination Result	Type of Report	Report Forms and Letters
Change in Income Taxes - Discrepancy Adjustments <ul style="list-style-type: none"> Form 1040 Form 1120 	Report	<ul style="list-style-type: none"> Letter 3605, 30-day letter, 1st formal examination report, then if necessary: Letter 3603, 30-day letter, 2nd formal examination report, or Letter 3619, 30-day letter, 2nd formal examination report Form 4549-E, with any letter above Form 886-A, with any letter above (issued by the group)
	Agreed closing letter	<ul style="list-style-type: none"> Letter 2511, and Copy of signed waiver form (issued by the group)
	Unagreed closing letter	90-Day SNOD, (issued by Mandatory Review or Appeals)

- (5) Give the taxpayer a schedule showing how the tax was computed.
- (6) If an organization has an income tax deficiency, send a 30-day letter (Letter 3614) and an RAR to the organization. Hold the case for 30 days pending the taxpayer's response. Update AIMS from Status 12 to Status 13 while in group suspense. If more time is needed for the taxpayer to reply, see IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports.
- (7) A proposed income tax deficiency is agreed only if the organization signs Form 4549 or Form 870. Payment of tax is not agreement.
- (8) If after receiving a reply to the 30-day letter the organization agrees with the tax change, issue a final agreed closing letter using Letter 2511. Close the case to the EO closing unit for assessment.
- (9) Issue separate closing letters if there is an agreement for some but not all of the years.

- (10) If the organization doesn't agree with the proposed tax change, it can submit a written protest in response to the 30-day letter. See IRM 4.70.14.7, Closing Cases to Appeals, for preparing a rebuttal.
- (11) If after receiving a reply to the 30-day letter the organization disagrees with the proposed tax change with protest, without protest, or doesn't reply, close the case to Mandatory Review for the unagreed tax change. Mandatory Review or Appeals will issue a final closing letter in the form of a SNOD (90-day letter) if they agree with your adjustment.
- (12) If in connection with a tax change, you have a primary return (or e-Postcard) also under examination, issue Letter 1744, following the guidelines in IRM 4.70.14.4.3.1, TE/GE Change due to Correction of Operations, to the EO that makes reference to the RAR for the tax change.
- (13) Refer also to the tables in the following exhibits:
 - See Exhibit 4.70.14-2, EO Reports and Closing Letters for Claims and Abatements, for a list of the formal 30-day letters, report forms, and closing letters for claims and abatements.
 - See Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, for a list of the formal 30-day letters, report forms, and closing letters in general.
 - For more details on 30-day letters, report forms, and closing letters for converted returns and discrepancy adjustments, refer to the same exhibits.
 - Refer to IRM 4.70.13.14., Discussion of Examination Findings/Conclusions, for more details on the initial report process.
 - Refer to IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports, for more details on the formal report process.
 - See also IRM 4.70.15, Discrepancy Adjustments.
 - See also IRM 4.70.14.2.1.3.3, EO - Conversion of Returns.
- (14) Close all agreed tax changes to the EO closing unit and all unagreed tax changes to Mandatory Review (except for employment tax cases that do not involve IRC section 7436 issues). Use the following disposal codes for the closing record of the tax return you are changing, unless a higher priority disposal code applies:
 - a. DC 03 (RCCMS - 102) for agreed tax changes.
 - b. DC 07 (RCCMS - 601) for unagreed tax changes if protested.
 - c. DC 10 (RCCMS - 604) for unagreed tax changes without protest.

4.70.14.2.1.3.1.22
(11-24-2023)

**EO - Private Foundation
Excise Taxes**

- (1) PFs report their Chapter 42 excise taxes on Form 4720 (MFT 50). Disqualified persons use Form 4720 (MFT 66), also referred to as "Form 4720-A".
Exception: IRC 4940 and IRC 4948 taxes are reported on Form 990-PF.
- (2) IRC Chapter 42 imposes several excise taxes. These taxes are assessed against the foundation and some are assessed against its disqualified persons and foundation managers. See Exhibit 4.70.14-10, EO Chapter 42 Excise Tax Reference Chart - Private Foundations.
- (3) Use the following letters and forms when preparing a report for changes in Chapter 42 excise tax:

Examination Result	Type of Report	Report Forms and Letters
Change in Chapter 42 Excise Taxes <ul style="list-style-type: none"> Form 4720 Form 4720-A Form 990-PF 	Report	<ul style="list-style-type: none"> Draft transmittal letter, IDR or Form 5701 (for Initial reports only), or Letter 3614 Form 870-E, with either letter above Form 4621, with either letter above Form 4883, with either letter above Form 886-A, with either letter above Pub 3498, with either letter above Pub 594, with either letter above (issued by the group)
	Agreed closing letter	<ul style="list-style-type: none"> Letter 2511 and Copy of signed waiver form (issued by the group)
	Unagreed closing letter	90-Day SNOD (issued by Mandatory Review or Appeals)

(4) A Thorne Letter:

- Is only required to be issued to a Foundation Manager, where the 2nd tier tax is proposed under IRC 4941, 4944, 4945, 4951, 4952 and 4955.
- Should be sent out to the foundation manager, prior to issuance of the 30-day letter.

Note: The 30-day letters sets up the proposed excise taxes, such as 1st and 2nd tier. It would note the foundation manager's refusal to correct.

- Is not required to be issued to either
 - 1) a disqualified person who isn't a foundation manager or
 - 2) the PF requesting correction.

Reminder: Consult with TEGEDC when preparing a Thorne letter.

- (5) In some cases, if the foundation or disqualified person (liable party) proposes a correction and:
 - You accept the proposed correction, issue Letter 5305, Private Foundation Correction Approval.
 - You deny the propose correction, issue Letter 5306.
- (6) A proposed Chapter 42 excise tax deficiency is agreed only if the liable party signs Form 870-E and, in the case of two-tiered Chapter 42 excise taxes, has made full correction. Payment of tax alone is not agreement.
- (7) If the liable parties fail to make correction, you must include the second-tier tax in the formal examination report. Describe each correctable activity and its remedy on Form 886-A of the report.
- (8) Sometimes the tax liability extends beyond the taxable years covered by the examination report and into a future taxable year. In these cases:
 - a. Make a statement on Form 4621 (the report form) or Form 886-A informing the liable party of its requirement to file Form 4720 for the following taxable years.
 - b. Inform the liable party they are required to pay any tax owed with respect to the act or failure to act remaining uncorrected into that following taxable year.
 - c. Consider preparing a referral on Form 5666 if the liable party indicates an unwillingness to make future corrections.
- (9) Give the taxpayer schedules detailing computations for the adjustments. Show the adjustments on Form 4886.
- (10) Consider whether the penalty under IRC 6684 for repeated or willful and flagrant Chapter 42 tax violations applies. Explain this penalty on Form 886-A. Include a comment on Form 4621 as to whether the penalty applies.
- (11) Prepare the agreement form, Form 870-E for excise tax adjustments. See IRM 4.70.14.2.1.3.1.4, EO – Form 870 and Form 870-E, for additional information on Form 870-E.
- (12) Send a 30-day letter (Letter 3614) and an RAR to the liable party. Hold the case for 30 days pending the taxpayer's response. Update AIMS from Status 12 to Status 13 while in group suspense. If more time is needed for the taxpayer to reply, see IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports.
- (13) Follow the instructions for IRC 6104(c) notification of certain States in IRM 4.70.14.4.11.8, State Notification of EO Examination Results.
- (14) If after receiving a reply to the 30-day letter the liable party agrees with the tax change and has fully corrected the acts or failures to act that gave rise to the initial tax, issue a final agreed closing letter using Letter 2511. Close the case to the EO closing unit for assessment.
- (15) If the taxpayer only agrees to or corrects some of the transactions, treat the case as partially agreed. Attempt to secure agreement for the agreed corrected items.
- (16) Issue separate closing letters if there is an agreement for some but not all of the years.

- (17) If the taxpayer doesn't agree with the proposed tax change, it can submit a written protest in response to the 30-day letter. See IRM 4.70.14.7, Closing Cases to Appeals, for preparing a rebuttal.
- (18) If after receiving a reply to the 30-day letter the liable party disagrees with the proposed tax change with protest, without protest, or doesn't reply, close the case to Mandatory Review for the unagreed tax change. Mandatory Review or Appeals will issue a final closing letter in the form of a SNOD if they agree with your adjustment.
- (19) If in connection with a tax change, you have a primary return (or e-Postcard) also under examination, issue Letter 1744, following the guidelines in IRM 4.70.14.4.3.1, TE/GE Change due to Correction of Operations, to the PF that makes reference to the taxable event that gave rise to a potential tax liability.
- (20) Refer also to the tables in the following exhibits:
 - See Exhibit 4.70.14-2, EO Reports and Closing Letters for Claims and Abatements, for a list of the formal 30-day letters, report forms, and closing letters for claims and abatements.
 - See Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, for a list of the formal 30-day letters, report forms, and closing letters in general.
 - Refer to IRM 4.70.13.14.3, Discussion of Examination Findings/Conclusions, for more details on the initial report process.
 - Refer to IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports, for more details on the formal report process.
 - See IRM 4.70.14.4.11.8.3, IRC 6104(c) Disclosures: Chapters 41 and 42 Assessments, for the procedures relating to state notification.
- (21) Close all agreed tax changes to the EO closing unit. Close all unagreed tax changes to Mandatory Review. Use the following disposal codes for the closing record of the tax return you are changing, unless a higher priority disposal code applies:
 - a. DC 03 (RCCMS - 102) for agreed tax changes.
 - b. DC 07 (RCCMS - 601) for unagreed tax changes if protested.
 - c. DC 10 (RCCMS - 604) for unagreed tax changes without protest.

4.70.14.2.1.3.1.23
(11-24-2023)
**EO - Non-Private
Foundation Excise
Taxes**

- (1) IRC Chapters 41 and 42 imposes several excise taxes on entities other than PFs. The IRC imposes some of these taxes on specified EOs and some on their disqualified persons and organization managers. See Exhibit 4.70.14-11, EO Chapter 41 and 42 Excise Tax Reference Chart - Non-Private Foundations.
- (2) Use the following letters and forms when preparing a report for changes in Chapter 41 or 42 excise tax:

Examination Result	Type of Report	Report Forms and Letters
Change in Chapter 41 and 42 Excise Taxes <ul style="list-style-type: none"> Form 4720 Form 4720-A Form 990-BL 	Report	<ul style="list-style-type: none"> Draft transmittal letter, IDR or Form 5701(for Initial reports only), or Letter 3614 Form 870-A, with either letter above Form 4621, with either letter above Form 4883, with either letter above Form 886-A, with either letter above Pub 3498, with either letter above Letter 594, with either letter above(issued by the group)
	Agreed closing letter	<ul style="list-style-type: none"> Letter 2511, and Copy of signed waiver form(issued by the group)
	Unagreed closing letter	90-Day SNOD, (issued by Mandatory Review or Appeals)

- (3) If you identify a Chapter 42 excise taxable event subject to correction, send a Thorne letter requesting the organization or disqualified person to fully correct the acts or failure to act before you prepare a formal report. Consult with TEGEDC when preparing a Thorne letter.
- (4) In some cases, if the organization or disqualified person (liable party) proposes a correction and:
- You accept the proposed correction, issue a modified version of Letter 5305 applicable to the type of Non-PF Chapter 42 tax involved.
 - You deny the propose correction, issue a modified version of Letter 5306 applicable to the type of Non-PF Chapter 42 tax involved.

- (5) A proposed Chapter 42 excise tax deficiency is agreed only if the liable party signs Form 870-E and, in the case of two-tiered Chapter 42 excise taxes, has made full correction. Payment of tax alone is not agreement.
- (6) In the case of two-tiered taxes, if the liable parties fail to make correction, you must include the second-tier tax in the formal report. Describe each correctable activity and its remedy on Form 886-A of the report.
- (7) Sometimes the tax liability extends beyond the taxable years covered by the examination report. In these cases:
 - a. Make a statement on Form 4621 (the report form) or Form 886-A informing the liable party of its requirement to file Form 4720 for the following taxable years.
 - b. Inform the liable party they are required to pay any tax owed with respect to the act or failure to act remaining uncorrected into that following taxable year.
 - c. Consider preparing a referral on Form 5666 if the liable party indicates an unwillingness to make future corrections.
- (8) Give the taxpayer schedules detailing computations of adjustments to the taxpayer. Show the computation of the tax on the adjustments on Form 4883.
- (9) Consider whether the penalty under IRC 6684 for repeated or willful and flagrant Chapter 42 tax violations applies. Explain this penalty on Form 886-A. Include a comment on Form 4621 as to whether the penalty applies.
- (10) Prepare the agreement form, Form 870-A for excise tax adjustments. See IRM 4.70.14.2.1.3.1.4, EO – Form 870 and Form 870-E, for additional information on Form 870-E.
- (11) Send a 30-day letter (Letter 3614) and an RAR to the liable party. Hold the case for 30 days pending the taxpayer's response. Update AIMS from Status 12 to Status 13 while in group suspense.
- (12) If after receiving a reply to the 30-day letter the liable party agrees with the tax change and, in the case of two-tiered excise taxes, has fully corrected the acts or failures to act that gave rise to the initial tax, issue a final agreed closing letter using Letter 2511. Close the case to the EO closing unit for assessment.
- (13) If the taxpayer only agrees to or corrects some of the transactions, treat the case as partially agreed. Attempt to secure agreement for the agreed corrected items.
- (14) Issue separate closing letters if there is an agreement for some but not all of the years.
- (15) If the taxpayer doesn't agree with the proposed tax change, it can submit a written protest in response to the 30-day letter. See IRM 4.70.14.7, Closing Cases to Appeals, for preparing a rebuttal.
- (16) If after receiving a reply to the 30-day letter the liable party disagrees with the proposed tax change with protest, without protest, or doesn't reply, close the case to Mandatory Review for the unagreed tax change. Mandatory Review or Appeals will issue a final closing letter in the form of a SNOD if they agree with your adjustment.

- (17) If in connection with a tax change, you have a primary return (or e-Postcard) also under examination, issue Letter 1744, following the guidelines in IRM 4.70.14.4.3.1, TE/GE Change due to Correction of Operations, to the organization that makes reference to the taxable event that gave rise to a potential tax liability.
- (18) Refer also to the tables in the following exhibits:
- See Exhibit 4.70.14-2, EO Reports and Closing Letters for Claims and Abatements, for a list of the formal 30-day letters, report forms, and closing letters for claims and abatements.
 - See Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, for a list of the formal 30-day letters, report forms, and closing letters in general.
 - Refer to IRM 4.70.13.14, for more details on the initial report process.
 - Refer to IRM 4.70.14.2.4.3.1, Discussion of Examination Findings/Conclusions, for more details on the formal report process.
 - See IRM 4.70.14.4.11.8.3, IRC 6104(c) Disclosures: Chapters 41 and 42 Assessments, for the procedures relating to state notification.
- (19) Close all agreed tax changes to the EO closing unit. Close all unagreed tax changes to Mandatory Review. Use the following disposal codes for the closing record of the tax return you are changing, unless a higher priority disposal code applies:
- a. DC 03 (RCCMS - 102) for agreed tax changes.
 - b. DC 07 (RCCMS - 601) for unagreed tax changes if protested.
 - c. DC 10 (RCCMS - 604) for unagreed tax changes without protest.
- (1) Refer to Rev. Proc. 83-32, 1983-1 C.B. 723, for the various filing requirements of both nonexempt charitable trusts (NECTs) and split-interest trusts.
- (2) NECTs described under IRC 4947(a)(1) file annual information returns on Form 990 or Form 990-PF depending on whether the trust has a determination letter granting IRC 509(a)(3) status. A determination letter granting IRC 509(a)(3) status doesn't grant the trust a tax-exempt status, but rather allows the trust to file a Form 990 instead of a Form 990-PF.
- (3) Nonexempt split-interest trusts described under IRC 4947(a)(2) file annual information returns on Form 5227. Split-interest trusts include:
- Charitable remainder trusts (uni-trusts or annuity trusts).
 - Charitable lead trusts (uni-trusts or annuity trusts).
 - IRC 642 pooled income funds.
- (4) When seeking information about a non-exempt charitable trust, send Letter 3407, requesting copy of trust instruments under Treasury Regulation 1.6012.
- (5) If you are examining any IRC 4947 trust (Form 990, Form 990-PF or Form 5227), and the examination results in a no change, issue Letter 6049 for the examination of that return. See Exhibit 4.70.14-1, Closing Letters for No Change Cases, for a list of no-change and letter for Change due to Correction of Operations.

4.70.14.2.1.3.1.24
(11-24-2023)
**EO - Nonexempt
Charitable Trusts**

TYPE OF RESULT & RETURN:	CLOSING LETTER
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No Change for IRC 4947 Trusts <ul style="list-style-type: none"> • Form 990 for IRC 4947(a)(1) Trusts • Form 990-PF for IRC 4947(a)(1) Trusts • Form 5227 for IRC 4947(a)(2) Split-Interest Trusts 	<ul style="list-style-type: none"> • Letter 6049 pure no change, or • Letter 1744, Change due to Correction of Operations (choose selectable Paragraph 3, 4 or 5 and 7)
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- (6) If you are examining Form 990, Form 990-PF or Form 5227, and the examination results in corrective actions to correct operational issues that did not result in a change to exempt status, issue Letter 1744 following the guidelines in IRM 4.70.14.4.3.1, TE/GE Change due to Correction of Operations.
- (7) The IRS doesn't revoke a tax-exempt status for IRC 4947 trusts, because a tax-exempt status was never granted.
- Chapter 42 excise taxes apply if charitable interests are diverted.
 - A diversion of charitable interests may also require reclassification of an IRC 509(a)(3) NECT to a PF as it may no longer be a supporting organization.
 - In some cases, you may also make a discrepancy adjustment to deny the grantor of the trust the overvalued portion of the charitable deduction (or make a referral to SB/SE or LB&I using Form 5666).
- (8) IRC 4947 trusts are subject to income tax if there is positive taxable income, and may be required to file Form 1041. Refer to income tax deficiency procedures in IRM 4.70.14.2.1.3.1.21, EO – UBIT and Other Income Taxes. IRC 4947 trusts are not recognized as tax-exempt.
- Fiduciaries and trustees must also file a Form 1041 on behalf of the trust if the trust has positive taxable income.
 - When the examination of a Form 1041 results in no change to income tax, prepare Letter 6049 for the examination of that return.
 - If there is a tax change to Form 1041, follow the deficiency procedures similar to those applicable to Forms 990-T, except that you are applying the income tax under IRC 1 with respect to these trusts. The \$1,000 specific deduction under IRC 512(b)(12) doesn't apply to IRC 4947 trusts. Follow the instructions in IRM 4.70.14.2.1.3.1.21, EO – UBIT and Other Income Taxes. for Form 1041 adjustments.
- (9) If an NECT doesn't meet the requirements for IRC 509(a)(3) as a supporting organization, reclassify the NECT to a PF. Follow the instructions in IRM 4.70.14.2.1.3.1.13, EO – Reclassification of Foundation Status.
- Generally the other exclusions from PF status under IRC 509(a), such as IRC 509(a)(2) don't apply.
 - Split-interest trusts are always treated as PFs for Chapter 42 purposes.
- (10) If you identify a Chapter 42 taxable event, based on Rev. Proc. 83-32, 1983-1 C.B. 723, follow the instructions in IRM 4.70.14.2.1.3.1.22, EO – Private Foundation Excise Taxes.
- (11) Split-interest trusts are:
- Not subject to IRC 4942 tax.

- Limited in the application of IRC 4943 and IRC 4944 tax by IRC 4947(b)(3).
 - Limited in the application of IRC 507(a) by IRC 4947(b)(4).
- (12) For the disposal codes used for foundation reclassifications, see IRM 4.70.14.2.1.3.1.13(15), EO - Reclassification of Foundation Status.
- (13) Close all agreed tax changes to the EO closing unit. Close all unagreed tax changes to Mandatory Review. Use the following disposal codes for the closing record of the tax return you are changing, unless a higher priority disposal code applies:
- a. DC 03 (RCCMS - 102) for agreed tax changes.
 - b. DC 07 (RCCMS - 601) for unagreed tax changes if protested.
 - c. DC 10 (RCCMS - 604) for unagreed tax changes without protest.

4.70.14.2.1.3.1.25
(11-24-2023)

**EO - Inactive
Organizations**

- (1) Inactivity for a period of years could result in proposed revocation of tax-exempt status on the grounds that the organization doesn't conduct qualifying activities, and therefore doesn't meet the operational test in 26 CFR 1.501(c)(3)-1(a)(1).
- (2) A secondary ground for revocation may be that the inactive organization failed to establish that it was observing the conditions necessary for continuation of exempt status and thus didn't comply with IRC 6033. However, automatic revocation may preempt the closing of such examinations. In that event, see survey procedures for IRC 6033(j) automatically revoked organizations at IRM 4.70.14.4.11.2, EO Automatically Revoked Organizations.
- (3) If an inactive organization (not subject to auto-revocation) properly terminated before the completion of the examination or can't be located, it may be recognized as terminated if it meets the criteria in IRM 4.70.14.2.1.3.1.15, Termination of Exempt Status, or is described in Examples 1 and 3 of Exhibit 4.70.14-17, EO Unable-to-Locate Scenario Guidance Table.
- (4) If an inactive organization has not properly terminated (or is unable-to-locate in Examples 2, 4, 5, and 6 of Exhibit 4.70.14-17), you may do one of the following:
- Issue Letter 1744, following the guidelines in IRM 4.70.14.4.3.1, TE/GE Change due to Correction of Operations, with a paragraph informing them that a lack of operations could result in revocation of tax-exempt status and/or reclassification to a PF, if applicable.
 - Propose revocation.
 - Survey the case if it falls under the survey guidelines.
- (5) If an inactive publicly supported organization is subject to a proposed revocation, determine whether to reclassify the organization as a PF.

4.70.14.2.1.3.1.26
(11-24-2023)

**EO - Inadequate
Records**

- (1) IRC 6001 provides that every person liable for any tax imposed by Title 26, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and Regulations as the Secretary or his delegate may from time to time prescribe.
- (2) Whenever in the judgment of the Secretary or his delegate, it is necessary, he may require any person, by notice served upon such person or by Regulations,

to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under Title 26.

- (3) IRC 6033 provides, in general, that every organization exempt under IRC 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the Internal Revenue laws as the Secretary may by forms of regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and Regulations as the Secretary may from time to time prescribe.
- (4) Treas. Reg. 1.6001-1(c) provides, in part, that organizations exempt from tax under IRC 501(a) shall “keep such books and records as are required to substantiate the information required by IRC 6033”.

4.70.14.2.1.3.1.27
(11-24-2023)

**EO - Inadequate
Records Notice**

- (1) An “Inadequate Records Notice” places taxpayers on notice that their record keeping practices are deficient and must be improved to meet the requirements of law. The issuance of an Inadequate Records Notice may result in a follow-up examination or compliance check. This notice is a tool to enforce compliance with the requirement to keep adequate books and records for purposes.
- (2) The following items together constitute an “Inadequate Records Notice” (the Notice):
 - a. Letter 4095, signed by the GM.
 - b. If agreed, a signed Form 2807, Agreement to Maintain Adequate Books of Accounts and Records.
 - c. If unagreed, attachment titled, “Explanation of Inadequate Records”. This notice must be sent by certified mail.

Note: Explain the reason the records were inadequate on the top of the page. Copy the list of inadequate records from Form 2807, and paste them onto bottom half of the page.

- d. Attachment titled, “Applicable Provisions of the Internal Revenue Code and Regulations”.
- e. Attachment titled, “Other Deficiencies Identified in the Examination”.

Note: List other defects noted in the examination similar to a paragraph on Letter 1744. These include examples such as engaging in excessive lobbying activities, or failure to file other returns.

Title the attachment: “Other Deficiencies Identified in the Examination.”

- (3) Use your judgment to determine whether a taxpayer has:
 - Maintained adequate records.
 - Complied with a record retention agreement.
- (4) Consider the facts and circumstances, including but not limited to the following factors:
 - a. Prior history and present degree of noncompliance.
 - b. Indications of willful intent.
 - c. Evidence of refusal to keep records.

- d. Other evidence of harm to the government.
 - e. Probability that poor record keeping results in significant changes to the return.
 - f. Likelihood that compliance can be enforced if the taxpayer fails or refuses to correct the inadequacies.
 - g. Anticipated revenue in relation to the time and effort required to obtain compliance.
- (5) If the taxpayer has failed to maintain adequate books and records, discuss the matter with your GM to determine whether to issue an Inadequate Records Notice.
- (6) When discussing the inadequate records issue with the taxpayer:
- a. Avoid criticizing the work of the taxpayer's employees, accountants, or attorneys in a way that would suggest wrongdoing or negligence.
 - b. Focus on explaining how the taxpayer's books and records are inadequate.
 - c. Explain the steps that need to be taken to bring them into compliance with applicable statutes.
- (7) Document the following:
- a. The nature of the inadequacies of the taxpayer's records.
 - b. Managerial discussions.
 - c. The basis for the conclusion reached.
 - d. On_____, the date the organization was verbally informed that records were not adequate, and in the record of service section on the bottom of the attachment to Letter 4095 titled, Applicable Provisions of the Internal Revenue Code and Regulations.
 - e. On_____, the date of delivery or service of Form 2807, and in the record of service section on the bottom of the attachment to Letter 4095 titled, Applicable Provisions of the Internal Revenue Code and Regulations. If certified-mailed, the return receipt constitutes record of service. Attach it to the copy of the Form 2807 retained in the case file. If hand-delivered, include the name of the individual served.
 - f. On_____, the date you solicited an agreement, and in the record of service section on the bottom of the attachment to Letter 4095 titled, Applicable Provisions of the Internal Revenue Code and Regulations.
- (8) If the case involves a potential or existing record retention agreement, contact LB&I. Use the Specialist Referral System (SRS) to obtain the assistance of a Computer Examination Specialist. See IRM 4.70.13.6.2, Specialist Referral System.
- (9) If you and your GM agree that an Inadequate Records Notice is appropriate, take the following steps:
- a. Prepare Form 2807. See example at Exhibit 4.70.14-9, EO Form 2807 Sample..
 - b. Include the date the taxpayer was verbally notified that the records were inadequate or not in compliance with a record retention agreement.
 - c. Include the tax years examined.
 - d. Include a description of the specific books and records.
 - e. Include a clear and concise statement how the taxpayer's records were inadequate or not in compliance with a record retention agreement.

- f. Personally serve Form 2807 or send by certified mail. If you hold a closing conference with the organization, serve Form 2807 to an officer or trustee authorized to sign tax returns. Allow no more than 15 days.
- g. Solicit an agreement with the taxpayer on Form 2807.
- h. If the taxpayer doesn't sign Form 2807, discuss the facts and circumstances with your GM.

Reminder: Document all managerial discussions.

- i. Prepare referral Form 5666. State in the "Information Obtained" section of Form 5666 that the attached Letter 4095 package is documentation for an Inadequate Records Notice.

Note: Recommend a follow-up examination on Form 5666 for no less than two years subsequent to the year of the current examination.

- j. Name the electronic files of the referral package following the established naming convention format and post to the RCCMS Office Documents Folder.
- k. Check the "Yes" box on the SH-56.0 Referral item on tab 3 of 6 of the RCCMS 3198-A Special Handling checksheet to flag the Form 5666.

Note: Manager reviews and sends the signed electronic Form 5666 (and attachments) in a secure email to the TE/GE Referral Group email box at **Manager EO Classification*.

See IRM 4.70.6.4, Referrals Procedures.

- l. Issue Letter 4095 and its attachments to the taxpayer. m. At closure, use RCCMS DC 214, Change due to Correction of Operations. Close the case to the closing unit following.
- m. At closure, use RCCMS DC 214, Change due to Correction of Operations. Close the case to the closing unit following.

4.70.14.2.1.3.1.28
(11-24-2023)
**EO - Inadequate
Records - Follow Up
After Issuance of
Inadequate Records
Notice**

- (1) You may be assigned a follow up examination or compliance check of the taxpayer. Document in your workpapers your consideration of the inadequate record-keeping issue. State whether or not the taxpayer has corrected the inadequacies.
- (2) If the taxpayer is substantially complying with the requirements to keep adequate records, follow normal examination procedures with regard to the scope of the examination.
- (3) When closing the case, include the inadequate records notice information in the case file.
- (4) If, upon follow-up, the taxpayer is still not keeping adequate records, consider additional enforcement measures, including:
 - Assertion of accuracy penalties
 - Revocation

4.70.14.2.1.3.1.29
(11-24-2023)
**EO - Inadequate
Records – Revocation**

- (1) Every organization exempt from tax, whether or not required to file an annual information return, must submit such additional information as may be required by the IRS for the purpose of inquiring into its exempt status and administering the provisions of subchapter F, Chapter 1 of subtitle A of the Code, IRC 6033, and Chapter 42 of subtitle D of the Code. Treas. Reg. 1.6033-2(1)(2).

- (2) Any organization exempt from tax under IRC 501(a) is required to supply the IRS with such information as is required by the revenue procedures, the instructions to Form 990, and the schedules thereto, and to keep such books and records as are necessary to substantiate such information. IRC 6033, Treas. Reg. 1.6001-1(c) and Treas. Reg. 1.6033-2(a)(1) and 1.6033-2(i)(2).
- (3) Failure to maintain proper books and records, and make them available to the examiner, may result in revocation of tax-exempt status because the organization isn't observing the conditions required for such status.

Caution: Except in unusual circumstances, don't propose revocation due to inadequate records unless an Inadequate Records Notice was issued as a result of a prior examination.

- (4) Although drafted prior to enactment of IRC 6652, Rev. Rul. 59-95 has never been withdrawn and can be used to support a revocation, where the organization will not supply the information necessary to enable the Service to make a determination as to whether there have been any substantial changes in the organization's character, purpose, or method of operation, and there is a substantial doubt that the organization should continue to be exempt.
- (5) If the organization continues to fail to comply substantially with the law and regulations for maintaining adequate books and records, or fails to provide requested information, discuss the inadequacies with your GM to determine whether to propose revocation of tax-exempt status.
- (6) If you and your GM decide revocation is appropriate, your workpapers and report of examination must demonstrate:
 - a. How the information requested from the taxpayer is material in establishing the organization's right to continued exemption.
 - b. That the organization was given an adequate opportunity to provide the requested information.
 - c. That the organization was advised of the consequences of failing to provide such information.

Note: The GM may consider requesting advice from TEGEDC during the development of a revocation issue based on a failure to maintain or provide records.

4.70.14.2.1.3.1.30
(11-24-2023)

**EO - Inadequate
Records Appeal Rights**

- (1) An Appeals conference is not given to taxpayers who agree to proposed adjustments but don't execute Form 2807.
- (2) If the taxpayer doesn't execute Form 2807 and the case is unagreed, inform the taxpayer of the opportunity to discuss the matter at an Appeals conference.

4.70.14.2.1.3.1.31
(11-24-2023)

**EO - Status 36
Organizations**

- (1) Status 36 in the EOBFM describes the following types of organizations that haven't received a ruling or determination letter granting tax-exempt status, and aren't covered under a group exemption ruling:
 - Organizations other than IRC 501(c)(3), (9) or (17) that filed a Form 990-N, Form 990, or Form 990-EZ, self-declaring their exempt status, not covered under a group exemption ruling.
 - IRC 501(c)(4) entities that have registered under IRC 506 (even if no Form 990 series return was filed).

- Organizations claiming exemption under IRC 501(c)(29) even though these organizations are required to apply for exemption because the application process is anticipated to take longer than the 180 days prescribed under the Status 40 program.
- (2) A Status 36 organization:
- Can be disqualified from tax-exempt status for the specified self-declared tax years if it fails to qualify.
 - Is subject to filing Form 990-T and other EO returns if it qualifies for tax-exempt status for the self-declared tax year.
- (3) A disqualification from a self-declared tax-exempt status is subject to declaratory judgment rights.
- (4) If a Status 36 organization meets the requirements for the tax-exempt status as declared on Form 990 or Form 990-EZ:
- a. Use Letter 6049 for no-change.
 - b. Inform the organization of the application for exemption process, including user fee.
- (5) If a Status 36 organization fails to qualify for tax-exemption for any tax year, prepare Letter 3618, Form 4621-A, Form 886-A, and Form 6018.
- a. Prepare Form 2363-A (don't submit for processing). See Exhibit 4.70.14-15, EO Status 36 Case: Form 2363-A Instructions.
 - b. Prepare Form 5666 or (Form 5346) for SB/SE or LB&I. Alternatively, you can enforce the income tax for the examined tax years.
- (6) Refer to the six Status 36 scenarios at Exhibit 4.70.14-4, Status 36 Case Scenarios.
- (7) If the examination resulted in a change due to correction of operations or had changes to related returns, use DC 52 (RCCMS 214) and issue Letter 1744 as a closing letter with explanations of the changes on a Form 886-A. Use DC 02 (RCCMS 107) and issue Letter 6049 if there were no changes.
- Reminder:** Status 36 organizations are not required to apply for tax-exemption, but must apply to receive recognition for tax-exempt status. Only IRC 501(c)(3), (9), (17) and (29) organizations are required to apply for tax-exemption.
- (8) For agreed disqualifications:
- a. Close the primary return with DC 13 (RCCMS 501) unless a higher priority disposal code applies.
 - b. Form 5666 (or Form 5346) is required if you use DC 13 (RCCMS 501).
 - c. If you enforce the income tax for the disqualified tax years, close the primary return with DC 04 (RCCMS 205) or DC 05 (RCCMS 207).
- Note:** Refer to Exhibit 4.70.14-6, for instructions in preparing Form 6018.
- (9) For unagreed disqualifications, use DC 07 (RCCMS 601) or DC 10 (RCCMS 604).

4.70.14.2.1.3.1.32
(11-24-2023)

EO - Initial Examination Reports

(1) An initial examination report is a preliminary summary report proposing a change in tax or status and soliciting an agreement. Initial examination reports:

- Are an efficient way to present a report and secure an agreement when the taxpayer reasonably understands the changes and you expect to receive an agreement to the changes.
- Are followed by a formal report if the taxpayer disagrees or fails to reply. In contrast formal reports are followed by a SNOD or immediate assessment if a taxpayer fails to reply.
- Aren't used for declaratory judgment cases, and church examinations. You can use a draft report tool instead if appropriate.
- Are optional and not appropriate for all cases.

Note: In the case of discrepancy adjustments, Letter 3605, Form 4549-E and Form 886-A is a first formal examination report issued to the taxpayer that can be thought of as an initial examination report, but it is actually a formal examination report because it is followed by a SNOD if there is no reply to the 30-day letter.

(2) For non-declaratory judgment cases, you can bypass an initial report process and resort directly to a formal report process if:

- You aren't certain the taxpayer understands the proposed changes.
- You reasonably expect the taxpayer will disagree with the changes.
- Other reasons are at the discretion of the examiner or the GM.

Note: In some larger cases, you can present an issue to the taxpayer using Form 5701, and then prepare an initial or formal examination report after you have gathered all comments on all issues (all Forms 5701). Form 5701 isn't a "report" or a waiver form, rather it is used to present one issue at a time and to document the taxpayer's agreement or comments on each specific issue.

See also Form 5700, Issue Control Log, also optional.

Note: Consider that a FTS may be more appropriate in order to settle one or more unagreed issues. See IRM 4.70.14.2.4.3.2, EO - Fast Track Settlement (FTS).

(3) The taxpayer's reply or non-reply to an initial examination report determines whether you have an agreed or unagreed case moving forward.

- a. If the initial examination report is agreed, issue a final agreed change closing letter with the GM's signature, and close the case to the EO closing unit.
- b. If the initial examination report is unagreed, issue a 30-day letter and formal examination report, update AIMS to status 13 while in 30-day suspense. Hold in suspense pending the taxpayer's reply.

(4) The initial examination report:

- a. Is a proposal.
- b. Solicits an agreement.
- c. Solicits correction of a taxable event for Chapter 42 excise tax purposes.
- d. Allows more time to resolve any disputed facts of the case.

- e. Allows for usage of shorter reply due dates (less than 30 days), if desired.
 - f. May inform the taxpayer to consider FTS for an unagreed issue.
 - g. Is optional and may be bypassed for a formal report.
- (5) For the initial examination report, you must:
- a. Fully develop the case before issuing the report.
 - b. Have a reasonable belief the taxpayer understands the changes and will agree without much difficulty.
 - c. Inform the taxpayer that the initial examination report doesn't constitute an official 30-day letter.
- (6) Generally, you prepare the facts, law and argument portion of the RAR component in summary form. If prepared in summary form, the explanation must be sufficient to justify the proposed change.
- (7) Give the initial examination report to the taxpayer using one of the following transmittals:
- A drafted nonstandard letter.
 - A Form 4564, Information Document Request.
 - A Form 5701, Notice of Proposed Adjustment.
- Note:** Indicate on the transmittal, "This Not a 30-day Letter."
- (8) If a taxpayer has verbally indicated they will agree to a proposed tax adjustment, an initial examination report doesn't need to include a Form 886-A, Explanation of Items.
- Note:** Obtain proof of correction for two-tiered Chapter 42 excise taxes before considering the tax as agreed.
- (9) If preparing Form 886-A, type:
- a. "This is an initial examination report" on the first page of the Form 886-A.
 - b. "Initial examination report" in the header of the Form 886-A.
- (10) Use the spelling and grammar checker. Refer to the tables listing various reports and letters that can be included in an initial examination report:
- See Exhibit 4.70.14-2, EO Reports and Closing Letters for Claims and Abatements, for a list of the formal 30-day letters, report forms, and closing letters for claims and abatements.
 - See Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, for a list of the formal 30-day letters, report forms, and closing letters in general.
- (11) After the deadline for responding passes, determine if the taxpayer:
- Agreed to the proposed adjustment.
 - Submitted a reply other than a signed agreement.
 - Failed to reply to the initial examination report.
- (12) If the taxpayer signs the agreement, process as follows:

If the issue is...	Then...
An agreed worker reclassification.	<ul style="list-style-type: none"> • Process any payments received. • Close to the EO closing unit as agreed with DC 03 (RCCMS - 102). • If the EO signed a CSP agreement, close the calendar quarters for which you will be making an assessment using DC 03 (RCCMS - 102). • Close all other tax periods using DC 01 (RCCMS - 210). Refer to IRM 4.23.6.15.2. Use Letter 3382.
Agreed tax changes including: <ul style="list-style-type: none"> • Excise (no correction required, or correction was required and fully made) • Employment taxes (non-worker classification) • Income taxes 	<ul style="list-style-type: none"> • Process any payments received. • Verify correction, if applicable. • Issue Letter 2511 with a copy of the signed agreement. Close to the EO closing unit as agreed with DC 03 (RCCMS - 102).
Chapter 42 excise tax adjustment without correction.	<ul style="list-style-type: none"> • Process any payments received. • Issue a formal RAR. Recommend imposition of the 1st tier tax and propose the 2nd tier tax in the event the act or failure to act giving rise to the 1st tier tax is uncorrected within the taxable period. • To ensure issuance of a notice of deficiency, you must recommend imposition of both taxes. • The report brings together all the issues and alerts the taxpayer to the full consequences of the failure to correct. • Fully describe the act or failure to act which gave rise to the tax liability in the report.

If the issue is...	Then...
Subject to multiple issues listed above.	<ul style="list-style-type: none"> • Process any payments received. • Issue separate formal examination reports for each unagreed issue. • Management may split cases by type of tax, closing unagreed issues to Mandatory Review and closing agreed issues to the EO closing unit.

Note: If issuing one or more Letter 2511, with no other issues, prepare and issue Letter 1744 as the closing letter for the primary return (or e-Postcard) examination. In the attached Form 886-A, reference the agreed adjustment as being “issued under separate cover.”

- (13) If the taxpayer disagrees with the initial examination report (and doesn’t request a FTS), review the reply and proceed as follows:

If the additional information provided...	Then...
Changes the conclusion, resulting in a no change.	Close as a no change. See Exhibit 4.70.14-1, Closing Letters for No Change Cases.
Changes the conclusion, resulting in a modified adjustment.	Consider FTS for the unagreed issue. See IRM 4.70.14.2.4.3.2, EO – Fast Track Settlements (FTS). Otherwise, modify the report, and issue a formal examination report. See IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports.
Doesn’t change the conclusion.	Consider FTS for the unagreed issue. See IRM 4.70.14.2.4.3.2, EO – Fast Track Settlements (FTS). Otherwise issue the formal RAR. See IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports.

- (14) If no one replies to the initial report, issue a “Formal examination report” via certified mail to the taxpayer and any representatives. See IRM 4.70.14.2.4.3.1, EO – Formal Examination Reports.

4.70.14.2.1.3.2
(11-24-2023)

**EO – Exempt
Organizations
Examinations Closing
Agreements**

- (1) IRC 7121 gives the Commissioner the authority to enter into a written closing agreement with any person for their internal revenue tax liability for any taxable period ending before or after the agreement date. EO employees use closing agreements to resolve exemption and tax issues under EO jurisdiction and in voluntary taxpayer-initiated (walk-in) requests. See Exhibit 4.70.14-12, EO Closing Agreement Authority and Finality, for authorities covering closing agreements.
- (2) The Director, EO is the executive responsible for closing agreements.
- (3) The EOCAC prepares a quarterly monitoring report detailing closing agreement activities. See IRM 4.70.14.2.1.3.2.46, EO – EOCAC: Monitoring Reports, for further detail.

4.70.14.2.1.3.2.1
(11-24-2023)

**EO – Terms/
Definitions/Acronyms**

- (1) Closing agreement: A legally binding document that exhibits some attributes of a contract, but is created by statute and subject to statutory requirements.
- (2) Exempt Organizations Closing Agreement Coordinator (EOCAC): The EOCAC is a senior employee in EO Examinations who is fully experienced in dealing with EO issues. If EO designates more than one EOCAC, one is the primary contact for communications with other offices. The duties of the EOCAC include:
 - a. Support the fair, impartial, objective, and consistent use of closing agreements for the treatment of similar issues. Thus, the EOCAC retains a copy of all approved closing agreements.
 - b. Provide guidance regarding the closing agreement process to tax exempt organizations seeking a closing agreement.
 - c. Provide managers and/or examiners advice whenever they are considering a closing agreement to ensure consistency of treatment for similar issues.
 - d. Review requests to begin the closing agreement process and review closing agreements for accuracy, completeness and consistency before submitting them to the Director, EO:E.
 - e. Contact TEGEDC concerning legal or technical issues, or the possibility of litigation.
 - f. Consider any alterations or erasures to material provisions of the closing agreement throughout the approval process and coordinate with the Director, EO:E.
 - g. Review and track closing agreements through signature process.
 - h. Provide backup file and information as needed.
 - i. Coordinate responses to requests for closing agreement information with Public Affairs and the Disclosure Officer.
 - j. Prepare quarterly closing agreement reports.
- (3) Informal stage: The taxpayer/representative and the EOCAC (or examiner) discuss the closing agreement process. Any information obtained is used to determine if a closing agreement is viable. The taxpayer is allowed to stay anonymous only with walk-in agreements.
- (4) Formal stage: The taxpayer/representative makes a formal request to enter into a closing agreement under IRC 7121. The taxpayer is required to reveal its identity.
- (5) We/our/us: Used in lieu of “the service” and “the government”.

Acronyms	Definition
AIMS	Audit Information Management System
BMF	Business Master File
CSP	Classification Settlement Program
EO	Exempt Organizations
EO Exam	Exempt Organizations, Examinations
EOCAC	Exempt Organizations Closing Agreement Coordinator
EO:E	Exempt Organizations Examinations
EO:RA:T	Exempt Organizations Ruling and Agreements Technical
EPR	Examination Program and Review
IDR	Information document request
JCT	Joint Committee on Taxation
MF	Master file
NMF	Non-master file
R&A	Exempt Organization Rulings and Agreements
RCCMS	Reporting Compliance Case Management System
TC	Transaction code
TEDS/EDS	Tax Examination Determination System/Exempt Determination System
TE/GE	Tax Exempt/Government Entities

4.70.14.2.1.3.2.2
(11-24-2023)
EO – Introduction

- (1) IRS uses closing agreements when satisfactory resolutions can't be reached through normal audit procedures.
- (2) A taxpayer may request a closing agreement during or outside of an audit. IRS isn't required to grant a closing agreement in either situation. See Exhibit 4.70.14-12, EO Closing Agreement Authority and Finality, for an explanation of the authority to enter into a closing agreement.

Note: See IRM 4.23.6, Classification Settlement Program (CSP), for CSP agreements used to resolve worker classification issues.

4.70.14.2.1.3.2.3
(11-24-2023)
**EO - Appropriate
Situations**

- (1) Consider a closing agreement in “but for” situations. “But for” situations are when an organization would retain exemption “but for” the involvement of certain persons, actions, or transactions otherwise requiring revocation.

Example: A public charity operates a food bank. The founder and his spouse, the primary officers, used the charity’s funds for personal expenses. While their transactions could be dealt with through IRC 4958, their continued control of the organization as officers requires revocation. The charity would be exempt “but for” the actions and control of the officers.

Example: A social club files Form 990-T annually and reports non-member income in excess of 20% from monthly pool parties open to the public. The remaining income stems from activities involving members only. The club would otherwise be exempt “but for” the existence of the pool parties.

Example: A homeowners association for a gated-community posts signs prohibiting public entry to the community. The homeowners association would be exempt under IRC 501(c)(4) “but for” the signs prohibiting entry.

Note: The taxpayer must remove the persons and completely correct the actions or transactions before executing the closing agreement.

- (2) You should consider a walk-in closing agreement when a tax issue can’t be resolved through regular procedures.

Example: An IRC 501(c)(5) organization has been primarily operating substantial non-exempt activities for several years. The organization wants their exemption revoked retroactive to the year in which they no longer met the exemption requirements under IRC 501(c)(5).

Example: An exempt organization failed to include as wages a taxable fringe benefit to its employees. The employer wants to pay all outstanding liability as a result of this under-reporting error.

- (3) A closing agreement can be entered into in a case under audit.

4.70.14.2.1.3.2.4
(11-24-2023)
EO – Restrictions

- (1) EO Exam doesn’t enter into closing agreements:

- For prospective transactions.
- To impose sanctions as a penalty for non-compliance.

- (2) Closing agreements shouldn’t be used if future compliance is in jeopardy.

Example: A taxpayer continues to engage in flagrant acts that compel revocation.

- (3) A closing agreement shouldn’t be used to:

- Circumvent a tax liability, regardless of the type or amount of tax.
- Infringe on the settlement authority of Appeals.
- Simply allow a taxpayer to reduce the amount of a tax or penalty.
- Skirt a normal audit procedure.
- Bypass other existing procedures.

- (4) Specific examples of when a closing agreement shouldn’t be used include:

- Processing an application for exemption.
- Processing delinquent returns.
- Submitting Offers in Compromise.
- Requesting a Technical Advice Memo.
- Processing a Private Letter Ruling request (an action performed by EEE Counsel only).
- Obtaining guidance from R&A.
- Referring the taxpayer to Criminal Investigation.
- Resolving a civil case after a criminal tax conviction.

4.70.14.2.1.3.2.5
(11-24-2023)
**EO - Recognition of
Exempt Status**

- (1) A closing agreement may not confer recognition of tax-exempt status; it may only state we recognize the taxpayer as exempt as of a given date.
- (2) The Area Manager or the EOCAC coordinates with the Manager, EO Determinations (Cincinnati) to process an application for recognition of exemption filed with a closing agreement.
- (3) EO Determinations establishes the application on TEDS/EDS and forwards it to R&A for expedited processing.
- (4) R&A issues the determination letter.

4.70.14.2.1.3.2.6
(11-24-2023)
**EO - Minimum
Requirements**

- (1) Fully develop all facts before considering a closing agreement.
- (2) Ensure the closing agreement brings taxpayers into full retroactive compliance:
 1. Secure all delinquent returns for the last six years, as applicable or required.
 2. Collect payment of 100% of the tax, interest, and penalties, if applicable.
 3. Verify correction of any transactions subject to Chapters 41, 42, and 44 .
- (3) Base assessments on the taxpayer's actual tax liability. The taxpayer may enter into an installment agreement if unable to pay in full when signing the agreement.

Note: If the taxpayer uses an installment agreement, the closing agreement should reference it.

- (4) If you're considering a closing agreement in lieu of revocation, you must determine the potential tax liability as if the organization were revoked. See IRM 4.70.14.2.1.3.3, Conversion of Returns Upon Revocation of Exemption.

4.70.14.2.1.3.2.7
(11-24-2023)
**EO - Closing Agreement
Document**

- (1) When creating a closing agreement, you may opt to use Form 866, Agreement As to Final Determination of Tax Liability, or Form 906, Closing Agreement On Final Determination Covering Specific Matters. If not using Form 866 or Form 906, make sure the closing agreement contains the same information that is in the top of Form 906.

Note: Form 866 is for determinations of tax liability only. Use Form 906 for exemption and/or status issues. A Form 906 can be used to determine tax liability and exemption and/or status issues.

- (2) Consider using Form 4222, Closing Agreement Checklist, to:
 - Ensure accuracy when preparing the closing agreement.

- Prevent procedural errors.

4.70.14.2.1.3.2.8
(11-24-2023)

**EO - Closing Agreement
Format**

- (1) While preparing a closing agreement refer to the format in Exhibit 4.70.14-14, EO Closing Agreement Authority and Finality.
- (2) The agreement begins with a standard caption at the top of the first page stating the nature of the document.
- (3) The agreement should list:
 - Names of all parties to the agreement
 - Addresses
 - Taxpayer identification numbers (TIN)
- (4) If several parties are involved in the agreement, follow the instructions in Rev. Proc. 68-16, section 6.04, paragraph four. See IRM 8.13.1.3.12, Multiple Party Agreements.
- (5) The agreement should contain one or more “WHEREAS” clauses. The “WHEREAS” clauses:
 - Introduce the subject matter of the agreement.
 - State the premises upon which the agreement is based.
 - Explain the facts supporting the determinations that follow.
- (6) The section of the agreement captioned “NOW, THEREFORE IT IS HEREBY DETERMINED AND AGREED BETWEEN TAXPAYER AND THE SERVICE AS FOLLOWS for federal tax purposes that:” lists:
 1. The items agreed upon by both parties.
 2. The actions taken by the taxpayer.
 3. The payments made by the taxpayer.
- (7) Draft the “THEREFORE” clauses as a continuation of the preceding “HEREBY DETERMINED” statements. The “THEREFORE” clauses list the resolution of the “WHEREAS” clauses.
- (8) The last section of the closing agreement is entitled “THIS CLOSING AGREEMENT IS FINAL AND CONCLUSIVE, EXCEPT”. See Exhibit 4.70.14-14, EO Sample Closing Agreement as To Final Determination.
- (9) If the closing agreement (exclusive of attachments) consists of more than one page:
 1. Number each page at the bottom “Page ____ of ____”.
 2. On the top of each page following page 1, state the following: “Closing Agreement with (name of taxpayer)”.
- (10) If several parties are involved in the agreement, follow the instructions in Rev. Proc. 68-16, section 6.04, paragraph four.
- (11) If the taxpayer is unable to pay in full, consider an installment agreement request. Reference the installment agreement in the closing agreement, but leave out the terms. See IRM 4.70.14.2.1.3.2.10, EO – Addressing Payment of Closing Agreement Liability, and IRM 4.70.14.2.1.3.1.9, EO – Installment Agreements.
- (12) If organizational documents need to be amended, secure the amendment and describe the changes in the closing agreement.

Reminder: The taxpayer must be compliant in both exemption and tax issues before the agreement is executed.

(13) Closing agreements must include:

- The relevant facts, including our proposed adverse action.
- Explicit conditions the taxpayer either has completed or must complete to achieve compliance. Keep concurrent actions to a minimum.
- A statement addressing the treatment we will accord the taxpayer (for example, retention of exempt status).
- The agreed-upon effect of the closing agreement on subsequent periods.
- A statement that the agreement is limited to Internal Revenue Code matters and doesn't extend to other federal or state law.
- The specific amount of tax, penalties and interest owed. Don't list other dollar amounts.
- A statement instructing the taxpayer to remit the total amount due by certified check(s), cashier's check(s) or similar instrument payable to the United States Treasury when he/she signs and returns the agreement for approval.
- A statement that the payment isn't tax deductible.

4.70.14.2.1.3.2.9
(11-24-2023)

**EO - Addressing Waiver
of Taxpayer's Rights**

(1) Section 3468 of the Restructuring and Reform Act of 1998, prohibits officers or employees of the United States from requesting a taxpayer "to waive the taxpayer's rights to bring a civil action against the United States, or any officer or employee of the United States, for any action taken in connection with the internal revenue laws". The law provides three exceptions:

1. The taxpayer waives the right knowingly and voluntarily.
2. The request by the employee is made in person and the taxpayer's attorney or other federally recognized tax practitioner is present, or
3. The request is made in writing by the taxpayer's attorney or other representative.

Note: The closing agreement shouldn't contain a taxpayer release of any right of action against the IRS or its employees unless it meets one of the above exceptions.

(2) If you're considering seeking a waiver of rights, discuss it first with the EOCAC.

(3) The EOCAC will discuss the matter with EO:RA:T.

(4) If it's determined the waiver request is appropriate, the examiner should include it in his/her case file:

- Signed and dated documentation from the taxpayer or the taxpayer's representative.
- Complete notes on Form 5464, Case Chronology Record, describing the process you used to secure the waiver.

4.70.14.2.1.3.2.10
(11-24-2023)

**EO - Addressing
Payment of Closing
Agreement Liability**

- (1) The taxpayer must pay the liability in full when signing the agreement. If the taxpayer is unable to fully pay, indicate in the closing agreement that before or simultaneously with the execution of the agreement, the taxpayer entered into an installment agreement providing for full payment of the liability.
- (2) IRM 5.14.1.6(3) states that multi-functional installment agreement authority is limited to certain types of accounts with an aggregate unpaid balance of assessments less than or equal to the amount provided in IRM 5.14.1.6(3).
- (3) If the liability is greater than \$25,000, consult with TEGEDC about using an installment agreement.
- (4) See IRM 4.70.14.2.1.3.1.9, EO – Installment Agreements, for more on installment agreements.

4.70.14.2.1.3.2.11
(11-24-2023)

**EO - Explanation of
Process**

- (1) Closing agreements involve a five-step process:
 1. Obtain necessary information
 2. Obtain approval to work on the draft
 3. Prepare and facilitate the draft
 4. Obtain approval of the agreement
 5. Process the approved agreement
- (2) At any time before the agreement is executed, either the taxpayer/representative or the IRS can decide not to enter into an agreement.
- (3) If the taxpayer/representative or the IRS decides not to enter into an agreement and the situation involves:
 - A taxpayer currently under audit, the examiner continues to work the case using normal audit procedures.
 - A walk-in, the EOCAC closes the request for a closing agreement and issues a denial letter.

4.70.14.2.1.3.2.12
(11-24-2023)

EO – Timelines

- (1) Follow the time frames below so the closing agreement process is completed expeditiously:

Action	Maximum Time frame after Receipt (working days)
Return phone call	3 days
Review request and consult with Counsel	10 days
Preparation of request for additional information	10 days
Due date for additional information	Due date for additional
Review of additional information	10 days
Due date for preparation of draft agreement	90 days
Review of draft agreement	10 days

Counsel review of draft agreement	45 days
TP review of draft agreement	15 days
Subsequent revisions to draft agreement	15 days
Group Manager, Area Manager, Counsel approval	5 days
Schedule briefings	30 days
EOCAC, EPR Manager, Director, EO:E approval	5 days
Respond to questions raised during briefings	5 days
Secure taxpayer signature and payment	30 days
Director executes agreement	10 days
Mail executed agreement to taxpayer	3 days
Assessment made after payment posts	5 days
Close case in RCCMS	45 days

- (2) Consider reasonable requests to extend the above time frames.
- (3) Secure any applicable statute extensions for requests for taxpayers currently under exam.

4.70.14.2.1.3.2.13
(11-24-2023)
**EO - Exam-Initiated
Closing Agreements**

- (1) A closing agreement is an option for resolving issues encountered in an exam.
- (2) The examiner or taxpayer may suggest a closing agreement. However, confer with your manager before you suggest a closing agreement.
- (3) Complete the paperwork for a closing agreement and to process any payments. TEGEDC may help to draft the closing agreement, but the examiner maintains the case file.

4.70.14.2.1.3.2.14
(11-24-2023)
**EO - Informal Stage -
Obtaining Necessary
Information**

- (1) Before considering a closing agreement:
 1. Assess the legal aspects of the case.
 2. Establish our position on the issues.
 3. Establish the taxpayer's position.
 4. Discuss our position on the issues with the taxpayer.
 5. Determine the effect adverse action(s) would have on public interest.
 6. Clarify if organizational and/or operational deficiencies can be corrected.
 7. Decide if we'll sustain disadvantage(s) by entering into the closing agreement.

- (2) Discuss the possible closing agreement with your group manager and decide if it's worth pursuing.
- (3) Talk to the taxpayer to see if they'd consider a closing agreement. However, don't guarantee a closing agreement as it may not be approved.
- (4) If the taxpayer agrees, consult your manager and TEGEDC. If both concur, submit a summary of the issues and the proposed solution to the EOCAC.
- (5) If the EOCAC considers a closing agreement to be viable, the EOCAC sends the cover sheet in Exhibit 4.70.14-13, EO Closing Agreement Cover Sheet, to the examiner. The examiner:
 1. Completes Part A.
 2. Secures the group manager's electronic signature in Part B.
 3. Secures the area manager's electronic signature in Part B.
 4. Returns the signed cover sheet to the EOCAC.

4.70.14.2.1.3.2.15
(11-24-2023)

**EO - Formal Stage -
Obtaining Approval to
Prepare Draft**

- (1) The Director, EO:E must approve the request to begin working on a draft agreement.
- (2) The examiner shouldn't start working on the terms of a closing agreement until after the approvals are obtained.
- (3) Upon receipt of the signed cover sheet, the EOCAC:
 1. Prepares briefing notes per Exhibit 4.70.14-18, EO Briefing Report.
 2. Briefs the Manager, EPR. Manager, EPR signs either the "approved" or "not approved" Part B section of the cover sheet and returns it to the EOCAC.
 3. Sends the briefing notes and approved cover sheet to the Director, EO:E.
 4. Briefs the Director, EO:E.
- (4) The Director, EO:E signs either the "approved" or "not approved" Part B section of the cover sheet and returns it to the EOCAC.
- (5) If the Director, EO:E concurs, the EOCAC returns the cover sheet to the group manager/examiner.
- (6) If approval isn't granted at any stage:
 1. The EOCAC returns the cover sheet to the group manager/examiner and communicates the reasons for rejection.
 2. The examiner must consider pursuing the original planned course of action (such as revocation, adverse action, etc.).
 3. The taxpayer may pursue a Fast Track Settlement (if applicable).
 4. The taxpayer may submit a formal protest to Appeals.
- (7) If further evidence is found indicating a closing agreement would be beneficial, the EOCAC may continue to further develop the proposal with the group. The approval process starts all over again.

4.70.14.2.1.3.2.16
(11-24-2023)

**EO - Formal Stage -
Preparing and
Facilitating the Draft**

- (1) Examiner: before you prepare the closing agreement:
 - Determine the tax consequences.
 - Discuss the general terms of the agreement with the taxpayer and attempt to work out any disputes.

- Make sure the taxpayer understands that either party has the option to discontinue at any point in the process if a resolution can't be reached. The taxpayer loses no appeal rights if an agreement isn't reached.
- If additional information is needed from the taxpayer, issue the cover letter in Exhibit 4.70.14-19, EO Information Document Request Cover Letter (Exams Only), and Form 4564, Information Document Request.
- Determine any required actions the taxpayer needs to complete.

Example: The President and Vice President engaged in several excess benefit transactions, jeopardizing the organization's exempt status. Revoking the organization's exempt status would severely hurt the local community. In lieu of revocation, we want the President and Vice President to resign and the Board to create and maintain a conflict of interest policy to prevent future excess benefit transactions.

- Consult the group manager and TEGEDC, as necessary.

4.70.14.2.1.3.2.17
(11-24-2023)

EO - Preparing a Draft Agreement

- (1) Once the issues are resolved, the examiner prepares the closing agreement. The taxpayer may also craft the closing agreement. TEGEDC reviews and revises the document as needed.

- (2) The closing agreement should:

- State each matter clearly allowing no room for misinterpretation.
- Be objective.
- Be easily enforceable.

Note: Although the material in the case file clearly explains the intent of the agreement, the agreement must speak for itself and will be the primary basis of future action.

- (3) Avoid using subjective terms such as:

- "Substantial"
- "Reasonable"
- "Due diligence"

- (4) See IRM 4.70.14.2.1.3.2.7, EO – Closing Agreement Format, for instructions on format and structure of a closing agreement.

- (5) See IRM 8.13.1, Closing Agreements, for further in-depth technical guidance on preparing closing agreements.

4.70.14.2.1.3.2.18
(11-24-2023)

EO - Formal Stage - Obtaining Approval of the Agreement(s)

- (1) After the language is drafted and revisions are made, the examiner secures verbal agreement of the draft language from the taxpayer.

- (2) Before securing the taxpayer's signature on the final version of the closing agreement, the draft must be approved by:

- a. Group Manager
- b. Area Manager
- c. TEGEDC
- d. EOCAC
- e. Manager, EPR
- f. Director, EO:E

- (3) The examiner secure emails the cover sheet to the field group manager with the draft closing agreement. If the group manager agrees with the closing agreement he/she electronically signs the cover sheet and secure emails the documents to the next person in line based on the following table.

If the...	Agrees, then electronically signs the approval on Part C of the cover sheet and sends the document to:	Disagrees, then electronically signs the disapproval on Part C of the cover sheet and sends the document to:
Field Group Manager	Area Manager	Examiner and work with them to redo the closing agreement or to end the process.
Area Manager	TEGEDC	Field group manager with an explanation for the denial.
TEGEDC	EOCAC	Field group manager, and: <ul style="list-style-type: none"> Writes a memo to the group listing the legal deficiencies, suggesting possible alternatives. Sends a copy of the memo to the Area Manager.
EOCAC	Manager, EPR and briefs him/her	Examiner. Works with the field group manager and the examiner to resolve any discrepancies. If necessary, briefs Manager, EPR and Director, EO:E

If the...	Agrees, then electronically signs the approval on Part C of the cover sheet and sends the document to:	Disagrees, then electronically signs the disapproval on Part C of the cover sheet and sends the document to:
Manager, EPR	EOCAC (sends briefing notes to the Director, EO:E)	EOCAC, who: <ul style="list-style-type: none"> • Holds a briefing with the field group manager and the examiner to discuss the Manager, EPR's concerns. • Briefs Director, EO:E, if necessary.
Director, EO:E	EOCAC. The EOCAC returns the cover sheet and draft closing agreement to the field group manager.	EOCAC, who: <ul style="list-style-type: none"> • Holds a conference call with the field group manager and the examiner to discuss the denial. • Returns the documents to the field group manager.

Note: Examiner: If there is tax due, enclose a computation of the tax or an explanation as to how the tax liability was determined. Also explain if the agreement doesn't assess penalties and/or interest.

- (4) If the EOCAC has any concerns about the terms of the closing agreement, the EOCAC:
 1. Contacts the examiner and/or field group manager.
 2. Gives the reason(s).
 3. Suggests alternatives.
 4. Briefs the Director, EO:E as necessary.
- (5) If approval isn't granted at any stage, the examiner/manager determines if the concerns can be resolved. If so, the examiner starts the approval process again.
- (6) If the concern can't be resolved:
 - a. The EOCAC returns the cover sheet to the field group manager/examiner.

- b. The examiner considers pursuing the original planned course of action (revocation, adverse action, etc.).
- c. The taxpayer may pursue a Fast Track Settlement (if applicable).
- d. The taxpayer may submit a formal protest to Appeals.

4.70.14.2.1.3.2.19
(11-24-2023)

**EO - Final Approval
Signatures – Taxpayer**

- (1) Examiner responsibilities: When you receive the cover sheet approved by the Director, EO:E, print a copy of the closing agreement for execution.
- (2) Enter the organization's legal name and taxpayer identification number (TIN) on the signature page. Following this are the lines for the signature, title of an authorized officer or authorized representative and date signed.
- (3) Send Letter 1595, Closing Agreement Request for Taxpayer Signature Transmittal, and the closing agreement to the taxpayer for signature. Be sure to use selectable paragraphs as appropriate. The taxpayer or the representative must sign the closing agreements before the Director, EO:E signs.
- (4) If it is impracticable to obtain signatures from each party on all copies of the agreement, consult with TEGEDC.

Example: This may apply for:

- Large numbers of individuals/entities party to the agreement, such as a 40 member board of trustees of a university.
 - Substantial geographic separation of the parties, such as the officers being located in Alaska and Florida.
- (5) The taxpayer must sign and date the closing agreement.
 - (6) If an authorized representative signs an agreement, attach the executed power of attorney to the signed copy of the agreement.
 - (7) An agreement tendered with the taxpayer's signature is the taxpayer's offer to enter into a closing agreement.
 - (8) Once the taxpayer signs the closing agreement, don't make changes or additions to the agreement.
 - (9) Be aware that the taxpayer or representative may try to make changes to the agreement. If they do, consult the EOCAC. Changes may be permitted, however:
 - a. The taxpayer or representative should initial and date any additions or corrections made to the closing agreement.
 - b. If a new page is substituted, the taxpayer or representative must initial and date the bottom of the page.
 - c. If the taxpayer or representative makes any alterations or erasures to material provisions, determine whether the closing agreement is still appropriate.
 - d. If, based on the changes, the agreement is no longer appropriate, proceed with proposed revocation and/or other adverse action.
 - e. If a revised closing agreement is appropriate, redraft the closing agreement.

Note: The IRS will also need to initial and date any additions or corrections made to the closing agreement when the IRS countersigns the agreement. See IRM 8.13.1.3.17, Erasures and Alterations.

- (10) Solicit payment of the closing agreement liability. If more than one taxpayer is involved, solicit separate checks. This is to ensure we post the payments properly and prevent erroneous refunds.
- (11) The closing agreement isn't in effect until the Director, EO:E approves and signs the agreement.

4.70.14.2.1.3.2.20
(11-24-2023)
**EO - Examiner's
Responsibilities Upon
Receipt of Signed
Agreement from
Taxpayer**

- (1) When you receive the signed agreement from the taxpayer, verify the taxpayer took all required actions described in the closing agreement. The taxpayer must be in full compliance before executing the closing agreement.
- (2) Make sure the closing agreement is in proper order and follow these steps:
 - a. Sign and date the reverse of the last page of the closing agreement as the Receiving Officer. See Exhibit 4.70.14-15, EO Certification by Receiving And Reviewing Officials.
 - b. Process the remittance and any delinquent returns received. See IRM 4.70.13.9, Delinquent, Amended and Substitute for Return.
 - c. Complete Part D of the cover sheet.
 - d. Forward the Closing Agreement to the EOCAC for approval.
 - e. The EOCAC forwards the Closing Agreement to the Director, EO:E for approval.
 - f. Await the return of the signed Closing Agreement from the EOCAC to you as the examiner.
 - g. Scan the signed copy of the closing agreement and upload into RCCMS.
 - h. Close the case to Mandatory Review. If the case is closed using regular procedures, the case closing coordinator receives the case.
- (3) If the closing agreement contains errors, send a corrected closing agreement to the taxpayer using Letter 1595-B, Closing Agreement Return for Correction Transmittal.

4.70.14.2.1.3.2.21
(11-24-2023)
**EO - Approval and
Execution of Closing
Agreement**

- (1) Upon receipt of the scanned copy of the closing agreement, the EOCAC:
 - a. Makes sure the closing agreement is in proper order.
 - b. Electronically signs and dates the reverse of the last page of the closing agreements "Reviewing Officer". See Exhibit 4.70.14-15, EO Certification by Receiving And Reviewing Officials.
 - c. Completes Part D and E of the cover sheet.
 - d. Prepares a memo to the Director, EO:E. See Exhibit 4.70.14-16, Transmittal Memo to Director, EO Examinations.
 - e. Secure emails the memo, scanned copy of the agreement, cover sheet and briefing notes to the Manager, Mandatory Review.
- (2) Once the Manager, Mandatory Review, receives three copies of the signed agreement, he/she prepares the package to send to the Director, EO:E.
- (3) Upon receipt of the package, the Director, EO:E:
 - a. Signs and dates the three copies.
 - b. Initials and dates Part E of the cover sheet.
 - c. Returns the package to the examiner.

Exception: The Director, EO:E won't take the above actions if the case is a Joint Committee case.

- (4) If the case is a Joint Committee on Taxation (JTC) case, the EOCAC first submits the agreement as part of the original Joint Committee letter. The report or transmittal must contain a statement indicating tentative approval of the closing agreement by the Director, EO:E. If the Joint Committee approves the proposed closing, then the Director, EO:E signs the closing agreement.
- (5) If an issue is resolved early in the audit, such as Fast Track Settlement or Early Referral to Appeals, and the case is likely to require a report to the JCT, the examiner must request an advanced review of the closing agreement by the JCT before the case closing. If the examiner wishes to pursue this option, he/she prepares a cover memo and forwards a copy of the closing agreement and any relevant supporting documents to the EOCAC. The EOCAC coordinates with the JCT. After JCT review, the appropriate Service official signs the agreement.

4.70.14.2.1.3.2.22
(11-24-2023)
**EO - Post-Approval
Actions**

- (1) Manager, Mandatory Review Staff: forward the signed package to the reviewer.
- (2) Mandatory Review Staff:
 - a. Print the signed closing agreement. Attach a copy to the taxpayer's most recent
 - b. return in the file covering the year to which the agreement pertains.
 - c. Mail Letter 1595-D, Final Signed and Approved Closing Agreement Transmittal Letter, and copies to the taxpayer (and a copy to their representative if authorized to receive notices).
 - d. Attach a copy of Letter 1595-D, Final Signed and Approved Closing Agreement Transmittal Letter, to a copy of the Closing Agreement.

Note: Do not send an executed copy of the Certification by Receiving and Reviewing Officials, to the taxpayer (or representative).

 - e. Place a copy of the agreement (with letter attached), the report transmittal (or pertinent work papers if no transmittal,) and the report of examination in the file.
- (3) List instructions on the 3198 Special Handling checksheet in RCCMS, for disclosure on all returns in the case file subject to disclosure under IRC 6104(a) or IRC 6104(b) for the years to which the agreement pertains.

4.70.14.2.1.3.2.23
(11-24-2023)
EO - Closure of Case

- (1) Close the case using normal case closing procedures found in IRM 4.70.14.4, Closing A Case.
- (2) Examined closing agreements are closed with DC 12 (104) unless a higher priority disposal code applies.

4.70.14.2.1.3.2.24
(11-24-2023)
**EO - Walk-In Initiated
Closing Agreements**

- (1) Any taxpayer may initiate the closing agreement process.
- (2) Non-exam initiated closing agreement requests are called "walk-ins".
- (3) The EOCAC handles all walk-in requests and tracks the case on RCCMS, but doesn't establish the case on AIMS.
- (4) The Manager, Mandatory Review may appoint additional staff to help process walk-in closing agreements.

- (5) If a taxpayer contacts an examiner or group manager to verbally discuss a walk-in closing agreement, refer the taxpayer or representative to the EOCAC.
- (6) If a taxpayer submits a written walk-in closing agreement request to the field, send it using Form 3210, Document Transmittal, to the EOCAC at:
Internal Revenue Service
Attn: EOCAC
[Enter EO Mandatory Review Manager's Address]
- (7) If the field receives an electronic walk-in closing agreement request, secure email or e-fax it to the EOCAC.
- (8) The taxpayer is allowed to remain anonymous during any informal discussions.

4.70.14.2.1.3.2.25
(11-24-2023)

**EO - Informal Stage -
Obtaining Necessary
Information**

- (1) The taxpayer/power of attorney contacts the EOCAC to explain the situation and discuss possible remedies.
- (2) The EOCAC:
 - a. May request additional information during the informal discussion.
 - b. Explains how the closing agreement program works and if applicable, recommends other avenues to pursue such as filing delinquent returns.
- (3) If both parties agree that a closing agreement is viable, the taxpayer submits the following:
 - a. Explanations why a closing agreement is appropriate.
 - b. Description of the advantage(s) to us and how we will sustain no disadvantage(s) because of a closing agreement.
 - c. A detailed description of the method proposed for correcting the non-compliant activities.
 - d. Description of each step of the correction method. The description must include specific information to support the suggested correction method.
 - e. Explanation of how it will achieve future compliance.
 - f. Description of proposed method to calculate any tax, interest and penalty.
 - g. Explanation of the facts, legal analysis, and proposed terms.
- (4) When a written request is received, the EOCAC must:
 - a. Establish the case on RCCMS, leaving "Update AIMS" unchecked.
 - b. Generate Form 5464, Case Chronology Record, to track actions taken on the closing agreement.
 - c. Request any additional documentation needed from the taxpayer to fully develop the taxpayer's proposal. If needed, issue a Form 4564, Information Document Request, using the cover letter at Exhibit 4.70.14-20, Information Document Request Cover Letter (Walk-Ins Only).
 - d. Review the information and have a TEGEDC attorney assigned. If the EOCAC and TEGEDC believe a closing agreement is viable, ask the taxpayer/representative to disclose the taxpayer's EIN and obtain Form 2848, Power of Attorney and Declaration of Representative, if applicable.
 - e. Review the exempt organization's module information on IDRS to verify compliance and that the organization isn't currently under audit.
- (5) If the request for a closing agreement isn't viable, the EOCAC issues Letter 5465, Closing Agreement Case has been Closed - Exempt Organizations.

4.70.14.2.1.3.2.26
(11-24-2023)
**EO - Formal Stage -
Obtaining Approval to
Prepare Draft**

- (1) The Director, EO:E must approve all requests to begin working on a draft agreement. The EOCAC doesn't work on the terms of a draft closing agreement until after approval is received.
- (2) EOCAC:
 1. Complete Part A and B of the cover sheet (Exhibit 4.70.14-13, EO Closing Agreement Cover Sheet). Electronically sign Part B.
 2. Send the cover sheet and briefing notes (Exhibit 4.70.14-18, EO Briefing Report) to the Manager, EPR.
 3. Brief the Manager, EPR.
- (3) Manager, EPR signs either the "approved" or the "not approved" Part B section of the cover sheet and returns it to the EOCAC.
- (4) If Manager, EPR approves the cover sheet, the EOCAC sends it and the briefing notes to the Director, EO:E and briefs the Director, EO:E.
- (5) The Director, EO:E signs either the "approved" or "not approved" Part B section of the cover sheet and returns it to the EOCAC.
- (6) If the Director, EO:E approves the request, the agreement moves to the next stage.
- (7) If the Director, EO:E denies the request, the EOCAC notifies the taxpayer and issues Letter 5465.

4.70.14.2.1.3.2.27
(11-24-2023)
**EO - Formal Stage -
Preparing and
Facilitating the Draft**

- (1) EOCAC: Before you prepare the draft closing agreement:
 - Determine the tax consequences.
 - Discuss the general terms of the agreement with the taxpayer and attempt to work out any disputes.
 - Make sure the taxpayer understands that either party has the option to discontinue the process at any point if a resolution can't be reached.
 - Issue an IDR with the cover letter in Exhibit 4.70.14-20, Information Document Request Cover Letter (Walk-Ins Only), if you need additional information.
 - Determine any required actions the taxpayer needs to complete.

Example: The president and vice president engaged in several excess benefit transactions, jeopardizing the organization's exempt status. Revoking the organization's exempt status would severely hurt the local community. In lieu of revocation, we want the president and vice president to resign and the Board to create and maintain a conflict of interest policy to prevent future excess benefit transactions.

4.70.14.2.1.3.2.28
(11-24-2023)
**EO - Preparing a Draft
Agreement**

- (1) EOCAC: When the issues are resolved, instruct the taxpayer/representative to prepare the draft closing agreement.
- (2) The agreement should:
 - State each matter clearly as to reasonably lead to only one interpretation.
 - Be objective.
 - Be easily enforceable.

- (3) The agreement should not include subjective terms such as:
- “Substantial”
 - “Reasonable”
 - “Due diligence”
- (4) EOCAC: When you receive the draft from the taxpayer:
- Review the draft agreement.
 - Make revisions.
 - Send the draft to TEGEDC for review.
 - Work with TEGEDC on any necessary items.
 - Send the draft to the taxpayer/rep for any further revisions.
- (5) See IRM 4.70.14.2.1.3.2.8, EO – Closing Agreement Format, for instructions on closing agreement format.
- (6) See IRM 8.13.1, Closing Agreements, for further in depth technical guidance on preparing closing agreements.

4.70.14.2.1.3.2.29
(11-24-2023)

**EO - Formal Stage -
Obtaining Approval of
the Agreement(s)**

- (1) The EOCAC secures the taxpayer’s/rep’s verbal approval of the draft closing agreement language before proceeding with the executive approval process.
- (2) The draft agreement must be approved by the following before the taxpayer signs:
- a. TEGEDC
 - b. EOCAC
 - c. Manager, EPR
 - d. Director, EO:E
- (3) Secure email the draft agreement and cover sheet to Area Counsel. The documents may be electronically signed. Send these documents to the next person as indicated per the table below:

If the...	Agrees... Then electronically sign approval on Part C of the cover sheet and send the documents to...	Disagrees... Then electronically sign disapproval on Part C of the cover sheet and...

TEGEDC	EOCAC	<ul style="list-style-type: none"> • Write a memo to the EOCAC explaining the legal deficiencies, suggesting possible alternatives. • Return the cover sheet and the memo to the EOCAC. • The EOCAC attempts to resolve the deficiencies or, if necessary, issues Letter 5465 to deny the request.
EOCAC	Manager, EPR and briefs Manager, EPR.	Works to resolve any discrepancies. May brief Manager, EPR and Director EO:E. If unable to resolve, issues Letter 5465 to deny the request.
Manager, EPR	EOCAC. The EOCAC forwards cover sheet and briefing notes to the Director, EO:E. EOCAC briefs Director, EO:E.	EOCAC. EOCAC works to resolve any discrepancies. EOCAC may brief Director EO:E. If unable to resolve, EOCAC issues Letter 5465 to deny the request.
Director, EO:E	EOCAC	EOCAC. EOCAC works to resolve any discrepancies. If unable to resolve, the EOCAC issues Letter 5465 to deny the request

Note: The EOCAC should provide TEGEDC a tax computation or an explanation as to how the tax liability was determined and an explanation if the agreement doesn't assess penalties and/or interest.

4.70.14.2.1.3.2.30
(11-24-2023)

**EO - Final Approval
Signatures – Taxpayer**

- (1) After the EOAC receives the approved cover sheet from the Director, EO:E, they forward it to the examiner.
- (2) The examiner prints a copy of the final closing agreement for execution.
- (3) The examiner:
 - a. Enters the organization's legal name and TIN on the signature page. Following this are the lines for the signature, title of an authorized officer or representative and date.
 - b. Sends Letter 1595, Closing Agreement Request for Taxpayer Signature Transmittal, and the closing agreements to the taxpayer for signature. Be sure to use the selectable paragraphs as appropriate. The taxpayer must sign and date the closing agreement. The taxpayer or the representative must sign the closing agreements before the Director, EO:E signs.
 - c. Consults with TEGEDC if it's impracticable to obtain signatures from each party on the agreement.

Example: Large numbers of individuals/entities party to the agreement, (such as, a 40-member board of trustees) or substantial geographic separation of the parties (such as, officers located in Alaska and Florida).

- d. Solicits payment of the closing agreement liability. If more than one taxpayer is involved, solicit separate checks.

Note: Separate checks ensure we post the payments properly and prevent erroneous refunds.

- (4) The taxpayer signs and dates the closing agreement.
- (5) When an authorized representative signs an agreement, attach the executed power of attorney to the agreement.
- (6) An agreement tendered with the taxpayer's signature is the taxpayer's offer to enter into a closing agreement.
- (7) Once the taxpayer signs the closing agreement, don't make changes or additions to the agreement.
- (8) Be aware that the taxpayer or representative may try to make changes to the agreement. If the taxpayer/representative makes any alterations or erasures to material provisions, consult with the EOAC. Changes may be permitted; however, the examiner must ensure:
 - a. The closing agreement is still appropriate.
 - b. The taxpayer/representative initials and dates any additions or corrections made to the closing agreement.
 - c. The taxpayer/representative initials and dates the bottom of any substituted pages.
 - d. The taxpayer is notified that the closing agreement is no longer appropriate, if as a result of the taxpayer's/representative's changes, the agreement is no longer acceptable.

Note: The IRS will also need to initial and date any additions or corrections made to the closing agreement when the IRS countersigns the agreement. See IRM 8.13.1.3.17, Erasures and Alterations.

4.70.14.2.1.3.2.31
(11-24-2023)
**EO - Examiners
Responsibilities Upon
Receipt of Signed
Agreement from
Taxpayer**

- (9) The examiner redrafts the closing agreement if a revised closing agreement is appropriate.
- (1) When you receive the signed closing agreement from the taxpayer, verify the taxpayer took all actions required by the closing agreement. The taxpayer must be in full compliance before executing the closing agreement.
- (2) Make sure the closing agreement is in proper order and follow these steps:
 - a. Sign and date the reverse of the last page of the agreement as the "Receiving Officer". See Exhibit 4.70.14-15, EO Certification by Receiving And Reviewing Officials.
 - b. Process the remittance and any delinquent returns following IRM 4.70.13.9, Delinquent, Amended and Substitute for Return Procedures. If you receive a delinquent return, make a copy before processing original.
 - c. Complete Part D of the cover sheet.
 - d. Scan the signed closing agreement and upload into RCCMS.
 - e. Close the case to Mandatory Review using normal case closing procedures.
- (3) The closing agreement isn't in effect until the Director, EO:E approves and signs the agreement.
- (4) If the closing agreement contains errors, send a corrected closing agreement to the taxpayer using Letter 1595-B, Closing Agreement for Correction Transmittal.

4.70.14.2.1.3.2.32
(11-24-2023)
**EO - Approval and
Execution of Closing
Agreement**

- (1) When the Director EO:E receives the closing agreement package, he/she:
 1. Signs and dates the closing agreement.
 2. Initials and dates Part E of the cover sheet.
 3. Returns the package to the EOCAC and Manager, Mandatory Review.

Exception: The Director, EO:E doesn't take the above actions if the case is a Joint Committee case.

The EOCAC must first submit the agreement as part of the original Joint Committee letter. The report or transmittal must contain a statement indicating the Director's tentative approval of the closing agreement. If the Joint Committee approves the proposed closing agreement, then the Director, EO:E signs the closing agreement. See IRM 4.36.3 for more information on Joint Committee cases.

4.70.14.2.1.3.2.33
(11-24-2023)
**EO - Post-Approval
Actions**

- (1) Manager, Mandatory Review: forward the signed closing agreement package to the Mandatory Review Staff.
- (2) The reviewer will:
 1. Upload the signed agreement into RCCMS.
 2. Mail Letter 1595-D and the second copy to the taxpayer (and a copy to their representative if authorized to receive).

Note: Do not send an executed copy of the Certification by Receiving and Reviewing Officials, to the taxpayer (or representative).

4.70.14.2.1.3.2.34
(11-24-2023)

EO - Closure of Case

- (1) Cases requiring master file (MF) assessments should contain:
 - a. Closing agreement
 - b. Form 4549-A, Form 4883, or other report form
 - c. 3198-A Special Handling checksheet in RCCMS
 - d. Form 3870
- (2) EOCAC: secure email the items in IRM 4.70.14.2.1.3.2.10.5.1(1) above to your manager.
- (3) Manager: electronically sign Form 3870 and send the items in (1) above to EO Closing Unit for assessment.
- (4) EOCAC: monitor IDRS to verify the assessment is made correctly before closing the case on RCCMS. See IRM 4.70.14.5, Managerial Review and Case Closure.
- (5) See IRM 4.70.14.2.1.3.2.42, EO – NMF Tax Assessment on Walk-In Initiated, for non-master file (NMF) assessments.

4.70.14.2.1.3.2.35
(11-24-2023)

EO - Employment Tax Agreements (Walk-ins)

- (1) Employers enter into employment tax closing agreements to correct prior errors. These errors usually involve failure to report a payment as wages.
- (2) To ensure no harm to the government, the employer agrees to pay all the applicable employment taxes. This might include:
 - Employer share of FICA
 - Employee share of FICA
 - Employer share of Medicare
 - Employee share of Medicare
 - Federal income tax
 - FUTA
- (3) In general, the payment is subject to the interest-free provisions under IRC 6205(a)(1), 26 CFR 31.6205-1.
- (4) Penalties are determined on a case by case basis.
- (5) See Exhibit 4.70.14-21, EO Employment Tax Closing Agreement Outline, for a sample employment tax closing agreement.

4.70.14.2.1.3.2.36
(11-24-2023)

EO - Determining Amount of Wages

- (1) The types of liability an employer may pay on behalf of the employee includes:
 - Employee share of FICA
 - Employee share of Medicare
 - Federal income tax
 - State income tax
- (2) When an employer pays the liability on behalf of an employee, the payment is considered additional wages to the employee in the year paid and subject to FICA, FUTA, and income tax withholding. This creates a pyramiding effect. The employer avoids this by paying taxes on the gross-up wage amount.
- (3) The formula for determining the gross-up wage amount is $W=S/(1-R)$ (see Rev. Proc. 81-48).

W = Gross-up wage amount

S = Additional wage amount

R = Rate of employee tax

The "Rate of employee tax" is the tax rate for all taxes the employer paid on behalf of the employee.

Example: Employer didn't include \$20,000 year-end bonuses paid to its employees as wages.

Employer wants to correct this by entering into a closing agreement. Using these percentages, the total rate of employee taxes is 32.65%:

Federal income tax rate of 25%

FICA rate of 6.2% (employee share)

Medicare rate of 1.45% (employee share)

The gross up amount of wages is \$29,696 calculated as follows:

$\$20,000 / (1 - 32.65\%)$.

Multiply the gross up wage amount by the applicable employment tax rates to determine the amount of taxes owed.

4.70.14.2.1.3.2.37

(11-24-2023)

**EO - Issuance of W-2c,
Corrected Wage and Tax
Statement**

- (1) The employer must report the increased social security/Medicare wages on Form W-2c, Corrected Wage and Tax Statement, boxes 3 and 5. Doing so, results in reporting the correct amount of wages for social security and Medicare benefit purposes, but doesn't require employees to amend their Forms 1040, U.S. Individual Income Tax Return.

- (2) The employer must also:

1. Issue any necessary Forms W-2c to the Social Security Administration.
2. Provide a copy of Form W-2c to the affected employee.

Note: The employer can use the following language to send a copy of the Form W-2c to the employee: You are receiving a copy of Form W-2c, Corrected Wage and Tax Statement, that reflects a correction and increase in social security wages and Medicare wages reported to the Social Security Administration. The corrected wages are reported in Box 3 for social security wages and Box 5 for Medicare wages. The Form W-2c does not include any increase to your federal income tax wages reported in Box 1. The Form W-2c is for informational purposes only relating to social security and Medicare wages; it does not require any action by you. You are not required to file an amended Form 1040, U.S. Individual Income Tax Return, based on receipt of this Form W-2c.

4.70.14.2.1.3.2.38

(11-24-2023)

EO - Tax Assessments

- (1) IRS must assess the liability stemming from a closing agreement when closing a case. We don't delay assessment pending payment.

- (2) If the taxpayer hasn't filed a required tax return, secure the return and any payment due from the taxpayer.
- (3) If the taxpayer fails to file a delinquent tax return, but executes an agreement (i.e., signs Form 4549, Income Tax Examination Changes, Form 870, Waiver of Restrictions on Assessments and Collection of Deficiency in Tax and Acceptance of Overassessment, Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment, or other waiver/agreement form), the agreed report constitutes a return under IRC 6020(a).
- (4) The EO closing unit makes the assessment from an executed closing agreement.
- (5) Enter the amount of the closing agreement tax liability in the "Penalties" section of the Form 4549 or other report form.

4.70.14.2.1.3.2.39
(11-24-2023)

**EO - Taxable Return
Assessment - Master
File Returns**

- (1) Examiner: Enter the codes below into the RCCMS Closing Record, as follows:
 - a. Hold Code - enter 2.
 - b. Tax Liability Adjustment - enter TC 300 and the agreed amount of tax.
 - c. Tax Liability Adjustment - enter the appropriate penalty transaction code and the agreed amount of penalties. See Document 6209 Section 8A, Transaction Codes.
 - d. Disposal Code - enter 12.

Note: If the statute expiration is imminent, enter TC 300 with a .00 amount. Enter the amount of tax and/or penalties to be assessed as the Manual Assessment Amount.

- (2) Examiner: enter appropriate instructions on the 3198-A Special Handling checksheet in RCCMS as follows:

If...	Then enter "EO Closing Agreement"...
No assessment.	"with No Tax Assessment - close off AIMS."
An assessment is to be made on a taxable return and the statute isn't imminent.	"with Tax Assessment. Assess tax using entries in RCCMS closing record."
An assessment is to be made on a taxable return and the statute is imminent (60 days or less).	"with Tax Assessment. Statute expires (insert date). Prepare Form 2859."
An assessment is to be made on a non-taxable return and the statute isn't imminent.	"with Assessment on Non-Taxable Return. Assess using entries on RCCMS Closing Record."
An assessment is to be made on a non-taxable return and the statute is imminent (60 days or less).	"with Assessment on Non-Taxable Return. Statute expires (insert date). Prepare Form 2859."

An assessment is to be made on a NMF Return (i.e., Form 990-BL or Form 4720-A).

“with Tax Assessment on NMF Return - Prepare Form 5734”

Note: Include instructions to EO Closing Unit on 3198-A Special Handling checksheet in RCCMS to not assess penalties and/or interest if the closing agreement provides for non-assessment.

4.70.14.2.1.3.2.40
(11-24-2023)

EO - Taxable Return Assessments - Non-Master File (NMF) Returns

- (1) The EO closing unit uses Form 2859, Request for Quick or Prompt Assessment, to make manual assessments to NMF.
- (2) The EO closing unit manually processes closing agreements involving:
 - Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Person
 - Forms 4720-A

Note: Refer to IRM 21.7.7.4.11.3, for directions on processing Forms 4720-A.

4.70.14.2.1.3.2.41
(11-24-2023)

EO - Non-Taxable (Information) Return Assessments

- (1) A closing agreement can impose an assessment on an exempt organization information return (such as, Form 990) that is under audit and controlled on AIMS. In order to assess the liability and close the return off AIMS, the examiner enters the codes below into the RCCMS Closing Record as follows:
 1. Hold Code - enter 2.
 2. Tax Liability Adjustment - enter TC 300 and .00.
 3. Disposal Code - enter 12.
 4. Credit and Tax Computation Adjustment - enter Item Adjustment Number 689 and the amount.

Note: Item Adjustment Number 689: EO Closing Agreement Penalty Assessment.

- (2) The EO closing uses Form 2859 to:
 - Make a manual assessment when the statute is imminent.
 - Input TC 150 and .00 to allow the closing agreement assessment if there are problems with posting a return (TC 150 for .00).

4.70.14.2.1.3.2.42
(11-24-2023)

EO - NMF Tax Assessment on Walk-In Initiated

- (1) A walk-in closing agreement assessment is usually made on BMF. There are times however, when that can't be done, such as when the statute has expired or the closing agreement payment amount can't be attributed to a particular tax return.
- (2) EOCAC: if the assessment can't be made on BMF:
 - a. Prepare Form 5734, Non-Master File Assessment Voucher. See Exhibit 4.70.14-22, EO Instructions for Completing Form 5734, Non-Master File Assessment Voucher.
 - b. Prepare a NMF Closing Agreement Memorandum. See Exhibit 4.70.14-23, EO NMF Closing Agreement Memorandum.
 - c. Secure email Form 5734 and a copy of the executed agreement to Cincinnati Submission Processing.

- d. Follow up to ensure that the assessment and payments were made in NMF.

4.70.14.2.1.3.2.43
(11-24-2023)
**EO - Follow-Up
Procedures**

- (1) To ensure an organization stays compliant with the terms of the closing agreement, the EOCAC may monitor an organization's actions. An organization's failure to comply with the terms of an executed closing agreement could result in a follow-up audit.

4.70.14.2.1.3.2.44
(11-24-2023)
**EO - EOCAC
Responsibilities**

- (1) EOCAC:
 - 1. Identify cases for follow-up by electronically preparing and submitting Form 5666, TE/GE Referral Information Report. See Exhibit 4.70.14-24, Preparation of Form 5666, r specific instructions.
 - 2. Insert a copy of the executed closing agreement into the Form 5666 pdf document so that only one document (the package) is submitted to the EO Referrals Group.
 - 3. Include in the package a suggested date for follow-up. Depending on the facts and circumstances, recommend a date two to three years in the future to give the organization time to:

- o Operate under the terms of the agreement.
 - o File returns.

- 4. Secure email the package to your group manager for approval and secure his/her electronic signature.
- 5. Secure email the package to the EO Referrals Group after you receive it from your manager.

4.70.14.2.1.3.2.45
(11-24-2023)
**EO - Referrals
Responsibilities**

- (1) Manager, EO Referrals Group: holds the Form 5666 pdf package until the recommended audit date.
- (2) Classifier: at the appropriate date, classifies the request under the high priority referral process.
- (3) Classifier: sends the case to the TE/GE Classification function if the case is recommended for field assignment.

4.70.14.2.1.3.2.46
(11-24-2023)
**EO - EOCAC: Monitoring
Reports**

- (1) EOCAC: prepare a quarterly monitoring report detailing closing agreement activities. The monitoring report should include:
 - a. A breakdown by type of issue.
 - b. A description of how the closing agreement resolved the issues.
 - c. The number of closing agreements in-process.
 - d. The number of closing agreements closed for the quarter.
 - e. The number of closing agreement closed year-to-date.
 - f. A breakdown of total payment amounts finalized for all agreements in the quarter.
 - g. A breakdown of total payment amounts finalized for all agreements year-to-date.
- (2) Send the monitoring report to Manager, Mandatory Review. After approval, Manager, Mandatory Review sends the report to Manager, EPR. Manager, EPR approves the report and sends it to Director, EO:E. See Exhibit 4.70.14-

25, Closing Agreement Director's Office Quarterly Report (Page 1) through Exhibit 4.70.14-29, Closing Agreement Director's Office Quarterly Report (Page 5).

- (3) The due dates for the quarterly reports are:

Quarter	Due Date
October 1st - December 31st	January 15th
January 1st - March 31st	April 15th
April 1st - June 30th	July 15th
July 1st - September 30th	October 15th

4.70.14.2.1.3.3
(11-24-2023)

EO – Conversion of Returns

- (1) This IRM section describes the converted return process in EO Examinations. This manual provides the procedures, guidelines and criteria for soliciting converted tax returns, and establishing and enforcing substitute for converted tax returns. This manual addresses the conversion of primary returns Form 990 or Form 990-EZ to three specific tax returns:

- Form 1120, U.S. Corporation Income Tax Return.
- Form 1041, U.S. Income Tax Return for Estates and Trusts.
- Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation.

4.70.14.2.1.3.3.1
(11-24-2023)

EO – Proposed Adverse Status Change

- (1) For purposes of this manual, an “adverse status change” includes:

- A revocation.
- A disqualification of a status 36 organization.
- A reclassification from a public charity to a private foundation.

Note: All are subject to mandatory review with declaratory judgment rights.

- (2) If a proposed adverse status change appears likely during the examination:

- Establish the primary return for subsequent tax years, unless the facts and circumstances warrant not establishing those years.
- Document the facts and circumstances for not expanding the primary return examination to subsequent tax years.
- Prepare an administrative record.

Note: Consider examination cycle time, statute of limitations, and available resources. Also, consider the extent of voluntary correction of non-compliant activities in subsequent tax years.

- (3) If you expand the primary return examination to include subsequent tax years, you can focus that examination to determining:

- The extent the noncompliant activities continue or were voluntarily corrected.

- The potential converted tax liability (see IRM 4.70.14.2.1.3.3.7, EO – Converted Tax Return Secured for each affected tax year, or
 - Both.
- (4) Follow these additional instructions for preparing an adverse status change report and closing the case:
- See IRM 4.70.14.2.4.3.1, EO- Formal Examination Reports, for preparing a 30-day letter and RAR.
 - See IRM 4.70.14.2.1.3.3.22, EO – Revocations and Disqualifications – Alternative Positions, for including alternate positions in a revocation RAR if the revocation is not upheld.
 - See IRM 4.70.14.2.4.1, EP & EO – Declaratory judgement Cases and the Administrative Record, for preparing an administrative record when there are indications of a proposed adverse status change.
- (5) An “adverse status change” requires taking the steps necessary to protect the assessment of the tax resulting from the adverse status change for the affected tax years by either:
- Preparing Form 5666 information report.
 - Conversion of the primary return (see next paragraph).
- Note:** Form 5666 is not needed for a revoked private foundation nor for reclassifying a public charity to a private foundation.
- Note:** However, you can prepare Forms 5666 for other tax years, other returns and other persons.
- (6) A conversion is accomplished by either of the following actions:
- Securing a “converted tax return” accepted as filed (see IRM 4.70.14.2.1.3.3.7, EO – Converted Tax Return Secured).
 - Adjusting the secured converted tax return (deficiency procedures) (see IRM 4.70.14.2.1.3.3.8, EO – Converted Tax Return Secured – To Be Further Adjusted).
 - Establishing an SFR (deficiency procedures) (see IRM 4.70.14.2.1.3.3.11, EO – Substitute for Return – Converted Tax Returns).
- (7) To help you decide how to bring an organization current, review:
- Enforcement criteria in IRM 4.70.14.2.1.3.3.13, EO – EO Enforcement Criterial.
 - Guidance for determining income tax in IRM 4.70.14.2.1.3.3.15, EO – Determination of Tax Liability, and IRM 4.70.14.2.1.3.3.15(2).
- (8) “Converted tax returns” addressed in this manual include:
- Form 1120, for revocations and disqualifications, including revocation of a private foundation.
 - Form 1041, for revocations and disqualifications, including revocation of a private foundation.
 - Form 990-PF, for reclassifications from a public charity to a private foundation.

Note: If you are both reclassifying a public charity to a private foundation and revoking its tax-exempt status, the converted tax return will be Form 1120 or Form 1041. A separate report can be issued for proposed Chapter 42 excise taxes including IRC 4940 tax after Mandatory Review or Appeals sustains both actions.

4.70.14.2.1.3.3.2
(11-24-2023)

**EO - Proposed Adverse
Status Change – Agreed**

- (1) A proposed adverse status change is agreed when the organization signs Form 6018. Filing a converted tax return or paying the tax does not constitute an agreement.
- (2) Solicit converted tax returns for all affected tax years not barred for assessment. Affected tax years are the years the adverse status change is effective.
 - a. Generally, give the organization no more than 30 days to file their converted tax return with you.
 - b. You are not required to hold the primary return case file in group inventory waiting for converted tax returns.

Note: Refer to IRM 4.70.14.2.1.3.3.7, EO – Converted Tax Return Secured, for processing a secured converted tax return.

Note: If you are reclassifying the organization from a public charity to a private foundation, you can also solicit or prepare SFRs for Form 4720 or 4720-A for IRC 4941-4945 taxes if they are required.

- (3) Bring the organization current on its tax and filing obligations for the affected tax years.
- (4) Prepare the following closing documents for the primary return case file:
 - RCCMS Closing Record for closing the case
 - Form 2363-A for posting the adverse status change and change in filing requirement.
 - 3198-A Specail Handling checksheet in RCCMS for special handling of the primary return case file.
 - Form 5666 if you decided not to employ deficiency procedures.
 - See IRM 4.70.14.2.1.3.3, Conversion of Returns.

4.70.14.2.1.3.3.3
(11-24-2023)

**EO – RCCMS Closing
Record**

- (1) For agreed adverse status changes, you can use either one of the following disposal codes, unless a higher priority disposal applies:
 - DC 211, Agreed Revocation.
 - DC 501, Referrals to Other Operating Divisions (applicable for agreed disqualifications).
 - DC 203, Change in Foundation Status (applicable for reclassification of a public charity to a private foundation).
- (2) For unagreed adverse status changes, you can use either one of the following disposal codes, unless a higher priority disposal applies:
 - DC 601, Unagreed - Protest to Appeals.
 - DC 605, Unagreed Revocation Without Protest.
 - DC 604, Unagreed - Without Protest.
 - DC 602, Church Examination - Unagreed.

4.70.14.2.1.3.3.4
(11-24-2023)

**EO – Form 2363-A
Primary Case File**

(1) Prepare Form 2363-A for every adverse status change case file (primary return case file).

a. Form 2363–A – Revocation of IRC 501(c)(3) and Generating 1120 Filing Requirement:

- Field 1, Enter the EIN.
- Field 2, Enter the name control.
- Field 3, Place an X in the box next to 80.
- Field 4, Place an X in the box next to 016.
- Field 5, Type in definer codes A and B.
- Field 8, Type in the name of the entity.
- Field 17, Enter 03.
- Field 18, Type in the two-digit foundation status code. See BMFOLO or INOLES.
- Field 19, Type in the one-digit classification code. See BMFOLO or INOLES.
- Field 22, Type in 22 followed by the year and month of effective revocation date.
- Field 34, Type in the number 9 to remove Employment Code “W”.
- Field 35, Type in the two digits representing the ending month of the fiscal year.
- Field 38, Place a 01 in the 941 field and an 01 in the 940 field (if applicable.)
- Field 39, Type REVOKE C-3 AND SET 941 -940 AND 1120 FILING REQ.
- Field 40, Digitally sign and date or print the form, sign and date it.
- Field 41, Type in PREPARER/GROUP NUMBER.

b. Form 2363–A – Revocation of PF and Generating Form 1120 Filing Requirement:

- Field 1, Enter the EIN.
- Field 2, Enter the name control.
- Field 3, Place an X in the box next to 80.
- Field 4, Place an X in the box next to 016.
- Field 5, Type in definer codes A and B.
- Field 8, Type in the name of the entity.
- Field 17, Enter 03.
- Field 18, Type in the two-digit foundation status code. See BMFOLO or INOLES.
- Field 19, Type in the one-digit classification code. See BMFOLO or INOLES.
- Field 22, Type in 19 followed by the year and month of effective revocation date.
- Field 34, Type in the number 9 to include Form 940 as a filing requirement.
- Field 35, Type in the two digits representing the ending month of the fiscal year.
- Field 38, Place a 01 in the 941 field and an 01 in the 940 field (if applicable.)
- Field 39, Type REVOKE C-3 AND SET 941 -940 AND 1120 FILING REQ.
- Field 40, Digitally sign and date or print the form, sign and date it.
- Field 41, Type in PREPARER/GROUP NUMBER.

c. Form 2363–A – Revocation of IRC 501(c)(Other) and Generating Form 1120 Filing Requirement:

- Field 1, Enter the EIN.
- Field 2, Enter the name control.
- Field 3, Place an X in the box next to 80.
- Field 4, Place an X in the box next to 016.
- Field 5, Type in definer codes A and B.
- Field 8, Type in the name of the entity. • Field 17, Enter code section. i.e., 04,05, etc.
- Field 18, Type in the two-digit foundation status code. See BMFOLO or INOLES.
- Field 19, Type in the one-digit classification code. See BMFOLO or INOLES.
- Field 22, Type in 22 followed by the year and month of effective revocation date.
- Field 34, Type in the number 9 to include Form 940 as a filing requirement.
- Field 35, Type in the two digits representing the ending month of the fiscal year.
- Field 38, Place a 01 in the 941 field and an 01 in the 940 field (if applicable.)
- Field 39, Type REVOKE C-3 AND SET 941-940 AND 1120 FILING REQ.
- Field 40, Digitally sign and date or print the form, sign and date it.
- Field 41, Type in PREPARER/GROUP NUMBER

- (2) You can also refer to IRM 25.7.1 for more information.

4.70.14.2.1.3.3.5
(11-24-2023)

**EO – 3198-A Special
Handling checksheet in
RCCMS Primary Return
Case File**

- (1) Prepare a 3198-A Special Handling checksheet in RCCMS for every adverse status change case file (primary return case file).
- (2) Enter one or more of the following notations if applicable in “Other Instructions” or under the “Mandatory Review” check box before transferring the case file to Mandatory Review:
 - If there is a POA, check the box for “Send All Communications Per POA”.
 - *“Process Form 2363-A [and Form 5666] if Revocation [Disqualification or Reclassification to PF] is Sustained.”*
 - *“Process Converted Form [1120, 1041, or 990-PF] Only If Revocation [Disqualification or Reclassification to PF] is Sustained.”*
 - Under the Mandatory Review check box, *“Agreed Revocation [Disqualification or Reclassification to PF].”*
 - Under the Mandatory Review check box, *“Unagreed Revocation [Disqualification or Reclassification to PF] - With [Without] Protest.”*
 - Check the *“Forward to Appeals”* box.
 - Notate for Appeals: *“Notify EO Exams if TP Intends Not to Extend Statute - Converted Tax Return in Suspense Pending Final Revocation [Disqualification or Reclassification to PF].”*
 - For IRC 501(c)(3) revocations, enter *“Notify State Officials Under IRC 6104(c).”*
 - *“If Revocation [Disqualification] is Sustained, Transfer Payments Applied to 990-T Module for the Revoked [Disqualified] Tax Years to the Converted 1120 [1041 or 990-PF] Module - Then Reverse Tax Assessments on 990-T Tax Module.”*
 - Indicate the reason for not enforcing a converted tax return tax in Other Instructions. See IRM 4.70.14.2.1.3.3.14, EO – EO Enforcement Criteria.

4.70.14.2.1.3.3.6
(11-24-2023)

**EO – Form 5666 Primary
Return Case File**

- (1) See instructions at IRM Exhibit 4.5.1-12, Instructions for Preparing Form 5666, TE/GE Referral/Information Report (Reference: IRM 4.5.1.6.9.2.1)).
- (2) Use Form 5666 to recommend an examination of the organization that loses its exempt status for the affected tax years, and subsequent years if needed. Include the following information on Form 5666:
 - A statement that the organization’s exemption has been revoked (or disqualified).
 - The effective date of the revocation (or affected tax years for disqualifications).
 - The date the organization was incorporated or created.
 - A statement that, as a taxable entity, the organization should be reporting income tax, FUTA tax or excise taxes for which it may be liable.
 - A list of the converted tax returns secured by the examiner (include form number, MFT, tax period).
 - A statement whether the original converted tax returns were submitted for processing.
 - A statement that contributions to the organization are no longer deductible as charitable contributions (IRC 170(c) organizations only).

- List the names and TINs of insiders whose deductions for contributions should be disallowed.

Note: A contributor can't deduct contributions effective the date the revocation is announced in the IRB. However, certain contributors also can't deduct contributions prior to that date if the contributor:

- Had knowledge of the revocation of the ruling or determination letter,
- Was aware that such revocation was imminent or
- Was in part responsible for, or was aware of, the activities or deficiencies on the part of the organization which gave rise to the revocation.

See Treas. Reg. §1.509(a)-7(a) and Rev. Proc. 2011-33, 2011-1 C.B. 887, which supersedes and modifies Rev. Proc. 82-39, 1982-2 C.B. 759 and Rev. Proc. 2009-32, 2009-28 I.R.B. 142.

(3) Attach the following documents to Form 5666:

- A copy of the report of examination proposing a revocation (or disqualification).
- A copy of the of the annual EO information returns for the affected tax years; e.g., Form 990.
- A copy of any converted tax returns if filed.
- Any other pertinent information or documents.
- A copy of the 90-day FADL (attached by Mandatory Reviewer).

(4) For additional instructions on preparing Form 5666, see IRM Exhibit 4.5.1-12, Instructions for Preparing Form 5666, TE/GE Referral/Information Report (Reference: IRM 4.5.1.6.9.2(1)). You can also use Form 5346 if you prefer that form.

4.70.14.2.1.3.3.7
(11-24-2023)

**EO – Converted Tax
Return Secured**

(1) Receiving and securing a converted tax return normally follows:

- Your solicitation for the converted tax return in IRM 4.70.14.2.1.3.3.2, EO – Proposed Adverse Status Change – Agreed, or
- An unexpected filing of a converted tax return.

Caution: Secured converted tax returns will have an ASER based on the filing of Form 990 or 990-EZ.

(2) Follow delinquent return procedures in IRM 4.70.13.9.5, Delinquent Return Procedures (Processing Delinquent Returns Other than Employment Tax Returns), except that you will:

- Mark the top margin of the converted tax return in red, "Form 990 Converted to Form [1120 or 1041 or 990-PF] by TE/GE".
- Generally, don't impose delinquency penalties if the underlying primary return was filed in good faith.
- Not send the return to the FAST.

(3) Prepare a "converted tax return package," for the filed return which includes the following forms:

- Form 13133.
- 3198-A Special Handling checksheet in RCCMS.
- A copy of the payment instrument (check, cashiers check, etc.).
- A copy of Form 3244-A.
- A copy of the taxpayer's written penalty relief request.
- The original return.
- Double envelopes addressed to the FAST. See IRM 4.70.14.2.1.3.3.10, EO – The FAST. Don't seal the envelopes.

Note: The unsealed converted tax return package will ride with the primary return case file to Mandatory Review.

- (4) If you receive and secure a converted tax return after you closed your primary return case file to Mandatory Review, follow these instructions:

If...	Then...
The underlying adverse status change has not yet posted per INOLES	Follow the converted tax return procedure in IRM 4.70.14.2.1.3.3, EO – Conversion of Returns. Send the converted tax return package to Mandatory Review to associate with the primary return case file. Charge this time to 610-0999, or charge time to the converted tax return if you established it for adjustment.
The underlying adverse status change has posted per INOLES	Follow delinquent return procedures for the converted tax return, and send to the FAST for processing. Charge this time to 610-0999, or charge time to the converted tax return if you established it for adjustment.

- (5) If you secured the converted tax return after a TC 150 already posted an SFR, follow the instructions in IRM 4.70.14.2.1.3.3.11(8), EO - Substitute for Return - Coveted Tax Returns.
- (6) Decide whether to accept the converted tax return as filed, or whether you will prepare Form 5666 or adjust the return yourself. Consider:
- Information obtained during your examination of the primary return.
 - The primary return information for the years of examination and subsequent years.
 - Enforcement criteria in IRM 4.70.14.2.1.3.3.13, EO – EO Enforcement Criteria.
 - Guidance for determining income tax in IRM 4.70.14.2.1.3.3.15, EO – Determination of Tax Liability and IRM 4.70.14.2.1.3.3.15(2).
- (7) If the underlying adverse status change is sustained by Mandatory Review or Appeals, Mandatory Review will:

- Issue a 90-day FADL (Appeals is authorized to issue a FADL).
- Sign and forward Form 2363-A (located in the primary return case file) to the FAST for processing.
- Forward Form 5666 to the EO Referrals group via the EO Closing Unit, after the 90 days plus 15 days expires.
- Forward the original converted tax return package to the FAST for processing.
- If applicable, send converted tax return case file in status 38 suspense back to you to adjust the return.

(8) If the underlying adverse status change is not sustained by Mandatory Review or Appeals, Mandatory Review will:

- Send the converted tax return package back to you. The return is unpostable.
- Destroy Form 2363-A and Form 5666.

Note: Send the converted tax return back to the organization with a cover letter informing them that the converted tax return is unpostable due to the continuation of tax-exempt status or public charity status. Amounts paid with the converted tax return will either be refunded or credited to other accounts. Contact the FAST via email to ensure that the amounts paid with the secured converted tax return are refunded or applied to other tax accounts.

See IRM 4.70.14.2.1.3.3.10, EO - The Fast.

4.70.14.2.1.3.3.8
(11-24-2023)

**EO - Converted Tax
Return Secured - To Be
Further Adjusted**

(1) This course of action follows your evaluation in IRM 4.70.14.2.1.3.3.7(6), EO – Converted Tax Return Secured, where you determine enforcement is needed by adjusting a secured converted tax return.

Caution: Secured converted tax returns will have an ASER based on the filing of Form 990 or 990-EZ.

(2) If you know the return is substantially incorrect or incomplete, give the organization an opportunity to submit a correct return if time permits for purposes of the ASER.

Note: If the organization insists on filing the incorrect return, collect the return subject to examination adjustment. If you believe the return to be fraudulent, consult with the Fraud Technical Advisor.

(3) Establish the secured converted tax return for adjustment on:

- AIMS NMF if the underlying adverse status change is not posted to the EOBFM (see IRM 4.70.14.2.1.3.2.40, EO – Taxable Return Assessments – Non-Master File (NMF) Returns).
- AIMS MF if the underlying adverse status change is posted to the EOBFM (see IRM 4.70.14.2.1.3.2.39, EO – Taxable Return Assessments – Master File Returns).

(4) The NMF case file will:

- Have its own Forms 3198-A, 5464, 5773 or their RCCMS equivalents, working return assembly, and workpapers. See IRM 4.70.14.2.1.3.3.9,

EO – 3198-A – Special Handling checksheet in RCCMS – Secured Converted Return To Be Adjusted Case File.

- Include a copy of the primary return marked “Copy - Do Not Process”.
- Follow the RCCMS naming convention.
- Include workpapers to support amounts per examination that are different from those reported on the primary return.
- Ride with the primary return case file to Mandatory Review to be placed in suspense Status 38 until the underlying proposed adverse status change is sustained.
- Have statute dates based on the filing of the underlying primary return of record.

Note: Mandatory Review will only hold the NMF converted tax return case file in Status 38 suspense until there are 270 days remaining on the ASED. Thereafter the reviewer will send the converted income tax case back to the examiner to initiate statute controls while the adverse status change remains unresolved.

Don't suspend the NMF case file with AIMS Status Code 39. During the short statute period, you and your manager will decide when to initiate deficiency procedures on NMF in order to protect the statute of limitations for assessment, even if the revocation is not final. Consult with TEGEDC regarding the issuance of a statutory notice of deficiency if the ASED is less than 270 days.

(5) You can obtain NMF transcripts as follows:

- Send an encrypted email to the Submission Processing Center Non-Master File (NMF) in Kansas City, at **W&I KCSPC Non-Master File Team*.
- Subject line: NMF Transcript Request.
- The body of the email should contain: “Please provide a NMF transcript for XYZ Corporation; EIN 12-3456789; MFT 66; Tax period 201111.”
- Call (816) 499-5445 to follow-up on your request.

(6) If the underlying adverse status change is sustained by Mandatory Review or Appeals:

- Mandatory Review will forward the converted tax return package to the FAST for processing.
- Mandatory Review will also send the NMF case file back to you to initiate deficiency procedures.
- Initiate deficiency procedures:

Adjusting the Secured Converted Tax Return:	
Form 1120 or Form 1041 - Income Tax	Form 990-PF - IRC 4940 Tax
Based on Revocation or Disqualification	Based on Reclassification to a Private Foundation

<ul style="list-style-type: none"> • Letter 950 • Form 870 • Form 4549-A • Form 886-A • Pub 3498 • Pub 594 <p>Reference: IRM 4.70.14.2.1.3.1.15, EO - Termination of Exempt Status</p>	<ul style="list-style-type: none"> • Letter 3614 • Form 4621 • Form 4883 • Form 870-E • Form 886-A • Pub 3498 • Pub 594
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- d. After the underlying adverse status change posts to the EOBF, establish the converted tax return on AIMS MF, Push Code 020. See IRM 4.70.14.2.1.3.2.39, EO – Taxable Returns Assessment – Master File Returns.
 - e. Delete the duplicate NMF account. Follow deletion instructions in IRM 4.70.14.4.9.1, Deleting AIMS Accounts.
- (7) If the underlying adverse status change is not sustained by Mandatory Review or Appeals:
1. Follow the workflow in IRM 4.70.14.2.1.3.3.7(8), EO - Converted Tax Returns Secured, with respect to disposition of the secured converted tax return package.
 2. Mandatory review will also send the NMF converted tax return case file back to you.
 3. Delete the NMF examination account. Follow deletion instructions in IRM 4.70.14.4.9.1, Deleting AIMS Accounts.
- (8) After initiating deficiency procedures in subparagraph (6)c, close the converted tax return case file as follows:

Closing the Converted Tax Return, as Adjusted		
#	If the organization...	Then...
1.	Agrees	<ol style="list-style-type: none"> 1. Stamp the received date on Form 870 or Form 870-E. 2. Issue Letter 2511, with copy of signed waiver form. 3. Prepare RCCMS Closing Record for converted tax return, DC 102. 4. Complete ARDI Code, on RCCMS Closing Record. 5. Close tax case to the EO Closing Unit <p>Reference IRM 4.70.14.2.1.3.1.15, EO – Termination of Exempt Status and IRM 4.70.14.2.1.4, Employment Tax Agreed Case Processing.</p>
2.	Fails to reply	<ol style="list-style-type: none"> 1. Prepare RCCMS Closing Record for converted tax return, DC 604. 2. Close tax case to Mandatory Review to issue the SNOD.
3.	Disagrees - Provides NO new information, or provides additional information that does not change your report	<ol style="list-style-type: none"> 1. Issue Letter 5918 rebuttal to organization. 2. Prepare RCCMS Closing Record, for converted tax return, DC 601 or DC 604. 3. Close tax case to Mandatory Review to issue the SNOD.

Closing the Converted Tax Return, as Adjusted		
#	If the organization...	Then...
4.	Disagrees - Provides additional information showing no tax adjustment was necessary	<ol style="list-style-type: none"> 1. Issue Letter 2656. 2. Prepare RCCMS Closing Record, for converted tax return, DC 107. 3. Close tax case to the EO Closing Unit. Reference Exhibit 4.70.14-1, Closing Letters for No Change Cases.
5.	Disagrees - Provides additional information that decreases the tax	<ol style="list-style-type: none"> 1. Issue a corrected RAR only. Don't issue a new 30-day letter. 2. Issue Letter 5918 rebuttal to organization over the part of the deficiency that remains unchanged. 3. Prepare RCCMS Closing Record for converted tax return, DC 07 (601) or DC 10 (604). 4. Close tax case to Mandatory Review to issue the SNOD. Reference IRM 4.70.14.2.1.3.1.4, EO – Form 870 and Form 870-E.

Closing the Converted Tax Return, as Adjusted		
#	If the organization...	Then...
6.	Disagrees - Provides additional information that increases the tax	<ol style="list-style-type: none"> 1. Issue a new 30-day letter, Letter 950 or Letter 3614 and a corrected RAR. 2. Suspend tax case for 30 days pending reply to new proposal. 3. Refer back to this table after organization responds. <p>Reference IRM 4.70.14.2.1.3.1.4, EO – Form 870 and Form 870-E and IRM 4.70.14.2.1.4, Employment Tax Agreed Case Processing.</p>

- (9) With respect to an adjustment to a Form 990-PF converted tax return in subparagraph (6)c, the adjustment need not be limited to IRC 4940 tax, which is subject to deficiency procedures. You can also adjust non-tax items, such as the reported distributable amount, qualifying distributions, or undistributed income. If adjusting non-tax items is the only adjustment, the adjustment is subject to a nonstandard 30-day letter, with protest to Appeals, but not subject to issuance of a final 90-day letter by Mandatory Review. Consult with **TEGE EO Review Staff* on a nonstandard 30-day letter. Any IRC 4942 tax resulting from non-tax adjustments is reported separately on Form 4720, which is subject to full deficiency procedures.

4.70.14.2.1.3.3.9
(11-24-2023)

**EO - 3198-A Special
Handling checksheet in
RCCMS - Secured
Converted Tax Return To
Be Adjusted Case File**

- (1) Prepare a 3198-A Special Handling checksheet in RCCMS for every Converted Tax Return case file. Enter one or more of the following notations if applicable in “Other Instructions” or under the “Mandatory Review” check box on 3198-A Special Handling checksheet before transferring the case file to Mandatory Review:
- Check the box for “Send All Communications Per POA”.
 - Check the box for “Mandatory Review” and enter “Unagreed Income Tax Deficiency”.
 - Check the box for “Forward to Appeals.”
 - At Special Features: Indicate “Place Converted Tax Return Case In Mandatory Review Suspense (Status 38) Pending Outcome of Revocation [Disqualification or Reclassification to PF]”.
 - Indicate “Assess Tax Per Form 4549 [Form 4883] – Exempt Status Revoked [Disqualified] or [501 (c)(3) Reclassified as a PF]”.

- At the “Earliest Statute Date” section, The Statute Starts With Filing of Form 990 [990-EZ, 990-PF, 990-BL] on [Date] and Expires [ASED].
- Check the box for “Forward to Appeals”.
- “Transfer Payments Applied to 990-T Module for the Revoked [Disqualified] Tax Years to the Converted 1120 [1041] Module - Then Reverse Tax Assessments on 990-T Tax Module.”

4.70.14.2.1.3.3.10
(11-24-2023)

EO - The FAST

- (1) The FAST envelopes will contain the secured converted tax return package to be processed by the FAST if the underlying proposed adverse status change is sustained by Mandatory Review or Appeals.
- (2) For security reasons, prepare two envelopes:
 1. First envelope addressed to the FAST, to enclose the contents above.
 2. Second envelope addressed to the FAST, to enclose first envelope and its contents.
- (3) Do NOT seal the envelopes. Both envelopes should be addressed to the FAST:

FAST U.S. Postal Service Address and UPS Address	Tax Exempt & Government Entities - FAST Attention: FAST M/S 1114 1973 Rulon White Blvd. Ogden, UT 84201-0252
FAST Contact Numbers and Email Address:	
FAST e-Fax Number	877-814-2236
FAST email address	*TEGE FAST

- (4) The secured converted tax return package and the FAST envelopes ride with EO primary return case file folder until the underlying adverse status change is determined.

4.70.14.2.1.3.3.11
(11-24-2023)

**EO - Substitute for
Return - Converted Tax
Returns**

- (1) This course of action is followed after an “adverse status change” is proposed, and where you determine an SFCR is required, because a converted tax return has not or cannot be secured.

Caution: The SFCR will have an ASEd based on the filing of Form 990 or 990-EZ.

- (2) The decision to initiate deficiency procedures requires managerial approval.
- (3) Establish the SFCR on NMF pending finality of adverse status change. Managerial approval is required. You establish a converted tax return on NMF because you recognize the need to protect the converted tax, but your underlying proposed adverse status change is not yet final and posted. While the adverse status change is not final, generally don't submit a 30-day letter and RAR to the organization, and don't solicit an agreement to a tax adjustment until you know the adverse status change is sustained by Mandatory Review (or Appeals if protested). To establish the Form 1120 on NMF (Pending Finality of Adverse Status Change) in RCCMS:

- Validate For: Establish.
- Update AIMS: Unchecked.
- Type: Form 1120.
- Activity Codes: 338, 203 through 231 [For Form 1041, 495 or 496].
- Statute date: The statute date is assumed to be the same as the statute date for the EO information return. If the organization is a non-filer, it is the date the tax return will be postmarked or filed with the examiner.
- Master File type: NMF – Non-Master File.
- MFT Code: 32 (Form 1120 NMF), or 21 (Form 1041 NMF).
- Source Code: 44.
- Status Code: 10.
- Reason for Request: Protective AIMS establishment for Conversion of Form 990 to Form 1120 ; Case suspended while revocation is unagreed.
- Save and Close.
- Select Request Establishment from the Actions menu.

Note: The activity will be established on RCCMS without the AIMS box checked. The AIMS NMF establishment must be done manually on Form 5588. See instructions for Form 5588 at IRM Exhibit 4.5.1-11 and IRM Exhibit 4.5.1-12. Leave the SBC field blank for manual establishments on Form 5588. See IRM Exhibit 4.5.1-8 and IRM Exhibit 4.5.1-10.

(4) The NMF case file will:

- Have its own 3198-A Special Handling checksheet in RCCMS, Form 5773 or their RCCMS equivalents, working return assembly, and supporting workpapers.
- Include a copy of the primary return marked “Copy - Do Not Process”.
- If actual amounts per examination are different from those reported on the primary return, include workpapers to support such amounts.
- Follow the RCCMS naming convention.
- Ride with the primary return case file to Mandatory Review to be placed in suspense Status 38 until the underlying proposed adverse status is sustained.
- Contain a substitute for converted tax return with a statute based on the filing of the underlying primary return of record.

Note: Mandatory Review will only hold the NMF converted tax return case file in Status 38 suspense until there are 270 days remaining on the ASED.

Thereafter the reviewer will send the income tax case back to the examiner to initiate statute controls while the adverse status change remains unresolved. Don't suspend the NMF case file with AIMS Status Code 39. During the short statute period, you and your manager will decide when to initiate deficiency procedures on NMF in order to protect the statute of limitations for assessment, even if the revocation is not final. Consult with TEGEDC regarding the issuance of a statutory notice of deficiency if the ASED is less than 270 days.

(5) You can obtain NMF transcripts as follows:

- Send an encrypted email to the Submission Processing Center Non-Master File (NMF) in Kansas City, at **W&I KCSPC Non-Master File Team*.
 - Subject line: NMF Transcript Request.
 - The body of the email should contain: "Please provide a NMF transcript for XYZ Corporation; EIN 12-3456789; MFT 66; Tax period 201111."
 - Call (816) 499-5445 to follow-up on your request.
- (6) If the underlying adverse status change is sustained by Mandatory Review or Appeals:
1. Mandatory Review or Appeals will issue a 90-day FADL.
 2. Mandatory Review will sign and forward Form 2363-A (located in the primary return case file) to the FAST for processing.
 3. Mandatory Review will forward Form 5666 to the EO Referrals group via the EO Closing Unit, after the 90 days plus 15 days expires.
 4. Mandatory Review will send the NMF case file back to you to initiate deficiency procedures.
 5. Initiate deficiency procedures:

Converted Tax Return SFCR Adjustment:	
Converted Tax Return SFCR Adjustment: Form 1120 or Form 1041 - Income Tax	Form 990-PF - IRC 4940 Tax
Based on Revocation or Disqualification	Based on Reclassification to a Private Foundation
<ul style="list-style-type: none"> • Letter 950 • Form 870 (only if using Form 4549-A) • Form 4549-A • Form 886-A • Pub 3498 • Pub 594 	<ul style="list-style-type: none"> • Letter 3614 • Form 870-E • Form 4621 • Form 4883 • Form 886-A • Pub 3498 • Pub 594

6. You establish a converted tax return on AIMS MF only after the underlying proposed adverse status change is sustained and posted. You can proceed to submit a 30-day letter and RAR to the organization, and solicit an agreement to a tax deficiency. After the underlying adverse status change posts to the EOBFM, follow IRM 4.70.13.9.8, Substitute for Returns Procedures, for establishing SFRs on AIMS MF, Push Code 036.
7. Establish an examination record on AIMS Master File using RCCMS. If you must establish the examination record manually using Form 5597, follow the instructions below. The items in parenthesis denote corresponding block numbers on Form 5597.
 - (P7-8): Source Code 44 for SFCRs.
 - (P10-12): Enter Primary Business Code. 401 Northeast. 403 Great Lakes/FIU. 404 Gulf Coast. 406 Pacific Coast. 410 EOCA.
 - (P20-23): Enter Employee Group Code.
 - (P25-26): Enter MFT 02 for Form 1120; MFT 05, For Form 1041, MFT 44 for Form 990-PF.
 - (P28-29): Enter Status Code 12.
 - (P31): Return Not Requested should be "3".

- (P33-36): Enter appropriate Project Code.
- (P41-43): Enter Push Code 036, for a SFCR establishment; 020 for a secured delinquent return.
- (P45-46): Enter Statute Alpha Code, if appropriate.
- (P48): Enter "1" as the flow-through indicator.
- (Line 2, P1-12; P14-17; blocks A and B): Enter Entity information.
- (P19-24): Enter Tax Periods.
- (P26-28): Enter Activity Codes: Form 1120 Activity Codes are 338, 203 through 231; Form 1041 Activity Codes are 495 or 496.
- (Blocks C, D and E): Self Explanatory.

Note: See also IRM 4.5.1, TE/GE AIMS Processing, Leave the SBC field blank for manual establishments on Form 5597.

You can enter the SBC for AIMS MF establishments made on RCCMS. See IRM Exhibit 4.5.1-8, Instructions for Preparing Form 5597, Page 1, TE/GE IMF/BMF/EPMF Request (Reference IRM 4.5.1.6.8.1(1) and IRM Exhibit 4.5.1-10.8, Instructions for Preparing Form 5588, Page 1, TE/GE NMF Request (Reference: IRM 4.5.1.6.8.4(1)).

8. Follow SFR Package procedures in IRM 4.70.13.9.8.9., EO Delinquent and SFR Forms 4720 and 4720-A.
 9. If an AIMS NMF examination record was previously established for the same returns, you must delete the duplicate NMF examination record after fully establishing the AIMS MF examination record. Follow deletion instructions in IRM 4.70.14.4.9.1, Deleting AIMS Accounts.
- (7) After initiating deficiency procedures in IRM 4.70.14.2.1.3.3.11(6), close the SFCR as follows:

Closing the Converted Tax Return (SFCR)		
#	If the organization...	Then...
1.	Agrees	<ol style="list-style-type: none"> 1. Stamp the received date on Form 4549 (or Form 870-E). 2. Issue Letter 2511. 3. Prepare RCCMS Closing Record for the SFCR, 102. 4. Complete ARDI Code, on RCCMS Closing Record. 5. Close tax case to the EO Closing Unit.

Closing the Converted Tax Return (SFCR)		
#	If the organization...	Then...
2.	Fails to reply	<ol style="list-style-type: none"> 1. Prepare RCCMS Closing Record for the SFCR, DC 604. 2. Close tax case to Mandatory Review to issue the SNOD.
3.	Disagrees - Provides NO new information, or provides additional information that does not change your report	<ol style="list-style-type: none"> 1. Issue Letter 5918, Rebuttal to Organization. 2. Prepare RCCMS Closing Record, for the SFCR, DC 601 or DC 604. 3. Close tax case to Mandatory Review to issue the SNOD.
4.	Disagrees -Provides additional information showing no tax adjustment was necessary	<ol style="list-style-type: none"> 1. Issue Letter 2656. 2. Prepare RCCMS Closing Record, for the SFCR, DC 107. 3. Close tax case to the EO Closing Unit.

Closing the Converted Tax Return (SFCR)		
#	If the organization...	Then...
5.	Disagrees - Provides additional information that decreases the tax	<ol style="list-style-type: none"> 1. Issue a corrected RAR only. Don't issue a new 30-day letter. 2. Issue Letter 5918 Rebuttal to Organization, over the part of the deficiency that remains unchanged. 3. Prepare RCCMS Closing Record for the SFCR, DC 601 or DC 604. 4. Close tax case to Mandatory Review to issue the SNOD.
6.	Disagrees - Provides additional information that increases the tax	<ol style="list-style-type: none"> 1. Issue a new 30-day letter Letter 950 (or Letter 3614) and a corrected RAR. 2. Suspend tax case for 30 days pending reply to new proposal. 3. Refer back to this table after organization responds.

- (8) After initiating deficiency procedures in IRM 4.70.14.2.1.3.3.11(6), close the SFCR as follows if you secure a converted tax return:

Closing the Converted Tax Return (SFCR)Organization Responds to Your Converted Tax Proposal by <u>Filing a Converted Tax Return</u>		
#	If...	Then...
7.	You accept the tax return as filed	<p>The Matter of Processing the Converted Tax Return:</p> <ol style="list-style-type: none"> 1. Follow delin- quent return procedures. 2. Submit return to the FAST after the adverse status change posts to the EOBMF. <p>The Matter of Your Adjustment to the Tax Return:</p> <ol style="list-style-type: none"> 1. Issue Letter 5331. 2. Prepare RCCMS Closing Record for converted tax return, DC 208. 3. Enter ARDI Code on RCCMS Closing Record. 4. Enter the manual assessment amount and de- linquent return code on the RCCMS Closing Record. 5. Enter Delinquent Return Amount, on RCCMS Closing Record. 6. Close tax case to the EO Closing Unit.

Closing the Converted Tax Return (SFCR) Organization Responds to Your Converted Tax Proposal by <u>Filing a Converted Tax Return</u>		
#	If...	Then...
8.	You issue a new 30-day Letter 950 (or Letter 3614) & report to correct the tax return, but the organization then replies with additional information showing the correction was unnecessary	<p>The Matter of Processing the Converted Tax Return:</p> <ol style="list-style-type: none"> 1. Follow delinquent return procedures. 2. Submit return to the FAST after the adverse status change posts to the EOBMF. <p>The Matter of Your Adjustment to the Tax Return:</p> <ol style="list-style-type: none"> 1. Issue Letter 2656. 2. Prepare RCCMS Closing Record for converted tax return, DC 208. 3. Enter ARDI Code on RCCMS Closing Record. 4. Enter the manual assessment amount and delinquent return code on the RCCMS Closing Record. 5. Enter Delinquent Return Amount on the RCCMS Closing Record. 6. Close tax case to the EO Closing Unit.

**Closing the
Converted Tax
Return
(SFCR)Organization
Responds to Your
Converted Tax
Proposal by Filing a
Converted Tax
Return**

#	If...	Then...
9.	You issue a new 30-day Letter 950 (or Letter 3614) & report to correct the tax return, and the organization agrees with your correction.	<p>The Matter of Processing the Converted Tax Return:</p> <ol style="list-style-type: none"> 1. Follow delinquent return procedures for converted tax return. 2. Submit return to the FAST after the adverse status change posts to the EOBF. <p>The Matter of Your Adjustment to the Tax Return:</p> <ol style="list-style-type: none"> 1. Stamp the received date on Form 4549 (or Form 870-E). 2. Issue Letter 2511. 3. Prepare the RCCMS Closing Record for converted tax return, DC 102. 4. Enter ARDI Code on the RCCMS Closing Record. 5. Close tax case to the EO Closing Unit.

Closing the Converted Tax Return (SFCR) Organization Responds to Your Converted Tax Proposal by <u>Filing a Converted Tax Return</u>		
#	If...	Then...
10.	You issue a new 30-day Letter 950 (or Letter 3614) & report to correct the tax return, and the organization fails to reply.	<p>The Matter of Processing the Converted Tax Return:</p> <ol style="list-style-type: none"> 1. Follow delinquent return procedures for converted tax return. 2. Submit return to the FAST after the adverse status change posts to EOBF. <p>The Matter of Your Adjustment to the Tax Return:</p> <ol style="list-style-type: none"> 1. Prepare the RCCMS Closing Record for converted tax return, DC 604. 2. Close tax case to Mandatory Review to issue the SNOD.

**Closing the
Converted Tax
Return
(SFCR)Organization
Responds to Your
Converted Tax
Proposal by Filing a
Converted Tax
Return**

#	If...	Then...
11.	You issue a new 30-day Letter 950 (or Letter 3614) & report to correct the tax return, and the organization disagrees with protest	<p>The Matter of Processing the Converted Tax Return:</p> <ol style="list-style-type: none"> 1. Follow delinquent return procedures for the converted tax return. 2. Submit the return to the FAST after the adverse status change posts to the EOBF. <p>The Matter of Your Adjustment to the Tax Return:</p> <ol style="list-style-type: none"> 1. Issue Letter 5918, Rebuttal to Organization. 2. Prepare the RCCMS Closing Record for converted tax return, DC 601. 3. Close tax case to Mandatory Review to send to Appeals.

(9) If the underlying adverse status change is not sustained by Mandatory Review or Appeals:

1. Mandatory review will also send the NMF SFCR converted tax return case file back to you for deletion.
2. Mandatory Review will destroy Form 2363-A and Form 5666 (located in the primary return case file).
3. Delete the NMF examination account. Follow deletion instructions in IRM 4.70.14.4.9.1, Deleting AIMS Accounts.

(10) With respect to an SFR Form 990-PF converted tax return in subparagraph (6)e, the adjustment need not be limited to IRC 4940 tax, which is subject to

deficiency procedures. You can also adjust non-tax items, such as the reported distributable amount, qualifying distributions, or undistributed income. If adjusting non-tax items is the only adjustment in the SFR, the adjustment is subject to a nonstandard 30-day letter, with protest to Appeals, but not subject to issuance of a final 90-day letter by Mandatory Review. Consult with **TEGE EO Review Staff* on a nonstandard 30-day letter. Any IRC 4942 tax resulting from non-tax adjustments is itself reported separately on Form 4720, which is subject to full deficiency procedures.

4.70.14.2.1.3.3.12
(11-24-2023)

**EO - 3198-A Special
Handling checksheet -
SFCR Case File**

- (1) Prepare a 3198-A Special Handling checksheet in RCCMS for every SFCR case file. Enter one or more of the following notations if applicable in "Other Instructions" or under the "Mandatory Review" check box before closing the case to either Mandatory Review or the EO Closing Unit:
 - Check the box for "*Send All Communications Per POA.*"
 - Check the box for "*Mandatory Review*" box and enter "*Unagreed Income Tax Deficiency.*"
 - Check the box for "*Forward to Appeals.*"
 - At Special Features: Indicate "*Place Converted Tax Return Case In Mandatory Review Suspense (Status 38) Pending Outcome of Revocation [Disqualification or Reclassification to PF].*"
 - Check the box "*SFR - Substitute for Return to be Processed.*"
 - Indicate "*Assess Tax Per Form 4549 [Form 4883] – Exempt Status Revoked [Disqualified] or [IRC 501(c)(3) Reclassified as a PF].*"
 - At the "*Earliest Statute Date*" section, "*The Statute Starts With Filing of Form 990 [990-EZ, 990-PF, 990-BL] on [Date] and Expires [ASED].*"
 - Check the box for "*Forward to Appeals.*"
 - *Transfer Payments Applied to 990-T Module for the Revoked [Disqualified] Tax Years to the Converted 1120 [1041] Module - Then Reverse Tax Assessments on 990-T Tax Module.*

4.70.14.2.1.3.3.13
(11-24-2023)

**EO - EO Enforcement
Criteria**

- (1) Generally, EO examiners must enforce converted return taxes for the affected

#

Note: "Enforcement" is part of the conversion process that involves initiating deficiency procedures in IRM 4.70.14.2.1.3.3.7, EO – Converted Tax Return Secured, and IRM 4.70.14.2.1.3.3.11, EO – Substitute for Return – Converted Tax Returns.

Note: Mandatory Review will accept business decisions made over enforcement so long as they are properly supported and documented.

- (2) EO Enforcement is NOT required under any one of the following conditions:

#

aggregate.

- The time remaining on the ASED based on the filing of Form 990 or 990-EZ is less than 12 months. See IRM 4.70.12.3.7.2, Examiner Responsibilities and Procedures.
- There is an NOL available to offset taxable income for the year under consideration.
- The organization is inactive, non-operational or abandoned.

- The converted return tax is reportable on specialized tax returns, e.g., Form 1120-L, Form 1120-F, etc.
- The converted return tax issues require specialized examiners trained to address the complex issues.
- An income tax BOD is interested in working the converted return tax case.
- Sufficient resources are unavailable, considering Policy Statement 4-119.

(3) Additional factors to consider in enforcing converted return taxes include:

- That failure to enforce converted return taxes could be a serious administrative omission or result in a serious criticism of the IRS's administration of tax law with fairness and integrity.
- The relative simplicity of the income tax issues and the conversion.
- The need to quickly process a deficiency.
- History, extent or frequency of repeated or continuous noncompliance.
- Indicators of fraud, malfeasance, collusion, concealment, or misrepresentation.
- Your familiarity with the case versus the time needed for another group to re-learn the case.
- Setting a precedent that could seriously hamper the IRS's subsequent attempts to take corrective action.
- The effect on future noncompliance by like organizations in the same industry or profession.
- The negative impact on EO Examinations programs, goals, work plans, implementing guidelines and strategic plan.
- The technical complexity of the income tax issues and the excessive demands on time for issue resolution.
- The availability of trained examiners and expertise in the specific income tax matter.
- Sensitivity of the case that should be addressed by SB/SE.
- Avoiding inconsistent treatment of similarly situated organizations in a market segment worked.
- Collectibility.

(4) If you can't enforce the converted return taxes, prepare Form 5666 (or Form 5346) package. Indicate the reason for not pursuing income tax on the 3198-A Special Handling checksheet in RCCMS for the EO information return case file.

4.70.14.2.1.3.3.14
(11-24-2023)
**EO - Scope of EO
Enforcement**

- (1) Policy Statement 4-119 states that the primary objective of the EO examination program is regulatory, with emphasis on the continued qualification of exempt organizations. For purposes of applying limited resources, income tax enforcement of revoked or disqualified organizations is incidental to that primary objective. The referral option on Form 5666 is available.
- (2) Policy Statement 4-63 provides that deficiencies should be based on meritorious adjustments. No adjustments should be included for punitive, bargaining, or similar purposes. Estimated amounts to protect the Government's interest may be used only when it is impossible to establish exact amounts.
- (3) In recognition of existing EO work plans and implementing guidelines, EO examiners will generally enforce income taxes by rolling over amounts known to be correct on the primary return, to the RAR of the tax return. See the Con-

version Table at IRM 4.70.14.2.1.3.3.15(2).

- (4) Converted return taxes are generally enforced for a maximum of 6 years. See P-5-133 at IRM 1.2.14.1.18 (8/2006).
- (5) In appropriate cases, consult with TEGEDC to determine whether special statute conditions exist for any return or tax year, e.g., 6-year statute. TEGEDC requires 45 days to provide a written opinion. See IRM 4.70.12.3.7, Statute of Limitations and Statute Control Procedures, for statute considerations.

4.70.14.2.1.3.3.15
(11-24-2023)

**EO - Determination of
Tax Liability**

- (1) Examiners may rely on the following resources to help determine income taxes:
 - a. GCM 39813.
 - b. 1990 CPE Text, Topic B, The Synanon Case.
 - c. CCH U.S. Master Tax Guide.
 - d. IRM Chapters 4.10, 4.11 and 4.12.
 - e. Income tax training textbooks.
 - f. Training Pub 11361-002, LMSB Corporate Taxation Participant Guide (Catalog 50286Q).
 - g. Consult with fellow examiners with strong income tax background.
 - h. Lexis-Nexis® and Westlaw®.
 - i. SB/SE or LB&I websites. See SB/SE's Issues and Procedures website.
- (2) Form 990 to Form 1120 Conversion Table

Contributions, gifts, grants, and other receipts	
Form 990 Description	Form 1120 Description
Direct public support	Non-taxable or Gross Receipts or Sales 1 & 2
Indirect public support	Non-taxable or Gross Receipts or Sales
Government contributions	Gross Receipts or Sales 3
Program service revenue including government fees and contracts	Gross Receipts or Sales
Membership dues and assessments	Gross Receipts or Sales 4
Interest on savings and temporary cash investments	Interest
Dividends and interest from securities	Dividends
Gross rents	Gross Rents 5
Less: rental expenses	Other Deductions 5
Other investment income	Other Income

Contributions, gifts, grants, and other receipts	
Form 990 Description	Form 1120 Description
Gross amount from sales of assets other than inventory	Capital Gain Income (net with Cost)
Less: cost or other basis and sales expenses	Capital Gain Income (net with Cost)
Net gain or (loss)	Capital Gain Income
Gross revenue from special events and activities	Gross Receipts or Sales
Cost of goods sold from special events and activities	Cost of Goods Sold
Gross sales of inventory, less returns and allowances	Gross Receipts or Sales
Less: cost of goods sold	Cost of Goods Sold
Other Revenue	Other Income

Expenses 6, 7 & 8	
Form 990 Description	Form 1120 Description
Grants and allocations	Charitable Contributions, if qualified
Specific assistance to individuals	Other Deductions, if qualified
Benefits paid to or for members	Other Deductions, if qualified 4
Compensation of officers, directors, etc.	Compensation of Officers
Other salaries and wages	Salaries and Wages
Pension plan contributions	Pension, profit-sharing, etc., plans
Other employee benefits	Employee benefits programs
Payroll taxes	Taxes and Licenses
Professional fund-raising fees	Other Deductions, if qualified
Accounting fees	Other Deductions
Legal fees	Other Deductions
Supplies	Other Deductions
Telephone	Other Deductions
Postage and shipping	Other Deductions
Occupancy	Rents

Expenses 6, 7 & 8	
Form 990 Description	Form 1120 Description
Equipment rental and maintenance	Repairs and Maintenance
Printing and publications	Other Deductions
Travel	Other Deductions
Conferences, conventions, and meetings	Other Deductions
Interest	Interest
Depreciation, depletion, etc.	Depreciation or Depletion, if qualified
Other expenses	Other Deductions
1	IRC 61, Gross Income Defined. As a general rule, all income is taxable unless proven otherwise.
2	IRC 102, Gift and Inheritances. As a general rule, gross income does not include the value of property acquired by gift, bequest, devise, or inheritance. *See also: Synanon Church v. Commissioner, T.C. Memo. 1989-270 (Docket No. 20015-84). See Exhibit CPE 1990, Taxation of Revoked Tax-Exempt Organizations: The Synanon Case, and General Counsel Memorandum 39813. (Not citable as legal precedent)
**	Issues Examiner should consider: 1. Was there a good faith solicitation? 2. Was there a good faith contribution?
3	Government Grants are not excludable income under IRC 102.
4	IRC 277, Deductions by Certain Membership Organizations [non 501(c)(3)]. As a general rule, deductions shall be allowed only to the extent of income derived during such year from members or transactions with members.
*	501(c)(3) - generally deductible

Expenses 6, 7 & 8	
Form 990 Description	Form 1120 Description
**	Examiners need to distinguish between contributions and gross receipts. Scenarios would be: <ol style="list-style-type: none"> 1. All classified as contributions with member benefits all deductible. 2. Quid-pro-quo - only partially contributions and only partially deductible. 3. Member services for member benefits - where no part is attributable to charitable purpose, would not be deductible.
5	IRC 470, Property Leased to an Exempt Organization. If a corporation leases property to a governmental or other tax-exempt entity, the corporation cannot claim deductions related to the property to the extent that they exceed the corporation's income from the lease payments.
6	IRC 162, Trade of Business Expenses. Examiners should be aware of the "Income Offset Rules" for deductibility of expenses.
7	IRC 263 and IRC 263A, Capital Expenditures. Generally requires corporations to capitalize, or include in inventory certain costs incurred in connection with real property and inventory. *Please be aware that this section applies to Form 990 as well*
8	IRC 183, Activities not engaged in for profit. As a General Rule, in the case of an activity engaged in by an individual or an S Corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter [26 USCS §§ 1 et. seq.] except as provided in this section.

4.70.14.2.1.3.3.16

(11-24-2023)

EO - Basic Income Tax Considerations

- (1) Apply IRC 7701. Identify the entity's legal status as a corporation, association, trust, cooperative or partnership. This determines what type of return needs to be filed. Unincorporated associations are generally treated as corporations liable for Form 1120 returns.
- (2) Don't make income tax elections on behalf of taxpayers.
- (3) All income is taxable and included in gross income unless excluded by statute IRC 61.
- (4) Regarding certain dues collected for others, escrow funds, similar trust funds, and amounts received on behalf of others, such amounts are not included in the organization's gross income until the organization asserts dominion over it as its own. See guidance on an income determination with respect to deposits in *Commissioner v. Indianapolis Power & Light Co.*, 110 S. Ct. 589; See Rev. Rul. 71-189, 1971-1 C.B. 32 (inactive deposits are not income until bank asserts dominion over the accounts). See also *Fidelity-Philadelphia Trust Co. v. Commissioner*, 23 T. C. 527 (1954).
- (5) Contributions and donations received may or may not be taxable. See IRC 102.
 1. Determine whether a contribution received constitutes a "gift".
 2. Gifts are excluded from gross income by IRC 102.
 3. "Intent" is a critical consideration in determining whether a transaction is a gift. *Commissioner v. Duberstein*, 363 U.S. 278 (1960).
 4. However, if the gift is acquired by misrepresentation or fraud it is included in gross income of the recipient. *Synanon Church v. Commissioner*, T.C. Memo. 1989-270.
 5. Government grants are not automatically presumed to be gifts. In some cases, a governmental entity can expect an economic benefit from programs that relieve business or individual hardships. For guidance, refer to *Kroon v. United States*, Civil No. A-90-71 (D. Alaska 1974); Rev. Rul. 77-280, 1977-2 C.B. 14; Rev. Rul. 68-97, 1968-1 C.B. 34; and *United States v. Chicago, B. & Q. R. Co.*, 412 U.S. 401 (1973), 1973-2 C.B. 428.
 6. Quid pro quo contributions are gifts only to the extent the total amount received exceeds the fair market value of the consideration provided to the donor. IRC 6115(b).
- (6) Deductibility of Expenses.
 1. Apply the rules of IRC 162. Expenses are deductible only to the extent they are ordinary and necessary in carrying on a trade or business.
 2. The income-offset rule allows full deduction for exempt function expenses but only to the extent of income derived from the exempt function. See *Adirondack League Club*, 55 T.C. at 806; *Five Lakes Outing Club v. U.S.*, 468 F. 2d 443, 446 (8th Cir. 1972); *Synanon*, 57 T.C.M. at 631.
 3. Similarly, charitable distributions are deductible in full only to the extent of the charitable gifts received. For corporations, charitable distributions from other income are deductible only to the extent of 10% of taxable income after certain adjustments. See limitations at IRC 170(b)(2).

Note: Some organizations may want to claim charitable and program expenses as "promotional expenses", which if proven to be ordinary and necessary, are fully deductible.

4. Lobbying and political expenses are not deductible expenses.
5. Fines and penalties are not deductible expenses.
6. Amounts paid for kickbacks, bribes, and other illegal payments are not deductible expenses.
7. Amounts paid by health care providers for payments in consideration of the referral of a client, patient or customer are not deductible expenses.
8. Amounts in excess of reasonable compensation or compensation for non-profit motivated activities are not allowable as a deduction.
9. Income taxes paid (including UBIT) are not deductible.
10. Expenses incurred in connection with a convention, seminar, or similar meeting held outside the "North American area" are limited under IRC section 274(h). Rev. Rul. 2011-26, 2011-48 IRB 803.

(7) Substantiation of Expenses.

1. Generally, the burden of proving the existence of a deduction or loss falls on the organization.
2. Examiners should use their best judgment in balancing utilization of time on substantiating expenses and accomplishment of the overall EO examination program as directed by Management. Thus, EO Examiners are not required to substantiate all deductible expenses unless the situation demands it.
3. Scrutiny should be reserved for expenses that appear unreasonable, large, unusual, and questionable. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992) [92-1 USTC P 50,113].
4. The "Cohan rule" is often cited by taxpayers who ask to use estimates where specific proof of the amount of the claimed deduction is absent. *Cohan v. Commissioner*, 39 F. 2d 540, 543-544 (2d Cir. 1930) [2 USTC P 489]. However, the organization must establish the essential proof necessary to allow for an estimate. *Coloman v. Commissioner*, 540 F. 2d 427 (9th Cir. 1976) [76-2 USTC P 9581], affirming T. C. Memo. 1974-78; see also *Vanicek v. Commissioner*, 85 T.C. 731 (1985).
5. Expenses for travel, entertainment expenses, business gifts, computers and vehicles require record-keeping before a deduction is allowed. These expenses should be substantiated in accordance with IRC 274(d) and IRC 280F and the regulations thereunder.

(8) Depreciation.

1. A depreciable asset begins to depreciate in the year it is first placed in service.
2. Note that the useful life or cost recovery period for certain assets may have expired before the year under examination began; thus, further depreciation of such assets would not be allowed.
3. Certain assets are NOT depreciable, such as certain works of art and land.
4. The IRC 179 deduction is only allowed if an election was made on a voluntarily filed tax return.
5. In general, the depreciation method depends on when tangible property was placed in service:
 1. Since 1986 – Generally Use MACRS,
 2. After 1980, but before 1987 – Use ACRS,
 3. Before 1981 – Use straight line, DB, SYD or other consistent method.

6. EO examiners generally will not challenge the organization's depreciation methods established before the revoked years, and reported on annual EO Information Returns.
- (9) Dividend Received Deduction.
 1. Corporations are allowed a special deduction called a dividend received deduction. See IRC 243, IRC 244, IRC 245 and IRC 246. The major reason for the dividend received deduction in IRC 243 is to avoid so-called "double taxation" in corporate taxes on earnings as income is passed from one corporation to another.
 2. Generally, examiners will not allow this deduction unless a revoked organization can establish that it is entitled to the deduction.
- (10) IRC 277, Deductions Incurred by Certain Membership Organizations in Transactions with Members.
 1. IRC 277 provides that a membership organization not exempt from tax may deduct expenses attributable to the provision of goods or services to members only to the extent of income derived from members. The purpose of this provision is to prevent nonexempt membership organizations from effectively rendering themselves free of tax by off-setting losses from membership activities against income derived from investments or other nonmember sources to produce little or no taxable income. Were they permitted to do so, they could put themselves in a better position than exempt clubs, which are taxable on all income but "exempt function" income.
- (11) Other Income tax provisions.
 1. IRC 263 and IRC 263A requires corporations to capitalize certain expenditures or include in inventory certain costs incurred in connection with real property and inventory.
 2. IRC 470 provides that if a corporation leases property to a governmental or other tax-exempt entity, the corporation cannot claim deductions related to the property to the extent that they exceed the corporation's income from the lease payments.
 3. If an organization under examination requests a change in accounting method, follow the procedures in IRM 4.11.6. A request for change in accounting method for an organization under examination requires the consent of the Director, EO Examinations before an application on Form 3115, Application for Change in Accounting Method, can be submitted in accordance with the instructions of the form. See Rev. Proc. 2008-52, 2008-2 C.B. 587.

4.70.14.2.1.3.3.17
(11-24-2023)
**EO - Gift Tax
Consequences**

- (1) IRC 2501 imposes a gift tax on donors who give to taxable entities, knowing it's a taxable entity or after public notice of the revocation. A donor is not subject to gift tax and has advance assurance of charitable deductibility under IRC 170 for amounts contributed to a revoked IRC 501(c)(3) entity prior to public notice of the revocation (such as in the Internal Revenue Bulletin, however, notice may occur in other ways, see *Estate of Clopton v. Commissioner*, 93 T.C. No. 275 (8-29-89)).
- (2) Consult with Gift Tax Specialist (attorney). Enforcement of this tax requires a referral to Estate and Gift using SRS online. See IRM 4.70.13.6.2, Specialist Referral System.

- 4.70.14.2.1.3.3.18
(11-24-2023)
EO - Effect on Employee Plans
- (1) The revocation of an organization's IRC 501(c)(3) status may adversely impact deferred compensation programs sponsored by the organization. Consult with an Employee Plans IRC 403(b) or IRC 457 Coordinator for your area if the organization maintains a deferred compensation plan. Deferred compensation plans are those described under IRC 401(a), IRC 403(b) or IRC 457.
- 4.70.14.2.1.3.3.19
(11-24-2023)
EO - Effect on Tax Exempt Bonds
- (1) Revocation of an organization's IRC 501(c)(3) status will result in the loss of the exclusion from gross income under IRC 103 for interest payments on tax-exempt obligations issued under IRC 145 as "qualified 501(c)(3) bonds." The loss of such exclusion is effective back to the date of issuance of the IRC 501(c)(3) obligations.
- (2) Determine whether the organization is the beneficiary of outstanding tax-exempt obligations under IRC 145 at the time of revocation.
- 4.70.14.2.1.3.3.20
(11-24-2023)
EO - Referral to Tax Exempt Bonds (TEB)
- (1) Because a revocation of the tax-exempt status of an IRC 501(c)(3) organization results in the loss of excluding interest from gross income of bondholders on the organization's qualified IRC 501(c)(3) bonds a referral is required to Tax Exempt Bonds. This section describes the procedure to make a referral by transmitting the required information to the TEB Referral Coordinator.
- (2) Use the Specialist Referral System (SRS) or Form 5666 to refer a potential noncompliant bond issuance to the TEB Referral Coordinator. Detailed instructions for completing the form are located in IRM Exhibit 4.5.1-12. Also see IRM 4.70.13.6.2, Specialist Referral System.
- (3) Complete a separate Form 5666 with all information that is available about the issuer of the bonds and the nature and size of the potential noncompliance issue. Include information pertaining to the source of the EO examination and attach any news articles, correspondence or other documentation concerning the potential noncompliance issue with the Form 5666. The referral package should be as complete as possible with objective information to facilitate the TEB Classifiers in making their recommendations of compliance actions.
- (4) Use the proper AIMS Source Codes for each referral. The following guidance will assist the originator in determining the proper source code for referrals and the preparation of or the Specialist Referral System.
1. Use the appropriate source codes based on the EO examination. TEB source codes are identified in the GE Computer Systems Codes Book, Document 11308.
- 4.70.14.2.1.3.3.21
(11-24-2023)
EO - Statute Protection - Dual Responsibility With Appeals
- (1) Both the primary return (e.g., Form 990) and the converted tax return (e.g., Form 1120) for the same tax year will share the same statute date based on the filing of the same Form 990. However, the two MFT case files will be separated once Mandatory Review ships the primary return case to Appeals assuming the organization protests the proposed adverse status change. This results in separating case assignments, and therefore dual responsibility for monitoring statutes.
- (2) At the onset, you are primarily responsible for monitoring and protecting the statute on all returns you establish on AIMS, including converted tax returns.

- a. However, if an organization protests an adverse status change (e.g., Form 990 returns) for specific tax years, Appeals will assume primary responsibility for protecting the statute of limitations for those tax years once accepted in their inventory.
 - b. You will continue to monitor statutes for all converted return tax years you establish on AIMS, but because Appeals assumed primary responsibility for protecting the statute for the protested years, you continue to assume primary responsibility for protecting the statute of limitations for the non-protested years, if any.
- (3) While the primary returns (e.g., Form 990) are in Appeals for resolution of the exemption issue, Mandatory review will hold the converted tax return case file in Status 38 suspense:
- a. Mandatory Review will only hold the converted tax return case file in Status 38 suspense until the sooner of:
 - 1. A converted tax return in the case file becomes a “short statute return,” requiring “statute controls” or
 - 2. Appeals has decided the adverse status change issue.
 - b. If a converted tax return becomes a short statute return, the reviewer will send the converted tax return case file back to you to monitor statutes for **all** converted return tax years, and to protect and solicit a statute extension for the non-protested tax years, if any.
 - c. If the organization will not consent to extend the statute date for any short statute returns, you and your manager may take steps to initiate deficiency procedures in order to protect the tax, even if the adverse status change is not yet resolved in Appeals.
 - d. Consult with TEGEDC regarding your issuance of a statutory notice of deficiency for a converted tax return if the ASER is imminent.
 - e. Don't suspend the converted tax return case file using AIMS Status Code 39. See IRM 4.70.12.3.7.5, Extending the Statute of Limitations, for statute extension procedures.
- (4) You are allowed to contact Appeals if needed to coordinate communications with the organization and soliciting statute extensions. This communication will not violate Rev. Proc. 2012-18, 2012-10 IRB 455, regarding ex parte communications because it meets the ministerial, administrative or procedural matters exception in Section 2.03(2)(a) of the Rev. Proc, so long as the issues are not discussed.
- (5) The instructions in the previous paragraphs are illustrated by the following examples:

Example: (1) By reason of IRC 6501(g)(2), Form 990 and Form 1120 show the same statute expiration date. Due to a proposed revocation of tax-exempt status under protest, Appeals has one set of returns under its control - 2014 and 2015 Forms 990; the examination group has another set of returns under its control - 2014 and 2015 converted Forms 1120 (on AIMS NMF). The statute expires in less than 270 days for both 2014 and 2015 returns and the examination group wants to solicit statute extensions from the organization. Appeals has primary responsibility for protecting the statute of limitations for income taxes for 2014 and 2015. In this case, the examination group may initiate contact with Appeals to

follow-up on whether Appeals solicited and secured statute extensions for income tax for 2014 and 2015. Because the communication is restricted to coordinating the solicitation and securing of statute extensions, this is a permissible procedural communication that falls within the ministerial, administrative or procedural matters exception and is permissible so long as the substance of issues is not discussed. See section 2.03(2)(a) of Rev. Proc. 2012-18.

Example: (2) Assume the same facts as Example (1) but in addition, the organization refuses to extend the statute of limitations after both the examiner and Appeals coordinated their solicitations to extend the statute for their respective short statute returns. The statute expiration date is within 90 days and the revocation matter is not yet settled. The examination group wants to issue an SNOD for income tax. The examination group can inform Appeals of its plan to issue an SNOD because the communication is restricted to the prospect, method and timing of issuing a SNOD. Protecting the government's interest for separate returns sharing the same statute date is a procedural matter. The communication is permissible so long as the substance of issues and the contents of the SNOD are not discussed. See section 2.03(2)(a) of Rev. Proc. 2012-18.

Example: (3) Examiner T is examining XYZ's 2014 Form 990. XYZ is exempt under IRC 501(c)(3). T determines XYZ's exempt status should be revoked effective 1/1/2014. Based on T's examination of the 2014 books and records, T estimated XYZ's income tax liability for 2014 to be \$6,000. After inspecting the 2015 Form 990 return alone, T also estimates the income tax liability for 2015 to be \$8,000. To protect the income tax for both tax years, T establishes the 2014 and 2015 Form 1120 SFR on AIMS Non-Master File for later adjustment pending the final outcome of your proposed revocation. XYZ appeals T's proposed revocation. T closes the Form 990 case file to Mandatory Review, with the Form 1120 case file riding with the package. Mandatory Review later forwards the Form 990 case file to Appeals. Two months later, both the 2014 Form 990 and the 2014 SFR Form 1120 become short statute returns. Because Appeals has primary responsibility for protecting the statute for income tax in 2014, T may initiate contact with Appeals to follow-up on their request to extend the statute of limitations for income tax for 2014 without violating ex parte rules.

Example: (4) Assume the same facts as Example (3) except both the 2014 and 2015 Form 1120 returns are short statute returns. Because Appeals continues to have primary responsibility for protecting the statute for income tax in 2014, T may initiate contact with Appeals to follow-up on their solicitations to extend the statute of limitations for the 2014 income tax. While Appeals doesn't have a 2015 Form 990 return in its inventory, T is primarily responsible for protecting the statute of limitations for the 2015 income tax.

Example: (5) Assume in Example (4) that Appeals has issued a 90-day final adverse determination letter (FADL) notifying XYZ of the final revocation of its exempt status. Because Appeals is closing its case, Appeals is no longer primarily responsible for protecting the statute of limitations for the 2014 income tax. T now assumes primary responsibility for protecting

the statutes for both the 2014 and 2015 income tax while Form 1120 SFR returns in T's inventory. Appeals' issuance of a FADL does not suspend the statute of limitations for any tax year. Only Mandatory Review's or T's issuance of a 90-day SNOD will suspend the statute of limitations for assessment if the taxpayer won't extend the statute.

- (6) If the organization refuses to extend the ASER for short statute converted tax returns, discuss your next course of action with your manager. Generally, you will prepare the tax case for closure to Mandatory Review for issuance of a SNOD in order to protect the government's interest, even if the revocation issue is undecided in Appeals.

Note: While the adverse status change issue is working in Appeals, the converted return tax case will still be on NMF. You must process that closure on NMF unless and until the revocation is sustained and posted to the EOBF.

- (7) If the statute is imminent you must issue the SNOD. See IRM 4.70.12.3.7.11, EO Imminent Statute, for approval procedures. See IRM 4.70.14.6.6.1, SNOD Preparation and Issuance, for SNOD preparation procedures. Upon issuance of the SNOD, close the income tax case to Mandatory Review for 90-day suspense (AIMS Status 24) within 5 business days.
- (8) Appeals will notify EO Examinations if the organization has no intention to execute a consent to extend the statute date by the earlier of:
- 120 days prior to the statute expiration date.
 - The date Appeals sends its case to TEGEDC for review of the 90-day FADL.
- (9) Appeals will also inform EO Examinations:
- If and when the adverse status change was approved by TEGEDC, and
 - When it issues a 90-day FADL.

4.70.14.2.1.3.3.22
(11-24-2023)

**EO - Revocations and
Disqualifications -
Alternative Positions**

- (1) The UBIT issue for the open Form 990-T examination for the affected tax years should be fully developed before closing the adverse status change case (primary return)

Note: The presence of a Form 990-T examination only impacts what goes on the proposed revocation or disqualification RAR and on the 3198-A Special Handling checksheet in RCCMS for the primary return case file. It has no effect on conversion procedures.

- (2) Incorporate the UBIT issue as an alternate position in the revocation or disqualification report. See IRM 4.70.14.2.1.3.3.8, EO – Converted Tax Return Secured – To Be Further Adjusted. Include Form 990-T at the heading of Letter 3618.
- If there is no change to UBIT under examination, include a statement to that effect after the conclusion part of the revocation or disqualification RAR.
 - If there is a UBIT deficiency, include the deficiency as your alternative position after the conclusion part of the revocation or disqualification RAR, complete with facts, law and argument and Form 4549 marked "Alternative Position" in the top margin.

Exception: If you requested a TAM on a revocation issue that grants IRC 7805(b) relief to the organization, process the Form 990-T case file for a normal tax-exempt organization for years of examination, because the revocation will be prospective.

Note: In cases where there is a revocation or disqualification report with an alternate UBIT issue, include a copy of the proposed revocation or disqualification report in the Form 990-T case file.

- (3) If applicable, notate the following on 3198-A Special Handling checksheet in RCCMS for the primary return case file and for the Form 990-T case file if also open for examination: "If Revocation [Disqualification] is Sustained, Transfer Payments Applied to 990-T Module for the Revoked [Disqualified] Tax Years to the Converted 1120 [1041 or 990-PF] Module - Then Reverse Tax Assessments on 990-T Tax Module".
- (4) Close Forms 990-T for the affected tax years with identical revocation or disqualification disposal codes used for the primary returns, unless a higher priority disposal code applies.

Exception: If you requested a TAM on a revocation issue that grants IRC 7805(b) relief to the organization, use disposal codes for Form 990-T for a normal tax-exempt organization, because the revocation will be prospective.

4.70.14.2.1.3.4
(11-24-2023)

Revocation or Termination of Organizations Covered by a Group Ruling

- (1) This section focuses on an examiner's responsibilities for examinations of organizations under a group ruling. It addresses these topics:
 - a. Revocations of group rulings
 - b. Terminations of group rulings
 - c. Appeals consideration

Note: for guidance on examining Organizations Covered by a Group Ruling see IRM 4.70.13.4.2.2.1, Organizations Covered by a Group Ruling.

4.70.14.2.1.3.4.1
(11-24-2023)

Revocations

- (1) When you're determining that a subordinate organization should no longer be tax-exempt, you are effectively proposing to remove the organization from the group ruling. This terminates their exempt status, and constitutes an adverse action that triggers the subordinate's rights to appeal. When writing the report of examination, minimize the use of terms like "revoke" and "revocation". Instead, use the phrase "removal from the group exemption" or some variation.
- (2) Removal of any subordinates that are under an IRC 501(c) group ruling triggers the administrative record requirement if unagreed. See IRM 4.70.14.2.4.1, EP & EO - Declaratory Judgment Cases and the Administrative Record for unagreed cases.
- (3) Revocation of the central organization's exempt status results in the termination of the group ruling as a whole. The subordinate organizations may seek their own individual recognition, join another group ruling, or if a statutorily exempt organization continue as exempt without recognition. The central orga-

nization is subject to declaratory judgment procedures under IRC 7428 and Mandatory Review (or Appeals) issues a 90-day final adverse determination letter (FADL). Contact Mandatory Review for a custom agreed revocation letter. See also IRM 4.70.14.6.9, EO - Revocations, any other loss of tax exemption, and foundation reclassifications.

- (4) For all revocations of central or subordinate organizations under examination, prepare Form 2363-A, Request for IDRS Input for BMF/EO Entity Change, to update the Exempt Organizations Business Master File (EO BMF) status to 22. Leave the Form 2363-A in the case file (and/or upload the Form 2363-A to RCCMS). See IRM 4.70.14.2.1.3.3, EO – Conversion of Returns, for securing converted returns or enforcing income tax on revoked organizations.
- (5) If Mandatory Review concurs with (or Appeals sustains) the revocation, they send Form 2363-A to the FAST unit to update the EO BMF status to 22. If a central organization is revoked, the GEN file updates all the subordinates to status 28.

4.70.14.2.1.3.4.2
(11-24-2023)
Terminations

- (1) Organizations that have their own exemption letter are corporations, trusts or associations. Organizations included under a group ruling may receive charters from the central organization. This is common with many fraternal and veterans' organizations.
- (2) When examining a subordinate that has a charter from the central organization, in lieu of or in addition to a certificate of incorporation, determine whether the charter has been rescinded/revoked by the central organization. Obtain a copy of the letter rescinding/revoking the charter of the subordinate entity.
- (3) When a central organization dissolves/terminates, is revoked, or relinquishes its exemption, then recognition on a group basis terminates. A subordinate may then file for a separate exemption letter by following the standard procedures in Rev. Proc. 2020-5 (updated annually) and submitting the appropriate application (e.g., Form 1023 including paying the user fee).

Note: The subordinate may also join another group, or if statutorily exempt or not required to file an application, continue as exempt without recognition. Refer to Pub 557, Application Procedures for Exempt Recognition - for application requirements, forms and procedures.

- (4) If terminating a subordinate in a group ruling, see the notification requirements in IRM 4.70.14.2.1.3.4.4, Notification Requirements.
- (5) For all subordinate termination cases, prepare Form 2363-A to update the status to 20. Leave the Form 2363-A in the case file (and/or upload the Form 2363-A to RCCMS). Examiners will send the Form 2363-A to the FAST unit when they close the case.
- (6) When a central organization terminates, prepare Form 2363-A to update the EIN's status to 29. Leave the Form 2363-A in the case file (and/or upload the Form 2363-A to RCCMS). Examiners will send the Form 2363-A to the FAST unit when they close the case. When processed, this updates the subordinates to EO BMF status 28.

Note: For other case closing procedures, please see IRM 4.70.14.4, Closing A Case.

4.70.14.2.1.3.4.3
(11-24-2023)

**Concurrent
Examinations**

- (1) A central organization's group ruling terminates when:
 - a. A central organization notifies the IRS that it is going out of existence by filing a return.
 - b. Its exemption is revoked (automatically or manually).
 - c. It files a final return.
 - d. The IRS revokes the group ruling letter.
- (2) The action impacts any current examination of a subordinate organization. All members of the group ruling are updated to EO BMF status 28. Any former subordinate organizations who later file a Form 990 series return are updated to status 40 or 36, depending on the code section claimed on the return. Subordinate organizations are also placed in status 40 or 36 when a central organization notifies them that it's dissolving its group ruling (but not terminating).
- (3) When possible, attempt to coordinate exams of central and subordinate organizations. If you're examining subordinate organizations, check AIMS to see if the central organization and/or the group return is under exam. Contact the examination group to discuss the exam issues and coordinate actions.
- (4) Mandatory Review follows these actions when these events occur:

For all central organization revocations:	
1.	Mandatory Review or Appeals issues the final letter (revocation or FADL to the central organization.)
2.	The reviewer, or Appeals, notifies the manager, Mandatory Review, of the issuance of the letter to the central organization.
3.	The manager, Mandatory Review, in turn notifies the Area Manager, GL\FIU, of the revocation of the central organization.
4.	The manager, Mandatory Review, secure emails the area managers giving directions on any subordinates in their inventories. See Exhibit 4.70.14-32, EO Secure Email message from Manager, Mandatory Review, to Area Managers Regarding the Revocation of a Central Organization (501(c)-FADL Issued), for all 501(c) revocations.

As all 501(c) Organizations Are Subject to IRC 7428:	
5.	When the waiting period per IRC 7428 ends, either the statute coordinator, Mandatory Review, or Appeals, depending on the file's location, notifies the manager, Mandatory Review of whether a petition was filed with the court.
6.	The manager, Mandatory Review, informs the applicable area manager.

As all 501(c) Organizations Are Subject to IRC 7428:	
7.	If no petition was filed, the manager, Mandatory Review, secure emails the area managers to proceed with final actions. See Exhibit 4.70.14-33, EO Secure Email message from Manager, Mandatory Review, to Area Managers Regarding the Revocation of a Central Organization - FADL Not Petitioned. Note: Cases where a petition was filed remain in suspense.
8.	Upon notification by Appeals or TEGEDC of the conclusion of the court case(s), the manager, Mandatory Review, secure emails the area managers to remove cases from suspense and conclude the exams. See Exhibit 4.70.14-34, EO Secure Email message from Manager, Mandatory Review, to Area Managers Regarding the Revocation of a Central Organization (Courts Upheld), and Exhibit 4.70.14-35, EO Secure Email message from Manager, Mandatory Review, to Area Managers Regarding the Revocation of a Central Organization (Courts Rejected).

- (5) Follow these actions for the central and subordinate organizations:

If the central organization's revocation/termination...	Then for the subordinate...
Occurs before the subordinate's	Close the examination of the Form 990. Pursue other taxes (excise/employment).
Occurs after the subordinate's	Follow normal procedures.

4.70.14.2.1.3.4.4
(11-24-2023)

Notification Requirements

- (1) You should not notify the central organization of your examination of a subordinate organization unless authorized to do so by the subordinate organization.

Exception: modifications, terminations and revocations.

- (2) If you can't contact the subordinate organization, contact the central organization for help contacting the subordinate's officers. The central organization is responsible for ensuring that the subordinate organization continues to meet the requirements for exemption under the group ruling.
- (3) See the following chart for the appropriate letter to issue and the group that issues the letter:

Taxpayer's situation	Letter to Issue
Subordinate Organization Revocation ("removal from group exemption coverage")	<ol style="list-style-type: none"> 1. Issue 30-day Letter (Letter 3618), then to respond to the 30-day letter: <ol style="list-style-type: none"> a. If valid protest received - Issue Rebuttal letter Letter 5918 b. If invalid protest or no reply- Issue 90-Day Final Adverse Determination Letter, (Exhibit 4.70.14-30, EO 90-Day Final Adverse Determination Letter - Revocation of 501(c) Subordinate). c. If agreement is secured - Issue 90-Day Final Adverse Determination Letter, (Exhibit 4.70.14-30, EO 90-Day Final Adverse Determination Letter - Revocation of 501(c) Subordinate). 2. Notification letter to Central Organization if revocation becomes final- Issue Letter 6263.
Subordinate Organization Termination	<ol style="list-style-type: none"> 1. Termination Letter - 501(c) (Letter 5426) 2. Notification letter to Central Organization Issue Letter 6263

Taxpayer's situation	Letter to Issue
Central Organization Revocation	Issue 30-day Letter 3618, then to respond to the 30-day letter: <ol style="list-style-type: none"> <i>If valid protest received</i> - Issue Rebuttal letter (Letter 5918) <i>If invalid protest or no reply</i> - Issue 90-Day Final Adverse Determination Letter (Exhibit 4.70.14-31, EO Central Organization 90-Day Final Adverse Determination Letter (501(c)) <i>If agreement is secured</i> - Issue 90-Day Final Adverse Determination Letter (Exhibit 4.70.14-31, EO Central Organization 90-Day Final Adverse Determination Letter (501(c))
Central Organization Termination	Termination letter(Letter 5426)
Note: The exam group issues Letter 3618 and other custom 30-day letters, and if the examiner receives a valid protest, Letter 5918. Mandatory Review issues all of the other letters.	

- (4) Prepare all letters issued to the taxpayer. For Mandatory Review letters, leave the contact information fields blank. Upload the letter to the Reporting Compliance Case Management System (RCCMS) and note on the 3198-A Special Handling checksheet in RCCMS, the file name for the letter and its folder location on RCCMS.

4.70.14.2.1.4
(11-24-2023)

Employment Tax Agreed Case Processing

- (1) IRM 4.23, Employment Tax, provides Servicewide instructions for all operating divisions with employees involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of ET by various IRS operating divisions.
- (2) However, for purposes of closing TE/GE ET cases after issuing your report, follow the closing instructions in this manual unless directed otherwise.
- (3) An agreed examination is one for which:
 - a. The examiner does not propose any tax adjustments and or change in worker classification.
 - b. The examiner proposes and the taxpayer agrees to tax adjustments proposed by the examiner and/or work classification determination.

- c. The Service and Taxpayer come to a closing agreement or settlement program.
- d. Disputes between the Service and Taxpayer are resolved under the following alternative dispute resolution programs:

- Early referral to Appeals
- Fast Track Settlement

4.70.14.2.1.4.1
(11-24-2023)

**Employment Tax
Establishing Related,
Prior and Subsequent
Period Returns**

- (1) When the Examiner identifies an issue that requires establishment of additional periods or related returns managerial approval is required prior to establishment of the return or period in RCCMS.
- (2) The source code to use when establishing additional tax periods or related returns depends on the source code that was used on the primary case. Refer to Document 11308 for each function specific source codes.
- (3) Procedures for delinquent and Substitute for Returns can be found in IRM 4.70.13.9, Delinquent, Amended and Substitute for Returns.

4.70.14.2.1.4.2
(11-24-2023)

**Employment Tax Closing
Agreements**

- (1) Treas. Reg. 301.7121-1(a) provides that a closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and the Commissioner determines that the United States will sustain no disadvantage through consummation of an agreement.
- (2) IRM 8.13.1, Closing Agreements, gives instructions and prescribes procedures for Service personnel handling closing agreements entered under IRC 7121.

4.70.14.2.1.4.3
(11-24-2023)

**FSL/ET - AD Hoc
Closing Agreement
Procedures and Policy**

- (1) Refer to IRM 8.13.1. The FSL/ET Closing Agreement Coordinator, Director, Government Entities and TEGEDC, as needed, may consider an ad hoc closing agreement to resolve a taxpayer's prior tax year compliance issue. The taxpayer would not be under examination. The Director, Government Entities signs all ad hoc closing agreements.
- (2) FSL/ET closing agreements will generally require Forms W-2/W-2c to be furnished and filed as part of the agreement, unless a specific dollar amount per employee cannot be determined. Any deviation from such policy will be rare and will require the approval from both EEE Counsel and the Director of Government Entities.
- (3) Closing agreement tax assessments for barred assessment statute years (i.e. Section 218 retroactive pay issues) will be made per current Chief Financial Officer's guidance.
- (4) Taxpayers will generally pursue the assessment of tax on all open years for the closing agreement issue via amended tax returns (for example, Form 941-X) and provide a copy to the FSL/ET Closing Agreement Coordinator. Facts and circumstances will govern any exceptions to this general policy.

4.70.14.2.1.4.3.1
(11-24-2023)

**FSL/ET - AD Hoc
Closing Agreement
Procedures for Walk In
Cases/Cases not Under
Examination**

- (1) If a taxpayer, not under examination, approaches FSL/ET field personnel seeking a closing agreement to resolve a prior tax year compliance issue, the matter will be handled by the FSL/ET Closing Agreement (CA) Coordinator. The request for a closing agreement, and any information received from the taxpayer, should be sent by secure email to the CA Coordinator.
- (2) The CA Coordinator receives and reviews all written requests for ad hoc closing agreements from taxpayers or representatives who are not under examination
- (3) The CA Coordinator will request establishment of a closing agreement case via normal establishment procedures on RCCMS.
- (4) The CA Coordinator will complete the "Ad Hoc Walk-In Closing Agreement Initial Memo" explaining the facts, taxpayer's proposal and voluntary disclosure. The memo will be sent to the FSL/ET Director, Government Entities. The Director will approve or disapprove whether or not the agreement process is the right solution. The Director will provide comments and direction, if necessary.
- (5) If the Director has questions or needs additional information not provided in the memo, a conference call will be set up with the CA Coordinator to address the inquiries.
- (6) The CA Coordinator will include updates on all ad hoc closing agreements in-process in the FSL/ET Monthly Briefing. The Director will review the Briefing and contact the CA Coordinator if new circumstances arise.
- (7) The CA Coordinator will contact the FSL/ET Group Manager if a high profile/sensitive issue arises. The FSL/ET Group Manager will coordinate with the Director as to the direction to take.
- (8) If the Director approves the agreement, then the CA Coordinator will work with the taxpayer and/or representative to complete the closing agreement. All files will be uploaded to RCCMS and all case related activity will be recorded on Form 9984, Examining Officer's Activity Record. The Director will receive the closing agreement for approval and signature. The CA Coordinator will follow established procedures to close the case, process the payment and send a copy of the case to the CP&C Monitor. The FSL/ET Group Manager will approve final processing of the case in RCCMS.
- (9) If the Director rejects the agreement, then the CA Coordinator will close the case according to established procedures and upload all electronic files received from the taxpayer into the RCCMS case file. Hard-copy documents will be scanned and imported, and the CA Coordinator will record all case-related activity on Form 9984. The FSL/ET Group Manager will approve final processing of the case in RCCMS and annotate Form 9984, Examining Officer's Activity Record.

4.70.14.2.1.4.3.2
(11-24-2023)

**FSL - Role of FSL/ET Ad
Hoc Closing Agreement
Coordinator**

- (1) The role of the CA Coordinator is to ensure the closing agreement process is consistent throughout FSL/ET and to provide a contact point for FSL/ET. The CA Coordinator has the following responsibilities:
 - a. Reviewing all draft ad hoc closing agreements and obtaining initial concurrence from the Director, Government Entities.

- b. Working directly with the taxpayer and their representative as the taxpayer is not under examination. In these cases, the final closing agreement will be reviewed by the FSL/ET Group Manager and may be reviewed by Chief Counsel.
- c. Maintaining an FSL/ET closing agreement spreadsheet.
- d. Sending a hard copy file of closed closing agreements, and any necessary supporting documentation, to CP&C for monitoring and file retention purposes.

4.70.14.2.1.4.3.3
(11-24-2023)

**Case Closing
Procedures for Ad Hoc
Closing Agreements for
Walk In Cases/Cases not
Under Examination**

- (1) When the CA Coordinator receives a check payment with an executed closing agreement, a Form 3244-A, Payment Posting Voucher, must be prepared and sent with a scanned copy of the check via email to the FSL/ET Group Manager to review and sign.
- (2) Once approved, the CA Coordinator can mail the payment to Ogden.
- (3) The CA Coordinator will close the RCCMS case to the FSL/ET Group Manager.
- (4) The FSL/ET Group Manager will review the case, annotate the Form 9984 and close it.
- (5) The CA Coordinator will forward one signed copy of the agreement to the taxpayer and retain a copy of the closing agreement in the electronic file sent to CP&C.

4.70.14.2.1.4.4
(11-24-2023)

**TE/GE - Classification
Settlement Program**

- (1) The Classification Settlement Program (CSP) establishes procedures that will enable taxpayers and the IRS to resolve worker classification cases as early in the administrative process as possible, thereby reducing taxpayer burden. The procedures also ensure that the taxpayer relief provisions under section 530 of the Revenue Act of 1978 are properly applied. By using the CSP, examiners can offer an entity under examination a worker classification settlement using a standard closing agreement.
- (2) CSP agreements are closing agreements that bind the Service and the taxpayer to prospective tax treatment for future tax periods. Therefore, all CSP agreements must be reviewed and approved. Group managers must review the CSP agreements.
- (3) Except as otherwise provided in situations listed in IRM 4.23.6.6, Eligible CSP Employment Tax Cases, and IRM 4.23.6.7, Cases Included in the CSP, you must present a CSP offer to a taxpayer. The taxpayer has the option of either accepting or rejecting the offer. All examinations that involve worker classification issues must follow the CSP Procedures as explained in the following manuals:
 - IRM 4.23.6, Classification Settlement Program (CSP).
 - IRM 4.23.10, Report Writing Guide for Employment Tax Examinations.
 - IRM 4.70.14.2.1.4.4.1, TE/GE – CSP Offer Case Closing Procedures.
- (4) For EO Exam Only:

- The Group Manager will:
 1. Ensure examiners use the most recent version of the CSP agreement template and the correct CSP agreement form, and ensures that the CSP agreement form is completed correctly.
 2. Review and submit the final CSP package to the Area CSP Reviewer for accuracy and consistency.
 3. Sign the CSP agreement (in triplicate) after the Area CSP Reviewer concurs with, and the taxpayer signs, the agreement.
 4. Send the final CSP package to the CSP Coordinator.
- The EO Area CSP Reviewer (one per area):
 1. Reviews proposed CSP agreements within two weeks of receipt of the CSP packages from group managers.
 2. Consults with the CSP Coordinator as necessary.
 3. Returns a signed memo to the group manager concurring with the offer.
 4. Find a list of CSP Reviewers on the EO Employment Tax SharePoint site.
- The EO CSP Coordinator:
 1. Acts as a consultant to the group managers and Area CSP Reviewers on all CSP cases.
 2. Responds to managers' and examiners' technical and procedure questions over the CSP.
 3. Participates in calls, as needed, with group managers and examiners or Area CSP Reviewers on CSP procedural problems, technical matters, emerging issues, and on the conduct of the overall program.

4.70.14.2.1.4.4.1
(11-24-2023)

**TE/GE - CSP Offer Case
Closing Procedures**

- (1) Generally, regular examination case closing procedures apply with a few additional requirements. Those additional requirements are outlined in IRM 4.23.6.14, Procedures for CSP. In part, the additional instructions provide for preparation of a CSP Settlement Memorandum; preparation of a Form 14490, 14491 or 14492, Closing Agreement; use of standard CSP language; and changes to the examination report.
- (2) The closing disposal codes in RCCMS are:
 - a. DC 102, Agreed Tax Change, for the offer quarters.
 - b. DC 104, Closing Agreement (FSL/ET cases).
 - c. DC 210, Regulatory/Revenue Protection, for the no-change tax periods in a 25% CSP offer.
 - d. DC 210, for the no-change tax periods in the non-CSP offer years for 100% CSP offers, unless a higher priority DC applies for changes in tax resulting from non-worker classification issues such as fringe benefit issues (e.g., DC 03 (102)). For a description of the type of CSP Settlement Offers, see IRM 4.23.6.14.1, CSP Settlement Offers.
- (3) For EO, Use the job aids listed below for reference. Find them on the EO SharePoint site at Exam, Exam Job Aids, Employment Taxes, CSP folder:
 - CSP Agreement Flowchart.

- CSP Guidelines Job Aid.
- Guidelines for CSP Offer Year Q&A
- CSP Memorandum Template to GM.
- CSP Agreement – 530 – Form 14490 (rev. 5-2013).
- CSP Agreement – CC WC – Form 14491 (rev. 5-2013).
- CSP Agreement – WC CC – Form 14492 (rev. 5-2013).
- List of CSP Reviewers.

- (4) The examiner will send the signed CSP Settlement Memorandum, the Closing Agreement, the complete examination report (including but not limited to Form 2504-WC, Form 2504, Form 4666, Form 4667 and Form 4668), the pro-forma spreadsheet with the list of reclassified workers, and Forms 886-A to the designated CSP Coordinator in a secured email when closing the case on RCCMS.

Note: For EO, also include the CSP memo signed by both the GM and the Area CSP Reviewer, copy of any workpapers to support the worker classification and Section 530 issues, and Taxpayer contact information.

- (5) Per IRM Exhibit 4.23.2-1, Employee Plans (EP) Referral Checksheet, when workers are re-classified during an exam, including the classification from independent contractor to employee, unreported compensation and taxable fringe benefits you must make a referral to Employee Plans (EP). See IRM 4.23.2.2.3.1, Referrals to Employee Plans and Exempt Organizations/ Government Entities, for instructions about how to make the referral.

4.70.14.2.1.4.4.2
(11-24-2023)

TE/GE - Role of the CSP Coordinator

- (1) The role of the CSP Coordinator is to ensure the CSP closing agreement process is consistent throughout TE/GE and to provide a contact point for examiners. The CSP Coordinator has the following responsibilities:
- a. Assisting Examiners and Managers with their CSP Offer.
 - b. Maintaining an CSP spreadsheet.
 - c. Sending a copy of the CSP package, as outlined in IRM 4.70.14.2.1.4.4.1, TE/GE – CSP Offer Case Closing Procedures, above, and any necessary supporting documentation to CP&C for monitoring and file retention purposes within 30 days of receiving the CSP package.

4.70.14.2.1.4.4.5
(11-24-2023)

TE/GE - Tip Compliance Agreements

- (1) IRM 4.23.7, Employment Tax on Tip Income, provides information about employment taxes on tip income, tip agreements, employment tax tip examinations, etc. While tip income among government employees is not common, TE/GE examiners should consider, as a possible area of non-compliance, tips provided to employees of a food and beverage establishment that is operated by a government, such as a city-operated museum or convention center restaurant. Baggage handlers at a city-operated airport and employees at a city-operated golf course, recreation center, or tourist service are additional examples of positions that may receive tip income as well.
- (2) Developing a tip compliance agreement using the parameters outlined in IRM 4.23.7 may be appropriate.
- (3) See IRM 4.70.18, Tip Compliance Agreement Procedures.

4.70.14.2.1.4.6

(11-24-2023)

TE/GE - IRC 3402(d) Tax Reduction Procedures

- (1) To properly assess both income taxes under IRC 3402 or backup withholding under IRC 3406, together with any applicable penalties and interest, examiners will follow a modified Partial Assessment procedure when penalties are to be assessed. The procedures described below supplement IRM 4.23.10.15.2, Examination Procedures for IRC 3402(d) and IRC 3102(f)(3) Relief.
- (2) IRC 3402(d) does not apply to the portion of federal income tax computed using IRC 3509 rates. If only IRC 3509 rates are used, line 12 of Form 4668 "Maximum tax available for abatement under IRC 3402(d)" should contain the word "NONE".

4.70.14.2.1.4.6.1

(11-24-2023)

TE/GE - IRC 3402(d) When No Penalties Are Proposed

- (1) The Partial Assessment procedures are not used if penalties are not being proposed based on the amount of tax. The examiner will compute the tax due on Form 4668, or Form 4668-B, Report of Examination of Withheld Federal Income Tax for Withholding Reported on Forms 1099 and W-2G, based on the net adjustment using amounts from valid Form 4669, Statement of Payments Received. The amount on line 12 of Form 4668 or line 20 of Form 4668-B will reflect the remaining amount of tax available for abatement after the IRC 3402(d) credit has been allowed during the examination. Form 4666 and the Form 2504 series, as applicable, will also show this net figure. The assessment information and the credits and tax adjustments section of the RCCMS closing record will also reflect the net adjustments using amounts from the valid Forms 4669.

4.70.14.2.1.4.6.2

(11-24-2023)

TE/GE- IRC 3402(d) When Penalties are Proposed

- (1) The modified Partial Assessment process must be used if penalties are to be assessed. This is a two-step process which ensures that the gross amount of tax, penalties, and interest are computed and assessed. The IRC 3402(d) credit is allowed only against this gross amount. The two-step process results in the generation of an initial billing notice for the gross amounts shown on the Form 2504 series, as applicable. The taxpayer will subsequently receive a second notice containing the abatements allowed in the examination upon final processing of Forms 4669 during the closing process. The examiner should discuss the two-step process with the taxpayer using the statement included on Form 4666. This should alleviate taxpayer concerns that Forms 4669 were not properly processed upon receipt of the first notice. See IRM 4.23.10.15.3, Examination Report Forms for IRC 3402(d) and IRC 3102(f)(3) Abatements.
 - a. The first step is to create a partial closing record to assess full tax and penalties as reflected on the Form 2504 series, as applicable; (Form 2504-T if IRC 3509 rates are not used). In RCCMS, create a Closing Record for the Partial Assessment, following the procedures in the RCCMS Case Closing Guide. On the Closing Record for the Partial Assessment, make sure that the "Partial" box is checked. On the Closing Record, complete just the fields that are necessary for the Partial Assessment: ARDI code, disposal code, assessment information, and credit/tax adjustments. All examination adjustments, including any other employment tax issues other than the Form 3402(d) items (fringe benefits, IRC 3509, penalties, etc.), are to be included on the Partial Assessment Closing Record. Enter "TC 308"(or "TC 300" if interest is to be assessed) for the gross tax amount. Enter the appropriate transaction code for the assessment of penalties based on the gross tax amount. Enter applicable reference fields for all adjustments of social security/Medicare wages and FICA/income tax/backup withholding taxes reflected on the Forms 2504 series, as applicable.

- b. The second step is to create a “full” closing record. The IRC 3402(d) credit and all closing record items will be entered on this “full” closing record. The “Partial” box will not be checked. Enter ARDI, Disposal Code, Examiner’s Time, Technique Code, and Examiner’s Name. The adjustment on the “full” closing record will reflect only amounts related to the IRC 3402(d) credit-allowed portion. For the transaction code, enter the amount of tax credit allowed based on valid Forms 4669 as a “309”(or “301” if interest is to be assessed) and the corresponding reduction in the income tax withholding or backup withholding in the reference number fields. Other sections to complete include related return information, principal issue codes, and employment tax/GE (under additional data).
- c. Examiners should follow the instructions provided in IRM 4.23.10.15.3, Examination Report Forms for IRC 3402(d) and IRC 3102(f)(3) Abatements, to prepare Forms 4666, 4668, and 2504 series, as applicable, when IRC 3402(d) applies.

4.70.14.2.1.4.7
(11-24-2023)

Employment Tax Report Writing

- (1) This subsection discusses instructions for preparation of examination reports covering employment tax examinations. It also references certain related procedures which are not purely of a report writing nature but which are necessary both for an efficient report writing system and to reduce examination time.
- (2) Exam reports (unlike workpapers) are legally binding documents and, when executed, serve as the basis for assessment and collection action. The Examiner’s report is the record of findings and recommendations regarding the investigation of a taxpayer’s liability for tax. It is the document from which reviewers may determine whether the Examiner has properly developed the case and has correctly applied the law, regulations, etc., to the facts in the particular case. Also, it may become the evidence on which the Government relies in a court case. Since the taxpayer ordinarily receives a copy of the report, it serves as a formal presentation to the taxpayer of the findings and recommendations of the Examiner.
- (3) Preparation of an examination report is a very important part of the Examiner’s duties. The examination report should be clear, concise, and to the point. All adjustments must be properly explained and supported by appropriate references to the applicable laws, regulations, court decisions, rulings, etc., on which the Examiner based the findings.

4.70.14.2.1.4.7.1
(11-24-2023)

Employment Tax Examination Reports

- (1) For instruction on the preparation of reports covering examination of employment tax see:
 - IRM 4.23.10, for preparation of employment tax reports.
 - IRM 4.24.20, Excise Tax Report Writing Guide, for guidance on excise reports.
 - IRM 4.10.8, Examination of Returns, Report Writing, and individual exam reports, respectively.
- (2) Report Generation Software (RGS) is required for generation of all income tax examination reports. See IRM 4.10.8.18, Reports Generation Software (RGS).
- (3) The Examiner prepares and provides the examination report to the taxpayer and solicits agreement. If necessary, various closing letters are available for the Examiner to use when the report is issued by mail. The letter should remain undated until issued.

- (4) Where possible, all correspondence with taxpayers should be prepared using standard forms and letters, since the specific language in these documents has been approved for general use. Examiners are never authorized to modify the context of National letters and forms except for short-term changes. (IRM 4.10.1.3.2, Written Communication.)
- (5) Any executed Form 2504 series, as applicable, received from a taxpayer must be date stamped on the day received.
- (6) Original paper Forms must be date stamped in the upper right corner:
 - If the Form is received via EEFax then the file itself contains the date and time stamp it was sent to the IRS and no further action is required to evidence receipt.
 - If the Form is received via facsimile and the date and time stamped by the sender's fax machine is correct no further action is required to evidence receipt. If the sender's date and time stamp is not correct you must treat it as a paper form and use the procedures in (1) above.
- (7) The Examiner should include on Form 4668 that the taxpayer needs to send to the Social Security Administration any Forms W-2/W-3 or W-2c/W-3c that are required to be filed, but that are not secured during the exam.
- (8) Generally, the Examiner should attach to the Form 4668 a listing of each affected worker and, for each worker, the wage and employment tax adjustment. The list should provide: the worker's name, SSN, amount of adjustment to total compensation, FICA, and Medicare wages, as well as related employment tax adjustments.

4.70.14.2.1.4.7.2
(11-24-2023)
**Employment Tax
No-Change Cases**

- (1) In general, all quarters of a calendar year concurrently; books and records for the entire year are requested and examined. The taxpayer is entitled to a report that addresses all quarters examined.
- (2) When an examination results in no changes to all quarters, all quarters will be closed "no- change".
- (3) If the Examiner notifies a taxpayer that only one period is under exam and limits the examination to that period, then it is appropriate to issue a no-change report on only that quarter.

4.70.14.2.1.4.7.3
(11-24-2023)
**Employment Tax
No-Change Report**

- (1) The Examiner will provide the taxpayer a no-change report on Form 4666 indicating the year(s) and return form(s) examined and closed as no-change. The report should indicate that the findings are subject to managerial approval. Letter 3381 should be prepared and issued to the taxpayer (unless some periods are changed and others are not changed) with a copy of Form 4666, including the appropriate Section 530 limitation language. The Examiner may draft a custom letter, if needed, as a transmittal if the no change report is issued by mail.

4.70.14.2.1.4.7.4
(11-24-2023)
**Employment Tax
Examination Resulting
in Both Change and
No-Change Periods**

- (1) In general, when an agreed examination results in changes to some quarters and no change to others, treat the employment tax case as an agreed "change" case. One letter and one report will be issued that addresses the no-change periods, and the periods with the changes, following the procedures outlined in IRM 4.23.10.10.3 (9). Specifically, the following guidance should be followed:

1. Always use Form 4666 to summarize all examined periods.
2. Report the no-changes in the summary section of Form 4666 by entering the period and return form number, writing "No-Change" in the tax column, and entering a dash in the page column.
3. Do not complete Forms 4668 for the quarters no-changed.
4. Enter the adjustment information on Form 4668 for only the quarters being changed. On a multiple-year examination, if no quarter during the year is changed, then no Form 4668 is necessary.

4.70.14.2.1.4.7.5
(11-24-2023)

Employment Tax Agreed Report

- (1) For agreed examinations, prepare, and furnish the taxpayer a copy of the report at the examination's conclusion. If the taxpayer doesn't pay the additional tax, indicate the last day for an interest-free adjustment on the report.
- (2) Notate on the 3198-A Special Handling checksheet in RCCMS, if the taxpayer is entitled to an interest-free period per IRC 6205. See IRC 20.2.10.5.1, Underpayment Adjustments on Employment Taxes.

4.70.14.2.1.4.7.6
(11-24-2023)

Employment Tax Unagreed Report

- (1) Any report that is given to the taxpayer must include a statement that the report is subject to the approval of the EO Examination Director, FSL/ET Program Manager, or ITG Program Manager.
- (2) With your group manager, examine and confirm the statute date to determine whether a 30-Day Letter, Statutory Notice of Deficiency (90-Day Letter), or Notice of Employment Tax Determination Under IRC 7436 should be issued. Primary guidance and procedures for unagreed cases including the 30-Day letter process can be found at:
 - IRM 4.23.22, Employment Tax Unagreed Employment Tax Case Procedures.
 - IRM 4.10.8.12, Unagreed Case Procedures.
- (3) Complete unagreed case write-up. See IRM 4.23.10.16.1, Preparing Explanation of Adjustments.
- (4) Separate reports MUST BE prepared for IRC 7436 and non-section 7436 issues. See IRM 4.23.10.10, Preparation of the Employment Tax Report, and IRM 4.23.10.10.4, Employment Tax Change Report.
- (5) To assist in the preparation of Tables 1 and 2 of Letter 3523, prepare a list of reclassified workers as defined in IRM 4.23.22.11.1, General Overview of Section 7436 Procedures, (5) and (6). In addition, examiners should prepare a work copy draft of Tables 3 and 4 to assist ITG Technical or EO Mandatory Review in the preparation of Letter 3523. Both the list of workers and the table of taxes should be included with the Employment Tax Examiner's Report (ETER) package in the front of the case file for use by ITG Technical Group or EO Mandatory Review in preparation of the Letter 3523. See IRM 4.23.22.11, Special Procedures for Letter 3523 under IRC 7436.

Note: To assist mandatory review on preparing Letter 3523, examiners should include the ETER spreadsheet and associated workpapers in electronic format and include in the file when closing.

4.70.14.2.1.4.7.7
(11-24-2023)

ITG - Concluding the Examination

- (1) Meet with the tribal official(s) to inform them of any findings, recommendations or proposed tax adjustments when you finish your examination.
 - a. Provide your employee information again when you issue the report. Refer to IRM 4.10.1.6.9, Providing Taxpayers with Employee Contact Information.
 - b. Issue the examination report and attach Pub 3498, The Examination Process, or Pub 5146, Employment Tax Returns Examination & Appeal Rights.
 - c. Discuss proposed adjustments with the taxpayer and/or taxpayer's representative including the law, regulations, rulings and court decisions supporting your conclusions.
 - d. Solicit agreement
 - e. Provide workpapers, if requested.
 - f. On agreed cases, request full payment of tax, penalties and interest.

- If taxpayer indicates an inability to pay the tax due at closing or within 120 days of the first notice, alternative payment methods should be discussed. An installment agreement should be offered if the taxpayer meets the requirements. See IRM 4.70.14.2.1.4.8.6, Installment Agreements.
- If the taxpayer and/or representative do not wish to pay the deficiency immediately, explain that a statement for the deficiency plus interest will be mailed. Their cancelled check will be their receipt. Encourage them to pay using EFTPS. If they must send a check instruct them to put the entity name, EIN, tax form number and tax period on the face of the check itself. Secure waivers as needed and close the case.

Note: If the tribal leader isn't in the closing meeting, explain your examination results in a letter. Thank the tribal official(s) for their cooperation. Issue all letters, publications and reports per the communication agreement. Send any examination correspondence you send to the designated tribal official also to the tribal leader.

Example: Send all correspondence to both the designated tribal official and the tribal leader for: an examination, examination expansion, or notification to the tribal leader that someone else from the IRS will be working on their reservation.

4.70.14.2.1.4.7.8
(11-24-2023)

Employment tax 30-day Letters

- (1) IRM 4.23.22, Unagreed Employment Tax Case Procedures, explains the procedures for unagreed cases, including the preparation of 30-day letters; i.e. Letters 950-C & 950-D.
- (2) Examiners are responsible for preparing and sending 30-day letters.
- (3) The following table provides a list of the most commonly used closing letters and indicates who is responsible for preparing and mailing the letter.

Letter Number	Prepared By	Mailed by
Letter 5376 (Full or Partial Claim Disallowance - Employment Tax)	Examiner	Examiner
Letter 570, (Claim Allowed In Full)	Examiner (undated)	Manager
Letter 3381 (No Change)	Examiner (undated)	Manager
Letter 905(Letter Notifying Taxpayer of Partial Refund Claim Disallowance)	Examiner	Mandatory Review
Letter 906(Certified Claim Disallowance Letter)	Examiner	Mandatory Review
Letter 950-C or Letter 950-D	Examiner	Examiner
Letter 3382(Notifica-tion Letter- Agreed Audit Changes)	Examiner	Manager
Letter 3523, (Notice of Determination of Worker Classification)	Mandatory Review	Mandatory Review

4.70.14.2.1.4.7.9
(11-24-2023)

Special Procedures for Notices of Determination of Worker Classification or Section 530 Relief

- (1) IRM 4.23.10.10, Preparation of the Employment Tax Examination Report, provides general information about IRC 7436, which provides Tax Court review when a part of the examination includes a controversy involving a determination that at least one worker should be reclassified as an employee of the taxpayer for employment tax purposes and/or that the taxpayer is not entitled to relief under section 530 of the Revenue Act of 1978.
- (2) Special procedures must be followed when unagreed issues are subject to IRC 7436.

4.70.14.2.1.4.7.10
(11-24-2023)

530 Limitation Language

- (1) The examination of a taxpayer's employment tax returns may or may not include the classification of the taxpayer's workers as employees rather than independent contractors.
- (2) Section 530 of the Revenue Act of 1978, as amended, provides that: Taxpayer may not rely on an audit begun after December 31, 1996, for purposes of subparagraph (B) [of subsection (a)(2), past IRS audit] thereof "unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer."
- (3) Language must be included on information document requests and examination reports to address Section 530 including identification of or development of

worker classification issues, the specific classes of workers examined, etc. The purpose of this language is to limit Section 530 exposure for subsequent periods to only classes of workers examined. Information on the location of worker classes is needed only when the examination was limited to worker classes within a particular agency, department, or school, in order to limit Section 530 prior audit exposure to the particular agency, department, or school examined.

4.70.14.2.1.4.7.11
(11-24-2023)

**530 Limitation Language
on IDRs**

- (1) Whenever worker classification issues are raised on an information document request (IDR), the IDR must specify the worker classification(s) (including location(s)) that are being examined. In addition, language should be used that limits Section 530 exposure to only classes of workers being examined and that are not reclassified. The following is an example of language that is appropriate when requesting information related to a specific class of workers: Please answer the following questions related to [CLASS OF WORKER(S)/LOCATION(S)]. The only class of worker that will be examined based upon information provided in response to this document request is [CLASS OF WORKER(S)/LOCATION(S)].

4.70.14.2.1.4.7.12
(11-24-2023)

**530 Limitation Language
on Form 4666**

- (1) Upon closing an examination, 530 limitation language must be inserted on all Form(s) 4666. This applies regardless of whether or not worker classification was an issue identified during the exam. The appropriate 530 limitation language to use will vary depending upon whether any worker issues were examined, and whether a worker classification examination resulted in a worker reclassification. The following scenarios capture the most common examination results.
- **Scenario #1:** The results of the examination include an employment tax assessment, but the examination did not include either the identification of or the development of the worker classification issue, including requests for information or discussion regarding a reclassification issue. The following language will be inserted in the “other information” section of Form 4666. “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 your employees for purposes of Section 530 of the Revenue Act of 1978 as amended by Section 1122 of the Small Business Job Protection Act of 1996.”
 - **Scenario #2:** An examination assessment will be made, and includes identification of or the development of worker classification issues, including requests for information or discussion regarding a reclassification issue but there will be no change related to the worker classification issue. Language will be inserted in the “other information” section of Form 4666 that specifies the classes of workers examined and limits Section 530 exposure to those classes of workers examined. For example, the following language is appropriate: “The examination of your employment tax returns as reflected on this Agreement included an examination for employment tax purposes of whether [CLASS OF WORKER(S)/LOCATION(S)] should be treated as employees of the taxpayer. Section 530 of the Revenue Act of 1978 as amended by Section 1122 of the Small Business Job Protection Act of 1996 provides that taxpayers may rely on a prior audit commenced after December 31, 1996, when the audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a

position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer. Based upon this examination, you may rely only on the audit of [CLASS OF WORKER(S)/LOCATION(S)] for purposes of the prior audit safe haven for satisfying the reasonable basis requirement of Section 530.”

- **Scenario #3:** An examination assessment will be made and the examination included identification of or the development of worker classification issues, including requests for information or discussion regarding a reclassification issue, and there will be a Notice of Determination of Worker Classification; specify classes of workers examined, limits of Section 530 exposure. Language will be inserted in the “other information” section of Form 4666 that specifies the classes of workers examined and limits Section 530 exposure to those classes of workers examined and not reclassified. For example, the following language is appropriate: “The examination of your employment tax returns as reflected on this Agreement included an examination for employment tax purposes of whether [CLASS OF WORKER(S)/LOCATION(S)] should be treated as employees of the taxpayer. Section 530 of the Revenue Act of 1978 as amended by Section 1122 of the Small Business Job Protection Act of 1996 provides that taxpayers may rely on a prior audit commenced after December 31, 1996, when the audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer. Based upon this examination, you may rely only on the audit of [CLASS OF WORKER(S)/LOCATION(S)] that did not result in a reclassification for purposes of the prior audit safe haven for satisfying the reasonable basis requirement of Section 530.”
- **Scenario #4:** Where the results of the examination includes reclassification of all workers examined. This language specifies the classes of workers examined and indicates that no worker classifications are covered under Section 530, because all workers audited were reclassified. For example, the following language is appropriate: “The examination of your employment tax returns as reflected on this Agreement included an examination for employment tax purposes of whether [CLASS OF WORKER(S)/LOCATION(S)] should be treated as employees of the taxpayer. Section 530 of the Revenue Act of 1978 as amended by Section 1122 of the Small Business Job Protection Act of 1996 provides that taxpayers may rely on a prior audit commenced after December 31, 1996, when the audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer. Based upon this examination, you may not rely on any classes of workers for purposes of the prior audit safe haven for satisfying the reasonable basis requirement of Section 530, because all workers audited were reclassified as employees.”
- **Scenario #5:** The examination results in no-change, and the examination did not include either the identification of or the development of the worker classification issue, including requests for information or discussion regarding a reclassification issue. The following language will be inserted in the “other information” section of Form 4666: “The examination of your employment tax returns did not include an examination for employment tax purposes of whether any individuals should be treated

as your employees for purposes of Section 530 of the Revenue Act of 1978 as amended by Section 1122 of the Small Business Job Protection Act of 1996.”

- **Scenario #6:** The examination results in no-change, but the examination included identification of or the development of worker classification issues, including requests for information or discussion regarding a re-classification issue. Language should be inserted in the “other information” section of Form 4666 that specifies the classes of workers examined and limits Section 530 exposure to those classes of workers examined. For example, the following language is appropriate: “The examination of your employment tax returns included an examination for employment tax purposes of whether [CLASS OF WORKER(S)/ LOCATION(S)] should be treated as employees of the taxpayer. Section 530 of the Revenue Act of 1978 as amended by Section 1122 of the Small Business Job Protection Act of 1996 provides that taxpayers may rely on a prior audit commenced after December 31, 1996, for Section 530 purposes when the audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer. Based upon this examination, you may rely only on the audit of [CLASS OF WORKER(S)/LOCATION(S)] for purposes of the prior audit safe haven for satisfying the reasonable basis requirement of Section 530.”

4.70.14.2.1.4.7.13
(11-24-2023)

**Publications to Include
with Examination
Reports**

- (1) The Internal Revenue Service Restructuring Act of 1998 (RRA 98) requires the IRS to include an explanation of the examination and collection process, as well as information about assistance from the Taxpayer Advocate with any first examination report and with any formal 30-Day letter. Pub 3498, The Examination Process, or Pub 5146, Employment Tax Returns, Examinations & Appeal Rights, will be used for this purpose. These publications incorporate Pub 1, Your Appeal Rights as a Taxpayer; Pub 5, Your Appeal Rights and How to Prepare a Protest If You Disagree; and Pub 594, The IRS Collection Process, into one document.
- (2) The following procedures will be followed:
 - Although Pub 3498 or Pub 5146 were provided with the initial opening letter these publications must also be provided to the taxpayer with the first report that is given to the taxpayer and with all 30-Day letters.
 - Pub 3498 is not required to be provided again to the same taxpayer for reports issued after the first report (in other words, corrected and supplemental reports) unless they are issued with a formal 30-Day letter.
 - Publications sent to the taxpayer should always agree with the enclosures listed on the cover letter to avoid confusion.
 - Publications are not required to be included with no-change reports but must be included with no-change with adjustment reports.

4.70.14.2.1.4.7.14
(11-24-2023)

**Reports Sent to the
Taxpayer’s
Representative**

- (1) If Form 2848, Power of Attorney and Declaration of Representative (POA), is on file for a taxpayer, it will be reviewed before the issuance of a report to determine who should receive a copy of the report. Centralized Authorization File (CAF), research on IDRS should be conducted because the POA may have been changed by the taxpayer submitting a new POA through channels other than the examiner. Refer to IRM 21.3.7, Processing Third Party Authori-

zations onto CAF, for more information regarding duties and responsibilities when dealing with a taxpayer's representative.

- (2) Per 26 CFR § 601.506 (Statement of Procedural Rules), the examiner should forward any correspondence (or copies), discussions, reports and/or other materials to the taxpayer at the same time they are sent to the representative. Refer to IRM 4.11.55, Examining Officer's Guide (EOG), Power of Attorney, Rights, and Responsibilities, for more detailed information about how to mail correspondence when a POA is involved.
- (3) Blank forms, notices and publications available on IRS.gov should not be sent to the taxpayer's representative or appointee, including, but not limited to:
 - Form 9465, Installment Agreement Request
 - Form 12203, Request for Appeals Review
 - Notice 609, Privacy Act Notice
 - Pub 1, Your Rights as a Taxpayer
 - Pub 1035, Extending the Tax Assessment Period

4.70.14.2.1.4.7.15
(11-24-2023)

**Execution of
Examination Reports
and Payments**

- (1) Agreement forms are considered executed when the taxpayer(s) signs the form. The executed agreement form should indicate the date the IRS received it. For this reason, the agreement form should be date-stamped upon receipt. Alternatively the specialists may, on the face of the agreement form, write the date it was received and authenticate the document with their initials.
- (2) A taxpayer, upon receipt of a report, may wish to pay the deficiency immediately. Form 3244-A, Payment Posting Voucher, should be processed with the funds, if payment is received. A copy of the completed Form 3244-A should be attached to the face of the return. See IRM 4.70.14.2.1.4.8, Employment Tax Remittance Processing Procedures.

4.70.14.2.1.4.7.16
(11-24-2023)

ITG - Fax Signatures

- (1) In May 2003, the Tax Administration Council approved the use of faxes for receiving information and documents from taxpayers and practitioners when contact with the taxpayer has been made and documented on Form 9984, Examining Officer's Activity Record (case activity record).
- (2) On November 19, 2015, a revision to the IRS's fax policy was announced by the Deputy Commissioner for Services and Enforcement, which eliminated the dollar ceiling for acceptance of consents to assess additional tax and taxpayer closing agreements received by fax.
- (3) Specifically, consents to assess additional tax (Forms 2504, 2504-T, 2504-S, 870 and others) can be accepted by fax if taxpayer contact has been made and the case activity record documents:
 - The date of contact, and
 - The desire of the taxpayer to submit the consent by fax.
- (4) The term "faxed signatures" should be construed to include electronic images of scanned original signatures transmitted by Enterprise Electronic Facsimile (EEFAX) or email.

4.70.14.2.1.4.8
(11-24-2023)

**Employment Tax
Remittance Processing
Procedures**

- (1) The following procedures should be followed for processing payments.
- (2) Use the following mailing address:

Payment Amount	Mailing Address
Less than \$100,000	Internal Revenue Service 1973 North Rulon White Blvd., Mail Stop 1999 Ogden, UT 84404 Attention: Teller Unit / Receipt & Control Operations Manager
\$100,000 or more	Internal Revenue Service 1973 North Rulon White Blvd., Mail Stop 2003 Ogden, UT 84404 Attention: Teller Unit / Receipt & Control Operations Manager

4.70.14.2.1.4.8.1
(11-24-2023)

**Employment Tax
Advanced Payments**

- (1) Taxpayers may prepay their deficiency or proposed deficiency by making an advance payment. Taxpayers can use checks, money orders or electronic funds transfers.
- (2) There are two types of advance payments:
 - IRC 6603 deposit, and
 - A payment of tax deficiency.

Note: Make sure to properly identify the type of taxpayer payment.

- (3) Do not solicit a payment from a taxpayer until you finish the exam and secure an agreement. If the taxpayer offers to pay before you finish the exam to stop accruing interest, accept the payment. This stops the interest accruing on the amount paid as of the date of payment.
- (4) Payments of less than \$100,000 secured as "Advance Payment on Deficiency" (TC 640) - secured as part of an exam should be sent (overnight delivery) with Form 3244-A via Form 3210.
- (5) Payments of \$100,000 and more secured as "Advance Payment on Deficiency" (TC 640) - secured as part of an exam require additional steps.
 - Email a copy of Form 3210 to *&CTR ODN Ogden Tellers* and your manager. Use secured email and include the following in the email:

--Date payment was mailed
--Amount of payment
--Name and address/post of duty of the submitter
--UPS tracking number, if payment is \$1 million or more
--If secure email is unavailable, contact the Ogden Remittance Liaison at 801-620-3972

- The payment should be sent overnight with Form 3244-A via Form 3210. Write "TE/GE over \$100,000" in the upper left-hand corner on the inside envelope of the double-wrapped envelope.

4.70.14.2.1.4.8.2

(11-24-2023)

IRC 6603 Deposits

- (1) IRC 6603 permits a taxpayer to make a deposit in lieu of a payment to stop the accrual of interest on a potential deficiency. It also allows for the accrual of interest on a deposit returned to the taxpayer to the extent that the deposit is attributable to a disputable tax. Rev. Proc. 2005-18 gives all the requirements for to treat a payment as a 6603 deposit. Taxpayers must include a written statement designating the payment as a deposit, including:
 - Type(s) of tax
 - Tax year(s)/tax period(s)
 - Amount(s) in dispute (enclosing the 30-Day letter is sufficient)
- (2) Without the written statement, the you can treat it as a tax payment and the taxpayer can't contest the determination in Tax Court. The taxpayer can only sue for a refund in federal district court or the Court of Federal Claims. (If the taxpayer pays the full deficiency, there is no deficiency and the Tax Court doesn't have jurisdiction.)
- (3) For more information, see IRM 4.20.1.3.1(4), Request Full Payment, IRM 4.23.11.4(4)(a), Advance Payments - IRC 6603 Deposits, and IRM 20.2.4.8.2, IRC 6603 Deposits.

4.70.14.2.1.4.8.3

(11-24-2023)

Completing Form 3244-A for IRC 6603 Deposits

- (1) Form 3244-A, Payment Posting Voucher — Examination, contains a check box on the form to mark a payment as an IRC 6603 deposit. If you fill out the form electronically and check the 6603 Box, it adds a Designated Payment Code (DPC) 12. If you fill out the form by hand, enter DPC 12.
- (2) Apply as a Transaction Code (TC) 640, Advance Payment on Deficiency, and enter the amount of payment.

4.70.14.2.1.4.8.4

(11-24-2023)

Employment Tax Processing Check Payments

- (1) Upon receipt of a payment, the Examiner should prepare Form 3244-A. Complete a separate Form 3244-A for each tax year and class of tax involved. See IRM 23.11.5, Form 3244-A, Payment Posting Voucher - Examination, for detailed instructions.
- (2) Checks should be made payable to "United States Treasury". If the payee section is blank or illegible, it must be over-stamped "United States Treasury."
- (3) The Examiner will transmit the payment(s) and related Form(s) 3244-A to Ogden via Form 3210 within 24 hours. All payments must be double-wrapped (with the payment placed in a security envelope inside of the overnight mail envelope) and marked or delivered via overnight traceable method. (A receipted copy of Form 3244-A may be used in lieu of Form 3210 only for payments which are hand-carried to a local remittance processor. This occurrence is not common.)
- (4) If a remittance must be held overnight, it must be stored securely in a locked container.
- (5) Form 3210 should be prepared in triplicate. Two copies should accompany a payment being sent to the processing center. If the payment applies to more

than one tax period, the breakdown should be on Form 3210. The payment should be stapled to the front of Form 3244-A, and sent with Form 3210 by overnight mail.

- (6) The mail service tracking number should be included on Form 3210. Form 3210 should also include taxpayer name, TIN, tax return form number, payment amount, and check number. Copies of all forms should be retained in the case file. Electronic copies may be imported to RCCMS.
- (7) To comply with the concept “segregation of duties” copies of Form 3210, 3244-A, and the checks should be faxed (or scanned/email) to the employee’s manager. The manager will approve the copies and alert the employee to transmit the originals to Ogden. Maintain a log at the managerial level. The Examiner should maintain a separate log of Forms 3210.
- (8) The remittance package will consist of the payment(s), Form(s) 3244-A, and Form 3210. Send the package to the Ogden address shown in the Case Closing Desk Guide.
- (9) The sender must establish a control to ensure delivery of tax receipts. The control must include amounts of taxpayer receipts by TIN, correlated to the package tracer information.
- (10) Copies of Form 3244-A are not required to be attached to the return document in a paper case file as long as electronic copies are in the RCCMS file. However, if a paper case is going to Appeals, attach Form 3244-A to the return document.
- (11) Submission processing centers must return acknowledgment copies of transmittals to originators within five workdays. The Examiner must follow up with the processing center within ten workdays if payment packages have not been acknowledged.

4.70.14.2.1.4.8.5
(11-24-2023)
EFTPS Option

- (1) Taxpayers have the option to pay deficiencies using EFTPS (Electronic Federal Tax Payment System). Although not required, EFTPS streamlines payment processing.
- (2) Payments will post to IDRS within days if the taxpayer uses EFTPS. Verify the payments posted to the proper periods on IDRS and attach a TXMOD printout to the front of the return showing the payment posted before you close the case from the group. If the case is all electronic, upload a copy of the TXMOD into the “Office Documents” folder in RCCMS and note in Form 9984, Examining Officer’s Activity Record, that the EFTPS payment posted properly.

4.70.14.2.1.4.8.6
(11-24-2023)
Installment Agreement

- (1) If you can’t secure payment of an agreed unpaid tax case and the taxpayer can’t pay immediately or upon receipt of the first notice, consider an installment agreement. Coordinate with SB/SE Collection, per IRM 4.20.1.3, Examination Collectibility, Issue Resolution - Solicit Payment.

Note: The taxpayer owes interest if the tax is not fully paid by the assessment date, even if the interest-free provisions otherwise apply.

- (2) If the taxpayer asks for an installment agreement beyond your installment agreement criteria or the agreed unpaid deficiency is over \$100,000, coordi-

nate contact between the taxpayer and a revenue officer through your manager. See IRM 4.20.1.4, Examination Collectibility, Installment Agreements, for more information.

4.70.14.2.1.5

(11-24-2023)

TEB – Agreed Case Processing

- (1) An agreed Tax-Exempt Bond examination is one for which:
 - a. The examiner concludes the bonds are in compliance.
 - b. Operational changes were made and did not result in a change to bond qualification.
 - c. A delinquent Form 8038 series or Form 8703 is received.
 - d. An issuer agrees with proposed resolution of non-compliance determined in the examination and completed a closing agreement.

4.70.14.2.1.5.1

(11-24-2023)

TEB - Resolution of Noncompliance

- (1) During an exam, it might be determined that the bonds are not in compliance with applicable tax laws. When this occurs, try to resolve the issue.
- (2) The goal of the resolution phase of the examination is to reach agreement, if possible, on the tax or compliance treatment of each issue examined and, if necessary, to issue a Revenue Agent Report (RAR) to, or enter into a closing agreement with, the taxpayer. The examiner should consider Alternative Dispute Resolutions such as Fast Track Settlement where appropriate.

4.70.14.2.1.5.2

(11-24-2023)

TEB - No Change Examinations

- (1) As a result of the examination, you may conclude that the bonds are in compliance. You must obtain your manager's concurrence with this conclusion.
- (2) Prepare the closing letter (Letter 6049, Examination Closed - No Change). Close the case in accordance with IRM 4.70.14.4, Closing A Case, and forward it to the manager.
- (3) The Field Exam group manager reviews the case file and issues the closing letter. Then, the manager documents these actions on the Case Chronology Record.
- (4) Close exams when you issue Letter 6049 with the appropriate RCCMS disposal code 02 (107 - No Change)

Note: Use the appropriate RCCMS disposal code for TEB from GE Computer Systems Codes Book, Document 11308.

4.70.14.2.1.5.3

(11-24-2023)

TEB - Examinations Resulting in Change due to Correction of Operations

- (1) You may conclude from the examination that the bonds are currently in compliance. However, Operational changes were made and did not result in a change to bond qualification.
- (2) In the event an examination results in a change of operations, **and** no change in bond qualification, use disposal code 52 (214 in RCCMS), Change due to Correction of Operations, unless a higher priority disposal code applies.
- (3) The following TEB examples would result in a no change (DC 02 / 107) (assuming there are no other issues), **not** a change due to correction of operations (52/214), in situations such as:

- a. The examiner finds that a payment of rebate will likely be due for the first computation date. However, the first date for payment of rebate hasn't occurred, and there were no corrections made during the examination.
- b. The examination shows an incorrect bond yield calculation. The bond yield adjustment didn't affect arbitrage rebate or yield restrictions for the first computation period.
- c. The examination shows that the taxpayer didn't timely allocate bond proceeds to expenditures. However, there were no proposed compliance changes and no corrections made during the examination to ensure timely allocations.
- d. The examiner finds the return didn't have an attached copy of the volume cap allocation for the bonds and doesn't secure it.
- e. The taxpayer filed the return using an incorrect employer identification number.

Note: These examples are not intended to be all inclusive.

Discuss future noncompliance with the group manager to determine whether a referral or information notice for a future year examination should be recommended. If so, prepare referral Form 5666, TE/GE Referral/information Report, requesting a subsequent examination and secure email it to: *eoclass@irs.gov*. Ensure the subject line references the referral type and TEB's functional unit. If the file is too large to scan or email, mail to:

Internal Revenue Service
 ATTN: Referrals Group Manager
 MS 4910 DAL 1100 Commerce Street
 Dallas, TX 75242-1027

- (4) When using DC 52/214, Change due to Correction of Operations, prepare Letter 1744 and attached Form 886-A for review and issuance by the group manager. See IRM 4.70.14.4.3.1, TE/GE Change due to Correction of Operations.
- (5) Close exams with the Letter 1744, using the RCCMS disposal code 214.

Note: Verify the appropriate RCCMS disposal code for TEB from GE Computer Systems Codes Book, Document 11308.

4.70.14.2.1.5.4
 (11-24-2023)

**TEB - Rebate or Yield
 Reduction Payment Due**

- (1) If you identify a failure to pay rebate or a yield reduction payment, then the bonds are arbitrage bonds under IRC 148. However, it might be appropriate to resolve the noncompliance by securing delinquent or amended Form 8038-T. If so, solicit the returns, place the returns under examination through RCCMS and assert the appropriate penalties. See IRM 4.70.13.9.5.9, TEB Procedures For Secured Delinquent and Late Filed Returns and Forms, for instructions on processing these returns.

- 4.70.14.2.1.5.5
(11-24-2023)
TEB - Annual Certification of a Residential Rental Project (Form 8703)
- (1) If you determine that the operator of a facility failed to file the Form 8703, Annual Certification of a Residential Rental Project, when required, solicit the certification for the delinquent periods and forward the delinquent forms for processing per the instructions in IRM 4.70.13.9, Delinquent, Amended, Substitute for Returns. Consider assessing the penalty provided under IRC 6652(j). Discuss assertion of appropriate penalties with your manager before proposing any penalty to the operator of a facility. See the penalty handbook, IRM 20.1.10, Penalty Handbook, Miscellaneous Penalties.
- 4.70.14.2.1.5.6
(11-24-2023)
TEB - Closing Agreement
- (1) The examiner or manager should not initiate closing agreement discussions with an issuer/POA. Closing agreement discussions are initiated solely at the request of the issuer/representative. It is permissible to inform an issuer or representative that closing agreements may be used to resolve tax matters.
- (2) If the issuer requests resolution of noncompliance determined during the exam, then with your manager's agreement, begin the closing agreement process outlined in IRM 4.81.6, Tax Exempt Bonds Closing Agreements.
- 4.70.14.2.1.5.7
(11-24-2023)
TEB - Unagreed Potential Noncompliance
- (1) If the identified noncompliance determined during the examination is unresolved, with your manager's concurrence, follow the procedures for unagreed issues in IRM 4.70.14.2.4, Unagreed.
- 4.70.14.2.1.5.8
(11-24-2023)
TEB - Secured Delinquent and Late Filed Returns and Forms
- (1) During the course of an examination, an examiner may secure a delinquent or late filed return or form, including forms from the Form 8038 series and Form 8703 (a "Delinquent Return"). Processing secured Delinquent Returns in accordance with the applicable procedures in IRM 4.70.13.9.5.9.1, TEB Procedures for Processing Delinquent Returns, helps to ensure the accuracy of reported exam results. Consider assessing the penalty provided under IRC 6652(j). Discuss assertion of appropriate penalties with your manager before proposing any penalty to the operator of a facility. See the penalty handbook, IRM 20.1.10, Penalty Handbook, Miscellaneous Penalties.
- 4.70.14.2.1.5.9
(11-24-2023)
TEB - Tax Exempt Bonds Closing Agreements
- (1) A closing agreement may be entered into to resolve violations of the federal tax laws applicable to tax-advantaged bonds. A closing agreement is the vehicle used to permanently and conclusively resolve such violations. By doing this, the holders of the bonds or investors in the credits, who generally don't know how the proceeds were used, continue to receive tax benefits on the bonds and issuers of direct pay bonds protect the subsidy associated with their bonds.
- (2) The Internal Revenue Service (IRS) may enter into and approve a written closing agreement with any person for his/her liability (or the person or estate for whom she/he acts) in respect of any internal revenue tax for any taxable period (IRC 7121 and the corresponding Regulations). This authority includes conclusively resolving any specific matters jeopardizing the tax-advantaged status of bonds with the issuer of the bonds even though the issuer may not have tax liability for the bonds.
- (3) Regulation section 301.7121-1(a) further provides that a closing agreement may be entered into in any exam case in which there appears to be an advantage in having the exam permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing

agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement.

- (4) The Commissioner delegates to the Director, GE (the Director) and the TEB Program Manager the authority to enter into and approve written closing agreements involving examinations under their jurisdiction (Delegation Order Number 8-3 (formerly Delegation Order 97, Rev. 34) in IRM 1.2, Servicewide Policies and Authorities).
- (5) Typically, TEB enters into a single closing agreement covering all identified violations and all known tax periods. However, TEB may enter into a series of closing agreements for a single tax-advantaged bond transaction when appropriate.

Example: The IRS may enter into a subsequent closing agreement when it identifies a matter not previously identified and resolved in the prior closing agreement. Or, it may enter into a subsequent closing agreement to cover additional tax periods or additional amounts of bonds not covered in the prior closing agreement.

4.70.14.2.1.5.9.1
(11-24-2023)

**TEB - General Rules
Applicable to Closing
Agreements**

- (1) Closing agreements are:
 - a. Final and conclusive and may not, in the absence of fraud, malfeasance, or misrepresentation of material fact, be reopened as to matters agreed upon or be modified by an officer, employee or examiner of the United States. See IRM 4.81.6.7 for further details.
 - b. Subject to Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law.
 - c. Subject to any change in, or modification of, the law enacted after the agreement's date and that apply to that taxable period(s) when they cover taxable period(s) ending after the closing agreement effective date.

4.70.14.2.1.5.9.2
(11-24-2023)

**TEB - Negotiating and
Drafting of Closing
Agreements**

- (1) Issuers may:
 - a. Request a closing agreement with the IRS to preserve the tax-advantaged status of their bonds.
 - b. Be joined by other parties to a tax-advantaged bond transaction in entering into a closing agreement.
- (2) TEB enters into closing agreements with the issuer of the bond issue.
 - a. In certain exam cases, other parties to the bond transaction may also participate in the negotiations and jointly execute the agreement.
 - b. The issuer must complete a Form 8821, Tax Information Authorization, to allow parties who have not been designated as a representative under Form 2848, Power of Attorney and Declaration of Representative, to participate in the negotiations.
 - c. The conduit borrower or other party may designate its own representative under Form 2848.

Note: The 6700 penalties may apply to parties other than issuers and therefore, closing agreements regarding the 6700 penalties may not include the issuer of the bonds. See IRM 4.70.14.2.1.5.9.13, TEB – IRC Section 6700 Penalty.

- (3) To ensure that taxpayers are treated consistently and that agreements are enforceable, the TEB Closing Agreement Committee (Committee) reviews all nonstandard closing agreements (See IRM 4.81.6.5(3)). The Committee consists of two members from TEB Technical appointed by the TEB Technical Manager. The Committee may consult with designated counsel from Associate Chief Counsel, Financial Institutions & Products (Branch 5) and designated counsel from Associate Chief Counsel, Procedures & Administrative.
 - (4) In an open exam case, the issuer may initiate closing agreement negotiations at any time. In most cases, the examiner or group manager negotiates the terms of the closing agreement. In some cases, the examiner and group manager may ask TEB Technical to help draft the closing agreements.
 - (5) In negotiating the terms of a closing agreement, the examiner, specialist, group manager and the Committee ensure the terms:
 - Are fair and equitable.
 - Promote voluntary compliance and encourage due diligence in complying with all applicable federal tax laws.
 - Recognize the difference between the IRS enforcement and voluntary compliance programs.
 - (6) Closing agreements with issuers generally don't contain terms that address any potential IRC 6700 promoter penalty liabilities unless the agreement specifically resolves an open IRC 6700 exam case on a party to the agreement.
- Note:** When TEB completes a bond exam, it may enter into a closing agreement that resolves all identified specific matters relating to that issue and, when appropriate, any potential IRC 6700 promoter penalty liability of the issuer.
- (7) The examiner drafts the closing agreement covering specific matters, following the appropriate model closing agreement (<https://www.irs.gov/tax-exempt-bonds/model-closing-agreements-for-vcap-and-examinations>). The drafter must clearly state the violation that is being resolved with the closing agreement so the agreement, read on its own, has only one reasonable interpretation as to the specific matter being resolved.
 - (8) Some of the model closing agreement terms apply only to specific situations so the examiner must consider whether the terms in IRM 4.70.14.2.1.5.9.3, TEB – Closing Agreement Terms, are appropriate for the agreement. The agreement may also cover related tax issues if the impacted taxpayer is a party to the agreement, such as:
 - a. Denial of interest deductions under IRC 150(b).
 - b. Depreciation adjustments under IRC 168.
 - (9) Closing agreement terms generally follow the model closing agreements created for exam.
 - (10) The GE Director executes exam closing agreements under the process in IRM 4.70.14.2.1.5.9.3, TEB – Closing Agreement Terms.

4.70.14.2.1.5.9.3
(11-24-2023)
**TEB - Closing
Agreement Terms**

- (1) TEB prepares the closing agreements. This section discusses some of the general terms we use to resolve specific matters.

- (2) Some violations are covered by a special closing agreement program. Generally, this program is described in a public announcement or notice and includes the closing agreement template to use. When this program applies, the issuer and the IRS must use the closing agreement template that is provided.
- (3) To determine a closing agreement's resolution terms, the examiner, group manager, TEB Program Manager and the Committee consider the compliance failure's facts and circumstances.
- (4) If the issuer or other party that executes the agreement fails to comply with its terms, TEB considers the significance of that failure. If a failure to comply with a material term of the closing agreement constitutes a new deliberate action or intentional act within the meaning of the Regulations and constitutes a new violation with respect to the bond issue, you may need to prepare a later closing agreement to resolve a new violation arising after the execution of a closing agreement (See IRM 4.70.14.2.1.5.9.1, TEB – General Rules Applicable to Closing Agreements).

4.70.14.2.1.5.9.4
(11-24-2023)

TEB - Bond Redemption

- (1) TEB may require as a prerequisite to entering into a closing agreement that the issuer redeem, retire or defease callable bonds of the issue at the earliest possible date.
- (2) For exam closing agreements, if the issuer can't redeem, retire or purchase and cancel the callable bonds before the closing agreement execution date, the closing agreement must:
 - a. Specify the date on which the bonds will be redeemed.
 - b. Require the issuer to call the bonds for redemption on that date.
 - c. Require the issuer to provide the bondholders with an irrevocable call notice. The irrevocable call notice must include the specific date on which the issuer has stated that the redemption will occur. The issuer must provide TEB with documentation of this call notice prior to TEB executing the closing agreement.
 - d. Require the issuer to establish, prior to TEB executing the closing agreement, a fully funded irrevocable defeasance escrow or similar escrow satisfactory to TEB to provide for the payment of the principal and interest on the bonds to the call date. The issuer must provide TEB with documentation that it has established the irrevocable defeasance escrow prior to TEB executing the closing agreement.

Note: The issuer's statement, made under penalty of perjury, that the bonds have been irrevocably defeased and an irrevocable call notice was given to bondholders is sufficient documentation.

Note: For bonds that are noncallable, payment through maturity of the applicable tax-exposure, credit maintenance amount or other basis for the resolution amount eliminates the requirement for irrevocable call notice and defeasance of the bonds.

- (3) If an issuer redeems 100% of the outstanding principal amount of the bonds during an exam, consider closing the exam without further action if your group manager concurs and obtains written approval from the PM.

- (4) Factors for consideration in whether to close the examination pursuant to this subsection:
- What are the reasons for noncompliance?
 - Is the transaction abusive?
 - Were interested parties involved in aspects of the transaction that resulted in noncompliance?
 - Were reasonable steps taken by the issuer/borrower to ensure compliance with the law?
 - Did the issuer/borrower take steps to self-correct prior to the start of the exam?
- (5) If your manager concurs and the Program Manager approves closing the case pursuant to this subsection, and you have a basis to conclude that the bonds do not comply with the law:
- a. Issue Letter 5859, Full Bond Redemption - Compliance Issue Identified.
 - b. Report the Principal amount of bonds redeemed and the present value of the tax on the interest that would have accrued on the bonds to their stated redemption date in the RCCMS closing record.
 - c. On RCCMS, use disposal code 115, Full Bond Redemption Without Agreement, and ARDI Code 1-Fully Paid.
- Note:** There may be circumstances that warrant referring a bondholder or other party to the transaction to another business unit under current referral procedures. Consider, among other factors, whether the bondholder holds a significant amount or percentage of the bonds. Consult your manager to determine if a referral is warranted.
- (6) If your manager concurs and the PM approves closing the case pursuant to this subsection, and there is no indication that there is a compliance problem with the bonds:
- a. Issue closing letter (Letter 649, Examination Closed -, No Change)
 - b. Close on RCCMS with disposal code 107, No Change.
- (7) This resolution method does not apply if:
- The bonds are redeemed with other tax-advantaged bonds.
 - The bonds are direct pay bonds.
 - The issuer did not make appropriate rebate payments on the bonds.
 - The issuer asks to negotiate or enter into a closing agreement. (See IRM 4.70.14.2.1.5.9, Tax Exempt Bonds Closing Agreements, if they request a closing agreement.)

4.70.14.2.1.5.9.5
(11-24-2023)

**TEB - Alternative Use of
Proceeds or Facility**

- (1) Closing agreement terms may require:
- a. The issuer to expend any disposition proceeds for an alternative qualifying use.
 - b. The issuer to use the bond-financed property for an alternative qualifying use.

Note: All arrangements and contracts must be finalized prior to the execution of the closing agreement.

4.70.14.2.1.5.9.6
(11-24-2023)
**TEB - Resolution
Amount**

- (1) Generally, a closing agreement resolution amount for a tax-exempt bond issue is based on 100% of the present value of the taxpayer exposure of the bond issue, as computed in IRM 4.70.14.2.1.5.9.7, TEB – Computation of Taxpayer Exposure, below. However, as appropriate, you can also base closing agreement resolution amounts on:
 - The present value of an alternative minimum tax adjustment.
 - IRC 150(b) adjustments.
 - IRC 168(g) adjustments.
 - Any excessive arbitrage profits.
 - IRC 6700 penalties.
- (2) Generally, a closing agreement resolution amount for a tax credit bond issue or direct pay bond issue is based on 100% of the credit maintenance amount, as computed in IRM 4.70.14.2.1.5.9.8, TEB – Computation of Credit Maintenance Amount, below. For direct pay bonds, an issuer and TEB may agree to modify the amount of future allowable credit payments the issuer may claim by excluding a portion of interest payments on those bonds from the calculations of the credits, as appropriate under the facts and circumstances.
- (3) In certain exam cases, the closing agreement resolution amount may be based on a specified amount. Generally, a specified amount is only appropriate when described in a closing agreement program in the IRM, published guidance (including Notices and Announcements) and IRM 4.70.14.2.1.5.9.9, TEB – Resolutions Involving Specified Amounts.
- (4) A resolution amount may consist of one or more amounts described in or computed under IRM 4.70.14.2.1.5.9.7 through IRM 4.70.14.2.1.5.9.15, including but not limited to an amount representing taxpayer exposure, a credit maintenance amount and/or a specified amount. The IRS requires a minimum amount even if the computations in IRM 4.70.14.2.1.5.9.7 through IRM 4.70.14.2.1.5.9.14 produce a lower amount. For an examination-related closing agreement, the minimum resolution amount is \$5,000 per bond issue.

4.70.14.2.1.5.9.7
(11-24-2023)
**TEB - Computation of
Taxpayer Exposure**

- (1) Taxpayer exposure represents the estimated amount of tax liability the United States would collect from the bondholders if the bondholders were taxed on the interest they realized from the bonds during the calendar year(s) covered under the closing agreement.
- (2) Compute the taxpayer exposure for an exam closing agreement as follows:
 - a. Step 1. Determine the closing agreement period. This is the period to be covered under the closing agreement by identifying each past calendar year (as determined below) and each future calendar year during which the bonds were or will be outstanding.

- Bonds that have been called for redemption and defeased by a defeasance escrow are considered outstanding until their date of redemption; other bonds are considered outstanding until their maturity date.
- Past calendar years generally include calendar years that have a tax payment date that falls within three years of the date TEB identified the compliance failure.
- A tax payment date for a calendar year is April 15th following the conclusion of that calendar year.
- For exam purposes, TEB identifies a compliance failure on the date it notifies the issuer in writing of that identified issue.

- b. Step 2. Determine the amount of interest accrued or scheduled to accrue on the bonds in each calendar year within the closing agreement period based on the yield of those bonds.

- For bonds originally sold at a discount or premium of less than 5%, you may use the actual amount of interest paid or to be paid.
- For variable rate bonds, you may determine the interest scheduled to accrue in future years by using the average of the interest rates paid to date, the last interest rate paid on the bonds, or the appropriate fixed swap rate less up to 50 basis points, as appropriate under each exam's facts and circumstances.

- c. Step 3. Multiply the amount determined in Step 2 for each calendar year by the relevant tax percentage. Unless specifically instructed otherwise or a more accurate measure of the particular holder's tax rate is available, use the rates below.

- For calendar years before 2018, use 29%.
- For calendar years after 2017, use the sum of (i) the backup withholding rate on interest payment pursuant to IRC 3406(a)(1) and (ii) the net investment income tax rate specified in IRC 1411(a)(1), in effect during the calendar year. For interest scheduled to accrue after the closing agreement is executed, assume no change to these tax rates from the rates in effect.

Note: Notice 1036 contains early release copies of the withholding tables and includes the backup withholding rates (for example, the backup withholding rate in effect as of January 2018 is 24%).

- d. Step 4. Compute the present value of the amount calculated in Step 3 for each calendar year per IRM 4.70.14.2.1.5.9.14, TEB – Excessive Arbitrage Profit, by assuming it was due on April 15 in the following calendar year.
- e. Step 5. Add the present value amounts determined in Step 4 for all calendar years. This is the taxpayer exposure for exam closing agreements.

4.70.14.2.1.5.9.8
(11-24-2023)

**TEB - Computation of
Credit Maintenance
Amount**

- (1) Generally, the credit maintenance amount applies to fixed rate tax credit bonds and fixed rate direct pay bonds.
 - For tax credit bonds, the credit maintenance amount is the present value of credit amounts that would have been allowed or allowable on each credit allowance date during the credit adjustment period of the bonds if the violation had not occurred.
 - For direct pay bonds, the credit maintenance amount is the present value of the refundable credits that would have been allowed or allowable during the credit adjustment period of the bonds, based on the interest rate or rates of the bonds issued, if the violation had not occurred.
 - If the IRS and issuer agree, TEB may consider modifications to future allowable credit payments on direct pay bonds to calculate the credit maintenance amount.
- (2) Closing agreement resolution amounts for variable rate tax credit bonds and variable rate direct pay bonds are determined based upon the facts and circumstances, but generally follow the computation method described in IRM 4.70.14.2.1.5.9.7 and IRM 4.70.14.2.1.5.9.10.
- (3) Generally, the credit adjustment period is the period from the date of the violation to the date the bonds are no longer outstanding, subject to the following:
 - a. The date of the violation is generally either the date of the deliberate action, the date of the intentional act, the issue date, or the date another action occurs which jeopardizes the tax-advantaged status of the bonds. In no event will the credit adjustment period begin earlier than the issue date of the bonds.
 - b. The statute for past credit allowance dates may be controlled as provided in IRM 4.82.3.4. Otherwise, the credit adjustment period must not apply to credit allowance dates that occurred more than three years before the date TEB identified the compliance failure unless the issuer filed the Form 8038-CP for such credit allowance date within three years before the date TEB identified the compliance failure.
- (4) Compute the credit maintenance amount for tax credit bonds as follows:
 - a. Step 1. Identify the applicable credit adjustment period.
 - b. Step 2. Determine the amount of the credit allowance for each credit allowance date occurring during the credit adjustment period. The credit allowance amount is determined under IRC 54(b), IRC 54A(b) (as reduced by IRC 54C(b), IRC 54D(b)), or IRC 54AA(b), as applicable.
 - c. Step 3. Compute the present value of each tax credit allowance calculated in Step 2 for the credit allowance dates scheduled after the date of the closing agreement per IRM 4.70.14.2.1.5.9.15, TEB – Computing Value as of the Closing Agreement Execution Date, by assuming that each tax credit will accrue on the applicable credit allowance date.
 - d. Step 4. Compute the amount of interest per IRC 6621(a)(2) on each amount calculated in Step 2 for credit allowance dates occurring during the credit adjustment period and prior to the date of the closing agreement, by assuming that each tax credit allowance occurred on the applicable credit allowance date.
 - e. Step 5. Add: (a) the credit allowances for credit allowance dates occurring prior to the date of the closing agreement plus (b) the interest

amounts computed in Step 4 plus (c) the amount computed in Step 3. This sum is the credit maintenance amount for tax credit bonds.

- (5) The credit maintenance amount for direct pay bonds is computed as follows:
- a. Step 1. Identify the applicable credit adjustment period.
 - b. Step 2. Determine the amount of each interest payment on the bonds scheduled during the credit adjustment period (take into account scheduled sinking fund payments but don't take into account any optional redemption).
 - c. Step 3. To determine the refundable credit amount for each interest payment date, multiply each amount determined in Step 2 by the relevant refundable tax credit rate percentage in IRC 1400U-2(a)(2) or IRC 6431(b), as applicable, or (iii) determine the amounts to be paid pursuant to IRC 6431(f).
 - d. Step 4. Compute the present value of each refundable credit amount calculated in Step 3 for interest payment dates, if any, scheduled after the date of the closing agreement and during the credit adjustment period to the date of the closing agreement per IRM 4.70.14.2.1.5.9.15, TEB – Computing Value as of the Closing Agreement Execution Date, by assuming that each refundable credit amount will be paid on the applicable interest payment date (take into account scheduled sinking fund payments but don't take into account any optional redemption).
 - e. Step 5. Compute the amount of interest per IRC 6621(a)(2) on each amount calculated in Step 3 with respect to interest payment dates that occurred during the credit adjustment period and prior to the date of the closing agreement, by assuming that each refundable credit amount was paid on the applicable interest payment date. The credit allowance amount for credit allowance dates occurring during the credit adjustment period and prior to the date of the closing agreement must reflect any reduction required by sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, or any similar reduction in credits payable.
 - f. Step 6. Add: (a) the sum of all refundable credit amounts with respect to interest payment dates that occurred prior to the date of the closing agreement plus (b) the interest amount computed in Step 5 plus (c) the amount computed in Step 4. This sum is the credit maintenance amount for direct pay bonds.

4.70.14.2.1.5.9.9
(11-24-2023)

**TEB - Resolutions
Involving Specified
Amounts**

- (1) In certain exams, the examiner, specialist, group manager or Committee may recommend a resolution be conditioned on payment of a specified amount. Generally, such an amount is only appropriate when described in a formal closing agreement program or in a Notice or an Announcement.
- (2) The specified amount is generally listed in the program, but if not listed, it must be less than \$5,000. Specified amounts have included:
 - a. An amount equal to the par amount of the bonds held by the issuer multiplied by a specified percentage and then multiplied by a number of specified time intervals (for example, monthly).
 - b. The amount required to be paid for a request for a closing agreement, as published annually in the Internal Revenue Bulletin (for example, the amount for 2021 based on paragraph (A)(3)(d) of Appendix A to Rev. Proc. 2018-1 would be \$38,000 (for requests received after February 3, 2021).

- c. An amount (for example, \$500) multiplied by a number of specified time intervals (for example, monthly).
- d. A fixed amount per bond issue (for example, \$5,000 in exam cases).

4.70.14.2.1.5.9.10

(11-24-2023)

**TEB - Computation of
Alternative Minimum Tax
Adjustment**

- (1) For closing agreements providing that interest on bonds will not be treated as an item of tax preference for the alternative minimum tax, the closing agreement amount is an estimate of the federal income tax liability that all bondholders referenced in the closing agreement period would have been or would be required to pay if the items in question were treated as subject to the alternative minimum tax.
- (2) Compute the alternative minimum tax adjustment as follows:
 - 1. Step 1. Determine the principal amount of bonds that will be outstanding on January 1 of each calendar year for that period that begins with the calendar year in which the compliance failure occurred and ends with the first calendar year in which the nonqualified bonds will no longer be outstanding.
 - 2. Step 2. Multiply the amount determined in Step 1 for each calendar year by 0.0014.
 - 3. Step 3. Compute the present value of each amount determined in Step 2 for each calendar year in accordance with IRM 4.70.14.2.1.5.9.15, TEB – Computing Value as of the Closing Agreement Execution Date, by assuming it is paid on April 15 in the following calendar year.
 - 4. Step 4. Add the present value amounts determined in Step 3 for all calendar years. This amount is the alternative minimum tax adjustment.

4.70.14.2.1.5.9.11

(11-24-2023)

**TEB - IRC Section 150(b)
Interest Deduction**

- (1) When a closing agreement addresses nonqualified private activity bonds, the closing agreement terms may require, a payment that recoups the tax benefit that a party to the transaction received for a deduction taken for interest paid for the tax-exempt financing of the bond-financed property that accrued during the nonqualified period.

4.70.14.2.1.5.9.12

(11-24-2023)

**TEB - IRC Section 168(g)
Depreciation Deduction**

- (1) When a closing agreement addresses nonqualified private activity bonds, the closing agreement terms may require, a payment that recoups the tax benefit that a party to the transaction received for a depreciation deduction on the financed property that wasn't allowed under IRC 168(g) during the nonqualified period.

4.70.14.2.1.5.9.13

(11-24-2023)

**TEB - IRC Section 6700
Penalty**

- (1) TEB may enter into a closing agreement for an IRC 6700 violation. IRC Section 6700 penalties may be applied to bond counsel, investment bankers, issuers, conduit borrowers, financial advisors, feasibility consultants, engineers or any other person(s) who is involved in the organization or sale of the bonds and knew or had reason to know that their opinions, documents, reports or other statements were false or fraudulent as to any matter material to the tax-advantaged status of the bonds. For these agreements, determine the IRC 6700 penalty by treating the sale of each bond denomination as a separate activity.
- (2) The closing agreement must clearly state:
 - a. That the payment is being made in resolution of an IRC 6700 exam.

- b. Whether the closing agreement payment is to be treated as a civil payment or a nondeductible penalty amount.

4.70.14.2.1.5.9.14
(11-24-2023)

**TEB - Excessive
Arbitrage Profit**

- (1) Excessive arbitrage profit is an estimated amount of the economic benefit realized by the issuer or other parties to the transaction in excess of the amount permitted to be realized under applicable arbitrage yield restriction and rebate rules.

4.70.14.2.1.5.9.15
(11-24-2023)

**TEB - Computing Value
as of the Closing
Agreement Execution
Date**

- (1) Value as of the approximate date that TEB receives any payment required per the closing agreement terms (the "agreement execution date") including:
- Past or future tax liabilities or payments.
 - Past or future excessive arbitrage profit.
- (2) To value a past payment, liability or benefit, future value that amount to the agreement execution date using both the applicable underpayment rate(s) under IRC 6621 as the discount rate and a daily compounding method per IRC 6622.
- (3) To value any amount representing a future payment, liability or benefit:
- a. Present value that amount to the agreement execution date.
 - b. Use, as the discount rate, the appropriate short-term, mid-term, or long-term semi-annual compounding applicable federal rate (AFR) in effect on the agreement execution date and for the term from the agreement execution date to the assumed April 15 tax payment date corresponding to that future tax year (with respect to tax-exempt bonds), the future credit allowance date (with respect to tax credit bonds) or the future interest payment date (with respect to direct pay bonds), as applicable, in accordance with the terms provided in IRC 1274(D)(1).
 - c. Treat any tax year that has an assumed April 15 tax payment date or interest payment date later than the agreement execution date as a future tax year payment.

Example: 1. A closing agreement expected to be executed on November 15, 2021, includes amounts corresponding to tax-exempt interest to be paid in future tax years 2021 through 2031.

Example: 2. Present value the amounts representing estimated tax payments due on the assumed April 15 tax payment dates for tax years 2021 through 2023 at the short-term AFR.

Example: 3. Present value the amounts assumed to be due on the April 15 tax payment dates for tax years 2024 through 2029 at the mid-term AFR.

Example: 4. Present value the amounts assumed to be due on the April 15 tax payment dates for tax years 2030 and 2031 at the long-term AFR.

Example: 5. Use the applicable AFRs in effect on November 15, 2021 for these present value computations.

4.70.14.2.1.5.9.16
(11-24-2023)

**TEB - Adjustments to
Direct Pay Credits**

- (1) When TEB and the issuer agree that a closing agreement will exclude a portion of allowable credit payments from future credit calculations to resolve a direct-pay bond violation IRM 4.70.14.2.1.5.9.6(2), the agreement generally includes these terms, conditions and supporting documentation:
 - a. The closing agreement identifies the credits claimed and refunds paid to which the closing agreement applies.
 - b. The closing agreement specifies that it is executed for the qualification for credit under IRC 6431.
 - c. The closing agreement specifies any period for which the IRS won't assess tax, interest, or penalty.
 - d. Any closing agreement terms that affect the future allowability of credits must not indicate specific amounts to be allowed, but must describe how the credit amount is determined for each future interest payment date.

Example: The agreement must specify, as applicable, the date on which bonds are no longer treated as outstanding for purposes of calculating future credits or any other changes to the terms of the bonds on which such calculations will be based.
 - e. The issuer modifies the debt service schedule that they originally filed with the information return to reflect the agreement between the issuer and IRS to modify future allowable credits per IRM 4.70.14.2.1.5.9.8, TEB - Computation of Credit Maintenance Amount. Attach the modified debt service schedule as an exhibit to the closing agreement. See IRM 8.13.1.3.16, Attachment to Agreements, for attachment guidance.
 - f. The issuer represents that it will not request credits for any portion of interest payments on bonds which it has agreed to exclude from calculations of credits.
 - g. The closing agreement provides that the issuer's ability to claim future credits depends on future compliance with applicable law and the terms of the closing agreement.
- (2) For closing agreements that provide that the issuer isn't entitled to a credit for interest paid on the bonds after the effective date of the agreement, include the following in the closing agreement:
 - a. The bonds aren't qualified bonds for purposes of IRC 6431.
 - b. The issuer isn't entitled to a refund of a credit under IRC 6431 for the bonds.
 - c. The issuer includes a representation that it won't request a refund of the credit.
- (3) For closing agreements that provide that the issuer may not treat a portion of an issue of direct pay bonds as tax-advantaged bonds, include the following in the closing agreement:
 - a. The portion of each maturity of outstanding bonds that is considered qualified on the effective date of the closing agreement.
 - b. How the IRS and issuer treated principal payments or other adjustments affecting the outstanding amount of each maturity of bonds for determining the qualified bonds in each maturity.
 - c. The portion of each maturity of outstanding bonds that is considered non-qualified on the effective date of the closing agreement.
- (4) For closing agreements under which credits are calculated by treating the bonds as if a change in bond terms other than that described in paragraph (3)

above had occurred (for example, a change in the interest rate for one or more maturities of bonds or the rate of credit), include the following in the closing agreement:

- a. The specific term(s) for calculations.
- b. The specific bonds affected by this change.

4.70.14.2.1.5.9.17
(11-24-2023)

**TEB - No Payment from
Tax-Advantaged Bond
Proceeds**

- (1) In general, the issuer must not make payments required under the closing agreement, including the redemption of bonds or the establishment of a defeasance escrow, from proceeds of bonds described in IRC 103(a), IRC 54A, or IRC 54AA.

Exception: Exceptions to this rule may be made for closing agreements that resolve compliance failures with the arbitrage yield restriction and rebate requirements to permit investment proceeds to be paid, and for disposition proceeds applied to redeem or defease the bonds.

4.70.14.2.1.5.9.18
(11-24-2023)

**TEB - Review and
Clearance Process for
Examination Closing
Agreements**

- (1) Examiner: Prepare a briefing memorandum summarizing the proposed resolution terms and include the draft closing agreement. Include in the briefing memo:
 - Discussion of the key facts.
 - Applicable law.
 - Identification of the violations.
 - Proposed resolution terms.
 - Description of the resolution amount methodology (if any).
 - Identification of the bonds to be redeemed or defeased (if any).
 - Any proposed deviation from the model closing agreement language.
 - Any mitigating or aggravating factors used in arriving at the proposed resolution terms.
- (2) Examiner: Attach the briefing memo and the proposed closing agreement to the Closing Agreement Approval Document and send to your group manager for review and concurrence. When your group manager concurs with the recommendations, discuss the proposed resolution terms with the representative/issuer, emphasizing that the resolution terms have not been reviewed by the Committee or approved by the TEB Program Manager or the Director. Upon the issuer's tentative approval of the terms of the proposed closing agreement, inform your group manager of the approval.
- (3) The group manager forwards the Closing Agreement Approval Document and the attached documents to the TEB Program Manager.
 - If the TEB Program Manager concurs with the resolution terms, and the agreement involves a nonstandard resolution (that is, resolution terms that are not specifically prescribed in the IRM or guidance) or language that differs substantively from the model closing agreement or if the TEB Program Manager believes Committee review is appropriate, he/she sends the Closing Agreement Approval Document to the Committee.
 - If the TEB Program Manager doesn't agree with the resolution terms, she/he sends the Closing Agreement Approval Document back to the group manager and the examiner for further consideration and resubmission.
- (4) The Committee reviews the proposed resolution terms to determine whether:

- a. The resolution terms are consistent with other TEB closing agreements for the same type of violation, considering relevant factors that might support different resolution terms, such as TEB's discovery of the violation rather than the issuer's submission through the Voluntary Closing Agreement Program.
- b. The closing agreement language is enforceable (if it has been substantively modified from the model closing agreement language).

Note: The Committee may seek advice from the designated counsels from TEGEDC and Chief Counsel when questions of procedure or content make it appropriate, such as when proposed terms of a closing agreement are substantively modified from the model agreement.

- (5) If the Committee, after consulting the Chief Counsel ad hoc members, determines that changes are needed to make the agreement enforceable, they share those changes with the examiner and the group manager. Generally, the examiner must make those changes. If the Committee concludes that the proposed resolution is inconsistent with other TEB closing agreements, or they recommend other changes, they list the changes and their reasons on the Closing Agreement Approval Document and discuss alternative resolutions with the group manager and the examiner. After review and any discussion, the Committee sends the Closing Agreement Approval Document and attached documents to the TEB Program Manager.
- (6) If the TEB Program Manager approves the closing agreement, he/she sends the Closing Agreement Approval Document and attached documents to the Field Exam group manager and examiner. If the TEB Program Manager doesn't agree, he/she discusses any concerns with the Committee and the group manager.
- (7) The TEB Program Manager may send the exam case back to the examiner for further consideration and resubmission. The TEB Program Manager may determine that it is in the best interest of TEB to proceed with execution of the agreement without full Committee concurrence. In such a case, the TEB Program Manager must notate such on the Closing Agreement Approval Document. The TEB Program Manager may make or approve changes in the closing agreement which don't impact enforceability or deviate from the model closing agreement language without Committee review or any special notation on the Closing Agreement Approval Document.

Example: The TEB Program Manager may change the resolution amount to reflect a different payment date or correct an issuer's name.

- (8) After receiving the TEB Program Manager's approval using the approval process, the examiner must discuss with the representative/issuer any changes to the closing agreement, emphasizing that the resolution terms still have not been approved by the Director. When the representative/issuer concur on the approved agreement, the examiner must follow the closing agreement execution procedures in IRM 4.70.14.2.1.5.9.19, TEB- Execution of Closing Agreements.

4.70.14.2.1.5.9.19
(11-24-2023)

**TEB - Execution of
Closing Agreements**

- (1) After the closing agreement has been through the required approval process, the examiner must send an execution copy of the closing agreement to the issuer and any other applicable parties for signature using Letter 1595, Closing Agreement Request for Taxpayer Signature Transmittal Letter. Be sure to use selectable paragraphs as applicable. Enclose Form 15094 when selecting paragraph G on Letter 1595.
- (2) Closing agreements are executed first by the taxpayer and other parties to the transaction, as applicable, and then by TEB. TEB signs the closing agreement only when the payment of the resolution amount is verified on the IRS systems and proof of any other required actions is received. Secure the taxpayer's "wet ink" signature. (IRS signatures may be digital.)
- (3) In the transmittal, the examiner must direct the issuer to mail the closing agreement executed by the issuer and other applicable parties directly to the examiner's group manager, at the address set forth in the transmittal. Upon receipt of the executed agreement from the issuer, the group manager emails a copy of the executed agreement to the examiner.
- (4) Examiner must confirm and document:
 - Payment of the Settlement Payment was made and is reflected on the proper IRS account module.
 - Any required payment was made from sources other than proceeds of tax-advantaged bonds.
 - Bonds that were described as redeemed and retired in the lettered paragraphs of the agreement have been redeemed and retired.
 - Any public statement or notice required under the agreement has been issued.
 - Any required escrow has been established and fully funded with sources other than proceeds of tax-advantaged bonds.
 - Any other required terms of the agreement have been met.
 - Signatory is someone eligible to sign a tax return or execute contracts.
 - If there are errors, return the closing agreement to the taxpayer using Letter 1595-B, Closing Agreement Return for Correction Transmittal Letter.
- (5) TEB receives all closing agreement payments through the Electronic Federal Tax Payment System (EFTPS) unless unusual circumstances warrant manually processing payments by certified check.

Example: Payments must be manually processed if EFTPS is unavailable or otherwise expected to be unavailable on the anticipated due date for the payment.

- (6) The issuer of the tax-advantaged bonds, the conduit borrower or, in the case of an IRC 6700 penalty exam, the taxpayer, may submit the closing agreement amounts.
 - a. If the closing agreement payment relates to the issuer's potential tax liability (for example, denial of an IRC 6431 credit payment) or the bondholders (for example, inclusion of interest income or denial of a tax credit), then report the payment using the issuer's EIN regardless of the source of the payment.

- b. If the closing agreement payment relates to the potential tax liability of the conduit borrower (for example, IRC 150(b) or IRC 168(g) adjustments), then credit the payment to the borrower using an appropriate MFT.
 - c. If the closing agreement payment relates to a potential promoter penalty, then credit the payment to the taxpayer subject to the IRC 6700 penalty.
- (7) In all cases, the group manager or examiner must verify that the Master File entity account for the EIN of the taxpayer who'll submit the electronic payment is accurate. If there isn't an entity account for the EIN, the group manager or examiner must ensure that one is created on Master File. The group manager or examiner must confirm the existence of the entity accounts in advance of execution of the closing agreement to allow time to establish the account, if necessary.
- (8) The examiner forwards to the group manager documentation confirming the issuer's required performance under the terms of the closing agreement have been met, together with all necessary closing agreement transmittal letters Letter 1595-D, Final Signed and Approved Closing Agreement Transmittal Letter.
- (9) The group manager:
- Confirms the executed documents are consistent with the document approved by the TEB Program Manager.
 - Confirms any required actions including: settlement payments, redemptions, notices, escrows have been completed.
 - Scans the executed closing agreement received from the issuer.
 - Prints all closing and transmittal letters and affixes the signature stamp for the TEB Program Manager and then scans the signed letters.
 - Securely emails the closing agreement package to the TEB Program Assistant or other person designated by the Director and the Director (with a cc to the TEB Program Manager).

The closing agreement package must contain:

- The Closing Agreement Committee Approval, including the Closing Agreement Briefing Memo.
- Verification that the IRS received the resolution amount.
- The scanned executed closing agreement.
- The scanned signed closing and transmittal letters.

- (10) The TEB Program Assistant or other person designated by the Director coordinates with the Director for execution of the closing agreement. The Director may sign the closing agreement with a manual or electronic signature. The TEB Program Assistant or other person designated by the Director:
- a. Dates all closing and transmittal letters.
 - b. Securely emails an electronic copy of the dated closing and transmittal letter 1595-D and one copy of the executed closing agreement to the originating group manager (with a cc copy to the TEB Program Manager).
 - c. Mails the executed original agreement to the issuer and sends copies of the agreement to the other signatories and any representative required to receive a copy along with the closing letters and transmittal letter 1595-D.

- d. Securely emails an electronic version of the executed closing agreement to the Committee members.
- (11) The originating group manager ensures that copies of the dated and signed closing and transmittal letters and executed closing agreement are in the case file.
- (12) The originating group manager sends by secure email a copy of the closing agreement involving direct pay bonds to the Direct Pay Bonds Compliance Review Coordinator in TEB Technical when the resolution involves any change in the debt service schedule for the bonds.

4.70.14.2.1.5.9.20
(11-24-2023)

TEB - Setting Aside or Clarification of Closing Agreements

- (1) The Commissioner may set aside an agreement entered into under IRC 7121 if there's a showing of fraud or malfeasance, or misrepresentation of a material fact. The Commissioner's signature is required to set aside an agreement. Even if there is a basis to set aside the agreement, it is not mandatory. The Commissioner may refrain from doing so if it is in the best interests of the United States not to set aside the agreement.
- (2) An agreement entered into under IRC 7121 may be clarified if any of its provisions are unclear and reasonably subject to more than one reasonable interpretation or if surrounding facts and circumstances result in more than one reasonable interpretation of a provision in the agreement.
 - a. TEB generally clarifies its understanding of a closing agreement by issuing a letter to the issuer interpreting the unclear provision and its application to the surrounding facts and circumstances.
 - b. TEB may refuse to clarify a disputed closing agreement term if it determines that the challenging party's proposed interpretation is unreasonable and unlikely to prevail if it is litigated.
 - c. For exam closing agreements, the Director decides whether it is necessary to clarify the agreement.

4.70.14.2.1.5.9.21
(11-24-2023)

TEB Case Closing Procedures for Examiners

- (1) Examiner: Complete the following responsibilities before you close a case file:
 - a. Prepare the closing letter conforming to the conclusions reached during the exam and any necessary transmittal letters to the designated representatives.
 - b. When your manager notifies you that the case is closed, identify and return to the issuer appropriate documents received in response to IDRs that are not necessary to support audit conclusions.
 - c. Scan all paper documents you exchanged with the taxpayer including envelopes or anything the taxpayer or representative marked.
 - d. Upload all exchanged documents and relevant documents you prepared during the exam into RCCMS per IRM 4.70.12.5.2, Workpaper Format and TE/GE RCCMS Naming Convention.
 - e. If applicable, mail any original return you retrieved to the FAST—Field Agent Support Team—with a cover sheet stating "Refile Original Return" before closing the case fully electronically.

Note: "Original return" means the original return the taxpayer filed with the Service Center. It doesn't mean a delinquent return the examiner secured.

- f. Keep all records uploaded into RCCMS or determined to be a record no longer relevant to the case file in accordance with normal record retention requirements.

- g. Correctly complete the closing tabs on RCCMS.
- h. Verify the workpapers that support the conclusions reached are properly organized or indexed per the TE/GE RCCMS Naming Convention. Include and organize any workpapers and other case file documents that cannot be included in the RCCMS electronic case file due to system size limits with the paper files referenced in the electronic case file.
- i. Ensure that all electronic workpapers are checked in on RCCMS.
- j. Request timely closure through RCCMS using DC 601 (AIMS Code 07).
- k. Prepare Form 3210, Document Transmittal, for mailing of any paper file associated with a case.

Note: Form 3210 is no longer required for cases that are determined to be paperless. The terms “paperless”, “100 percent paperless”, “100 percent electronic” and “totally electronic” are synonymous.

Note: You may use the following paper documents with a 100 percent electronic case without affecting its status as an electronic case.

- Form 2848, Power of Attorney and Declaration of Representative.
- Form 8821, Tax Information Authorization.
- Form 56, Notice Concerning Fiduciary Relationship.
- Executed statute extension on Form 872 series or Form SS-10, Consent to Extend the Time to Assess Employment Taxes.
- Closing agreements.
- Any correspondence from a taxpayer signed under penalties of perjury. Notify the closing unit that the case is a 100 percent electronic case, by:

- Clicking on the “Electronic Indicator” box. o Including in the RCCMS comment section: “100 percent Paperless Case, Short Statute and SOL date”, if applicable.
- Forms 2848, 8821, 56, 872, SS-10, and/or closing agreements sent by UPS Services.

(2) Unagreed exam with protest to Appeals:

- a. The closing unit will not accept any protested case to Appeals with less than 425 days remaining on the statute (330 days for cases previously returned to the group by Appeals).
- b. The TEB Exam group manager:

1. Review the case for accuracy and completeness.
2. Confirm that the case file contains Letter 4413, Notice of Proposed Adverse Determination, valid protest, Letter 5918, Protest Received Rebuttal/ Transfer to Appeals. If a rebuttal was not prepared, the Case Chronology Record must explain the reasons.
3. If applicable, notify the TEB Technical Manager that the case requires review.
4. On RCCMS, update the status to 20 with disposal code 601 (AIMS Code 07). For cases requiring technical review, transfer the case to TEB Technical (440-20011-7271). For other cases, transfer the case to the Closing Unit.
5. When applicable, ship the paper file via Form 3210 to the reviewer identified by the TEB Technical Manager. Ensure that a 3198-A Special Handling checksheet in RCCMS is completed, with the check box "Forward to Appeals" selected.
6. Coordinate with Appeals on shipping of any paper case file.

(3) Fraud referrals:

- a. After uploading to RCCMS, the examiner should keep the following paper records for any matter involving potential criminal fraud:

- Records which contain color (such as blue ink, color letter-head).
- Records in which the taxpayer used white-out or any other alterations or markings that would render the scanned document not identical to the original document.

- b. Keep these paper records with the case file until either:

- CI accepts the referral and you transfer the record for inclusion in their investigative file; or
- The relevant parties (i.e., you/your manager/FTA/CI) determine the case has no criminal fraud potential.

Note: When you determine there's no criminal fraud potential, you don't need to keep these records in the case file. However, you must keep these records per normal record retention requirements before proper disposal.

4.70.14.2.1.5.9.22
(11-24-2023)

**Case Closing
Procedures for
Managers**

(1) Group managers must:

- a. Timely review the case file for concurrence with the conclusions reached and procedural accuracy.
- b. Promptly return the case to the examiner if, upon review of the case file, the manager determines that additional exam or procedural work must be completed.
- c. Ensure the appropriate closing letters are mailed to the issuers and any designated representatives.
- d. Update the case file to reflect the date the closing letters were mailed.

- e. Notify the examiner when you have concluded the case review so the examiner can return records to the issuer or conduit borrower.
- f. Mail any paper file to the Closing Unit.

4.70.14.2.2
(11-24-2023)
Managerial Conference

- (1) Issues identified during an examination should be resolved at the lowest level possible and at the earliest point of the examination. The group manager should be consulted on identified issues and proposed resolution to those issues as part of the on-going examination risk analysis.
- (2) A managerial conference may be held at any point during the examination. The conferences may be requested by the taxpayer, examiner or manager.
- (3) A managerial conference is a tool that may be used to assist in resolving an issue using one of the resolution programs offered.
- (4) Managerial conferences should be documented in the examination case file. The documentation should include at a minimum: date of meeting, attendees, items discussed, agreed resolutions and any items that require follow up action.

4.70.14.2.3
(11-24-2023)
Fast Track Settlement Procedures

- (1) TE/GE and Appeals jointly administers FTS, an alternative dispute resolution program designed to help taxpayers settle disputes at the examination group level. An Appeals Officer trained in mediation serves as an impartial third party to resolve unagreed TE/GE issues by:
 - a. Facilitating settlement negotiations.
 - b. Using mediation techniques and sometimes settlement authority.
- (2) Announcement 2008-105, IRB 2008-48, 1219 established FTS for certain unagreed issues that are ineligible for resolution under EPCRS or a DO 8-3 agreement for EP and for certain EO, FSL/ET cases, so that they could be resolved while the case is still open in the group. The program was made permanent under Announcement 2012-34, 2012-36 IRB 334. This Announcement contains procedures as well as the types of issues that are eligible for FTS.
- (3) The goal of FTS is to resolve the issue within 60 calendar days from the date an EP or EO case is accepted in the FTS program, and 120 days for FSL/ET cases.
- (4) Find additional information regarding this program in Pub 5092, Fast Track Settlement A Process Resolution of Tax Exempt and Government Entities (TE/GE) Tax Issues, and at the Appeals Alternative Dispute Resolution Program FTS website *Pages - Fast Track Settlement (FTS) (irsnet.gov)*.

4.70.14.2.3.1
(11-24-2023)
Overview of Fast Track Settlement (FTS) Program

- (1) You or the taxpayer may consider the FTS process at any time after you fully develop a disputed issue, but before you issue a formal examination report (30-day letter and RAR). FTS may be allowed in specific situations when the taxpayer provides new information after the 30-day letter is mailed. In all situations, FTS must be initiated before the mailing of the 90-day letter.

Example: The taxpayer provides new information during the appeals process, which warrants the Appeals Officer sending the case back to the field. FTS can still be used because the IRS hasn't issued the 90-day letter.

- (2) FTS resolves factual and legal issues.
- (3) FTS enables the taxpayer to work with the examiner, the Group Manager, and Appeals.
 - a. All three parties (examination group, taxpayer, and Appeals) are active participants in the process.
 - b. All three must agree before a proposed resolution can be put in place.
- (4) All parties must commit to settling the issues involved.
- (5) The prohibition against ex-parte communications (Public Law 105-206, Section 1001(a)) between Appeals Officers and other IRS employees doesn't apply to the FTS process. See Rev. Proc. 2012-18, Section 2.05. Appeals personnel:
 - Ease agreement between the taxpayer and Examination group.
 - Don't act in their traditional Appeals settlement role.
- (6) To participate in FTS, the taxpayer must consent, per IRC 6103(c), to disclose the taxpayer's returns and return information for the issues being considered in the FTS process to the individuals named on Form 14017, Application for Fast Track Settlement.
- (7) If the parties fail to resolve any issue in FTS, the taxpayer retains the right to protest the issue through the traditional Appeals process.

4.70.14.2.3.2
(11-24-2023)
**Duties and
Responsibilities**

- (1) As the examiner, you:
 - a. Have a full understanding of the FTS program, process and eligibility requirements.
 - b. Offer FTS for all eligible unagreed cases.
 - c. Discuss FTS with the taxpayer/representative.
 - d. Answer all questions of the taxpayer/representative pertaining to FTS.
 - e. Fully develop each unagreed issue.
 - f. Prepare to address the taxpayer's arguments during the FTS session with facts and citable precedent.
 - g. Keep the Group Manager (GM) or designee, updated on the status of the FTS case.
- (2) The GM or designee:
 - a. Coordinates preparation and submission of the application package.
 - b. Notifies the taxpayer of acceptance into or rejection from the FTS program.
 - c. Participates in the FTS session on behalf of the government.
 - d. Has primary responsibility for accepting or rejecting any settlement proposal that arises as a result of the FTS.
- (3) The FTS Application is reviewed by both the Group Manager and the Area Manager (or designee) before it is sent to the Appeals FTS Program Manager for final approval.
- (4) The Appeals Team Manager responsible for TE/GE programs serves as the Appeals FTS Program Manager and may consult with the GM.

- (5) Taxpayers interested in participating in FTS or having questions about the program and its suitability for their case(s), should contact you or your GM to discuss resolution of an issue for the period(s) currently under examination.
- (6) During the FTS process the examiner is responsible for protecting the statute of limitations.

4.70.14.2.3.3
(11-24-2023)

**Case Eligibility and
Exclusions**

- (1) FTS is generally available for the following non-docketed EP cases:
 - a. Form 5330 exams
 - b. Form 990-T exams
 - c. Form 1040/1120 discrepancy adjustments
 - d. Penalties related to Forms 5330, 990-T or 1040/1120 discrepancy adjustments
- (2) FTS is generally not available for the following EP cases:
 - a. Qualification issues under IRC 401(a).
Note: Resolve these cases through EPCRS or through a DO 8-3 closing agreement. See IRM 4.70.14.2.1.2.2, EP – EPCRS and Closing Agreements.
 - b. Where the taxpayer has failed to respond to the IRS communications and no documentation has been previously submitted for consideration.
 - c. Listed Transactions or Abusive Tax Avoidance Transactions (ATATs).
 - d. Where Appeals has no jurisdiction (for example IRC 6700 penalty cases).
 - e. Specifically excluded from FTS, by the IRS Commissioner, Chief Counsel or by a Director in EP.
 - f. Correspondence exams worked solely from a Campus site.
 - g. TEFRA partnership cases.
 - h. Issues under consideration or designated for litigation.
 - i. Involving potential for civil or criminal fraud.
 - j. “Whipsaw” issues (in other words, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party).
- (3) For EO, FTS can only resolve unagreed issues in the following types of examinations:
 - a. Form 990 series information returns (or Form 990-N) with exemption, foundation or qualification issues.
 - b. Forms 4720 and 4720-A.
 - c. Forms 990-T.
 - d. Forms 1040 or 1120 discrepancy adjustments.
 - e. Employment taxes, including worker classification issues not resolved through CSP.
- (4) FTS is generally unavailable for the following EO cases:
 - a. Correspondence examination cases.
 - b. Campus cases (formerly known as Service Centers). These cases aren't eligible for FTS as there is no decision-maker available to attend the session.
 - c. Cases where the taxpayer fails to respond to the IRS communications and didn't previously submit documentation for consideration.

- d. Listed transactions cases or abusive tax avoidance transactions (ATAT) cases.
 - e. Cases in which Appeals has no jurisdiction (e.g., IRC 6700 penalty cases).
 - f. Cases involving potential for civil or criminal fraud.
 - g. Issues designated for litigation.
 - h. Issues under consideration for designation for litigation.
 - i. Issues identified in a Chief Counsel Notice, or equivalent publication, as excluded from the FTS process.
 - j. "Whipsaw" issues (i.e., issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party).
 - k. Issues that can be resolved through other established settlement initiatives, such as, but not limited to, the Self Corrections Program, the examination Closing Agreement Program, or other programs described in Rev. Proc. 2013-12, 2013-4 IRB 313.
 - l. Cases where the taxpayer raises issues/arguments that clearly have no merit or legal sufficiency on their face.
 - m. Cases involving the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds. See Treas. Reg. 601.106(b).
 - n. Tax Equity & Fiscal Responsibility Act (TEFRA) partnership cases.
 - o. Cases specifically excluded from FTS, by the IRS Commissioner, Chief Counsel or by a Director in EO/GE.
 - p. Selected initiatives as determined by the individual Directors on an annual basis.
 - q. Rebate claim cases.
- (5) In revocation cases, the issue of a retroactive effective date of revocation isn't eligible for FTS. IRC 7805(b) governs relief from retroactive application of adverse determination, which requires a request for a technical advice memorandum. See Rev. Proc. 2019-2, 2019-01, IRB 230, (updated annually).

4.70.14.2.3.4
(11-24-2023)

Application Process

- (1) To apply for the FTS program, the taxpayer submits a completed Form 14017, Application for Fast Track Settlement.

Note: To participate in FTS, the taxpayer must consent, pursuant to IRC 6103(c), to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the FTS process to those persons named on Form 14017.

- (2) Before submitting Form 14017 to Appeals:

- a. The examiner must write up all unagreed issues under the FTS process. EP Examiners will prepare a Revenue Agent Report (RAR) per IRM 4.70.14.2.1.1, Revenue Agent Report. EO Examiners will write up issues in a RAR format using Form 5701 for this purpose. Add Form 886-A if more room is needed.
- b. The taxpayer must prepare a full written response explaining their position on each issue.

Note: Form 14017, the RAR and the taxpayer's written position are collectively referred to as the FTS Submission Package.

- (3) Group and Area Managers (or designee) will review the FTS Submission Package before sending it to Appeals.
- (4) After the FTS Submission Package is approved by the Group Manager and Area Manager, the examiner will email it to the Appeals FTS Program Manager using the following email address: *AP TEGE FTS.
- (5) Submission of the approved and signed Form 14017 to the Appeals FTS Program Manager must be done within five business days of receipt.
- (6) Within three business days of receipt of the FTS package, the Appeals FTS Program Manager (or designee) will review the FTS Submission Package:
 - a. If the case is accepted for inclusion in FTS, the Appeals FTS Program Manager (or designee) will: Contact the taxpayer to inform them that the case has been accepted for FTS.
 - b. Contact the Group Manager to inform him/her that the case has been accepted for FTS.
 - c. Assign an FTS Appeals Officer who will act as the FTS Appeals Official (FTS AO) to help resolve the case.
- (7) If the case is rejected for inclusion in FTS, the Appeals FTS Program Manager (or designee) will:
 - a. Contact the Group Manager to inform him/her that the case has been rejected for FTS.
 - b. Call the taxpayer and send them a letter informing them that the case has been rejected for FTS.
 - c. Discuss other dispute resolution opportunities with the taxpayer, including 30-Day letter procedures and the taxpayer's normal Appeal rights.

Note: The decision not to accept a case into the FTS program is not subject to administrative appeal or judicial review.

4.70.14.2.3.5
(11-24-2023)
Settlement Process

- (1) If the case is accepted in FTS, the FTS AO:
 - a. Contacts the GM (or examiner) and the taxpayer to set up an FTS session to discuss case resolution.
 - b. Holds the FTS session at the date and location agreed to by both parties.
 - c. Meets with the taxpayer, the GM (or designee) and the examiner at the FTS session.
 - d. Serves as a neutral party at the FTS session.
 - e. Doesn't perform in a traditional Appeals role but uses dispute resolution techniques to facilitate settlement between the parties.
- (2) Both parties can withdraw at any time during the FTS process. A party wishing to withdraw must provide written notice to the FTS AO and other party.
- (3) At least one person with decision-making authority from both the taxpayer and IRS must be present during the FTS session.
- (4) The FTS Session may also include other individuals with decision making authority, information, and expertise to assist the parties during the settlement process.

- (5) The FTS AO may ask the taxpayer and the examiner to limit the number of participants at the FTS Session to facilitate the process.
- (6) IRS employees, the taxpayer, and persons invited to participate by the IRS, or the taxpayer must not voluntarily disclose information about any communication made during the FTS Session, except as provided by statute.
- (7) Before the FTS Session, the FTS AO will advise the participants of the procedures and establish ground rules.
- (8) The FTS Session may include joint sessions with all parties, separate meetings, or both as determined appropriate in the FTS AO's judgment.
- (9) The FTS AO may modify the rules and procedures during the FTS Session to adapt to changes in circumstances.
- (10) The taxpayer is not required to have a representative to participate in the FTS process, but if they do, this individual must have a valid power of attorney from the taxpayer (Form 2848, Power of Attorney and Declaration of Representative).
- (11) During the FTS Session, the FTS AO will prepare the FTS Session Agenda and the FTS Session Report and provide both parties with copies.
 - a. The FTS Agenda guides the communication in the FTS Session, sets the order of issue discussion, and poses questions to clarify the issues.
 - b. The FTS Report includes a list of all issues approved for the FTS program, a description of the issues, the amounts in dispute, conference dates, a plan of action for the FTS Session and other information useful to the process as determined by the parties and the FTS AO.

Note: The FTS AO updates the FTS Report after the FTS Session with the developments of the session.

- (12) Generally, the FTS AO will consider only those issues outlined in the FTS Report, except by mutual agreement of the parties.
- (13) If the taxpayer presents information during the FTS Session that the taxpayer had not previously presented during the exam, the FTS AO will adjust the targeted completion date to give the appropriate IRS officials time to evaluate the information.
- (14) During the FTS Session, the FTS AO may propose settlement terms for any or all issues and may consider settlement terms proposed by either party.
- (15) If the parties resolve any disputed issue at the conclusion of the FTS Session:
 - a. The parties and the FTS AO sign the FTS Report acknowledging acceptance of the terms of settlement for purposes of preparing computations.
 - b. The case is processed under normal case processing procedures.

Note: The signature of the parties on the FTS Report does not constitute a final settlement, nor does it waive restrictions on assessment, terminate consents to extend periods of limitation, start the running of any periods of limitation, or constitute agreement to close the case.

- (16) If the taxpayer accepts the FTS AO's settlement proposal, but the Group Manager rejects it, the Area Manager must review the settlement proposal and either concur in writing with the rejection or accept the settlement proposal on behalf of EP/EO. If the Area Manager:
 - a. Accepts the settlement proposal, the case is processed under established procedures for an agreed case.
 - b. Concurs with the Group Manager's rejection of the settlement proposal, and an acceptable alternative settlement is not reached, the issue is closed out of the FTS program as unagreed.
- (17) If the parties cannot reach an agreement, process the case under normal "unagreed" procedures.

Note: If the parties fail to resolve any issue in FTS, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

- (18) A resolution reached by the parties through the FTS process will not bind the parties for taxable periods or issues not covered by the FTS agreement, unless such taxable periods or issues are addressed expressly in a closing agreement reached as part of the FTS process.
- (19) If applicable, the IRS will report a proposed resolution reached as a result of FTS to the Joint Committee on Taxation in accordance with IRC 6405.
 - a. The IRS may reconsider a proposed settlement, as reflected in a signed FTS Session Report, upon receipt of comments on the proposed settlement from the Joint Committee on Taxation.
 - b. If the taxpayer declines to agree with any changes by the IRS upon reconsideration, EP/EO will close the case unagreed, and the taxpayer will retain all the usual rights to request Appeals consideration of any unagreed issues.

4.70.14.2.4
(11-24-2023)
Unagreed

- (1) Unagreed cases are those in which a taxpayer and/or representative do not agree with the findings of the examination. The following are unagreed situations:
 - a. A status/qualification issue is raised and the taxpayer or representative does not agree with the findings.
 - b. A status/qualification issue is raised and is not resolved under a correction or settlement program.
 - c. The examiner solicits and does not receive agreement to additional assessments or filing of returns due.
 - d. The examiner provides the taxpayer with their right to appeal and the taxpayer either:
 - i. Responds with a formal appeal
 - ii. Does not respond to 30-day notice
- (2) If agreement can be reached on one or more, but not all issues or years, taxpayers should be encouraged to enter into partial agreement covering the agreed issues or years where functional procedures allow for partial agreement.
- (3) Managerial involvement is required in all unagreed cases. The group manager should review the case file to ensure the taxpayer has submitted requested information and all issues are fully developed and documented.

- (4) Managers are required to make contact in person or by telephone with taxpayers and/or representatives on all unagreed cases. See IRM 4.70.14.2.2, Managerial Conference
- (5) TE/GE functional unagreed examination processing guidance is listed in the table below:

Functional Unit	Unagreed Processing Guidance
EP & EO	<p>An unagreed Discrepancy Adjustment is one for which:</p> <ul style="list-style-type: none">a. The taxpayer disagrees and files a protest with Appeals.b. The taxpayer doesn't submit a proper response to the 30-day letter. <p>See IRM 4.70.15.6, Unagreed Case Procedures, for procedural guidance on unagreed discrepancy adjustments.</p>

Functional Unit	Unagreed Processing Guidance
EP	<ol style="list-style-type: none"> <li data-bbox="1026 289 1443 604">1. An unagreed Form 5500 examination is one that involves a qualification issue that cannot or has not been resolved through EPCRS or a DO 8-3 closing agreement. See IRM 4.70.14.2.4.2.1, EP - Unagreed Form 5500 Examination Procedures. <li data-bbox="1026 604 1443 1045">2. An unagreed SEP, SIMPLE or SARSEP examination is one for which an IRA-based plan is non-compliant and the taxpayer does not agree to correct the issue using EPCRS. See IRM 4.70.14.2.4.2.2, EP - Procedures for IRA-based Plans (SEP, SIMPLE or SARSEP) Found to Be in Non-Compliance and Not Resolved Through a Closing Agreement. <li data-bbox="1026 1045 1443 1717">3. An unagreed Form 5330 and 990-T examination is one for which: <ol style="list-style-type: none"> <li data-bbox="1091 1150 1443 1234">a. The taxpayer does not agree to adjustments to a filed return. <li data-bbox="1091 1234 1443 1339">b. The taxpayer does not respond to solicitation of a delinquent return. <li data-bbox="1091 1339 1443 1717">c. A taxable failure for which required correction is not complete. See the following sections for return specific procedural guidance: <ul style="list-style-type: none"> <li data-bbox="1156 1560 1443 1717">• IRM 4.70.14.2.4.2.3, EP - Unagreed Forms 5330 and 990-T

Functional Unit	Unagreed Processing Guidance
EO	<p>An unagreed Exempt Organization examination is one in which a Taxpayer disagrees with either a proposed adverse status change (revocation, disqualification of a status 36 organization, or reclassification from public charity to a private foundation) or tax adjustment, and does not make correction under a closing agreement program, fast track settlement, or classification settlement program.</p> <p>See the following sections for specific procedural guidance:</p> <ul style="list-style-type: none"> • IRM 4.70.14.2.4.3.1, EO - Formal Examination Reports • IRM 4.70.14.2.4.3.2, EO - Fast Track Settlement (FTS) • IRM 4.70.14.2.4.3.3, EO – Unagreed SFR Tax Cases • IRM 4.70.14.2.4.3.4, EO – Special Procedures for Unagreed Worker Classification • IRM 4.70.14.2.4.3.5, EO – Unagreed Proposed Adverse Status Change

Functional Unit	Unagreed Processing Guidance
FSL & ITG	<p>An unagreed FSL/ET or ITG employment tax examination is one in which a Taxpayer disagrees with proposed adjustments and/or worker classification determination and does not participate in fast track settlement, an early referral to appeals, or a settlement or agreement program. See the following sections for specific procedural guidance:</p> <ul style="list-style-type: none">• , IRM 4.70.14.2.4.4, Employment Tax Unagreed Cases• IRM 4.70.14.2.4.4.1, Procedures for Failure to File Form W-2 – Unagreed• IRM 4.70.14.2.4.4.2, Special Procedures for Notices of Determination of Worker Classification or Section 530 Relief• IRM 4.70.14.2.4.4.3, Fast Track Settlement (FTS)• IRM 4.70.14.2.4.4.4, ITG – Appeals Alternative Dispute Resolution Programs• IRM 4.70.14.2.4.4.5, Early Referral to Appeals• IRM 4.70.14.2.4.4.6, Employment Tax Cases Subject to Mandatory Review

Functional Unit	Unagreed Processing Guidance
TEB	<p>An unagreed Tax Exempt Bond examination is one in which non-compliance is unresolved, including:</p> <ol style="list-style-type: none"> Denials of claims for recovery of an asserted overpayment of an arbitrage payment under IRC 148. Unagreed disallowances to credit payments under IRC Section 6431 (claim denials.) <p>See:</p> <ul style="list-style-type: none"> IRM 4.70.14.2.4.5, TEB – Unagreed Case Processing IRM 4.70.14.2.4.5.1, TEB - Communicating Identified Issues IRM 4.70.14.2.4.5.2, TEB - Technical Assistance IRM 4.70.14.2.4.5.3, TEB - 30-Day Letter IRM 4.70.14.2.4.5.4, TEB – Cases Subject to Mandatory Review IRM 4.70.14.2.4.5.5, TEB – Cases Closed to Appeals

4.70.14.2.4.1
(11-24-2023)

**EP & EO - Declaratory
Judgement Cases and
the Administrative
Record**

- (1) The instructions in this IRM apply to all examinations cases subject to declaratory judgment actions. These include examinations in which the IRS proposes to either:
 - EP:
 - Revocations
 - Non-qualifications
 - EO:
 - Revoke an organization's exempt status (qualification).
 - Modify an organization's foundation status (classification).
- (2) These exam cases must include a separate and complete administrative record file:
 - EP:
 - Plan revocations and non-qualifications (unagreed)
 - EO:
 - Revocations (unagreed)
 - Disqualifications unagreed)
 - Foundation Status modification unagreed)

See: IRM 4.70.14.2.4.1.3, EP & EO – Administrative Record, for guidance on development of the administrative record.

Note: If the case is unagreed, an index is also required. See Exhibit 4.70.14-36, EO Sample Administrative Record Index through

Exhibit 4.70.14-38, EO Examples of Documents Not Included in the Administrative Record and Solutions for Getting the Documents or Information Included.

- (3) EO: Declaratory judgment rights for IRC 501(c)(3) organizations have been extended to all 501(c) & (d) organizations under the PATH Act of 2015.
- (4) EO: We no longer modify the exempt status of an organization which is:
 - 1. Not exempt under the code section for which it was granted exempt status.
 - 2. Filing its return under another code section.

4.70.14.2.4.1.1
(11-24-2023)

**EP & EO - Background
Information**

- (1) EO: Certain organizations are allowed a swift review of their exempt status qualifications or foundation classifications (IRC 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc.). The PATH Act of 2015 expanded declaratory judgment rights on exempt status qualification from 501(c)(3) organizations to all other IRC 501(c) and 501(d) organizations.
- (2) EO: An IRC section 501(c) or (d) case means a case with an exam of:
 - Form 990 series return or e-Postcard.
 - Form 1065

Note: Form 1065 is filed by IRC section 501(d) religious and apostolic associations.
- (3) EO: Form 990 series returns do not include:
 - A case of only Form 990-T returns.
 - A Form 990 series return filed by a political organization.
- (4) A declaratory judgment action permits an taxpayer to challenge a revocation or foundation status modification in court before the assessment of any:
 - a. Income taxes that might result from the loss of exemption or plan qualification.
 - b. Excise taxes that might result from the reclassification of foundation status or plan non-qualification.
- (5) These courts have jurisdiction over declaratory judgment actions:
 - a. U.S. Tax Court
 - b. U.S. District Court for the District of Columbia
 - c. U.S. Court of Federal Claims
- (6) The courts use the administrative record in cases involving declaratory judgments. They can decide the cases entirely on the contents of an administrative record.
- (7) When one or both parties desires a trial in a revocation case in lieu of a determination based solely on the administrative record, additional evidence may be developed and submitted per ordinary trial procedures.

- (8) Find the specific rules for declaratory judgment actions, including the content of the administrative record, in Tax Court Rules 210-218 at www.ustaxcourt.gov.

4.70.14.2.4.1.2
(11-24-2023)

**EP & EO - Cases
Subject to Declaratory
Judgment Actions**

- (1) Declaratory judgment actions apply to cases:

- a. EP:
 - I. Plan revocations
 - II. Plan non-qualifications
- b. EO:

I. involving an organization's initial or continuing qualification or classification as:

- i. An organization described in IRC 501(c) or (d).
- ii. An organization described in IRC 170(c)(2).
- iii. A private foundation defined in IRC 509(a).
- iv. A private operating foundation defined in IRC 4942(j)(3).
- v. A farmers' cooperative under IRC 521(b).

Note: Large Business and International (LB&I) has exam jurisdiction over exempt farmers' cooperatives described under IRC 521.

II. Involving a foundation status modification (reclassification):

- i. Originally claimed by the organization.
- ii. Determined by either EO Rulings and Agreements or EO Examination.

- (2) EO: Modification of an organization's foundation status occurs when the IRS determines, for example, that an organization is:
- a. A private non-operating foundation, though it claims to be or is currently classified as a public charity, or is currently classified as a private operating foundation.
 - b. A private operating foundation, though it claims to be or is currently classified as a public charity.
 - c. An IRC 509(a)(3) organization, though it claims to be, or is currently classified as, a IRC 509(a)(1) or IRC 509(a)(2) organization.
 - d. An IRC 509(a)(2) organization, though it claims to be, or is currently classified as, a IRC 509(a)(1) organization.
 - e. An IRC 509(a)(1) organization, but it should be classified differently under IRC 170(b)(1)(A) than it is currently classified; i.e., a IRC 170(b)(1)(A)(ii) school reclassified as a IRC 170(b)(1)(A)(vi) publicly-supported charity.
- (3) EO: A determination subject to Section 7428 also includes any organization that claims to be described in IRC 170(c)(2) that the IRS determines is not.
- (4) EO: All revocations are treated the same (per the PATH Act of 2015), with declaratory judgment rights being conferred upon all revoked exempt organizations. Accordingly:
- a. All revocations of IRC 501(c) or (d) organizations follow the same procedures and processes as those previously used for IRC 501(c)(3) organizations.

- b. The IRS will revoke (or treat as revocation for declaratory judgment purposes) any organization that no longer qualifies under the code section for which tax-exemption was granted or self-declared.
- c. This includes self-declarer organizations (Status 36 entities) determined not to qualify under the code section for which they filed a return.

Note: The self-declaring PF that has indicated on schedule A that they are a PF does not trigger a declaratory judgment action under IRC 7428. That right would apply only upon a subsequent IRS exam.

4.70.14.2.4.1.3

(11-24-2023)

EP & EO -**Administrative Record**

- (1) The administrative record is the written record of the administrative proceedings between the IRS and the taxpayer.
- (2) Tax Court Rule 210(b)(12) defines the administrative record as including:
 - a. EO: The request for determination.
 - b. EO: All documents the applicant submitted to the IRS as part of the determination request.
 - c. All protests and related papers submitted to the IRS.
 - d. All written correspondence between the IRS and the applicant about those protests.
 - e. All pertinent returns filed with IRS.
 - f. The notice of determination by the Commissioner.
- (3) Examiners must include in the administrative record all documents exchanged between the IRS and the taxpayer during examination of the:
 - a. Continuing qualification (of exempt status or plan qualification).
 - b. Classification (such as modification of foundation status).
- (4) Although not documents, items such as electronic disks or all other media are considered physical evidence and fall within the intent of Tax Court Rule 210(b)(12) when transmitted between the parties. If a disk is:
 - a. Sent by letter, the disk is deemed part of that written document.
 - b. Received at a conference, stamp and mark the disk appropriately, then reference it in a summary of the conference you send to the taxpayer.
- (5) For documents to be considered exchanged with the IRS, the material(s) must go to or from the taxpayer or its representative by:
 - a. Hand delivery
 - b. Mail
 - c. Email
 - d. Fax

Note: Don't include documents you reviewed on site in the administrative record unless the taxpayer gives you copies or you make copies for the exam files.

Caution: Don't email Sensitive but Unclassified (SBU) information to the taxpayer.

- (6) The administrative record does not include any internally generated materials, such as:

- a. Exam workpapers
 - b. AIMS documents (Forms 5588, 5595, 5596, 5597, or 5598)
 - c. IDRS prints
 - d. Counsel memos
 - e. Field actuary memos
 - f. Engineer memos
 - g. Reviewer memos
- (7) The administrative record does not include materials obtained from third-party sources, such as:
- a. Referral packages
 - b. Claims
 - c. Summoned records from third parties
 - d. Summoned third party testimony
 - e. Records received from city, county, state or federal agencies
- (8) You can include any document that is generated for internal use or obtained from a third-party in the administrative record by giving a copy of the document to the taxpayer.

Note: Consult your group manager and TEGEDC as to what parts of the document(s), if any, you may share, and how to share them.

- (9) Any statements made in correspondence (by either side) is deemed true if there's no conflicting or clarifying evidence. Therefore, if the taxpayer sends or otherwise provides something that doesn't appear to be correct, get written clarification. Confirm clarification you receive by telephone either by requesting the information in writing or by sending a letter which explains what was discussed on the phone.

4.70.14.2.4.1.3.1
(11-24-2023)

**EP & EO: Maintaining
the Administrative
Record File**

- (1) Several subsequent users review the administrative record and must be able to identify all documentation that supports the examination results of a plan qualification examination. Subsequent users include management, Mandatory Review, Appeals, and Counsel in preparation of records to be submitted to US Tax Court.
- (2) The administrative record contains all items exchanged between the IRS and the taxpayer throughout the examination. This may include forms filed prior to the examination which are relevant to the issues raised.
- (3) Scan and/or save all administrative record items into the Administrative Record File in RCCMS using the TE/GE RCCMS Naming Convention using appropriate sub-folders.

Note: The TE/GE RCCMS Naming Convention now includes section 7 for administrative record items. List items in order of the administrative record index.

The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items.

- (4) Organize the administrative record file in chronological order, based on when the documents were exchanged and/or filed.
- (5) EO: The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items.

- Typically, the first document in the administrative record is the determination application, such as those below, with all of the original attachments (articles, bylaws, financial statements, and expanded explanations of proposed activities) indexed as of the date the IRS received the application through to the date IRS issued the determination letter.

- i. Form 1023, Application for Recognition of Exemption under section 501(c)(3) of the Internal Revenue Code
- ii. Form 1024, Application for Recognition of Exemption under section 501(a)
- iii. Form 1024-A, Application for Recognition of Exemption under section 501(c)(4) of the Internal Revenue Code. Exception: When organizations have claimed exemption without submitting an application, the first document is typically the earliest Form 990, Return of Organization Exempt From Income Tax, under exam.

- (6) EP: Typically, the first document in the administrative record is Letter 6031, but if returns filed before the start of the exam are relevant to qualification or tax issues the administrative record should start with the returns in order filed.

Example:

7.0 Administrative Record Index

7.001 Forms W-2 for 2019 tax year (when relevant to the qualification issues)

7.002 Form 1120 for 2019 tax year (when relevant to the qualification issues)

7.003 Form 5500 for 2019 Plan Year

7.004 Letter 6031, TE/GE Opening Examination Letter

7.004a Publication 1

7.004b Notice 609

7.004c Publication 3498

7.004d Publication 4324

7.004e Initial Information Document Request

- (7) Prepare an index to the administrative record that will allow users to easily locate documents. See Employee Plans Examination Exhibits, Administrative Record Index with Cover sheet.
- a. In preparing the index, list:

Index	<p>Note:</p> <ul style="list-style-type: none"> • This column is for the sequential number designation of each item in the Administrative Record. • The index should be numeric and should begin with “1”. Item 1 will be the first written contact between the IRS and the taxpayer. Generally, that will be Letter 6031, TE/GE Opening Examination Letter and enclosures of Publication 1, Notice 609 and your initial IDR. • Do not skip any numbers and do not use letters or Roman numerals. If you have scanned attachments or enclosures in separate PDF documents, you may choose to name them sub numbers such as 1a, 1b, 1c.
Date	<p>Note:</p> <ul style="list-style-type: none"> • This column should identify the date of the document, if it has one. For example, the file copy of the Letter 6031, TE/GE Opening Examination Letter, should be dated with the date that the original Letter 6031 was mailed to the taxpayer. • If you receive a document that is not dated from the taxpayer. Note the date received on the face of the document and use that received date on the Administrative Record Index.

Recipient/Originator	<p>Note:</p> <ul style="list-style-type: none"> • This column should identify the person who received the document and the person who sent it. The person should be identified by both name and title or position. • Using the example of an appointment letter, identify the recipient by the name and title of the person to whom the appointment letter was addressed, for example, “Mr. Boss, President of Peach, Inc.” The originator will be the person sending the letter, which is not necessarily the name printed on the signature line. This will most likely be the name and title of the Person to Contact listed in the heading of the letter, e.g., “Emma Examiner, EP Specialist”. • For consistency, the name and title should be identified for every entry on the Administrative Record Index, even if the same person is identified several times. • Use specific names rather than generic entries like, “the Service ”or “Taxpayer”. • Some plan examinations will have more than one representative. Specify the representative by name followed by “Attorney”, “Accountant”, “Actuary”, “Representative” or whatever title applies.
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Description of Document	<ul style="list-style-type: none"> • This column should identify everything that is received or sent together. • Type the number and full name of each letter, form and publication numbers. Identify all attachments also. • Use enough detail to ensure that anyone reading the Administrative Record Index could identify and locate the documents listed.
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b. EP: Clearly describe all attachments to correspondence in the index. If it helps to clarify the index, give multiple attachments sub-numbers in an outline format (for example, 4.001a, 4.001b, 4.001c).

(8) If you have a partial paper case file for your administrative record, index each item in order (such as 1, 2, etc.). Generally, number tabbed folder dividers or write the corresponding number of each item on a post-It note affixed to a blank sheet of paper placed before the first page of each document.

(9) If you deviate from a strict chronological order, consult TEGEDC for other assembly considerations, and document the discussion in the CCR.

Example: You secure half of the year's bank statements at the initial exam, a few more by IDR a month later, and the rest by bank summonses two months later. You subsequently exchange the summoned bank statements with the taxpayer to include them in the administrative record. Counsel advises you to keep all bank statements for a given year together as one exhibit. Index the dates and methods describing the documents that were exchanged. Identify the number of pages of each set of documents in the description of the documents.

- (10) If the taxpayer ultimately agrees, an administrative record is required, but an index is not.
- (11) Keep all original paper records after scanning and saving in RCCMS until the issues are resolved. If requested, you may need to assist Mandatory Review if an administrative record is subsequently required for a case you closed to Mandatory Review with taxpayer agreement to the adverse action (in other words, the taxpayer filed a petition.)
- (12) Consult your group manager on cases with unique circumstances that might justify processing with a paper case file.

4.70.14.2.4.1.4
(11-24-2023)

EP & EO - Exchange of Documents

- (1) In general, if a document is related to the disqualification of the plan, or the continuing qualification or classification of an organization, and it's a document that you haven't exchanged with the taxpayer, mail, or otherwise provide a copy of the document to the taxpayer using Letter 6050 as the cover letter.

- (2) Even if a document is not related to the qualification issues, if it has been exchanged, include it in the administrative record file with an explanation in the administrative record index.
- (3) EO: Refer to Exhibit 4.70.14-38, EO Examples of Documents Not Included in the Administrative Record and Solutions for Getting the Documents or Information Included, for examples of documents which might not otherwise be included in the administrative record and for solutions for getting the documents or information included.
- (4) EO: Include the Determination Application as part of the Administrative record:
 - a. Exchange a copy of the determination application you received from Cincinnati with the organization during the exam, and request comments as to any changes in methods of operation from what was described in the application.
 - b. Get a copy of the determination application from the EO Files and Records Unit in Cincinnati. Ask the unit secure email the records.
 - c. When exchanging the application with the organization, send only the documents labeled as public. Don't send any PDF files listed as private because they are internal records that were never exchanged during the application process.
 - d. If Cincinnati doesn't have a copy of the determination, request it from the organization.
 - e. If you got the application from:

- i. Cincinnati and sent it to the organization, index it twice, (with any cover letter and enclosures) once at the start of the record, and again as of the date you sent to the organization.
- ii. The organization, index the application (and any cover letter and attachments) only as of the date you received it because the document wouldn't have been date stamped as of the initial application.

Note: The organization's copy of the application can't be proven as being the true confirmed copy of the application.

- (5) For documents received from the taxpayer:
 - a. Do not deface documents them in any way (writing, highlighting, noting or scribbling, etc.). If you need to write information on a document, make a copy for that purpose.
 - b. If you have a partial paper file for your administrative record, do not write the item numbers from the Administrative Record Index on the documents. Instead, use tabbed folder dividers or Post-It notes attached to a blank sheet of paper, because TEGEDC prepares the final index and will place the final exhibit numbers on the documents
 - c. Before scanning into an electronic record, date stamp documents and other items you received from the taxpayer on the cover memo or first page. Use the same stamp your office uses to stamp incoming mail.
 - d. Keep any original documents, such as Forms 872, Consent to Extend the Time to Assess Tax, and Forms 2848, Power of Attorney and Declaration of Representative, in the workpaper file. Scan into an electronic copy for the administrative record.

- (6) For documents the IRS provided to the taxpayer:
- Outgoing correspondence and enclosures included in the administrative record file will inevitably be copies, because you've sent the originals to the taxpayer.
 - Verify copies for exactness against their originals including the same dates and signatures. Scan the signed letter before you mail it, and keep the copy in the administrative record.
 - Don't forget to scan enclosures or attachments you sent with correspondence (or delivered by hand) and keep the copies in the administrative record.
 - Verify that the scanned copies are identical (front and back) to the correspondence or attachments you sent to the taxpayer.

Example: In the opening appointment letter, Pub 1, Your Rights as a Taxpayer, must be given or sent to the taxpayer, and must also be included in the administrative record.

- Clarify incorrect computations, misinterpretations of law (IRC, Regulations, Revenue Rulings, etc.) or incorrect conclusions in writing via subsequent correspondence to the taxpayer.
 - Any information you previously shared with the taxpayer becomes a part of the administrative record; therefore, include incorrect information that you put in writing and sent to the taxpayer/representative in the administrative record.
 - To correct a mistake, do not remove the document from the administrative record. Rather, acknowledge the mistake and send a corrected statement or revised calculation to the taxpayer/representative. .
- (7) To place information into the administrative record that was communicated orally with the taxpayer or POA in the initial interview or a subsequent telephone conversation, create a transcript or summary of the discussion using Form 4564, Information Document Request.
- Document the Form 4564 with whom the conversation was held, and the matters discussed.
 - Send Form 4564 with Letter 1477, Information Document Request Cover Letter -EP and EO, to the taxpayer and ask them to confirm that the summary is an accurate representation of the information it contains, and if not, to provide specific clarification.
- (8) If you have any doubt that a document has been exchanged, mail it to the taxpayer with Letter 1477, Information Document Request Cover Letter -EP and EO, listing the document(s) being enclosed with the letter.

4.70.14.2.4.1.5
(11-24-2023)

**EP & EO - Examiner's
Responsibility**

- (1) Always track documents exchanged with the taxpayer and the dates the documents are exchanged. Be careful you don't deface any documents (such as making notes or highlighting text using highlight markers).

Caution: If a document is defaced, you may need to exchange it with the taxpayer again, with the markings on it. Discuss this situation with your group manager or TEGEDC.

- (2) By carefully tracking all documents exchanged by date, it's easier to compile the administrative record and prepare the index if the case goes unagreed. It's recommended you compile an administrative record file at the same time as

the various exchanges so that when items are exchanged, you scan that item and put in the electronic administrative record file.

- (3) Tax Court Rule 217 imposes short deadlines for filing the administrative record. Further, Counsel reviews all unagreed cases subject to declaratory judgment before IRS issues the final adverse letter. The administrative record must be well-organized and complete when Counsel receives it.
- (4) When scanning documents, make sure that the copy is a clear identical copy of the original (aside from being in black and white versus color). This requires that you:
 - Lay the document flat on the glass pane in lieu of using an auto feeder if the document is folded or bent.
 - Remove staples, paper clips, or other fasteners before scanning.
 - Scan the front and back of a document if information is present on the back.
 - Check that no portions of the document are eliminated or missing in the scan.
 - Double check each page scanned to ensure that it is a pristine identical copy of the original.

Note: When scanning double-sided documents, create two single-sided pages: one for the front, and one for the back.

Caution: Scans must be of high quality and resolution, as Counsel will redact the documents and submit copies of the redacted documents to court.

- (5) When sending correspondence, date the letter with the actual date you mail, fax or hand deliver it.
- (6) Ensure that all administrative record items have been scanned and/or saved into the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.

Note: EP: The TE/GE RCCMS Naming Convention now includes section 7.XX for administrative record items. List items in order of the administrative record index. The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items.

- (7) Keep all original paper records after scanning and saving in RCCMS until the issues are resolved.
- (8) Consult your group manager on cases with unique circumstances that might justify closing with a fully paper case file.

4.70.14.2.4.1.6
(11-24-2023)
**EP & EO Group
Manager's
Responsibility**

- (1) The group manager must ensure the following:
 - a. The administrative record is properly prepared, scanned into RCCMS and indexed according to this IRM's procedures.
 - b. All processing delays are fully explained on the CCR.
 - c. The case is flagged for Mandatory Review.
 - d. Paper records that can't be scanned are submitted to Mandatory Review.

4.70.14.2.4.2
(11-24-2023)
**Employee Plans
Unagreed Procedures**

- (1) An unagreed Employee Plans examination is one in which a Taxpayer disagrees with either a proposed revocation/non-qualification of a plan or tax adjustment, and does not make correction under a closing agreement program, fast track settlement, or classification settlement program.

4.70.14.2.4.2.1
(11-24-2023)
**EP – Unagreed Form
5500 Examination
Procedures**

- (1) If the qualification issue is not resolved through EPCRS or a DO 8-3 closing agreement, follow the procedures in this subsection.
- (2) Solicit Forms 1041 from the trustee. See IRM 4.70.14.2.4.2.1.1, EP - Solicitation of Form 1041.
- (3) Pick up prior and subsequent year Forms 5500 for examination (at your group manager's discretion, and in some cases, the area manager's or the Director, EP Examinations' discretion).
- In general, expand the examination to include subsequent year Forms 5500 that are due.
 - If you do not include the subsequent year returns in the examination, the group manager prepares a written statement in the case chronology, memo, or email to include in the workpapers, giving the reasons the subsequent years are not included.
 - You may need to open an examination of a year in which the normal statute of limitations has expired. This happens when the IRS has determined that an operational issue has occurred that retroactively disqualifies the plan.
 - The IRS's ability to pursue a qualification issue in any year is not impacted by the Form 1041 statute of limitations. The Form 1041 statute of limitations expiration for any given year doesn't prevent the IRS from pursuing a qualification issue in that year (see Christy and Swan Profit Sharing Plan v. Commissioner, T.C. Memo 2011-62).
 - If you solicit plan or trust records for a given plan year, that year is considered to be under examination and you must establish the Form 5500 on AIMS and RCCMS even if the Form 5500/1041 statute has expired. If the statute of limitations has already expired, update the statute to alpha code "PP" per IRM 4.70.12.3.7.7, Use of Alpha Codes.
 - Document your decision to examine (or not) related years in the CCR.
 - Include your group manager's agreement to examine prior years via a confirmation email or by signing the CCR.
 - See IRM 4.70.12.3.6.1, Specific Filing Checks, for procedures to open an examination of a related or prior or subsequent year Form 5500 that has been filed and IRM 4.70.13.9, Delinquent, Amended and Substitute for Returns, for delinquent and substitute Form 5500 procedures.
- (4) Begin (at your manager's discretion) Form 1040 discrepancy adjustments (when there is a taxable event) on all or some plan participants or at a minimum, those individuals with substantial tax impact, depending on workload considerations. See the discrepancy adjustment procedures in IRM 4.70.15, Discrepancy Adjustments.
- Before starting a discrepancy adjustment, secure an AMDISA print to determine if a Form 1040 examination is already in process.
 - If you don't do a discrepancy adjustment, explain why on the CCR.

- (5) Begin (at your manager's discretion) a Form 1120 discrepancy adjustment on the plan sponsor per the discrepancy adjustment procedures in IRM 4.70.15, Discrepancy Adjustments.
- Before starting a discrepancy adjustment, secure an AMDISA print to determine if a Form 1120 examination is already in process.
 - You may need to ask SB/SE for help to generate the income tax adjustment on Form 4549-E.
 - EP examiner mails the 30-Day Letter (Letter 3605) for Forms 1040/1120 discrepancy adjustments (See IRM 4.70.15, Preparation of the Discrepancy Adjustment Package). When you do a discrepancy adjustment with (or because of) a proposed revocation/non-qualification, you work the discrepancy adjustment files with the proposed revocation/non-qualification. The discrepancy adjustment file continues to be part of the proposed revocation/non-qualification package and you process both 30-day Letter packages to the taxpayer at the same time.
 - If you do not pursue a discrepancy adjustment, explain why on the CCR.
- (6) Make timely referrals to the applicable EFU (LB&I SB/SE, and W&I) on Form 5666, if either:
- The trustee does not file the solicited Forms 1041.
 - You do not do Forms 1040 or 1120 discrepancy adjustments.

Note: See IRM 4.70.11.15.5, Referrals to Other Business Units, for referral procedures.

- (7) Make a referral to DOL on Form 6212-B through the FAC/EP DOL Coordinator. See Employee Plans Examination Exhibits, Contact Information.

Note: If applicable, also make a referral to PBGC on Form 6533.

See IRM 4.70.11.15.6, Referrals to Other Agencies, for referral procedures.

- (8) Prepare the 30-Day Letter package for the unagreed Form 5500 examination per IRM 4.70.14.2.4.2.1.3, 30-Day Letter Procedures.
- (9) Prepare a final RAR per IRM 4.70.14.2.1.1, Revenue Agent Report. Update the preliminary RAR that you mailed to the taxpayer (as discussed in IRM 4.70.14.2.1.2.1, EP- Addressing Issues that Effect Plan Qualification) for:
- Any necessary clarification to parts "a" through "d" (Issue, Facts, Law, or Government's Position)
 - The taxpayer's response (if provided)

Note: Add a Taxpayer's Position section to the RAR after the Government's Position section,

and

- The IRS's rebuttal of the taxpayer's response (if the taxpayer provided a response).

Note: Add an IRS Rebuttal section to the RAR after the Taxpayer's Position section addressing each point the taxpayer raised.

- (10) Prepare the administrative record per IRM 4.70.14.2.4.1.3, EP & EO Administrative Record.

Note: All cases subject to declaratory judgment (which includes unagreed Form 5500 examinations) require you to prepare an administrative record and index to the administrative record.

- (11) Complete the Unagreed Plan Disqualification Checksheet before issuing the 30-day letter. See Employee Plans Examination Exhibits, Unagreed Plan Disqualification Checksheet for an example of the Unagreed Plan Disqualification Sheet.
- (12) Prepare Form 5773-A to document examination procedures and findings and save them in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention. See IRM 4.70.12.5.2, TE/GE RCCMS Naming Convention.
- (13) Include current copies of IDRS prints in the case file and in the RCCMS Office Documents folder of:
- AMDISA prints for all cases under examination
 - EMFOLT prints for all Forms 5500 examined
 - IMFOLT prints for any Forms 1040 picked up as a result of the revocation
 - BMFOLT prints for any Forms 1120 picked up as a result of the revocation
- (14) Follow the closing instructions outlined in IRM 4.70.14.4, Closing ACase.

4.70.14.2.4.2.1.1
(11-24-2023)

**EP – Solicitation of
Form 1041**

- (1) If your examination results in the proposed revocation/non-qualification of a trust's tax-exempt status and the issue couldn't be resolved under EPCRS or a DO 8-3 closing agreement, the trust becomes taxable and the trustee must file Form 1041 for all open years.

- a. Forms 1041 are filed on a calendar year basis per IRC 644(a).
- b. The statute of limitations on the trust year runs with the filing of the Form 5500 for the plan year in which the trust year ends.

Note: See IRM 4.70.12.3.8.6, Securing Consents for Forms 5500 and Form 1041, for a detailed explanation.

- c. Use Form 4564 to solicit Forms 1041 for all open trust years that correspond with the plan years being disqualified.
- d. Sometimes, these years may be short years.

Example: You're examining plan year ending June 30, 2019, and disqualifying the plan for the plan year ending June 30, 2019, and all subsequent years. The effective date of disqualification is July 1, 2018. On November 1, 2020, you solicit Forms 1041. You should solicit Forms 1041 for the trust tax year beginning July 1, 2018 and ending December 31, 2018; the trust tax year beginning January 1, 2019 and ending December 31, 2019 and the trust tax year beginning January 1, 2020 and ending December 31, 2020.

- e. See IRC 443(b) for the required computation of taxable income for a taxable entity that is required to file a tax return for a short tax year.

- f. The plan sponsor can't use its EIN to file Form 1041. The trust must obtain its own EIN. See IRM 4.70.14.2.4.2.1.2, EP - Obtaining a Trust EIN, for instructions on how to get an EIN for the trust.
- (2) Do not establish Forms 1041 on AIMS or RCCMS whether or not received from the taxpayer because EP does not have jurisdiction over Forms 1041. Apply time spent on the examination to Forms 5500 examined, or if you're doing discrepancy adjustments, apply time to those cases.
- (3) If you receive solicited Forms 1041:
- Enter on the top margin in bold face print "FORM 5500 CONVERTED TO FORM 1041 BY TE/GE:EP."
 - Date stamp Form 1041 to establish the date actually received.
 - Attach Form 3198-A with the following items completed:

- List your name, ID number, phone number, POD and group number in the "Required Entries" section.
- List the trust EIN, return MFT (05), year of the attached Form 1041, taxpayer's name and name control in the "Required Entries" section.
- List all years for the same taxpayer that are being processed simultaneously, with the applicable statute date.
- Recommend the assessment or non-assessment of failure to pay and failure to file penalties in the "Other Instructions" section. Highlight your instructions for penalties on the form.

- d. Attach Form 13133 with the following completed:

- List your name, phone number and mail code.
- Check "Delinquent Return."
- Check "See attached 3198-A."
- If penalties should not be assessed, check "Penalties" and insert "Do not assess penalties" in the space provided.

- e. If you receive payment, prepare Form 3244-A for each Form 1041 received. Complete these items with comments as noted:

- EIN
- Form number/MFT: Enter 1041/05
- Tax period
- Plan number
- Transaction date: Enter the date the payment was received.
- Taxpayer name, date, address and zip code
- Transaction Data: List the entire amount received for the year under transaction code 610 (Remittance With Return) and the same amount under "Total payment."
- Remarks: List the check number and the amount of the check. If the payment is to be broken out over more than one year, list each year and the amount applied to each year.
- Prepared by: Enter the EP examiner's name, group number and phone number.

- f. Make a copy of the Form 1041, Form 3198-A, Form 13133, the check and Form 3244-A (if applicable) for the case file.
- g. Prepare Form 3210.

- List all Forms 1041 being forwarded.
- If you received payment, list all check numbers and the amounts.

- h. Mail Form 1041 packages without remittance to:
IRS 1973 N. Rulon White Blvd.,
Mail Stop 6052
Ogden, UT 84404

Note: If you receive remittance of \$100,000 or more, mail the Form 1041 package to Mail Stop 2003 instead of Mail Stop 1999.

- i. When you address Form 9814, type "Mail Supervisor" for the recipient and (801) 620-3750 for recipient phone number, whether or not you receive payment.

- (4) Your receipt of a Form 1041 from the taxpayer doesn't make the case agreed. You must continue to:

- a. Close the case to Mandatory Review.
- b. Give the taxpayer Appeal rights and the right to petition Tax Court.
- c. Process the case as an unagreed revocation/non-qualification (except you do not have to make a Form 1041 referral to SB/SE or LB&I).
- d. Prepare the 30-Day package (including the RAR) and the administrative record.

- (5) If the trustee doesn't agree to complete and sign Form 1041, prepare Form 5666 for Form 1041 to send to SB/SE or LB&I (as applicable), since EP does not have examination jurisdiction over Forms 1041. Unless the trust has its own EIN, prepare the referral using the plan sponsor's EIN.

- a. Send the referral to Classification at tege-cpc-classification@irs.gov. If SB/SE or LB&I is directly involved in the case, send the referral to SB/SE (or LB&I). If you send the referral to SB/SE (or LB&I), send a copy of it to Classification.
- b. Attach a copy of the RAR to the Form 5666 along with a rough calculation of Form 1041 tax due.
- c. Make copies of all referral packages (Form 5666, the RAR and tax calculations) for the paper case file and include as part of the workpapers.

Reminder: Also make similar referrals for Forms 1040 and 1120, if you do not do discrepancy adjustments. Include a copy of the RAR and an estimate of tax due with these referrals.

4.70.14.2.4.2.1.2
(11-24-2023)

EP – Obtaining a Trust EIN

- (1) When you solicit a Form 1041 for a plan that is being disqualified, request the trust EIN from the plan sponsor.

Note: If the trust doesn't have an EIN, request the plan sponsor to complete Form SS-4, and email or EEFax it to the appropriate IRS office listed on the Form SS-4 instructions.

- (2) If the plan sponsor agrees to file a Form 1041 and provides a trust EIN, get a BMFOLI print to make sure the EIN isn't being used to file non-trust returns.

Note: The Ogden Campus won't process a Form 1041 with an EIN used for any purpose other than for filing a trust Form 1041 or Form 990-T; the return will reject and a new trust EIN will be assigned.

- (3) When a plan sponsor voluntarily files a Form 1041, but uses an erroneous EIN (such as the plan sponsor's EIN), obtain an EIN for the trust by EEFaxing Form 4442 to the EO Entity Unit at Ogden Campus. The EEFax number is 855-306-0953. See Employee Plans Examination Exhibits for an example of a completed Form 4442. Give the taxpayer the trust's newly assigned EIN.

Note: Obtaining a new EIN for the trust will automatically establish an entity module. You do not need to prepare Form 2363 or Form 4442 to establish the entity.

- (4) When a plan sponsor refuses to file a Form 1041, there is no need to request a trust EIN. It is up to the Business Unit receiving the referral to obtain the EIN.

4.70.14.2.4.2.1.3
(11-24-2023)
**EP – 30-Day Letter
Procedures**

- (1) The 30-Day Letter gives the taxpayer 30 days to file a protest requesting a hearing with Appeals.
- (2) When the exam group issues the 30-Day Letter (group manager agrees with the examiner's conclusion(s) and no major corrections are needed), the examiner will:
- Make any minor corrections to the Revenue Agent Report (RAR), or other portions of the 30-Day Letter package.
 - Email the 30-Day Letter package, with current INOLES print showing the taxpayer's name and address, to the group manager (or designee) for review and approval.
- Note:** The exam group manager (or designee) reviews the 30-Day Letter package and, if needed, discusses concerns with the examiner. The manager may make suggestions for revision of the 30-Day Letter package. The group manager emails the examiner an approved final 30-Day Letter package.
- The examiner will then mail the approved 30-Day Letter package to the taxpayer (and POA if applicable) by certified mail.
 - The examiner will then update the case to status 13 (30-Day) through RCCMS (with the AIMS box checked) immediately after mailing the 30-Day Letter to the taxpayer.
- (3) Use the most current version of the 30-Day Letter. See the table below for which letter to use for specific case types, and the acceptable RCCMS naming convention to use:

Exam Issue	Use Letter	RCCMS naming convention	Acceptable variations
Forms 1040/1120 - Discrepancy Adjustments (Including all Form 5329 adjustments)	3605	3.L3605 TAX DISC ADJ	<ul style="list-style-type: none"> 3. L3605 date
Forms 5330 or 990-T	2005	3.L 2005 30-Day Form 5330	<ul style="list-style-type: none"> 3.L2005 30-Day Form 5330 date
Proposed Non-Qualification or Revocation	1756	3.L 1756 30-Day Proposed Non-Qual or Revocation	<ul style="list-style-type: none"> 3.L1756 30-Day Proposed Non-Qual or Rev. (as appropriate) date
Claim Disallowance without Additional Tax	3602	3.L3602 30-Day Claim Denied	<ul style="list-style-type: none"> 3.L3602 30-Day Claim Denied date
Claim Disallowance with Additional Tax	3602-B	3.L3602-B 30-Day Claim Denied	<ul style="list-style-type: none"> 3.L3602-B 30-Day Claim Denied date

Note: Additional items in the 30-Day Letter package use the same naming convention as the letter.

Example: Form 4549-E would be named 3.L3605 g F-4549-E if the L-3605 was named 3.L3605. See naming convention discussion at the end of the guide.

- (4) The 30-Day Letter package for a Form 1040 or Form 1120 and all Form 5329 discrepancy adjustments includes:
- Letter 3605
 - Pub 1
 - Pub 5
 - Pub 504 (if the subject return is a Form 1040 series return and the taxpayer was married)
 - Pub 594

- f. RAR
- g. Two copies of Form 4549-E
- h. Penalty calculations (if penalties are being assessed)
- i. Interest calculations
- j. Form 9465 (optional)
- k. Return Envelope

Note: If the taxpayer jointly filed a Form 1040, MR must mail a separate letter to each spouse.

(5) The 30-Day Letter package for a Form 990-T includes:

- a. Letter 2005
- b. RAR (Form 886-A)
- c. Pub 1
- d. Pub 594
- e. Pub 1020
- f. Form 870-EP (See Employee Plans Examination Exhibits for an example of Form 870-EP.)
- g. Penalties/Additions to tax calculations, if applicable
- h. Return Envelope

(6) The 30-Day Letter package for a Form 5330

- a. Letter 2005
- b. RAR (Form 886-A)
- c. Pub 1
- d. Pub 594
- e. Pub 1020
- f. Form 870-EP (See Employee Plans Examination Exhibits for an example of Form 870-EP.)
- g. Form 5438
- h. Penalties/Additions to tax calculations, if applicable
- i. Return Envelope

Note: On the face of the L2005 for IRC 4971(b) tax for minimum funding, you will reflect an entry for the 100% tax under 4971(b) in the tax chart for each year and you will utilize selectable paragraph 2.

Tax period ended:	Tax deficiency:		Penalties/Additions to tax:	
12/31/2015	\$1,000.00	\$10,000	\$2,475.00	\$2,750.00
12/31/2016	\$2,000.00	\$10,000	\$2,700.00	\$3,000.00
12/31/2017	\$3,000.00	\$10,000	\$2,925.00	\$3,250.00
12/31/2018	\$4,000.00	\$10,000	\$3,150.00	\$3,500.00
12/31/2019	\$5,000.00	\$10,000	\$3,375.00	\$3,750.00
12/31/2020	\$6,000.00	\$10,000	\$3,600.00	\$4,000.00

Note: You will not have an entry in the tax chart on the face of the L2005 for IRC 4975(b) tax for prohibited transactions. The potential for the 4975(b) tax is mentioned in the RAR, and you will utilize selectable paragraph 1 to make

the taxpayer aware it could become due. The 4975(b)-tax paragraph 1 notification is for their information only at this point. The year the 4975(b) tax is due is not known until we go through the entire unagreed process, and the 90-day statutory notice letter is mailed by Mandatory Review. Hopefully, seeing the paragraph 1 notification and mentioning it may become due in the 30-Day Letter RAR will help to secure an agreement for correction.

- (7) The 30-Day Letter package for a proposed revocation/non-qualification includes:
- a. Letter 1756 (Proposed Non-qualification/Revocation). See Employee Plans Examination Exhibits.
 - b. Pub 1
 - c. Pub 594
 - d. Pub 1020
 - e. Explanation for Proposed Non-qualification or Revocation (RAR)
 - f. Return Envelope
- (8) The 30-Day Letter package for a claim disallowance without additional taxes includes:
- a. Letter 3602 (This is an EO letter, and we will use it for EP)
 - b. Form 2297 (See Employee Plans Examination Exhibits for an example of Form 2297)
 - c. Form 3363 (See Employee Plans Examination Exhibits for an example of Form 3363)
 - d. Return Envelope
- (9) The 30-Day Letter package for a claim disallowance with additional taxes due includes:
- a. Letter 3602-B (This is an EO letter, and we will use it for EP)
 - b. Form 2297 (See Employee Plans Examination Exhibits for an example of Form 2297)
 - c. Form 3363 (See Employee Plans Examination Exhibits for an example of Form 3363)
 - d. Form 870-EP (Used when additional taxes are due. See Employee Plans Examination Exhibits for an example of Form 870-EP)
 - e. Return Envelope
- (10) Use the correct salutations on the 30-Day Letters:
- a. For individuals, use the name(s) shown on Form 1040.
 - b. For organizations (any entity that is not an individual), use the organization's legal name shown on federal tax returns.

Note: EP will no longer use the Letter 3602-A for any claim case; this letter will be obsoleted shortly.

Note: The address line of the letter can include an individual name.

Example: ABC, Inc. c/o John Doe 12 Main Street City, State Zip.

Reminder: Do not use the plan name.

- (11) For claims, if the taxpayer signs and returns Form 2297 and Form 3363, close the case with:
- Letter 2087 if the claim is for a Form 5330.
 - Letter 2511 if the claim is for a Form 990-T.
- Note:** There is no closing letter for claims on Forms 1040 or 1120 if the taxpayer signs and returns Form 2297 and Form 3363.
- (12) If the taxpayer timely files a protest to Appeals (including claims cases). When the taxpayer responds to the 30-Day Letter with a protest to Appeals, examiners should follow the Appeals steps outlined in IRM 4.70.14.7, Closing Cases to Appeals, while also referring to the Appeals publication provided by the 30-day letter that was issued. We recently revised this section with our most current instructions for considering requests for appeals.
- (13) If the taxpayer concedes the issue or wants to enter into a closing agreement resolution, discuss the taxpayer's proposal with the group manager for closing agreement resolution as a CAP or a DO 8-3 closing agreement. Follow the relevant procedures in IRM 4.70.14.2.1.2.2, EP - EPCRS and Closing Agreements, for those processes. If resolution is successful, update and prepare workpapers in the appropriate places to show the issue(s) resolution.
- Reclassify the Administrative Record (if the case is a previously unagreed Form 5500) to a correspondence file.
 - Issue the appropriate closing letter.
 - Close the case to the TE/GE Closing Group.
- (14) If the taxpayer gives additional information that changes the government's position, discuss case resolution with the group manager. If the group manager agrees that the case can be resolved, he/she will coordinate case processing with the examiner.
- (15) For all unagreed cases including claims, if the taxpayer doesn't respond or chooses not to appeal, then the case will be closed to EP Mandatory Review for issuance of a 90-day letter or a final claim disallowance letter.
- (16) If a taxpayer agrees and signs Form 870-EP for a Form 5330 and 990-T examination or files Forms 5330, close the case per IRM 4.70.14.2.1.2.4, EP – Processing Agreed Forms 5330 and 990-T, whether they paid or not, and process any returns or checks received per IRM 4.70.13.9.5.2, EP Processing Delinquent Forms 5330 and 990-T.
- (17) If a taxpayer agrees and signs Form 4549-E for Form 1040/1120/Form 5329 discrepancy adjustments, close the case per IRM 4.70.15.5, Agreed Tax Change.
- (18) If a qualification issue is resolved through a closing agreement, close the case per IRM 4.70.14.2.1.2.2.2, EP - EPCRS Closing Agreements or IRM 4.70.14.2.1.2.2.3, EP - DO 8-3 Closing Agreements.

Note: Using the 1040/1120 discrepancy adjustment 30-Day letter procedures for all Form 5329 adjustments is a significant change.

Form 5329 adjustments will be added to the discrepancy adjustment RAR and reflected on the Form 1040 Discrepancy Adjustment Form 4549-E as "Other Taxes". This is consistent with the guidance reflected in IRM 4.4.14, Individual

Retirement Account (IRA), Education Savings Accounts and Medical Savings Account Adjustments, which also applies to TE/GE employees.

- (19) Form 5329 is used by the taxpayer to report additional taxes. The table below describes the part number of Form 5329, the corresponding reference number, and the type of tax (income or excise).

Part	Type	Ref #	Type
I	Additional Tax on Early Distributions - IRC 72(t)	N/A	Income
II	Additional Tax on Certain Distributions from Education Accounts - IRC 72(t)	N/A	Income
III	Increase or decrease tax on excess contributions reported on Form 5329, Part III, Additional Tax on Excess Contributions to Traditional IRAs - IRC 4973	160	Excise
IV	Increase or decrease tax on excess contributions reported on Form 5329, Part IV, Additional Tax on Excess Contributions to Roth IRAs - IRC 4973	236	Excise
V	Increase or decrease in tax on excess contributions reported on Form 5329, Part V, Additional Tax on Excess Contributions to Coverdell ESAs - IRC 4973	235	Excise
VI	Increase or decrease tax on excess contributions reported on Form 5329, Part VI, Additional Tax on Excess Contributions to Archer MSAs - IRC 4973	233	Excise

Part	Type	Ref #	Type
VII	Increase or decrease to additional 6% tax on excess contributions to HSAs. Reported on Form 5329, Part VII, Additional Tax on Excess Contributions to Health Savings Accounts (HSAs)	237	Excise
VIII	Increase or decrease in accumulations tax reported on Form 5329, Part VIII, Additional Tax on Excess Accumulation in Qualified Retirement Plans (Including IRAs) - IRC 4974	162	Excise

Note: The first two types of tax on the Form 5329 are income taxes and we will only need to be assessed on MFT Module 30 following the Aims and RCCMS return establishment instructions for discrepancy adjustments.

Note: The other types of tax on Form 5329 are excise taxes, and we will need to establish the Form 5329 on Aims and RCCMS as an MFT29, per the instructions reflected in IRM 4.70.15.4.2.3, Establishing Forms 5329. We will follow the 30-day letter procedures for Form 1040/1120 discrepancy adjustments any time one of these excise taxes are due and reflect them as “Other taxes” on the Form 4549-E. So, we may end up with an MFT 30 case establishment and an MFT 29 establishment on RCCMS and AIMS, with one 30-day letter for both cases that may contain duplicate records. This is acceptable and will enable the closing unit to properly assess any income and excise taxes that are due for Form 5329.

- (20) Per IRM 4.70.12.5.2, Workpaper Format and TE/GE RCCMS Naming Convention, all 30-day letters on new cases go in the new section 3:

- a. Closing letter and/or RAR and attachments as “3.FILE NAME”.

Note: This includes closing letters, 30-day letters for unagreed cases, taxpayer protests to Appeals, rebuttals to protests, closing agreements, and all attachments to the closing letter and/or revenue agent report (RAR) (e.g., Forms 4549, 4549-E, 2504, 886-A, 870, etc.).

- b. If all attachments are separate, the cover letter does not need an alphabetical character, only the attachments. They should line up accordingly in RCCMS.

Example:

- (1) 3.L3605 date
- (2) 3.L3605a F4549-E
- (3) 3.L3605b RAR

- (4) 3.L3605c Interest Calculations
- (5) 3.L3605d Penalty Calculations
- (6) 3.L3605e Pub 1
- (7) 3.L3605f Pub 5
- (8) 3.L3605g Pub 594

- c. If all documents are scanned together in one package:
3.L3605 30-day letter package date

4.70.14.2.4.2.1.4
(11-24-2023)

**EP – Statute
Considerations**

- (1) The normal statute of limitations date expires three years from the later of the due date of the Form 5500 series return or the date the Form 5500 series return was filed.
- (2) Complete and place the Statute Expiration Chart in the Form 5500 RCCMS Office Documents folder. See Employee Plans Examination Exhibits, Form 1041 Statute Expiration Chart.
- (3) Solicit a Form 872-H if there is less than 12 months remaining on the statute of limitations on the Form 5500/1041.
- (4) See IRM 4.70.12.3.8, EP Statute Control Procedures, for Form 5500 statute of limitations procedures.

4.70.14.2.4.2.1.5
(11-24-2023)

EP – Case Closing

- (1) Close all cases fully electronically. See IRM 4.70.14.4.2.1, Electronic Case File Assembly.
- (2) Save all workpapers, returns, forms, letters, etc., in the RCCMS Office Documents folder using the RCCMS. See IRM 4.70.12.5.2, Workpaper Format and TE/GE RCCMS Naming Convention.
- (3) Make sure you scan and save all relevant case related documents you received from the taxpayer/POA in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.
- (4) Make sure you save any other document necessary to document the examination trail in the RCCMS Office Documents folder.
- (5) Keep all records you upload into RCCMS or determine are no longer relevant to the case file per normal record retention requirements in IRM 1.15.2, Types of Records and Their Life Cycles.
- (6) Fully document electronically all unagreed cases in the RCCMS Office Documents Folder.
- (7) Save the 30-Day Letter package, all IDRS research and all forms and letters you prepared during the examination in the RCCMS Office Documents folder (for the Lead examination File) using the TE/GE RCCMS Naming Convention.
- (8) Use the relevant RCCMS tabs for closing in lieu of Form 5650 or Form 5599. See IRM 4.70.14.2.4.2.1.6, EP - Completion of the RCCMS Closing Record. When you select "Validate for: Close" in RCCMS, complete all required fields highlighted in red font with the correct information.

Note: These fields correspond to the items that were required items on the optional Form 5650 or Form 5599.

- (9) Make sure the statute of limitations shown in the RCCMS Compliance Activity, General tab (1 of 2), is completed and correct.
- (10) Complete the RCCMS Statute Validation Process if the statute date is 270 days or less:
 - a. Check the "Statute Valid" check box in the RCCMS Compliance Activity, General tab (1 of 2).
 - b. Select "Actions," "Request Statute Validation," complete the "Comment" box and submit the request for your group manager's approval.
- (11) Follow the statute control procedures in IRM 4.70.12.3.8, EP Statute Control Procedures. See IRM 4.70.12.3.8.2, EP Statute of Limitations for Form 5330, for Form 5330 statutes.
- (12) Ensure that all administrative record items have been scanned and saved into the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.

Note: The TE/GE RCCMS Naming Convention now includes section 7.XX for administrative record items.

List items in order of the administrative record index. The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items. See IRM 4.70.14.2.4.1.3.1, EP & EO Maintaining the Administrative Record File.

- (13) Keep a copy of all paper files that you scan and upload into the RCCMS Office Documents Folder until all issues are resolved.
- (14) Close all cases fully electronically to increase efficiency and reduce the need to mail paper case files. Consult your group manager on cases with unique circumstances that might justify closing with a paper case file.
- (15) Update the case to status 20 on AIMS and RCCMS and close the case to Mandatory Review.
- (16) Send any correspondence you receive after you close the case immediately to Mandatory Review to associate with the case file.

4.70.14.2.4.2.1.6
(11-24-2023)

**EP- Completion of the
RCCMS Closing Record**

- (1) Validate the RCCMS Compliance and Closing Record for "Close."
 - a. Complete any field that appears in red and other relevant tabs depending on the type of disposal code being used.
 - b. Select the "Update AIMS" box, if applicable.
- (2) Complete the RCCMS Closing Record General Tab "Disposal code" field. Unagreed cases are closed with disposal code 604 = "Unagreed – Without Protest."
- (3) Complete the RCCMS Closing Record General Tab "Closing with" field by selecting one of the following, as applicable:

Option	Reason for Selection
1- Original Return	This is a rare selection for EP examination. Only select 1 if you're closing an activity with an original return that has not been accepted, filed, or processed by any other function
2- Taxpayer Return	Select this option when the return for the activity is a copy of a return you received from the taxpayer. Select 2 if you get a delinquent Form 5500/5330 and submit a copy of return with your examination (the original was processed through DOL or Classification or the Service Center).
3- Electronic Prints	Select this option if the return you used for the examination was the RCCMS return and you're closing the examination with a paper file (or a partial paper file).
4- Paperless Examined	Select this option if the return you used for the examination was the RCCMS return and you are closing the examination fully electronic. Select 4 for NRU closures that are paperless.
5 - No Return	Select this option when there is no return for the activity, such as a non-filer substitute for return (SFR), an error closure (Form 10904), or a Non-Return Unit (NRU) examination with a paper file (or partial paper file)
7- Paperless Non Examined	Select this option for an all-electronic case that is NOT examined, such as an all-electronic survey.

- (4) Complete these additional fields on the "General Tab" that are not highlighted if they apply: Field Required Action "ARDI code." Select the appropriate code from the pull down menu, if a closing agreement was secured. "Fax Indicator" Check if a closing agreement was secured via EEFax. If not, leave blank.
- (5) Complete the following fields on the RCCMS Closing Record, "Details tab" for all closures regardless of disposal code:

Note: These fields are highlighted in red.

- a. "Deductions Claimed" - enter deductions claimed for contributions to the specific plan and year to which the RCCMS record relates. Do not include salary deferrals. If "deductions" is not a selected issue, enter the employer contribution amount listed on line 2a(1) of Form 5500 Schedule I or Schedule H (as applicable). If the amount deducted is \$0 or \$1, enter \$1.

Note: If you're working an EP Large Case Support Examination coordinated with LB&I or EO and only one return is established on RCCMS and AIMS, enter the total deduction taken for all corporate tax years and for all deferred compensation arrangements qualified or otherwise.

- b. "Total Trust Assets" - enter total trust assets as of the end of the plan year. Must be at least \$1.
- c. "Number of Participants Affected" - enter the number of participants that were directly affected by the examination (for example, a change in account balance or vesting percentage). Must enter 0 if none are directly affected (cannot be left blank)

Note: A participant is not considered directly affected merely because the plan could have been disqualified.

- d. "Examiner's Time" - enter the examiner's time on the case.
- e. "Technique Code" - select the technique code from the pull-down menu.
- f. "Examiner's Name" - select the examiner's name from the pull-down menu.

(6) Close the RCCMS Case file record to the MR Manager:

- a. Select the activity(s) you want to closed for the list view.
- b. Select "Actions" from the top line menu.
- c. Select "Request Closure."
- d. Type comments in "request closure" dialog box, if necessary.

4.70.14.2.4.2.2
(11-24-2023)

**EP – Procedures for IRA
– Based Plans (SEP,
SIMPLE or SARSEP)
Found to Be in
Non-compliance and Not
Resolved Through a
Closing Agreement**

- (1) 1) When you determine an IRA-based plan is non-compliant and the plan sponsor doesn't agree to correct the issue through a closing agreement or through SCP, plan years in which the failure occurs are considered ineligible years for contributions to participants. This results in the following tax consequences:

Note: Individuals are entitled to make the "traditional IRA contribution" for that year. See Pub 590-A.

- a. All contributions allocated to participant accounts become taxable to the individual in the year for which they are made.

Note: Individuals are entitled to make the "traditional IRA contribution" for that year. See Pub 590-A.

- b. Contributions made on behalf of each participant in excess of the "traditional IRA contribution" limit are excess contributions subject to IRC 4973 excise tax.
- c. IRC 72(t) tax applies to excess amounts distributed from the IRA-based plan to the extent that the participants didn't previously take amounts distributed into income.

- d. The plan sponsor is liable for IRC 4979 excise tax when the SARSEP fails the discrimination test in IRC 408(k)(6)(A)(iii) and doesn't timely correct.

Note: IRC 4979 excise tax applies even when the SEP is determined to not satisfy the requirements of IRC 408(k), unless the SEP is determined to not satisfy the requirements of IRC 408(k) from its inception. See IRC 4979(e).

- (2) When you determine an IRA-based plan to be non-compliant and the issue is not resolved through a closing agreement, address the issue(s) through Form 1040 discrepancy adjustments.
 - a. When an IRA-based plan is non-compliant, all contributions allocated to participant accounts become taxable to the individual in the year for which they are made, except that the participant is still entitled to the "traditional IRA contribution."

Note: This only applies for the years in which the IRA-based plan is determined to be non-compliant.

 - b. You and your manager determine which Form 1040 discrepancy adjustments to pursue (such as highly compensated participants or non-highly compensated participants with significant income tax adjustments).
 - c. Follow the procedures in IRM 4.70.15.4.5, Preparation of the Discrepancy Adjustment Package, when you/manager decide to make a Form 1040 discrepancy adjustment.
 - d. You prepare the 30-Day letter packages for any Form 1040 discrepancy adjustment related to an IRA-based plan will be prepared and mail them.
 - e. Follow the procedures in IRM 4.70.15.7.1, Taxpayer Disagrees, if the taxpayer files a Protest to Appeals or doesn't agree with the proposed discrepancy adjustment within the allotted time-frame.
 - f. When you close a discrepancy adjustment to Mandatory Review before you forward the discrepancy adjustment case to issue the 90-Day Letter, you're strongly encouraged to close the related NRU paper and the NRU RCCMS case file(s) to Mandatory Review as a ride-along case. Include all supporting documentation for the discrepancy adjustment (such as the plan sponsor generated documents) in the case file.

Note: If you are not planning to close the NRU paper case file with the discrepancy adjustment case, call the Manager, EP Mandatory Review to discuss the case.

- (3) A SEP/SARSEP or SIMPLE IRA failure will normally result in two tax issues on Form 1040 discrepancy adjustments:
 - a. Addition to income of the amount of excess contribution in the current year (the amount allocated to the participant's account in excess of the amount allowed as a "traditional IRA contribution.")
 - b. IRC 4973 excise tax on excess contributions for the current year and any excess contributions carried forward from prior years.
- (4) The 6% excise tax under IRC 4973 is imposed on the individual participants, and applies to all excess contributions to an IRA until the excess amounts (plus earnings) are either distributed to the individual or absorbed as traditional IRA contributions in later years.

- a. An individual has until the due date of their Form 1040 (April 15 plus extensions) to distribute the excess to avoid the tax.
- b. There is no requirement to remove excess monies, but any excess will be taxed accordingly until there is no longer an excess.
- c. Individuals report IRC 4973 excise tax on Form 5329, which they may file along with Form 1040 or separately.
- d. The filing of Form 5329 starts the running of the statute of limitations for purposes of IRC 4973 excise tax. This means that the Form 5329 has its own statute date that is not linked to the statute date of a Form 1040. If the individual never filed Form 5329, then the statute of limitations for IRC 4973 tax has not begun to run.
- e. Even if the related Form 1040 statute of limitations is open and you/manager decide to pursue a discrepancy adjustment on the participant's Form 1040, the individual should still address IRC 4973 excise tax on Form 5329.
- f. If SB/SE or W&I has the related Form 1040 under examination, you may refer the IRC 4973 issue to SB/SE or W&I on Form 5666.
- g. You may pursue IRC 4973 tax on Form 5329 even if we're not adjusting income on Form 1040.

Note: IRC 4973 and IRC 4974 excise tax are now handled in the discrepancy adjustment process (previously Form 5329 processing) in IRM 4.70.15, Discrepancy Adjustments. IRC 4973 and IRC 4974 adjustments are to be added to Form 4549-E (as "other taxes") and the issues listed on the Form 1040 RAR. Use Forms and letters listed for EP Form 1040 discrepancy adjustment to process these cases. Along with this IRM, follow IRM 4.4.14.3.2, Adjustments to Parts II through III of Form 5329 - IRM 4.4.14.3.4 Closing IRA Adjustments from the Group to address these IRC 4973 and IRC 4974 excise tax adjustments.

- (5) IRC 72(t) tax applies to excess amounts distributed to individuals from a SEP, SARSEP or SIMPLE IRA to the extent that the individuals didn't previously include amounts distributed in income.
- (6) If you determine a SARSEP doesn't meet the requirements of IRC 408(k)(6):
 - a. IRC 4979 excise tax is imposed on the plan sponsor.
 - b. IRC 4979 excise tax applies to excess contributions determined for a SARSEP under IRC 408(k)(6)(A)(iii), if the SARSEP was qualified at any time.

Note: The statute of limitations for IRC 4979 begins to run with the filing of Form 5330.

Note: A SARSEP that fails IRC 408(k) may also result in a discrepancy adjustment and or IRC 4973 excise tax.

- (7) Appeal rights are not offered to the employer for an IRA-based plan found to be non-compliant with the Internal Revenue Code and not resolved through Audit CAP. Non-compliant IRA-based plans are therefore not subject to mandatory review. We would offer Appeal rights for related returns, though as discussed in paragraphs b), c) and d) below.

- a. Do not, therefore, prepare a 30-Day letter with a Revenue Agent Report (RAR) for the NRU examination.
- b. With your manager approval, propose taxable adjustments as discrepancy adjustments on the related Forms 1040 of plan participants (normally highly compensated participants), and provide appeal rights for any related Form 1040 discrepancy adjustment.

Note: Follow the procedures of IRM 4.70.15, Discrepancy Adjustments, for Forms 1040 or 1120 picked up in conjunction with the SEP, SARSEP or SIMPLE IRA examination. However, you mail the 30-Day letter, not Mandatory Review.

Note: IRC 4973 and IRC 4974 excise tax are now handled in the discrepancy adjustment process (previously Form 5329 processing.) IRC 4973 and IRC 4974 adjustments are to be added to Form 4549-E (as “other taxes”) and the issues listed on the Form 1040 RAR. Use Forms and letters listed for EP Form 1040 discrepancy adjustment to process these cases.

Along with this IRM, follow IRM 4.4.14.3.2, Adjustments to Parts II through III of Form 5329 - IRM 4.4.14.3.4, Closing IRA Adjustments from the Group to address these IRC 4973 and IRC 4974 excise tax adjustments.

- c. You may also pick up Forms 5330 for IRC 4979 as discussed in IRM 4.70.14.2.4.2.2(6) If you do, follow the procedures in IRM 4.70.14.2.1.2.4, EP - Processing Agreed Forms 5330 and 990-T.
- (8) Prepare Letter 1758-A to close a SEP or SARSEP examination that you determined to be non-compliant and wasn't resolved through a closing agreement. Letter 1758-A should:
- a. Specify the year(s) the SIMPLE IRA does not meet the requirements of IRC 408(p).
 - b. Clearly state why the SIMPLE IRA does not meet the requirements of IRC 408(p).
 - c. Specify the consequences of failure to meet the requirements of 408(p), including a list of participants with excess contributions and the amount of excess contributions.
 - d. Inform the SIMPLE IRA sponsor that they're required to notify plan participants of their excess amounts and that IRC 4973 tax applies on the excess monies not withdrawn (plus earnings). See Employee Plans Examination Exhibits for an example of Letter 1758-D.

4.70.14.2.4.2.3
(11-24-2023)

**EP – Unagreed Forms
5330 and 990-T**

- (1) “Unagreed” cases are those cases in which the taxpayer disagrees with the examiner's position, or agrees only in part. The case is unagreed if any, or all, of the following conditions exist:
 1. The amount of initial tax shown on the return is in dispute.
 2. The initial tax is not in dispute but the taxpayer cannot or will not correct the issue giving rise to the excise tax, or the IRS considers the correction or proposed correction unacceptable.
 3. The taxpayer refuses to file a delinquent Form 5330, or Form 990-T or sign Form 870-EP.
- (2) Examiners must inform their group manager at the first indication that a case might be unagreed. Examiners must document the CCR as to the method

used to contact the group manager (email, telephone call, face to face discussion, etc.) and the manager's response. Use the CCR to clearly reflect case activities and contacts with the taxpayer/representative.

- (3) If the taxpayer refuses to file a delinquent Form 5330, or Form 990-T establish an SFR in accordance with IRM 4.70.13.9.8.7, EP – Processing Form 5330 or 990-T Substitute for Return.
- (4) Establish unagreed Forms 5330, or 990-T on RCCMS and AIMS in the same manner as agreed returns. See IRM 4.70.14.2.1.2.4, EP - Processing Agreed Forms 5330 and 990-T.
- (5) For forms 5330: Follow the procedures in IRM 4.70.14.2.1.2.4 (5) and (6), Processing Agreed Form 5330 and 990-T, to determine if there is an entity module on AIMS. If there is no entity module, prepare and process Form 4442 according to IRM 4.70.13.9.5.2.2, EP Preparation of Form 4442.
- (6) For Forms 990-T: Follow the procedures set forth in IRM 4.70.14.2.1.2.4.13, EP - Obtaining a Trust EIN, to obtain an EIN for the trust if the trust does not already have an EIN.
- (7) Prepare and send by certified mail a 30-Day Letter package to the taxpayer (and POA if applicable). See IRM 4.70.14.2.4.2.1.3, EP 30-Day Letter Package, for instructions to examiner on what is required.

Note: Prior to preparing a 30-Day Letter Package, you may want to consider using the Fast Track Settlement Process to resolve unagreed issues involving Forms 5330.

See IRM 4.70.14.2.3, Fast Track Settlement Procedures.

- (8) As part of the 30-Day Letter package, prepare a written Revenue Agent Report (RAR) explaining the basis of the proposed adjustments and citing the provisions of the law, regulations, published rulings, United States Tax Court and other court decisions on which the conclusions are based. See IRM 4.70.14.2.1.1, Revenue Agent Report.

Note: If more than one person is liable for IRC 4975 excise tax with respect to any one prohibited transaction, all persons shall be jointly and severally liable, and a separate 30-Day Letter package needs to be prepared and processed for each disqualified person.

- (9) After you mail the letter, update the case to status 13 and call the taxpayer to discuss the issue(s) being raised.
- (10) The examiner's phone call should be:
 - No earlier than 14 calendar days after the initial letter is mailed (unless first contacted by the taxpayer).
 - No later than 21 calendar days after the letter is mailed.
- (11) Verbally explain the issues either by telephone or through an arranged face-to-face meeting.
- (12) A minimum of 12 months must remain on the statute when Appeals receives the case.

1. It may be necessary to send out Form 872 with the 30-Day Letter to make sure Appeals has at least 12 months when they receive the case.
2. Take processing time into consideration when you mail out the 30-Day Letter.

Note: For this reason, it is advisable to include Form 872 with the 30-Day Letter if 15 months or less remain on the statute.

3. If the taxpayer refuses to extend the statute, the taxpayer basically forfeits their Appeal rights. Prepare the 90-Day Letter package (SNOD) using Letter 531-B (DO NOT SEND) and process to Mandatory Review to issue.
- (13) If the statute of limitations will expire within 12 months and the taxpayer refuses to extend the statute of limitations, close the case to Mandatory Review to issue the 90-Day Letter package.

Note: In these instances contact the Manager, EP Mandatory Review to discuss the short statute and the need to issue a 90-Day Letter. Document the CCR accordingly.

- (14) When the 30-Day Letter is mailed and the taxpayer timely files a valid protest to Appeals, close the case to Appeals. See IRM 4.70.14.7, Closing Cases to Appeals.
- (15) If the taxpayer agrees and files Form 5330, Form 990-T or signs Form 870-EP, close the case per IRM 4.70.14.2.1.2.4.6, EP – Processing Agreed Forms 5330 and 990-T, and process any returns or checks received per IRM 4.70.14.3, Payment Processing.
- (16) If the taxpayer does not protest within the 30-day period, but previously indicated his/her intention to do so, you may send Letter 923-A to the taxpayer to allow an additional 15 days to file a protest. Send Letter 923-A no later than seven calendar days after the response date of the original 30-Day Letter.
- (17) If the taxpayer fails to timely file a valid protest to Appeals, close the case to Mandatory Review to issue a 90-Day Letter.

Note: Prior to closing any cases to Mandatory Review, the field manager must call the Manager, EP Mandatory Review to discuss the case and obtain mailing instructions.

1. Inform the taxpayer/representative that the case is being closed unagreed to EP Mandatory Review.
 2. Explain the appeals process to the taxpayer or POA. See Pub 1020.
- (18) As is the requirement for all exam cases, prepare Form 5773-A and other relevant workpapers.
- (19) Use the CCR to clearly reflect case activities and contacts with the taxpayer/representative.
- (20) Complete the following before you transfer a case to Appeals or Mandatory Review:
- Scan all paper documents you exchanged with the taxpayer including envelopes or anything the taxpayer or representative marked.

- Name all prepared workpapers, forms, and letters, using the TE/GE RCCMS Naming Convention and save in the RCCMS Office Documents folder.
 - Keep all records you upload into RCCMS or determine are no longer relevant to the case file per normal record retention requirements outlined in IRM 1.15.2.
- (21) When closing a case unagreed, prepare the RCCMS Closing Record tabs in accordance with IRM 4.70.14.2.4.2.3.1, EP - Preparation of RCCMS Tabs for Unagreed Form 5330 and 990-T Examinations.
 - (22) Ensure that the statute procedures found in IRM 4.70.12.3.7.1, Group Manager Responsibilities and Procedures, and IRM 4.70.12.3.7.2, Examiner Responsibilities and Procedures, are followed for Forms 5330, or 990-T; and any related Forms 5500 examinations closed to Mandatory Review.
 - (23) Make sure the case is fully established on RCCMS and AIMS before the case is closed to Appeals or Mandatory Review.
 - (24) Update the case on RCCMS to disposal code 601 if it is going to Appeals and disposal code 604 if it is going to Mandatory Review, and close the case to your group manager.
 - (25) If the case is closing to Appeals, the group manager (or designee) will make sure the case is processed in accordance with IRM 4.70.14.7, Closing Cases to Appeals.
 - (26) If the case is closing to Mandatory Review, the group manager (or designee) will: 1. Update the case to status 20 on RCCMS and AIMS 2. Close the case and related Forms 5500 to Mandatory Review.
- Note:** Prior to closing any cases to Mandatory Review, the field manager must contact the Manager, EP Mandatory Review to discuss the case and obtain mailing instructions.
- (27) If any correspondence is received by the examiner/field group, the correspondence must be sent (as applicable) to Appeals or Mandatory Review immediately for association with the case file.

4.70.14.2.4.2.3.1
(11-24-2023)
**EP - Preparation of
RCCMS Tabs for
Unagreed Form 5330
and 990-T Exams**

- (1) Validate cases for closure in the RCCMS closing record using the table below.
- Note:** All items highlighted in red are required to be completed.
- Note:** Refer to IRM 4.5.2, TE/GE Examined and Non-Examined Closures, and Document 6476 for additional Information.

<u>RCCMS TAB</u>	<u>ITEM</u>	<u>EXPLANATION</u>
General	Disposal Code	601 = "Appealed - Protest to Appeals" (for cases going to Appeals) 604 = "Unagreed - Without Protest" (for cases going to Mandatory Review to issue a 90-Day Letter)
General	Closing With	Make the appropriate selection in the drop down menu, but in most cases select "electronic prints"
General	Appeals Office Code	Enter 131 if the case is going to Appeals.
Details	Examiner's Time	Time must be entered in whole hours and in tenths of hours.
Details	Technique Code	4 - Field exam - full scope 6- Office correspondence exam 7 - Field exam - limited scope
Details	Examiner's Name	Last name, first name
Individual/Business (1 of 3)	Unagreed Amount	Enter the tax and Failure to File penalties related to that year, if the case is going to Appeals

4.70.14.2.4.2.3.2
(11-24-2023)

EP – Consideration of Statute of Limitations for Forms 5330, and 900-T

- (1) Except for prohibited transactions, the statute of limitations (SOL) for assessment of taxes expires three years from the later of the due date of the return, or the date the return is filed (See IRC 6501(a)).
 - a. Generally, for any tax other than IRC 4975 excise tax and UBIT, there will not be a SOL date when a return is not filed.
 - b. A return is deemed filed on its due date if filed on or before its due date.
- (2) Forms 5330 filed for IRC 4975 excise tax: The three year statute of limitations for assessment of taxes begins on the later of:
 - a. The date the related Form 5500 series return is filed, or
 - b. The date due, if the prohibited transaction is sufficiently disclosed (See IRC 6501(l)(1)).

Note: The statute of limitations for prohibited transactions is extended to six years if the prohibited transaction is not adequately disclosed on the related Form 5500.

Note: See Employee Plans Examination Exhibits for a matrix to help compute the statutes under IRC 4975.

- c. Involving a discrete act (one-time occurrence, such as a sale), even though the taxes are imposed annually, there is only one period of limitations applicable to all the tax attributable to the prohibited transaction. Therefore, the filed or due date to be used in determining the statute of limitations date is limited to that of the initial Form 5500 return filed for the period in which the discrete act occurred.
- d. For a prohibited transaction that is considered a continuing transaction, such as a loan or lease, the situation is different.
- e. In addition to the original transaction, a new transaction is deemed to occur on the first day of each subsequent taxable year of the disqualified person.
- f. The filing of the Form 5500 return for the year in which the prohibited transaction first occurred starts the running of the statute of limitations for purposes of the tax on the actual transaction occurring in that plan year.
- g. The filing of the Form 5500 return for each subsequent plan year starts the running of the statutes for transactions deemed to reoccur in subsequent years.

(3) Forms 990-T reporting UBIT:

- a. The three-year statute of limitations for assessment of taxes begins:

- 1. If the trust files a Form 990-T, the statute of limitations begins to run on its filing date.
- 2. If the Form 990-T is not filed, the statute of limitations starts to run based upon the Form 5500 return if:
 - i. The plan administrator files the Form 5500 series return, and
 - ii. The Form 5500 discloses sufficient information to reveal the existence of UBI.

- b. If the trust reported UBI on the Form 5500 series return, and the amount of omitted gross income from unrelated business activity is greater than 25% of the reported gross income from unrelated business activity, the statute of limitations period is six years from the date the Form 5500 series return was filed. See IRC 6501(e).

Note: Before you pursue a six year statute, secure the approval of your manager and TEGEDC.

- c. If the Form 990-T is not filed, and the criteria in item (a)(2) above are not met, the statute of limitations does not begin running.
- d. If the trust files Form 990-T and the amount of omitted gross income from unrelated business activity is greater than 25% of the reported gross income from unrelated business activity, the statute of limitations period is six years from the date the Form 990-T return was filed.

Note: Before you pursue a six year statute, secure the approval of your manager and TEGEDC.

- e. See IRM 4.70.12.3.8.9, Securing Consents for Form 990-T, for guidance on completing Form 872-H, Consent to Extend the Time to Assess Tax on a Trust, to extend the statute of limitations for Form 990-T.

Note: Form 872-H can be accepted by fax if taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the consent to extend the time to assess tax.

- (4) In cases where the taxpayer omitted more than 25% of the excise tax due (other than prohibited transactions and UBIT), the statutory period to assess tax is six years from the later of:

- a. The date the return is filed, or
- b. Deemed filed.

Note: See IRC 6501(e)(3).

- (5) Consult TEGEDC before pursuing a six-year statute of limitations. Document discussions and responses with Counsel in the CCR.
- (6) Make sure the statute of limitations reflected in the RCCMS Compliance Activity, General tab (1 of 2), is completed and is correct. BMF and IMF will automatically calculate a statute of limitations date for a Forms established on AIMS. However, the calculated date cannot be relied upon to reflect the normal statute date for prohibited transactions or SFRs established for all other taxes.
 - 1. Presently, statute of limitation dates for all Forms are calculated on BMF and IMF as three years from the later of: The date the Form is filed, or The date due.
 - 2. Forms 5330 reporting IRC 4975 excise tax:

- 1. BMF incorrectly calculates the statute of limitations date for prohibited transactions since there is no linkage to the Form 5500 series return statute date.

Note: The problem exists because the prohibited transaction statute of limitation date is based on the filing of the Form 5500 in which the prohibited transaction occurred or is deemed to have occurred, and not the filing of the Form 5330.

- 2. If a single Form 5330 contains both IRC 4975 excise tax and another type of excise tax (for example, IRC 4971), use the statute of limitations date for IRC 4975 since it will expire sooner.

- 3. All SFRs other than Forms 5330 for IRC 4975 excise tax: IMF and BMF incorrectly calculate a 3-year statute date for SFRs. When a return has not been filed by the Taxpayer, the statute of limitations has not begun to run. Update the statute of limitations to alpha code "EE" per IRM 4.70.12.3.7.7, Use of Alpha Codes, when no return has been filed and the statute of limitations has not begun to run.

Note: The year reflected should be six years from the date the SFR posted. For example, if the SFR posted on 10/21/2020, the statute date should be 10/EE/2026.

- (7) If AIMS and/or RCCMS reflects an incorrect statute date, notify your manager and update the statute of limitations through RCCMS with the "Update AIMS" box checked.

Note: If statute date reflected in RCCMS but different than the statute date reflected on AIMS, update of the statute date on AIMS must be done manually so that it agrees with RCCMS.

- (8) When the statute date is less than or equal to 270 days, complete the RCCMS Statute Validation Process:
- Check the "Statute Valid" check box in the RCCMS Compliance Activity, General tab (1 of 2).
 - Select "Actions", "Request Statute Validation", complete the "Comment" box and submit the request for your manager's approval.
- (9) Follow the statute control procedures discussed in IRM 4.70.12.3.8, EP Statute Control Procedures.

4.70.14.2.4.2.3.3
(11-24-2023)

**EP – Referrals to the
Department of Labor**

- (1) For cases involving uncorrected minimum funding deficiencies or uncorrected prohibited transactions, the examiner will prepare a DOL referral package and forward it at the earliest possible time in the audit cycle.
- (2) The examiner will provide the group manager with the following items:
- Completed Form 6212-B.
- Note:** Include a concise summary of the issue(s) referred on Line 12 "Remarks" of Form 6212-B.
- Any relevant information pertaining to the issue referred, including a copy of the RAR if there is an unagreed IRC 4971, IRC 4975 issue or a proposed revocation.
- Note:** None of the Form 6212-B attachments are sent to DOL-EBSA, unless Classification receives a written request from DOL-EBSA for the information. Classification will release relevant information as required by IRC 6103(l)(2).
- (3) The group manager or designee will send approved referrals to the FAC/EP DOL Coordinator. See Employee Plans Examination Exhibits, for addresses.
- (4) See IRM 4.70.11.15.6, Referrals to Other Agencies.

4.70.14.2.4.3
(11-24-2023)

**Exempt Organizations
Unagreed Procedures**

- (1) An unagreed Exempt Organization examination is one in which a Taxpayer disagrees with either a proposed adverse status change (revocation, disqualification of a status 36 organization, or reclassification from public charity to a private foundation) or tax adjustment, and does not make correction under a closing agreement program, fast track settlement, or classification settlement program.

4.70.14.2.4.3.1
(11-24-2023)

**EO - Formal
Examination Reports**

- (1) The formal report is the official written report you issue to a taxpayer that presents your findings regarding a change in tax, status or claim disallowance. A formal report is unnecessary if you issued the optional initial report and the taxpayer agreed.

Note: All cases subject to declaratory judgment under IRC 7428, require a formal report.

- (2) Don't issue a report to a taxpayer prior to discussing findings and proposed issues with the taxpayer. Exceptions to this rule are for the following:
 - a. No-show / no-response appointments.
 - b. Uncooperative taxpayers.
 - c. When additional records are provided for your consideration.
- (3) The RAR provides more details as to facts, law and argument than the initial report. The formal examination report:
 - a. Combines a 30-day letter with an RAR.
 - b. Transmits the RAR to the taxpayer.
 - c. Eliminates consideration for a FTS (unless properly rescinded).
 - d. Requires managerial approval prior to issuance.
 - e. Requires issuance via certified (domestic) or registered (international) mail.

Caution: Generally, don't issue a 30-day letter to the taxpayer unless the manager tried to resolve the controversies and reach an agreement.

Note: TEGEDC must approve a formal examination report and closing letter for a church for issues covered under IRC 7611 before Mandatory Review issues it within the two-year examination period. Submit a proposed adverse determination to Mandatory Review at least 120 days before the two-year period expires.

- (4) After issuing an initial examination report, create a formal examination report by modifying the initial examination report based on any taxpayer responses. These modifications can include, but aren't limited to:
 - Corrections of facts stated.
 - Changes in expense allocations.
 - Additions or subtractions of items (income, expenses, reclassified workers).
 - Additions of legal references.
 - Recomputations of taxes.
 - Additions to the taxpayer's position.
 - Revisions of the government's position to rebut the taxpayer's position.

Reminder: Eliminate any references to initial reports in the Form 886-A, Explanation of Items, and other documents.

- (5) Issue the report with the appropriate letter and its enclosures. See:
 - Exhibit 4.70.14-2, EO Reports and Closing Letters for Claims and Abatements, for a list of the formal 30-day letters, report forms, and closing letters for claims and abatements.
 - Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases, or a list of the formal 30-day letters, report forms, and closing letters in general.
- (6) After waiting 30 days, determine if:

- The taxpayer agreed to the adjustment.
- The taxpayer submitted a formal protest.
- The taxpayer failed to reply to the formal report.

Note: At the manager's discretion you may wait up to an additional week after the 30 day deadline, to allow mailing time, before taking action.

(7) If the taxpayer agrees with a formal report, process as follows:

If the issue is...	Then...
Subject to declaratory judgment rights under IRC 7428 .	Close to Mandatory Review as: <ul style="list-style-type: none"> • Revocation - agreed with DC 09 (RCCMS - 211). • Change in foundation status - agreed with DC 17 (RCCMS - 203).
An agreed worker reclassification.	<ul style="list-style-type: none"> • Process any payments received. • Close to the EO closing unit as agreed with DC 03 (RCCMS - 102). • If the taxpayer signed a classification settlement program, close the quarters where making assessments using DC 03 (RCCMS - 102). • Close all other periods using DC 01 (RCCMS - 210). Refer to IRM 4.23.6.15.2, CSP Examination Reports. • Use Letter 3382.
Agreed tax changes including: <ul style="list-style-type: none"> • Excise (no correction required, or correction was required and fully made) • Employment taxes (non-worker classification) • Income taxes 	<ul style="list-style-type: none"> • Process any payments received. • Verify correction, if applicable. • Issue Letter 3382 for ETs. • Issue Letter 2511 with a copy of the signed agreement forms for all other taxes. • Close to the EO closing unit as agreed with DC 03 (RCCMS - 102).

If the issue is...	Then...
Chapter 42 excise tax adjustment without correction.	<ul style="list-style-type: none"> • Process any payments received. • Close to Mandatory Review as unagreed without protest with DC 10 (RCCMS - 604).
Subject to multiple issues listed above.	<ul style="list-style-type: none"> • Process any payments received. • Close to Mandatory Review, if applicable. • Otherwise, verify correction, if applicable, process any payments received, and close to the EO closing unit.

Note: If you issue one or more Letters 2511 and there are no other issues, prepare and issue Letter 1744 as the closing letter for the annual information return (or e-Postcard) examination. In the attached Form 886-A, make reference to the agreed adjustment under a separate examination report.

- (8) If the taxpayer protests a formal examination report, review the reply and proceed as follows:

If the additional information provided...	Then...
Changes your conclusion, resulting in a no change	<ul style="list-style-type: none"> • Rescind the report. • Close as a no change. • See Exhibit 4.70.14-1, Closing Letters for No-Change Cases, for the appropriate closing letter to be issued.
Changes your conclusion, resulting in a modified adjustment	<ul style="list-style-type: none"> • Change the report and issue the revised formal examination report, unless rescinding the report and considering a FTS for the unagreed issue. • See IRM 4.70.14.2.3, Fast Track Settlement Procedures. <p>Note: A new 30-day letter for a tax change is unnecessary if there are no new issues and the revised report is favorable to the taxpayer.</p>

If the additional information provided...	Then...
Doesn't change your conclusion, and constitutes a formal protest to Appeals.	<ul style="list-style-type: none"> • Prepare a rebuttal to the protest. • Issue the rebuttal to the taxpayer. • Close to Mandatory Review using DC 07, Unagreed-Protest to Appeals (RCCMS - 601). • See IRM 4.70.14.7, Closing Cases to Appeals, for procedures on how to prepare a rebuttal.
Doesn't change your conclusion, and doesn't constitute a valid formal protest to Appeals.	<ul style="list-style-type: none"> • Prepare and send a drafted letter to the taxpayer. Give 10 days to respond. • See Exhibit 4.70.14-8, Incomplete Protest Returned to taxpayer - Suggested Language, for suggested language.
Doesn't change your conclusion, and the taxpayer filed a petition to Tax Court.	Send an individually designed letter, approved by the GM, notifying the taxpayer that the petition is premature, and they have the option of filing a formal protest. Give 10 days to respond.

Caution: If still within the 30-day period of the formal letter when you receive the incomplete protest, the taxpayer has the remainder of the 30 days and the additional 10 days in which to reply with the formal protest (a total of 40 days from the date of the formal 30-day letter).

- (9) If you receive a response to the drafted letter, refer to the above table as to how to proceed. Don't send more than two drafted follow up letters to the taxpayer. If you don't receive a formal protest after the second letter, close to Mandatory Review as unagreed without protest.
- (10) If the taxpayer fails to reply to a formal examination report and:

You sent the report...	You may...
More than 30 days ago	<i>In some tax cases</i> issue Letter 923, Letter Extending Time to File Protest, or Letter 923-E, Letter Extending Time to File Protest Excise See Notes 1, 2, and 3

37 days ago (45 days if you issued Letter 923 or a comparable letter)	Close the case to Mandatory Review as unagreed without protest with DC 10 (RCCMS - 604) or DC 55 (RCCMS - 605). See Exception.
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Note: 1. Letter 923 and Letter 923-E apply to Form 990-T income taxes and gaming excise taxes respectively.

Note: 2. For both Letters 923 and Letter 923-E, you must insert the GM's information in the contact section. The GM must approve the issuance of Letter 923 or Letter 923-E.

Note: 3. You may prepare a comparable letter to Letter 923 and Letter 923-E for other tax cases. The GM has discretion over issuance of the letter.

Exception: Close ET cases (other than worker classification issues) and gaming excise tax cases to the EO closing unit, unless otherwise subject to Mandatory Review.

4.70.14.2.4.3.2 (11-24-2023)

EO - Fast Track Settlement (FTS)

- (1) TE/GE and Appeals jointly administers FTS, an alternative dispute resolution program designed to help taxpayers settle disputes at the examination group level. An appeals officer trained in mediation serves as an impartial third party to resolve unagreed TE/GE issues by:
 - a. Facilitating settlement negotiations.
 - b. Using mediation techniques and sometimes settlement authority.
- (2) The goal of TE/GE FTS is to resolve the issue within 60 calendar days. The benefits of TE/GE FTS include less time, expense, and burden on both the taxpayer and the government.
- (3) You or the taxpayer may consider the FTS process at any time after you fully develop a disputed issue but before you issue a formal examination report (30-day letter and RAR). FTS may be allowed in specific situations when the taxpayer provides new information after the 30-day letter is mailed. In all situations, FTS must be initiated before the mailing of the 90-day letter.

Example: The taxpayer provides new information during the appeals process which warrants the Appeals officer sending the case back to the field. FTS can still be used because the IRS hasn't issued the 90-day letter.

- (4) Announcement 2008-105 originally announced FTS for EO cases. Announcement 2012-34 makes the program permanent. This Announcement contains procedures as well as the types of issues that are eligible for FTS.
- (5) Find additional information regarding this program in Pub 5092, Fast Track Settlement A Process Resolution of Tax Exempt and Government Entities (TE/GE) Tax Issues, and at the Appeals Alternative Dispute Resolution Program FTS website http://appeals.web.irs.gov/tech_services/adr/fasttrack.htm.

4.70.14.2.4.3.2.1
(11-24-2023)

**EO - Characteristics of
Fast Track Settlement**

- (1) FTS resolves factual and legal issues.
- (2) FTS enables the taxpayer to work with the EO examiner, the EO GM and Appeals.
 1. All three parties (examination group, taxpayer, and Appeals) are active participants in the process.
 2. All three must agree before a proposed resolution can be put in place.
- (3) Both parties must commit to settling the issues involved.
- (4) The prohibition against ex parte communications (Public Law 105-206, Section 1001(a)) between Appeals Officers and other IRS employees doesn't apply to the FTS process. See Rev. Proc. 2012-18, Section 2.05. Appeals personnel:
 - Ease agreement between the taxpayer and EO.
 - Don't act in their traditional Appeals settlement role.
- (5) If the parties fail to resolve any issue in FTS, the taxpayer retains the right to protest the issue through the traditional Appeals process.

4.70.14.2.4.3.2.2
(11-24-2023)

**EO - Eligibility for Fast
Track Settlement**

- (1) For EO, FTS can only resolve unagreed issues in the following types of examinations:
 - a. Form 990 series information returns (or Form 990-N) with exemption, foundation or qualification issues.
 - b. Forms 4720 and 4720-A.
 - c. Forms 990-T.
 - d. Forms 1040 or 1120 discrepancy adjustments.
 - e. Employment taxes, including worker classification issues not resolved through CSP.
- (2) FTS is generally unavailable for the following EO cases:
 - a. Correspondence examination cases.
 - b. Campus cases (formerly known as Service Centers). These cases aren't eligible for FTS as there is no decision-maker available to attend the session.
 - c. Cases where the taxpayer fails to respond to the IRS communications and didn't previously submit documentation for consideration.
 - d. Listed transactions cases or abusive tax avoidance transactions (ATAT) cases.
 - e. Cases in which Appeals has no jurisdiction (e.g., IRC 6700 penalty cases).
 - f. Cases involving potential for civil or criminal fraud.
 - g. Issues designated for litigation.
 - h. Issues under consideration for designation for litigation.
 - i. Issues identified in a Chief Counsel Notice, or equivalent publication, as excluded from the FTS process.
 - j. "Whipsaw" issues (i.e., issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party).
 - k. Issues that can be resolved through other established settlement initiatives, such as, but not limited to, the Self Corrections Program, the examination Closing Agreement Program, or other programs described in Rev. Proc. 2013-12, 2013-4 IRB 313.

- l. Cases where the taxpayer raises issues/arguments that clearly have no merit or legal sufficiency on their face.
 - m. Cases involving the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds. See Treas. Reg. 601.106(b).
 - n. Tax Equity & Fiscal Responsibility Act (TEFRA) partnership cases.
 - o. Cases specifically excluded from FTS, by the IRS Commissioner, Chief Counsel or by a Director in EO/GE.
 - p. Selected initiatives as determined by the individual Directors on an annual basis.
 - q. Rebate claim cases.
- (3) In revocation cases, the issue of a retroactive effective date of revocation isn't eligible for FTS. IRC 7805(b) governs relief from retroactive application of adverse determination, which requires a request for a technical advice memorandum. See Rev. Proc. 2019-2, 2019-01, IRB 230, (updated annually).

4.70.14.2.4.3.2.3
(11-24-2023)

**EO - Fast Track Duties
and Responsibilities**

- (1) As the examiner, you:
- a. Have a full understanding of the FTS program, process and eligibility requirements.
 - b. Offer FTS for all eligible unagreed cases.
 - c. Discuss FTS with the taxpayer/representative.
 - d. Answer all questions of the taxpayer/representative pertaining to FTS.
 - e. Fully develop each unagreed issue.
 - f. Prepare to address the taxpayer's arguments during the FTS session with facts and citable precedent.
 - g. Keep the GM or their designee, updated on the status of the FTS case.
- (2) The EO GM or designee:
- a. Coordinates preparation and submission of the application package.
 - b. Notifies the taxpayer of acceptance into or rejection from the FTS program.
 - c. Participates in the FTS session on behalf of the government.
 - d. Has primary responsibility for accepting or rejecting any settlement proposal that arises as a result of the FTS.
- (3) The Appeals Team Manager responsible for TE/GE programs serves as the Appeals FTS Program Manager and may consult with the EO GM.
- (4) Taxpayers interested in participating in FTS or having questions about the program and its suitability for their cases, should contact you or your GM to discuss resolution of an issue for the periods currently under examination.

4.70.14.2.4.3.2.4
(11-24-2023)

**EO - Fast Track
Application Process**

- (1) To apply for the FTS program, the taxpayer submits a completed Form 14017, Application for Fast Track Settlement.
- Note:** To participate in FTS, the taxpayer must consent, pursuant to IRC 6103(c), to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the FTS process to those persons named on Form 14017.
- (2) Write up all unagreed issues in a RAR format. Use Form 5701 for this purpose. Add Form 886-A if more room is needed.

- (3) The taxpayer must prepare a full written response explaining their position on each issue.
- (4) Assemble the FTS Submission Package:
 - Form 14017.
 - Form 5701 and RAR.
 - The taxpayer's written response.
 - Your rebuttal.
- (5) Submit the FTS Submission Package to your GM for signature on Form 14017.
- (6) Secure email the FTS Submission Package to the area manager.
 - The area manager approves the FTS Submission Package by signing Form 14017 as the approving operating division official.
- (7) Secure email the FTS Submission Package approved by your area manager to the Appeals Program Manager using the mailbox ap.tege.fts@irs.gov.
 - The Appeals Program Manager (or designee) contacts the EO GM to inform them of the decision made regarding acceptance or rejection in FTS.
- (8) If accepted, the Appeals Program Manager (or designee) assigns an FTS Appeals Officer who acts as the FTS Appeals Official (FTS AO) to help resolve the case.
- (9) If the case isn't accepted for inclusion in FTS:
 - a. Notify the taxpayer accordingly.
 - b. Discuss other dispute resolution opportunities with the taxpayer, including closing agreement or 30-day letter procedures and the taxpayer's normal Appeal rights.

Note: The decision not to accept a case into the FTS program isn't subject to administrative appeal or judicial review.

4.70.14.2.4.3.2.5
(11-24-2023)

**EO - Initial Process for
Cases Accepted in FTS**

- (1) If the case is accepted in FTS, the FTS AO:
 - a. Contacts the EO GM (or EO examiner) and the taxpayer to set up an FTS session to discuss case resolution.
 - b. Holds the FTS session at the date and location agreed to by both parties.
 - c. Meets with the taxpayer, the EO GM (or designee) and the examiner at the FTS session.
 - d. Serves as a neutral party at the FTS session.
 - e. Doesn't perform in a traditional Appeals role, but uses dispute resolution techniques to facilitate settlement between the parties.
- (2) The taxpayer doesn't need to have a representative to participate in the FTS process, but if they do, this individual must have a power of attorney from the taxpayer (Form 2848, Power of Attorney and Declaration of Representative).
- (3) The FTS AO may ask you and the taxpayer to limit the number of participants at the FTS session to facilitate the process.

4.70.14.2.4.3.2.6
(11-24-2023)

**EO - Fast Track
Settlement Session**

- (4) Before the FTS session, the FTS AO advises the participants of the procedures and establish ground rules.
- (5) Generally, the FTS AO considers only those issues outlined in the FTS Report, except by mutual agreement of the parties.

- (1) Both parties retain the right to withdraw throughout the entire FTS process. A party wishing to withdraw should provide written notice to the FTS AO and the other parties.
- (2) The FTS session may include joint sessions with all parties, separate meetings, or both as determined appropriate in the sole judgment of the FTS AO.
- (3) The FTS AO may modify the rules and procedures during the FTS session to adapt to changes in circumstances.
- (4) The FTS session may include other individuals with decision making authority and information and expertise necessary to help the parties during the settlement process.

Note: IRS employees, the taxpayer, and the people invited to participate by the IRS or the taxpayer mustn't voluntarily disclose information about any communication made during the FTS session, except as provided by statute.

- (5) During the FTS AO prepares the FTS Session Agenda and the FTS Session Report and provides both parties with copies.
 - a. The FTS Agenda guides the communication in the FTS session, sets the order of issue discussion, and poses questions to clarify the issues.
 - b. The FTS Report includes a list of all issues approved for the FTS program, a description of the issues, the amounts in dispute, conference dates, a plan of action for the FTS session and other information useful to the process as determined by the parties and the FTS AO.

Note: The FTS AO updates the FTS Report after the FTS session with the developments of the session.

- (6) Generally, the FTS AO considers only those issues outlined in the FTS Report, except by mutual agreement of the parties.
- (7) If the taxpayer presents information during the FTS session that wasn't previously presented during the examination, the FTS AO adjusts the targeted completion date to give the appropriate IRS officials time to evaluate the information.
- (8) During the FTS session, the FTS AO may propose settlement terms for any or all issues, and may consider settlement terms proposed by either party.
- (9) If the parties resolve any disputed issue at the conclusion of the FTS session:
 - a. The parties and the FTS AO sign the FTS Report acknowledging acceptance of the terms of settlement for purposes of preparing computations.
 - b. You process the case under normal case processing procedures.
- (10) The signature of the parties on the FTS Report doesn't:

- Constitute a final settlement.
- Waive restrictions on assessment.
- Terminate consents to extend periods of limitation.
- Start the running of any periods of limitation.
- Constitute agreement to close the case.

4.70.14.2.4.3.2.7
(11-24-2023)

**EO - Fast Track
Settlement Conclusion**

- (1) If the taxpayer accepts the FTS AO's settlement proposal, but the EO GM rejects it, the EO area manager must review the settlement proposal and either concur in writing with the rejection or accept the settlement proposal on behalf of EO.
 - a. If the area manager accepts the settlement proposal, process the case in accordance with the proposal.
 - b. If the area manager concurs with the GM's rejection of the settlement proposal, and an acceptable alternative settlement cannot be reached, the issue closes out of the FTS program as unagreed.
- (2) Include any resolution of an issue (or disagreement) through the FTS process for specified tax periods in your workpapers. Appropriately index the resolution in the Form 5773 to support your conclusions.
- (3) A resolution by the parties through the FTS process won't bind the parties for taxable periods or issues not covered by the FTS agreement, unless addressed expressly in a closing agreement reached as part of the FTS process.
- (4) If the parties can't reach an agreement, process the case under normal "unagreed" procedures.

Note: If the parties fail to resolve any issue in FTS, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

- (5) If applicable, the IRS will report a proposed resolution reached as a result of EO FTS to the Joint Committee on Taxation in accordance with IRC 6405.
 - The IRS may reconsider a proposed settlement, as reflected in a signed FTS Session Report, upon receipt of comments on the proposed settlement from the Joint Committee on Taxation.
 - If the taxpayer declines to agree with any changes by the IRS upon reconsideration, close the case unagreed, and the taxpayer will retain all the usual rights to request Appeals consideration of any unagreed issues.

4.70.14.2.4.3.3
(11-24-2023)

**EO – Unagreed SFR Tax
Cases**

- (1) If you issued your report of examination (30-day letter and RAR), and the taxpayer disagrees, close the case to Mandatory Review, except for:
 - Unagreed without protest employment tax cases (other than worker classification). The 30-day letter becomes final. Close to the EO Closing Unit for assessment.
 - Unagreed without protest gaming excise tax cases. The 30-day letter becomes final. Close to the EO Closing Unit for assessment.
- (2) Close the case using DC 07 (601) or DC 10 (604).

- (3) Mandatory Review or Appeals will issue a 90-day statutory notice of deficiency.

4.70.14.2.4.3.4
(11-24-2023)

**EO – Special Procedures
for Unagreed Worker
Classification**

- (1) If a worker classification case is unagreed, and neither Form 1099-MISC nor Form W-2 were filed, follow these special procedures:
- Prepare two Forms 8278 to reflect penalty assessments. Don't provide to the taxpayer.
 - Prepare two Forms 3645 to reflect penalty assessments. Don't provide to the taxpayer.
 - The first set (pair) of Forms 8278 and 3645 will reflect Form W-2 penalty assessments.
 - The second set of Forms 8278 and 3645 will reflect Form 1099-MISC penalty assessments.
 - Attach a post-It note to the first set (Form W-2 penalty) indicating "Primary Examiner Position."
 - Attach a post-It note to the second set (Form 1099-MISC) indicating "Alternate Examiner Position."
 - Prepare two explanations on Form 5773 at Section I, Penalties, Subsection 6, Other.

- Title the first explanation, "Primary Examiner Position."
- Title the second explanation, **Alternate Examiner Position.**

- Enter in the "Other" section of 3198-A Special Handling checksheet in RCCMS, "Suspend assessment of information return penalties until the taxpayer's request for appeal period has expired."
- Associate the penalty case file with the employment tax case file under examination.

Note: If the organization doesn't request an Appeals conference for the worker reclassification issue, the civil penalty recommendation shown in the penalty package as the "Primary Examiner Position" will be processed. If an Appeals Conference is requested, the civil penalty package with the worker classification case file under examination will be closed to Appeals by the review function, where a final penalty determination will be made.

4.70.14.2.4.3.5
(11-24-2023)

**EO – Unagreed
Proposed Adverse
Status Change**

- (1) Don't solicit converted tax returns for unagreed adverse status changes.
- (2) If the organization files a converted tax return with you, follow the same procedures for agreed revocations in IRM 4.70.14.2.1.3.3.2, EO – Proposed Adverse Status Change - Agreed.

Note: The organization may want to minimize interest on unpaid tax, or prefer to pay the tax and contest the revocation in U.S. District Court or the U.S. Claims Court at some future date, after you deny their claim for refund.

- (3) Take the steps necessary to protect the assessment of the tax resulting from the adverse status change for the affected tax years. If you decide to enforce the tax, you can:
- Establish the converted tax return on AIMS NMF and
 - Inform the organization of the potential income tax filing requirement and liability pending a final determination on the exempt status.

Note: You only propose an income tax or solicit a converted tax return after Mandatory Review or Appeals sustains the adverse status change.

- (4) Prepare the following closing documents for the primary return case file:
- RCCMS Closing Record for closing the case (see IRM 4.70.14.2.1.3.3.3 EO – RCCMS Closing Record).
 - Form 2363-A for posting the adverse status change and change in filing requirement (see IRM 4.70.14.2.1.3.3.4, EO – Form 2363-A Primary Case File).
 - 3198-A Checksheet in RCCMS for special handling of the primary return case file (see IRM 4.70.14.2.1.3.3.5, EO – 3198-A Special Handling checksheet in RCCMS Primary Return Case File).
 - Form 5666 if you decided not to employ deficiency procedures (see IRM 4.70.14.2.1.3.3.6, EO – Form 5666 Primary Return Case File).

4.70.14.2.4.4
(11-24-2023)
**Employment Tax
Unagreed Cases**

- (1) Refer to the following IRMs for unagreed cases:
- IRM 4.23.10.16, Unagreed Employment Tax-Examination Reports, provides general instructions on procedures to be used for unagreed employment tax returns.
 - IRM 4.23.22 - Unagreed Employment Tax Case Procedures
- (2) This section provides information about additional procedures that must be followed, and additional documents included in case file prior to closing:
- a. Examiner's rebuttal to taxpayer's protest
 - b. Taxpayer's protest
 - c. Current AMDISA and BRTVU or BMFOLT
 - d. Report forms:

- Form 2504, 2504-S or 2504-T, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment
- Form 4665, Report Transmittal
- Form 4666, Summary of Employment Tax Examination
- Form 4667, Examination Changes (FUTA)
- Form 4668, Employment Tax Examination Changes

Note: For ITG examination cases, any report that is given to the taxpayer must include the statement, 'This examination report is subject to the approval of the Program Manager, Indian Tribal Governments.' Prepare the report forms at the conclusion of the examination.

- e. Use L950-C for Section 7436 issues (worker classification) & L950-D for non-Section 7436 issues
- f. Include a 3198-A Special Handling checksheet in RCCMS:

- Protest received: Group Manager notates on 3198-A case is to be closed to Appeals.
- No protest received: Group Manager notates 30-day letter was defaulted on 3198-A and closes case to Mandatory Review.

g. Include a Form 886-A, Explanation of Items for:

- Adjustment amount (adjustment, tax, penalties, etc.)
- Issues: State what is in dispute
- Each different class of worker in Section 7436 cases (be sure to include Section 530 discussion in all).
- Each penalty asserted.
- Facts: Explain the activity the tribal entity has engaged in and develop the facts to address the taxability issues.
- Law: Cite the applicable Code, Regulations, Revenue Rulings and Procedures, etc., that support your position.
- Government's Position: State why the application of the law to the facts supports the conclusion reached by the specialist.
- Taxpayer's Position: What authority does the taxpayer rely upon (as opposed to the Specialist's conclusions). If possible, secure the position in writing.
- Analysis / Conclusion. Comment on the position taken by the taxpayer. After consideration of all items, the proper tax liability or other Service action that is to be sustained.
- Alternative position must be discussed with the taxpayer and included on a separate Form 886-A which is sent to the taxpayer with the report. See IRM 4.23.10.16.3, Alternative and Whipsaw Positions in Unagreed Cases.

- (3) EO and FSL unagreed employment tax cases with section 7436 issues, without protest to Appeals, will be closed to EO Mandatory Review for the issuance of a SNOD or Letter 3523, Notice of Employment Tax Determination Under IRC section 7436. Unagreed employment tax cases that do not involve IRC section 7436 issues, will be closed to the closing unit, and Letter 950-D will be the closing letter.
- (4) ITG unagreed cases, without protest to Appeals will be closed to ITG Mandatory Review.
- (5) For ITG on unagreed cases:
 - a. Offer the taxpayer a managerial conference.
 - b. Determine if the case is wholly or partially agreed.
 - c. Solicit the taxpayer's position on unagreed issues.
 - d. Tell the taxpayer about Fast Track Settlement (FTS), if eligible.
 - e. Tell the taxpayer of the appellate process and their appeal rights.
- (6) For ITG on unagreed cases, If the tribal leader isn't in the closing meeting, explain your examination results in a letter. Thank the tribal official(s) for their cooperation.
- (7) For ITG on unagreed cases, issue all letters, publications and reports per the communication agreement. Send any examination correspondence you send to the designated tribal official also to the tribal leader.

Example: Send all correspondence to both the designated tribal official and the tribal leader for: an examination, examination expansion, or notification to the tribal leader that someone else from the IRS will be working on their reservation.

4.70.14.2.4.4.1
(11-24-2023)
Procedures for Failure to File Form W-2 – Unagreed

- (1) When the Examiner recommends assessment of penalties for failure to file and failure to furnish Form W-2 involving reclassification of workers to employee status and the case is unagreed, the appropriate Information Return Penalty package will be prepared. When neither Form 1099 nor Form W-2 was filed, follow the procedures in IRM 4.23.8.10.3.

4.70.14.2.4.4.2
(11-24-2023)
Special Procedures for Notices of Determination of Worker Classification or Section 530 Relief

- (1) IRM 4.23.10.10 provides general information about IRM 7436, which provides Tax Court review when a part of the examination includes a controversy involving a determination that at least one worker should be reclassified as an employee of the taxpayer for employment tax purposes and/or that the taxpayer is not entitled to relief under section 530 of the Revenue Act of 1978.
- (2) Special procedures must be followed when unagreed issues are subject to IRC 7436.

4.70.14.2.4.4.3
(11-24-2023)
Fast Track Settlement (FTS)

- (1) TE/GE and Appeals jointly administer FTS, an alternative dispute resolution program designed to assist taxpayers settle disputes at the examination group level. An appeals officer trained in mediation serves as an impartial third party to resolve unagreed TE/GE issues by:
 - a. Facilitating settlement negotiations.
 - b. Using mediation techniques and sometimes settlement authority.
- (2) FTS offers examination personnel a way to resolve exam issues utilizing the settlement authority and mediation skills of Appeals while retaining jurisdiction of the case. The FTS process is designed to be completed within 120 days, thus reducing burden for the taxpayer and the Service.
- (3) Offer Fast Track Settlement as soon as possible during the examination when an unagreed issue is identified.
- (4) You or the taxpayer may consider the Fast Track Settlement (FTS) process after you fully develop a disputed issue, but before you issue a 30-day letter.
- (5) For Procedures in IRM 8.26.7, Fast Track Settlement (FTS) for Tax-Exempt/ Government Entities (TE/GE) Taxpayers, when considering the use of FTS. See also Pub 5092 and IRB 2012-36, Announcement 2012-34.
- (6) The group manager should contact the Area Manager or ITG Program Manager to discuss the case/issues. When the group manager considers it appropriate, and if requested, such discussions may include the taxpayer. With the concurrence of the Appeals FTS Team manager and the ITG Program Manager, an issue may be accepted when adequately developed to facilitate resolution.
- (7) Find more information regarding this at http://appeals.web.irs.gov/tech_services/adr/fasttrack.htm.

4.70.14.2.4.4.4
(11-24-2023)

**Appeals Alternative
Dispute Resolution
Programs**

- (1) When taxpayers disagree with proposed adjustments, it is beneficial to all parties to resolve disputes at the lowest level possible. IRC 7123 provides for alternative dispute resolution techniques by Appeals. This code section was added by section 3465 of the IRS Reform and Restructuring Act of 1998. Two processes that may expedite dispute resolution are:

- Early referral to Appeals
- Fast Track Settlement

4.70.14.2.4.4.5
(11-24-2023)

**Early Referral to
Appeals**

- (1) Taxpayers may request, under Rev. Proc. 99-28, 1999-2 C.B. 109, Early Referral of Issues to Appeals, an early referral of one or more unresolved examination or collection issues to the Appeals office. Proper issues for early referral are limited to those that:

- a. Are fully developed.
- b. If resolved, can reasonably be expected to result in a quicker resolution of the entire case.
- c. Both the taxpayer and the ITG Program Manager agree.
- d. Are part of a case where the remaining issues are not expected to be completed before Appeals could resolve the early referral issue.

4.70.14.2.4.4.6
(11-24-2023)

**Employment Tax Cases
Subject to Mandatory
Review**

- (1) Cases subject to Mandatory Review are as follows:

- a. Unagreed exam closures without protest to Appeals requiring issuance of:

- | |
|--|
| <ul style="list-style-type: none"> • A Statutory Notice of Deficiency, or • Letter 3523, Notice of Employment Tax Determination Under IRC 7436 |
|--|

- b. Claim disallowances, (full or partial) unagreed without protest to Appeals requiring the issuance of one of the following:

- | |
|---|
| <ul style="list-style-type: none"> • Letter 905, Final Partial Claim Disallowance • Letter 906, Final Full Claim Disallowance |
|---|

- c. Managerial request (requires TE/GE senior manager approval)

4.70.14.2.4.4.6.1
(11-24-2023)

**ITG - Time Frames for
Submitting Employment
Tax Cases for Mandatory
Review**

- (1) Close unagreed cases for statutory notice or Letter 3523, Notice of Employment Tax Determination Under IRC 7436 to ITG Technical :

If ...	Then ...
Unagreed cases (without a valid protest to Appeals) for statutory notice or Letter 3523, Notice of Employment Tax Determination Under IRC 7436 and claim disallowances	The case must have 270 days (9 months) remaining on the statute for assessment on the date the "ITG Technical receives the case."

- (2) When sending a case with a short statute to ITG Technical, your group manager contacts the Manager, ITG Technical, before sending the case. A

short statute case is a case with less than 270 days remaining on an unagreed case when received in ITG Technical. These cases must include documentation of the approval of the ITG Program Manager before closure to ITG Technical.

- (3) The group manager closes all cases in RCCMS and routes them as shown below:
- Close agreed and no-change cases directly to the TE/GE Closing Group.
 - Close unagreed cases with a valid protest letter to Appeals to the TE/GE Closing Group (400-20011-7204) in Status 51.
 - Close unagreed cases without a protest requiring Mandatory Review to ITG Technical. Update AIMS to Status Code 20 (Mandatory Review) and Disposal Code 10/RCCMS Disposal Code 604.

4.70.14.2.4.4.6.2
(11-24-2023)

ITG - Case Identification

- (1) Specialists identify case files subject to mandatory review on the Form 3198-A Special Handling checklist in RCCMS. Identify the applicable mandatory review category.

4.70.14.2.4.4.7
(11-24-2023)

**Unagreed Employment
Tax Case with Protest to
Appeals**

- (1) The TE/GE Closing Group will not accept any protested case with less than 425 days remaining on the statutory period of limitations for assessment (330 days for cases previously returned to the examination group by Appeals).
- (2) Complete the following before you close a case file or transfer it to Appeals:
- a. Scan all paper documents you exchanged with the taxpayer including envelopes or anything the taxpayer or representative marked.
 - b. Upload all exchanged documents and relevant documents you prepared during the examination into RCCMS.
 - c. Keep all records you upload into RCCMS or determine are no longer relevant to the case file per normal record retention requirements.
- (3) Confirm that the case file contains a signed, dated 30-Day letter with the manager's signature, a valid protest, and a rebuttal to the protest, if prepared. If not prepared, the chronology record, should explain why a rebuttal was not prepared.
- (4) For all cases with a formal protest to Appeals (no longer subject to mandatory review), make sure the protest:
- Includes the taxpayer's name, address, and employer identification number.
 - Includes a statement that the taxpayer wants to appeal the IRS findings to Appeals.
 - Includes a copy of the 30-Day letter.
 - Identifies the tax periods or years involved.
 - Lists the adjustments with which the taxpayer does not agree.
 - Includes a statement of facts supporting the taxpayer's position in any contested factual issue.
 - Includes a statement outlining the law or other authority the taxpayer is relying on.
 - Includes a signed jurat statement.
 - Includes a copy of the rebuttal letter you issued to the taxpayer.

- (5) The officer, director, or trustee's jurat statement must read *"Under penalties of perjury, I declare that I have examined the statement of facts presented in this protest including any accompanying documents and, to the best of my knowledge and belief, they are true, correct, and complete."*
- (6) A designated representative submitting the protest on behalf of the taxpayer must submit their own substitute statement. They must state that they prepared the protest and attached documents, and whether they know personally that the statements of fact contained in the protest including any accompanying documents are true and correct.
- (7) Complete page 6 on the 3198-A, Special Handling checksheet, in RCCMS.
- (8) Complete the closing tabs on RCCMS compliance activity. In addition, for unagreed cases with a protest to Appeals, must complete the Appeals Office Code, EO/GE Appeals Issue Code, and Unagreed Amount on the closing tabs in the RCCMS compliance activity, as follows:
 - Item 16 - General Tab, Appeals Office Code 121 or 221
 - Item 17 - Indiv/Bus (1 of 3) tab, EO/GE Appeals Issue Code 7-8-5
 - Item 18 - Indiv/Bus (1 of 3) tab, Unagreed Amount
- (9) Request the case closure on RCCMS. Front-line managers approve the request for closure and close the RCCMS compliance activity to the TE/GE Closing Group (400-20011-7204) in status 51 with RCCMS disposal code 601.

4.70.14.2.4.5
(11-24-2023)

TEB - Unagreed Case Processing

- (1) An unagreed Tax Exempt Bond examination is one in which non-compliance is unresolved, including:
 - a. Denials of claims for recovery of an asserted overpayment of an arbitrage payment under IRC 148.
 - b. Unagreed disallowances to credit payments under IRC Section 6431 (claim denials.)

4.70.14.2.4.5.1
(11-24-2023)

TEB – Communicating Identified Issues

- (1) If you conclude, after verifying the relevant facts and establishing the issuer's position, that the bonds fail to comply with one or more requirements, discuss the noncompliance with your manager.
- (2) If your manager concurs with your determination of noncompliance, consider whether the legal issue warrants technical assistance or technical advice, see IRM 4.70.16, Technical Assistance and Technical Advice Requests and Request for 7805(b), for procedures to request technical assistance and technical advice (tech advice). The issuer may also request technical advice on an identified area of noncompliance, see. Rev. Proc. 2021-2 (updated annually) and IRM 4.70.16.
 - a. Follow your manager's instructions on how to address the noncompliance. This may include preparing Form 5701-B, Notice of Proposed Issue, and Form 886-A, Explanation of Items.
 - b. Include a description of the identified noncompliance, relevant facts, applicable law and analysis, and a conclusion on Form 886-A.
 - c. Issue the Form 5701-B, Notice of Proposed Issue, if applicable, to the issuer after your manager reviews and approves it along with Letter 5943, Form 5701-B Cover Letter.

- (3) If the issuer's response to the Form 5701-B indicates that they'd like to enter into a closing agreement, discuss any proposed resolution with the group manager. If the manager concurs with your determination of noncompliance, discuss the proposed resolution with the issuer. If a closing agreement is warranted, see IRM 4.81.6, Closing Agreements, for closing agreement procedures.
- (4) If the issuer's response to the Form 5701-B indicates that they can't expeditiously resolve the noncompliant issue(s), including via a closing agreement, discuss the need for technical assistance or technical advice with your group manager.

4.70.14.2.4.5.2
(11-24-2023)
TEB - Technical Assistance

- (1) (1) When the group manager and the examiner determine a case is likely to result in an adverse determination and close unagreed, or result in a claim denial, they inform the TEB Program Manager of: a. The case status. b. Any need for assistance from a tax law specialist (TLS) or the TEB technical advisor.
- (2) If the TEB Program Manager determines help is warranted, the Field Exam group manager, TEB Program Manager, TEB Technical group manager, TLS and examiner should follow the procedures in IRM 4.70.16, TE/GE Technical Assistance, Technical Advice Requests and Requests for 7805(b) Relief.

Note: The Program Manager may contact the TEB technical advisor at any time for help.

Note: Consider whether the legal issue warrants tech advice. The issuer may also request tech advice on an identified area of noncompliance. Follow the procedures in the most recent revenue procedures on tech advice, 2023-2 (updated annually) and IRM 4.70.16, Technical Advice Requests, if this type of request is warranted.

4.70.14.2.4.5.3
(11-24-2023)
TEB - 30-Day Letter

- (1) The 30-day letter notifies the issuer of their right to appeal the changes proposed by the IRS.
- (2) After any technical review is complete, the examiner should prepare the relevant 30-day letter, as follows:

- For Forms 8038, 8038-B, 8038-G, 8038-GC and 8038-TC, use Letter 4413, Notice of Proposed Adverse Determination Letter.
- For Form 8038-R, use Letter 5684, TEB Arbitrage Claim Notification of Proposed Claim Disallowance.
- For Form 8038-CP, use either Letter 5871, Proposed Adjustment to Credits under Section 6431 (Associated with an Appealed Bond Determination) or Letter 5871-A, TEB Proposed Adjustment to Credits under IRC 6431 (30-day letter).

- a. Address all identified areas of noncompliance in the letter and attachments. Your group manager reviews, signs and approves the letter.
- b. Mail the letter to the issuer and/or authorized representative via certified mail with a request for return receipt.
- c. Update the status of the case to 13 after you mail the letter.

- d. Keep a copy of the 30-day letter and attachments and the certified mail receipt in the case file.
 - e. Follow the bondholder referral procedures in IRM 4.81.7, Tax Exempt Bonds, Bondholder Identification and Referrals.
- (3) When an issuer receives the 30-day letter, the issuer may request an administrative appeal of the case to Appeals. If the issuer:
- a. Doesn't timely request an appeal in writing, follow the final adverse determination procedures in IRM 4.81.14.6, Final Adverse Determination.
 - b. Requests an extension of time to prepare a protest, you may grant up to an additional 30 days. Issue Letter 686 (DO), Extension of Time for Certain Actions, to notify the issuer in writing of the date by which the protest must be submitted. Grant further extension requests only if your group manager approves and the Program Manager agrees.
 - c. Timely requests an appeal, ensure the request meets the requirements of Rev. Proc. 2006-40, 2006-42 IRB 694 and Pub 5.
 - d. Submits a request that doesn't meet the requirements, call the issuer and/or authorized representative and allow up to 30 days to perfect the request. Issue Letter 686 (DO), Extension of Time for Certain Actions, to notify the issuer in writing of the date by which the perfected request must be submitted.
- (4) After the issuer perfects the appeal request, follow these steps:
- a. Review the request and prepare a rebuttal to the arguments the issuer raised. If no new arguments are raised, notate that in the rebuttal and affirm that our position hasn't changed. In your rebuttal, address:

- Only those statements, facts, or arguments the issuer made that weren't completely addressed in the 30-day letter.
 - New arguments or facts the issuer raised.
 - b. If the protest contains new information or analysis of the issuer's position, notify the issuer that the new information submitted may change the case's outcome and requires further review and possible discussions before you transfer the case file to Appeals.
 - c. Since all unagreed protested cases are subject to TEB Technical mandatory review, request technical assistance before you issue the rebuttal.
 - d. You must mail the rebuttal to the issuer, but the issuer is not given an opportunity to respond to the rebuttal.
 - e. Completely address all statements, facts, and arguments discussed in the protest, then prepare Letter 5918, Protest Received Rebuttal/Transfer to Appeals, and mail to the issuer.
 - f. Prepare the case for closing per IRM 4.81.5.24.1, Case Closing Procedures for Examiners, and forward to your group manager.
- (5) Group manager:
- a. Review the case for accuracy and completeness: confirm that the case file contains a valid protest, adequate rebuttal, printed copies of electronic RCCMS documents, the relevant determination, tax exposure calculation if applicable, adjustment or disallowance letter and Letter 5918 Appeals transfer letter.

- b. Update the case to status 20 on RCCMS with disposal code 601 (add ARDI code 2 for claim denials) and transfer the case to the TEB Technical group responsible for mandatory review.
- c. Ship the paper case file via Form 3210 to the reviewer identified by the TEB Technical group manager responsible for mandatory reviews.

Note: The TE/GE Closing Group won't accept any protested case to Appeals with less than 425 days remaining on the statute (330 days for cases Appeals previously returned to the group). Therefore, TEB Technical requires TEB Exam to send cases with at least 455 days remaining on the statute to allow time for mandatory review.

4.70.14.2.4.5.4
(11-24-2023)

TEB – Cases Subject to Mandatory Review

- (1) The following TEB cases are subject to mandatory review.
 - a. Unagreed exam closures without protest to Appeals requiring issuance of a Statutory Notice of Deficiency.
 - b. Unagreed claim disallowances (full or partial) without protest to Appeals requiring the issuance of one of the following:

- Letter 905, Final Partial Claim Disallowance
 - Letter 906, Final Full Claim Disallowance
 - Letter 5677, TEB Arbitrage Claim Notification of Final Adverse Determination
 - c. Arbitrage claims – allowed refund claims > \$2M
 - d. Management requests

- (2) The TEB Technical group manager may assign the case for mandatory review to the same TLS who initially reviewed the case under a technical assistance request per IRM 4.70.16.

4.70.14.2.4.5.5
(11-24-2023)

TEB – Cases Closed to Appeals

- (1) If the examiner's group manager decides to transfer the case to Appeals before the TLS determines the rebuttal sufficiently addresses the issuer's protest, the TLS will brief the TEB Technical Manager on the case. Then, the program manager, Technical and the TEB Exam group manager will discuss whether additional case actions are required before transferring the case to Appeals.
- (2) Examiner: provide any subsequent revisions to the rebuttal to the issuer and/or the representative before transferring the case to Appeals.
- (3) Examiner: transfer case to Appeals.
- (4) Confirm the RCCMS case file sent to Appeals includes copies of the following documents:

1. The technical advice memorandum, if any
2. All information received by TEB from the issuer regarding the bond issue or Arbitrage Rebate Claim Denial.
3. All workpapers related to TEB's examination of the bond issue or Arbitrage Rebate Claim Denial.
4. TEB's written Proposed Adverse Determination or Arbitrage Rebate Claim Denial.
5. The issuer's written protest.
6. TEB's response to positions stated by the issuer in its protest.

- (5) Ship any paper case file items to Appeals via Form 3210, Document Transmittal, following the instructions on the Appeals *Case Routing Addresses and Instructions* page.

Note: Currently, all TEB cases should be transferred via RCCMS to Appeals. The examiner should review this with their manager prior to mailing any paper.

- (6) Examiner: Close the case on RCCMS in status 51 with disposal code 601 to the TE/GE Closing Group (400-20011-7204).
- (7) Examiner: Add a note to the RCCMS Comment box: "Appeals case, DC 07 (601). Paper case file sent directly to Appeals."

Note: Delete the sentence about the paper case file if all documents are transferred to Appeals electronically.

- (8) If Appeals settles the case: upon case closing, Appeals sends Form 5402, Appeals Transmittal and Case Memo and a copy of the closing letter to the TEB Program Manager.

- (9) If Appeals is unable to settle the case, they:
- a. Issue the Final Adverse Determination Letter and close the case.
 - b. Return the paper case file to TEB to contact the bondholders (if warranted).

Note: However, Appeals doesn't release Form 8038 jurisdiction back to TEB. Accordingly, TEB may not: i) continue any case exam activities, or ii) reengage in resolution actions without reopening the case.

- (10) If Appeals:
- a. Determines that TEB has not fully developed its position, they: may return the case to TEB for further development or concede the government's position and close the case.
 - b. Receives, during their consideration of the case, a new argument from the issuer, they may return the case to TEB requesting its response to the issuer's argument. Appeals may or may not release jurisdiction.
 - c. Releases jurisdiction, TEB is free to re-engage in resolution actions or concede its position and close the case as agreed.
 - d. Doesn't release jurisdiction, TEB should provide the response requested and return the case to Appeals within the established timeframe.

Note: TEB must not communicate with the issuer and/or authorized representative while Appeals has jurisdiction.

4.70.14.2.4.6

(11-24-2023)

**Awards of Attorney Fees
In Tax Cases**

- (1) The purpose of this section is to:
 - Advise examiners of the provisions of IRC 7430.
 - Emphasize the principles they must uphold when performing their duties.
- (2) The Equal Access to Justice Act, P.L. 96-481, 94 Stat. 2328, amended Title 28, the Judicial Code, to award costs, attorney fees and other expenses to “prevailing parties” in any civil tax action in the U.S. District Courts or the Court of Claims when:
 - a. The Government has acted in “bad faith.”

Note: Bad faith includes vexatious, wanton, or oppressive behavior. The Act doesn’t:

- Apply to United States Tax Court or State courts’ litigation.
 - Award for fees and costs a taxpayer incurs in IRS administrative proceedings.
 - b. The IRS is unable to prove that its position was “substantially justified.”
- (3) IRC 7430 provides that a taxpayer who prevails may be awarded reasonable administrative and litigation costs, including attorney fees in these proceedings for civil tax litigation begun on the Federal courts, including the United States Tax Court, after February 28, 1983. Such an award is generally limited to matters where the position of the United States isn’t substantially justified.
- (4) Although effective tax administration sometimes results in judicial proceedings in which taxpayers prevail, strictly following existing IRM provisions should safeguard against a court’s finding that the position of the United States was not substantially justified.
- (5) As long as our position is found to have a reasonable basis both in law and fact, no award is usually authorized under IRC 7430 even though we lost the case. Therefore, the law doesn’t limit our statutory duty to effectively enforce the Internal Revenue laws. See Rev. Proc. 64-22, 1964-1 C.B. 689 for the principles we must follow to carry out our duties.
- (6) The exception to the substantial justification defense is if the taxpayer submits a qualified offer under IRC 7430. A qualified offer is just a settlement offer that contains certain specified language. A qualified offer will be recognizable by either referring to qualified offers, IRC 7430(c)(4)(E) or IRC 7430(g). Taxpayers may submit qualified offers once they have received their first opportunity for review by Appeals. Taxpayers who receive a 30-day letter that gives them the option of continuing to work with Exam or seeking review in Appeals, may submit a qualified offer to Exam. For more information on qualified offers, see IRM 4.8.8.20.

4.70.14.3

(11-24-2023)

Payment Processing

- (1) During a TE/GE examination, an examiner will sometimes receive a payment that must be processed. Although some payments can be made electronically, many payments are still made with a non-electronic payment method. Payments should be processed expeditiously. Generally, the examiner should prepare a Form 3244-A, Payment Posting Voucher - Examination. Most payments will need to be sent somewhere for processing, so the payment will

also need to be tracked when it is sent to the other office. Since payment procedures vary depending on the situation, make sure to check for function specific procedures. This section provides general guidance for TE/GE payment processing.

- (2) Send all payments and original remittance documents directly to the Ogden Campus addresses:

Description:	Address:
Packages with remittance less than \$100,000 to:	IRS STOP 1999 1973 N. Rulon White Blvd. Ogden, UT 84201-1001
Remittance is \$100,000 or more.	Use Mail Stop 2003 instead of 1999. Also, send an email to the teller unit to & CTR ODN Ogden Tellers with the following information: <ul style="list-style-type: none"> • UPS tracking number • Dollar amount of the remittance • The city/state the package is being shipped from

Description:	Address:
Remittance of \$1 million or more:	<ul style="list-style-type: none"> • Locate the designated OSC remittance liaison on the Submission Processing Field Office Payment Processing page website to obtain the OSC liaison's e-mail address provided in the "Phone" column. • Call, email, or EEFax the liaison that you will be sending a single remittance of \$1 million or more and provide the tracking number for the overnight package containing the remittance, see IRM 5.1.2.7.1.1, Remittance Over \$1M. • When addressing the Express Services Routing slip (Form 9814): <ul style="list-style-type: none"> a. Use "Mail Supervisor" as the recipient name and recipient phone number of (801) 620-3750 (with or without payment). b. The address listed on Form 9814 should match the address on Form 3210. Make sure the proper mail stop is used.

- (3) Payments must be processed within 24 hours after receiving the payment. If you are unavailable to process a check within 24 hours, inform the group secretary or other designee:
- To complete Form 3244-A and Form 3210.
 - How to apply the check against any liability.
- (4) When a payment is received, verify the following:
- The certified check, cashier's check, or similar instrument is payable to the "United States Treasury."
 - If the payee line is blank or made out to the IRS, over-stamp the check with the "United States Treasury."
- (5) A check dated in the future is referred to as a post-dated check. Do not solicit post-dated checks. If a taxpayer pays with a post-dated check, ask for a corrected dated check.

- (6) If a payment instrument must be held overnight, store in a secured locked container.

Caution: Hanging credenzas aren't secure for storing payments.

- (7) There should be a segregation of duties when performing a payment processing function.
- (8) Prepare Form 3244-A for each tax period and class of tax involved for which payment is received:

- Enter the employer identification number. If there is no EIN on file, see IRM 4.70.13.4.
- Enter the form number and MFT.
- Enter the tax period in YYYYMM format.
- Enter the date the payment was received.
- Enter the name and address of the taxpayer.
- Enter the check number and the amount in the remarks field.
- Enter the amount of the payment in the TC 610 field.
- Enter the same amount in the total payment field.
- Enter your name and office symbols.

Note: If a check applies to more than one tax return, type "Split Remittance" in the remarks field, along with a breakdown of how the check amount is to be allocated. Also, prepare a separate Form 3244-A for each tax period.

Note: See Exhibit 4.70.13-8 for a sample of a completed Form 3244-A for a payment made with a delinquent return. For more detailed instructions for Form 3244-A, such as for advance payments on deficiencies, see Form 4.4.24, Payments and Remittances.

- (9) For the payment received date, use the date the payment is received by the IRS. Prior to submitting the payment for processing, check that the transaction date on the Form 3244-A matches the received date of the remittance.
- (10) Photocopy the payment and original Forms 3244-A. Scan the paper copy of the check and Forms 3244-A:
- Save the scanned documents as PDF files and upload to RCCMS.
 - If there is a paper case file, attach the paper copy of the check and Forms 3244-A to the front of the original return.
- (11) A logbook of all checks sent for processing should be maintained, including all appropriate signatures. The logbook can include copies of the check and forms sent for processing.
- (12) Paperclip the payment to the original Form 3244-A. Don't staple or damage. If there is a split remittance, paper clip the check to Form 3244-A for the earliest tax period.
- (13) For payments hand-carried to a remittance processor, use a receipted copy of Form 3244-A in lieu of Form 3210.
- (14) Prepare Form 3210 as follows:
- Prepare in triplicate.

- Address Form 3210 to the appropriate address.
 - Indicate the return address.
 - List each check or other payment instrument.
 - List the Forms 3244-A to which it applies.
- (15) Examiner will email documents to group manager or delegate for review. The group manager or his/her delegate must:
- Review Form 3210.
 - Compare the information on Form 3210 to Forms 3244-A.
 - Ensure the person who prepares Form 3244-A is not the same person who signs Form 3210.
 - Sign Form 3210 concurring with the package.
- (16) Place the following items in opaque double envelopes addressed to the appropriate address.
- Payment paper-clipped to the original Forms 3244-A.
 - The recipient and acknowledgment copies of Form 3210.
- (17) Mail the package overnight using a traceable method.
- Refer to IRM 10.5.1.6.9.3 for instructions for shipping, and preparing and following up on Form 3210.
 - For additional information on shipping procedures and PII, refer to Document 13056 and IRM 10.2.13.
- (18) If the acknowledgement copy isn't received within 3 business days:
- Follow-up with the appropriate Ogden Submission Processing Center for overnight shipments.
 - Associate follow-up letters with Part 4 of the original Form 3210.
 - Document these actions in the group logbook.
- Note:** If the acknowledgment copy isn't received within 10 days, issue a follow-up letter to the campus.
- (19) If you don't receive the acknowledgment copy of Form 3210 after issuing a follow-up letter:
- Use IDRS to ensure the remittance was properly posted to the taxpayer's account.
 - Check other tax modules for the taxpayer in case of misapplication of payments.
 - If not found, request a payment tracer by sending an email to the FAST at: *TEGE FAST.
- (20) If Ogden Campus acknowledges receipt of the payment package, follow group procedures for filing the acknowledgment copy of Form 3210.

4.70.14.3.1
(11-24-2023)
**Electronic Payment
Processing**

- (1) Publications provide the Taxpayers a choice in form of payment for tax. Generally, they can choose from:
- IRS.gov options include:

- Direct Pay
- Digital Wallet
- EFTPS

- IRS2Go – this is a mobile app

- (2) When a Taxpayer indicates they have used an electronic form of payment, request documentation such as a confirmation page of the payment from the Taxpayer to document your case file.
- (3) Complete IDRS research of IMF or BMF as, applicable to confirm posting of the transaction. Document your CCR and workpapers covering assessment of tax.

4.70.14.4
(11-24-2023)
Closing A Case

- (1) The purpose of this chapter is to describe the closing process for examined and non-examined returns under TE/GE jurisdiction.
- (2) Cases must have adequate statute for the type of processing it has beyond the examination group. See IRM 4.70.12.3.8, Statute of Limitations for procedures to consider statute of limitations throughout as well as closing of the exam.
- (3) The case must be closed timely per TEQMS standards, once examination steps are complete.
 - a. Make your best effort to close examinations within established timeframes.
 - b. Document any delays or extended periods of inactivity on the CCR.
 - c. The National Standard Timeframes for closing cases are guidelines for quality exam purposes in TEQMS.
 - d. For no-change or agreed change examinations, close the case from the examination group within 10 calendar days from the date you receive the t/p's agreement to your report, or the date you communicate the no-change status to the t/p.
 - e. For unagreed examinations, close the case from the examination group within 20 calendar days from the date the 30-day letter defaults or the date you receive a request for appeals conference.
 - f. Managers must close the case within 10 calendar days after receipt from the examiner.
 - g. Record the date you close the case on the CCR. The group manager records the date he or she approved the closure.
- (4) All TE/GE cases are processed to closure through use of RCCMS.
 - a. RCCMS allows for the electronic establishing, updating, and closing of AIMS records.
 - b. Follow the TE/GE RCCMS Naming Convention to index and name documents.
 - c. For information on assembling an electronic case file in RCCMS, see IRM 4.70.14.4.2, Finalizing and Organizing Workpapers and the CCR.
 - d. For closing a RCCMS record, see IRM 4.70.14.4.6, Completing the Case Closing Record.
 - e. In order to close a RCCMS record opened in error without a corresponding AIMS record, or an AIMS record is closed without a corresponding RCCMS record, the group manager:

- i. Sends a secure email message to the Exams Systems Analyst. Include the name of the case, EIN and MFTs, tax period, and explanation of the error.
- ii. Completes the RCCMS Closing Document by selecting the appropriate disposal code for deletion (901 – Error Accounts, or 801 – Information Report).
- iii. Selects “7- Paperless Non-Examined” in the “Closing with:” field.
- iv. Completes the fields at the bottom of the closing document with the group’s information (PBC, SBC, and EGC).
- v. Leaves the AIMS box unchecked.
- vi. Closes RCCMS controls to the Closing Unit using the following: PBC – 400; SBC – 11115; EGC – 7997; and, Status Code 56.

- (5) Non-examined cases must be closed off AIMS. See IRM 4.70.14.4.9, Non-Examined Closures, for procedures to close off of AIMS.
- (6) Examiners must complete the following steps for Examined Closures:
 - a. Complete a closing conference, See IRM 4.70.14.4.1.
 - b. Finalize and organize case file workpapers and CCR. See IRM 4.70.14.4.2.
 - c. Generate a closing letter. See IRM 4.70.14.4.3.
 - d. Complete the issue code data grid. See IRM 4.70.14.4.4.
 - e. Complete the case closing record. See IRM 4.70.14.4.6.
 - f. Make considerations for partial closings. See IRM 4.70.14.4.7.
 - g. Complete a final case file review and close the examination to your manager. See IRM 4.70.14.4.8.

4.70.14.4.1
(11-24-2023)
Closing Conference

- (1) The closing conference with the taxpayer or their representative includes at a minimum:
 - a. Informing the taxpayer and/or representative that the examination has been completed.
 - b. Informing the taxpayer and/or representative that a closing letter will be issued and the years and returns covered by the letter.
 - c. An explanation of your findings based on the facts and current law.

Note: Be prepared to provide the authority of your findings, converse knowledgeably, explain proposed adjustments and provide the taxpayer with copies of relevant court cases, regulations, revenue rulings, revenue procedures, and workpapers showing computations. Instructions to returns and publications that explain and support regulations and rulings are also helpful, but are not citable as legal precedent.
 - d. A discussion of the actions taken to resolve the issues and to prevent future occurrences.
 - e. An explanation of proposed adjustments.
 - f. An explanation of appeal rights.
 - g. A solicitation of agreements.
 - h. Answering any questions and concerns.

Note: Listen to the taxpayer and/or representative. Get a clear understanding from all persons present that there are no pertinent facts other than those of which you are aware. State “This is my under-

standing. . .,” and then detail the facts as you understand them.

“Are we all in agreement on this? Are there any other material facts or circumstances of any consequence?”

- i. In the case of an unagreed issue, offer a manager’s conference if one has not already been given and the manager is not present in the closing conference.
 - j. Document in the CCR that the conference was conducted and what was discussed. If a closing conference was not held, explain why not on Form 5464 or Form 9984.
- (2) Each closing conference situation is unique and techniques vary widely, but there are basic procedures to follow:
- a. The closing conference is held once the examiner reaches conclusions on all issues.
 - b. Closing conferences will be productive if the taxpayer and representative are kept informed of the issues throughout the examination.
 - c. Closing conferences may be followed by a “managerial conference(s),” which can be held anytime until the case closes. Managerial conferences are applicable primarily because the group manager did not attend the closing conference.
 - d. There can be more than one closing conference, and managerial conference.
 - e. Propose and discuss substantive issues with the taxpayer or a representative in a face to face meeting. If economically unfeasible, hold a conference call.
 - f. Don’t issue an examination report to a taxpayer without discussing findings and issues with the taxpayer or representative. Exceptions to this rule are for the following:

- i. No-show / no-response appointments
 - ii. Uncooperative taxpayers
 - g. You may mail a revised report to the taxpayer rather than presenting it in a face to face meeting.
 - h. To facilitate discussion at closing conferences, you can provide the taxpayer with a listing of items to be discussed.
 - i. Choose the order in which issues will be presented at the closing conference. You can modify the order during the conference. While there is no “right” order which is best for all occasions, resolve factual issues or issues involving an established application of law first. Discuss less certain issues last.

4.70.14.4.2
(11-24-2023)

**Finalizing and
Organizing Workpapers
and the CCR**

- (1) The Case Chronology Record (CCR) or Case Activity Record (CAR) must be documented fully prior to closing the case. At a minimum the following actions should be documented in the CCR or CAR at case closure:
- a. An explanation for any delays or extended periods of inactivity
 - b. The date the examiner closes the case to the group manager
 - c. The date the manager approves the case closure
 - d. Managerial review and approval of all surveyed closures
 - e. Managerial approval of penalties (Where required, see IRM on Penalties)

- (2) Ensure time on case agrees between the closing record, Form 5773 or Form 4318, CCR and WebETS.
- (3) Finalize all workpapers with examination conclusions.
- (4) Finalize all required forms for your type of case closure. See IRM 4.70.14.4.2.2, Case File Forms Finalized to close
- (5) Save all copies of workpapers, forms and letters that you generated in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.

Note: Any documents scanned into RCCMS should be the final version of that document that includes the date and signature, if applicable. For example, if the examination closing letter is scanned into RCCMS, it must be a copy that includes the date the letter was mailed and the signature of the Director.

- (6) Scan all relevant case related documents received from the taxpayer or POA and save them in RCCMS using the TE/GE RCCMS Naming Convention.

4.70.14.4.2.1
(11-24-2023)
**Electronic Case File
Assembly**

- (1) Because further technical, administrative and procedural action is required on a case after you close it, it's important that the case file be properly organized.
- (2) Proper assembly of the examination case file is the responsibility of the examiner.
- (3) All examinations are closed fully electronic. All documents are required to be saved in the RCCMS Office Documents Folder using the TE/GE RCCMS Naming Convention.
 - a. Consult with your manager on cases with unique circumstances that might justify closing with a paper case file.
 - b. If a paper file is warranted, follow the paper case file assembly guideline provisions folder per IRM 4.70.14.4.2.1.1, Paper Case File Assembly.
 - c. All TE/GE functions now index all electronic case files with a file name that starts with the numbers 1-7

1. Cover documents as "1.FILE NAME".
 - a. This includes special handling notices, transmittal documents, reviewer's memos, and responses to reviewer's memos.
 - b. If there is a paper case file, include those documents on the front outside of the case file folder and transmittal documents.
2. Non-disclosure/administrative documents and check sheets as "2.FILE NAME".
 - a. This includes internal administrative documents, referral documents, case check sheets, and other miscellaneous forms or documents not indexed to the workpaper summary sheet in the workpaper section, etc.
 - b. If there is a paper case file, include those documents on the left inside of the case file folder.
 - c.
Note: Do not include whistleblower documents in RCCMS and continue to maintain them separately from the examination case file (paper or electronic).
3. Closing letter and/or RAR and attachments as "3.FILE NAME".
 - a. This includes closing letters, 30-day letters for unagreed cases, taxpayer protests to Appeals, rebuttals to protests, closing agreements, and all attachments to the closing letter and/or revenue agent report (RAR) (e.g., Forms 4549, 4549-E, 2504, 886-A, 870, etc.).
 - b. If there is a paper case file, include those documents on the right inside of the case file folder.
4. Working return, POA, statute extensions, remittances, and related documents as "4.FILE NAME".
 - a. This includes an original return/RICS return under examination, taxpayer's copy of return, substitute for return package (SFR), dummy return, Forms 2848/8821, statute extensions (Forms 872, SS-10, etc.), Form 3244-A, current IDRS prints (within 30 days of closure), etc.
 - b. If there is a paper case file, include those documents on the right inside of the case file folder after the closing letter and/or RAR.
5. CCR/activity record, workpaper summary, and case file workpapers as "5.FILE NAME".
 - a. This includes the case chronology record (CCR), workpaper summary and all workpapers referenced on the workpaper summary sheets (Forms 5773, 5773-A, 4318 and TEB's workpaper summary document).
 - b. Your internal correspondence/emails with your manager, Counsel, K-Net and specialists go here.
 - c. If there is a paper case file, include those documents on the right inside of the case file folder after the working return documents.

6. Correspondence with taxpayer/representative as “6.FILE NAME”.
 - a. This includes your correspondence to and from the taxpayer/representative, information document requests (IDRs), taxpayer documents, summons, etc.
 - b. The correspondence files named in chronological order (e.g., “6.01”, “6.02”, “6.03”, etc.).
 - i. For example, name an initial contact letter and IDR file “6.01.L6031” and “6.01.F4564 IDR# (Date issued)”, and name your follow up letter and/or IDR “6.02.File Name”. If the taxpayer/representative provides a response to the letter or IDR, save their response and any attachments as “6.03.File Name”. If the taxpayer provides correspondence that is not tied to a specific IDR, then name the file with the next chronological number (e.g., “6.04.File Name”, “6.05.File Name”, etc.)
 - c. If there is a paper case file, include those documents on the right inside of the case file folder after the workpapers.
 - d. As noted above, closing letters, unagreed 30-day letters/ RARs, protests to Appeals and rebuttals to protests go in section 3.
7. Administrative record (for EO and EP only) as “7.FILE NAME”.
 - a. This is the administrative record for EO and EP cases, where applicable.
 - b. If there is a paper case file, those documents are kept in a separate paper case file folder.
8. For TEB only – You may continue to attach electronic documents on the TWS file using the pushpin or paperclip icon

- d. There are circumstances when you may need to rename a file to organize the files appropriately within an index section. You can modify the file names, as long as the name starts with numbers 1 – 7, as described above.
 - e. When you need to name a file not listed in the RCCMS documents, or when needing to rename a file because it makes more sense in a different section for certain situations, then use the index numbers 1-7 as described above. For example, there might be a letter currently named “6.FILE NAME”, but if it ends up being the closing letter or an unagreed 30-day letter, then rename it as “3.FILE NAME”.
 - f. As a best practice, use the sub-folders in Office Documents or Case File Documents to organize the case file documents in RCCMS.
- (4) TEB: Assemble the workpapers using the workpaper summary or other formats that your manager approves. Post documents not attached to Adobe workpaper documents as comments (commonly referred to as the push pin method).
- (5) EO Sub-folders in RCCMS:
- a. All TE/GE functions now index all electronic case files with a file name that starts with the numbers 1-7. EO examiners may arrange documents named per the TE/GE Naming Convention, using subfolders within RCCMS.
 - b. The first level of electronic folders in RCCMS is based on Form 5773.

4.70.14.4.2.1.1
(11-24-2023)**Paper Case File
Assembly**

- (1) Some cases with unique circumstances such as fraud or specific requests from management, Appeals or Counsel might justify closing with a paper case file.
- (2) If a paper file is warranted, document your CCR with the specifics warranting a paper case file and follow these paper case file assembly guidelines.
- (3) Follow notation instructions for Form 3198-A, TE/GE Special Handling Notice in IRM 4.70.14.4.2.2(4) to generate a paper Form 3198-A.
- (4) Follow the instructions for the RCCMS Case Closing Record input in IRM 4.70.14.4.5, Completing Special Handling Notice 3198-A, and IRM 4.5.2, TE/GE Examined and Non-Examined Closures, to generate the applicable closing record Form 5599, Form 5650 (EP Form 5500 or NRU exams) or other closing record as appropriate.
- (5) Except as indicated, use a brown or manila folder for a paper examination case file.
 - a. Use red folders for short statute cases.
 - b. Use pink folders for claims.
 - c. Use a separate case file folder for each type of MFT. You can place multiple years of the same MFT for one t/p in one folder.
 - d. EP and EO: For declaratory judgment cases, maintain a separate Administrative Record file folder.
- (6) Place whistleblower and other confidential information in a "To be Opened by Addressee Only" envelope with a TD F 15-05.11, Sensitive But Unclassified (SBU) Cover Sheet (Catalog Number 56033J). Place the envelope in a separate folder with the same cover sheet. Do not include whistleblower documents in RCCMS and continue to maintain them separately from the examination case file (paper or electronic.)
- (7) Front Outside of the paper case file should include cover documents (corresponding with TE/GE Naming Convention category 1):
 - Special handling notices
 - Transmittal documents
 - Reviewer's Memos
 - Responses to Reviewer's Memos
- (8) Left Inside of the paper case file should include non-disclosure/administrative documents and checksheets (corresponding with TE/GE Naming Convention category 2):
 - Internal administrative documents
 - Referral documents
 - Case checksheets
 - Other miscellaneous forms or documents not indexed to workpaper summary sheet in the workpaper section
- (9) Right Inside of the paper case file should include closing letter and/or RAR and attachments, working Return, POA, statute extensions, remittances and related documents, CCR, workpaper summary, case file workpapers, and correspondence with taxpayer/representative (corresponding with TE/GE Naming Convention categories 3-6):

Category 3:

Closing Letters
30-day Letters for unagreed cases
Taxpayer Protests to Appeals
Rebuttals to Protests
Closing Agreements
All attachments to closing letter and/or RAR (e.g., Forms 4549, 4549-E, 2504, 886-A, 870, etc.)

Category 4:

Original return/RICS return under examination
Taxpayer's copy of Return
SFR package
Dummy return
Forms 2848/8821
Statute extensions (Forms 872, SS-10, etc.)
Form 3244-A
Current IDRS Prints (within 30 days of closure)

Category 5:

Case Chronology Record (CCR)
Workpaper summary (Forms 5773, 5773-A, 4318 and TEB's workpaper summary document)
All workpapers referenced on the workpaper summary
Internal correspondence emails with your manager, Counsel, K-Net and specialists

Category 6:

Correspondence to and from the taxpayer/representative
Information Documentation Requests (IDRs)
Taxpayer provided documents
Summons

Note: As noted above, closing letters, unagreed 30-day letters/RARs, protests to Appeals and rebuttals to protests go in category 3.

Note: Correspondence items should be named in chronological order (e.g., "6.01", "6.02", "6.03", etc.)

Example: Name an initial contact letter and IDR file "6.01.L6031" and "6.01.F4564 IDR# (Date issued)", and name your follow up letter and/or IDR "6.02.File Name". If the taxpayer/representative provides a response to the letter or IDR, save their response and any attachments as "6.03.File Name". If the taxpayer provides correspondence that is not tied to a specific IDR, then name the file with the next chronological number (e.g., "6.04.File Name", "6.05.File Name", etc.)

4.70.14.4.2.2
(11-24-2023)

**Case File Forms
Finalized to close**

- (1) EP/EO: Finalize Form 5773 or Form 5773-A to document examination conclusions and the basic case information:

- a. The entity examined
- b. The taxpayer identification number (TIN)
- c. The type of return examined
- d. The years examined

Note: Form 5773-A incorporates all years of the examination cycle of a single plan type.

Note: If multiple plans are examined, a separate F5773-A is required.

- e. The disposal code and type of closing letter issued for each year examined
- f. The examiner's name
- g. The examiner's time

Note: The Form 5773-A incorporates the time spent on all years of the examination cycle.

- h. The date the examination was completed

- (2) Form 5773 or Form 5773-A is not a substitution for administrative workpapers or supporting workpapers to document the identification, development, and resolution of selected examination issues.

- (3) EP/EO: Form 10329

- Form 10329 must be completed and saved in the RCCMS Office Documents Folder when there are related returns and case files. This Form helps all users of the file including the closing unit to identify all related case files that should be processed together.
- Complete the following fields on Form 10329:

- i. List your group number in the **Area Office** section.
- ii. Starting with the primary return and continuing to include all related returns – each year individually, list:
 1. Taxpayer name – this may be different for each type of return.
 2. TIN – this will be different for different taxpayers.
 3. MFT – each return type has its own MFT code.
 4. Tax Period – each line item should represent one, single tax period.
 5. Statute of Limitations – each line item should list the statute of limitations at the time of case closure. If you received an extension, list the extended statute date. If you alpha coded a statute, list the date with the alpha indicator. It is very important that a future user of this document can quickly see what returns have potential statute issues.

- (4) 3198-A Special Handling checksheet in RCCMS

- a. TE/GE has added RCCMS functionality to document the case file for Special Handling Notice with the 3198-A Special Handling checksheet. Follow the procedures below as appropriate.
- b. Appropriately note the following items on Form 3198-A Special Handling checksheet in RCCMS:

- i. Cases subject to mandatory review.
- ii. Cases that require updating the BMF on Form 2363-A.
- iii. Cases closed based on an taxpayer's retained copy of a return.
- iv. Cases where an amended return was received directly from the t/p during the examination.
- v. Power of Attorney instructions.
- vi. Discrepancy adjustments cases.
- vii. Restricted interest cases.
- viii. Unagreed cases.
- ix. Cases with less than 270 days (9 months) until the statute of limitations for assessment expires.
- x. Instructions for notification of state officials.
- xi. Related case files.
- xii. Any other special instructions regarding the case that may be helpful in the closing process.
- xiii. The case includes proof of filing Form 990-N.

c. Under "Other instructions" may include, but don't limit to, the following:

- i. Form 4669 adjustments allowed by examination.
- ii. Wage statements secured by examiner (send originals to Social Security Administration (SSA)).
- iii. Delinquent Form 1099 secured by examiner (send original to Cincinnati Campus).
- iv. Assess Civil Penalty as indicated on Forms 8278 and 3645.
- v. -A freeze addressed-release freeze.
- vi. ASEDR5 (enter only when ALL adjustments are subject to IRC 3509 rates).
- vii. For declaratory judgement cases, refer to IRM 4.70.14.4.11.1, EO Declaratory Judgement Cases, for further instructions on completing 3198-A for agreed and unagreed cases.
- viii. For a converted return case file, refer to IRM 4.70.14.2.1.3.3, EO – Conversion of Returns, for agreed cases for further instructions.

(5) Form 5666

- a. Group managers and examiners may submit leads by submitting a Form 5666, TE/GE Referral or Information Report, with any supporting documents that provide details about potential noncompliance. Securely email the Form 5666 to your manager to review and forward to the CP&C Referral group at EOClass@irs.gov, if applicable. See IRM 4.5.1.6.9.2, TE/GE Referral or Information Report, and IRM Exhibit 4.5.1-12, Instructions for Preparing Form 5666, TE/GE Referral/Information Report.
- b. Use Form 5666 to:

- i. Recommend a future year examination of the same organization.
- ii. Recommend the examination of another person, such as potential unreported gross income.
- iii. Recommend the examination of a revoked organization for income tax.

c. The general instructions for completing Form 5666 are on the back of the form.

- d. Procedures for considering referrals and how to process them are in IRM 4.70.11.15, Collateral Examinations and Referrals.

(6) FSL/ET and ITG:

- a. Form 4318, Examination Workpapers Index, is the cover sheet that indexes the administrative and issue lead sheets and supporting documents (e.g., information document requests, correspondence, case building materials). It pertains to one taxpayer and includes all tax years under examination. The conclusions on this document should correspond to the conclusions on the lead sheets, workpapers and reports.
- b. Form 4318 is not a substitute for administrative workpapers or supporting workpapers to document the identification, development, and resolution of selected examination issues.
- c. Use Form 9984, Examining Officer's Activity Record, (case activity record) to document each action you take on the work assignment. Documentation includes the date, location, time charged, and an explanation of each activity or contact. The activity record should be prepared contemporaneously and provide a complete and concise case history. Write all entries factually and professionally and omit personal opinions. Other employees responsible for activity on the case must also document their actions using the same criteria listed above (for example, group manager, Technical staff, clerical staff).

(7) TEB: Tax Exempt Bond Workpaper Summary ("TWS", also known as the Pushpin Workpaper) is not a substitute for administrative workpapers or supporting workpapers to document the identification, development, and resolution of selected examination issues.

4.70.14.4.2.2.1
(11-24-2023)

**EP Functional Specific
Case File Documents**

(1) Forms 6212-B and/or 6533

- a. If a referral to DOL is warranted, send the original Form 6212-B to the FAC/EP DOL Coordinator per IRM 4.70.11.15.6, Referrals to Other Agencies, and save the referral in the RCCMS Office Documents folder.

Note: See Employee Plans Examination Exhibits, or the Centralized Contact page on TE/GE Connect for contact information for the FAC/EP DOL Coordinator.
- b. When an examination is initiated as the result of a referral from EBSA is closed:
 - i. Contact the FAC/EP DOL Coordinator to remove the freeze code so the case can be closed.
 - ii. Email a copy of Form 6212-A to EP Classification and the FAC/EP DOL Coordinator with comments in the "Remarks" section of Form 6212-A or on a Form 886-A, briefly stating the results of the examination.

Note: Contact the EBSA investigator if they have a related investigation open and are anticipating an update.

Note: See Employee Plans Exhibits, Important Contact Information for Individuals and Business Units, for contact information for EP Classification and the FAC/EP DOL Coordinator.

- c. If a referral to PBGC is warranted, send the original Form 6533 to PBGC (with a courtesy copy to Classification) per IRM 4.70.11.14.6, Referrals to

Other Agencies, and save the referral in the RCCMS Office Documents folder. See Employee Plans Examination Exhibits, for PBGC's address.

Note: It is no longer necessary to prepare Form 6533 for all EP examinations of plans that are subject to PBGC. Only prepare and send Form 6533 if a referral is required to be made per Form 6533.

4.70.14.4.2.2.2
(11-24-2023)

**EO, FSL/ET and ITG
Functional Specific Case
File Documents**

- (1) EO and FSL: Complete Form 2363-A to correct any EOBF entity errors identified during the examination, including name and address. Also, complete Form 2363-A to reflect any changes to an organization's status resulting from your examination.

Reminder: For cases subject to mandatory review, complete but don't send Form 2363-A based on examination results to the FAST, such as a revocation.

- (2) FSL/ET: Complete Form 2363 to correct any BMF entity errors identified during the examination.
- (3) ITG: complete Form 2363-A and Tribal Entity Information Update Form (TEIFUG) to correct any BMF tribal entity errors identified during the examination.
- (4) For instructions on completing the Form 2363-A refer to IRM 25.7.1.5, Form 2363-A Preparation Instructions.
- (5) The FAST's address and other contact information is provided below:

FAST U.S. Postal Service Address and UPS Address
Tax Exempt & Government Entities - FAST Attention: FAST M/S 1114 1973 Rulon White Blvd. Ogden, UT 84201-0252

FAST Contact Numbers and Email Address:	
FAST e-Fax Number:	877-814-2236
FAST email address	tege.fast@irs.gov

- (6) Some common changes requiring the preparation of a Form 2363-A and the disposition of the Form 2363-A are as follows:

For	Submit <u>Form 2363-A</u>
A Name and/or Address Change	To the FAST Immediately
An Exempt Status Change	With the case file to the review function
A Foundation Status Classification Modification	With the case file to the review function

For	Submit Form 2363-A
A Filing Requirement Change:	
Delinquent Return Secured	To the FAST Immediately
Contested Filing Requirement	With the case file to the review function
NTEE	To the FAST Immediately

- (7) Place in the workpapers retained copies of Form 2363-A processed. Mark as "Copy - Original Sent to the FAST on Date."
- (8) For Form 2363-A to be processed based on examination results, complete the 3198-A Special Handling checksheet in RCCMS by checking the box, "Entity Change Form 2363 Prepared _____."

4.70.14.4.3
(11-24-2023)
Generating a Closing Letter

- (1) TE/GE examiners are not authorized to develop local letters that will be sent to more than 10 taxpayers. These letters must be approved by Headquarters. See IRM 1.17, Publishing, for these requirements and procedures.
 1. Use Letter 6049, TE/GE No Change Letter, when the examination is closed no change (disposal code 02) and you do not have comments for your examination results.
 2. Use Letter 1744, TE/GE Change due to Correction of Operations when appropriate. See IRM 4.70.14.4.3.1, TE/GE Change due to Correction of Operations, for using this letter.
 3. Use other Functional Unique Letters when appropriate. See IRM 4.70.14.4.3.2.
 4. Use Letter 1024-A, Survey After Assignment - Taxpayer Contact Made, only if contact has been initiated with the taxpayer that the plan or return was being examined.
 5. Generate a closing letter addressed to the taxpayer (if applicable) covering all years examined. Send the POA a copy of the closing letter with cover Letter 937-A.
 6. The lowest level officials authorized to place their own signature "for" the Examination Director on letters bearing the Exams Director's signature block or use the Exams Director's stamp or facsimile signature are:
 - a. Group Managers (GM).
 - b. Grade 12 reviewers.
 7. The group will mail the closing letter after the group manager approves the case for closing and has saved the letter in the Office Documents folder within the RCCMS activity.

4.70.14.4.3.1
(11-24-2023)
TE/GE Change due to Correction of Operations

- (1) Examiners closing examinations of primary returns, where the taxpayer took corrective actions during the examination to correct operational or compliance issues that did not result in change to exempt status or plan or bond qualification, should prepare Letter 1744, Change due to Correction of Operations.

For	Choose selectable paragraph
EP	1 or 2 and 7 (if a closing agreement is entered into and there are additional comments to be included on the Form 886-A.)
EO	3, 4, or 5 and 7 (if a closing agreement is entered into.)
TEB	6 and 8 or 9.

Note: FSL/ET and ITG examiners would not issue Letter 1744 except when a comment would be applicable, decided on a case-by-case basis with managerial approval.

- (2) Letter 1744 should **not** be used when there are deficiencies that may affect future operations of the organization, entity, or plan. If there is no change to the return being examined, and no corrections made during the examination to correct the deficiencies, then use Letter 6049, Examined Closed – No Change, unless another letter is appropriate.
- (3) Describe the compliance issues resolved on a Form 886-A, for inclusion with Letter 1744. Describe the change due to correction of operations and/or separate reports issued for related returns in the Form 886-A. Use the sample paragraphs on the following Knowledge Management & Transfer sites. However, the examiner can write their own paragraphs with managers approval.

Employee Plans 1744 Closing Letter Paragraphs
--

Exempt Organizations Resources Knowledge Base
--

Tax Exempt Bonds Knowledge Base
--

- (4) When delinquent returns or related delinquent returns are secured, include the following on the Form 886-A:

- | |
|---|
| <ol style="list-style-type: none"> a. Cite the law that requires the return filing b. State the Form and year/period for the delinquent return(s) we secured. c. State that we imposed or will impose delinquency penalties, or that the taxpayer established reasonable cause d. Cite the law that authorizes the proposed penalty assessment. <ul style="list-style-type: none"> • If assessing a penalty, state, "Please be sure to file your return when due to avoid a penalty in the future." • If not assessing because the taxpayer established reasonable cause, state, "We may not waive late filing penalties on future returns if filed late due to the same circumstances." |
|---|

- (5) Include the following, whichever applies, in each paragraph about refusals to file delinquent returns or related return adjustments:

- a. The examiner prepared a substitute for return under IRC 6020(b) for the non-filed tax return, reflected in a separate report.
 - b. A separate report reflects an adjustment to tax reported on a related return (state the return).
 - c. A separate report reflects an adjustment to tax reported on a secured delinquent return.
 - d. The taxpayer agreed, partially agreed or did not agree, with or without protest, to the proposed tax.
 - (6) Include the following in each paragraph for issues other than delinquent returns or a related return adjustment:
 - a. Identify the noncompliant issue.
 - b. Cite the law that requires compliance.
 - c. Identify how the taxpayer corrected the noncompliant issue.
 - d. List any penalties assessed or abated, and if the taxpayer established reasonable cause.
 - e. Cite the law that authorizes any listed penalties.
 - (7) Use disposal code 52 (214 in RCCMS), Change due to Correction of Operations, unless a higher priority disposal code applies. Examiners can use Letter 1744 with other disposal codes, when applicable (for example: change to related return, delinquent related return secured, or closing agreement with additional changes due to correction of operations).
- Note:** Disposal Code 08 (213 in RCCMS) is obsoleted, because the reference to whether a referral is submitted or not will be indicated on the 3198-A Special Handling checksheet in RC\CMS and will not be distinguished by disposal code.
- Note:** Do not use Disposal Code 52 (214 in RCCMS) when there are deficiencies that may affect future operations of the organization, entity, or plan. If there is no change to the return being examined, and no corrections made during the examination to correct the deficiencies, then use Disposal Code 02 (107 in RCCMS), No Change.
- (8) Prepare Form 5666 if the examiner finds some aspect of the taxpayer's activities or operations that may jeopardize future compliance.
 - a. Prepare Form 5666, attaching any documents needed to support the referral.
 - b. Name the electronic files of the referral package following the established naming convention format and post to the RCCMS Office Documents folder.
 - c. Check the "Yes" box on the SH-S6.0 Referral item on tab 3 of 6 of the RCCMS 3198-A Special Handling checksheet to flag the Form 5666.

Note: Manager reviews and sends the signed electronic Form 5666 (and attachments) in a secure email to the TE/GE Referral Group email box at **Manager EO Classification*. See IRM 4.70.6.4 for more details.

- (9) **Don't** use the "Change due to Correction of Operations" disposal code in situations such as:

- a. The examiner could use a higher applicable priority disposal code (for example: change to related return, delinquent related return secured, etc.).
 - b. The taxpayer failed to file a related return and based on the facts and circumstances in the case the examiner didn't secure the delinquent related return but told the taxpayer to file the delinquent return. Close the examination as a "No Change" (assuming there are no other issues).
 - c. The taxpayer filed an incomplete or inaccurate primary return or schedules, which has no impact on a compliance issue (for example: exempt status, plan qualification, tax, penalties, etc.). The correct disposal code is a "No Change" if not assessing penalties (assuming there are no other compliance issues).
- (10) The following EP examples would result in a no change (i.e., DC 02/107) (assuming there are no other issues), not a change due to correction of operations (i.e., DC 52/214), in situations such as:
- a. The sponsor improperly reported the pension plan deduction on their tax return. However, the plan sponsor did not take an improper deduction; they merely completed the form improperly.
 - b. The examiner found assets that hadn't been reported correctly on the Form 5500 series return or schedules.
 - c. The examiner found that for the plan under examination the plan exceeded the allowable deduction by a de minimis amount. The examiner decided with group manager concurrence, to neither pursue a discrepancy adjustment, nor complete a referral to SB/SE. The over-deduction was an isolated error and didn't result from a systemic error.
 - d. The plan sponsor didn't timely deposit elective deferrals per DOL Regulation Section 2510.3-102(b)(1). However, the lost interest per participant was de minimis. The examiner, with group manager concurrence, decided to neither require correction nor request delinquent Forms 5330.

Note: These examples are not intended to be all inclusive.

- (11) The following EO examples would result in a no change (i.e., DC 02/107) (assuming there are no other issues), not a change due to correction of operations (i.e., DC 52/214), in situations such as:
- a. The EO didn't properly complete Schedule A, Public Charity Status and Public Support, or other Schedules with the Form 990 series, but the omissions/errors did not result in penalties under IRC Section 6652(c) and did not change the EO's tax exempt status.
 - b. The EO didn't answer all the right questions on the Form 990, but the omissions/ errors did not result in penalties under IRC section 6652(c).
 - c. The EO filed a delinquent return with the service center for a return that was not open under examination, and the service center assessed penalties.
 - d. The EO didn't attach a list with the Form 990 of all grants and contributions made.
 - e. The EO didn't properly report the income or expenses on the correct lines of the return, or there were variances between the return and the books and records, but such errors resulted in no tax changes or penalties assessed.

- f. The Form 990 series didn't supply all of the required officers, directors and trustees' information. The examiner did not secure an amended Form 990 and did not assess penalties under IRC section 6652(c).

Note: These examples are not intended to be all inclusive.

- (12) The following TEB examples would result in a no change (i.e., DC 02/107) (assuming there are no other issues), not a change due to correction of operations (i.e., DC 52/214), in situations such as:
 - a. The examiner finds that a payment of rebate will likely be due for the first computation date. However, the first date for payment of rebate hasn't occurred, and there were no corrections made during the examination.
 - b. The examination shows that an incorrect bond yield calculation. The bond yield adjustment didn't affect arbitrage rebate or yield restrictions for the first computation period.
 - c. The examination shows that the taxpayer didn't timely allocate bond proceeds to expenditures. However, there were no proposed compliance changes and no corrections made during the examination to ensure timely allocations.
 - d. The examiner finds the return didn't have an attached copy of the volume cap allocation for the bonds and doesn't secure it.
 - e. The taxpayer filed the return using an incorrect employer identification number.

Note: These examples are not intended to be all inclusive.

4.70.14.4.3.2
(11-24-2023)
**Functionally Unique
Letters and Procedures**

- (1) See below.

4.70.14.4.3.2.1
(11-24-2023)
Employee Plans

- (1) Use Letter 1744 with attached Form 886-A using selectable paragraphs from IRM 4.70.14.4.3.1, TE/GE Change due to Correction of Operations, when any plan type examination (Form 5500, SEP/SIMPLE/SARSEP, 403(b)/457, Church, 412(e) or governmental) results in a Change due to Change in Operations and requires a comment. These closures include examinations in which Employee Plans Compliance Resolution System (EPCRS) self-correction or closing agreement programs were used.
- (2) Use these Letter 1744 series letters when an exam is resolved through use of EPCRS closing agreement and no comment is required:
 - a. Letter 1744-E, Form 5500 Examination Closing Agreement Closing Letter
 - b. Letter 1744-G, SEP or SIMPLE Examination Closing Agreement Closing Letter
- (3) Use 1745 series letters to close examinations resolved through a DO 8-3 closing agreement where the plan is determined to be disqualified from inception.
 - a. Letter 1745, DO 8-3 - Plan Disqualified from Inception - No SB/SE Involvement.
 - b. Letter 1745-A, DO 8-3 - Plan Disqualified from Inception - SB/SE Involvement.

- (4) Use these letters to close Form 5330 or 990-T exams:

Form	Closing Letter
5330 or 990-T	<ul style="list-style-type: none"> Letter 6049 when the exam results in no change to the tax reported on a filed return. Note: Letter 6049 is the normal closing letter used to close a delinquent Form 5330 or 990-T picked up in conjunction with a Form 5500 exam and is to be mailed from the group. Letter 2086 when the exam results in no change to the tax reported on the filed Form 5330, but additional restorative correction is made. Letter 2087 when a signed Form 870-EP is secured reflecting an agreed upon change to the tax previously reflected on a filed return. The letter can also be used if a delinquent return is secured and you have additional comments that you want to convey to the taxpayer.

4.70.14.4.3.2.2
(11-24-2023)

Exempt organizations

- (1) See IRM Exhibit 4.70.14-7, Guidelines for Issuance of Letters, to determine the appropriate address to include in the heading.
- (2) The table below applies the EO Exam correspondence rules. See also IRM Exhibit 4.70.14-7, Guidelines for Issuance of Letters.

Type of letter	Heading Address	Signature block	Lowest Authority to Sign
No examination after contact letters Letter 1024-A	Examiner's address	Director, EO Exams	GM

Type of letter	Heading Address	Signature block	Lowest Authority to Sign
No-change or Change due to Correction of Operations closing letters	Director, EO Exams Address	Director, EO Exams	GM
30-day letters	Examiner's address	Director, EO Exams	GM
Rebuttal Letters- (not part of a report) Letter 5918	Examiner's address	Examiner	Examiner
Agreed tax change closing letters	Director, EO Exams Address	Director, EO Exams	GM
Claim or abatement -allowance in full closing letters	Director, EO Exams Address	Director, EO Exams	GM
Claim or abatement -disallowance in full or in part closing letters - agreed	Director, EO Exams Address	Director, EO Exams	GM
90-day letters - FADL	Manager, EO Mandatory Review address	Director, EO Exams	Manager, Mandatory Review
90-day letters FADL (Imminent Statute)	Area Office	Director, EO Exams	Manager, Mandatory Review (Area Office responsible for issuing and mailing)
90-day letters <ul style="list-style-type: none"> Letter 531 Letter 1753 Letter 3523 	Manager, EO Mandatory Review address	Director, EO Exams	Grade 12 Reviewer

Type of letter	Heading Address	Signature block	Lowest Authority to Sign
90-day letters <ul style="list-style-type: none"> • SNOD • Letter 3523 (Imminent Statute)	Area Office	Director, EO Exams	Area Manager
Statutory notices of claim disallowance <ul style="list-style-type: none"> • Letter 905 • Letter 906 (unagreed) 	Manager, EO Mandatory Review address	Director, EO Exams	Grade 12 Reviewer
Statutory notices of claim disallowance <ul style="list-style-type: none"> • Letter 905 • Letter 906 (Unagreed - Imminent Statute) 	Area Office	Director, EO Exams	Area Manager
Inadequate Records Notice Letter 4095	Director, EO Exams address	Director, EO Exams	GM
Termination <ul style="list-style-type: none"> • Letter 5426 • Letter 5426-A 	Manager, EO Mandatory Review address	Director, EO Exams	Grade 12 Reviewer
All other letters	Generally, sender's address	Generally, sender	Generally sender

4.70.14.4.3.2.3
(11-24-2023)

Employment Taxes

- (1) For agreed and no-change employment tax cases, prepare the appropriate closing letter below and include it in the case file at closing. The manager signs, dates, and mails the letters upon final closure. Scan and store in RCCMS all signed examination reports.

- Letter 3382, Notification Letter - Agreed Employment Tax Change Cases
- Letter 987, Agreed Income Tax Change
- Letter 3381, No-Change Letter for Employment Taxes

4.70.14.4.4
(11-24-2023)
**Completing the Issue
Code Data Grid**

- (1) The pre-selected examination method is the standard approach for examinations.
 - a. This method requires you to review the return and all supporting information to determine the scope of the examination and which specific issues you will examine.
 - b. Classification will normally identify issues that the examiner should address in the examination. Based on your pre-examination, you will determine if any additional issues need to be addressed. The addition of issues generally requires group managerial approval.
 - c. If you determine that a pre-determined issue does not apply or is not appropriate to the return, include your analysis leading to that conclusion in your workpapers.
 - d. Your examination of a pre-selected issue may require examination of aspects of a related issue. That may be a component of the pre-selected issue. This would not be the opening of a new issue.
 - e. If your examination of the related issue results in a determination that the item is not in compliance with the Internal Revenue Code, e.g., the issue raises a qualification concern, then this would equate with opening of a new issue.

Example: If EPCRS is used to resolve an additional issue beyond one specified by Classification or if an examination results on a related issue associated with the pre-assigned issue, this equates with an opening a new issue.

- (2) The RCCMS Issue Code Data Grid must be used throughout the examination process. The data grid is updated contemporaneously as issues are identified, updated, resolved, or not pursued throughout the examination.
- (3) Utilize the Issue Code Data Grid process outlined in the TE/GE Examination Process Procedural Handbook to expand or contract the scope of the examination and to seek managerial approval.
- (4) Issues should be marked as closed in the "Issue Closed" column as they are resolved. Ensure you have fully updated the Issues Sheet before requesting a close action in RCCMS. RCCMS will not allow you to complete a close action without all issues marked as closed.

4.70.14.4.5
(11-24-2023)
**Completing Special
Handling Notice 3198-A**

- (1) TE/GE Special Handling Notice 3198-A checksheet in RCCMS is an essential tool for documenting special handling instructions for compliance activity case processing to: alert processors of case files requiring special handling, expedite processing, or including special features and flag special characteristics specific to that case file requiring attention to ensure proper and timely case processing and closing instructions
- (2) If a paper case file is necessary, post the Form 3198-A, TE/GE Special Handling Notice to the RCCMS Office Documents folder for all cases when appropriate whether controlled on AIMS or not, as part of the procedural special handling notice requirements.
- (3) Complete the RCCMS 3198-A Special Handling checksheet for all cases requiring special handling, expedited processing, or including special features.

- (4) Use the RCCMS 3198-A Special Handling checksheet to flag special characteristics specific to the case file to ensure proper and timely case processing and closing instructions.
- (5) Generally, the fields included on the RCCMS 3198-A Special Handling checksheet are items identified as commonly applicable to TE/GE cases from Form 3198-A. There are two new tabs that contain fields not captured on the Form 3198-A.
Returns Secured: Use this tab to capture the type and count of returns secured during a compliance activity.
Appeals: Use this tab to capture the taxpayer protest received date and whether that protest contains new information that required additional development.

4.70.14.4.6
(11-24-2023)
**Completing the case
closing record**

- (1) In general, the required entries in the RCCMS closing record screen will be highlighted in red. Examiners should complete all required and any other relevant tabs depending on the disposal code used. The information in RCCMS must accurately reflect the examination results.
- (2) Refer to your function specific guidance for Information System Codes applicable to your type of case closure:
 - a. EP: Document 6476, Information Systems Codes FY 2023 Quick Reference for EP examiners
 - b. EO: Document 6379, Information Systems Codes FY 2023 Quick Reference for EO examiners.
 - c. GE: Document 11308, Information Systems Codes FY 2023 Quick Reference for GE examiners.
- (3) At a minimum, the following entries should be completed on the general tab.
 - a. Disposal Code
 - b. Closing with
 - c. Primary Business Code
 - d. Secondary Business Code
 - e. Employee Group Code
 - f. ARDI Code (where applicable)

Note: EP – An entry is required if:

Circumstance	Action
A closing agreement is secured for a Form 5500 or NRU exam	Select the appropriate ARDI code from the pull down menu. If the closing agreement was secured via EEFax, check the box next to "Fax Indicator."
Closing Form 5330, 5329 or 990-T exam with RCCMS disposal code 102 or 208	Select the appropriate ARDI code from the pull down menu

- (4) At a minimum, the following entries should be completed on the Details tab.

- a. Examiner's Time - Make sure your time in RCCMS agrees with the time listed on the CCR and WebETS.
- b. Technique Code
- c. Examiner's Name
- d. EP - Complete the following fields for all Form 5500 and NRU exams:

RCCMS Closing Code	Details Tab Entry
207 - Delinquent Related Return Secured	Enter the tax and penalties for the related secured delinquent Form 5330.
102 - Agreed Tax or Penalty Change	Enter amount in the "EP taxes" and the "EP penalties and interest" fields, if applicable. This field represents excise or income taxes and penalties assessed on a return that had been secured during the examination where the related return was not included in the examination cycle (e.g., the related Form 5330 was not established).
501 – Referrals to Other Operating Divisions	Enter the amount of proposed adjustments referred to an Examination Functional Unit (e.g., SB/SE) for the specific plan and year in the "Adjustments to SBSE, WI, LB&I" field.

- (5) RCCMS closing record entries for Discrepancy Adjustments are in IRM 4.70.15, Discrepancy Adjustments.
- (6) RCCMS closing record entries for Unagreed and Mandatory Review case processing are in the applicable IRMs. See IRM 4.70.14.2.4, Unagreed or IRM 4.70.14.6, Mandatory Review.

4.70.14.4.7
(11-24-2023)

Partial Closings

- (1) The following circumstances may require a partial case closure:
 - a. Partially agreed discrepancy adjustments
Note: Partially agreed discrepancy adjustment procedures are covered in IRM 4.70.15.9, Partial Agreement Procedures.
 - b. IRC Section 3402(d) and 3102(f)(3) cases

4.70.14.4.7.1
(11-24-2023)

IRC 3402(d) and IRC 3102(f)(3) Relief Cases

- (1) In general, continue to follow the overall instructions in IRM 4.23.10.15, Partially Agreed Cases, except for IRM 4.23.10.15.2, Examination Procedures for IRC 3402(d) and IRC 3102(f)(3) Relief.
- (2) For purposes of closing employment tax cases that fall under IRC 3402(d) when penalties are proposed, a modified two-step abatement/ partial assessment process must be used.

- (3) The modified two-step abatement/partial assessment process ensures that the gross tax, penalties, and interest are computed and assessed and then some relief of some portion of the tax. This relief doesn't apply to reduce penalties and interest based on the gross tax. It only applies to the gross tax such as:
 - Income taxes under IRC 3402.
 - Backup withholding tax under IRC 3406.
 - Additional Medicare tax under IRC 3101(b)(2) (including RRTA).
- (4) Do not use these partial assessment procedures if penalties are not being proposed based on the gross tax.
- (5) The two-step process results in the generation of an initial billing notice for the gross amounts. The Taxpayer will then receive a second notice containing the abatement allowed.
- (6) The first step consists of the following actions.
 - a. Create a partial closing record to assess the full tax and penalties.
 - b. In RCCMS, create a closing record for the partial assessment, following the procedures in the RCCMS Case Closing Guide.
 - c. Check the "Partial" box.
 - d. Include all examination adjustments, including any other employment tax issues (fringe benefits, IRC 3509, penalties, etc.) other than the IRC 3402(d) items on the partial closing.
- (7) Second Step:
 - a. Create a "full" closing record to include the IRC 3402(d) credit.
 - b. Do NOT check the "partial" box.
 - c. Enter the ARDI and DC as well as your time, technique code and name. Include in the adjustments on the full closing record the IRC 3402(d) relief amount.
 - d. Follow the instructions provided in IRM 4.23.10.16.3 to prepare Form 4666, 4668, and 2504 when IRC 3402(d) applies.

4.70.14.4.7.1.1
(11-24-2023)
**IRC 3402(d) Tax
Reduction Procedures**

- (1) To properly assess both income taxes under IRC 3402 or backup withholding under IRC 3406, together with any applicable penalties and interest, examiners will follow a modified Partial Assessment procedure when penalties are to be assessed. The procedures described below supplement IRC 4.23.10.15.2.
- (2) IRC 3402(d) does not apply to the portion of federal income tax computed using IRC 3509 rates. If only IRC 3509 rates are used, line 12 of Form 4668 "Maximum tax available for abatement under IRC 3402(d)" should contain the word "NONE".

4.70.14.4.7.1.2
(11-24-2023)
**IRC 3402(d) When No
Penalties Are Proposed**

- (1) The Partial Assessment procedures are not used if penalties are not being proposed based on the amount of tax. The examiner will compute the tax due on Form 4668, or Form 4668-B, Report of Examination of Withheld Federal Income Tax for Withholding Reported on Forms 1099 and W-2G, based on the net adjustment using amounts from valid Form 4669, Statement of Payments Received. The amount on line 12 of Form 4668 or line 20 of Form 4668-B will reflect the remaining amount of tax available for abatement after the IRC 3402(d) credit has been allowed during the examination. Forms 4666 and the Forms 2504 series, as applicable, will also show this net figure. The assess-

ment information and the credits and tax adjustments section of the RCCMS closing record will also reflect the net adjustments using amounts from the valid Forms 4669.

4.70.14.4.7.1.3
(11-24-2023)
**IRC 3402(d) When
Penalties are Proposed**

- (1) The modified Partial Assessment process must be used if penalties are to be assessed. This is a two-step process which ensures that the gross amount of tax, penalties, and interest are computed and assessed. The IRC 3402(d) credit is allowed only against this gross amount. The two-step process results in the generation of an initial billing notice for the gross amounts shown on the Form 2504 series, as applicable. The taxpayer will subsequently receive a second notice containing the abatements allowed in the examination upon final processing of Forms 4669 during the closing process. The examiner should discuss the two-step process with the taxpayer using the statement included on Form 4666. This should alleviate taxpayer concerns that Forms 4669 were not properly processed upon receipt of the first notice. See IRC 4.23.10.15.3. There are two steps in this process.
- (2) The first step is to create a partial closing record to assess full tax and penalties as reflected on the Form 2504 series, as applicable. (Form 2504-T if IRC 3509 rates are not used). Create the record by:
 - a. In RCCMS, create a Closing Record for the Partial Assessment, following the procedures in the RCCMS Case Closing Guide. On the Closing Record for the Partial Assessment, make sure that the "Partial" box is checked. On the Closing Record, complete just the fields that are necessary for the Partial Assessment: ARDI code, disposal code, assessment information, and credit/tax adjustments.
 - b. All examination adjustments, including any other employment tax issues other than the IRC 3402(d) items (fringe benefits, IRC 3509, penalties, etc.), are to be included on the Partial Assessment Closing Record. Enter "TC 308" (or "TC 300" if interest is to be assessed) for the gross tax amount. Enter the appropriate transaction code for the assessment of penalties based on the gross tax amount. Enter applicable reference fields for all adjustments of social security/Medicare wages and FICA/ income tax/backup withholding taxes reflected on the Forms 2504 series, as applicable.
- (3) The second step is to create a "full" closing record. The IRC 3402(d) credit and all closing record items will be entered on this "full" closing record. The "Partial" box will not be checked. Enter ARDI, Disposal Code, Examiner's Time, Technique Code, and Examiner's Name. The adjustment on the "full" closing record will reflect only amounts related to the IRC 3402(d) credit-allowed portion. For the transaction code, enter the amount of tax credit allowed based on valid Forms 4669 as a "309" (or "301" if interest is to be assessed) and the corresponding reduction in the income tax withholding or backup withholding in the reference number fields. Other sections to complete include related return information, principal issue codes, and employment tax/GE (under additional data).
- (4) Examiners should follow the instructions provided in IRM 4.23.10.15.3 to prepare Forms 4666, 4668, and 2504 series, as applicable, when IRC 3402(d) applies.

4.70.14.4.8
(11-24-2023)

**Final Case Review and
Closing to Your Manager**

- (1) Prior to closing the case to the group manager, examiners should ensure that:
- a. There is sufficient time remaining on the statute of the return to close the case or that appropriate actions were taken to close with less than the required amount of time. (See IRM 4.70.14.5(2), Managerial Review and Case Closure.)
 - b. The results of the examination have been communicated to the taxpayer and is documented in the case file. See IRM 4.70.14.4.1, Closing Conference and IRM 4.70.14.4.3, Generating a Closing Letter.
 - c. All the relevant workpapers, returns, forms, letters, etc., are located in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention. See IRM 4.70.14.4.2, Finalizing and Organizing Workpapers and the CCR.

Note: Lead cases should contain a complete set of workpapers. Subsequent and prior year returns do not require a complete set of workpapers if closing with the same disposal code as the lead.

- d. Purge all unnecessary or duplicate workpapers.

Note: Only the most recent version of the file needs to be retained in the RCCMS record.

- e. Ensure that all the documents located in RCCMS are complete
- f. Ensure that all correspondence files are the signed and dated copies and have all the enclosures embedded in the file.
- g. Fraud was appropriately considered, and the conclusion documented.
- h. Penalties were appropriately considered, and the conclusion(s) documented.

Note: Many penalties require written documentation of managerial involvement in any decision to assess penalties.

- i. Any required referral form has been completed. (F5666 or _____) EP: Form 6212-B or 6533 EO:
- j. The issue code data grid was properly completed. See IRM 4.70.14.4.4, Completing the Issue Code Data Grid.
- k. All the fields in the RCCMS closing record of each year that was under examination is complete. Ensure that:

- “Validate for: Close” in RCCMS has been selected and all required fields highlighted in red font have been completed.
- The “all electronic case” box is checked, unless there is a paper file.
- The statute of limitations reflected in the RCCMS Compliance Activity, General tab (1 of 2), is completed and is correct.

- l. The time shown on the RCCMS closing record reconciles to the total time on the Case Chronology Record (CCR).
- m. EP and EO: For declaratory judgement cases(unagreed) ensure that.

- All the files of the administrative record and index have been saved in RCCMS
- All the files are listed on the administrative record index
- The administrative record files are properly named

- n. Any project checksheet is complete.

- (2) Request timely closure through RCCMS and immediately mail any paper case file to the manager using Form 3210, document transmittal. See IRM 4.70.11.6, Time Frames for Conducting an Examination, for case closing time standards.

4.70.14.4.9
(11-24-2023)

Non-Examined Closures

- (1) Non-examined closures of returns are known as “short closures.” Non-examined closures include:
 - Deletions of AIMS records or accounts
 - Surveys of returns see IRM 4.70.12.3.11 for procedures on deciding to survey a return as well as procedures to process closure.
- (2) Specific examples of reasons to delete AIMS records or accounts:
 - AIMS records established in error.
 - Duplicate AIMS NMF records, after establishing an AIMS MF record for the same return.

4.70.14.4.9.1
(11-24-2023)

Deleting AIMS Accounts

- (1) Use Form 10904 to delete an AIMS account on MF and NMF.
- (2) AIMS deletions are generally NMF closures. Surveys are generally MF closures.
- (3) You must justify and document an AIMS deletion in the “Reason for Request (Narrative)” block of Form 10904.
 - Attach available documentation to support the reason for deletion.
 - Attach AMDISA prints no more than 30 days old.
 - Leave no question that the AIMS deletion is warranted.
- (4) Some MF accounts may be deleted, such as a filed return ordered or classified but not received and you did not start the examination.
- (5) Use one of the two following DCs for AIMS deletions at the group level:

- DC 99 (801), Information Report and Miscellaneous.
- DC 33 (901), Error Accounts with no Returns.

4.70.14.4.9.1.1
(11-24-2023)

Disposal Code 99 and Disposal Code 33

- (1) Use DC 99 (801) when you:
 - Convert an examination record from NMF to MF.
 - Change from one MFT to another.
 - Change from one tax period to another.
 - Transfer from one TIN to another (such as a parent TIN).
- (2) Use DC 33 (901) when you:
 - Correct a keypunch error.
 - Correct an error account.
 - Correct an incorrect TIN.
 - Didn't start the examination because the t/p isn't liable for filing a return.
 - Opened a claim in error because it wasn't timely filed.
 - Established a MFT 67 non-return unit on MF or NMF, but didn't do the examination.

4.70.14.4.9.2
(11-24-2023)
Form 10904 Package

- (1) To request an AIMS account deletion, prepare an electronic Form 10904 package:
 - Form 10904 (first page only), with signed explanation by the requestor and the group manager
 - **Note:** For DC 33, you also need the area manager's signature
 - AMDISA print for module being deleted from AIMS.
 - AMDISA print for corresponding module established on MF.
 - TXMODA.
 - Supporting documentation.
- (2) When the Form 10904 package is complete:
 - Upload it into RCCMS.
 - Close to your TE/GE Closing Unit in status code 56.
 - The Closing Unit accepts the case using current practice.

4.70.14.4.10
(11-24-2023)
Disposition of IRC 501(p) Cases

- (1) These procedures provide information for examiners on closing cases involving organizations that received a designation as a terrorist organization as described in Internal Revenue Code Section (IRC) 501(p), enacted as part of the Military Family Tax Relief Act of 2003 (P.L.108-121). The IRS announces the designations in the Internal Revenue Bulletin and they apply to organizations designated as supporting or engaging in terrorist activity or supporting terrorism under the Immigration and Nationality Act, the International Emergency Economic Powers Act, or the United Nations Participation Act of 1945.

4.70.14.4.10.1
(11-24-2023)
Suspension of Exemption for IRC Section 501(p) Organizations

- (1) IRC 501(p)(1) suspends the exemption from tax under IRC Section 501(a) with respect to any organization described in IRC 501(p)(2).
- (2) Under IRC 501(p)(3), suspension of an organization's tax exemption begins on the date of the first publication of a designation or identification with respect to the organization, as described above, or the date on which IRC 501(p) was enacted, whichever is later. This suspension continues until all designations and identifications receive a subsequent rescission under the law or Executive Order, under which such designation or identification was made.
- (3) Under IRC 501(p)(4), the IRS doesn't allow any deduction for a contribution to an organization during the entire period the organization's tax exemption receives a suspension under IRC Section 501(p).

Example: No charitable contribution is allowed under IRC 170 (relating to the income tax).

- (4) An organization with a suspended exempt status under IRC Section 501(p) doesn't file Form 990, Return of Organization Exempt From Income Tax, but is required to file the appropriate federal income tax returns for the taxable periods beginning on the date of the suspension. The organization must continue to file all other appropriate federal tax returns, including employment tax returns, and may also have to file federal unemployment tax returns.
- (5) If an organization is included on the Treasury Department's Office of Foreign Assets Control (OFAC) Specially Designated Nationals (SDN) list at <https://>

www.treasury.gov/resource-center/sanctions/Pages/default.aspx, and is “suspended” under IRC 501(p), there are several implications, including:

- a. Contributions to the organization become illegal.
- b. Contributions to the organization lose their deductibility.
- c. The organization’s assets are frozen.
- d. The Federal Bureau of Investigation or other federal agency will seize and hold the organization’s records; and
- e. No organization or person may challenge a suspension in any administrative or judicial proceeding relating to the federal tax liability of such organization.

4.70.14.4.10.2
(11-24-2023)

**Processing a IRC
Section 501(p)
Organization Identified
During Audit**

- (1) When a case is assigned to an examiner involving an organization whose tax-exempt status has been suspended under IRC Section 501(p) (Status Code 98 in the EO Business Master File (BMF)), or is suspended under IRC Section 501(p) during the audit, the examiner will cease all exam actions and notify his/her manager. After consulting with the manager, the examiner will:
 - a. Close the case from the group using either Disposal Code (DC) 36, Surveyed After Initial Contact; DC 31, Survey Before Assignment, or DC 32, Survey After Assignment, depending on the status of the case within the group, and
 - b. Identify the case as an IRC Section 501(p) closure and check the Mandatory Review section in the 3198-SH checksheet in RCCMS.
- (2) Mandatory Review staff will mail Letter 5324, IRC Section 501(p) Closing Letter, to the taxpayer.

4.70.14.4.10.3
(11-24-2023)

**Procedures for Updating
the Business Master File**

- (1) The EO R&A Anti-Terrorism Coordinator is responsible for:
 - a. Serving as the liaison with IRS-CI.
 - b. Maintaining an archive of all Potential Terrorism Connection Checksheets (PTCC). (i.e., Form 14503)
 - c. Extracting the OFAC SDN list from its website into a spreadsheet and distributing the spreadsheet to internal stakeholders.
 - d. Reviewing and evaluating the completed (PTCC) checksheets
 - e. Forwarding these checksheets to:

- I. Manager for review
- II. Originator for further clarification
- III. IRS-CI for cases identified with a risk of terrorism

- (2) The EO Examinations Fraud Suspense Coordinator (FSC) will:
 - a. Determine whether the designated organization has an established AIMS Master File or Non-Master file audit record and notify the EO R&A designated employee if no audit records exist.
 - b. Assist and coordinate with EO R&A to update the BMF to Status 98, Terrorist Organizations, and to update the filing requirement and employment codes.
 - c. Monitor and receive a Lexis Alert when an IRC 501(p) announcement is published in the Internal Revenue Bulletin.
 - d. Alert all EO Exam managers of the announcement via secure email.

- (3) An outstanding balance due on the suspended organization's tax module will preclude the EO R&A designated employee from updating the organization to BMF status 98. The EO R&A designated employee will coordinate with the FSC to determine whether the outstanding balance can be abated. The FSC will:
 - a. Determine whether the IRS is in a collection action to satisfy existing balances, or in other investigative action.
 - b. Coordinate with IRS Criminal Investigation Division to determine whether OFAC will release the organization's assets to satisfy existing balances.
 - c. Provide assistance to the Exam field managers in preparing an email for the abatement of any tax liability.
 - d. Prepare both a memo authorizing the Service Center to abate tax and interest due, and a Form 3198-A for the Ogden Service Center. e. Forward both the memo and Form 3198-A to the Mandatory Review (MR) Examination Manager for review and approval.
- (4) The Mandatory Review (MR) Examination Manager will:
 - a. Review and approve the abatement package.
 - b. Discuss the abatement issues with the EO Examinations or GE Director.
- (5) If the EO Examinations Director or GE Director concurs with the abatement, the Mandatory Review (MR) Examination Manager will:
 - a. Email Submission Processing Programs Division (SPP) manager of Business Systems Plan in Ogden, to advise him/her that the abatement package will be forthcoming.
 - b. Alert the FSC.
- (6) Once the tax liability's abated, the organization's BMF entity record can then be updated to Status 98, allowing the EO R&A designated employee to change the filing requirements and remove the entity as an exempt organization.

4.70.14.4.11
(11-24-2023)
EO Special Situations

- (1) Certain situations may arise during an examination. This section covers in depth closing procedures.

4.70.14.4.11.1
(11-24-2023)
**EO Declaratory
Judgement Cases**

- (1) With respect to the initial or continuing qualification of an organization as exempt from federal income tax, Section 406 of the PATH Act expanded declaratory judgment rights under IRC 7428 to all IRC 501(c) organizations regardless of paragraph and to IRC 501(d) organizations.
 1. As a result of these expanded rights, examiners may not modify a tax-exempt status (such as modifying a recognized IRC 501(c)(4) exemption to an IRC 501(c)(7)).
 2. Rather, the revocation procedures in place for IRC 501(c)(3) organizations have been expanded to all IRC 501(c) and (d) organizations.
 3. Thus, the IRS must revoke (or treat as a revocation for declaratory judgment purposes) any organization that no longer qualifies under the IRC code section for which tax-exemption was granted or self-declared.
 4. A revoked organization is free to apply or reapply for recognition of exemption under a different IRC section.
- (2) Revocations or disqualifications of organizations exempt under other than IRC 501(c)(3), IRC 501(c)(9) and IRC 501(c)(17), will not have an effective date.

These organizations will be revoked (or treated as revoked in the case of disqualifications) for the specified tax years they failed to qualify.

- (3) Declaratory judgment rights also applies to disqualifications of organizations described under IRC 501(c)(12) or IRC 501(c)(15) that fail their respective 85 percent member income test or gross receipts test for specified tax years. These cases will be treated as a revocation for declaratory judgment purposes for the failed tax years only.
- (4) IRC 7428 continues to apply to IRC 501(c)(3) organizations the same way it did prior to the PATH Act when proposing:
 - A loss of tax-exempt status.
 - Adverse reclassification of an organization's foundation status for IRC 501(c)(3) organizations.
- (5) Before closing a declaratory judgment case, refer to IRM 4.70.14.2.4.1, EP & EO - Declaratory Judgment and the Administrative Record.
 1. All declaratory judgment cases require an administrative record.
 2. Unagreed declaratory judgment cases also require a completed index to the administrative record.
 3. The review function or Appeals will issue 90-day FADL for these cases, which are subject to review by the U.S. Tax Court.

4.70.14.4.11.2

(11-24-2023)

EO Automatically Revoked Organizations

- (1) This subsection provides instructions for closing examinations where the organization was automatically revoked under IRC 6033(j).
- (2) An automatic revocation is reflected in the status code field of the EO BMF as "97".
- (3) Automatic revocation is effective for tax periods beginning after 2006.
 1. Generally, a status 97 can take one to six months to post after the passage of the third non-filed due date.
 2. Ogden Campus will post a status 97 in the EO BMF even if an organization is under examination.
 3. You can research TEOS for automatically revoked organizations.
 4. Organizations in status 97 receive their CP120A notice from Campus within two weeks after the IRS sends the notice. See Understanding your CP120A Notice for additional information.
 5. Generally, the date of the CP120A notice is the same date as the "Revocation Posting Date" in TEOS.
 6. If you secure a delinquent annual information return by the third due date, expeditiously follow delinquent return procedures.
 7. Wait until either the delinquent return posts or status 97 posts, whichever comes first in order to determine your next step.
 8. If the secured return posts a TC 150, continue the examination under normal examination procedures.
 9. If the secured return fails to post, and status 97 posts instead, survey the case as stated in the next paragraph.
- (4) If a status 97 posts, survey the case. Sample language to input in the Remarks section in the RCCMS closing: ORGANIZATION AUTO-REVOKED BY OGDEN CAMPUS WHILE OPEN FOR EXAMINATION by reason of IRC 6033(j), the exempt status of the organization has been auto-revoked by the

Ogden Service Center for failing to file annual EO information returns or Form 990-N for three consecutive tax years ending [20YYMM, 20YYMM and 20YYMM]. EO BMF Status 97 posted on [date] while the EO returns were open for examination. The Ogden Service Center issued Notice CP120A to the taxpayer on [date**]. The effective date of auto-revocation is [due date of return for 3rd tax year]. Because the organization is no longer tax-exempt this examination has been terminated and the returns for the years indicated must be surveyed.

Note: Use Project Definer Codes (PDC) 1160, Assign to the Initial Primary Return or 1161, Assign to Additional Return Pick-ups.

Note: See IRM 4.70.12.3.11, Survey Procedures for all other survey procedures.

- (5) If there is a compelling reason to continue the examination after a status 97 has posted, submit a request to the Director, EO Examinations (or their delegate). Examples of reasons to continue an examination include:
 - An earlier effective date of revocation needs to be proposed based on the facts and circumstances.
 - A survey might jeopardize a fraud case.
 - The examination is for a claim not yet resolved.
- (6) For IRC 501(c)(12) and 501(c)(15) organizations, the posting of a Form 1120 series tax return in lieu of Form 990, is considered a filed return satisfying the filing requirement for automatic revocation purposes.
- (7) A substitute for return (SFR) with a TC 150 is not a filed return for automatic revocation purposes.
- (8) Employment tax returns and Chapter 42 tax returns are not subject to these procedures.
- (9) Surveys of auto-revoked organizations are not subject to mandatory review.

4.70.14.4.11.3
(11-24-2023)
**EO Closing Agreement
Cases**

- (1) Closing agreements are used to resolve matters that cannot be resolved through normal compliance procedures. Closing agreements encourage future voluntary compliance.
- (2) T/Ps must meet certain requirements to qualify for a closing agreement. See procedures for closing agreements in IRM 4.70.14.2.1.3.2, EO – Exempt Organizations Examinations Closing Agreements.
- (3) T/Ps may request closing agreements, either during the examination, or by voluntarily contacting the Area Office outside the context of an examination (normally referred to as “walk-in” closing agreements). Walk-in requests must be forwarded to the EO Examinations Closing Agreement Coordinator (Attn: EOCAC) in Mandatory Review.
- (4) Examined closing agreements are closed with DC 12 (104) unless a higher priority disposal code applies.

4.70.14.4.11.4
(11-24-2023)

EO Form 990-N Filer Cases

- (1) Follow normal examination closing procedures.
- (2) To recognize a Form 990-N filing on BMFOLT, refer to the 4th and 5th digits of the DLN containing "8" and "9" respectively, or by checking online at the select check site, <http://www.irs.gov/app/ePostcard>.

Note: Form 990-N is not a "return" even if it creates a TC 150. It doesn't start the period of limitations for assessment. See Treas. Regs. 1.6033-6(c)(3) and (4).

- (3) If you determine that an organization was in fact required to file an annual information return, follow delinquent return procedures in IRM 4.70.13.3.9.
- (4) A dummy Form 990 must be in the case file. See Exhibit 4.70.14-39, EO Form 4844 Sample. Refer to IRM 4.70.13.9.1.1(8) for details on "dummy" Form 990.

4.70.14.4.11.5
(11-24-2023)

EO Inadequate Records

- (1) Close the case using DC 52 (214), Change due to Correction of Operations, and include an explanation about the inadequate records notice on the attached Form 886-A. Close case to the Closing Unit.

4.70.14.4.11.6
(11-24-2023)

EO Not Required to File Form 990

- (1) If you determine a non-filer was in fact not required to file a Form 990, or files Form 990-N:

- Prepare Form 2363-A to change the Form 990 filing requirement. This prevents an accidental auto-revocation.
- You can close the examination as an NMF account. Use a dummy return or a filed Form 990-N in Exhibit 4.70.14-39, EO Form 4844 Sample.

- (2) Organizations not required to file a Form 990 include:

- Subordinate organizations under a group ruling included in a group return.
- Churches, their integrated auxiliaries, and conventions or associations of churches. Rev. Proc. 96-10.
- Certain IRC 527 political organizations. Rev. Rul. 2003-49.
- Governmental units and affiliates of governmental units. Treas. Reg. 1.6033-2(g)(1) as supplemented by Rev. Proc. 95-48.
- Any domestic, foreign and U.S. possession organization with annual gross receipts normally not more than \$50,000 (\$25,000 for tax years beginning prior to 2010). Such organizations must file Form 990-N if it chooses not to file Form 990 or 990-EZ. Rev. Proc. 2011-15.

Exception: IRC 509(a)(3) supporting organizations are required to file Form 990 or 990-EZ, unless gross receipts are normally not more than \$5,000 supporting an IRC 501(c)(3) religious organization. Such an organization must file Form 990-N.

- (3) In all other circumstances, establish Form 990 returns on AIMS Master File before closing the case to the EO Closing Unit.
- (4) If you determine a non-filer exempt from filing Form 990 in the EO BMF was in fact required to file a Form 990, issue a 30-day letter and a report of examination explaining the filing requirement. Solicit the organization's agreement on

Form 6018, at Line 10. This type of status change is not subject to declaratory judgement rights. The organization can protest the proposed change to Appeals if it disagrees. If the t/p fails to respond to your proposal, your 30-day letter becomes final and the organization must file Form 990.

4.70.14.4.11.7
(11-24-2023)
**EO Unable to Locate
Cases**

- (1) Before closing a case as unable to locate, follow the procedures outlined below for locating the t/p.
- (2) If you can't make contact, research public records about the dissolution of the organization.
- (3) If you are unable to locate the t/p, or the initial contact letter is returned by the Post Office as undeliverable:
 1. Inspect any correspondence in the case file for any change of address noted by the U.S. Postal Service.
 2. Review the case file for possible sources of information that may lead to the t/p's whereabouts.
 3. Check to see if the organization has a website.
 4. Check the current address via IDRS research. Extract the latest address from the most recent return posted to master file.
 5. Use Accurant™ to find the current address and telephone number for the organization, officer, director, or trustee.
 6. Check telephone and city directories for names and addresses of officers, directors, or trustees and the organization.
 7. Check Internet resources for possible leads.
 8. Request the most recently filed return to identify the current officers or power of attorney (POA).
- (4) Follow these additional steps if the preceding steps are unsuccessful:
 1. Contact third parties such as current or former employees or return preparers.

Caution: Be sure to follow all third-party procedures in Treasury Regulation 301.7602-2. See IRM 25.27.1, Third Party Contacts.
 2. If the organization is a subordinate of a group ruling, contact the parent of the group ruling for the names and addresses of officers and trustees, and review the reported financial data.
 3. Contact the state agency that processes the records of incorporation. Obtain the names and addresses of the statutory agent or officers listed on the Articles of Incorporation.
 4. Contact the state agency that processes charitable registration or charitable solicitation information sheets and applications for liquor or gaming licenses. Obtain the names and addresses of the statutory agent or officers listed on these information sheets, liquor or gaming licensees.
 5. Request the determination file containing the original application for exemption Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, or Form 1024 from the EO Determinations Record Unit in Cincinnati. Provide the name, address and EIN for the organization in the request.
 6. Contact the Post Office for a current address using Form 4759, Address Information Request - Postal Tracer.

- (5) Although not required in TE/GE, you can use Form 1900-B, Unlocatable Taxpayer Checksheet, as a worksheet.
- (6) If you can't locate an authorized contact after following the applicable procedures above, send initial contact letters by certified mail to the organization's last known address and the last known address of officers, as reported to the state or to the Service, whichever was most recently reported.
- (7) Put a due date on the letters, such as 30 days after the date of the letter.
- (8) Refer to Exhibit 4.70.14-17, EO Unable-to-Locate Scenario Guidance Table, for closing procedures depending on the outcome of your attempts to locate.

4.70.14.4.11.8
(11-24-2023)

**State Notification of EO
Examination Results**

- (1) The IRS is required to disclose certain examination results and in some cases, the proposed assessments or revocations of specific types of exempt organizations to state authorities under IRC 6103(d) and IRC 6104(c). This section provides the authority, the procedures for examiners, the type of information subject to lawful disclosure, and the recipient of the lawfully disclosable return information.
- (2) Also refer to IRM 7.28.2, Information Disclosure to State Officials under IRC 6104(c).

4.70.14.4.11.8.1
(11-24-2023)

**IRC 6103(d) Disclosures
and Examiner
Procedures**

- (1) The IRS is permitted to disclose certain tax return information for taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, 52, and subchapter D of chapter 36; see IRC 6103(d)(1). Disclosure is limited to those entities charged under state laws with the responsibility to administer any state tax law:
 - The state agency.
 - Body or commission.
 - Its legal representative.
- (2) IRS disclosure may be made only:
 - a. In response to a written request by the head of the agency, body or commission.
 - b. For the purpose of, and extent necessary, in the administration of such tax laws.
- (3) The EO Exam Director staff is responsible for updating the state list and sharing the updated list with examiners.
- (4) "IRC 6103(d) information" includes completed examination report forms for income tax and employment tax changes, with schedules or other attachments.
 - Form 4549, Income Tax Examination Changes • Form 4549-A, Income Tax Examination Changes (Unagreed and Excepted Agreed)
 - Form 4667, Examination Changes - Federal Unemployment Tax
 - Form 4668, Employment Tax Examination Changes Report
 - Form 4668-B, Report of Examination of Withheld Federal Income Tax for Withholding Reported on Form 1099 and Form W-2G

Note: Do not include secured delinquent income tax or employment tax return as IRC 6103(d) information.

Caution: No employee is authorized to disseminate or disclose returns or return information to another governmental unit, agency or other person, except as provided by law, according to the procedures in the IRM and in IGM.

- (5) Use the procedures below for an organization located in one of the approved states.
 - a. Identify potential IRC 6103(d) case file, which is a case file that contains IRC 6103(d) information whether or not it's subject to mandatory or special review.
 - b. Prepare 3198-A, TE/GE Special Handling Notice, and note in "Other Instructions" - "[990-T adjustment or Employment Tax adjustment] - potential 6103(d) disclosure to State."
 - c. The disposal codes for AIMS and RCCMS consistent with a potential IRC 6103(d) closing include:

- DC 03 (102), Agreed Tax Change.
- DC 10 (604), Unagreed - Without Protest.
- DC 12 (104), Closing Agreement.

Note: You aren't required to determine which states and designated state agencies should receive IRC 6103(d) information. The TEGE Closing Unit makes that determination after it receives the case. The TEGE Closing Unit is responsible for printing, suspense, and proper disposition of IRC 6103(d) information to the proper state authority through the proper channels.

4.70.14.4.11.8.2
(11-24-2023)

**IRC 6104(c) Disclosures:
Proposed and Final
Revocations**

- (1) Refer to IRM 7.28.2, Information Disclosure to State Officials Under IRC 6104(c), for detailed guidance.
- (2) The Pension Protection Act of 2006 (PPA) significantly expanded the scope of information available to these agencies and gave the IRS the ability to provide this information much earlier in the examination process. PPA Section 1224 amended IRC 6104(c) which governs disclosures about IRC 501(c)(3) organizations to state tax or charity agencies.
- (3) The legislation included a provision requiring recipients of taxpayer information under IRC 6104(c) to meet comprehensive technical, procedural and administrative federal safeguard requirements under IRC 6103(p)(4).
- (4) Prior to the PPA, EO Examinations provided IRC 501(c)(3) organizations final revocation notifications to both state tax or charity agencies in all fifty states. EO stopped automatic notifications on August 17, 2007.
- (5) Agencies must now meet certain requirements to be eligible to receive disclosures under IRC 6104(c),
 - a. They must submit a Safeguard Procedures Report (SPR) and be approved to receive the information.
 - b. State agencies must enter into a memo of understanding with the IRS:

- Outlining permitted disclosure and the use of information.
- Committing to the statutory safeguard responsibilities.

(6) Any 501(c)(3) organization (both public charities and private foundations) or disqualified persons located in these states fall under these provisions. Examiners in other states need to know these procedures for assigned cases not in the taxpayer's geographic area.

(7) List of States Eligible for IRC 6104(c) Disclosure:

Disclosure Code Section	Approved States	Types of Adjustments	Information to be Included	Send Information to
IRC 6104(c)	CA DC KY NE PA SC WV	<ol style="list-style-type: none"> 1. Proposed and final revocations and terminations of IRC 501(c)(3) organizations 2. Proposed and final notices of deficiency for Chapter 41 and 42 excise taxes imposed on IRC 501(c)(3) organizations and "Taxable Persons" 	30-Day Letter, Form 6018, RAR, Form 4883 (Chap 41/42)Final Adverse Determination Letter (FADL), Statutory Notice of Deficiency (Chap 41/42)	<i>*TE/GE-EO-Field Reports</i>

You can refer to IRM 7.28.2, Information Disclosure to State Officials Under IRC 6104(c), for guidance.

Note: EO Exam Director's Staff is responsible for updating the state list and giving the updated list to the field.

- (8) For an IRC 501(c)(3) organization located in one of the approved states, the examiner will send the 30-day proposed revocation letter and RAR to the taxpayer per current group closing letter procedures. Hold the case for 30 days.
- (9) Examiner will prepare and send a package to the electronically to: **TE/GE-EO-Field Reports* with copies of the following:
- 30-day letter.
 - Form 6018, Consent to Proposed Adverse Action.
 - RAR.
 - Form 990 for all applicable tax periods.
- (10) Note on the case chronology IRC 6104(c) package for [state(s)] was sent to the **TE/GE-EO-Field Reports* on MM/DD/YYYY).

- (11) Prepare a 3198-A, TE/GE Special Handling Notice, indicating the case involves a state agency authorized to receive disclosures under IRC 6104(c). The 3198-A lets EO Examinations Mandatory Review know that this is a case subject to these special disclosure provisions.
- (12) The EO Exam Director's Staff:
 - a. Sends the proposed revocation package to the appropriate state agency using Letter 6401, Disclosure to State Agencies under IRC Section 6104.
 - b. Keeps the appropriate records and notifies the Disclosure Office to account for the disclosures under IRC 6103(p)(3).
 - c. Coordinates with EO MR and tracks the progress of the proposed revocation case (i.e., agreed or unagreed).
 - d. Will email each group manager a monthly report showing open cases in their groups in the eligible states, as well as recent closures that may be subject to disclosure. This is an internal control tool to allow managers to verify that IRC 6104(c) procedures are followed, when needed.
- (13) Frontline Managers and Area Manager Monthly Briefings will also include a new section on IRC 6104(c) Disclosures. Managers should report on any cases subject to 6104(c) Disclosure.
- (14) If the issue is **agreed or unagreed without protest**:
 - a. EO MR prepares a 90-day letter (final adverse determination letter) and sends it to the taxpayer.
 - b. The EO Exam Director's Staff secures a copy of the 90-day letter from EO MR and sends it to the appropriate state agency.
- (15) If the issue is **unagreed with protest**:
 - a. EO MR sends it to Appeals.
 - b. The EO Exam Director's Staff tracks the case progress and coordinates with the Appeals Office.
- (16) The 3198-A stays attached to the unagreed case file in order to alert the Appeals office the case involves an unagreed proposed revocation in a state which is eligible to receive disclosures under IRC 6104(c).
- (17) The EO Exam Director's Staff notifies the appropriate state agency whether or not the proposed revocation is upheld using Letter 6400, Disclosure to State Agencies under IRC Section 6104 - Revocation not Sustained.

4.70.14.4.11.8.3
(11-24-2023)

**IRC 6104(c) Disclosures:
Chapters 41 and 42
Assessments**

- (1) In addition to disclosure of proposed and final revocations of IRC 501(c)(3) organizations, approved state tax and charity agencies are also eligible to receive notices of proposed and final deficiencies of tax imposed under IRC 507 or Chapter 41 or 42 against an organization, or its disqualified persons. See IRC 6104(c)(1)(B) and Treas. Reg. 301.6104(c)-1(c)(2). These assessments include:
 - Initial and second tier taxes on private foundations under IRC 4940 through IRC 4945 for net investment income, self-dealing, failure to distribute income, excess business holdings, investments that jeopardize charitable purpose, and taxable expenditures.
 - Initial tax on certain supporting organizations and donor advised funds for excess business holdings under IRC 4943.

- IRC 4911 tax on excess lobbying expenditures by public charities that have elected to be subject to IRC 501(h) regarding expenditures to influence legislation.
 - IRC 4912 tax on excess lobbying expenditures that result in loss of IRC 501(c)(3) tax-exempt status.
 - IRC 4955 tax imposed on any amount paid or incurred by a IRC 501(c)(3) organization that participates or intervenes in any political campaign on behalf of, or in opposition to, any candidate for public office.
 - IRC 4958 initial taxes on disqualified persons and organization managers of IRC 501(c)(3) organizations that engage in excess benefit transactions.
 - IRC 4959 tax imposed on hospitals organizations for failing to meet the requirements of IRC 501(r)(3).
 - IRC 4965 taxes related to prohibited shelter transactions.
 - IRC 4966 taxes on taxable distributions by sponsoring organizations maintaining donor advised funds.
 - IRC 4967 taxes on advice to have sponsoring organizations make distributions resulting in more than incidental benefits.
- (2) If the case is located in one of the approved states, follow the procedures outlined below.
 - (3) Prepare and send a package to **TE/GE-EO-Field Reports* with copies of the following:
 - 30-day letter.
 - Form 870-E, Waiver of Restrictions on Assessment and Collection of Deficiency and Acceptance of Overassessment.
 - RAR.
 - (4) Note on the case chronology IRC 6104(c) package for [state(s)] was sent to the **TE/GE-EO-Field Reports* on MM/DD/YYYY).
 - (5) Notify **TE/GE-EO-Field Reports* either that:
 - a. Issue is agreed.
 - b. Issue is disagreed and being forwarded to EO Compliance & Review Mandatory Review. Include a Form 3198-A Special Handling checksheet in RCCMS to alert EO Compliance & Review Mandatory Review that this case is subject to the disclosure provisions of IRC 6104(c).
 - (6) The EO Exam Director's Staff sends the Chapter 41/42 deficiency package to the appropriate state agency using Letter 6402, Disclosure to State Agencies under IRC Section 6104 of Proposed Tax Deficiency. The EO Exam Director's Staff keeps the appropriate records and notifies the Disclosure Office to account for the disclosure under IRC 6103(p)(3).
 - a. If the Chapter 41/42 issue goes disagreed, the EO Exam Director's Staff coordinates with EO Compliance & Review Mandatory Review and Appeals and tracks the progress of the case.
 - b. For cases sent to the Appeals office, include a 3198-A Special Handling checksheet in the RCCMS case file to alert them that the case involves an disagreed issue in a state which is eligible to receive disclosures under IRC 6104(c).

- c. The EO Exam Director's Staff ensures the appropriate state agency is notified as to whether the proposed assessment is upheld using Letter 6399, Disclosure to State Agencies under IRC Section 6104 of Proposed Tax Deficiency – Follow-Up Status.

4.70.14.5
(11-24-2023)

**Managerial Review and
Case Closure**

- (1) All completed case files go to the group manager for closing.
- (2) Group managers must:
 - a. Review the case within 10 calendar days after receipt from the examiner in RCCMS and/or paper for concurrence with the conclusions reached and procedural accuracy.

- Verify statute date – see IRM 4.70.12.3.7, Statute of Limitations
 - Ensure required case processing documents are properly completed and included in RCCMS
 - Ensure all relevant case related documents received from the taxpayer/POA are in the RCCMS Office Documents folder, and the case file documents are organized using the applicable TE/GE RCCMS Naming Convention.
 - Ensure the required sections in the “Closing Record” in RCCMS are accurate.
 - b. Promptly return the case to the examiner if, upon review of the case file, the manager determines that additional examination or procedural work must be completed.
 - c. Ensure documentation of any penalties requiring manager approval was completed. IRC 6751 requires written documentation of your involvement in any decision to assess most penalties. Document your interaction on Form 9984. The following penalties do not require your approval:

- IRC 6651, Failure to File or Failure to Pay - except where fraud is involved
 - IRC 6654, Failure to Pay Estimated Tax for Individuals
 - IRC 6655, Failure to Pay Estimated Tax for Corporations
 - Any other penalties automatically calculated through electronic means.
 - d. Review and mail the appropriate closing letters to the taxpayer and any designated representatives. Upload a copy of the signed closing letter to the RCCMS office documents folder.
 - e. If a referral is warranted, review referral documents the examiner prepared and forward to the applicable recipient. See IRM 4.70.11.14 - Collateral Examinations & Referrals.
 - f. Update the case chronology to reflect group manager review of required case processing documentation and approval of examined case closure. It should also reflect the date the managerial review was completed, date the closing letters were mailed and any other actions taken.
 - g. For TEB, Notify the examiner that the manager has concluded the case review so the examiner can return records to the issuer or conduit borrower.
 - h. Close case to the appropriate function through RCCMS, and mail paper file if applicable. See IRM 10.5.1, Privacy Policy, and IRM 10.5.1.6.9.3, Shipping, for procedures when shipping PII.

Function case is closed to	RCCMS codes for closure	Mail paper file to
EO Mandatory Review	PBC - 400 SBC - 11113 EGC - 7994 Status Code: 20	Internal Revenue Service EO Mandatory Review MC: 4920 DAL 1100 Commerce St. Dallas, Texas 75242
Closing Unit for EO	PBC - 400 SBC - 11115 EGC - 7997 Status Code: 51	Internal Revenue Service EO Closing Unit MC: 4980 DAL 1100 Commerce St. Dallas, Texas 75242
EP Mandatory Review	PBC - 400 SBC - 12113 EGC - 7694 Status Code: 20	See Employee Plans Examination Exhibits – Contact Information
Closing Unit for EP	PBC - 400 SBC - 12115 EGC - 7697 Status Code: 51	See Employee Plans Examination Exhibits – Contact Information
ITG or TEB Technical	PBC - 400 SBC - 20011 EGC - 7271 for ITG Technical or 7211 for TEB Technical Status Code: 20	Contact the ITG & TEB Technical manager
Closing Unit for GE	PBC – 400 SBC – 20011 EGC – 7204 Status Code: 51	Contact the Closing Unit manager

- (3) For EO, close certain excepted-agreed cases directly to Mandatory Review. For example, examiner proposes a revocation to ABC Charity while conducting an examination of Form 990. The proposed revocation is unagreed without protest, but ABC agreed to additional unrelated business income tax by signing Form 4549 in the event its exemption is sustained. Because the agreed issue can't be finalized due to the pending revocation issue, the Form 990-T examination is excepted-agreed. Therefore, the Form 990-T case file will ride with the Form 990 file to Mandatory Review. Note that an open Form 990-T examination must be addressed as an alternative issue in a revocation RAR, whether agreed or unagreed.
- (4) Group managers must notify the receiving manager of the Closing Group or Mandatory Review / Technical, via secure email, that a short statute return is forthcoming. See IRM 4.70.12.3.7 for short statute control procedures. See the table below for actions to take when a case meets certain deadlines.

- a. The EP Mandatory Review group mailbox is **TE/GE-EP Exam - MR*. The EO Mandatory Review group mailbox is **TEGE EO Review Staff*.
- b. Advance written notification includes:

- The returns and years being closed
- Actual statute expiration date for each return
- The reason for the short statute condition
- The dates a statute extension was solicited
- The amount of tax and penalty for the short statute returns
- An explanation why a statute extension wasn't needed or wasn't executed after extension requests.

- (5) The group manager does the final review of cases before closing to Appeals, function specific closing unit, mandatory review or to the TE/GE Closing Group. Each recipient needs sufficient time for processing. See the table below for actions to take when a case meets certain deadlines:

Type of Case	Days left on statute at closing	Actions to take
Closing a valid unagreed protest to Appeals.	395 or more	Close to the TE/GE Closing Group, who sends the case to Appeals
Closing a valid unagreed protest to Appeals.	394 days or less	Secure a statute extension. If none secured, close as unagreed without protest.
Appeals returns a case for more work and it stays unagreed.	330 days or more	Return the case to Appeals.
Appeals returns a case for more work and it stays unagreed.	329 days or less	Secure a statute extension. If unable to do so, close as unagreed without protest. If secured, return the case to Appeals.
Closing an unagreed excise tax /income tax/worker classification case without protest.	270 days or more	Close to Mandatory Review or ITG Technical for preparation and issuance of the statutory notice of deficiency.

Type of Case	Days left on statute at closing	Actions to take
Closing an unagreed excise tax /income tax/worker classification case without protest.	269 days or less	Email the Mandatory Review or ITG Technical manager before closing, to discuss special handling instructions.
Closing an unagreed non-worker classification employment tax case without protest.	180 days or more	Close to the TE/GE Closing Group.
Closing an unagreed non-worker classification employment tax case without protest.	179 days or less	Email the TE/GE Closing Group manager before you forward them to the TE/GE Closing Group.
Appeals returns a case for more work and you secure agreement.	180 days or more	Close to the TE/GE Closing Group.
Closing an agreed case.	180 days or more	Close to TE/GE Closing Group.
Closing any case.	91 to 179 days	Email the TE/GE Closing Group manager before you forward them to the TE/GE Closing Group.

Type of Case	Days left on statute at closing	Actions to take
Imminent statute.	90 days or less	Group manager places a phone call to both the Manager of the Closing group and the Program Manager for CP&C Planning and Monitoring, to discuss special handling instructions. Review functions will not accept an imminent statute return until the area office has issued a statutory notice of deficiency notice to the taxpayer covering the imminent statute return. See IRM 4.70.12.3.7.11, for full discussion on imminent statute procedures.

- (6) For EO, imminent statute returns subject to a mandatory review, examiners assume the responsibility for preparing final closing letters including 90-day letters. Review functions will not accept an imminent statute return until the area office has issued a 90-day SNOD letter to the taxpayer covering the imminent statute return. An imminent statute return is a return with 90 days or less remaining until the statute expiration date.
- For instructions on preparing a final adverse determination letter (FADL), see IRM 4.70.14.6.9.2, Final Adverse Determination Letter Case Processing. The Area office will forward the two copies of the FADL to the Manager, FSL/ET (or designee) for signature. The Manager, FSL/ET (or designee) will return the signed FADLs to the area office for issuance via certified mail.
 - For instructions on preparing a SNOD, see IRM 4.70.14.6.6.1, SNOD Preparation and Issuance, and IRM 4.8.9, Statutory Notices of Deficiency.
 - For instructions on preparation of Letter 3523, Notice of Employment Tax Determination Under IRC section 7436. See IRM 4.8.10, Notice of Employment Tax Determination Under IRC 7436. The area manager signs and issues the SNOD / 90-day letter to the t/p via certified mail, Letter 3523, Notice of Employment Tax Determination Under IRC section 7436.
 - Arrange for pre-issuance review of the draft 90-day letter with TEGEDC. See Exhibit 4.70.14-41, EO Memorandum to TEGEDC, Memorandum to Area Counsel. Refer also to the TE/GE Area Counsel Directory.
 - Review functions are not available for pre-issuance review.

- f. With the group manager's approval, send the completed 90-day letter package to the appropriate area address in order to obtain the signatures on the 90-day letter. Include pre-addressed mailing envelopes with the package.

Note: TEGEDC's approval is not required for agreed declaratory judgment cases.

Reminder: TEGEDC generally requires up to 45 days to provide legal advice.

- g. If you had not issued a 30-day letter by the time a statute date is imminent, do the following:

1. Consult with Area Counsel whether to issue a substitute transmittal letter in lieu of a 30-day letter.
2. If the substitute transmittal letter is to be issued, determine the content, format, timing and issuance of the letter with Area Counsel.
3. Include in the transmittal letter why a standard 30-day letter can't be issued if so advised by Counsel.
4. Include the most recent Taxpayer Advocate Service (TAS) paragraph in the cover letter by reviewing TAS paragraphs in recently published 30-day letters.
5. Enclose your report of examination if so advised by Counsel.
6. Issue the substitute transmittal letter transmitting your report of examination, either before or on the day of issuance of the 90-day letter to which it pertains.
7. Close the imminent statute case to Mandatory Review for suspense and storage within five (5) business days of issuance of the 90-day letter.

4.70.14.6
(11-24-2023)

Mandatory Review

- (1) The primary objective of the mandatory review process is to ensure factual, procedural, and legal matters documented in a case file support the issues raised. The review process must be sufficient in depth to verify:
 - a. Correct technical conclusions
 - b. Accurate computations
 - c. Proper completion of all procedural requirements, including statute controls
 - d. Proper managerial involvement
 - e. Proper protection of taxpayer rights

4.70.14.6.1
(11-24-2023)

Responsibilities

- (1) Mandatory Review has the following responsibilities:
 - a. Review cases listed as subject to mandatory review. See IRM 4.70.14.6.2, Cases Subject to Mandatory Review below.
 - b. Prepare reviewer's memorandum, issued to examination managers when a case requires further documentation, correction or development.
 - c. Perfect and issue all final audit reports and 90-day letters, Statutory Notices of Deficiency, and Notice of Employment Tax Determination Under 7436.
 - d. Perform post-examination processing of certain special feature cases.

- e. TEB - Review issuer's protest to the Form 886-A, Explanation of Items, and the examiner's rebuttal before transferring to Appeals.

(2) Other Responsibilities of Mandatory Review Staff:

- a. Provide procedural and technical guidance to examiners and managers.
- b. Develop guidance such as IRMs, Alerts, and IGMs.
- c. Revise letters pertaining to TE/GE examination functions.
- d. Write and review other types of instructional materials and guidance that impact examinations.
- e. Collaborate with TE/GE Knowledge Management staff to provide presentations and technical support.
- f. Other function specific duties:

i. EP

- Perform duties related to EPCRS processing.

ii. EO

- Requests for Forms 1254, Examination Suspense Report.
- Coordination of closing agreements, technical advice requests and closing letters.
- Redactions of final audit reports, 90-Day Letters, and corresponding cover letters.

iii. TEB

- Review of documents for cases likely to close unagreed when the examiner has requested technical assistance.
- Coordination of technical assistance requests, TAMs and closing agreements.

4.70.14.6.2
(11-24-2023)
**Cases Subject to
Mandatory Review**

(1) The following TE/GE cases are subject to mandatory review: Unagreed exam closures without protest to Appeals requiring the issuance of:

- a. A Statutory Notice of Deficiency.

Note: Exam groups mail the 30-Day Letters for tax deficiencies. If the taxpayer files a protest to Appeals, the exam group closes the case directly to Appeals.

Note: MR sends the 90-Day Letters for SFRs and discrepancy adjustments.

- b. Letter 3523, Notice of Employment Tax Determination Under IRC 7436

Note: All AGREED worker classification cases will close directly to the closing unit for immediate assessment.

(2) Unagreed claim disallowances (full or partial) without protest to Appeals requiring the issuance of:

- a. Letter 905, Final Partial Claim Disallowance, or
- b. Letter 906, Final Full Claim Disallowance

(3) The following TE/GE function specific cases:

- a. EP

i. All plan disqualification (revocation or non-qualification) cases (unless resolved through a Delegation Order 8-3 (DO 8-3) closing agreement) where the taxpayer has not protested to appeals.

Note: Exam group issues the 30-Day letter package and processes protests to appeals. MR issues the 90-Day Letter packages for both types of plan disqualifications when the taxpayer does not protest to appeals.

ii. Unagreed discrepancy adjustments (Form 1040 or Form 1120) or other tax results (Forms 5330, 5329 or 990-T).

Note: Exam group issues the 30-Day letter package and processes protests to appeals. MR issues the 90-Day Letter packages.

iii. Non-Bank Trustee Investigations (NBTI) that are closed as a “No-Change” or “No Change with Deficiencies”.

b. EO/FSL

i. All revocations, any other loss of tax-exemption, and foundation re-classifications (even if agreed):

- Modifications of foundation status under IRC 509 (IRC 7428)
- Revocations, disqualifications of exemption of IRC 501(c) and (d) organizations (IRC 7428)
- Disqualification of a Status 36 organization
- Year to year disqualification of a IRC 501(c)(12) or (c)(15) organization

Note: Special Review prepares and issues 90-day letters in cases they reopen.

Note: The FSL/ET group manager approves all final adverse employment tax determinations (pending Counsel approval). The Reviewer date stamps and mails the Notice of Determination of Worker Classification (NDWC).

Note: Groups holding short statute cases prepare and issue the 90-day letters. The Area Manager approves and signs 90-day letters. Examiners work directly with Counsel on cases with imminent statute.

c. ITG - The ITG Technical Group is responsible for the review of unagreed cases without protest that require the preparation and delivery of a statutory notice of deficiency, full or partial claim disallowances and manager requests for review.

d. TEB -

- Issuer protests to Form 886-A, Explanation of Items, and the examiner's rebuttal even if documentation was previously reviewed in a prior technical review. See procedures in IRM 4.70.14.6.10.1, TEB – Final Adverse Determination
 - Arbitrage claims:
 - o Allowed refund > \$2M
 - o Disallowed (full or partial)

See Procedures in IRM 4.70.14.6.10.3, TEB – Arbitrage Refund Claims.

- (4) With Senior Manager approval, group managers may request a specific case be reviewed.
- (5) Management may identify other cases as being subject to mandatory review, as problems or other special needs arise.

4.70.14.6.3
(11-24-2023)
Case Review Steps

- (1) When reviewing a case, focus on technical and procedural accuracy.
- (2) Focus on these key areas of verification:
 - The statute(s) of limitations are correct in AIMS and RCCMS, including proper use of alpha codes. Verify the statutes of limitations were properly determined, extended, and updated as needed.
 - Forms 2848, power of attorney and/or Forms 8821, Tax Information Authorization are correctly signed and executed when applicable.

Note: Verify entity information, tax type, form number, tax periods (all years under exam must be included), and the taxpayer's execution of the form (as trustee, authorized corporate officer, individual) are correct. If any item is incorrect, the form may be invalid. If the form appears to have a defect, TEGEDC should be involved.

 - All returns and years under examination are listed on the Audit Inventory Management System (AIMS) and has a case file in RCCMS.
 - Revenue Agent Reports are complete and fully present the issues, facts, law, taxpayer's position, and government's position. Technical conclusions must be correct considering sufficient facts and applicable law.
 - Case file documentation reflects facts supporting the specialist's conclusions.
 - Correspondence record is complete and fully documented in the case file.
 - EP/EO: Administrative record is complete and fully documented in the case file (if applicable).

Note: Update the Administrative Record and Index for all correspondence you sent to the taxpayer/POA while the case is in MR.

 - TEB: Print and assemble a physical case file and administrative record for all cases sent to TEGEDC if a taxpayer filed a petition to Tax Court. Contact the examiner for assistance, if needed, to create the administrative record if the exam group closed the case with taxpayer agreement to the adverse action.
 - Computations of tax, penalties, and interest are correct and included in case file (if applicable).

- If unagreed, the case file documents reasonable effort by examiner to reach an agreement using available correction and settlement programs or early referrals to Appeals.
- Management involvement is documented in the case file.
- Proper completion of internal examination procedures, clearly documented in workpapers, Form 5773, Workpaper summary, Form 4318, Examination Workpapers Index and case chronology. This includes required forms, letters and documents. EO: The case is PATH Act compliant (if applicable).
- In managing fraud suspense cases, follow IRM 4.70.14.4.2.1.1, Paper Case File Assembly, for paper records that must be maintained for cases with criminal fraud potential.

(3) During the review, ensure the case contains properly:

- Executed Forms 872, Consent to Extend the Time to Assess Tax or 872-A, Special Consent to Extend the Time to Assess Tax, if needed.
- Completed Form SS-10 Consent to Extend the Time to Assess Employment Taxes.
- Assembled tax returns for all years on the Audit Inventory Management System (AIMS)/RCCMS.
- Documented Forms 5773, TE/GE Workpaper Summary, and Forms 5464, Case Chronology Record.

Note: FSL/ET & ITG examiners will have documented Form 9984, Case Chronology, Form 4318, Workpaper Summary.

- Developed workpapers documenting the audit and supporting the examiner's determinations.

Note: For cases with 990 series returns or Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the IRC, a scanned copy downloaded from the Statistics of Income EO Image Net (SEIN) suffices. For other types of issues, the original return needs to be in the file.

- (4) EP: For unagreed IRC 4971 and IRC 4975 excise tax, ensure a referral to the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) was made at least 30 days before the examiner issued the 30-day letter package. If the exam group did not make the statute required referral, complete the DOL referral using Form 6212-B 30 days before issuing the 90-day letter. If EBSA responds that they will participate, you need to send back to the EP exam group for further development. See IRM 4.70.14.2.1.2.4.12, EP – Referrals to the Department of Labor.
- (5) When you are not able to verify one or more of the elements listed in item (2) above, discuss with the mandatory review or technical manager to determine the appropriate steps forward. You may be able to work to obtain missing documentation, required forms and make correction to procedural errors. Often, reviewers also work with Counsel and specialists to improve technical conclusions. In egregious instances, you may need to return the case to the examination group with a reviewer's memorandum outlining deficiencies.
- (6) Provide feedback to both examiners and management, if needed. See IRM 4.70.14.6.4, Form 5456, Reviewer's Memorandum.

- (7) Once you have determined a case is technically and procedurally accurate, complete unagreed processing for the case type.
- (8) Document mandatory review and technical actions in the case activity record.

4.70.14.6.4
(11-24-2023)
**Form 5456, Reviewer's
Memorandum**

- (1) Reviewers may contact groups informally via email, Microsoft Teams, phone calls, or in person. When providing formal guidance or feedback, prepare Form 5456, Reviewer's Memorandum - TE/GE.
- (2) Reviewers: In preparing Form 5456, determine the type of feedback to provide:
 - a. Advisory: Errors that don't require specialist action(s).
 - b. Inquiry: Errors that require specialist action(s), based on your initial review of a case.
 - c. Correction: Errors that still require specialist action(s), based on your subsequent review of a case you previously returned to the group.
- (3) Advisory memoranda may also be commendatory. You may prepare a commendatory advisory memo if you believe the specialist has performed exceptionally well on a case. Group managers may place these memos in the examiner's employee personnel folder.
- (4) Before determining which memo to prepare, determine whether the error involves an agreed issue. In general, don't instruct the specialist to reopen an agreed issue, or create a new issue, unless your grounds are substantial and/or the potential effect upon the tax liability is material.
- (5) Complete Form 5456 as follows:
 - a. Check advisory, correction, or inquiry.
 - b. Box 1: Enter the group S/B manager's name who will be receiving the returned case and the group number. (e.g., Mary Beagle, Group Manager, EP Group # 7694). Select the appropriate checkbox that identifies the type of memorandum (Inquiry, Advisory, or Correction).
 - c. Box 2: Enter the name of the specialist who will receive the returned case.
 - d. Box 3: Enter the date the case will be returned to the group
 - e. Box 4: Enter the name of the organization/employee plan/taxpayer of the case being returned.
 - f. Box 5: Enter the applicable tax period (e.g., Tax year or Plan year, (yyyymm)).
 - g. Box 6: Select whether statute of limitations expires within six months.
 - h. Box 7: Select the appropriate checkbox for the type of case.
 - i. Box 8: Select the appropriate checkbox to indicate if the case was sent to Review Staff as a Mandatory review or Sample review.
 - j. Box 9: Indicate if a related case is being returned. List the name of the related case in box 12.
 - k. Box 10: If a second reviewer has performed a computation review enter the name of that reviewer and complete box 11, otherwise enter N/A, for not applicable.
 - l. Box 11: If applicable, enter the pages of the report that were reviewed, otherwise enter N/A, for not applicable.
 - m. Box 12: Enter an explanation of why the case is being returned with errors identified and explained, along with appropriate citations of law to support the reviewer's conclusions. This may include Tax Code Sections,

Treasury Regulations Sections, Tax Court cases, and the IRS IRM sections. Indicate the appropriate corrective action necessary for the specialist to take

- n. Box 13: Enter the reviewer's name and date.
- o. Box 14: Enter the name of the approving manager and date.
- p. Box 15: Enter type of error. More than one type of error may apply.
- q. Box 16: Check applicable blocks. Indicate additional information if check blocks are not sufficient, or if additional information is required to clarify the selected check block(s).

(6) When writing an inquiry or correction memo:

- a. Use plain language.
- b. Provide a brief history of why Mandatory Review has the case.
- c. Outline the errors identified in the case file.
- d. Outline a course of action for the examiner to complete.
- e. Provide corrected computations, if applicable.
- f. Give directions on how to prepare Form 5457, Response to Reviewer's Memorandum - TE/GE. Specialists must respond within 60 days.
- g. List your mailing address.

Note: Reviewers would reference an attachment on Form 5456 and write all additional comments on a Word file which can be converted to a PDF file if necessary.

(7) For advisory memos, identify the error(s). Show where to find directions to avoid the errors in the future. (Cases without errors may merit a commendatory advisory memo).

(8) Email Form 5456 to the mandatory review or technical manager for approval, and forward the paper case file, if applicable and if requested.

(9) When approved, do the following:

- a. Inquiry or Correction Memos: The mandatory review or technical manager secure emails the Form 5456 to the appropriate group manager and has the reviewer return the case file to the group manager with the original and a copy of Form 5456.

Note: Return case files to the group manager of the specialist who worked the case.

- b. Advisory or Commendatory Memos: The mandatory review or technical manager secure emails the Form 5456 (without the case file) to the appropriate group manager when the case is closed.
- c. The reviewer and the mandatory review or technical manager each retains one copy of the Form 5456.

4.70.14.6.5
(11-24-2023)

**Return of case to
Examination Group**

(1) Reviewers return cases to the examination group in Status Code 12 on RCCMS, with the mandatory review or technical manager's concurrence, when any of the following conditions exist:

- a. Major technical deficiencies.
- b. Significant computation errors.
- c. Seriously underdeveloped issues.
- d. Clear evidence of an incorrect determination made or a seriously underdeveloped case.

- e. “Clearly defined substantial” errors based on an established IRS position during the exam. “Clearly defined” means the error is plain and not vague or uncertain. “Substantial” refers to the dollar amount of tax that we wouldn’t assess if we don’t return the case.

Note: Normally ITG regards any proposed change to a case involving net additional tax of \$10,000 or more, regardless of the years involved, as substantial. Don’t consider penalties and interest when making this determination.

- f. Any evidence of fraud, malfeasance, collusion, concealment or misrepresentation by the taxpayer or representative.
 - g. Administrative or procedural errors that prevent case processing.
 - h. Favorable adjustments to the taxpayer and Review can’t readily correct the report.
 - i. Other circumstances indicating that not returning the case would be a serious administrative omission.
- (2) Prepare Form 5456, Reviewer’s Memorandum - TE/GE, before returning a case for further development. The reviewer’s report is an official communication between mandatory review or technical groups and field groups for technical/procedural errors found in cases or for commendatory feedback.
 - (3) Send the Form 5456 to the mandatory review or technical manager for approval. In the email identify the group manager and area manager.
 - (4) Reviewer: For Form 5456 Correction Memos:
 - a. Update the CCR stating that the case is being returned with an explanation of the reason.
 - b. Upload the approved version of Form 5456 and any additional files prepared by the reviewer into the RCCMS Office Documents folder using the RCCMS Naming Convention.
 - c. Update the case in RCCMS to status 12.

Note: The case remains in status 12 until closed from the field group.

 - d. Transfer the RCCMS files to the MR manager (or designee) who closes the case back to the exam group.
 - (5) Reviewer: For Form 5456 Advisory or Commendatory Memos, the MR manager approves and sends the Form 5456 (without the case file) to the examiner’s group manager before the case is either transferred to Appeals (disposal code 07), the 90-Day Letter is issued (status code 24), or the case is closed (disposal code 10).
 - (6) The MR manager contacts the exam group manager to discuss the reviewer’s memo, and if the case is being returned, explains why.
- Note:** The MR manager must call field group manager before returning a case with less than 180 days remaining on the statute.
- (7) The mandatory review or technical manager forwards the Form 5456 to the group manager.
 - (8) Reviewers can make informal contacts (call or email) with specialists when a defect can be fixed without returning the case to the group. Reviewers note the informal contact in the case activity record.

4.70.14.6.5.1

(11-24-2023)

Response to Reviewer's Memorandum

- (9) Any mathematical, technical, managerial or procedural errors or omissions may be sent back to the examination group for consideration or development when a reviewer is unable to perfect them.

- (1) The exam group manager considers the reviewer's memorandum. The group must submit their reply within 60 days of receipt.

- a. If the exam group manager considers the reviewer's memorandum inappropriate, refer to IRM 4.70.14.6.5.2, Dispute Resolution.
- b. Otherwise, forward Form 5456 via secure email to the examiner. Return the case to the examiner via RCCMS, and maintain appropriate AIMS controls.

- (2) Examiner: Upon receipt of the returned case:

- a. Reopen the case on WebETS.
- b. Review the Form 5456 and continuation on Form 886-A, Explanation of Items, if provided, as listed in box 12.
- c. Note the directions provided in the memo.
- d. Contact the reviewer if you have any questions about the directions.

- (3) Examiner: Confer with your manager about the requested actions. If you and your manager disagree with the course of action, proceed to IRM 4.70.14.6.5.2, Dispute Resolution. Otherwise, perform the actions requested.

Caution: If you don't do the actions requested, you may receive the case back again, with a correction memo attached.

- (4) Examiner: If unable to complete the actions requested, ask the reviewer for an alternative course of action.

- (5) Examiner: Request and secure a statute extension, if needed.

- (6) Examiner: Before you close your case to your manager:

- a. Fully document your actions taken in your case chronology and on Form 5457.
- b. Verify that the hours on your case chronology agree with the time input on WebETS.
- c. Update your Forms 5773 and related workpapers.
- d. Electronically sign and save the Form 5457.
- e. Upload the Form 5457 and the other updated documents to RCCMS.
- f. Reassemble your case file; see IRM 4.70.14.4.2.1, Electronic Case File Assembly.

Note: FSL & ITG may continue to use Form 9984 in lieu of EO's Form 5464 and Form 4318 in lieu of Form 5773.

- (7) Examiner: Close the case file to your manager.

- (8) Examiner: Reply to Mandatory Review within 60 days of receipt of a reviewer's memo. Respond to the issues listed on Form 5456, Item 12, using Form 886-A, Explanation of Items, if you need more space

- (9) If the returned case hasn't been sent back to MR within 60 days, the MR manager will contact the field group manager to discuss the case status. The

MR manager will continue to contact the field group manager every 30 days thereafter, until the group returns the case to MR or otherwise resolves it.

4.70.14.6.5.2
(11-24-2023)

Dispute Resolution

- (1) The exam group manager has two options for resolving disputes with a reviewer's recommended course of action:
 - a. Contact the reviewer to discuss the case. Document the outcome of the discussion in the Form 5457. Have the examiner complete any agreed upon actions. Sign the Form 5457 and return the case to the reviewer.
 - b. Complete the Form 5457 documenting the disputed items and why the group won't take the course of action. Sign the Form 5457 and return the case to the reviewer.
- (2) Reviewer: Upon receipt of the case file:
 - a. Review the Form 5457 and the case file.
 - b. Determine whether to agree with the group manager.
 - c. Sign the Form 5457, checking the applicable entries in boxes 8 and 9.
- (3) Reviewer: If in disagreement with the group, contact the mandatory review or technical group manager. Provide a copy of the Form 5457. Discuss the case.
- (4) Mandatory Review or Technical group manager: Schedule a call with the exam group manager and his/her area manager. Document the discussion and any resolution agreed upon. If the parties can't agree upon a course of action, the Director of the functional examination program makes the final decision on the issue.
- (5) Mandatory Review or Technical group manager: Convey the directions to the reviewer, who either prepares a correction memorandum to return the case or proceeds to make any necessary corrections.

4.70.14.6.6
(11-24-2023)

Statutory Notice of Deficiency (SNOD)

- (1) A notice of deficiency, also called a "statutory notice of deficiency" or "stat notice," is the IRS's determination of a taxpayer's income, excise, employment, estate or gift tax deficiency sent to the taxpayer by certified or registered mail.
- (2) IRC 6212(a) and 26 CFR 301.6212-1 authorize the IRS to send this notice.
- (3) Mandatory Review or Technical prepares and issues all Statutory Notices of Deficiency and Notice of Employment Tax Determination Under IRC 7436.
- (4) A SNOD is the Commissioner's, as a delegate of the Secretary, legal determination of the taxpayer's tax liability.
- (5) Functional Directors and Area Managers are authorized to sign a SNOD, on the Commissioner's behalf.
- (6) A taxpayer must file a Tax Court petition within 90 days (150 days if the SNOD is addressed to a taxpayer outside the United States) after the IRS mails the SNOD. All references in this IRM to the 90-Day Letter include the 150-Day Letter, when applicable.

4.70.14.6.6.1
(11-24-2023)

SNOD Preparation and Issuance

- (1) The notice of deficiency is a legal determination that is presumptively correct. The notice of deficiency consists of:

- a. A letter explaining the purpose of the notice, the amount of the deficiency, and the taxpayer's options.

Case Type	SNOD Letter
Income Tax Assessments	Letter 531
EP Forms 1040 or Forms 1120 Discrepancy Adjustments	Letter 531-A
EP Forms 5330 or Forms 990-T	Letter 531-B
EO/FSL Chapter 42 and 43 Excise Taxes	Letter 1753

Note: EP - If a SNOD is being issued for IRC 4973, IRC 4974 or IRC 72(t) tax, these taxes will be added to the Form 4549 and the issues added to the Form 1040 RAR. These will be mailed out with Letter 531-A.

- b. A copy of that same letter.
c. A waiver.

Case Type	Waiver Form
Forms 1040 or Forms 1120 Discrepancy Adjustments	Form 4089 or Form 4089-B
EP Forms 533 and, Forms 990-T	Form 870-EP

- d. Appropriate tax computation.

Case Type	Tax Computation Form
EP Forms 1040 or Forms 1120 Discrepancy Adjustments	Form 4549-E
EP Forms 5330 and or Forms 990-T	Tax computation is provided in RAR Form 886-A
EO Chapter 42 and 43 Excise Taxes	Form 4883
EO/FSL 1040 or Forms 1120 Discrepancy Adjustments	Form 4549-A

- e. A written explanation of all the adjustments: Form 886-A, Explanation of Adjustments.
f. Information about the Taxpayer Advocate Service (TAS) services, along with the closest TAS office address.

- (2) When you write the explanation of the adjustments, provide a short synopsis of the facts and law.

Caution: Never include the complete explanation of items in the Statutory Notice of Deficiency.

- (3) Refer to IRM 4.8.9, Statutory Notices of Deficiency for directions on preparing notices. Focus on IRM 4.8.9.7, Case Review Prior to Preparing Notice of Defi-

ciency, IRM 4.8.9.8, Preparing Notices of Deficiency, IRM 4.8.9.10, Signing and Dating the Notice of Deficiency, IRM 4.8.9.12.3, Disposition of Copies, IRM 4.8.9.15, Overassessments and Claims, IRM 4.8.9.16, Special Issues and IRM 4.8.9.17, Special Cases.

Note: EO - For Chapter 42 excise taxes, replace Letter 531 with Letter 1753 (Rev. 01/19). Refer to Exhibit 4.70.14-44, EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act, as an example for purposes of a continuing transaction.

Note: When reviewing directions in IRM 4.8.9, keep in mind that TEGEDC reviews all TE/GE issued Statutory Notices of Deficiency before they're issued, and that TE/GE Closing Group handles the notices in lieu of Small Business/Self Employed (SB/SE) Centralized Case Processing (CCP) units.

- (4) EO - For excise taxes involving a second tier tax for failure to correct without full correction, IRS must determine the second level at the time liability for the first level is determined. It is therefore included in any notice of deficiency, regardless of whether the first level tax is agreed. The second level will be abated if correction is made after the mailing of the notice plus extensions that apply. See IRC 4961(c) for suspending the collection period for the second tier tax to allow the taxpayer to seek judicial review of the assessment.

Note: If we are notified that the taxpayer corrected within the 90-day period, the reviewer sends the case file back to the examiner assigned to the case. The examiner would then abate the second tier assessment.

- (5) The mandatory review or technical manager approves the SNOD and sends to TEGEDC before Issuance. Once concurrence is gained between mandatory review and TEGEDC, the reviewer issues the SNOD.
- (6) TEGEDC requires a PS Form 3811, Return Receipt, (green card) be used to provide proof of delivery in addition to the record of certified and registered mailing kept on PS Form 3877. See IRM 4.8.9.11.3, Records of Mailings. When the green card is received signed with a post office stamp, scan it and save in the RCCMS case file documents.
- (7) After issuing the notice, update to Status Code 24 and add 150 days (210 if sent to a foreign address) to the statute of limitations for each tax year in the notice. Update AIMS using RCCMS.

Note: Secure a new AMDISA showing the update. Save it in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.

Note: By signing Form 4089 or Form 870-EP, the taxpayer waives his/her right to petition tax court. As a result, the additional time by which the statute of limitations was "extended" (by issuance of the 90-day letter) is shortened by the amount of time remaining from the date the taxpayer signed Form 4089 or Form 870-EP to the deadline to petition tax court.

- (8) Monitor the case during the 90-Day suspense period to determine if the taxpayer petitioned the U.S. Tax Court by researching **dawson.ustaxcourt.gov/**, and completing a "Docket Inquiry" (use Microsoft Edge).

- (9) The issuance of a SNOD begins the litigation process. Once you issue the 90-Day Letter, make note to take action on the case on the earlier of:
- 105 days (90 days plus 15 days).
 - The date the taxpayer petitions tax court.
 - The date the taxpayer files the appropriate waiver.
- (10) If the taxpayer agrees to the deficiency by signing Form 4089 or Form 870-EP, close the case following agreed case closing procedures.

4.70.14.6.6.2
(11-24-2023)
**SNOD Statute
Considerations**

- (1) Generally, the issuance of the 90-Day Letter suspends (extends) the statute of limitations:
- a. 150 days (90 days to petition Tax Court plus an additional 60 days to process the case) for taxpayers in the United States.
 - b. 210 days (150 days to petition Tax Court plus an additional 60 days to process the case) for taxpayers outside the United States.
- (2) However, by signing Form 870-EP or Form 4089 the taxpayer waives his/her right to petition Tax Court. As a result, the additional time by which the statute of limitations was “extended” (by the issuance of the 90-Day Letter) is shortened by the amount of time remaining from the date the taxpayer signed Form 870-EP or Form 4089 to the deadline to petition Tax Court.

Example: Assume the IRS issues a SNOD on June 1, 2020, for a Form 5330 return with a statute expiration date of July 31, 2020. The taxpayer has 90 days (until August 30, 2020) to petition Tax Court. The statute of limitations would be “extended” to December 28, 2020, (150 days are added to the original statute date) by the issuance of the 90-Day Letter. However, if the taxpayer signs Form 870-EP on June 21, 2020 (with 70 days remaining in the 90-day period), the statute of limitations would be shortened by 70 days to October 19, 2020.

- (3) Update the statute of limitations on AIMS and RCCMS after you mail the 90-Day Letter and when the taxpayer signs Form 870-EP or Form 4089.

4.70.14.6.6.3
(11-24-2023)
**Procedures Following
the SNOD 90-Day Period**

- (1) If the taxpayer doesn’t respond to the SNOD within 90 days and the case isn’t docketed, hold the case for another 15 days and then close to TE/GE Closing Group.
- (2) Update 3198-A, TE/GE Special Handling Notice, with the following instructions “STATUTORY NOTICE OF DEFICIENCY DEFAULTED - ASSESS TAX IMMEDIATELY.”
- (3) Before closing, verify that the case has not been docketed. If docketed for Tax Court, update and forward to the closing unit to transfer to Appeals.

Note: For information on petitions, see IRM 4.8.9.25, United States Tax Court Petition Filed.

Note: The Mandatory Reviewer prints and assembles a physical case for all cases sent to TEGEDC if a taxpayer filed a petition to Tax Court.

4.70.14.6.6.4
(11-24-2023)

Rescinding a SNOD

- (1) Reviewers can rescind a SNOD mailed to a taxpayer, but only with the consent of the taxpayer. See Delegation Order 4-8; see IRM 1.2.2.5.8.

- a. The taxpayer or the IRS may initiate rescission of a SNOD.
- b. Whether or not a notice is rescinded is at the Secretary's discretion.
- c. The decision to rescind a SNOD is made on a case-by-case basis. A rescission may be agreed if: A SNOD has been issued for an incorrect amount. We must advise the taxpayer that, once rescinded, we may issue another SNOD for a different amount. The SNOD was issued to the wrong taxpayer. The SNOD was issued for the wrong tax period. The taxpayer submits information establishing the actual tax due is less than the amount shown in the SNOD. Other extenuating circumstances warrant rescission.
- d. IRS won't enter into a rescission in any of these situations:

- I. On the date of the rescission, 90 days or less remains before the expiration date of the period of limitations on assessment.
- II. The 90-day period under IRC 6213(a) has expired without the taxpayer filing a petition with the Tax Court.
- III. The taxpayer has filed a petition with the Tax Court.
- IV. The taxpayer and the IRS executed a Form 872-A covering any of the tax years in the notice of deficiency, before the notice of deficiency was issued. However, a notice of deficiency may be rescinded in this situation if before rescinding the notice of deficiency the taxpayer and the IRS execute a new Form 872-A covering the same tax years as the earlier Form 872-A.

- (2) Since the rescission agreement returns the case back to its original statute before the SNOD was issued, carefully consider the statute before you enter into a SNOD rescission.
- a. The rescinded SNOD suspends the running of the statute of limitations only for the period during which the SNOD is outstanding. Mandatory Review must determine a new statute date if they issue another SNOD to make assessments.
 - b. If there are at least 90 days remaining on the statute, a rescission may be entered into. If less than 90 days remains on the statute, the SNOD will be rescinded only if the taxpayer executes a Form 872 or Form 872-A to extend the statute.
 - c. If there was a Form 872 or 872-A on the case before the SNOD was issued, the rescission won't be granted unless the taxpayer signs another Form 872 or 872-A before the rescission.
- (3) Use Form 8626 to get an agreement between the taxpayer and the government to rescind a SNOD.
- a. The originator of the SNOD prepares, controls and executes the form.
 - b. The rescission agreement: Must apply to the same tax periods as the SNOD. Can list more than one year. Must contain all taxable years covered in the SNOD, Enter all tax years covered below the first paragraph under **Tax Year Ended**.
 - c. The rescission agreement must show the same deficiency and penalties as the SNOD.

- d. If the SNOD was issued to both a husband and wife, both spouses or authorized representative(s) for the parties must sign the rescission agreement.
- e. Prepare Form 826 in duplicate. Once executed: Attached one copy of the form to the front of the SNOD. Send the second copy to the taxpayer.
- f. The rescission agreement is effective on the date the Commissioner or delegate countersigns the Form 8626.
- g. Use Letter 2264 (DO) to request the taxpayer's concurrence to rescind by signing Form 8626.
- h. Use Letter 2262 (DO) to send a copy of the executed rescission agreement to the taxpayer.
- i. Use Letter 2263 (DO) to advise the taxpayer that the rescission is not being granted and the SNOD will remain in effect.

4.70.14.6.6.5
(11-24-2023)

**Protest, Correspondence
and Waivers Received
After Issuance of SNOD**

- (1) See IRM 4.8.9.23, Protests, Correspondence and Waivers Received After Issuance of Notice of Deficiency, for general procedures when the taxpayer sends in something other than a signed Form 4089.
- (2) Reviewer: If during the 90-day period the taxpayer submits a signed Form 4089 or Form 4089-B, send the case to the closing unit to assess the deficiency.

4.70.14.6.7
(11-24-2023)

**Worker classification
determinations –
unagreed without
protest**

- (1) Refer to the table below for the final report for employment tax issues:

Employment tax issue	Final report
IRC 7436 worker classification	Letter 3523, Notice of Employment Tax Determination Under IRC 7436
Any other issues	30-day letter

- (2) SB/SE has jurisdiction over employment taxes. TEGEDC serves as the legal advisor.
- (3) 90-day letter guidance, See IRM 4.8.10, Notice of Employment Tax Determination Under IRC 7436 and IRM 4.23.22, Employment Tax, Unagreed Employment Tax Procedures.
- (4) 30-day letter guidance where no worker classification issues are present, see IRM 4.23.10.10, 30-Day Letters
- (5) 30-day letters when both IRC 7436 and non-IRC 7436 issues are present: IRM 4.8.10.1.3.1, 30-Day Letters.
- (6) Mandatory Reviewer: When following the procedures in IRM 4.8.10, keep in mind that:
 - You have the authority to sign and issue the notice. See IRM 1.2.2.5.22, Delegation Order 4-26 (Rev. 1) (formerly DO-251).
 - TEGEDC, reviews all TE/GE notices of determination of worker classification before issuance.
 - TE/GE Closing Group works the case upon closure, not SB/SE's Centralized Case Processing (CCP).

4.70.14.6.8
(11-24-2023)
**EP Proposed
Disqualifications
(revocation or
non-qualification) and
Related Unagreed Tax
Assessments**

- (1) Triage is performed on all cases received in MR by the MR manager and MR Tax Examiner. After triage, the MR manager assigns the case to a reviewer.
- (2) The MR Tax Examiner:
 - a. Reconciles the AIMS and RCCMS statute of limitation (SOL) date and corrects discrepancies.
Example: The TC 150 posting date was used instead of the Form 5500 filing date for a prohibited transaction.
 - b. Updates the SOL to alpha code as appropriate.
Example: The TC 150 posting day for a SFR was used instead of “EE”.
Note: With the exception of IRC 4975, when a SFR posts, the year reflected should be six years from the date the SFR posted. For example, if the SFR posted on 10/21/2020, the statute date should be “10/EE/2026”.
 - c. Visually inspects the statute extension and any documents directly related to the extension (Form 56, applicable plan documents, Form 2848). If the tax examiner finds an error, he/she immediately contacts the MR manager to discuss the appropriate action.
Example: The MR manager may assign the case to a reviewer to get a new statute extension.
- (3) The MR manager:
 - a. Conducts a quick case overview to determine if the case is ready for review or must be sent back to the group for further development.
 - b. Makes sure the information in RCCMS and AIMS agree.
 - c. For discrepancy adjustment cases, ensures the RGS file and a zero-variance report are in the file.
 - d. For Claims, ensures the examiner enclosed a full set of workpapers and mailed the Claim Disallowance Notification package (Letter 569-A with Form 2297 and Form 3363) to the appropriate parties.
 - e. Determine if the case warrants immediate assignment to a reviewer (such as when the case has a short SOL).
- (4) The MR manager may note specific instructions or observations for the assigned reviewer in RCCMS.
- (5) The MR manager assigns the case to a reviewer after the triage process.
- (6) Reviewers will:
 - a. Attempt to start case review within 15 days of receipt.
 - b. Track their case time to each case type (F-5500, F-1040, F-5330) separately using the TE/GE RCCMS Naming Convention of “2.4_F5464_CCR_MR”. Reviewers may use a consolidated CCR.
 - c. Complete a review of the case file following IRM 4.70.14.6.3, Case Review Steps.
 - d. Be responsible for the statute of limitations and comply with IRM 4.70.12.3.8 Statute of Limitations procedures. Update AIMS and RCCMS accordingly. Use Alpha Codes when applicable. Reminder: If the statute

of limitation is updated to “PP”, you must prepare the memo to the Area Manager. Include the approved memo to RCCM Office Document folder.

Reminder: If the statute of limitation is updated to “EE”, you must update the aging reason code to 26 (NMF cases don’t need an aging reason code) to prevent alpha code “EE” from falling off of AIMS. First try to update in RCCMS from the Codes tab and make sure the Update AIMS box is checked. If the Codes tab is grayed out, use Form 5595 and enter “26” on Line 1 P-30-32.

Note: With the exception of IRC 4975, when a SFR posts, the year reflected should be six years from the date the SFR posted. For example, if the SFR posted on 10/21/2020, the statute date should be “10/EE/2026”.

- e. Generally, don’t expand the examination into years beyond the field examiner’s unagreed return package. However, if you believe that pursuing a qualification issue or tax issue (income/excise) for years not covered in the examiner’s unagreed package is warranted, discuss with the MR manager.
- f. Once you have determined a case is technically and procedurally accurate, complete 90-Day Letter processing. See IRM 4.70.14.6.8.1, EP 90-day Letter Procedures.

4.70.14.6.8.1 (11-24-2023)

EP 90-day Letter Procedures

- (1) If the taxpayer fails to respond to the 30-Day Letter issued by the exam group, mandatory review prepares and issues the 90-Day Letter package (Final Revocation Letter, Final Non-Qualification Letter, or SNOD).

Note: Allow an additional seven days beyond the 30-Day period (to account for mail delays) before preparing the 90-Day Letter, unless a statute is pending.

- (2) For 30-Day Letters issued by the field, determine whether the 30-Day Letter package is correct. If any 30-Day Letter package item (the Letter, RAR, Form 870-EP, Form 4549-E, Form 5438) contains an error(s), discuss with the MR manager. The MR manager determines whether the 30-Day Letter must be re-issued. See IRM 4.70.14.2.4.2.1.3, EP 30-day letter procedures.
- (3) If the 30-Day Letter package must be re-issued, the MR manager determines whether:
 - a. The reviewer will make the corrections and re-issue the 30-Day Letter
 - b. MR will return the case to the field to make the correction(s) and re-issue the 30-Day Letter.

Note: If you return the case to the field, prepare a Reviewer’s Memorandum (Form 5456) to explain the items requiring correction and the need for the letter to be reissued.

- (4) Use the most current version of the 90-Day Letter. See the table below for which letter to use for specific case types, and the acceptable TE/GE RCCMS Naming Convention:

Type	Letter
Forms 1040/1120 - Discrepancy Adjustments	531-A
Forms 5330 or 990-T	531-B
Proposed Non- Qualification or Revocation	1757

- (5) The 90-Day Letter package for a Form 1040 or Form 1120 discrepancy adjustment includes:

- a. Letter 531-A (See Employee Plans Examination Exhibits)
- b. Form 4549-E
- c. RAR (Form 886-A)
- d. Form 4089

See IRM 4.70.14.6.6.1. SNOD Preparation and Issuance, for additional guidance on issuing Statutory Notices of Deficiency.

Note: If the taxpayer jointly filed a Form 1040, a separate letter must be mailed to each spouse.

Note: If a SNOD is being issued for a Form 1040 and a SNOD is also being issued for IRC 4973, IRC 4974 or IRC 72(t) tax for the same taxpayer for the same year, only one SNOD will be issued. These taxes will be added to the Form 4549 and the issues added to the Form 1040 RAR. These will be mailed out with Letter 531-A.

Note: Publications 1 and 594 are referenced in the letter and listed as optional enclosures because the letter tells the Taxpayer how to get copies.

- (6) The 90-Day Letter package for a, Form 5330 or Form 990-T exam includes:

- a. Letter 531-B (See Employee Plans Examination Exhibits)
- b. Form 870-EP (See Employee Plans Examination Exhibits for an example of Form 870-EP.)
- c. RAR (Form 886-A)
- d. Return Envelope. See IRM 4.70.14.6.6, Statutory Notice of Deficiency (SNOD), for additional guidance on issuing Statutory Notices of Deficiency.

Note: If a SNOD is being issued for a Form 1040 and a SNOD is also being issued for IRC 4973, IRC 4974 or IRC 72(t) tax for the same taxpayer for the same year, only one SNOD will be issued. These taxes will be added to the Form 4549 and the issues added to the Form 1040 RAR. These will be mailed out with Letter 531-A.

Note: Publications 1 and 594 are referenced in the letter and listed as optional enclosures because the letter tells the Taxpayer how to get copies.

- (7) The 90-Day Letter package for a Final Revocation/Non-qualification consists of:

- a. Letter 1757 (See Employee Plans Examination Exhibits)
- b. Pub 1020
- c. Explanation of Revocation/Non-Qualification (Summary RAR)

Note: Publication 1 is referenced in the letter and Publication 1020 is listed as an optional enclosure because the letter tells the Taxpayer how to get copies.

(8) Use the correct salutations in the 90-Day Letters:

- a. For an individual(s), use the name(s) on Form 1040.
- b. For an organization (any entity that is not an individual), use the organization's legal name as shown on federal tax returns.
- c. L-1757 series letter, use the plan sponsor's name (Dear ABC, Inc.). Do not use the plan name or an individual's name.

Note: The address line of the letter can include an individual name.

Example:

ABC, Inc.
c/o John Doe
12 Main Street
City, State Zip

(9) TEGEDC Concurrence:

- a. Must be obtained before issuing all 90-Day Letter packages.
- b. Is solicited from the TEGEDC office that has jurisdiction over the area where the taxpayer resides.

Exception: Specific Counsel attorneys may be assigned to special project cases such as ATAT cases or Promoter project cases. In those instances, review case project procedures to determine designated Counsel attorneys.

(10) Before sending a case to Counsel for a 90-Day Review:

- a. Prepare a draft of the applicable 90-Day Letter, completing all parts except the date.
- b. Send the case to the 90-Day Reviewer (ass applicable), following the procedures in IRM 4.70.14.6.8.3, EP Transfer to 90-Day Reviewer.
- c. Prepare a Summary RAR. Counsel recommends that the Explanation of Revocation or Explanation of Non-Qualification be one short paragraph stating the reasons (including the relevant code sections) why the plan is not qualified and stating the first plan year of Non-Qualification or revocation. In some cases (like ATAT projects), Counsel may want to prepare the Summary RAR.
- d. If the taxpayer has a representative(s), make sure that all years listed on the 90-Day Letter are listed on ta Form 2848 or Form 8821. If they are not, get a revised Form 2848 (or Form 8821); otherwise, you can't send the 90-Day Letter to the representative(s).

Note: A taxpayer may use different representatives for different years.

- e. Ensure that the Administrative Record is correctly prepared per IRM 4.70.14.2.4.1.3.1, EP & EO - Maintaining the Administrative Record File, for Form 5500 cases involving revocation or non-qualification.

Note: Unagreed Forms, 5330, 990-T or 1040/1120 discrepancy adjustment and agreed companion (ride along) Forms 5500 don't have an Administrative Record. For these cases, save all correspondence and relevant documents in the RCCMS Office Documents folder (using the TE/GE RCCMS Naming Convention) in all related RCCMS files.

Note: Discuss closing any agreed companion (ride along) returns with the Mandatory Review manager.

- f. Email the 90-Day Letter(s), full RAR, Summary RAR, Administrative Record index (if applicable), Form 4089 (if applicable), and Form 870-EP (if applicable) to the Mandatory Review manager (or designee).

Note: Full RAR is not mailed with 90-day letter package.

- g. If the Mandatory Review manager has concerns with the case or the 90-Day Letter package, they'll discuss with the reviewer and determine appropriate actions and/or revisions.

Note: The Mandatory Review manager resolves any disagreements and review completes all actions/revisions before sending to Counsel. .

(11) When you receive Mandatory Review manager approval:

- a. Prepare a transmittal memo for Counsel requesting a formal 90-Day Letter review.
- b. Email TEGEDC, based on geographical location of the taxpayer. Include name of taxpayer, address, EIN, and short description of the issue(s) in the 90-day letter.
- c. Make sure all of the relevant files are uploaded into the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.
- d. If the case is a Form 5500, make sure the Administrative Record in RCCMS is complete, all files are properly named, and the Administrative Record index properly indexes all of the files in the Administrative Record.
- e. Email the transmittal memo, 90-Day Letter including all attachments, full RAR, Summary RAR, Administrative Record index, and Form 870-EP, Form 4089, Form 4549-E, (as applicable) to the Counsel attorney conducting the 90-Day Letter review.
- f. Update the case to status 25 (case issues awaiting counsel review) through RCCMS immediately after you mail the 90-Day Letter package to counsel.

Note: When the case is updated to status 25 in RCCMS, make sure the AIMS box is checked so that AIMS gets updated when the update request is made. Get a new AMDISA that shows the update. Place electronic print in RCCMS.

- g. Use the TE/GE RCCMS Naming Convention 2.2 Request for Counsel Review followed by a descriptive extension for the request package.

Note: You may use an email as the transmittal memo.

- h. The Mandatory Review manager will transfer the RCCMS files for the case(s) being reviewed to the Counsel attorney conducting the 90-Day Letter Review.

- (12) Generally, Counsel has 45 days to review and return the case file to the reviewer.

Note: While the case is in Counsel, the reviewer is responsible for protecting the statute of limitations.

- (13) When Counsel returns the case, they note recommendations in a Counsel Recommendation Memo. Upload Counsel's memo the RCCMS case file using the TE/GE RCCMS Naming Convention "2.1 Counsel Recommendation Memo" followed by a descriptive extension.

- (14) The reviewer will:

- a. Generally, follow the recommendations in the Counsel Recommendation Memo and document the CCR accordingly.
- b. Only deviate from Counsel's recommendation(s) after:
 - i.) attempting to obtain agreement from the attorney who wrote the memo on any deviation and/or proposed alternative actions (sometimes clarification is needed and agreement is reached),
 - ii.) discussing your reasons for deviation and proposed alternative actions, if any, with the MR manager,
 - iii) obtaining the MR manager's written approval.

- (15) Generally, reviewers issue 90-Day Letter packages on the cases they review. The Mandatory Review manager determines exceptions to the rules. Reviewers who don't issue 90-Day Letters, transfer to the 90-Day Reviewer. The 90-Day Reviewer issues the 90-Day Letter package and becomes the case owner.

- (16) After getting Counsel concurrence, the reviewer emails the Mid-Atlantic EP Area Manager (with cc to the Mandatory Review Manager) the entire 90-Day Letter Package, along with the Counsel Recommendation Memo.

- a. Note the email's purpose in the subject line.
- b. At the top of the email: list the entity name, the years covered, the form number and the statute date.
- c. In the body of the email: ask the Mid-Atlantic Area Manager and the Mandatory Review manager to approve the letter's issuance by signing the attached Form 1725 (the buck slip included in the email).
- d. Address the buck slip to the Area Manager. Identify the taxpayer (name, plan number), issue(s), form number, years covered and the corresponding statute date(s). State whether you followed Counsel's recommendations and, if applicable, whether you'll send the POA a copy of the letter.

Note: Send separate emails for each 90-Day Letter package (complete with all attachments) as all packages require approval.

- e. The attachments to the email should include the following:

- The applicable 90-Day Letter. Verify that the letter number, series, salutation, address, and person to contact are correct.
- Explanation of Non-Qualification or Revocation (for non-qualification/revocations)
- Explanation of Adjustments (for SNODs)
- Counsel Recommendation Memo with reviewer's comment and/or response.
- Form 870-EP (if applicable)
- Administrative Record Index (if applicable)
- INOLES print (if address differs from the address reflected on the 90-Day Letter, an explanation is warranted.)

- (17) Upload approved Form 1725 into the RCCMS Office Documents folder and note in your CCR that the Mid-Atlantic Area Manager approved the issuance of the 90-Day Letter package.
- (18) With approval, mail the 90-day letter package to the taxpayer and POA via certified mail.
- a. Ensure the certified mail receipt tracking number is printed on the approved 90-Day Letter package.
 - b. Mail the approved 90-Day Letter package with the required enclosures.
 - c. Upload the 90-Day package and enclosures into RCCMS.
 - d. Update the Administrative Record Index, if any to include the 90-Day Letter Package.

Caution: Prior to mailing the 90-day Letter Package to the taxpayer or providing a copy to the POA, ensure that if required, a complete and accurate Form 13496 has been uploaded in to the RCCMS case file. Form 13496 is required if the return is a substitute for return (SFR) for a Form 5329, 5330 or Form 990-T and the penalty (failure to pay) is asserted.

- (19) If the taxpayer has a valid representative, prepare a separate 90-Day Letter package for the POA.
- a. Verify that all years listed on the 90-Day Letter are listed on Form 2848 or Form 8821. If not, get a revised Form 2848 (or Form 8821). Otherwise, you can't mail the 90-Day Letter package to the representative.
- Note:** A taxpayer may use different representatives for different years.
- b. Ensure that the documents provided to the POA is uploaded to the correspondence section of the RCCMS case file.
- (20) Update the case to status 24 (90-Day) in AIMS through RCCMS immediately after you mail the 90-Day Letter to the taxpayer. Print a new AMDISA that shows the update. Post the electronic print in RCCMS. Check and complete the "Stat Notice Issue Date" box on 3198-A Special Handling checksheet in RCCMS.
- (21) Update the statute of limitations on AIMS and RCCMS after you mail the 90-Day Letter and when the taxpayer signs Form 870-EP or Form 4089. Generally, the issuance of the 90-Day Letter suspends (extends) the statute of limitations:

- a. 150 days (90 days to petition tax court plus, an additional 60 days to process the case) for taxpayers in the United States.
- b. 210 days (150 days to petition tax court plus, an additional 60 days to process the case) for taxpayers outside the United States.

However, by signing Form 870-EP or Form 4089 the taxpayer waives his/her right to petition tax court. As a result, the additional time by which the statute of limitations was “extended”(by the issuance of the 90-Day Letter) is shortened by the amount of time remaining from the date the taxpayer signed Form 870-EP or Form 4089 to the deadline to petition tax court.

Example: Assume the IRS issues a SNOD June 1, 2018, for a Form 5330 return with a statute expiration date of July 31, 2018. The taxpayer has 90 days (until August 30, 2018) to petition tax court. The statute of limitations would be “extended” to December 28, 2018, (150 days are added to the original statute date) by the issuance of the 90-Day Letter. However, if the taxpayer signs Form 870-EP on June 21, 2018 (with 70 days remaining in the 90-day period), the statute of limitations would be shortened by 70 days to October 19, 2018. Place the case in suspense until the end of the IRC 7476(b)(5) period, if earlier, the time the taxpayer petitions tax court or files the appropriate waiver.

Note: Per IRC Section 7476(b)(5), if you want to file a petition, you must file it before the ninety-first day after the day after the IRS mails this letter to you.

Note: Suspend the case for 14 business days past the IRC 7476(b)(5) period to allow for time lags in mailing and inputting information.

- (22) Monitor the U.S. Tax Court by researching **dawson.ustaxcourt.gov/**, and completing a “Docket Inquiry” (use Microsoft Edge).

Note: A “R” at the end of the docket number indicates a retirement plan case.

- (23) If the recipient of the 90-day Letter files a petition with the U.S. Tax Court:

- a. Contact the assigned Counsel attorney with a cc to the Area Counsel attorney responsible for the case to let them know the case is being closed to Counsel through the Appeals function.
- b. Ask the Counsel attorney if they want the Administrative Record (Form 5500 cases only) mailed directly to them (if there is a paper Administrative Record).
- c. Prepare the case for closing.

Note: The Appeals Office Code is 221 for cases going to Tax Court, and the disposal code is 11 on AIMS and 603 in RCCMS - Unagreed - Petition to Tax Court.

- (24) If a Tax Court petition is not timely filed, the reviewer will:

- a. Prepare the case for closing as a defaulted case.
- b. Use AIMS disposal code 10 and RCCMS code 604.

- (25) If IRS assesses tax on a corporation of \$100,000 in any given tax year, IRC 6621(c) imposes additional interest of 2% interest on amounts due.

- a. For EP exam purposes, section 6621(c) applies to Forms 5330 and to Form 1120 discrepancy adjustments.
- b. IRC 6621(c) applies only to "C" corporations.

Note: IRC 6621(c) doesn't apply to individuals, trusts or "S" corporations.

- c. The additional 2% interest only applies when the IRS issued a 30-Day or 90- Day Letter and only when the taxpayer hasn't paid the amount due within 30 days of the 30-Day or 90-Day Letter date (whichever is issued first).
- d. Ensure the additional 2% interest is assessed, enter the date the 30-Day or 90-Day Letter was issued (whichever is issued first) in the "2% interest date": field on the "Individual/Bus. (1 of 3)" tab of RCCMS Closing Record.

Caution: The additional 2% interest for each year if tax of \$100,000 or more is proposed against a C corporation in any single tax year.

- (26) Forward the RCCMS case to the MR manager who will close the case to the TE/GE Closing Group on AIMS and RCCMS.

If case Closing to	Then
Counsel	<ul style="list-style-type: none"> Email the AIMS Coordinator and TE/GE Closing Group Manager to notify them of the case closure to Counsel and requesting that the status code be updated to 51. When the status code updates to 51, transfer the RCCMS file to Counsel. Send an email to notify of the transfer. Make sure the Administrative Record (Form 5500 cases only) is properly completed in RCCMS. If there is a paper Administrative Record, mail it directly to the assigned Counsel Attorney, unless directed otherwise. Forward acknowledged Form 3210 to the TE/GE Closing Group Manager.
Closing Unit	<ul style="list-style-type: none"> Email the AIMS Coordinator and TE/GE Closing Group Manager to notify them of the case closure. Transfer the RCCMS file to the Closing unit for further processing.

- (27) If MR receives information while the case file is in appellate review, notify the Appeals Office or Counsel immediately.

4.70.14.6.8.2
(11-24-2023)

**Non-Bank Trustee
Investigation Procedures**

- (1) The reviewer:
- a. Determines if the examiner followed the procedures and investigation steps in Employee Plans Technical Guidance, Non-bank Trustee Investigation Procedures.
 - b. Verifies that a copy of the Notice of Approval (NOA), Notice of Change (NOC) and copy of any prior investigation closing, if applicable are in the RCCMS Office Document folder. If not, access the NBT sharepoint site and get the file(s) and upload to RCCMS.
 - c. Verifies that the closing letter, Letter 6118 was prepared, if not create a closing letter using the proforma document located in New Office Documents under the Letters Tab in RCCMS.

Note: If the procedures were not followed, prepare a Reviewer's Memorandum, Form 5456, and return the investigation case file to the Exam group

Note: Letter 6118 has selectable paragraphs.

Caution: Ensure that the Letter 6118 is the latest version posted in RCCMS.

- d. Verifies the accuracy of the Letter 6118 and the Explanation of Deficiencies, if applicable.

Caution: Common mistakes include the following:

- Incorrect accounts are listed on the Letter 6118.
Example: The accounts listed are not those on the NOA or any NOC.
- The Letter 6118 include wrong dates.
Example: NOA's date is not correct.
Example: Date of prior closing letter is not correct.
- • The Letter 6118 is addressed incorrectly.
Example: A NOC was submitted, yet old address was used.
- The Explanation of Deficiencies include grammar and punctuation errors.
- Plain language was not used to draft the Explanation of Deficiencies.

- e. Mail or EEFax the dated and signed closing letter and Explanation of Deficiencies, if applicable to the NBT and a copy to the POA, if applicable.
- f. Ensure a copy of the dated and signed closing letter and Explanation of Deficiencies, if applicable is contained in the RCCMS Office Document folder using the TE/GE naming convention.

4.70.14.6.8.3
(11-24-2023)

**EP Transfer to 90-day
Reviewer**

- (1) This section applies to cases transferred to the “90-Day Reviewer”; the reviewer designated by the MR manager to issue 90-Day Letter packages.
- (2) Effective on the date of transfer, the 90-Day Reviewer is entirely responsible for the case (including protecting the SOL) and its closure.
- (3) Before transferring the case to the 90-Day Reviewer:
 - a. Complete the “Person to Contact” section of the letter using the 90-Day Reviewer’s information (address, ID, and phone number).
 - b. Ensure that the following is located in the RCCMS Office Document Folder:

- Entire 90-Day Letter package (excluding any pubs and notices)
 - Approved Form 1725 indicating the Mid-Atlantic Area Manager approved the issuance of the 90-Day Letter.
 - Entire 30-Day Letter package
 - Copy of applicable return(s), all forms, all workpapers, and all research
 - Copy of all correspondence Reminder: Ensure that all documents were saved to the RCCMS Office Documents Folder using the TE/GE RCCMS Naming Convention.
 - c. Ensure that the Administrative Record is correctly prepared per IRM 4.70.14.2.4.1.3.1, EP & EO Maintaining the Administrative Record File, for Form 5500 cases involving revocation or non-qualification. See *Employee Plans Examination Exhibit* for an Administrative Record index template.
 - d. Complete the RCCMS Closing Record. See IRM 4.70.14.4, Case A Closing.
 - e. Request transfer of RCCMS case to the 90-Day Letter Reviewer.
 - f. 90-Day Reviewer: When you receive the complete case file (RCCMS files, paper case files and the 90-Day Letter package), review the 90-Day Letter package:

- Immediately, if the statute of limitations expires within 45 days.
 - Within 10 workdays, if the statute of limitations expires in more than 45 days.
 - g. 90-Day Reviewer:

- Review the 90-Day Letter Package
- Make any necessary minor corrections to the 90-Day Letter package.
- Contact the original reviewer to discuss any significant corrections identified to see if all facts are understood and to determine if a solution can be reached. If there is a difference in opinion between the 90-Day Reviewer and the original reviewer on the type or extent of the change(s), the MR manager resolves any differences and determines if the case will be returned to the original reviewer.
- If the taxpayer has a representative, make sure that all years listed on the 90-Day Letter are listed on Form 2848 or Form 8821.

- h. Proceed to issue the 90-Day Letter.
- i. Process the case per IRM 4.70.14.6.8.1, EP 90-Day Letter Procedures, paragraphs (18) through (26).

4.70.14.6.8.4
(11-24-2023)

EP Monthly Reports

- (1) At the end of each WebETS reporting period, each reviewer validates their assigned case inventory and submits a status report to the MR manager.
 - a. The number of cases on hand are carefully appraised so appropriate measures are taken to avert potential backlogs.
 - b. The status of short statute and other high priority cases are determined to take appropriate measures.
 - c. Each reviewer reports the following information to the MR manager to include in their monthly report:

- i. Status of special assignments (if applicable)
- ii. Speaking engagements and group presentations they conducted
- iii. Closing agreements secured for cases closed during the WebETS period

4.70.14.6.9
(11-24-2023)

EO – Revocations, any other loss of tax exemption, and foundation reclassifications

- (1) In general, EO Mandatory reviewers prepare and issue 90-day letters for unagreed without protest cases, with these exceptions:
 - a. Special Review prepares and issues 90-day letters in cases they reopen.
 - b. The FSL/ET group manager approves all final adverse employment tax determinations (pending Counsel approval). The Reviewer date stamps and mails the Notice of Determination of Worker Classification (NDWC).
 - c. Groups holding short statute cases prepare and issue the 90-day letters. The Area Manager approves and signs 90-day letters. Examiners work directly with Counsel on cases with imminent statute.
- (2) Don't prepare 90-day letters for unagreed employment tax deficiencies - non-worker classification, and for miscellaneous excise taxes, such as gaming excise taxes. In these situations, the 30-day letter serves as the final letter if not protested.
- (3) Mandatory Review Statute Coordinator- When you receive a case from a group:

- a. Acknowledge receipt of Form 3210, Document Transmittal.
- b. Return one copy of the Form 3210 to the group.
- c. Upload it to the Reporting Compliance Case Management System (RCCMS).
- d. Verify the assessment statute of expirations date (ASED). Notify the Mandatory Review manager if statute procedures (including proper use of alpha code "PP") aren't followed.

Note: For imminent statute returns subject to a mandatory review, examiners assume the responsibility for preparing final closing letters including 90-day letters. For cases involving imminent statute returns refer to IRM 4.70.12.3.7.11.

- e. Send the case file to the Mandatory Review manager to assign to a reviewer.

Caution: If the case file lacks Form 3210, prepare Form 3210, forward an email to the group.

(4) Mandatory Review Statute Coordinator- If the case doesn't belong in Mandatory Review:

- a. Prepare a transmittal (Form 3210).
- b. Complete Form 9814, Request for mail/shipping service (if sending the case outside of Dallas) for any paper case files.
- c. Double package any paper case file (if sending the case outside Dallas).
- d. Transfer the case on RCCMS to the appropriate unit.
- e. Send any paper case file to appropriate unit.

(5) Mandatory Review Manager- Upon receipt of the case file:

- a. Inspect the case file.
- b. Determine the issue(s).
- c. If the case belongs in Mandatory Review, assign to a reviewer.
- d. Give the case to a tax examining assistant/clerk indicating to whom and where to send it.

Note: The Mandatory Review manager assigns cases based on reviewer workload and doesn't consider geographical location, unless the closed case comes from a reviewer's post of duty, in which case they assign it to another reviewer. Reviewers don't review cases they worked on before joining Mandatory Review.

(6) Reviewer, Mandatory Review - When you receive the case file:

- a. Sign the Form 3210.
- b. Prepare a fax cover sheet, attention: tax examining assistant/clerk's e-fax number.
- c. Fax the cover sheet and Form 3210 to the tax examining assistant/clerk's e-fax number.
- d. In MS Outlook, instruct the assistant/clerk to send the signatures to your inbox.
- e. Review the case file to verify the statute of limitations.
- f. Document in a new the completion of steps a through e above.

(7) Reviewer, Mandatory Review - Complete a review of the case file following IRM 4.70.14.6.3, Case Review Steps.

4.70.14.6.9.1
(11-24-2023)
**EO - Declaratory
Judgments Under IRC
7428**

- (1) IRC 7428 provides for the judicial review of certain final adverse EO determinations by either the United States Tax Court, the United States Court of Federal Claims or the United States District Court for the District of Columbia (IRC 7428).
- (2) Matters subject to court review covered under IRC 7428(a)(1) include disagreements on an organization's initial or continuing qualification under IRC 501(c)(3).

Note: Refer to IRM 4.70.14.2.4.1.2, EP & EO Cases Subject to Declaratory Judgment Actions.

- (3) For an organization's initial or continuing qualification as exempt from federal income tax, Section 406 of the PATH Act expanded declaratory judgment rights under IRC 7428 to all IRC 501(c) organizations regardless of paragraph, and to IRC 501(d) organizations.
- (4) When a taxpayer files suit under IRC 7428, the government has 45 days (motions) to 60 days (answers) to file a response with the court, (pertains to the Tax Court). Because the government may file a motion to dismiss before submitting an answer, timeliness is critical.

4.70.14.6.9.2
(11-24-2023)
**EO - Final Adverse
Determination Letter
Case Processing**

- (1) Reviewer: If you agree with the examiner's proposal to revoke (or disqualify) any IRC 501(c) or (d) tax-exempt status without protest:
 - a. Prepare the 90-day Final Adverse Determination Letter (FADL) and any accompanying power of attorney cover letters. If a FADL is already in the file, correct as needed. See Exhibit 4.70.14-42, EO Final Adverse Determination Letter: 501(c)(3) Exemption Revocation (90 Day Letter) or Exhibit 4.70.14-43, EO Final Adverse Determination Letter: 501(c)(3) Foundation Status Modification (90 Day Letter).

Note: You may further customize IRC 501(c)-other and 501(d) revocations.

- b. If unagreed, prepare a memo to TEGEDC requesting a pre-issuance review of the letter. See Exhibit 4.70.14-41, EO Memorandum to TEGEDC.
- c. If unagreed, transfer the RCCMS case file to TEGEDC. Prepare Form 3210, Document Transmittal, and Form 9814, Request for Mail/Shipping Service, to send any paper case to the appropriate TEGEDC office. For office addresses, see <https://ccintranet.prod.irsounsel.treas.gov/OrgStrat/Offices/TEGE-DC/Pages/AreaCounselOffices.aspx>.

Note: For purposes of the FADL, treat IRC 7428 declaratory judgment cases as unagreed even if you received a signed Form 6018, Consent to Proposed Action, except that TEGEDC review of cases with a signed Forms 6018 is not required.

- (2) Upon issuing a 90-day FADL to an organization, perfect the case file.
 - a. Check for a completed Form 2363-A, Request for IDRS Input for BMF/EO Entity Change
 - b. Make corrections as needed or prepare a new Form 2363-A.
 - c. See Exhibit 4.70.14-46, EO Form 2363-A Instructions: IRC 501(c)(3) Revocation or Exhibit 4.70.14-47, EO Form 2363-A Instructions: IRC

501(c)(3) Foundation Status Modification, for instructions in preparing Form 2363-A.

- d. Sign and email Form 2363-A to the **TEGE FAST* unit for processing. Your signature assures the FAST you reviewed the adverse determination.

- (3) When you've finished creating the 90-day letter package, save it along with any power of attorney cover letters in the RCCMS Office Documents folder and re-index the administrative record, if necessary. See IRM 4.70.14.2.1.5.9, EP & EO Administrative Record.
- (4) Prepare a brief memo to Area Counsel requesting pre-issuance review of the 90-day letter. See Exhibit 4.70.14-41, EO Memorandum to TEGEDC. Consult Chief Counsel's website for the appropriate TEGEDC office: <http://ccintranet.prod.irsounsel.treas.gov/OrgStrat/Offices/TEGE-DC/General%20Documents%20and%20Links/Area%20Counsel%20Geographic%20Jurisdiction%20Map.pdf>.

Note: It's recommended the reviewer first review the file to see if TEGEDC previously had been involved in advising Exam in the case. The file should be sent to the TEGEDC office attorney who originally worked on the case.

- (5) After consulting the map, prepare a Form 3210 and Form 9814 to ship any paper case file items to the identified TEGEDC office. For a list of TEGEDC office addresses, see <http://ccintranet.prod.irsounsel.treas.gov/OrgStrat/Offices/TEGE-DC/Pages/AreaCounselOffices.aspx>.
- (6) Double package any paper case file per IRM 10.2.13.4.4.1. Send any paper case file to TEGEDC.
- (7) When TEGEDC returns the file, acknowledge receipt on the Form 3210 and return the form. Retain a copy of the Form 3210 as per local procedures.
- (8) Review the memorandum from TEGEDC. Make any corrections to the 90-day letter package as directed. If you have questions, consult the memo author.
- (9) Anytime an EO or FSL specialist, reviewer or field manager discusses an issue with TEGEDC it is documented in the file (such as the case chronology record), indicating TEGEDC had been consulted, the name of the attorney, contact number, etc.
- (10) For final adverse determination letters, grade 12 reviewers and above may authorize and sign. If needed, make copies of the letters for distribution to powers of attorney.
- (11) Print and date stamp the completed final 90-day letter package. Use the method provided in IRM Exhibit 4.8.9-2, Computation of Last Day to File a Petition with United States Tax Court and Computation of Default Date, to determine the last day for filing a petition.
- (12) For statutory notices of deficiency and notices of worker classification determination, signature stamp the letter with the Director, EO Examinations signature.
- (13) Make additional copies of the 90-day letter as indicated in the enclosure statements at the end of the letter. Make sure to save the final 90-day letter package in RCCMS.

- (14) Prepare the 90-day letter package for mailing, either certified for domestic addresses, or registered for foreign addresses:
- Follow local procedures for obtaining postage and mailing the package.
 - Obtain a stamped certified or registered mail receipt. (For countries that don't permit registered mail, get a certificate of mailing).
 - Complete Postal Service (PS) Form 3877, Firm Mailing Book for Accountable Mail.
 - Scan the receipt and save with the 90-day package and administrative record (if applicable) in RCCMS.

4.70.14.6.9.3

(11-24-2023)

Publication of the Determination

- (1) The IRS publishes lists of:
- Revoked IRC 501(c)(3) organizations in the Internal Revenue Bulletin
 - IRC 501(c)(3) organizations that lost their public charity status and have become private foundations.
- (2) The public can:
- Search an organization's exemption or foundation status via Tax Exempt Organization Search.
 - Inspect a redacted copy of a FADL at the IRS Electronic Reading Room.
- Note:** Redacted FADL's of revoked organizations other than 501(c)(3) organizations are also posted to the IRS Electronic Reading Room.

- (3) Reviewer: For purposes of public notice, prepare:

Form	For
Form 4194, Revocation of IRC 170(c) Status. See Exhibit 4.70.14-44, EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act, for directions.	The revocation of a IRC 501(c)(4), (c)(8), (c)(10), (c)(13) or (c)(19) organization, if contributions to the organization are no longer deductible under IRC 170(c).

- (4) The preparation of Form 4194 publishes the non-501(c)(3) organizations that are no longer deductible under IRC 170(c) in the IRB notices.
- (5) Reviewer: Secure-email the following items to the Manager, Mandatory Review:
- The electronically signed Form 4194
 - The 30-day letter
 - The revenue agent report (RAR), including Form 886-A, Explanation of Items
- (6) The final adverse determination letter, with date of mailing

Note: The 30-day letter is a transmittal letter to the RAR soliciting agreement to the proposal. It also informs the organization of the right to appeal. Manager, Mandatory Review: Forward the email to the IRC 6110 Redactions Coordinator in Mandatory Review for a:

- a. IRB Notice process
- b. Redaction process

(7) The “IRB notice process”: The IRC 6110 Redactions Coordinator:

- a. Emails to irb@irs.gov a notice of a revocation or the appropriate adverse change in foundation status by sending the following items:

- Form 14712, Memorandum for Bulletin Program Coordinator and Internal Revenue Bulletin Submission
- Deletions Statement for revocations (See Exhibit 4.70.14-48, EO Deletions Statements)
- A Foundation Change statement for adverse changes to a foundation status

- b. Electronically signs Form 4194 upon completing the IRB notice process.
- c. Keeps a retention file for Form 4194.

(8) The “redaction process”: The IRC 6110 Redaction Coordinator:

- a. Redacts a copy of the 30-day letter, RAR, and FADL.
- b. Refers to redaction guidance in IRM 7.28.4.4, General Guidelines for IRC 6110 Deletions.
- c. Refers to redaction guidance in IRM 7.28.4.5, Submitting IRC 6110 Determination Letters for Disclosure, reviewer procedures.
- d. Sends to the revoked organization’s address of record (and up to two designated representatives) the following items:

- Letter 437, Notice of Intention to Disclose, with the blank fields filled-in. Letter 437 directs the organization to reply directly with the IRS Chief Counsel Legal Processing Division in Washington D.C.
- Copy of FADL
- Copy of FADL (redacted)
- Copy of 30-day letter
- Copy of 30-day letter (redacted)
- Copy of Form 886-A
- Copy of Form 886-A (redacted)

- e. Follow the mailing procedures in IRM 4.8.9.12.3, Records of Mailing
- f. Emails to **CC 6110 Disclosure* the following documents:

- Copy of Letter 437 sent to the organization
- Checklist for EO IRC 6110 Written Determinations (see Exhibit 4.70.14-50, EO Checklist for EO IRC 6110 Written Determinations))
- Copy of FADL
- Copy of FADL (redacted)
- Copy of 30-day letter
- Copy of 30-day letter (redacted)
- Copy of Form 886-A o Copy of Form 886-A (redacted)

- (9) These procedures are based on Section 3.01, 3.02 and 3.03 of Rev. Proc. 2018-32, 2018-32 IRB 739.
- (10) Foundation status changes do not require redaction as they are not disclosed or sent to the IRS Reading Room.

4.70.14.6.9.4
(11-24-2023)

EO – Responding to Questions

- (1) Mandatory Review encourages all EO Examination employees to submit their procedural questions to the **TEGE EO Review Staff* mailbox.
- (2) Examination employees first consider submitting their technical questions by clicking on “ask a question” on the relevant Knowledge Network (K-Net) site on the KM portal.
- (3) Before you submit a question, review the available materials on the topic, such as:
 - Internal Revenue Code sections
 - Treasury Regulations
 - Applicable court cases
 - Other legal guidance
 - Continuing professional education materials
 - Internal Revenue Manuals
 - Interim guidance memoranda

Reminder: See IRM 4.10.7.2, Researching Tax Law for a comprehensive listing of available legal resources.

- (4) Please list the resources you researched when submitting your question.
- (5) The mailbox coordinator either answers or forwards the question to a SME, with an expected response of three business days. SMEs aren’t limited to members of Mandatory Review.
- (6) When an examiner or manager directly contacts a reviewer, whether by Skype, in person, or by phone, the reviewer documents the question (such as copying the conversation from Skype to email) and forwards the question with the reviewer’s response to the mailbox.
- (7) Mandatory Review maintains a table of previously asked questions and responses. The reviewer may access this table to see if a previously provided answer is available and applies it to the current question.

4.70.14.6.9.5
(11-24-2023)

EO - Form 1254 Suspense Procedures

- (1) For guidance on suspending cases using Form 1254 see IRM 4.2.1.4, 1254 Suspense and IRM 4.8.2.11, Suspense Cases. Examination Technical Services is the SB/SE counterpart to EO Examinations Mandatory Review.
- (2) When preparing Form 1254, replace the salutation from “SB/SE, Technical Services Group Manager” to “Mandatory Review manager”.
- (3) When following IRM 4.8.2.11.1.1, Placing the Case in Suspense, put the case into status 38 in lieu of status 30.

4.70.14.6.10

(11-24-2023)

**TEB Technical -
Unagreed Adverse
Determination**

- (1) The mandatory review involves:
 - a. Ensuring that the factual and legal matters documented in the case file support the issues raised in the proposed adverse or claim denial.
 - b. Reviewing the issuer's protest to the Form 886-A, Explanation of Items, and the examiner's rebuttal even if such documentation was previously reviewed in a prior technical review.
- (2) If the TLS determines that the examiner's rebuttal does not sufficiently address the issuer's protest or that the examiner's position requires further development, the TLS coordinates with their manager, Field Exam group manager, and the examiner. Once all issues are resolved, the TLS notifies the TEB Technical manager, the examiner, the examiner's group manager and transfers the case to Appeals.
- (3) If the examiner's group manager decides to transfer the case to Appeals before the TLS determines the rebuttal sufficiently addresses the issuer's protest, the TLS will brief the TEB Technical Manager on the case. Then, the program manager, Technical and the TEB Exam group manager will discuss whether additional case actions are required before transferring the case to Appeals.
- (4) Examiner: provide any subsequent revisions to the rebuttal to the issuer and/or the representative before transferring the case to Appeals.
- (5) Examiner: transfer case to Appeals:
 - a. Confirm the RCCMS case file sent to Appeals includes copies of the following documents:

1. The technical advice memorandum, if any:
 2. All information received by TEB from the issuer regarding the bond issue or Arbitrage Rebate Claim Denial.
 3. All workpapers related to TEB's examination of the bond issue or Arbitrage Rebate Claim Denial.
 4. TEB's written Proposed Adverse Determination or Arbitrage Rebate Claim Denial.
 5. The issuer's written protest.
 6. TEB's response to positions stated by the issuer in its protest.
 - b. Ship any paper case file items to Appeals via Form 3210, Document Transmittal, to:

Internal Revenue Service
ATTN: Ronda Pennington
10 Causeway Street
Appeals Office Room 493
Boston, MA 02222-1083
Phone: 617-788-0628

Note: Currently, all TEB cases should be transferred via RCCMS to Appeals. The examiner should review this with their manager prior to mailing any paper documents.

- (6) Examiner: Close the case on RCCMS in status 51 with disposal code 601 to the TE/GE Closing Group (400-20011-7204).
- (7) Examiner: Add a note to the RCCMS Comment box: "Appeals case, DC 07 (601). Paper case file sent directly to Appeals".

Note: Delete the sentence about the paper case file if all documents are transferred to Appeals electronically.

4.70.14.6.10.1
(11-24-2023)

**TEB Technical – Final
Adverse Determination**

- (1) If the issuer or authorized representative doesn't request an administrative appeal of a proposed adverse determination to Appeals, issue the appropriate final adverse determination letter: Letter 4409, Notice of Final Adverse Determination; Letter 905, Final Partial Claim Disallowance; Letter 906, Final Full Claim Disallowance; or Letter 5677, TEB Arbitrage Claim Notification of Final Adverse Determination, by certified mail with a request for return receipt.
- (2) Field Exam group manager forwards a copy of this letter to the Bondholder Referral Coordinator, if applicable.
- (3) For a conduit financing resulting in a final adverse determination, determine whether the conduit borrower is under exam by another operating division or another TE/GE function. If the conduit borrower:
 - a. Is under examination, inform the appropriate operating division of the final adverse determination and coordinate as needed to consider any impact on the conduit borrower's tax matters.
 - b. Isn't under examination, refer to the appropriate operating division or other TE/GE function to consider any impact on the borrower's tax matters.

4.70.14.6.10.2
(11-24-2023)

**TEB – Possible Actions
Taken by Appeals**

- (1) If Appeals settles the case, upon case closing, Appeals sends Form 5402, Appeals Transmittal and Case Memo and a copy of the closing letter to the TEB Program Manager.
- (2) If Appeals is unable to settle the case, they will:
 - a. Issue the Final Adverse Determination Letter and close the case.
 - b. Return the RCCMS case and any paper case file to TEB to contact the bondholders (if warranted).

Note: However, Appeals doesn't release Form 8038 jurisdiction back to TEB. Accordingly, TEB may not:

- i) continue any case exam activities, or
- ii) reengage in resolution actions without reopening the case.

- (3) If Appeals:
 - a. Determines that TEB has not fully developed its position, they: may return the case to TEB for further development or concede the government's position and close the case.
 - b. Receives, during their consideration of the case, a new argument from the issuer, they may return the case to TEB requesting its response to the issuer's argument. Appeals may or may not release jurisdiction.
 - c. Releases jurisdiction, TEB is free to re-engage in resolution actions or concede its position and close the case as agreed.

- d. Doesn't release jurisdiction, TEB should provide the response requested and return the case to Appeals within the established timeframe.

Note: TEB must not communicate with the issuer and/or authorized representative while Appeals has jurisdiction.

4.70.14.6.10.3

(11-24-2023)

TEB – Arbitrage Refund Claims

- (1) Certain refund claims are subject to mandatory review:
 - a. Approved refund claims “**exceeding**” \$2 million
 - b. Unagreed refund claims
- (2) The TEB Technical Manager assigns one or more TLS from Technical to perform mandatory reviews.
- (3) The TLS reviews the refund claim using the following procedures and may discuss any questions with the examiner:

Action	Explanation
Review the refund claim case file to identify errors or issues of particular significance.	Your review is mostly to: <ul style="list-style-type: none"> • Confirm the examiner's determination for technical accuracy. • Verify the supporting documentation is included in the file.
Perform a cursory review of the unagreed issue(s) in the case to determine the scope of your review. Then, review the underlying documentation.	For example, you may decide to limit your review to the issue that's the basis for a denial. You may also: <ol style="list-style-type: none"> 1. Review arbitrage computations and supporting documentation to confirm they're substantially correct and technically accurate. 2. Test computations for select funds and/or investments to independently confirm the calculation method's accuracy. 3. Review the case file to identify any factors that might substantially impact the calculations' accuracy or otherwise affect the claim's validity.
Document any needed case development and return the refund claim case to the examiner.	If you determine that additional development is needed to concur with the examiner's determination.

Action	Explanation
Close the refund claim case	If you agree with the TEB Exam determination.

4.70.14.6.11
(11-24-2023)

**Agreed Cases Reviewed
Per Management
Request**

- (1) Sometimes, management requests MR to review certain open agreed cases. After reviewing these cases the reviewer:
 - a. Gives requested feedback to management on Form 5456 or any other form of communication the MR manager determines.
 - b. Closes the case to Examinations, Support Processing, or returns the case to the group, as applicable.
- (2) The reviewer won't reopen an agreed issue, or open or elevate a new issue, unless the nature for proposing this is significant or the potential effect upon the tax liability is material.
- (3) Cases are returned to the field group only if the field group manager agrees.

4.70.14.7
(11-24-2023)

**Closing Cases to
Appeals**

- (1) A formal protest comes only in response to the certified 30-day letter. Responses to the initial examination report don't include formal protests, as the initial examination report doesn't convey appeal rights.
- (2) If the taxpayer responds to the 30-Day letter with a protest to appeal the issues proposed in the 30-Day letter, the IRS must abide by that request, if certain requirements are satisfied:
 - a. There is sufficient time remaining on the statute.

FUNCTION	AMOUNT OF TIME REQUIRED
Appeals	Requires that there must be at least 365 days remaining on the SOL at the time Appeals receives the case.
TE/GE Closing Group	Will not accept any protested case with less than 395 days remaining on the statutory period of limitations for assessment (330 days for cases previously returned to the examination group by Appeals)

- b. The protest is valid. Verify that a valid formal protest contains the required elements as outlined in:

- Publication 3498, The Examination Process
- Publication 5 for Claims, Form 1040 or Form 1120 protests
- Publication 1020 for Form 990-T, Form 5330 and Form 5500 protests
- Publication 892, How to Appeal an IRS Decision on Tax Exempt Status

c. Contents should include:

1. The taxpayer's name, address, and a daytime telephone number.
2. A statement that the taxpayer wants to appeal the findings to the Appeals Office.
3. A copy of the letter showing the proposed changes and findings (or the date and symbols from the letter).
4. The tax periods or years involved.
5. A list of the changes that are unagreed and reasons for disagreement.
6. The facts supporting the taxpayer's position on any unagreed issues.
7. The law or authority, if any, on which the taxpayer is relying.
8. The taxpayer's signature under penalties of perjury.

(3) The jurat statement is "Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete." If the statement is modified or missing, Appeals doesn't recognize the protest as a formal protest.

(4) If the representative prepared and signed the protest, the representative must substitute a declaration stating:

- a. That he or she submitted the protest and accompanying documents.
- b. Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

Note: If the declaration is missing, or the representative submitted the jurat statement instead, notify the representative of this requirement.

(5) For all situations where the formal protest contains the jurat statement (or substitute declaration), but not all of the required elements, consult Mandatory Review to determine whether the protest can be forwarded to Appeals.

(6) If there isn't enough time remaining on the statute of limitations to forward the protest to Appeals, request a statute extension.

- a. If the taxpayer refuses to extend the statute of limitations, or you can't find the taxpayer, get the group manager's approval to proceed with a 90-Day letter process instead of sending the case to Appeals.
- b. If the taxpayer provides an extension, proceed to update the statute using RCCMS.

- (7) If the formal written request doesn't comply with the requirements as shown in Pub 5, Pub 594, Pub 892, Pub 1020, Pub 3498 or Pub 5146, whichever is applicable, you may, with managerial approval:

- a. Return the protest to the taxpayer with applicable version of Letter 1025 and grant them additional time to perfect the protest.

Note: Note: The signature of only one spouse on a protest for a joint return doesn't make the protest incomplete. Also, if the only item missing from the protest is a copy of the 30-Day Letter, you can close the case using the copy in the file. Therefore, there is no need to return the protest to the taxpayer for perfection. Adequacy of a protest is generally not determined based on its substantive content, such as whether the protest contains sufficient factual or legal support.

- b. Proceed to close the case to Appeals
c. Proceed with a 90-Day letter process instead of sending the case to Appeals. Examples of inadequate responses:

- The taxpayer submits a formal written protest that simply states that the taxpayer doesn't agree.
- The formal requests don't provide any law to support the position.
- Taxpayer didn't sign the documents under the penalties of perjury.

- (8) If the total amount of tax plus penalties for any tax period is not more \$25,000, the taxpayer may make a "small case request" for an Appeals conference (protest to Appeals) when responding to the 30-Day letter. For a small case request, the taxpayer may submit Form 12203 to request an Appeals conference, or the taxpayer may send a letter requesting Appeals consideration indicating the changes they don't agree with, and the reasons they don't agree.

Note: See Pub 1020 or Pub 5, dependent on which publication was provided and the instructions to Form 12203.

Note: Form 12203 does not have to be submitted with a penalties of perjury statement as is required with a formal written protest to Appeals.

- (9) If the total amount of tax plus penalties for any tax period is more \$25,000, the taxpayer must submit a formal protest to Appeals.

Note: See Pub 1020 or Pub 5, dependent on which publication was provided.

- (10) If the taxpayer or POA files a valid timely protest to appeal and the issues address those in the RAR in the 30-Day Letter package, the examiner will:
- a. Review the protest and evaluate any new facts or arguments presented.
 - b. Update the RAR or prepare a rebuttal on a Form 886-A to address the protest, rebutting the taxpayer's position (if necessary). Notify the group manager (or designee) that a valid protest was received. The following table outlines how to address common issues raised in protests:

If the protest	And.....	Then
Identifies a fact as erroneous	The protest over the fact is correct	Agree with the correction.
Identifies a fact as erroneous	The protest over the fact is wrong	Confirm the validity of the original fact.
Challenges the facts	The challenge constitutes a difference of opinion	Dispute the opinion and restate the applicable portion of the government's position.
Identifies legal references not previously cited	The citations are applicable	Address the citations and identify any differences in application of the law.
Identifies legal references not previously cited	The citations aren't applicable	Explain why the law cited isn't applicable.
Challenges the legal interpretation	Their analysis is flawed	Clarify the law and point out the error in the analysis.
Challenges the legal interpretation	Their analysis is correct	Agree with the interpretation.

- c. Send the revised RAR to the taxpayer and POA, if applicable, with cover Letter 5918, Protest Received Rebuttal/Transfer to Appeals. Ensure that the updated RAR states that the revised RAR supersedes the previously provided RAR
- d. Complete the Appeals routing slip (Form 1725) for the case to go to the Appeals Office in Chicago, (Office Code 131).
- e. If the return is a SFR Form 5330 or Form 990-T and the IRC 6651(a)(2) failure to pay penalty is proposed, complete Form 13496.

Reminder: Form 13496 is not required if only the IRC section 6651(a)(1) failure to file penalty is proposed.

- f. If applicable, copy the RGS information to an email to include or associate with your case. Ensure any passwords you use to encrypt the file is noted on the CCR.
- g. Follow these steps to send RGS file by email:

- Open the RGS program, highlight the case from “Case Management Window,” which usually opens automatically, and hit “Select.” If the “Case Management Window” doesn’t automatically (or you’ve been working in RGS on another case, select “File,” “Open” and “Case” from the “Report Generation Software” window.
- From the “Report Generation Software” window, select “Copy Case” from the “File” drop down menu.
Note: Selecting “Move Case” removes the case from RGS once case is copied to your hard drive.
- From the “Copy Case(s)” window, use “Select Location” in the “Copy Cases(s) To” box to navigate to the desired location on your hard drive.
- Select “Copy.” A folder containing a file “NFORWARDI1.ZIP” (or similar name) is created.
- Send this file to the email address the Manager, EP Mandatory Review gave you.

h. To extract RGS information in an email (the NFORWARDI1.ZIP file):

- Save the file to your hard drive.
- Open RGS.
- At the “Case Management” window, select “Merge”.
Note: If the “Case Management” window doesn’t open automatically, select the “File” drop down menu and “Case” then “Open” from the “Report Generation Software” window.
- A “Merge” window will open.
- In the “Merge from” box navigate to the NFORWARDI1.ZIP file and select.
- Then select “Merge”.

- i. Save all of the prepared forms and letters in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.
- j. Scan all relevant paper documents and save them in the RCCMS Office Documents folder using the RCCMS Naming Convention.

Note: If the protest is incomplete and the taxpayer would not fix the deficiencies, get the group manager’s approval to proceed with a 90-Day letter process instead of sending the case to Appeals.

(11) If IRC 6651(a) penalties are to be assessed on a SFR, the IRS must certify the SFR Form 5330, and Form 990-T per IRC 6020(b).

- a. Use Form 13496 to provide the certification to prepare the SFR Certification package.

Note: When the report of proposed adjustments involves more than one tax year, a separate Form 13496 must be prepared for each year.

- b. A SFR package includes:

- i. Form 13496
- ii. The SFR (Form 5330 and Form 990-T sent to the Service Campus)
- iii. The RAR (Form 886-A)
- iv. Form 5438

- c. The Form 13496 must contain an original signature and date. The date must be on or after the date the 30-Day Letter is signed and dated and before the date the 90-Day Letter is signed and dated.
- d. The completed Form 13496 must identify the taxpayer by name, contain the taxpayer identification number, purport to be a valid IRC 6020(b) return, and be signed and dated.
- e. Form 13496 requires the number of pages in the SFR package be noted. List the total number of pages in the SFR package.

Note: Whenever the examiner revises a report of proposed adjustments that increases the taxpayer's total tax liability, a recertification on another Form 13496 is required. The revised form must be signed and dated on (or after) the date of the revised report.

(12) Complete the RCCMS closing tabs and consider:

- a. The AIMS disposal code is 07 (601 in RCCMS), Appealed—Protest to Appeals.
- b. Do not make an entry for Tax, Liability, or Interest.
- c. Enter Appeals Office Code 131 in RCCMS.
- d. Enter the tax and negligence penalties on the "Unagreed Amount" line in the Individual/Business (1 of 3) tab of the Closing Record in RCCMS.
- e. When you "validate for close" in RCCMS, complete any fields that appear in red.

(13) Before closing the case to Appeals, make sure the following items are prepared electronically and placed in RCCMS:

- a. Dated 30-Day Letter to the taxpayer with all attachments
- b. Taxpayer's valid protest letter with all attachments (scanned)
- c. RAR revised to address the taxpayer's protest including the rebuttal to the taxpayer's position and the Letter 5918, Protest Received Rebuttal/ Transfer to Appeals used to send the RAR with rebuttal to the taxpayer (and POA, if applicable)
- d. Completed Form 1725
- e. Copy of the return(s)
- f. SFR package and Form 13496, if applicable
- g. 6020(b) Certification package(s), if applicable
- h. All documents that were exchanged and relevant documents that you prepared during the examination.

Note: Keep all records you upload into RCCMS per normal record retention requirements.

(14) Complete the Appeals e-checksheet in RCCMS.

(15) Close all cases, with rare exception, 100% electronically. You must:

- Close all cases fully electronically to increase efficiency and reduce the need to mail paper case files.

- Consult with your manager on cases with unique circumstances that might justify closing with a paper case file. Note that cases to Appeals are to be closed electronically.
- (16) Before closing to Appeals, the group manager or designee will
 - a. Review the case to ensure all the required actions have been completed.
 - b. Update the case in RCCMS to status 51.
 - c. Close the case to TE/GE Closing Group.
 - i. When the TE/GE Closing Group accepts the case and puts it in status 51, the group manager or designee will box up the paper case files, if any, and mail them with Form 3210 listing all returns to Appeals.
 - (17) When the acknowledged Form 3210 is returned from Appeals, the group manager or designee will send a copy to the TE/GE Closing Group manager. The TE/GE Closing Group will update the case to status 81 and transfer the RCCMS case file(s) to Appeals.
 - (18) If information is received in the group while the case file is in appellate review, immediately send the Appeals Office the information.

Note: The group manager determines whether any proposed communication with Appeals is necessary and whether it is an ex parte communication covered by RRA 98 limitations. See IRM 8.1.10, Ex Parte Communications for the rules on ex parte communications.

Reminder: Notify the taxpayer that you provided the additional information to Appeals.

4.70.14.8
(11-24-2023)
**Ex Parte
Communications**

- (1) Taxpayers have the Right to Appeal an IRS Decision in an Independent Forum and the Right to Challenge the IRS's Position and Be Heard.
- (2) Rev. Proc. 2012-18, Sec. 2.03(1), provides guidance concerning prohibited ex parte communications.
- (3) Ex parte communications are communications that take place between Appeals and another IRS function without the participation of the taxpayer or the taxpayer's representative. Ex parte communications between any Appeals employee and employees of other IRS functions are prohibited to the extent that such communications appear to compromise the independence of Appeals.
- (4) All IRS employees share the responsibility to ensure that communications with Appeals do not compromise or appear to compromise the independence of Appeals. This includes both oral and written communications.
- (5) All IRS employees will make every effort to promptly end any communications not permitted by the ex parte communication rules.
- (6) When communicating with appeals, follow procedures in IRM 4.2.7, General Examining Procedures, Ex Parte Communication Procedures and reference IRM 8.1.10, Appeals Function, Ex Parte Communications for guidance concerning ex parte communications.

4.70.14.9
(11-24-2023)
**Appeals Case Return
Procedures**

- (1) Appeals may return cases to examination groups or Mandatory Review new information is received, new issues are raised, or new arguments are presented.
- (2) When you receive the case, prioritize it.
- (3) After reviewing the case file and the memo from Appeals, the examiner and examiner's manager will meet to discuss the issues raised by Appeals.
- (4) If the case is returned to the examiner's group:
EP:
 - If the Appeals Officer's concerns can be easily addressed, act accordingly
 - The group manager's permission is required to communicate with Appeals. The manager determines whether the proposed communication is necessary and whether it is an ex parte communication covered in RRA 98 limitations. See IRM 8.1.10, Appeals Function, Ex Parte Communications for rules.
 - When the recommended actions have been completed, return the case to Appeals or closed per group manager instructions.

TEB:

- If a new argument is received from the issuer, Appeals may return the case requesting a response to the issuer's argument. Appeals may or may not release jurisdiction.

- If Appeals releases jurisdiction, the examiner is free to re-engage in resolution actions or concede its position and close the case as agreed.
 - If Appeals doesn't release jurisdiction, the examiner should provide the response requested and return the case to Appeals within the established timeframe.

Note: The examiner must not communicate with the issuer and/or authorized representative while Appeals has jurisdiction.

ITG:

- If the examiner and manager don't agree with Appeals' recommendation, the examiner will prepare a responding or clarifying memo and return the case file to Appeals. Send a copy to the taxpayer. See IRM 4.2.7.4.1 and IRM 4.2.7.5.
- If the examiner and manager agree with Appeals recommendations, complete the required actions.
- If appeals receives a new argument from the taxpayer/issuer, the case may be returned to the examiner. Appeals may or may not release jurisdiction.

- If Appeals releases jurisdiction of the case, the examiner may re-engage in resolution actions or concede their position and close the case as agreed. Update AIMS to Status 12. When all other actions are complete, close the case.
- If Appeals doesn't release jurisdiction, respond as requested. Don't update AIMS. When the actions have been completed, close the case and return it to Appeals by the set time frames.

(5) If the case is returned to Mandatory Review:

- Mandatory Review Manager Responsibilities:

- a. Research: case records to determine original reviewer. If still in mandatory review, return case to that reviewer. If not, assign case to another reviewer.
- b. Pull the RCCMS records from the RCCMS case library.
- c. Assign the case to the reviewer.
- d. Give reviewer specific instructions or observations, as needed.

- Reviewer Responsibilities:

- a. Give high priority to working the case.
- b. Review the case file and Appeal's memo to determine if you should return the case to the original field examiner for further development (discuss with your manager as appropriate).
- c. If you can easily correct the Appeal's Officer's concerns, do so and send the case back to Appeals.
- d. If you are returning the case to the field, prepare Form 5456, Reviewer's Memorandum, and follow the procedures in IRM 4.70.14.6.4, Form 5456, Reviewer's Memorandum.

(6) The group manager's permission is required to communicate with Appeals. The manager determines whether the proposed communication is necessary and whether it is an ex parte communication covered in RRA 98 limitations. See IRM 8.1.10, Ex Parte Communications for rules.

Exhibit 4.70.14-1 (11-24-2023)**Closing Letters for No Change Cases**

<i>No Changes or Change due</i>	
TYPE OF RESULT & RETURN:	CLOSING LETTER
No Change to Status, IRC 501(c) or (d) Exempt Organizations IRC 527 Exempt Organizations <ul style="list-style-type: none"> • Form 990 • Form 990-EZ • Form 990-PF • Form 990-BL • Form 1065 	<ul style="list-style-type: none"> • Letter 6049 pure no change or • Letter 1744 Change due to Correction of Operations
No Change to Status <ul style="list-style-type: none"> • Form 990-N 	<ul style="list-style-type: none"> • Letter 6049 pure no change or • Letter 1744 Change due to Correction of Operations
No Change for IRC 4947 Trusts <ul style="list-style-type: none"> • Form 990 for IRC 4947(a)(1) Trusts • Form 990-PF for IRC 4947(a)(1) Trusts • Form 5227 for IRC 4947(a)(2) Split-Interest Trusts 	<ul style="list-style-type: none"> • Letter 6049 pure no change or • Letter 1744 Change due to Correction of Operations
No Change to EO Income Taxes for IRC 501(c) or IRC 4947(a)(1) or IRC 4947(a)(2) Trusts <ul style="list-style-type: none"> • Form 990-T, also proxy tax • Form 1041 • Form 1041-A • Form 1120 • Form 1120-POL 	<ul style="list-style-type: none"> • Letter 6049 pure no change or • Letter 2656, No tax liability after a response to proposal of tax or • Letter 5334, No tax liability after delinquent income tax return secured and accepted as filed, with or without penalties
No Change to Income Taxes - Converted Returns - No tax liability after response to proposal of tax or delinquent income tax return secured and accepted as filed <ul style="list-style-type: none"> • Form 1041 • Form 1120 	<ul style="list-style-type: none"> • Letter 2656, No tax liability after a response to proposal of tax or • Letter 5334, No tax liability after delinquent income tax return secured and accepted as filed, with or without penalties
No Change to Income Taxes - Discrepancy Adjustment - No tax liability after response to proposal of tax <ul style="list-style-type: none"> • Form 1040 • Form 1120 	<ul style="list-style-type: none"> • Letter 2656, No tax liability after a response to proposal of tax (replaces Letter 3604, obsoleted on 5/31/2017)
No Change to Chapter 41 or 42 Excise Taxes. <ul style="list-style-type: none"> • Form 4720 • Form 4720-A 	<ul style="list-style-type: none"> • Letter 6049 or • Letter 2656, No tax liability after a response to proposal of tax or • Letter 5334, No tax liability after delinquent income tax return secured and accepted as filed, with or without penalties

Exhibit 4.70.14-1 (Cont. 1) (11-24-2023)
Closing Letters for No Change Cases

TYPE OF RESULT & RETURN:	CLOSING LETTER
No Change to Miscellaneous Excise Taxes <ul style="list-style-type: none"> • Form 11-C • Form 730 	<ul style="list-style-type: none"> • Letter 6049 or • Letter 2656, No tax liability after a response to proposal of tax or • Letter 5334, No tax liability after delinquent income tax return secured and accepted as filed, with or without penalties
No Change to Employment Taxes <ul style="list-style-type: none"> • Form 940 • Form 941 • Form 944 • Form 945 	<ul style="list-style-type: none"> • Letter 3381 or • Letter 4840 • Form 4666 enclosed with Letter 4840 or • Letter 5332, No tax liability after a response to proposal of tax or • Letter 5334, No tax liability after delinquent income tax return secured and accepted as filed, with or without penalties

Note: For multiple-year examinations, don't send a no change letter unless all years are no changed.

Reminder: Send a copy of the report and closing letter using Letter 937-A, Transmittal Letter for Power of Attorney, to the representative who is authorized to receive copies of the taxpayer correspondence via Form 2848 or Form 8821.

Exhibit 4.70.14-2 (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

(1) For general procedural instructions on claims and requests for abatement, see IRM 4.70.17, Claims and Abatements.

(2) Where FTS is a viable option to an eligible taxpayer for unagreed issues, give the taxpayer Pub 5092, Fast Track Settlement A Process Resolution of Tax Exempt and Government Entities (TEGE) Tax Issues, with the initial examination report.

(3) If a statute date is imminent and there is no time to send a standard 30-day letter, consider issuing a replacement transmittal letter for the report. Consult with Area Counsel concerning the content, format, and timing of issuing a letter that replaces a 30-day letter. Refer to the Taxpayer Advocate Service (TAS) directory page <https://organization.ds.irsnet.gov/sites/tas/SiteAssets/TAS%20Directory.aspx> for the current list of TAS offices. Generally:

- Summarize in the letter why you can't use a standard 30-day letter. See Sections 9.10 and 12.02 of Rev. Proc. 2019-5 (updated annually).
- Ensure the replacement transmittal letter contains the standard Taxpayer Advocate paragraph.
- A suspense date for the letter isn't required.
- The transmittal letter can direct the taxpayer toward availing themselves the opportunity for Appeals consideration, such as by promptly submitting a valid consent to extend the statute date.

<i>Claims Allowed in Full</i>	
TYPE OF RESULT & RETURN:	CLOSING LETTER
<u>Income Taxes -</u> Claim Allowed in Full: <ul style="list-style-type: none"> • Form 990-T also proxy tax • Form 1120-X • Form 1120-POL • Form 1041 	<ul style="list-style-type: none"> • Letter 570-A • Form 4549 No signatures are necessary on waiver forms if the claim is allowed in full specifically as requested by the taxpayer. While allowing a claim in full, if there is an additional tax deficiency, issue the report for income taxes in Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases.
<u>Chapter 41 and 42 Excise Taxes -</u> Claim Allowed in Full: <ul style="list-style-type: none"> • Form 990-PF • Form 990-BL • Form 4720 • Form 4720-A • Form 843 	<ul style="list-style-type: none"> • Letter 570-A • Form 4621 • Form 4883 No signatures are necessary on waiver forms if the claim is allowed in full specifically as requested by the taxpayer. While allowing the claim in full, if there is an additional tax deficiency, issue the report on Chapter 41 or 42 excise taxes in Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases.

Exhibit 4.70.14-2 (Cont. 1) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

TYPE OF RESULT & RETURN:	CLOSING LETTER
<u>Miscellaneous Excise Taxes -</u> Claim Allowed in Full: <ul style="list-style-type: none"> • Form 11-C • Form 730 • Form 8849 	<ul style="list-style-type: none"> • Letter 3601 • Form 5384 No signatures are necessary on waiver forms if the claim is allowed in full specifically as requested by the taxpayer. While allowing a claim in full, if there is an additional tax deficiency, issue the report for miscellaneous excise taxes in Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases.
<u>Employment Taxes -</u> Claims Allowed in Full <ul style="list-style-type: none"> • Form 940 • Form 941-X • Form 944-X • Form 945-X See IRM 4.23.13	<ul style="list-style-type: none"> • Letter 570 • Form 4666 • Form 4667, if applicable • Form 4668, if applicable • Form 4668-B, if applicable No signatures are necessary on waiver forms if the claim is allowed in full specifically as requested by the taxpayer. While allowing a claim in full, if there is an additional tax deficiency, issue the report for ETs in Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases.

Claims Disallowed in Full or in Part

Examination Result	Type of Report	Report Forms and Letters
<u>Income Taxes</u> Claims Disallowed in Full, Claims Disallowed in Part or Claims Disallowed with Additional Adjustment: <ul style="list-style-type: none"> • Form 990-T (also proxy tax) • Form 1120-X • Form 1120-POL • Form 1041 	Report (issued by group)	<ul style="list-style-type: none"> • Draft transmittal letter, IDR or Form 5701 (Initial reports only) or Letter 3602, 30-day letter or • Letter 3602-B, 30-day letter; use with additional adjustment • Form 2297 with any letter above • Form 3363 with any letter above • Form 4549 with <u>initial</u> examination report only • Form 870 with Letter 3602-B only • Form 4549-A with either Letter 3602 or Letter 3602-B only • Form 886-A with any letter above

Exhibit 4.70.14-2 (Cont. 2) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2841-A, For agreed closing of full disallowance of claim only (correct the signature block) Copy of Signed Form 2297 Copy of Signed Form 3363 or <ul style="list-style-type: none"> Letter 2511, For agreed closing of partial disallowance of claim, or any disallowance with adjustment Copy of Signed Form 2297 Copy of Signed Form 3363 Copy of Signed Form 4549 or Form 870
	Unagreed Closing Letter	<ul style="list-style-type: none"> Letter 905, Statutory Notice of Disallowance of Claim in Part, issued by Mandatory Review or Appeals or Letter 906, Statutory Notice of Disallowance of Claim in Full, issued by Mandatory Review or Appeals or Letter 917, Closing letter when taxpayer fails to show eligibility to reconsider claim, for Claim Reconsiderations only, issued by group.
<u>Chapter 41 and 42 Excise Taxes</u> Claims Disallowed in Full, Claims Disallowed in Part or Claims Disallowed with Additional Adjustment: <ul style="list-style-type: none"> Form 4720 Form 4720-A Form 990-PF Form 990-BL Form 843 	Report (issued by group)	<ul style="list-style-type: none"> Draft transmittal letter, IDR, or Form 5701 (initial examination reports only) or Letter 3602, 30-day letter or Letter 3602-B, 30-day letter- use with additional adjustment Form 2297 with any letter above Form 3363 with any letter above Form 870-E with initial examination report or Letter 3602-B only Form 4621 with any letter above Form 4883 with any letter above Form 886-A with any letter above.

Exhibit 4.70.14-2 (Cont. 3) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2841-A, For agreed closing of full disallowance of claim only (correct the signature block) Copy of Signed Form 2297 Copy of Signed Form 3363 or <ul style="list-style-type: none"> Letter 2511, For agreed closing of partial disallowance of claim or any disallowances with adjustment Copy of Signed Form 2297 Copy of Signed Form 3363 Copy of Signed Form 870-E
	Unagreed Closing Letter	<ul style="list-style-type: none"> Letter 905, Statutory Notice of Disallowance of Claim in Part, issued by Mandatory Review or Appeals or Letter 906, Statutory Notice of Disallowance of Claim in Full, issued by Mandatory Review or Appeals or Letter 917, Closing letter when taxpayer fails to show eligibility to reconsider claim, for Claim Reconsiderations only, issued by group.
<u>Miscellaneous Excise Taxes</u> Claims Disallowed in Full, Claims Disallowed in Part or Claims Disallowed with Additional Adjustment: <ul style="list-style-type: none"> Form 11-C Form 730 Form 8849 	Report (issued by group)	<ul style="list-style-type: none"> Draft transmittal letter, IDR or Form 5701 (initial reports only), or Letter 3602, 30-day letter or Letter 3602-B, 30-day letter- use with additional adjustment Form 2297 with any letter above Form 3363 with any letter above Form 5384 with initial reports only Form 2504-E with Letter 3602-B only Form 5385 with Letter 3602 or 3602-B only Form 886-A with any letter above

Exhibit 4.70.14-2 (Cont. 4) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2841-A, For agreed closing of full disallowance of Claim (correct the signature block) Copy of Signed Form 2297 Copy of Signed Form 3363 or <ul style="list-style-type: none"> Letter 2511, For agreed closing of partial disallowance of claim, or any disallowances with adjustment, Copy of Signed Form 2297 Copy of Signed Form 3363 Copy of Signed Form 870-E
	Unagreed Closing Letter	<ul style="list-style-type: none"> Letter 905, Statutory Notice of Disallowance of Claim in Part, issued by Mandatory Review or Appeals or Letter 906, Statutory Notice of Disallowance of Claim in Full, issued by Mandatory Review or Appeals Letter 917, Closing letter when taxpayer fails to show eligibility to reconsider claim, for Claim Reconsiderations only, issued by group.
<u>Employment Taxes</u> Claims Disallowed in Full, Claims Disallowed in Part or Claims Disallowed with Additional Adjustment: <ul style="list-style-type: none"> Form 940 Form 941-X Form 944-X Form 945-X See IRM 4.23.13	Report (issued by group)	<ul style="list-style-type: none"> Draft transmittal letter, IDR or Form 5701 (initial reports only) or Letter 5376, 30-day letter or Letter 953, 30-day letter, Reconsideration of Disallowed Claims only Form 2297 with any letter above Form 3363 with any letter above Form 2504 use appropriate version, for any disallowance with additional adjustments Form 4666 with any letter above Form 4667 with any letter above Form 4668 with any letter above Form 4668-B with any letter above Form 886-A with any letter above Pub 3498 with any letter above Pub 594 with any letter above Pub 5 with any letter above

Exhibit 4.70.14-2 (Cont. 5) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2841-A, Agreed Closing for Full Disallowance of Claim (correct the signature block) Copy of Signed Form 2297 Copy of Signed Form 3363 or <ul style="list-style-type: none"> Letter 2511, Agreed Closing for Partial Disallowance of Claim, or any Claim with Adjustment Copy of Signed Form 2297 Copy of Signed Form 3363 Copy of Signed appropriate Form 2504 version if there are additional adjustments
	Unagreed Closing Letter	<ul style="list-style-type: none"> Letter 905, Statutory Notice of Disallowance of Claim in Part, issued by Mandatory Review or Appeals, or Letter 906, Statutory Notice of Disallowance of Claim in Full, issued by Mandatory Review or Appeals, or Letter 917, Closing letter when taxpayer fails to show eligibility to reconsider claim, for Claim Reconsiderations only, issued by group

Abatement Requests Allowed in Full	
TYPE OF RESULT & RETURN:	CLOSING LETTER
<u>Income Taxes -</u> Requests for Abatement Allowed in Full: <ul style="list-style-type: none"> Form 990-T also proxy tax Form 1120-X Form 1120-POL Form 1041 See IRM 4.70.17.8.5, Informal Request for Abatement of Income Taxes	<ul style="list-style-type: none"> Letter 693, examination reconsiderations only, check the 1st box for full abatement and enclose Letter 2738 to Letter 693 or Letter 2738 by itself for non examination reconsiderations Form 4549, with either letter
<u>Chapter 41 and 42 Excise Taxes -</u> Requests for Abatement Allowed in Full: <ul style="list-style-type: none"> Form 4720 Form 4720-A Form 990-PF Form 990-BL 	<ul style="list-style-type: none"> Letter 693, examination reconsiderations only, check the 1st box for full abatement and enclose Letter 2738 to Letter 693 or Letter 2738 by itself for non-examination reconsiderations Form 4621 with either letter Form 4883 with either letter

Exhibit 4.70.14-2 (Cont. 6) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

TYPE OF RESULT & RETURN:	CLOSING LETTER
<u>Miscellaneous Excise Taxes -</u> Requests for Abatement Allowed in Full: <ul style="list-style-type: none"> Form 11-C Form 730 	<ul style="list-style-type: none"> Letter 693, examination reconsiderations only, check the 1st box for full abatement and enclose Letter 2738 to Letter 693 or Letter 2738 by itself for non examination reconsiderations Form 5384 with either letter
<u>Employment Taxes -</u> Requests for Abatement Allowed in Full: <ul style="list-style-type: none"> Form 940 Form 941-X Form 944-X Form 945-X See IRM 4.23.13	<ul style="list-style-type: none"> Letter 5154, check the 1st box Letter 2738 enclosed Form 4666 Form 4667 Form 4668, Form 4668-B Pub 5,

<i>Abatement Requests Disallowed in Full or in Part</i>		
Examination Result	Type of Report	Report Forms and Letters
<u>Income Taxes</u> Abatements Disallowed in Full Abatements Disallowed in Part, or Abatements Disallowed with Additional Adjustment: <ul style="list-style-type: none"> Form 990-T, also proxy tax Form 1120-X Form 1120-POL Form 1041 See IRM 4.70.17.18.5, Informal Request for Abatement of Income Taxes	Report (issued by group)	Abatements Disallowed in Full or in Part Only Note: The IRC has no provision for filing income tax abatement requests. There is only a final closing letter for abatements disallowed in full or in part; no 30-day letter. IRC 6404(b). Any Abatements with Additional Tax: <ul style="list-style-type: none"> Drafted 30-day Letter similar to Letter 5182 or Letter 5183, whichever applies, but used only for income tax. Form 4549 Form 886-A
	Agreed Closing Letter (issued by group)	Any Abatements with Additional Tax <ul style="list-style-type: none"> Letter 2511 Copy of Signed Form 4549

Exhibit 4.70.14-2 (Cont. 7) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Unagreed Closing Letter	Abatements Disallowed in Full or in Part Only: <ul style="list-style-type: none"> Letter 693, Check 1st box for partial disallowance. Check the 2nd or 3rd box for full disallowance, issued by the group. Form 4549, no signature required. Form 886-A Any Abatement with Additional Tax: <ul style="list-style-type: none"> 90-day SNOD Issued by Mandatory Review or Appeals
<u>Chapter 41 and 42 Excise Taxes</u> Abatements Disallowed in Full, Abatements Disallowed in Part, or Abatements Disallowed with Additional Adjustment: <ul style="list-style-type: none"> Form 4720 Form 4720-A Form 990-PF Form 990-BL 	Report (issued by group)	All IRC 4962 Abatement of Chapter 42 Tax Only: <ul style="list-style-type: none"> 30-day letter, Disallowed in Full, or 30-day letter, Disallowed in Part Form 870-E for either letter above Form 4621 for either letter above Form 4883 for either letter above Form 886-A for either letter above Non-4962 Abatements Disallowed in Full or in Part - NOT an examination reconsideration: <ul style="list-style-type: none"> 30-day letter, Disallowed in Full or 30-day letter, Disallowed in Part Form 886-A with either letter Non-4962 Abatements Disallowed in Full or in Part - examination reconsiderations only: <ul style="list-style-type: none"> N/A, No 30-day letter or report. Final closing letter only. Any Abatement Additional Tax: <ul style="list-style-type: none"> Drafted 30-day letter similar to Letter 5183, but used only for Chapter 41 or 42 Excise Tax. Form 870-E Form 4621 Form 4883 Form 886-A

Exhibit 4.70.14-2 (Cont. 8) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Agreed Closing Letter (issued by group)	<p>All IRC 4962 Abatement of Chapter 42 Tax Only:</p> <ul style="list-style-type: none"> • 30-day Letter – Partial Abatement – IRC 4962 Copy of Signed Form 870-E <p>Non-4962 Abatements Disallowed in Full or in Part - NOT an examination reconsideration:</p> <ul style="list-style-type: none"> • Letter 2511 • Copy of Signed Form 870-E <p>Non-4962 Abatements Disallowed in Full or in Part - Examination reconsiderations only:</p> <ul style="list-style-type: none"> • N/A, No 30-day letter or report. See unagreed closing letters. <p>Any Abatement - With Additional Tax:</p> <ul style="list-style-type: none"> • Letter 2511 • Copy of Signed Form 870-E

Exhibit 4.70.14-2 (Cont. 9) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Unagreed Closing Letters	<p>All IRC 4962 Abatement of Chapter 42 Tax Only:</p> <ul style="list-style-type: none"> • 30-day letter becomes final (unless Appealed) or • Examination Reconsideration Letter – Full Denial, Closing Letter for improper IRC 4962 Abatement Request; issued by group or • Letter 924, if applicable, issued by group or • Letter 693, if applicable. Edit out 1st sentence of 2nd paragraph that mentions “income tax.” Check the 3rd box, issued by group <p><u>Non-4962 Abatements Disallowed in Full or in Part - NOT examination reconsideration:</u></p> <ul style="list-style-type: none"> • 30-day letter becomes final (unless appealed) <p>Non-4962 Abatements Disallowed in Full or in Part - examination reconsiderations only:</p> <ul style="list-style-type: none"> • Letter 693, Edit out 1st sentence of 2nd paragraph that mentions “income tax.” Check the 1st box for partial disallowance. Check the 2nd or 3rd box for full disallowance; issued by group. • Form 4621 • Form 4883 • Form 886-A <p>Non-4962 Abatement Not Considered:</p> <ul style="list-style-type: none"> • Letter 924, issued by Group (Non-4962) or • Letter 693, Edit out 1st sentence of 2nd paragraph that mentions “income tax.” Check the 3rd box, issued by group <p>Any Abatement with Additional Tax:</p> <ul style="list-style-type: none"> • 90-day SNOD issued by Mandatory Review or Appeals.

Exhibit 4.70.14-2 (Cont. 10) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
<p>Miscellaneous Excise Taxes - Abatements Disallowed in Full, Abatements Disallowed in Part or Abatements Disallowed with Additional Adjustment:</p> <ul style="list-style-type: none"> Form 11-C Form 730 	Report (issued by group)	<p>Abatements Disallowed in Full or in Part - NOT an examination reconsideration:</p> <ul style="list-style-type: none"> Letter similar to 30-day letter – Full Denial – IRC 4962 or Letter similar to Closing Letter – Partial Abatement – IRC 4962 Form 5384 with either letter above Form 886-A with either letter above <p>Abatements Disallowed in Full or in Part - examination reconsiderations only:</p> <ul style="list-style-type: none"> N/A, No 30-day letter or report. Final closing letter only <p>Any Abatement with Additional Tax:</p> <ul style="list-style-type: none"> Drafted 30-day letter similar to Letter 5183, but used only for miscellaneous excise tax. Form 5384 Form 886-A
	Agreed Closing Letter (issued by group)	<p>Abatements Disallowed in Full or in Part - NOT an examination reconsideration:</p> <ul style="list-style-type: none"> Letter 2511 Copy of signed Form 5384 <p>Abatements Disallowed in Full or in Part - examination reconsiderations only:</p> <ul style="list-style-type: none"> N/A, No 30-day letter or report. See unagreed closing letters. <p>Any Abatement with Additional Tax:</p> <ul style="list-style-type: none"> Letter 2511 Copy of Signed Form 5384

Exhibit 4.70.14-2 (Cont. 11) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Unagreed Closing Letters	<p>Abatements Disallowed in Full or in Part - NOT an examination reconsideration:</p> <ul style="list-style-type: none"> 30-day letter, becomes final (unless appealed) <p>Abatements Disallowed in Full or in Part - examination reconsiderations only:</p> <ul style="list-style-type: none"> Drafted letter similar to Letter 693, but without the 1st sentence of the 2nd paragraph that mentions "income tax." Check the 1st box for partial disallowance. Check the 2nd or 3rd box for full disallowance. Copy of Form 5384 Copy of Form 886-A <p>Any Abatement with Additional Tax:</p> <ul style="list-style-type: none"> 90-day SNOD issued by Mandatory Review or Appeals <p>Abatement Not Considered:</p> <ul style="list-style-type: none"> Letter 924, or Letter 693, but without 1st sentence of 2nd paragraph that mentions "income tax." Check the 3rd box.
<p>Employment Taxes -</p> <p>Abatements Disallowed in Full</p> <p>Abatements Disallowed in Part or</p> <p>Abatements Disallowed with Additional Adjustment:</p> <ul style="list-style-type: none"> Form 940 Form 941-X Form 944-X Form 945-X <p>See IRM 4.23.13</p>	Report (issued by group)	<ul style="list-style-type: none"> Letter 5182, 30-day letter, or Letter 5183, 30-day letter Form 2504, correct version, with Letter 5183 only Form 4666, with Letter 5183 only Form 4667, with Letter 5183 only Form 4668, with Letter 5183 only Form 4668-B, with Letter 5183 only Form 886-A, with either letter above Pub 5, with either letter above Pub 594, with either letter above

Exhibit 4.70.14-2 (Cont. 12) (11-24-2023)**EO Reports and Closing Letters for Claims and Abatements**

Examination Result	Type of Report	Report Forms and Letters
	Closing Letter	<ul style="list-style-type: none"> Letter 5154, closing letter when taxpayer fails to respond or provide sufficient information or abatement not considered on its merits, or previous adjustment is reduced. Copy of Signed Form 2504 if agreed Copy of Form 4666 Copy of Form 4667 Copy of Form 4668 Copy of Form 4668-B Pub 5

Note: Generally requests for abatement that aren't examination reconsiderations aren't assigned to EO Exams. The Service Center generally requires the taxpayer to first pay the tax and file a claim.

Reminder: Send a copy of the report and closing letter using Letter 937-A, Transmittal Letter of Information to Power of Attorney, to the representative who is authorized to receive copies of the taxpayer correspondence via Form 2848 or Form 8821.

Reminder: Form 886-A is mandatory for all unagreed issues, all declaratory judgment cases, and for agreed issues where the explanation can't fit in the space provided on the basic report forms. Form 886-A is optional for all other situations. If you prepare a Form 886-A for an "initial report," generally the explanation will be in summary form unlike an explanation for a formal report. Indicate "Initial Examination Report" on the top of Form 886-A.

Reminder: * When a disqualified person, self-dealer, manager, donor or donor advisor signs a Form 4720-A for the Chapter 42 tax liability, send each such person their own separate letter.

Exhibit 4.70.14-3 (11-24-2023)**Reports and Closing Letters for Change Cases**

(1) Where FTS is a viable option to an eligible taxpayer for unagreed issues, give the taxpayer Pub 5092, Fast Track Settlement A Process Resolution of Tax Exempt and Government Entities (TEGE) Tax Issues, with the initial report.

(2) If a statute date is imminent and there isn't time to send a standard 30-day letter, consider issuing a replacement transmittal letter for the report. Consult with TEGEDC concerning the content, format, and timing of issuing a letter that replaces a 30-day letter. Refer to the TAS Directory <https://organization.ds.irsnet.gov/sites/tas/SiteAssets/TAS%20Directory.aspx> for the current list of Taxpayer Advocate offices. Generally:

- Summarize in the letter why you can't use a standard 30-day letter. See Sections 9.10 and 12.02 of Rev. Proc. 2019-5 (updated annually).
- Ensure the replacement transmittal letter contains the standard Taxpayer Advocate paragraph, as shown in the 30-day letter..
- A suspense date for the letter is not required.
- The transmittal letter can direct the taxpayer toward availing themselves the opportunity for Appeals Office consideration, such as by promptly submitting a valid consent to extend the statute date.

Examination Result	Type of Report	Report Forms and Letters
Revocations - <ul style="list-style-type: none"> • IRC 501(c)(3) • IRC 501(c)(9) • IRC 501(c)(17) with an effective date	Formal reports only (issued by group)	<ul style="list-style-type: none"> • Letter 3618, 30-day letter • Form 6018, at Line 1 • Form 4621-A • Form 886-A • Pub 892 • Pub 3498
	Closing Letter	<ul style="list-style-type: none"> • 90-day FADL issued by Mandatory Review or Appeals
Revocations - <ul style="list-style-type: none"> • All other 501(c) or (d) for specified tax years	Formal reports only (issued by group)	<ul style="list-style-type: none"> • Letter 3618, 30-day letter • Form 6018, at Line 2 • Form 4621-A • Form 886-A • Pub 892 • Pub 3498
	Closing Letter	<ul style="list-style-type: none"> • 90-day FADL issued by Mandatory Review or Appeals
Disqualifications - <ul style="list-style-type: none"> • Status 36 Organizations for specified tax years	Formal reports only (issued by group)	<ul style="list-style-type: none"> • Letter 3618, 30-day letter • Form 6018, at Line 3 • Form 4621-A • Form 886-A • Pub 892 • Pub 3498
	Closing Letter	<ul style="list-style-type: none"> • 90-day FADL issued by Mandatory Review or Appeals

Exhibit 4.70.14-3 (Cont. 1) (11-24-2023)
Reports and Closing Letters for Change Cases

Examination Result	Type of Report	Report Forms and Letters
Disqualifications - <ul style="list-style-type: none"> • IRC 501(c)(12) • IRC 501(c)(15) for specified tax years	Formal reports only (issued by group)	<ul style="list-style-type: none"> • Letter 4700, 30-day letter • Form 6018 at Line 3 • Form 4621-A • Form 886-A • Pub 892 • Pub 3498
	Closing Letter	<ul style="list-style-type: none"> • 90-day FADL issued by Mandatory Review or Appeals
Reclassification of Foundation or Public Charity Status - with an effective date	Formal reports only (issued by group)	<ul style="list-style-type: none"> • Letter 3620, 30-day letter • Form 6018, Lines 4 through 9 • Form 4621-A • Form 886-A • Pub 892 • Pub 3498
	Closing Letter	<ul style="list-style-type: none"> • 90-day FADL issued by Mandatory Review or Appeals
Non-declaratory status changes that are subject to appeal - with an effective date Example: (1) EO no longer exempt from filing Form 990 Example: (2) Exempt veterans organization no longer described under IRC 170(c)(3)	Report (issued by group)	<ul style="list-style-type: none"> • Draft transmittal letter, IDR or Form 5701 (for initial reports only) or • Drafted 30-day letter • Form 6018 at Line 10, with either letter above • Form 4621-A, with either letter above • Form 886-A, with either letter above
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> • Drafted letter and • Copy of signed waiver form
	Unagreed Closing Letter	<ul style="list-style-type: none"> • Drafted 30-day letter becomes final (unless appealed)
<u>Change to EO Income Taxes - Exempt Organizations, taxable PFs, IRC 527 organizations, or IRC 4947 Trusts:</u> <ul style="list-style-type: none"> • Form 990-T also proxy tax • Form 1120 • Form 1120-POL • Form 1041 	Report (issued by group)	<ul style="list-style-type: none"> • Draft transmittal letter, IDR or Form 5701 (for initial reports only) or • Letter 3614, 30-day letter • Form 4549, for initial reports only • Form 870, for formal reports only • Form 4549-A, for formal reports only • Form 886-A, with either letter above • Pub 3498, with either letter above • Pub 594, with either letter above

Exhibit 4.70.14-3 (Cont. 2) (11-24-2023)
Reports and Closing Letters for Change Cases

Examination Result	Type of Report	Report Forms and Letters
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2511 and Copy of Signed Waiver Form or <ul style="list-style-type: none"> Letter 2656 or Letter 5334
	Unagreed Closing Letter	<ul style="list-style-type: none"> 90-Day SNOD, issued by Mandatory Review or Appeals.
<u>Change in Income Taxes -</u> Converted Tax Returns <ul style="list-style-type: none"> Form 1120 Form 1041 	Report (issued by group)	<ul style="list-style-type: none"> Letter 950, 30-day letter Form 870 Form 4549-A Form 886-A Pub 3498 Pub 594
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2511 and Copy of Signed Waiver Form
	Unagreed Closing Letter	<ul style="list-style-type: none"> 90-Day SNOD, issued by Mandatory Review or Appeals
<u>Change in Income Taxes -</u> Discrepancy Adjustments <ul style="list-style-type: none"> Form 1040 Form 1120 	Report (issued by group)	<ul style="list-style-type: none"> Letter 3605, 30-day letter, 1st formal examination report, then if necessary: <ul style="list-style-type: none"> Letter 3603, 30-day letter, 2nd formal examination report or Letter 3619, 30-day letter, 2nd formal examination report Form 4549-E, with any letter above Form 886-A, with any letter above
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2511 and Copy of Signed Waiver Form
	Unagreed Closing Letter	<ul style="list-style-type: none"> 90-Day SNOD, issued by Mandatory Review or Appeals.

Exhibit 4.70.14-3 (Cont. 3) (11-24-2023)
Reports and Closing Letters for Change Cases

Examination Result	Type of Report	Report Forms and Letters
<u>Change in Chapter 41 and 42 Excise Taxes</u> <ul style="list-style-type: none"> Form 4720 Form 4720-A Form 990-PF Form 990-BL 	Report (issued by group)	<ul style="list-style-type: none"> Draft transmittal letter, IDR or Form 5701 (for Initial reports only) or Letter 3614, 30-day letter Form 870-E, with either letter above Form 4621, with either letter above Form 4883, with either letter above Form 886-A, with either letter above Pub 3498, with either letter above Pub 594, with either letter above
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2511 and Copy of signed waiver form
	Unagreed Closing Letter	<ul style="list-style-type: none"> 90-Day SNOD, issued by Mandatory Review or Appeals.
<u>Change in Miscellaneous Excise Taxes</u> <ul style="list-style-type: none"> Form 11-C Form 730 	Report (issued by group)	<ul style="list-style-type: none"> Draft transmittal letter, IDR or Form 5701 (for initial reports only) or Letter 950-E, 30-day letter Form 5384, for initial examination report only Form 2504-E, for formal report only Form 5385, for formal report only Form 886-A, with any letter above Pub 3498, with any letter above.
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> Letter 2511 and Copy of Signed Waiver Form
	Unagreed Closing Letter	<ul style="list-style-type: none"> Letter 950-E 30-day letter becomes final (unless appealed).

Exhibit 4.70.14-3 (Cont. 4) (11-24-2023)
Reports and Closing Letters for Change Cases

Examination Result	Type of Report	Report Forms and Letters
<u>Change in Employment Taxes - non-Worker Classification</u> <ul style="list-style-type: none"> • Form 940 • Form 941 • Form 944 • Form 945 	Report (issued by group)	<ul style="list-style-type: none"> • Draft transmittal letter, IDR or Form 5701 (for initial reports only) or • Letter 4121-E (initial report only, if mailed) or • Letter 950-D, 30-day letter • Form 2504 or Form 2504-S, with any letter above • Form 4666, with any letter above • Form 4667, with any letter above • Form 4668, with any letter above • Form 4668-B, with any letter above • Form 886-A, with any letter above • Pub 3498, with any letter above
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> • Letter 3382 and • Copy of Signed Waiver Form
	Unagreed Closing Letter	<ul style="list-style-type: none"> • Letter 950-D 30-day letter becomes final (unless appealed).
<u>Change in Employment Taxes- Worker Classification</u> <ul style="list-style-type: none"> • Form 940 • Form 941 • Form 944 	Report (issued by group)	<ul style="list-style-type: none"> • Draft transmittal letter, IDR or Form 5701 (for initial examination reports only) or • Letter 4121-E (initial examination report letter only, if mailed) or • Letter 950-C, 30-day letter • Form 2504-T, with any letter above • Form 4666, with any letter above • Form 4668, with any letter above • Form 4667, with any letter above • Form 886-A, with any letter above • Pub 3498, with any letter above • Pub 1976, with any letter above
	Agreed Closing Letter (issued by group)	<ul style="list-style-type: none"> • Letter 3382 and • Copy of Signed Waiver Form
	Unagreed Closing Letter	<ul style="list-style-type: none"> • Letter 3523, 90-Day Notice of Employment Tax Determination Under IRC 7436., issued by Mandatory Review or Appeals.

Reminder: (1) Form 886-A is mandatory for all unagreed issues, all declaratory judgment cases, and for agreed issues where the explanation can't fit in the space provided on the basic report forms. Form 886-A is optional for all other situations. If you prepare a Form 886-A for an "initial examination

Exhibit 4.70.14-3 (Cont. 5) (11-24-2023)**Reports and Closing Letters for Change Cases**

report,” generally the explanation will be in summary form unlike an explanation for a formal report. Indicate “Initial Report” on the top of Form 886-A. Also indicate the “initial examination report” is **not** a 30-day letter.

Reminder: (2) For unagreed issues where FTS is a viable option to an eligible taxpayer, provide Pub 5092, Fast Track Settlement A Process Resolution of Tax Exempt and Government Entities (TEGE) Tax Issues, with the initial report.

Reminder: (3) When a disqualified person, self dealer, manager, donor or donor advisor signs a Form 4720-A for the Chapter 42 tax liability, send each such person their own separate letter.

Exhibit 4.70.14-4 (11-24-2023)**Status 36 Case Scenarios**

Scenario 1
Status 36 Organization Qualifies
<i>Facts and Instructions</i>
<p>Organization A has never applied for exemption with the IRS. A has filed Forms 990 for 2014 and 2015 self-declaring its exempt status under IRC 501(c)(7). The BMFOLO shows a current status code of “36” and subsection of 07.</p> <p>During the examination of 2014 and 2015 Forms 990, you determine that A does qualify for exemption under IRC 501(c)(7) for the tax years of examination. No other issues or defects were discovered in the examination.</p> <p>Prepare Letter 6049 TE/GE, No Change Letter. This letter is a closing letter issued by the examination group. Mail Letter 6049 to the taxpayer following group procedures.</p> <p>How do you proceed? Complete the RCCMS Closing Record. Use DC 52 (RCCMS 214), Change due to Correction of Operations, if the organization made corrections by applying for tax-exempt status on Form 1024 or 1024-A during the examination, or if there were other changes or corrections to operations. Use DC 02 (RCCMS 107), No Change, if there were no changes to the organization’s status and the organization did not make any corrections during the examination.</p> <p>Close the case to the Closing Unit.</p>

For scenarios 2 through 6, there will reflect a disqualification. In each disqualification scenario, when completing your examination report on Form 4621-A, do not check any box in Item 12 until the Form is revised after publication of this manual to reflect the PATH Act. Instead, complete Item 13, Remarks, explaining the disqualification: “*The nature of the proposed status change is denial of tax-exempt status effective for the tax periods under examination.*”

Scenario 2
Agreed Disqualification — Converted Return Form 1120 Secured
<i>Facts and Instructions</i>

Exhibit 4.70.14-4 (Cont. 1) (11-24-2023)
Status 36 Case Scenarios

Scenario 2
<p>Organization B has never applied for exemption with the IRS. B has filed Forms 990 for 2014 and 2015 self-declaring its exempt status under IRC 501(c)(6). The BMFOLO shows a current status code of “36” and subsection of 06.</p> <p>During the examination of 2014 and 2015 Forms 990, you determine that B does not qualify for tax-exempt status under IRC 501(c)(6) for the years of examination.</p> <p>Prepare Form 4621-A. Prepare Form 886-A if additional space is needed for facts, law and argument. Issue your examination report to B with a 30-day letter. B has declaratory judgment rights.</p> <p>After reviewing your examination report on Form 4621-A B signs Form 6018 agreeing that it does not qualify for tax-exemption. B also files delinquent Forms 1120 with you for the affected tax years.</p> <p>How to proceed after the taxpayer agrees with your report: Follow the converted tax return procedures in IRM 4.70.14.2.1.3.3, EO Conversion Returns, for the secured Form 1120. Prepare a secured converted return package. Don't submit the Form 1120 package to the FAST Unit.</p> <p>Prepare Form 2363-A. Don't submit Form 2363-A to the FAST. Agreed disqualifications in Status 36 cases are subject Mandatory Review. Keep Form 2363-A in the case file for both Mandatory Review and Appeals.</p> <p>Complete referral Form 5666 (or Form 5346) only if you are unsure the secured Forms 1120 are technically accurate, the return is too complex or it appears to be prepared incorrectly.</p> <p>Complete the RCCMS Closing Record. Use DC 05 (RCCMS 207), <i>Delinquent Related Return Secured</i> for Forms 990. You can't use DC 13 (RCCMS 207), Referrals to Other Operating Divisions because DC 05 (RCCMS 207) is a higher priority disposal code.</p> <p>Close the case to Mandatory Review. Include the administrative record and the administrative record index.</p>
Scenario 3
Agreed Disqualification — Form 5666 Prepared
<i>Facts and Instructions</i>

Exhibit 4.70.14-4 (Cont. 2) (11-24-2023)
Status 36 Case Scenarios

Scenario 3
<p>Organization C has never applied for exemption with the IRS. C has filed Forms 990 for 2014 and 2015 self-declaring its exempt status under IRC 501(c)(7). The BMFOLO shows a current status code of “36” and subsection of 07.</p> <p>During the examination of 2014 and 2015 Forms 990, you determine that C does not qualify for tax-exempt status under IRC 501(c)(7) for the years of examination.</p> <p>Prepare Form 4621-A. Prepare Form 886-A if additional space is needed for facts, law and argument. Issue your examination report to C with a 30-day letter. C has declaratory judgment rights.</p> <p>After reviewing your examination report on Form 4621-A C signs Form 6018 agreeing that it does not qualify for tax-exemption. C is not ready to file Forms 1120 for the affected tax years in time before you close your examination.</p> <p>How to proceed after the taxpayer agreed to your report: Prepare Form 2363-A. Don't submit Form 2363-A to the FAST Unit. Agreed disqualifications in Status 36 cases are subject Mandatory Review. Keep Form 2363-A in the case file for both Mandatory Review and Appeals.</p> <p>Since you are not enforcing income tax on converted returns as described in IRM 4.70.14.2.1.3.3, EO Conversion Returns, prepare a referral on Form 5666 (or Form 5346) to inform SB/SE or LB&I that C is a taxable organization and has not filed its required tax returns on Form 1120</p> <p>Complete the RCCMS Closing Record. Use DC 13 (RCCMS 207), <i>Referrals to Other Operating Divisions</i> for Forms 990.</p> <p>Close the case to Mandatory Review. Include the administrative record and the administrative record index.</p>

Scenario 4
Agreed Disqualification — Income Tax Enforced
<i>Facts and Instructions</i>

Exhibit 4.70.14-4 (Cont. 3) (11-24-2023)
Status 36 Case Scenarios

Scenario 4
<p>Organization D has never applied for exemption with the IRS. D has filed Forms 990 for 2014 and 2015 self-declaring its exempt status under IRC 501(c)(4). The BMFOLO shows a current status code of “36” and subsection of 04.</p> <p>During the examination of 2014 and 2015 Forms 990, you determine that D does not qualify for tax-exempt status under IRC 501(c)(4) for the years of examination.</p> <p>Prepare Form 4621-A. Prepare Form 886-A if additional space is needed for facts, law and argument. Issue your examination report to D with a 30-day letter. D has declaratory judgment rights.</p> <p>After reviewing your examination report on Form 4621-A D signs Form 6018 agreeing that it does not qualify for tax-exemption. D is not ready to file Forms 1120 for the affected tax years in time before you close your examination. You decide to enforce the income tax on converted returns as described in IRM 4.70.14.2.1.3.3, EO Conversion Returns.</p> <p>How to proceed after the taxpayer agreed to your report: Prepare Form 2363-A. Don't submit Form 2363-A to the FAST. Agreed disqualifications in Status 36 cases are subject Mandatory Review. Keep Form 2363-A in the case file for both Mandatory Review and Appeals.</p> <p>Since you are enforcing income tax on converted returns as described in IRM 4.70.14.2.1.3.3, EO Conversion Returns, there is no need to prepare a referral on Form 5666 (or Form 5346). After Form 2363-A posts, follow substitute for return procedures for Form 1120 like any other tax return.</p> <p>Complete the RCCMS Closing Record. Use DC 04 (RCCMS 205), <i>Change to Related Return</i> for Forms 990. You can't use DC 13 (RCCMS 207), Referrals to Other Operating Divisions because DC 04 (RCCMS 205) is a higher priority disposal code.</p> <p>Close the case to Mandatory Review. Include the administrative record and the administrative record index.</p>
Scenario 5
<p>Unagreed Disqualification With Protest — Organization Requests Modification if Disqualification is Sustained — Form 5666 Prepared</p>
<p><i>Facts and Instructions</i></p>

Exhibit 4.70.14-4 (Cont. 4) (11-24-2023)
Status 36 Case Scenarios

Scenario 5
<p>Organization E has never applied for exemption with the IRS. E has filed Forms 990 for 2014 and 2015 self-declaring its exempt status under IRC 501(c)(6). The BMFOLO shows a current status code of “36” and subsection of 06.</p> <p>During the examination of 2014 and 2015 Forms 990, you determine that E does not qualify for tax-exempt status under IRC 501(c)(6) for the years of examination. However, E appears to qualify for exemption under IRC 501(c)(5) instead.</p> <p>Prepare Form 4621-A. Prepare Form 886-A to present your facts, law and argument. Issue your examination report to E with a 30-day letter. E has declaratory judgment rights.</p> <p>After reviewing your examination report on Form 4621-A, E does not agree to the proposed disqualification of tax-exempt status. E submits a written protest to you, and also requests IRC 501(c)(5) status if the disqualification under IRC 501(c)(6) is sustained. You issue a rebuttal Letter 5918 to E, and you explain that E cannot modify a tax-exempt status citing IRC 7428(a).</p> <p>How to proceed after the taxpayer responds to your report: Prepare Form 2363-A. Don't submit Form 2363-A to the FAST. Keep Form 2363-A in the case file for both Mandatory Review and Appeals.</p> <p>Since you are not enforcing income tax on converted returns as described in IRM 4.70.14.2.1.3.3, EO Conversion Returns, prepare a referral on Form 5666 (or Form 5346) to inform SB/SE or LB&I that C is a taxable organization and has not filed its required tax returns on Form 1120.</p> <p>Complete the RCCMS Closing Record. Use DC 07 (RCCMS 601), <i>Unagreed-Protest to Appeals</i> for the Forms 990.</p> <p>Close the case to Mandatory Review. Include the administrative record and the administrative record index.</p>

Scenario 6
Unagreed Disqualification Without Protest — Income Tax Enforced
<i>Facts and Instructions</i>

Exhibit 4.70.14-4 (Cont. 5) (11-24-2023)
Status 36 Case Scenarios

Scenario 6
<p>Organization F has never applied for exemption with the IRS. F has filed Forms 990 for 2014 and 2015 self-declaring its exempt status under IRC 501(c)(6). The BMFOLO shows a current status code of 36 and subsection of 06.</p> <p>During the examination of 2014 and 2015 Forms 990, you determine that F does not qualify for tax-exempt status under IRC 501(c)(6) for the years of examination.</p> <p>Prepare Form 4621-A. Prepare Form 886-A to present your facts, law and argument. Issue your examination report to F with a 30-day letter. F has declaratory judgment rights.</p> <p>F defaults on the 30-day letter.</p> <p>How to proceed after the taxpayer responds to your report: Prepare Form 2363-A. Because the proposed disqualification is deemed unagreed, keep Form 2363-A in the case file for Mandatory Review.</p> <p>Since you are enforcing income tax on converted returns as described in IRM 4.70.14.2.1.3.3, EO Conversion Returns, there is no need to prepare a referral on Form 5666 (or Form 5346). You can't enforce income tax until Form 2363-A posts. Form 2363-A won't post until Mandatory Review agrees with the disqualification and issues a 90-day FADL, which may be 3 weeks to 3 months later. Consequently, you establish Form 1120 NMF controls to protect the revenue.</p> <p>Complete the RCCMS Closing Record. Use DC 10 (RCCMS 604), Unagreed - Without Protest for the Forms 990.</p> <p>Close the Form 990 case to Mandatory Review. Include the administrative record and the administrative record index. Also, transfer the Form 1120 NMF case file to Mandatory Review for AIMS Status 38 suspense pending Mandatory Review's decision to sustain the disqualification.</p> <p>If the disqualification is sustained and Form 2363-A has posted, follow substitute for return procedures for Forms 1120 on AIMS Master File like any other tax return unless F files delinquent Forms 1120 voluntarily with you. Delete the Form 1120 NMF duplicate record.</p>

Exhibit 4.70.14-5 (11-24-2023)**EO Status 36 Case: Form 2363-A Instructions**

Step	Form 2363-A Instructions
1	In box 1, enter the EIN
2	In box 2, enter the four letter Name Control
3	In box 3, check Document Code 80
4	In box 4, check Transaction Code 16
5	In box 5, enter Definer Code AB
6	In box 8, enter the name of the organization
7	In box 17, enter the current subsection code
8	In box 18, enter the foundation code as 00 if anything other than 00 presently
9	In box 19, enter the current classification code
10	In box 22, enter 22 followed by the first month of the first year under examination in the YYYYMM format
11	In box 35, enter the fiscal year ending month
12	In the filing requirement boxes, enter a 01 under 1120 [or 1 under 1041], and 00 under 990 and 990-T
13	Add 01 and 1 requirements for Forms 941 and 940, as applicable
14	In the comments field, state "Updating filing requirement to 1120 [or 1041]"

Exhibit 4.70.14-6 (11-24-2023)**EO Status 36 Case: Form 6018 Instructions**

Step	Form 6018 Instructions
1	Enter the name and address of the organization.
2	Enter the employer identification number.
3	Enter the date of the 30-day letter as the date of proposed action letter.
4	Check Box 3, and enter the type of organization, and the disqualified tax years.

Exhibit 4.70.14-7 (11-24-2023)
Guidelines for Issuance of Letters

ADDRESS HEADING:

Letter	Address
30-day Letters	Examiner's mailing address
90-day letters with an imminent statute	<ul style="list-style-type: none"> Address of the person who is issuing the letter For EO, Area Office's address For FSL/ET, Examiner's address
Examination closing letters issued by Mandatory Review	<ul style="list-style-type: none"> Address of the person who is issuing the letter For EO, Manager, EO Mandatory Review
All other examination closing letters	<ul style="list-style-type: none"> Address of the person whose name is on the signature line For EO, Director, EO Exams address
All other letters	Sender's mailing address

Note: Rebuttal letters aren't examination closing letters.

SIGNATURE BLOCK:

Type of Letter	Signatory Authority
30-day letters	Group Manager or Reviewers in Mandatory Review groups, see IRM 1.2.68.2.3, Delegation Order TEGE 1-23-1.
Statutory Notice of Deficiency (SNOD)	Senior Managers, see IRM 1.2.2.5.8, Delegation Order 4-8 (Rev. 2)
Final Adverse Determination Letter (FADL)	<ul style="list-style-type: none"> For EP: Director, Employee Plans Examinations with regard to revocations or Director, Employee Plans Rulings & Agreements with regard to modifications. See IRM 1.2.2.8.14, Delegation Order 7-14. For EO: Director, Exempt Organizations Examinations. See IRM 1.2.2.8.17, Delegation Order 7-17.

Exhibit 4.70.14-7 (Cont. 1) (11-24-2023)
Guidelines for Issuance of Letters

Type of Letter	Signatory Authority
Closing letters	<p>Generally, group managers would issue and sign these closing letters on behalf of the following:</p> <ul style="list-style-type: none"> • For EP: Director, Employee Plans Examinations or Director, Employee Plans Rulings & Agreements • For EO: Director, Exempt Organizations Examinations • For FSL/ET: Program Manager, Federal State and Local / Employment Tax • For ITG: Program Manager, Indian Tribal Governments • For TEB: Program Manager, Tax Exempt Bonds
All other examination letters	Examiner's name and title

PERSON TO CONTACT:

- The examiner's name, for letters issued by the examination group.
- The reviewer's name, for letters issued by Mandatory Review.

For a current table that lists EO examination letters, including closing letters, refer to the intranet webpage at http://tege.web.irs.gov/article.asp?title=guidelines-issuance-letters&path=/my-job/1_revenue-agent/2_examination.

Note: Mandatory Review will print the letters they issue. Write the letter number (or IRM exhibit number) at the heading of Form 5773, Form 5773-A, or Form 4318 and in the Mandatory Review section of 3198-A Special Handling checksheet in RCCMS, "Prepare/Issue Letter:"

Exhibit 4.70.14-8 (11-24-2023)**Incomplete Protest Returned to taxpayer - Suggested Language**

This is suggested language to return an incomplete protest to the taxpayer. The examiner should use their address in the heading of the letter and allow 10 days for the taxpayer to respond.

We are returning the protest you provided on MMDDYYYY as it didn't provide all the information as outlined in Pub 3498. The following items are missing and must be provided in order for the protest to be considered complete and forwarded to the Appeals Office: (examiner prepares list of missing items).

Please furnish the required information within 10 days from the date of this letter. We are enclosing an addressed envelope for your convenience.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Enclosures: Pub 892, Pub 5, Copy of Protest.

Exhibit 4.70.14-9 (11-24-2023)
EO Form 2807 Sample

Do not use this verbatim. Tailor your agreement to fit your issues.

Form 2807 (Rev. July 1980)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE
	AGREEMENT TO MAINTAIN ADEQUATE BOOKS OF ACCOUNT AND RECORDS
During the examination of my Federal income tax return for the year(s) shown, consideration was given to the adequacy of the books of account and records I now maintain. As a result, I agree that, to be able to make a proper return of income in the future, I will maintain the specific books of account and records described below.	YEAR(S) 12/31/2011
DESCRIPTION	

Exhibit 4.70.14-9 (Cont. 1) (11-24-2023)
EO Form 2807 Sample

Section 6001 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that every person liable for any tax imposed by title 26, or for the collection thereof, shall keep such records, render such statements, make such returns and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under title 26.

Section 6033 provides, in general, that every organization exempt under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

We notified you on [date] that your books and records are not adequate to permit the Internal Revenue Service to determine the correctness of your Forms 990 and the extent of your unrelated business income tax liability. The amounts reported on your Form 990 do not agree with documents you have provided us. You did not maintain original source documents to support your transactions. Specifically, we can't determine how and under what circumstances your funds were distributed. Also, we can't confirm who your recipients were for charitable distributions, and whether they were charitable organizations or of a charitable class. Consequently, we can't ascertain whether your assets are dedicated exclusively for charitable purposes in order to justify continued recognition of your tax-exempt status under section 501(c)(3) of the Code.

Your records also don't permit us to confirm whether amounts you received are contributions or sales of goods and services. For some transactions we believe to be contributions, we can't identify your sources for purposes of determining your proper foundation status, and ultimately your tax liability under Chapter 42 of the Code, if any. We found you liable for unrelated business income tax for the sale of widgets, but your records don't permit us to determine the extent of your sales. You erroneously reported a substantial amount of your gross income from sales as contributions, and you didn't report all of the amounts you received.

You are required to maintain the books and records listed below:

- Names, addresses and contact information for individual and corporate donors
- Copies of all acknowledgments of charitable contributions issued to donors
- Copies of contribution agreements and correspondence with donors
- Records of any goods or services provided to any donor
- Documentation pertaining to any in-kind donations received
- Taxpayer Identification Numbers of all recipients of grants from your organization
- Copies of determination letters issued by the IRS to the grant recipients, as applicable
- Documentation of how grants are/were used by the grant recipients
- Documentation of (internal) approval determinations for all grants made
- Documentation of all transactions for the provision of goods or services with all parties
- Documentation of sales (such as a sales journal), and copies of orders for widgets from customers.

Exhibit 4.70.14-9 (Cont. 2) (11-24-2023)
EO Form 2807 Sample

SIGNATURE OF TAXPAYER (OR PARTNER)	ADDRESS	DATE
SIGNATURE OF SPOUSE IF PRIMARILY RESPONSIBLE FOR KEEPING ALL OR PART OF NECESSARY RECORDS	ADDRESS	DATE

Exhibit 4.70.14-10 (11-24-2023)**EO Chapter 42 Excise Tax Reference Chart - Private Foundations**

The chart below lists the excise taxes under IRC Chapter 42 applicable to PFs. Each listed tax is described with its key attributes.

IRC Section	Assessed Against	Tax Rate	Form Reported On	2nd Tier Tax Applicable
IRC 4940 Tax on net investment income	PF	2 percent of Net Investment Income (1 percent if IRC 4940(e) is met). See Note 1	Form 990-PF	No
IRC 4941 self dealing	Self-dealer	10 percent	Form 4720-A	200 percent
	Foundation Manager	5 percent (Max \$20,000 with respect to any one act)		50 percent (Max \$20,000 with respect to any one act)
IRC 4942 Distribution of income	PF	30 percent	Form 4720	100 percent
IRC 4943 Excess business holdings	PF	10 percent	Form 4720	200 percent
IRC 4944 Jeopardizing investments	PF	10 percent	Form 4720	25 percent
	Foundation Manager	10 percent (Max \$10,000 with respect to any one investment)	Form 4720-A	5 percent (Max \$20,000 with respect to any one investment)
IRC 4945 Taxable expenditures	PF	20 percent	Form 4720	100 percent
	Foundation Manager	5 percent (Max \$10,000 with respect to any one taxable expenditure)	Form 4720-A	50 percent (Max \$20,000 with respect to any one taxable expenditure)
IRC 4948 Tax on gross investment income of foreign private foundations	PF	4 percent of gross investment income derived from U.S. sources	Form 990-PF	No

Note 1 - Exempt operating foundations described under IRC 4940(d)(2) are exempt from IRC 4940 tax. Taxable PFs and IRC 4947(a)(1) trusts are taxed at a rate of 2 percent of the net investment income plus the tax that would be imposed under IRC 511 if the organization were exempt, less the income tax reported on Form 1041 or Form 1120.

Exhibit 4.70.14-11 (11-24-2023)**EO Chapter 41 and 42 Excise Tax Reference Chart - Non-Private Foundations**

The chart below lists the excise taxes under IRC Chapters 41 and 42 applicable to organizations that are not PFs. Each listed tax is described with its key attributes.

IRC Section	Assessed Against	Tax Rate	Form Reported On	2nd Tier Tax Applicable	Additional Resources
IRC 170(f)(10)(F) Tax on premiums paid on personal benefit	EO	100 percent	Form 4720	No	See Note 1
IRC 664(c)(2) Tax on UBIT of charitable remainder trusts	Charitable Remainder Trust	100 percent	Form 4720	No	Treas. Reg. 1.664-1(c)
IRC 4911 Tax on excess lobbying expenditures	EO	25 percent	Form 4720	No	-
IRC 4912 Tax on disqualifying lobbying expenditures	EO	5 percent	Form 4720	No	-
	Organization Manager	5 percent	Form 4720-A		
IRC 4951 Tax on self dealing (black lung trusts)	Self Dealer	10 percent	Form 990-BL, Schedule A	100 percent	-
	Trustee	2.5 percent		50 percent	
IRC 4952 Tax on taxable expenditures (black lung trusts)	Trust Fund	10 percent	Form 990-BL, Schedule A	100 percent	-
	Trustee	2.5 percent		50 percent	
IRC 4953 Tax on excess contributions (black lung trusts)	Contributor	5 percent	Form 6069 (Make a referral on Form 5666 to LB&I or SB/SE)	No	-
IRC 4955 Tax on political expenditures of IRC 501(c)(3) organizations	EO	10 percent	Form 4720	100 percent	-

Exhibit 4.70.14-11 (Cont. 1) (11-24-2023)**EO Chapter 41 and 42 Excise Tax Reference Chart - Non-Private Foundations**

IRC Section	Assessed Against	Tax Rate	Form Reported On	2nd Tier Tax Applicable	Additional Resources
	Organization Manager	2.5 percent (Max \$5,000 with respect to any one political expenditure)	Form 4720-A	50 percent (Max \$10,000 with respect to any one political expenditure)	
IRC 4958 Tax on excess benefit transactions (EBT)	Disqualified Person	25 percent	Form 4720	200 percent	-
	Organization Manager	10 percent (Max \$20,000 with respect to any one EBT)	Form 4720-A	No	
IRC 4959 Tax on hospital organizations for failure to meet requirements of IRC 501(r)(3)	Hospital Organization	\$50,000	Form 4720	No	Notice 2011-52
IRC 4960 Tax on excess expenditures to influence legislation	EO	21 percent	Form 4720	No	Notice 2007-18
IRC 4965 Tax on prohibited tax shelter transaction (PTST)	Tax-Exempt Entity	Highest Income Tax Rate on the Greater of Entity Net Income or 75 percent of Transaction Proceeds. See Note 2	Form 4720 (The PTST is also reported on Form 8886-T)	No	
	Entity Manager	\$20,000 with respect to each approval or act	Form 4720-A		

Exhibit 4.70.14-11 (Cont. 2) (11-24-2023)**EO Chapter 41 and 42 Excise Tax Reference Chart - Non-Private Foundations**

IRC Section	Assessed Against	Tax Rate	Form Reported On	2nd Tier Tax Applicable	Additional Resources
IRC 4966 Tax on taxable distribution by a sponsoring organization with respect to a donor advised fund	Sponsoring Organization	20 percent	Form 4720	No	Notice 2007-21
	Fund Manager	5 percent (Max \$10,000 with respect to any one taxable distribution)	Form 4720-A		
IRC 4967 Tax on prohibited benefit to donor, donor advisor or to related person	Donor/ Donor Advisor/ Related Person	125 percent	Form 4720-A	No	Notice 2007-21
	Fund Manager	10 percent (Max \$10,000 with respect to any one distribution)			
IRC 4968 Excise tax based on investment income of private colleges and universities	EO	1.4 percent	Form 4720	No	

Note 1: Personal benefit contracts are certain life insurance, annuity, or endowment contracts where any beneficiary, or certain person(s) related thereto, are the transferors to the exempt organization of such contract.

Note 2: If the tax-exempt entity knew the transaction was a prohibited tax shelter transaction, the tax rate is the greater of 100 percent of the entity net income or 75 percent of the transaction proceeds.

Exhibit 4.70.14-12 (11-24-2023)**EO Closing Agreement Authority and Finality****Authority**

The Commissioner may enter into and approve a written closing agreement with any person relating to the liability of such person in respect of any internal revenue tax for any taxable period ending prior or subsequent to the date of such agreement. (IRC 7121)

We may enter in a closing agreement in any case in which:

1. There appears to be an advantage in having the case permanently and conclusively closed.
2. The taxpayer demonstrates good and sufficient reasons for desiring a closing agreement.
3. The Commissioner determines the United States will sustain no disadvantage through consummation of such an agreement.

(26 CFR 301.7121-1(a))

To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts). This does not include the authority to set aside any closing agreement.

This is delegated to Assistant Commissioner (Employee Plans and Exempt Organizations); Division Commissioner (TE/GE); Directors, Employee Plans; Directors, Exempt Organizations; Directors, Government Entities; and Senior Technical Advisors who report directly to the TE/GE Division Commissioner. This authority may also be redelegated to special assistants and division directors reporting directly to the assistant commissioner. 1.2.2.9.3(12)-(13).

Note: This authority **does not** contain the same limitation regarding years ended prior to the date of the agreement.

Any taxpayer having issues that might result in revocation or taxation, may voluntarily (walk-in) contact the Area Office to resolve outstanding issues by way of a closing agreement.

- a. A closing agreement may be accepted with respect to a taxpayer not under audit. However, we must be furnished sufficient facts and documentation (and may make sufficient audit or inquiry) to warrant acceptance of the agreement. (Section 8.01 of Rev. Proc. 68-16, 1968-1 C.B. 770)
- b. EO personnel may not discuss a closing agreement with an anonymous taxpayer.
- c.) The taxpayer will provide a description of the non-compliant activities and the items listed in IRM 4.70.14.2.1.3.2.9.1.
- d. We may consider more favorably a taxpayer voluntarily approaching us to resolve outstanding issues and agreeing to future voluntary compliance.

Finality

Once the Director, EO:E approves an agreement, it's final and conclusive. We can't reopen the closing agreement as to the matters agreed upon or modified. We may not annul, modify, set aside, or disregard the closing agreement (or any legal action in accordance with it) in any suit, action, or proceeding unless there is a showing of fraud, malfeasance, or misrepresentation of material fact.

The Commissioner may set aside agreements made under IRC 7121(b) upon a showing of fraud or malfeasance, or misrepresentation of a material fact. The Commissioner's authority in this respect hasn't been delegated; therefore, the Commissioner must approve any such actions.

Note: We don't treat simple unintentional errors as fraud, malfeasance, or misrepresentation that allow reopening of an agreement. (Policy Statement P-4-3 (IRM 1.2.1.5.1))

Exhibit 4.70.14-12 (Cont. 1) (11-24-2023)
EO Closing Agreement Authority and Finality**Finality**

The burden of proof in establishing the disqualifying factor falls upon the party seeking to set the agreement aside. (*Holmes & Janes, Inc.* 30 B.T.A. 74 (1934))

- a. Where EO Examinations believes there is fraud, malfeasance, or misrepresentation, we must conduct an audit of the taxpayer to prove a disqualifying factor.
- b. The taxpayer must retain sufficient documentation to ensure compliance with the closing agreement requirements.

Existence of any disqualifying element is subject to review by a court.

We must base the term “fraud”, as applied under IRC 7121(b), upon evidence showing intent to evade the payment of tax, for which the taxpayer is believed to be liable, as distinguished from mistake, inadvertence, reliance on incorrect technical advice, honest difference of opinion, negligence, or carelessness. (IRM 25.1, Fraud Handbook.)

Note: Evidence of fraud not related to the issues constituting the basis for the closing agreement will probably be insufficient to sustain setting aside a closing agreement, unless the fraud goes to the agreement itself as in *Kehoe v. Commissioner*, 34 B.T.A. 59 (1936) *vacated*, 105 F.2d 552, *rev’d sub nom. Helvering v. Kehoe*, 309 U.S. 277 (1940).

The term “malfeasance” imports violation of a public trust or guilt with respect to some form of official act.

The term “misrepresentation” when used as a basis for setting aside a closing agreement connotes intentional deceit. It doesn’t refer to a mere mistake of fact or law, whether unilateral or mutual, no matter how material. In *Ingram v. Commissioner*, 32 B.T.A. 1063 (1935) the then Board of Tax Appeals stated: “Obviously the use of the word misrepresentation denotes something more deliberate or more conscious than a mere error or mistake. Otherwise, the entire rationale of a closing agreement would be lost. Congress intended that innocent mistakes be buried in a closing agreement. This still leaves an ample field for protection against an agreement founded in trickery or deception.”

Setting aside of a closing agreement, even though deemed justified, is not mandatory. If it’s in our best interests to refrain from setting aside the agreement, we may do so.

Any request to set aside a closing agreement must be submitted to the Commissioner. The request should include a recommendation and the reasons therefor.

Exhibit 4.70.14-13 (11-24-2023)
EO Closing Agreement Cover Sheet

EO Closing Agreement Cover Sheet - Part A			
Type of closing agreement:		Exam: _____	Walk in: _____
Name of Organization: _____			
EIN: _____		Tax Years: _____	
Statute Expiration Date(s): _____			
Request for Approval to Prepare Draft - Part B			
Approvals	Initial: Concurrence	Initial: Nonconcurrence	Date
Group Manager			
Area Manager			
Counsel			
EOCAC			
Director, EO Exam			
Request for Approval of Draft Closing Agreement - Part C			
Approvals	Initial: Approval	Initial: Disapproval	Date
Group Manager			
Area Manager			
Area Counsel			
EOCAC			
Director, EO Exam			
* Group manager and area manager concurrences/approvals aren't required for walk-ins.			
Payment of Tax Liability or Assessment in Lieu of Taxes - Part D			
Check Applicable Box:		No Payment Required	_____
Paid in Full: _____		Installment Agreement	_____
Attach explanation, if no payment is required or taxpayer hasn't paid in full or hasn't entered into an installment agreement.			
Approval of Final Closing Agreement Signed by Taxpayer - Part E			
Reviewed by EOCAC: _____		Date reviewed: _____	
Initials of Director, EO Examinations: _____		Date approved: _____	

Exhibit 4.70.14-14 (11-24-2023)

EO Sample Closing Agreement as To Final Determination

Closing Agreement as to Final Determination Covering Specific Matters Under Section 7121 of the Internal Revenue Code	
[Taxpayer's name, address, and identifying number]	
Under section 7121 of the Internal Revenue Code (Code) (Name of Organization) (Taxpayer) and the Commissioner of Internal Revenue (the Service) make the following Closing Agreement.	
WHEREAS, [Taxpayer] has been recognized as an organization described in section 501(c) () of the Code since [Date].	
WHEREAS, Commissioner conducted an audit of [Taxpayer] annual return(s), [Form(s) 990, 990-T, 990-PF, etc.] for the year(s) ending [Tax periods in month day, year format].	
WHEREAS, on a preliminary basis Commissioner adopted a proposed adverse position that [Taxpayer's] [tax exempt status under section 501(c)() of the Code should be revoked] / [is liable for unrelated business income tax, employment tax, etc.].	
This position is based on information indicating that [describe facts upon which the proposed adverse position is based in one or more whereas clauses].	
WHEREAS, [Taxpayer] [describe corrective steps already taken].	
NOW, THEREFORE, IT IS HEREBY FURTHER DETERMINED AND AGREED BETWEEN TAXPAYER AND THE SERVICE AS FOLLOWS for federal income tax purposes that:	
1.	[List payment made and/ or actions taken by taxpayer].
2.	[List tax treatment agreed to by parties].
[Where determination letter is issued because of closing agreement, insert here: The letter recognizing tax-exempt status is attached to this agreement.]	
This agreement is limited to the specific Internal Revenue Code matters discussed herein and does not extend to other federal law.	
THIS AGREEMENT IS FINAL AND CONCLUSIVE, EXCEPT:	
(a)	the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;
Page 1 of 2	

Closing Agreement with [Name of organization and TIN]	
(b)	it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law; and
(c)	if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to that tax period.
By signing below, the parties certify that they have read and agreed to the terms of this document.	
[NAME OF TAXPAYER]	

Exhibit 4.70.14-14 (Cont. 1) (11-24-2023)
EO Sample Closing Agreement as To Final Determination

By		Date signed:
(Title or authority of signer)		
COMMISSIONER OF INTERNAL REVENUE		
By		Date signed:
Title		
Page 2 of 2		

Exhibit 4.70.14-15 (11-24-2023)

EO Certification by Receiving And Reviewing Officials

(Insert on Reverse of Last Page of Original of Closing Agreement)

I have examined the specific matters involved and recommend the acceptance of the proposed agreement.		I have reviewed the specific matters involved and recommend approval of the proposed agreement.	
(Receiving Officer)	(Date)	(Receiving Officer)	(Date)
(Title)		(Title)	

Exhibit 4.70.14-16 (11-24-2023)**Transmittal Memo to Director, EO Examinations**

Date:	
To:	DIRECTOR, EO EXAMINATIONS
From:	EOCAC
Subject:	Closing Agreement with xxxxxx
Attached is the final closing agreement signed by the taxpayer. I have reviewed the closing agreement before forwarding for your approval and signature. <i>[Include any other applicable background material.]</i>	
Also attached is the EO Closing Agreement Cover Sheet. Please initial and date at the bottom of the page. Also attached is a copy of the briefing notes.	
Please return the signed agreements and approval cover sheet to the EOCAC at:	
<i>[Insert address of Closing Agreement Coordinator]</i>	
Attachments <i>[Enter number of attachments in parenthesis]</i>	

Exhibit 4.70.14-17 (11-24-2023)**EO Unable-to-Locate Scenario Guidance Table**

	<u>Example 1</u>	<u>Example 2</u>	<u>Example 3</u>
Facts			
The organization is a:	Corporation	Corporation	Corporation
Certified letters were:	Undeliverable	Undeliverable	Undeliverable
There is reliable 3rd party information that the organization has engaged in non-exempt activities	No	No	No
Dissolution	Articles of Dissolution filed with State	Administratively dissolved by the State but CAN be reactivated currently. See footnote 2	Administratively dissolved by the State but CAN NOT be reactivated. See footnote 3.
Development and Closing			
Update the EO/BMF status	20 - Termination See footnote 4	See footnote 5	20 - Termination See footnote 4
AIMS closing			
Return filed - BMF account established	14 - Termination	32 - Survey After Assignment	14 - Termination
No return filed	14 - Termination (Establish on BMF)	99 - Miscellaneous Form 10904 See footnote 6	14 - Termination (Establish on BMF)
Closing letter or required	Termination letter See footnote 7	None	Termination letter See footnote 7
Is 90-day letter required in declaratory judgment cases?	No	No	No
Is the case subject to Mandatory Review?	Yes	No	Yes

	<u>Example 4</u>	<u>Example 5</u>	<u>Example 6</u>
Facts			
The organization is a:	Corporation, Unincorporated Association, or Trust	Corporation, Unincorporated Association, or Trust	Corporation, Unincorporated Association, or Trust

Exhibit 4.70.14-17 (Cont. 1) (11-24-2023)
EO Unable-to-Locate Scenario Guidance Table

	Example 4	Example 5	Example 6
Certified letters were:	Delivered but no response was received	Undeliverable or delivered and no response received	Undeliverable
There is reliable 3rd party information that the organization has engaged in non-exempt activities	No	Yes See footnote 1	No
Dissolution	No information available	No information available	No information available
Development and Closing			
Update the EO/BMF status	22 - Revocation See footnote 4	22 - Revocation See footnote 4	See footnote 5
AIMS closing			
Return filed - BMF account established	10 - Unagreed without protest	10 - Unagreed Without Protest	32 - Survey After Assignment
No return filed	10 - Unagreed without Protest (Establish on BMF)	10 - Unagreed Without Protest (Establish on BMF)	99 - Miscellaneous Form 10904 See footnote 6
Closing letter or required	Letter 3618 and RAR See footnote 8	Letter 3618 and RAR See footnotes 9, 10	None
Is 90-day letter required in declaratory judgment cases?	Yes See footnote 11	Yes See footnote 11	No
Is the case subject to Mandatory Review?	Yes	Yes	No

#	Applies to Examples:	Footnote:
1	5	There is reliable 3rd party information that supports a proposed revocation on the basis that the organization has engaged in non-exempt activities and Area Counsel agrees that this information supports a proposed revocation. Such cases should be rare.

Exhibit 4.70.14-17 (Cont. 2) (11-24-2023)
EO Unable-to-Locate Scenario Guidance Table

#	Applies to Examples:	Footnote:
2	2	The organization has been administratively terminated by the State for failure to file annual reports or pay required filing fees. The state allows a corporation to be reactivated or the state allows reactivation during a proscribed period of time and the period during which reactivation is permitted has not expired. If the State allows reactivation during a prescribed period of time only, the examiner will prepare a Form 5666 recommending the year in which the corporation can no longer be reactivated for termination.
3	3	The organization has been administratively terminated by the State for failure to file annual reports or pay required filing fees. The state does not allow a corporation to be reactivated or the State allows reactivation during a proscribed period of time but the period in during which reactivation is permitted has expired.
4	1, 3, 4, and 5	examiners prepare Form 2363-A to update the EO/BMF to the correct status code. Mandatory Review will sign as reviewer and process Form 2363-A with the FAST once it concurs by issuing the final letter. A marked copy of Form 2363-A will be retained in the case file indicating the date Mandatory Review submitted the form for processing.
5	2 and 6	The examiner should update the organization's status to "unable to locate" by preparing Form 4844, <i>Request for Terminal Action</i> . The transaction code should be 593 and the closing code(CC) should be 82. (TC 593-CC 82). Note: 3198-A Checksheet in RCCMS should state, in the other instructions section, "Please process Form 4844."
6	2 and 6	Close with Closing Code 99, Information Report and Miscellaneous. Prepare Form 10904. The reason for the request should be "Unable to locate t/p and examination is not to take place".
7	1 and 3	The termination letters will be mailed by Mandatory Review.
8	4	Revocation is proposed because of the organization's failure to provide information verifying its continued qualification for exempt status. See IRC 6033, Treas. Reg. 1.6001-1 and Rev. Rul. 59-95. The examiner will prepare the Revenue Agent's Report (RAR), 30-day letter and mail it to the t/p. Mandatory Review will prepare and mail the final letter.
9	5	Examiners, through the group manager, must secure Area Counsel's written agreement that the 3rd party facts support revocation. If Area Counsel agrees with the revocation, the examiner will prepare the Revenue Agent's Report (RAR), 30-day letter and mail it to the t/p. Mandatory Review will prepare and mail the final revocation letters.

Exhibit 4.70.14-17 (Cont. 3) (11-24-2023)**EO Unable-to-Locate Scenario Guidance Table**

#	Applies to Examples:	Footnote:
10	5	If the letters were undeliverable in example 5, the basis for revocation is the 3rd party information. If the letters were delivered but there was no response, the basis for revocation will include both issues, failure to provide records and the 3rd party information.
11	4 and 5	Area Counsel must review and approve all 90-day letters involving IRC 501(c)(3) organizations.

Exhibit 4.70.14-18 (11-24-2023)
EO Briefing Report

<u>Taxpayer Name</u>
Type: (Walk-in or Examination)
Submission Date:
Status: (Stage of Agreement)
Counsel: (Counsel's name)
Years:
Return: Form
Issue:
<ul style="list-style-type: none">(List issues and resolution)

Exhibit 4.70.14-19 (11-24-2023)**EO Information Document Request Cover Letter (Exams Only)**

This letter replaces the Letter 3606 (Rev. 11-2003), historically used as a cover letter for Form 4564 during the conduct of the audit. This is not to be used as an initial contact letter.

Department of the Treasury Internal Revenue Service TE/GE Exempt Organizations Examinations <i>[Insert street address]</i> <i>[Insert city, state, and ZIP code]</i> <i>[Insert name of entity]</i> <i>[Insert street address]</i> <i>[Insert city, state, and zip code]</i>	Date: <i>[Insert date]</i> Taxpayer Identification Number: <i>[Insert TIN]</i> Form: <i>[Insert form]</i> Filing periods ended: <i>[Insert tax years]</i> Person to Contact / ID Number: <i>[Insert name and ID number]</i> Contact Numbers: Phone Number: <i>[Insert phone number]</i> Fax Number: <i>[Insert fax number]</i> Manager's Name / ID Number: <i>[Insert manager's name]</i> <i>[Insert manager's ID number]</i> Response Due Date: <i>[Insert date]</i>
Dear <i>[insert name of entity]</i> :	
Why I Am Sending You This Letter	
I am in need of additional information from you to help in completing my audit of your organization. I ask that you send me the items I am requesting by <i>[insert date]</i> .	
Information Document Request	
Enclosed is a Form 4564, <i>Information Document Request</i> , listing the items I need. Please mail this information to me at the address shown above. Original documents aren't required, but please ensure all copies are legible.	
Communication	
Please call me to discuss any potential issues and keep me informed of unavoidable delays. I'll do likewise. The audit will proceed faster if we address questions and concerns and provide information to each other in a timely manner. You may also speak to my manager at any time. My manager's name and phone number are also shown in the heading of this letter.	
Thank you for your cooperation in this matter.	

Exhibit 4.70.14-19 (Cont. 1) (11-24-2023)**EO Information Document Request Cover Letter (Exams Only)**

	<p>Sincerely,</p> <p>[Insert name]</p> <p>Internal Revenue Agent</p>
Enclosures:	
Form 4564	

Exhibit 4.70.14-20 (11-24-2023)**Information Document Request Cover Letter (Walk-Ins Only)**

This letter is **not** to be used as an initial contact letter for an audit.

[TE/GE Logo (on green letterhead)]	DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE WASHINGTON, D. C. 20224
Date	
[Name of taxpayer] [Street address] [City, state, and ZIP code]	[Employer Identification Number]
RE: Additional information regarding closing agreement request Dear [Sir or Madam],	
In order to determine if the IRS wants to begin the negotiation process for a closing agreement as requested on [date] [by your Power of Attorney], [name], we need additional information submitted to us.	
Enclosed is an Information Document Request. This request lists the additional items we are requesting.	
If you have any questions, please contact me at [number].	
Sincerely, [Insert name] Internal Revenue Agent	
Enclosure (1)	
cc: [name] POA	

Exhibit 4.70.14-21 (11-24-2023)**EO Employment Tax Closing Agreement Outline**

CLOSING AGREEMENT AS TO FINAL DETERMINATION COVERING SPECIFIC MATTERS UNDER SECTION 7121 OF THE INTERNAL REVENUE CODE
Under section 7121 of the Internal Revenue Code of 1986, as amended (the "Code"), xxxxx ("Taxpayer"), (Address), EIN: xx-xxxxxxx, and the Commissioner of Internal Revenue (the "Commissioner") (collectively the "Parties") enter into a Closing Agreement as to final determination of tax liability and specific matters:
WHEREAS, the Taxpayer is exempt from federal income tax as an organization described in section 501(c)(xx) of the Code; and
WHEREAS, during the taxable periods (month, day, year) through (month, day, year) (the "Applicable Tax Periods"), the Taxpayer represents that it (describe situation) to certain employees (the "Affected Employees");
WHEREAS, during the Applicable Tax Periods, the Taxpayer did not treat the (describe situation) as "wages" to the Affected Employees for income and employment tax purposes by reporting the (describe situation) on Forms W-2 and 941 and appropriately withholding and depositing applicable taxes; and
WHEREAS, the Taxpayer has voluntarily disclosed to the Commissioner the income and employment tax withholding and reporting errors made during the Applicable Tax Periods; and
WHEREAS , Taxpayer represents that it has instituted procedures to ensure future compliance with the reporting and withholding requirement issues set forth in this Closing Agreement; and,
WHEREAS , Taxpayer is not under examination by the IRS for employment or income tax matters, and any tax years referenced have not been examined for employment or income tax purposes; and
WHEREAS, the Commissioner, through his authorized representative(s) and the Taxpayer, through its authorized representative(s) have determined that final resolution of the Taxpayer's income tax withholding obligations and employment tax liabilities according to the terms of this Closing Agreement as to final determination of tax liability and specific matters set forth herein is in their respective best interests.
NOW THEREFORE IT IS HEREBY DETERMINED AND AGREED BETWEEN TAXPAYER AND THE COMMISSIONER AS FOLLOWS for federal employment tax purposes that:
(1) Taxpayer is liable for and will pay \$XXXX Dollars and No Cents, in full discharge of all income tax withholding, and employment tax liabilities due on the wages arising to the Affected Employees' (explain situation) during the Applicable Tax Periods, as follows:

Year	Federal Income Tax Withholding	Social Security Tax	Medicare Taxes	Total Tax Due
xxxx	\$x,xxx	\$x,xxx	\$x,xxx	\$xx,xxx
xxxx	\$x,xxx	\$x,xxx	\$x,xxx	\$xx,xxx
xxxx	\$x,xxx	\$x,xxx	\$x,xxx	\$xx,xxx

Exhibit 4.70.14-21 (Cont. 1) (11-24-2023)**EO Employment Tax Closing Agreement Outline**

- | |
|--|
| 2. Taxpayer will remit the total amounts set forth in paragraph (1) above by certified check, cashier's check, or similar instrument payable to the United States Treasury prior to, or contemporaneously with, the execution of this agreement by the duly authorized representative of the Commissioner. Payment should be sent to the following address: |
| 3. The Taxpayer agrees that the Service may assess the taxes contained in paragraph 1 above against the Taxpayer, as required by law, and waives all defenses against and restrictions on the assessment and collection of the liability, including any defense based on the expiration of the statute of limitations on assessment of tax with respect to the taxable periods for such amounts. |
| 4. Any adjustment to the employment taxes paid by the Taxpayer pursuant to this Closing Agreement shall be made without interest pursuant to Code section 6205(a)(1) and Treasury Regulation section 31.6205-1. |
| 5. No penalty shall be imposed on Taxpayer with respect to its failure to properly report and withhold employment taxes from the payments. |
| 6. The Taxpayer will file a Form W-2c, <i>Corrected Wage and Tax Statement</i> , for each Affected Employee with the Social Security Administration, reporting the increased Medicare and social security wages in Box 3 and Box 5, respectively. Box 1 will not include the increased wages for federal income tax purposes. |
| 7. The Taxpayer shall furnish a copy of the Form W-2c, <i>Corrected Wage and Tax Statement</i> , described in paragraph 6, to each Affected Employee. |
| 8. Nothing in this Agreement shall be construed as a limitation on the Commissioner's ability to adjust the tax liabilities of Taxpayer for any taxable period, except as expressly provided for in this Agreement. Further, this Agreement does not prevent the Commissioner from examining Taxpayer and determining adjustments for any tax periods covered by this Agreement for unrelated matters. |
| 9. This Closing Agreement and resolution of issues herein does not qualify as an examination or inspection under Code sections 7602 or 7605(b), or as an audit for purposes of Section 530 of the Revenue Act of 1978. |
| 10. The Taxpayer agrees not to file any future claims with respect to the specific items contained in this Closing Agreement. |
| 11. This Closing Agreement constitutes a resolution under the Code of the specific matters discussed herein. No inference shall be made with respect to whether this resolution satisfies other federal or state law. |
| 12. This Closing Agreement may not be cited or relied upon by any person or entity as precedent in the disposition of any other case. |
| This Closing Agreement is final and conclusive except: |
| <ol style="list-style-type: none"> 1. The matters to which it relates may be reopened in the event of fraud, malfeasance or misrepresentation of material fact; 2. It is subject to the sections of the Internal Revenue Code that expressly provide that effect be given to their provisions (including any stated exception for Section 7122 of the Code) notwithstanding any other law or rule of law; and 3. If it relates to a tax period ending after the date of this Closing Agreement, it is subject to any law, enacted after such date, which applies to the taxable period. |

Exhibit 4.70.14-21 (Cont. 2) (11-24-2023)**EO Employment Tax Closing Agreement Outline**

IN WITNESS WHEREOF, the above Parties to this Closing Agreement as to Final Determination of Tax Liability and Specific Matters have executed this Closing Agreement in triplicate on the dates indicated below. By signing this Closing Agreement, the Parties certify that they have read and agreed to its terms.

TP Name:

EIN:

By: _____ Date signed: _____

Name: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

By: _____ Date signed: _____

Name: _____

Title: Director, EO Examinations

Exhibit 4.70.14-22 (11-24-2023)**EO Instructions for Completing Form 5734, Non-Master File Assessment Voucher**

Form 5734 fields:	Enter the following:
Block 1	Name and address of taxpayer
Block 2	Leave blank
Block 3	Taxpayer Identification Number
Block 4	Closing Agreement
Block 5	Not applicable or N/A
Block 6	The date the agreement was executed by the Director, EO:E.
Block 7	28
Block 8	139
Block 9	Leave blank
Block 10	
I.R.C. Section or Type of Penalty	IRC 7121
Trans. Code	150
Amount	The total amount of tax, penalty, and interest.
Block 11	Leave blank
Block 12	The total amount of tax, penalty, and interest.
Block 13	Closing Agreement - See attached
Block 14	The EOCAC's name and phone number
Block 15	Current date

Exhibit 4.70.14-23 (11-24-2023)**EO NMF Closing Agreement Memorandum**

Date:

MEMORANDUM FOR: Cincinnati Submission Processing Center
Accounting Operations, Accounting Control Department 1
ANMF Team 104

FROM: EO Examinations Closing Agreement Coordinator

SUBJECT: Closing Agreement on Final Determination

Attached is a closing agreement executed on xx/xx/xxxx as noted:

Payer's Name:

Payer's SSN/EIN:

Payer's Address:

The closing agreement should be routed to the accounting branch for assessment and credit. The assessment should be made as a Non-Master File assessment, true tax class 6, utilizing abstract number 139 (Please refer to IRM 3(17) (243)8.4 for processing instructions). The payments that relate to the NMF assessment are currently sitting in the xxxx NMF fund.

There are to be no refunds of monies under this closing agreement.

If you have any questions, please contact xxxx at xxx-xxx-xxxx.

Thank you.

Attachment:

Exhibit 4.70.14-24 (11-24-2023)
EO Preparation of Form 5666

Position Number	Description	Definition
N/A	Referral or Information Report	Check the Referral box
Line 1		
A	Organization/Taxpayer/Plan Name	Self-explanatory
B	Street Address	Self-explanatory
C	City, State and Zip Code	Self-explanatory
D	Forward Report to: (Name/ Date/ Org / Telephone)	Manager, EO Referrals Group
E	Source of Information	Leave Blank
F	Tax Period	YYYYMM format for year of agreement
G	MFT/Plan No.	2-digit MFT
H	Future Year (EP/EO/GE)	Two to three years from the date of the closing agreement
I	Future Year Code (EP/EO/GE)	Use the appropriate Follow-Up Push Code: <ul style="list-style-type: none"> • 022: Exemption Granted • 023: Unrelated Business Income • 024: Payout Provision • 025: Other
P7-8	Source Code	41: Closing Agreement
P25-26	MFT	Use appropriate 2-digit code
P33-36	Project Code	8196: Closing Agreement Follow Up
Line 2		
1-12	TIN/File Source	Self-explanatory
14-17	Name Control or check Digit	Enter four-character name control
L	Name Control or check Digit	Self-explanatory
M	Approved by/Date	Self-explanatory
O	Information Obtained	Provide summary of the items that need verification to determine if TP is in compliance with the agreement

Exhibit 4.70.14-25 (11-24-2023)

EO Closing Agreement Director's Office Quarterly Report (Page 1)

**EXEMPT ORGANIZATIONS CLOSING AGREEMENTS
DIRECTOR, EO EXAMINATIONS QUARTERLY REPORT
AS OF (Last Day of Quarter)**

NUMBER OF CASES	ASSESSMENTS
-----------------	-------------

Agreements Involving:	In Process	Closed This Quarter	Closed Year to Date	This Quarter	Year to Date
Qualification Issues				0.00	0.00
Unrelated Business Income Tax				0.00	0.00
Private Foundation Status				0.00	0.00
Chapter 42 Taxes				0.00	0.00
IRC 4958, Excess Benefits				0.00	0.00
Employment Taxes				0.00	0.00
Other (Describe Below)				0.00	0.00
Total				0.00	0.00

Employment Tax Issues	Resolution
PF Issues	Resolution
Other Issues	Resolution

Exhibit 4.70.14-26 (11-24-2023)**EO Closing Agreement Director's Office Quarterly Report (Page 2)**

**EXEMPT ORGANIZATIONS CLOSING AGREEMENTS
DIRECTOR, EO EXAMINATIONS QUARTERLY REPORT
AS OF (Last Day of Quarter)**

I. REQUEST TO FACILITATE CLOSING AGREEMENT APPROVED OR PENDING**1.****Name of organization:****EIN:****Tax Year:****Area Office:****Origination:****Issue:****Proposed Resolution:****Status:****2.****Name of organization:****EIN:****Tax Year:****Area Office:****Origination:****Issue:****Proposed Resolution:****Status:****3.****Name of organization:****EIN:****Tax Year:****Area Office:****Origination:****Issue:****Proposed Resolution:****Status:**

Exhibit 4.70.14-27 (11-24-2023)

EO Closing Agreement Director's Office Quarterly Report (Page 3)

**EXEMPT ORGANIZATIONS CLOSING AGREEMENTS
DIRECTOR, EO EXAMINATIONS QUARTERLY REPORT
AS OF (Last Day of Quarter)**

II. DRAFT CLOSING AGREEMENT APPROVED**1.****Name of organization:****EIN:****Tax Year:****Area Office:****Origination:****Issue:****Proposed Resolution:****Status:****2.****Name of organization:****EIN:****Tax Year:****Area Office:****Origination:****Issue:****Proposed Resolution:****Status:****3.****Name of organization:****EIN:****Tax Year:****Area Office:****Origination:****Issue:****Proposed Resolution:****Status:**

Exhibit 4.70.14-28 (11-24-2023)**EO Closing Agreement Director's Office Quarterly Report (Page 4)**

**EXEMPT ORGANIZATIONS CLOSING AGREEMENTS
DIRECTOR, EO EXAMINATIONS QUARTERLY REPORT
AS OF (Last Day of Quarter)**

III. FINAL CLOSING AGREEMENT SIGNED BY DIRECTOR**1.****Name of organization:****EIN:****Tax Year:****Area Office:****Origination:****Issue:****Proposed Resolution:****Status:****Date Closing Agreement Sent to Taxpayer:****2.****Name of organization:****EIN:****Tax Year:****Area Office:****Origination:****Issue:****Proposed Resolution:****Status:****Date Closing Agreement Sent to Taxpayer:**

Exhibit 4.70.14-29 (11-24-2023)

EO Closing Agreement Director's Office Quarterly Report (Page 5)

**EXEMPT ORGANIZATIONS CLOSING AGREEMENTS
DIRECTOR, EO EXAMINATIONS QUARTERLY REPORT
AS OF (Last Day of Quarter)**

IV. REQUEST FOR CLOSING AGREEMENT NOT APPROVED

1.

Name of organization:

EIN:

Tax Year:

Area Office:

Origination:

Issue:

Proposed Resolution:

Status:

Exhibit 4.70.14-30 (11-24-2023)**EO 90-Day Final Adverse Determination Letter - Revocation of 501(c) Subordinate**

Internal Revenue Service

Department of the Treasury

TE/GE Exempt Organizations Examinations

[Enter EO Mandatory Review Manager's
address]

Date: [Insert date]

Taxpayer Identification Number:

[Insert TIN]

Person to Contact:

[Insert name]

Employee Identification Number:

[Insert ID Number]

[Insert name of entity]

[Insert attention line]

[Insert street address]

[Insert city, state, and zip code]

Employee Telephone Number:

[Insert phone number] (Phone)

[Insert fax number] (Fax)

CERTIFIED MAIL

Dear [Sir or Madam],

This is a final adverse determination regarding your exempt status under section 501(c)[_] of the Internal Revenue Code (the Code).

The revocation of your exempt status was made for the following reason[s]:

[Insert applicable and appropriate summary of the reasons for the revocation.]

Contributions to your organization are no longer deductible.

{Note: If, the organization has deductibility code "2", this paragraph is not applicable}

You are required to file income tax returns on Form [1120 or 1041]. If you have not already filed these returns and the agent has not provided you instructions for converting your previously filed Form(s) 990 [or 990-EZ or 990-BL or 990-PF] to Form(s) 1120 [or Form(s) 1041], you should file these income tax returns with the appropriate Service Center for the tax year[s] ending [date], and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

Exhibit 4.70.14-30 (Cont. 1) (11-24-2023)**EO 90-Day Final Adverse Determination Letter - Revocation of 501(c) Subordinate**

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

You also have the right to contact the Office of the Taxpayer Advocate. If you wish to seek review of our determination, a petition or complaint must be filed in one of these three courts before the 91st day after the date this determination was mailed to you. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate Service
[1st Line Address]
[2nd Line Address]
[City, State Zip]
[Phone Number]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[Name of Designated Official]
Designated Official

Enclosure:
Publication 892

Exhibit 4.70.14-31 (11-24-2023)**EO Central Organization 90-Day Final Adverse Determination Letter (501(c))****Internal Revenue Service****Department of the Treasury**

TE/GE Exempt Organizations Examinations
 [Enter EO Mandatory Review Manager's Address]

Date: [Insert date]

Taxpayer Identification Number:

[Insert TIN]

Person to Contact:

[Insert name of reviewer]

Employee Identification Number:

[Insert ID Number]

[Insert name of entity]

[Insert attention line]

[Insert street address]

[Insert city, state, and zip code]

Employee Telephone Number:

[Insert phone number] (Phone)

[Insert fax number] (Fax)

CERTIFIED MAIL

Dear [Sir or Madam]:

This is a final adverse determination regarding your exempt status under section 501(c)[_] of the Internal Revenue Code (the Code). Our favorable determination letter to you dated [date] is hereby revoked and you are no longer exempt under section 501(a) of the Code effective [date].

The revocation of your exempt status was made for the following reason[s]:

[Insert applicable and appropriate summary of the reasons for the revocation.]

Contributions to your organization are no longer deductible.

{Note: If, the organization has deductibility code "2", this paragraph is not applicable}

Revenue Procedure 80-27 provides guidance on group exemptions. According to this revenue procedure, when we terminate your tax exemption, we also terminate your group exemption. Effective [date], your Group Exemption Number [insert GEN] is no longer valid. **Please tell your subordinates of this action.** Each subordinate seeking recognition of tax exemption should file an individual application or file a Form 990 series return, as appropriate.

You are required to file federal tax returns for the tax period(s) shown above. Unless an extension of time is granted or the returns are already filed, send them to Ogden Service Center within 60 days from the date on this letter. Returns for later years are filed with the appropriate service center indicated in the return instructions.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following venues:

- the United States Tax Court
- the United States Court of Federal Claims
- the United States District Court for the District of Columbia

Exhibit 4.70.14-31 (Cont. 1) (11-24-2023)**EO Central Organization 90-Day Final Adverse Determination Letter (501(c))**

A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

U.S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Filing a petition for declaratory judgment however, does not delay the processing of income tax returns and assessments of any taxes due. A petition or complaint must be filed in one of these 3 courts before the 91st day after the date this determination was mailed to you.

You have the right to contact the Taxpayer Advocate Service. Their assistance is not a substitute for established IRS procedures, such as the formal appeals process. They cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. However, they can see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Taxpayer Advocate Service
[1st Line Address]
[2nd Line Address]
[City, State, Zip]
[Phone Number]

If you have any questions, please contact the person listed above.

Sincerely,

[Insert name]
Director, EO Examinations

Enclosures:
Publication 892
Form 6018, *Consent to Proposed Action - Section 7428*

Exhibit 4.70.14-32 (11-24-2023)**EO Secure Email message from Manager, Mandatory Review, to Area Managers Regarding the Revocation of a Central Organization (501(c)- FADL Issued)****Subject: Central Organization Revocation, Final Adverse Determination Letter Issued**

On [insert date], Mandatory Review issued a 90- day adverse final determination letter proposing revocation to [insert name of central organization]. Under Rev. Proc. 80-27, the group exemption is terminated. Any organization under GEN [insert GEN] will now be updated to EO BMF status 28 and be subject to a Form 1120 filing requirement.

Please check your inventory to see if you have any subordinate organizations included in the group ruling of the aforementioned parent under examination. If you have cases in status 10, please survey the case. If you have cases in status 12, continue to pursue any excise and/or employment taxes. For income tax purposes for years prior to [insert effective date of revocation], continue to pursue unrelated business income. For years after that date, follow the instructions in IRM 4.70.14.2.1.3.3 for converted returns. For any cases where you are pursuing revocation but no taxes, survey the case. The appropriate closing letter is a custom letter.

Exhibit 4.70.14-33 (11-24-2023)**EO Secure Email message from Manager, Mandatory Review, to Area Managers Regarding the Revocation of a Central Organization - FADL Not Petitioned)****Subject: Central Organization Revocation Final**

On [insert date], Mandatory Review issued a 90-day final adverse determination letter proposing revocation to [insert name of central organization], which did not file a petition with the courts. Under Rev. Proc. 80-27, the group exemption is terminated. Any organization under GEN [insert GEN] is to be updated to EO BMF status 28 and is subject to a Form 1120 filing requirement.

Please check your inventory to see if you have any subordinate organizations included in the group ruling of the aforementioned parent under examination. If you have cases in status 10, please survey the case. If you have cases in status 12, continue to pursue any excise and/or employment taxes. For income tax purposes for years prior to [insert effective date of revocation], continue to pursue unrelated business income. For subsequent years, see IRM 4.70.14.2.1.3.3 for converted returns. If pursuing revocation but no taxes, survey the case. The appropriate closing letter is a custom letter.

Exhibit 4.70.14-34 (11-24-2023)**EO Secure Email message from Manager, Mandatory Review, to Area Managers Regarding the Revocation of a Central Organization (Courts Upheld)****Subject: Central Organization Final Adverse Letter Petitioned**

On [insert date], Mandatory Review issued a 90-day final adverse determination letter proposing revocation to [insert name of central organization]. The organization has lost its court case. Under Rev. Proc. 80-27, the group exemption is terminated. Any organization under GEN [insert GEN] is to be updated to EO BMF status 28 and is subject to a Form 1120 filing requirement.

Please check your inventory to see if you have any subordinate organizations included in the group ruling of the aforementioned parent under examination. If you have cases in status 10, please survey the case. If you have cases in status 12, continue to pursue any excise and/or employment taxes. For income tax purposes for years prior to [insert effective date of revocation], continue to pursue unrelated business income. For subsequent years, see IRM 4.70.14.2.1.3.3 for converted returns. If pursuing revocation but no taxes, survey the case. The appropriate closing letter is a custom letter.

Exhibit 4.70.14-35 (11-24-2023)**EO Secure Email message from Manager, Mandatory Review, to Area Managers Regarding the Revocation of a Central Organization (Courts Rejected)****Subject: Central Organization Final Adverse Letter Petitioned**

On [insert date], Mandatory Review issued a 90-day final adverse determination letter proposing revocation to [insert name of central organization]. We did not prevail in the court case. Therefore, please check your inventory to see if you have any subordinate cases in suspense. If so, please remove those cases from suspense and continue with the examinations.

Exhibit 4.70.14-36 (11-24-2023)**EO Sample Administrative Record Index****Administrative Record Index**

Taxpayer:	ABC Charity Inc.	TIN:	00-0000000
Address:	123 Any Street	Form:	990
	Any Town, Any State Zip Code	Tax Year(s):	201512

Index #	Created by/ Received from	Description of documents (Mailed/emailed/faxed/handed to/received from the EO/POA)	Letter dated, Date received	# of pages
1	POA James Esquire	Form 1023, <i>Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code</i> , Articles of Incorporation, Bylaws, attached schedules describing proposed activities and financial statements	4/12/1989 - 11/7/1989	45
2	Revenue Agent J	Letter 947, determination letter recognizing exemption under §501(c)(3), from the Internal Revenue Service to ABC Charity, Inc.	11/7/1989	4
3	EO Treasurer John Taxpayer	Form 990, <i>Return of Organization Exempt from Tax</i> , for the year ended December 31, 2015	5/15/2016	25
4	Revenue Agent K	Letter 3611, Publication 1, and Form 4564, <i>Information Document Request</i> , scheduling initial appointment from the Internal Revenue Service to ABC Charity, Inc.	1/9/2017	2
5	POA Jane Rep	Letter from ABC Charity, Inc. to the Internal Revenue Service, with attachment Form 2848, <i>Power of Attorney</i>	1/14/2017, 1/16/2017	2
6	POA Jane Rep	Minutes of the Board of Directors of ABC Charity, Inc. dated January 5, 2015; February 1, 2015; March 10, 2015; April 5, 2015; May 3, 2015; June 7, 2015; June 25, 2015; July 12, 2015; August 2, 2015; September 2, 2015; October 4, 2015; November 8, 2015; December 6, 2015, received in person by Revenue Agent K from POA Jane Rep	2/6/2017	30

Exhibit 4.70.14-36 (Cont. 1) (11-24-2023)
EO Sample Administrative Record Index

Index #	Created by/ Received from	Description of documents (Mailed/emailed/faxed/handed to/received from the EO/POA)	Letter dated, Date received	# of pages
7	POA Jane Rep	Copies of ABC Charity's cancelled checks numbered: 20013; 20022; 20045; 20046; 20047; 21055; 20156; 20157; 20158; 20203; 20204; 20205; 20288; 20289; 20335; 20421; 20551; and 20611, received in person by Revenue Agent K from POA Jane Rep	2/6/2017	18
8	POA Jane Rep	Brochure entitled: "Summer Performances 2015", received in person by Revenue Agent K from POA Jane Rep	2/9/2017	8
9	Revenue Agent K	Letter 3606, and Form 4564, <i>Information Document Request</i> , from the Internal Revenue Service to ABC Charity, Inc.	2/9/2017	2
10	EO Treasurer John Taxpayer	Letter from ABC Charity, Inc. to the Internal Revenue Service with 2 attachments as follows: Forms 941, response to questions.	2/23/2017, 2/26/2017	16
11	POA Jane Rep	Letter from ABC Charity, Inc.'s representative to the Internal Revenue Service	3/2/2017, 3/5/2017	14
12	Revenue Agent K	Letter to ABC Charity, Inc. scheduling a date for a group manager's conference.	3/10/2017	1
13	Revenue Agent K	Letter to ABC Charity, Inc. summarizing the items discussed at the group manager's conference on March 26, 2017, with a copy of the Form 1023 and the attachments to the Form 1023.	3/27/2017	47
14	Revenue Agent K	Letter from the Internal Revenue Service to ABC Charity, Inc., with 4 attachments: Form 4621-A, <i>Report of Examination - Exempt Organizations</i> , Forms 886-A, <i>Explanation of Items</i> , Form 6018, <i>Consent to Proposed Action</i> , and Publication 892, <i>How to Appeal an IRS Determination on Tax-Exempt Status</i>	4/9/2017	30

Exhibit 4.70.14-37 (11-24-2023)**EO Documents that Are Part of the Administrative Record**

How to include documents that should be part of the administrative record:	
Letters to the organization (mailed)	
1.	Make a copy of the letter at the time of issuance showing the original signature as signed or stamped.
2.	Print a copy of any enclosures such as information document requests, reports of audit, any forms, (such as waivers, agreement forms, statute extensions, etc.) and any publications.
3.	Make a copy of any return envelopes that were included with the letter.
4.	If certified, make a copy of the certified mail receipt, PS Form 3800, and a copy of the front and back of the domestic return receipt (green card,) PS Form 3811.
5.	List the letter as of the date of the letter in the admin record index.
Letters to the representative (mailed)	
1.	Make a copy of the cover letter to the Power of Attorney (Letter 937-A) at the time you mailed it showing the original signature as signed or stamped.
2.	Make a copy of the letter at the time you mailed it showing the original signature as signed or stamped.
3.	Print a copy of any enclosures such as information document requests, reports of audit, any forms, (such as waivers, agreement forms, statute extensions, etc.) and any publications.
4.	Make a copy of any return envelopes that were included with the letter.
5.	If certified, make a copy of the certified mail receipt, PS Form 3800, and a copy of the front and back of the domestic return receipt (green card,) PS Form 3811.
6.	List the letter as of the date of letter in the admin record index.
Letters to the organization (efaxed)	
1.	Users of efax will not have a cover sheet. Retrieve the efax from your Sent Items folder and print a copy of the sent efax to place in the administrative record.
2.	Make a copy of the letter at the time you faxed it showing the original signature as signed or stamped.
3.	Print a copy of any enclosures such as information document requests, reports of audit, any forms, (such as waivers, agreement forms, statute extensions, etc.) and any publications.
4.	When using efax, the efax transmittal email you receive is also not part of the administrative record.
5.	List the letter as of the date of the efax transmission in the admin record index.

Exhibit 4.70.14-37 (Cont. 1) (11-24-2023)**EO Documents that Are Part of the Administrative Record**

Letters to the representative (efaxed)	
1.	When using efax, you will not have a cover sheet. Instead, retrieve the efax from your Sent Items folder and print a copy of the sent efax to place in the administrative record.
2.	Make a copy of the cover letter to the Power of Attorney (Letter 937-A) at the time you faxed it showing the original signature as signed or stamped.
3.	Make a copy of the letter at the time you efax it, showing the original signature as signed or stamped.
4.	Print a copy of any enclosures such as information document requests, reports of audit, any forms, (such as waivers, agreement forms, statute extensions, etc.) and any publications.
5.	When using efax, the efax transmittal email you receive is also not part of the administrative record.
6.	List the letter as of the date of the efax transmission in the admin record index.
Email sent to the organization or representative (no SBU data permitted)	
1.	At the time of transmission, retrieve the email from the Sent Items folder in Outlook. (If archived, retrieve from the archive.)
2.	Print a copy of the sent email.
3.	List the email as of the date of transmission.
Letters from the organization or representative (mailed)	
1.	Use the group secretary or manager's received date stamp to stamp the first page of the correspondence with the date the mail was received.
2.	Make a copy of the letter, all enclosures, and the envelope that the package came in.
3.	List the letter in the admin record index as of the date of the letter, and include the date the letter was received.
Letters from the organization or representative (efaxed)	
1.	Make a copy of the efaxed letter, and enclosures.
2.	If the efax time and date are not present, date stamp as described above.
3.	List the letter in the admin record index as of the date of the letter, and include the date the fax was received.
Emails from the organization or representative	
1.	Print out the email as received.
2.	After virus scanning any attachments, print out any attached documents.

Exhibit 4.70.14-37 (Cont. 2) (11-24-2023)**EO Documents that Are Part of the Administrative Record**

3.	List the email in the admin record index as of the date received.
Documents handed to the organization's officers or representative	
1.	Make a copy of the document.
2.	Prepare a transmittal memo, which can be signed by an officer of the organization to acknowledge receipt and then kept by the IRS.
3.	Mention in the description of documents that the document was handed over.
4.	Index the document as of the date the document was handed over.
Documents received by the agent while at the audit site or representative's office	
1.	If the document is to be retained, do not make any marks on the document.
2.	Make a note of receipt in your CCR and describe what was received.
3.	Upon return to the office, date stamp the document as received as of the date noted in the CCR.
4.	After date stamping, you may make a separate copy of the document that can be modified or marked up as a workpaper.
	Note: Any document reviewed on site that is left at the audit site won't be included in the administrative record.
The determination application	
1.	See IRM 4.70.14.2.4.1.4 for determination application procedures.
The determination letter	
1.	Follow the directions as listed above for the determination application.
2.	If the determination application is available from Cincinnati, list it as the second item in the index.
Forms 990, 990-EZ, 990-PF, 990-T	
1.	Make a copy of the return.
2.	List the return in the index as of the date of filing.
Form 990-N	
1.	Retrieve the Form 990-N information from http://www.irs.gov/app/ePostcard/ .
2.	Print the information retrieved from the website.

Exhibit 4.70.14-37 (Cont. 3) (11-24-2023)**EO Documents that Are Part of the Administrative Record**

	Note: As with any information or tax return secured internally, make sure they are mailed to the taxpayer with Letter 1477, Information Document Request Cover Letter - EP and EO, so that they can be included in the administrative record.
3.	Index the Form 990-N as of the date of filing.
Statute extensions	
1.	Print a copy of the unsigned statute extension.
2.	Index the unsigned statute extension with the cover letter used to issue the extension request. See the procedures for Letters to the organization (mailed.)
3.	Upon receipt of the signed extension, make a copy before your manager signs it. Follow the procedures for Letters from the organization (mailed.)
4.	Make a copy of the signed statute extension. Follow the procedures for Letters to the organization (mailed.)
5.	Do not index or include the statute extension with the Form 990 series return. (The statute extension will be stapled to the return for the workpaper file only.) Index the statute extensions as separate entries if received without a cover letter.
Forms 2848 or 8821	
1.	Make a copy of the signed Form 2848/8821 as received (by mail, efax, hand, or email) before you complete the upper right corner of the form and fax it to the appropriate campus.
2.	Index the Form 2848 as of the date of receipt.
3.	Do not index or include the Form 2848/8821 with the Form 990 series return. (The Form 2848/8821 is stapled to the return for the workpaper file only.)
Undelivered mail	
1.	Date stamp the envelope and the letter with the date of receipt (when returned to the Service as undeliverable.)
2.	Make a copy of the letter, all enclosures, and the envelope that the package came in.
3.	List the letter in the admin record index as of the date of the letter, and include the date the letter was returned to the Service.

Exhibit 4.70.14-38 (11-24-2023)**EO Examples of Documents Not Included in the Administrative Record and Solutions for Getting the Documents or Information Included**

Documents Not Included In the Administrative Record	Solutions For Inclusion in the Administrative Record If Needed
1. Agent's case chronological record.	If the CCR reflects information such as notes from a telephone call that are relied on in the decision process, create a transcript or summary of the discussion and send it to the organization with a request for confirmation or comment.
2. Notes taken by the agent during interviews or conferences with the organization.	Reduce the interview or conference to writing and provide a copy to the organization with a cover letter or Information Document Request (IDR) requesting confirmation of the contents. If hand-delivered to the organization with an IDR, ask the receiving person to acknowledge receipt by signing a copy of the IDR to be retained by the IRS.
3. Newspaper articles concerning the organization provided to the agent by a third party.	Provide copies of the newspaper articles to the organization with a cover letter or IDR requesting comments on the accuracy of the articles. If copies are sent by letter to the organization, send it certified. If hand-delivered to the organization with an IDR, ask the receiving person to acknowledge receipt by signing a copy of the IDR to be retained by the IRS. Be sure to attach copies of the newspaper articles to the copy of the IDR retained by the IRS. Note: For all documents secured from third parties and provided to the organization, be very careful to avoid disclosing a confidential source or making an unauthorized disclosure.
4. Newspaper articles concerning the organization clipped from the paper by the agent.	Same as in item number 3.
5. Internet articles or information concerning the organization downloaded from the Internet by the agent.	Provide copies of the downloaded information to the organization with a cover letter or IDR requesting comments on the accuracy of the information. If copies are sent by letter to the organization, send it certified. If hand-delivered to the organization with an IDR, ask the receiving person to acknowledge receipt by signing a copy of the IDR to be retained by the IRS. Make certain that copies of the downloaded information are attached to the copy of the IDR retained by the IRS.

Exhibit 4.70.14-38 (Cont. 1) (11-24-2023)**EO Examples of Documents Not Included in the Administrative Record and Solutions for Getting the Documents or Information Included**

Documents Not Included In the Administrative Record	Solutions For Inclusion in the Administrative Record If Needed
6. Copies of the organization's cancelled checks provided to the agent by a former employee of the organization.	To protect the identity of the former employee, make a written request for the organization to provide copies of the cancelled checks.
7. A copy of a rental agreement between the organization and a related IRC 501(c)(3) organization for the use of the organization's facilities provided to the agent by the related organization.	Request a copy of the contract from the organization or provide a copy to the organization with a written request that the organization confirm that it is a true copy of the contract.
8. A letter sent to the Internal Revenue Service by the organization a week after the final adverse determination letter was mailed to the organization.	None. There is no way to include documents received after the issuance of the final adverse determination letter in the administrative record. However, send the letter for association with the files in the case.
9. Documents that substantiate the revocation and enhance the Service's chances of sustaining the issue that were submitted to the Internal Revenue Service by a third party the day after a final revocation letter was mailed to the organization.	None. There is no way to include documents received after the issuance of the final adverse determination letter in the administrative record. Collect the information and call attention to it by memo or otherwise.
10. Workpapers and computations prepared by the agent.	Use either of two methods to include workpapers in the administrative record: (a) Mail a copy of the workpapers to the organization with a cover letter requesting comments. (b) Provide a copy of the original workpaper to the organization during the audit and request a receipt of acknowledgment. Caution: If shared, do not further modify the workpaper. If later modified, share the workpaper again.
11. Agent's notes concerning records the organization failed to produce.	Write to the taxpayer, reminding the taxpayer of what had been said, and note the failure to produce the documents. The letter with the taxpayer's verbal representations and failures to produce is then part of the record. Of course, any written response from the taxpayer is also a part of the record.

Exhibit 4.70.14-39 (11-24-2023)
EO Form 4844 Sample

Request for Terminal Action	EIN or SSN ##-#####	Name control XXXX	MFT code XX	Periods 201X
	Plan No/Report No (MFT 74, 76 & 46)			
	Name of taxpayer XXXXXXXXXXXXXXXXXXXX	Address of taxpayer (if necessary) #### Street City, State ZIP		
Taxpayer Account Changes	Transaction code TC 593	Amount (if applicable)	Control Base Data Request <input type="checkbox"/> ACTON Activity code: _____ Status code: _____ A - Assigned M - Monitor/Other B - Background S - Suspense C - Closed Category code: _____ Employee no.: _____ <input type="checkbox"/> TC 148 Entity indicator: _____	
Type of Research Requested <input type="checkbox"/> Assessed balance \$ _____ <input type="checkbox"/> Accruals to (Date: mmddyyyy) _____ Interest \$ _____ Penalty \$ _____ Total due \$ _____			Remarks <div style="text-align: center; font-weight: bold;">TC 593 CC 82</div>	
<input type="checkbox"/> Module printout <input type="checkbox"/> Transactions after (Date: mmddyyyy) <input type="checkbox"/> Complete printout <input type="checkbox"/> Other (Specify) _____			Identity Theft Action Code Miscellaneous Field Input Secondary Date Field	
<input type="checkbox"/> Return DLN _____ <input type="checkbox"/> DLN not available <input type="checkbox"/> Photocopy <input type="checkbox"/> Original <input type="checkbox"/> Form W-2 <input type="checkbox"/> Other (Specify) _____ _____ _____			Employee IDRS number Name of requester XXXXXX X. XXXXXXXXXXX Telephone no. (###) ### - ####	
			Signature of requester <i>Leanna H. Recordado</i> Date (mmddyyyy) ##/dd/####	
			Request Approved Signature of supervisor (if necessary) <input type="checkbox"/> Yes Date (mmddyyyy)	
			Request done Name of Terminal Operator <input type="checkbox"/> Yes _____ <input type="checkbox"/> No Telephone no. () Signature of Terminal Operator Date (mmddyyyy)	

Form **4844** (Rev. 11-2011)

Catalog No. 23470Y

publish.no.irs.gov

Department of the Treasury – Internal Revenue Service

Exhibit 4.70.14-40 (11-24-2023)
EO Mandatory Review Cover Sheet

MANDATORY REVIEW COVER SHEET (Place on outside of Case File when closing)					
TAXPAYER NAME: _____			EIN: _____		
ASSIGNED TO: _____			MGR APPROVAL: _____		
STATUTE VERIFICATION					
MFT	YEAR	STATUTE DATE	DATE VERIFIED	RETURN	INITIALS
BMFOLT/AMDIS PRINTS ATTACHED? YES NO, WHY NOT?					
	Close to EO Closing Unit				
	All Revocations - Redaction Package emailed to Group Mgr on:				
	1120 Suspense file				
	90 day suspense date:				
	Taxable related case(s) enclosed needing assessment				
	Copy of final closing letter enclosed in file				
	2363-A's in file for processing				

Exhibit 4.70.14-40 (Cont. 1) (11-24-2023)**EO Mandatory Review Cover Sheet**

MANDATORY REVIEW COVER SHEET (Place on outside of Case File when closing)	
	Release of V-freeze
	Release of freeze code 3
Reviewer Signature	Date

Exhibit 4.70.14-41 (11-24-2023)
EO Memorandum to TEGEDC

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE**

MC:4920:DAL
1100 Commerce St.
Dallas, TX 75242

[Insert date]

Memorandum for: [Insert name of Area Counsel]
[Insert Area] Area Counsel
[Insert street address with mail stop]
[Insert city, state and zip code]
[Insert phone number]

From: [Insert name of reviewer]
TE/GE Mandatory Review

Subject: Pre-issuance review of [insert final adverse determination letter or
statutory notice of deficiency]

Please review the attached case file for issuance of the [insert final adverse determination letter
or statutory notice of deficiency] and return to Reviewer at the following address:

Internal Revenue Service
[Insert street address with mail stop]
[Insert city, state and zip code]

If you have any questions, please call [Insert phone number] or email [Insert email
address]@irs.gov.

Attachment(s):

Case file of [Insert name of entity]

Exhibit 4.70.14-42 (11-24-2023)**EO Final Adverse Determination Letter: 501(c)(3) Exemption Revocation (90 Day Letter)****Internal Revenue Service****Department of the Treasury**

TE/GE Exempt Organizations Examinations
 [Enter EO Mandatory Review Manager's Address]

Date: [Insert date]

Taxpayer Identification Number:

[Insert TIN]

Person to Contact:

[Insert name]

Employee Identification Number:

[Insert ID Number]

[Insert name of entity]

[Insert attention line]

[Insert street address]

[Insert city, state, and zip code]

Employee Telephone Number:

[Insert phone number] (Phone)

[Insert fax number] (Fax)

CERTIFIED MAIL

Dear [Sir or Madam],

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated [date] is hereby revoked and you are no longer exempt under section 501(a) of the Code effective [date].

The revocation of your exempt status was made for the following reason[s]:

[Insert applicable and appropriate summary of the reasons for the revocation.]

Contributions to your organization are no longer deductible.

{Note: If, the organization has deductibility code "2", this paragraph is not applicable}

You are required to file income tax returns on Form [1120 or 1041]. If you have not already filed these returns and the agent has not provided you instructions for converting your previously filed Form(s) 990 [or 990-EZ or 990-BL or 990-PF] to Form(s) 1120 [or Form(s) 1041], you should file these income tax returns with the appropriate Service Center for the tax year[s] ending [date], and for all tax years thereafter in accordance with the instructions of the return.

[As you were a private foundation as of the effective date of revocation, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.]

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

Exhibit 4.70.14-42 (Cont. 1) (11-24-2023)**EO Final Adverse Determination Letter: 501(c)(3) Exemption Revocation (90 Day Letter)**

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate Service
[1st Line Address]
[2nd Line Address]
[City, State Zip]
[Phone Number]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[Name of Designated Official]
Designated Official

Enclosure:
Publication 892

Exhibit 4.70.14-43 (11-24-2023)**EO Final Adverse Determination Letter: 501(c)(3) Foundation Status Modification (90 Day Letter)****Internal Revenue Service****Department of the Treasury**

TE/GE Exempt Organizations Examinations
 [Enter EO Mandatory Review Manager's Address]

Date: [Insert date]

Taxpayer Identification Number:

[Insert TIN]

Person to Contact:

[Insert name]

Employee Identification Number:

[Insert ID Number]

[Insert name of entity]

[Insert street address]

[Insert city, state, and zip code]

Employee Telephone Number:

[Insert phone number] (Phone)

[Insert fax number] (Fax)

CERTIFIED MAIL

Dear [Sir or Madam],

This is a final determination regarding your foundation classification. This letter modifies our letter to you dated [date], in which we determined that you were an organization described in section[s] 509(a)(_) [and 170(b)(1)(A)(__)] of the Internal Revenue Code (Code).

[Based on your sources of support, we have determined that you are a private [operating] foundation described under section[s] 509(a) [and 4942(j)(3)] of the Code, effective [date]. [You will be treated as a private operating foundation as long as you continue to meet the requirements of section 4942(j)(3).] Your tax exempt status under section 501(c)(3) of the Internal Revenue Code is not affected.]

[Based on your sources of support, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section[s] 509(a)(__) [and 170(b)(1)(A)(__)] of the Code, effective [date]. Your tax exempt status under section 501(c)(3) of the Internal Revenue Code is not affected.]

Grantors and contributors may rely on this determination, unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

{For all organizations modified from publicly supported status to a private [operating] foundation}

[Because you are a Private [Operating] Foundation, you are required to file Form 990-PF, Return of Private Foundation. If you have not already filed these returns and you have not received instructions for filing substitute Form[s] 990-PF, you should file these returns with the appropriate Service Center for the tax year[s] ending [date], and for all tax years thereafter in accordance with the instructions of the return.]

Exhibit 4.70.14-43 (Cont. 1) (11-24-2023)**EO Final Adverse Determination Letter: 501(c)(3) Foundation Status Modification (90 Day Letter)**

{For small organizations still considered publicly supported; i.e. modification from 509(a)(1) to 509(a)(2)}
[For tax periods beginning after December 31, 2006, small tax-exempt organizations with gross receipts normally less than \$50,000 a year are required to file an annual electronic notice, Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ. Organizations that do not file a return or a notice for three consecutive years will lose their tax-exempt status.]

Processing of tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate Service
[1st Line Address]
[2nd Line Address]
[City, State Zip]
[Phone Number]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Exhibit 4.70.14-43 (Cont. 2) (11-24-2023)

EO Final Adverse Determination Letter: 501(c)(3) Foundation Status Modification (90 Day Letter)

[Name of Designated Official]
Designated Official

Enclosure:
Publication 892

Exhibit 4.70.14-44 (11-24-2023)**EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act**

Internal Revenue Service

Department of the Treasury

TE/GE Exempt Organizations Examinations
[Enter Mandatory Review Manager's Address]

Date: [Insert date]

Taxpayer Identification Number:

[Insert TIN]

Form Number:

4720-A

Person to Contact:

[Insert name/ID number]

Contact Hours:[Insert disqualified person's name]
[Insert disqualified person's street
address]
[Insert city, state, and zip code]**Telephone Number:**

[Insert phone number]

[Insert fax number] (Fax)

LAST DAY TO FILE A PETITION IN
THE UNITED STATES TAX COURT:
[Insert date]**CERTIFIED MAIL**

<u>Tax Year(s) Ended:</u>	First Tier (Initial) Tax Deficiency <u>I.R.C. 4941(a)(1):</u>
12/31/2013	\$300.00
12/31/2014	\$900.00
12/31/2015	\$1,500.00

Dear [Sir or Madam],

NOTICE OF DEFICIENCY

We have determined that there is a deficiency (increase) in your excise tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statements show how we figured the deficiency.

The second tier tax deficiency shown above will be eliminated if correction is made by the end of the correction period, which ends 90 days after the mailing of this letter plus the total period of any extensions that may apply. You may request this office to grant an extension of the correction period for the time reasonable and necessary for you to bring about correction of the act giving rise to the first tier tax. However, an extension can be granted only if warranted by the facts and requested before the correction period would otherwise end. A statement as to the actions required for correction is enclosed.

Exhibit 4.70.14-44 (Cont. 1) (11-24-2023)**EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act**

If you want to contest this deficiency in court before making any payment, you must file a petition with the United States Tax Court for a redetermination of the deficiency. Your petition must be filed with the Court within 90 days from the mailing date of this letter (150 days if addressed to you outside of the United States), plus the time (if any) during which this office has extended the correction period as a result of your request. The petition should be filed with the United States Tax Court, 400 Second Street N.W., Washington, D.C. 20217, and the copy of this letter should be attached to your petition. The time in which you must file a petition with the Court (90 or 150 days, as the case may be, plus any extension of the correction period that may be granted) is fixed by law and the court cannot consider your case if your petition is filed late. Filing a petition will extend the correction period until after the Tax Court has decided whether the second tier tax was properly imposed.

If your petition involves a dispute of not more than \$50,000 for any one taxable period (or, if there is no taxable period, taxable event) a simplified procedure is provided by the Tax Court for small tax cases. You can get information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court at 400 Second Street N.W., Washington D.C. 20217. You should do this promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, please sign and return the enclosed waiver form. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. The enclosed envelope is for your convenience. If you decide not to sign and return the statement and you do not timely petition the Tax Court, the law requires us to assess and bill you for the deficiency after 90 days from the mailing date of this letter (150 days if this letter is addressed to you outside the United States). The time for making the assessment is extended by any extension of the correction period that may be granted.

You have the right to contact the office of Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot correct a legally correct tax determination or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels get prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at the address and telephone number shown below:

Taxpayer Advocate Service
[1st Line Address]
[2nd Line Address]
[City, State Zip]
[Phone Number]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[Commissioner's Name]
Commissioner
By

Exhibit 4.70.14-44 (Cont. 2) (11-24-2023)**EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act**

<p style="text-align: right; margin-right: 100px;">[Name of Designated Official] Designated Official</p> <p>Enclosures: Statements (Form 4883 and Explanation of Items) Copy of this letter Waiver (Form 4089) Envelope</p>

Exempt Organizations Excise Tax Audit Changes <i>(Chapter 41, Chapter 42, and Section 170(f)(10)(F) Excise Taxes)</i>				
Name of Taxpayer [Insert name]		Employer ID No. [Insert SSN]	Schedule or Exhibit	
Name of Exempt Organization <i>(if different from taxpayer)</i> [Insert name of private foundation]				
		Taxable Years Ended		
		12/31/2013	12/31/2014	12/31/2015
Internal Revenue Code Section for Proposed Adjustment		4941(a)	4941(a)	4941(a)
1. Adjustments	Self-dealing: Amount involved	3,000.00	9,000.00	15,000.00
2.	Total adjustments	3,000.00	9,000.00	15,000.00
3.	Amount reported on return or as previously adjusted	0	0	0
4.	Total amount as corrected	3,000.00	9,000.00	15,000.00

Exhibit 4.70.14-44 (Cont. 3) (11-24-2023)**EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act**

5.	Applicable tax rate %	10%	10%	10%
6.	Initial tax liability as corrected (line 4 x line 5)	300.00	900.00	1,500.00
7.	Initial tax liability reported	0	0	0
8.	Increase (or decrease) in tax	300.00	900.00	1,500.00
9.	Additional tax (minimum)			
10.	Penalties (Code section _____)			
Explanation of Adjustments See attached Explanation of Items				
Form 4883	(Rev. 1-2004)	Catalog Number 42083F	Department of the Treasury- Internal Revenue Service www.irs.gov	

Addendum to Form 4883
Explanation of Adjustments
[Name of Taxpayer]
[EIN of Taxpayer]

On July 1, 2013, XYZ Foundation, a private foundation pursuant to I.R.C. section 509, made a loan to you in the amount of \$100,000 at an annual interest rate of 6%. Interest on the loan was paid timely. The loan was repaid on December 31, 2015. As a substantial contributor to the Foundation and a foundation manager, you are a disqualified person with respect to the Foundation.

I.R.C. 4941(d)(1)(B) provides that the lending of money or other extension of credit between a private foundation and a disqualified person is an act of self-dealing. Where the transaction relates to the lending of money or other extension of credit, the transaction is an act of self-dealing on the day the transaction occurs plus an act of self-dealing on the first day of each taxable year or portion of a taxable year which is within the taxable period and which begins after the taxable year in which the transaction occurs. See Treas. Reg. 53.4941(e)-1(e)(1). The taxable period begins with the date on which the act of self-dealing occurs and ends on the earliest of (a) the mailing date of a notice of deficiency; (b) the date on which tax is assessed; or (c) the date on which correction of the act of self-dealing is completed. See I.R.C. 4941(e).

I.R.C. 4941(a)(1) imposes a 10% excise tax on the amount involved in the act of self-dealing for each year (or part thereof) in the taxable period. The amounts involved are determined using the greater of interest paid or fair market interest rate on day the act occurs. The tax is imposed on disqualified persons who participate in the act of self-dealing. Appendix 1 shows how we calculated the amount involved.

Exhibit 4.70.14-44 (Cont. 4) (11-24-2023)**EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act**

Addendum to Form 4883
Explanation of Adjustments
[Name of Taxpayer]
[EIN of Taxpayer]

Accordingly, you are liable for excise taxes under I.R.C. 4941(a)(1) in the amounts of \$300.00, \$900.00 and \$1,500.00 for the taxable years ended December 31, 2013, December 31, 2014 and December 31, 2015, respectively (the taxable period).

[Taxpayer name]
[EIN]
[Taxable years]

Appendix I

Date of Act	Loan Amount	Interest Rate Paid	FMV Interest Rate	Time in Years	Amount Involved	Total Amounts Involved
7/1/2013	\$100,000	6%	6%	1/2	\$3,000	\$3,000
1/1/2014	\$100,000	6%	6%	1	\$6,000	\$9,000
1/1/2015	\$100,000	6%	6%	1	\$6,000	\$15,000

Amount of tax (10% of amount involved with respect to each act of self-dealing for each year in taxable period) is calculated as follows:

Act Date/Taxable Period Beginning Date	2013	2014	2015	Total
7/1/2014	\$300	\$300	\$300	\$900
1/1/2015		\$600	\$600	\$1,200
1/1/2016			\$600	\$600
Totals:	\$300	\$900	\$1,500	\$2,700

Form 4089 (Rev. January 1983)	Department of the Treasury - Internal Revenue Service Notice of Deficiency - Waiver	Symbols SE:T:EO:E:FS- L:ET:MR
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Exhibit 4.70.14-44 (Cont. 5) (11-24-2023)**EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act**

Name, SSN or EIN, and address of Taxpayer(s) <div style="display: flex; justify-content: space-between; margin-top: 10px;"> [Insert name of taxpayer] [Insert SSN] </div> <div style="margin-top: 5px;">[Insert street address]</div> <div style="margin-top: 5px;">[Insert city, state, and ZIP code]</div>		
Kind of Tax 4720-A	Copy to Authorized Representative	
Tax Year Ended	Deficiency	
	Increase in Tax	Penalties
December 31, 2013	\$300.00	
December 31, 2014	\$900.00	
December 31, 2015	\$1,500.00	
See the attached explanation for the above deficiencies		
I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.		
Your Signature _____	(Date signed) _____	
Spouse's Signature, If a Joint Return Was Filed _____	(Date signed) _____	
Taxpayer's Representatives Sign Here _____	(Date signed) _____	
Corporate Name: _____		
Corporate Officers Sign Here _____	(Date signed) _____	
	(Date signed) _____	
<div style="display: flex; justify-content: space-between;"> Note: Who Must Sign </div>		

Exhibit 4.70.14-44 (Cont. 6) (11-24-2023)**EO Statutory Notice of Deficiency: IRC 4941(a)(1): Continuing Act**

<p>If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary that you owe additional tax; nor will it extend the time provided by law for either action. If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.</p>	<p>If this waiver is for any year(s) for which you filed a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her. For any agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed. For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed. For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.</p>		
<p>If you agree, please sign one copy and return it; keep the other copy for your records.</p>			
Cat. No. 22650Y	www.irs.gov	Form 4089)

Exhibit 4.70.14-45 (11-24-2023)**EO Examples of 90-Day Letter Summaries**

The following examples of caveats can be used to explain the reasons for the adverse action. Every caveat must be tailored to fit the unique facts and circumstances of particular situations.

Revocation of IRC 501(c)(3), Failure to Provide Books and Records

1. You have failed to produce documents to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. Also, you have failed to keep adequate books and records as required by IRC section 6001 and the regulations thereunder.

2. In our letter(s) dated Month, DD, YYYY and Month DD, YYYY, we requested information necessary to conduct an examination of your Form 990 for the year ended Month, DD, YYYY. We have not received the requested information. Section 1.6033-2(i)(2) of the Income Tax Regulations provides, in part, that every organization which is exempt from tax, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status. Since you have not provided the requested information, you have failed to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3) and that no part of your net earnings inure to the benefit of private shareholders or individuals.

Revocation of IRC 501(c)(3), Operational Test – including failure to provide Books and Records.

3. You have failed to provide documents to establish that you are organized and operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3) and that no part of your net earnings inure to the benefit of private shareholders or individuals. Also, you have failed to keep adequate books and records as required by I.R.C. section 6001 and the regulations thereunder.

Revocation of IRC 501(c)(3), Operational Test.

4. Your primary activity since your inception has consisted of the operation of bingo games, which is an activity not accomplishing an exempt purpose. In addition, your executives unlawfully appropriated funds for their personal use, which is a means by which net earnings of your organization have inured to your private shareholders or individuals. I.R.C. 501(c)(3) requires organizations to operate exclusively for an exempt purpose, which includes having a primary activity accomplishing exempt purposes. See Treas. Reg. 1.501(c)(3)-1(a). Section 501(c)(3) precludes Federal income tax exemption if net earnings inure to the benefit of private shareholders or individuals. See Treas. Reg. 1.501(c)(3)-1(c)(2). As such, you are not an organization described in section 501(c)(3).

Exhibit 4.70.14-45 (Cont. 1) (11-24-2023)
EO Examples of 90-Day Letter Summaries

5. You paid over \$100,000 in compensation to your Chief Executive Officer during each of the tax years ended December 31, 2015 and 2016, pursuant to an employment contract approved by your board of directors. During 2015 and 2016, you received only \$125,000 and \$117,000, respectively, in monetary donations. You did not in either year fund acquisitions for your collection of natural history exhibits. You also cut back the hours of the museum from 6 days a week to weekends only. In addition, you turned down a large bequest from a private donor because you did not have the funds to pay for storing, cataloging or displaying the donated items. You did make two \$10,000 grants to CEO Foundation, an organization set up by your CEO's step-son to rescue retired greyhounds, and guaranteed a note from CEO Foundation to ABC Bank, the proceeds of which were used to build a state-of-the art kennel on your CEO's property (CEO Foundation conducted its rescue operation at CEO's ranch).

I.R.C. 501(c)(3) precludes federal income tax exemption if net earnings inure to the benefit of private shareholders or individuals and if it is operated for the benefit of private interests. Because I.R.C. 501(c)(3) prohibits inurement of earnings and you operated for the benefit of private interests more than insubstantially, your exempt status is hereby revoked.

6. As a result of our examination of your activities and financial records for the year ending October 31, we have determined that your organization has been inactive for several prior years and that there have been no operations or financial activities conducted or planned. As such, you fail to meet the operational requirements for continued exemption under IRC 501(c)(3).

Unrelated Business Income Tax

8. During the tax year ending December 31, 2015 and 2016, while described as a tax exempt organization under I.R.C. 501(c)(6), you received gross income of \$75,000 and \$100,000, respectively, for engaging in the business of providing management services, for a market-priced fee, on a regular basis.

I.R.C. 511 imposes a tax on the unrelated business taxable income of exempt organizations. I.R.C. 513 provides that an unrelated trade or business is any trade or business not substantially related (aside from the need of such organization for income) to the exercise or performance by such organization of its exempt purpose or function constituting the basis for its exemption.

Because the provision of management services, for a market-priced fee, on a regular basis, is not substantially related to and does not contribute importantly to the accomplishment of the purposes for which tax exemption was granted (aside for the need to produce income), you received unrelated business taxable income in the amounts of \$50,000 and \$30,000 in taxable years 2015 and 2016 respectively. Accordingly, you are subject to unrelated business income tax in the amount of \$7,500 and \$4,500 for the tax years ending December 31, 2015 and 2016, respectively.

[Set forth any applicable penalties and their explanations in separate paragraphs.]

Exhibit 4.70.14-45 (Cont. 2) (11-24-2023)**EO Examples of 90-Day Letter Summaries**

Note: Since this is a tax determination, a Form 4549-A should be attached showing the computation and summary.

Chapter 42 Excise Tax

9. We have determined that you were a disqualified person of XX Public Charity ("XXPC") during 2015 and 2016, within the meaning of I.R.C. 4958(f)(1). We have further determined that XXPC is an applicable tax exempt organization and that you engaged in certain "excess benefit transactions" with XXPC.

Specifically, we have determined that in 2015 XXPC paid \$12,434.23 in economic benefits to you or for your use and that you provided reciprocal value to XXPC in the amount of \$121.65. The payments to or for your personal use occurred throughout 2015. For 2016, we have determined that you intercepted \$10,000 of XXPC assets without providing any reciprocal value. As such, you engaged in excess benefit transactions and are liable for the first tier excise taxes computed pursuant to I.R.C. 4958(a)(1) as shown on the attached Form 4883.

We have further determined that you were an organization manager of XXPC and that as an organization manager you participated in the excess benefit transactions described above, knowing them to be such transactions within the meaning of I.R.C. 4958(a)(2). We have further determined that you have not demonstrated that such participation was not willful or that there was reasonable cause for such knowing participation. As such, you are liable for the excise taxes computed pursuant to I.R.C. 4958(a)(2) as shown on the attached Form 4883.

We have further determined that you have not established that you have corrected these excess benefit transactions. To correct, the amount of the excess benefit transactions plus applicable interest must be paid to an organization described in I.R.C. 501(c)(3) in accord with the principles enumerated in Treas. Reg. 53.4958-7, including sub-paragraph (e) of these regulations, Correction in the case of an applicable tax-exempt organization that has ceased to exist, or is no longer tax-exempt is specifically mandated. As such, we have determined that you are liable for the applicable second tier excise tax of I.R.C. 4958(b).

Addendum to Form 4883
Explanation of Adjustments
Name of Taxpayer
EIN of Taxpayer

Exhibit 4.70.14-45 (Cont. 3) (11-24-2023)
EO Examples of 90-Day Letter Summaries

We have determined that you were a disqualified person of XXPC during 2012, within the meaning of I.R.C. 4958(f)(1). We have further determined that XXPC is an applicable tax exempt organization and that you engaged in certain “excess benefit transactions” with XXPC.

Specifically, we have determined that in 2012 XXPC paid \$100,000 in economic benefits to you or for your use by making credit card payments on your behalf for purchases of personal goods and services. You have not demonstrated that you provided reciprocal economic value to XXPC and have not demonstrated that you received these economic benefits as a bona fide loan from XXPC to you. Our determination is made in accordance with the principles described in Treas. Reg. 53.4958-4(c)(1). As such, you engaged in excess benefit transactions and are liable for the first tier excise taxes computed pursuant to I.R.C. 4958(a)(1) as shown on the attached Form 4883.

Exhibit 4.70.14-46 (11-24-2023)**EO Form 2363-A Instructions: IRC 501(c)(3) Revocation**

Revocation of §501(c)(3) - Instructions For Form 2363-A, Request for IDRS Input for BMF/EO Entity Change	
Field 1	Enter the EIN
Field 2	Enter the name control
Field 3	Place an X in the box next to 80
Field 4	Place an X in the box next to 016
Field 5	Type in definer codes A and B
Field 8	Type in the name of the entity.
Field 17	Enter 03
Field 18	Type in the two-digit foundation status code. See BMFOLO or INOLES.
Field 19	Type in the two-digit classification code. See BMFOLO or INOLES.
Field 22	Type in 22 followed by the year and month of effective revocation.
Field 35	Type in the two digits representing the ending month of the fiscal year.
Field 38	Place an 01 in the 941 field and an 01 in the 940 field (if applicable.)
Field 39	Type REVOKE C-3 AND SET 941-940 AND 1120 FILING REQ
Field 40	Digitally sign and date or print the form, sign and date it.
Field 41	Type EO:E:FSL/ET:MR

Exhibit 4.70.14-47 (11-24-2023)**EO Form 2363-A Instructions: IRC 501(c)(3) Foundation Status Modification**

Foundation Status Modifications - Instructions For Form 2363-A	
Field 1	Enter the EIN
Field 2	Enter the name control
Field 3	Place an X in the box next to 80
Field 4	Place an X in the box next to 016
Field 5	Type in definer code A
Field 17	Enter 03
Field 18	Type in the two-digit foundation status code. See Document 6379, II-5.
Field 19	Type in the two-digit classification code. See Document 6379, II-2.
Field 35	Type in the two digits representing the ending month of the fiscal year.
Field 38	Place an 01 in the Form 990 field. Place a 1 in the Form 990-T if applicable.
Field 39	Type FDN ST-CHANGE in the boxes
Field 40	Digitally sign and date or print the form, sign and date it.
Field 41	Type EO:E:FSL/ET:MR

Exhibit 4.70.14-48 (11-24-2023)**EO Deletions Statement**

The subsection that refers to this exhibit is IRM 4.70.14.6.9.3, Publication of the Determination.

Below is a sample deletions statement for revoking an organization described under IRC 170(c). The deletions statement accompanies Form 14712 to the Bulletin Program Coordinator.

Internal Revenue Bulletin: 2017-XX		
November XX, 2017 Announcement 2017-X		
<i>Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code</i>		
Table of Contents		
<p>The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.</p> <p>Generally, the IRS will allow deductions for contributions made to a listed organization that no longer qualifies to receive deductible contributions if the contributions occurred on or before the date of announcement in the Internal Revenue Bulletin. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.</p> <p>If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on November XX, 2017 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.</p>		
Name of Organization	Effective Date of Revocation	LOCATION
Organization 1	1/1/2014	City, ST
Organization 2	9/1/2013	City, ST

Exhibit 4.70.14-49 (11-24-2023)**EO Checklist for EO IRC 6110 Written Determinations**

The subsection that refers to this exhibit is IRM 4.70.14.6.9.3 Publication of the Determination.

CHECKLIST FOR EO IRC 6110 WRITTEN DETERMINATIONS		
CASE CONTROL NAME: Organization's name		
CASE CONTROL NUMBER:		UIL CODE:
ISSUING OFFICE: EO Examinations		
CONTACT NAME: Name of IRC 6110 Redaction Coordinator	PHONE:	EMAIL:
DATE OF ISSUANCE:		
<u>X</u>	1)	Does the written determination show the uniform issue list number(s) (See Pub 1102)?
<u>X</u>	2)	Is the document a final written determination? (i.e. has it exhausted its rights to administrative remedy and are all approvals in place?)
<u>X</u>	3)	Did the author solicit proposed deletions and resolve any disputes (Case file should contain copies of Pattern Letter 38 and, in some cases, 39)?
<u>NA</u>	4)	If a third party communicated with the author about this written determination, did the author add a notation on the document and in the case history?
<u>X</u>	5)	Did the author prepare the Letter 437, Notice of Intention to Disclose for issuance?
<u>X</u>	6)	Has an electronic redacted version of the written determination been prepared? Note: If the original was date-stamped, the date that the document was signed should be inserted directly below the letterhead on the first page of the redacted document.
<u>X</u>	7)	Has the author identified and redacted all non-disclosable items? (If any items other than taxpayer identifying information is redacted, please explain in the box below. See attached list and don't forget to redact tax years and dollars and amounts)
<u>X</u>	8)	Have sufficient copies of the unredacted and redacted written determination been printed? <ul style="list-style-type: none"> One copy each for the taxpayer, plus one additional copy each for each representative of the taxpayer (up to two representatives) designated to receive the document. One copy each for the office's administrative records.
<u>X</u>	9)	Were copies of this checklist and the final, issued unredacted and redacted written determinations sent by attachment in encrypted email to the Chief Counsel Disclosure Unit? Primary email address: <i>*CC 6110 Disclosure</i> .
AUTHOR:	Name of IRC 6110 Redaction Coordinator	Date:
REVIEWER:	Name of IRC 6110 Redaction Coordinator or other delegated employee in Mandatory Review	Date:

