



Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 1. FTD Alerts

5.7.1 FTD Alerts

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Manual Transmittal

November 29, 2012

Purpose

(1) This transmits updated IRM 5.7.1, Collecting Process, Trust Fund Compliance Handbook, FTD (Federal Tax Deposit) Alerts.

Material Changes

- (1) 5.7.1.1 Added EFTPS requirement information.
- (2) 5.7.1.4(2) Added TIGTA (Treasury Inspector General for Tax Administration) correction action timely alert assignment information.
- (3) 5.7.1.5(1)(b) Added direction to close the Alert prior to creating the Bal Due account.
- (4) 5.7.1.5(1)(c) Added Note regarding Automatic stay.
- (5) Editorial changes were made throughout the document.

Effect on Other Documents

This material supersedes IRM 5.7.1, dated May 15, 2012.

Audience

The intended audience is revenue officers in SBSE Field Collection.

Effective Date

(11-29-2012)

Signed by
Scott Reisher
Director, Collection Policy
Small Business/Self-Employed

5.7.1.1 (05-15-2012) Federal Tax Deposit FTD Alerts

1. Federal Tax Deposit (FTD) Alerts are used to determine an employer's compliance with employment tax deposit requirements for the quarter of the Alert issuance, and for subsequent quarters until the taxpayer is brought into full compliance.
2. The FTD Alert process identifies, at an early stage (i.e., before the return is due), taxpayers who have fallen behind in their deposits.
3. Beginning January 1, 2011, all FTDs must be made by means of the Electronic Federal Tax Payment System (EFTPS). Prior to January 1, 2011, many employers were permitted to make their federal tax deposits at an authorized financial institution accompanied by an FTD coupon. EFTPS is a system designed to use electronic funds transfer (EFT) to pay Federal taxes. The EFT number is shown.

5.7.1.2 (05-15-2012) Criteria for FTD Alert Issuance

1. FTD Alerts are issued on taxpayers who are classified as semiweekly depositors and who have not made FTDs during the current quarter or who have made them in substantially reduced amounts. They may be identified by the presence of TC 971 AC 046 on a tax module.
2. There are two levels of Alert issuances, both of which are assigned for field contact. They are identified by the following systemically generated codes:
 - Potential Pyramider, identified by an Alert priority code of "A" . The taxpayer had modules in notice status in each of the prior two quarters.
 - Potential Noncompliant, identified by an Alert priority code of "B" . The taxpayer is considered to be likely to owe without intervention based on our identification and selection process.

5.7.1.3 (05-15-2012)

Process for Alert Issuance

1. Master File conducts the FTD Alert analysis in the twelfth cycle week of each calendar quarter. The FTD Alerts generate in March, June, September, and December.

5.7.1.4 (11-29-2012)

Receipt of FTD Alerts

1. FTD Alerts are sent directly from Master File to the Integrated Collection System (ICS) for direct assignment to the field.
2. Revenue Officer inventories should be at a level that will allow for the immediate assignment of the alerts; however, in no circumstances should the assignment date exceed seven calendar days from the date the alert arrives in the group designation hold file.
3. Contact the taxpayer within 15 calendar days of assignment of the Alert. If timely contact is not possible, notify the group manager. The group manager will decide if reassignment of the Alert is appropriate. If contact is delayed for more than 15 calendar days, note the reason for the delay in the case history.

5.7.1.5 (11-29-2012)

Pre-Contact Research and Analysis

1. Pre-contact analysis must be conducted on all alerts prior to making a field call. If the pre-contact research and analysis reveal:
 - A. The taxpayer is not liable for deposits, close the Alert. Verify final return information is posted on IDRS.
 - B. The taxpayer is assigned to Automated Collection System (ACS), contact ACS. Determine the account's status. If ACS indicates that the taxpayer is current or no longer liable for employment taxes, close the Alert. If this information is unavailable, work the Alert, request that ACS transfer the account, close the Alert and create bal due modules on ICS.
 - C. The taxpayer is in bankruptcy, inform Insolvency of the FTD Alert and determine if Insolvency is monitoring the taxpayer's compliance. If Insolvency is monitoring compliance, request input of TC 136, if it has not already been input and close the Alert. A TC 136 prevents future Alerts from generating. It is reversed with a TC 137. If Insolvency is not monitoring the taxpayer's compliance, continue working the Alert. Do not, however, request a collection information statement, demand payment or take any enforced collection action unless Insolvency indicates that the action will not violate the automatic stay.

Note:

Some of the acts prohibited under the automatic stay include: collecting debts incurred before the filing of the bankruptcy petition, as well as taking possession of, or exercising control over, property of the estate and the debtor to collect any debt. See IRM 5.17.8.10 *Automatic Stay -11 USC § 362*.

- D. Upon receipt of the Alert, ensure the case sub code is listed as FTD Alert 105, per IRM 5.2.1.8.1, *Field Collection Area Procedures* and 5.2.1.10(2), *ICS and Entity Subcodes* (Field Collection Area only). If the sub code is not listed as 105, immediately update ICS.
2. Review BMFOLI to verify compliance history, including prior TFRP assessments. Establish the total amount of deposits made in previous quarters to assist in deposit verification during the field call. Additional things to consider as a part of pre-contact analysis, but not all inclusive:
 - Review cross compliance.
 - Determine if taxpayer previously qualified for the COBRA credit.
 - Determine if the taxpayer has a representative.
 - Decide what issues to address during the initial contact with the taxpayer.
 - Schedule field/telephone call within 15 calendar days of receipt.

5.7.1.6 (05-15-2012)

Contact Procedures

1. Initial taxpayer contact by telephone within 15 calendar days from the date of receipt, is considered a timely initial contact.
2. A telephone call that does not result in taxpayer contact will not meet the timely contact requirements. Leaving a message within this period is also not considered a timely contact, though this action should be documented in the case history.
3. Follow the procedures in IRM 5.1.10.3.2, *Effective Initial Contact*.
4. Explain the reason for the visit/call. Recognize that FTD Alerts generate based on the probability that the taxpayer has fallen behind in deposit payments.
5. Provide the taxpayer with Publication 1, *Your Rights as a Taxpayer*.
6. If the taxpayer provides documentation or other substantiating information confirming full compliance, verify that the amount deposited is accurate based on prior quarter deposits. If the amount of the deposits are less than prior quarters, ask additional questions regarding possible reduced payroll or wages and close the Alert.
7. If the taxpayer is no longer required to deposit (i.e., out-of-business, no employees), ensure there are no other outstanding modules, promptly request input of TC 591 and close the Alert.
8. If the taxpayer is in compliance, but due to sporadic or seasonal payrolls the Alert analysis is unable to predict deposit compliance, request input of TC 136 and close the Alert. During the contact, briefly review Federal Tax Deposit requirements with the taxpayer and provide Notice 931, *Deposit Requirements for Employment Taxes*, or other documents outlining the deposit rules to help explain the requirements. This may help ensure the taxpayer maintains future compliance.

5.7.1.7 (05-15-2012)

Taxpayer Not in Compliance

1. FTD Alerts on delinquent taxpayers provide an early opportunity to assist and educate taxpayers before their liability pyramids and the growing debt becomes more difficult to resolve.
2. Review Federal Tax Deposit requirements with the taxpayer. Give the taxpayer Notice 931, *Deposit Requirements for Employment Taxes*, Publication 15, *Circular E, Employer's Tax Guide*, Publication 3151-A, *The ABCs of FTDs* or other documents outlining the deposit rules to help explain the requirements.
3. Discuss the cost for failing to deposit taxes on time. Explain the FTD penalty to the taxpayer. Consider explaining the cost to the taxpayer by showing the taxpayer the penalties incurred in the Alert quarter as well as prior quarters.
4. Ensure that the taxpayer understands the consequences of continued noncompliance. Discuss the Notice of Federal Tax Lien (NFTL), levy and seizure provisions. When applicable, discuss the provisions for the Trust Fund Recovery Penalty (TFRP).
5. Monitor and document the taxpayer's compliance with deposits for the Alert quarter and subsequent quarters until the account is resolved. If the taxpayer cannot satisfy past due deposits while meeting current deposits, encourage the taxpayer to make current deposits first while working to resolve past due deposits.

6. After contacting the taxpayer, document the case history to show FTD requirements and penalty assessment were discussed with the taxpayer. Also, document that the taxpayer was informed of the consequences of non-compliance.
7. If the taxpayer is unable to make the required deposits or remain in compliance, see IRM 5.7.1.8, *Working FTD Alerts*.

5.7.1.8 (05-15-2012) Working FTD Alerts

1. If the taxpayer is unable to make the required deposits or become compliant, secure a Collection Information Statement and follow the procedures listed in IRM 5.1.10.3.2, *Effective Initial Contact*. Request assignment of the case and close the Alert.
2. Explain the TFRP provisions, provide Notice 784, *Could you be Personally Liable for Certain Unpaid Federal Taxes?* and make TFRP determination.
3. Ensure ICS histories are clearly documented. See IRM 5.1.10.7, *Case Histories*.
4. Ensure timely follow-ups are met. See IRM 5.1.10.8, *Timely Follow-ups*.

5.7.1.9 (05-15-2012) Alert Closing Procedures

1. Close the FTD Alert at the earliest, most appropriate time.
2. Secure the 941 return for the Alert quarter. Use the appropriate closing code with TC 599 for the return secured.
3. If full payment of tax, penalty, and interest is not received with the return, proceed with prompt assessment action and see IRM 5.7.1.8, *Working FTD Alerts*.
4. Close the Alert when the taxpayer is brought into full compliance. Full compliance includes, filing of all tax returns on or before the required due date; making appropriate tax deposits in the proper amount, by the appropriate due date; and paying any tax due with the return at the time the return is filed.
5. If the taxpayer is not in compliance and there is a Bal Due, or Del Ret open, request assignment of the case and close the Alert.
6. If a Bal Due or Del Ret is received on the FTD module, prior to requesting assignment, the FTD Alert will systemically close and will be assigned to the RO.
7. The following ICS options are available to close an Alert:
 - A. **Return Secured**: The taxpayer was not in compliance with FTDs, and the revenue officer secured a balance due return for the Alert quarter. The revenue officer should close the FTD Alert, create a pre-assessed or prompt assessed Bal Due on ICS, and pursue collection.
 - B. **TP is in Compliance**: The taxpayer was required to deposit and was fully current with payment and filing requirements at the time of initial contact on the Alert.
 - C. **Not Required to Deposit**: The taxpayer was not required to deposit for the Alert quarter.
 - D. **TP is Sporadic/Seasonal**: The taxpayer is either a sporadic or seasonal employer with a fluctuating payroll. If the Alert analysis would be unable to predict the taxpayer's deposit compliance, the revenue officer should manually request input of TC 136 to suppress future Alerts and close the Alert.
 - E. **Brought into Compliance**: The revenue officer ensured the taxpayer made all required deposits and secured the return for the Alert quarter. The taxpayer is fully current on the alert and current quarter at the time of closure, and there are no additional balances owed.
 - F. **Bal Due/Del Ret Received**: The revenue officer received another ICS module by which to control the case. FTD Alerts should be closed when there is an open Bal Due or Del Ret on ICS.

Note:

If another module is listed on IDRS in status 21 or 58 for the same taxpayer, use appropriate procedures to request assignment and create an ICS Bal Due/Del Ret. Once case is assigned, close FTD Alert.

8. If a new FTD Alert is issued while an Alert from a prior quarter is still open in inventory, the old Alert will be systemically closed and replaced with the new Alert.

5.7.1.10 (05-15-2012) Transfer of FTD Alerts

1. If the taxpayer is in another area, the FTD Alert can be transferred without a prior Courtesy Investigation.
2. Due to the time-sensitive nature of FTD Alert contacts, call and advise the receiving office of the transfer.
3. Transfer FTD Alerts only if the business itself, not merely one or more officers or partners, is located in the transferee area.

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Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 2. Letter 903 Process

5.7.2 Letter 903 Process

- 5.7.2.1 [Overview of the Letter 903 Process](#)
- 5.7.2.2 [Issuance of Letter 903](#)
- 5.7.2.3 [Referrals For Civil Enforcement](#)
- 5.7.2.4 [Referrals For Criminal Enforcement](#)

Manual Transmittal

March 19, 2015

Purpose

(1) This transmits revised IRM 5.7.2, Trust Fund Compliance, Letter 903 Process.

Material Changes

- (1) IRM 5.7.2.2(2) added reference to IRM 25.1.8.2, *Trust Fund Violations*.
- (2) Former IRM 5.7.2.2.1(1) References to older versions of Letter 903 have been deleted.
- (3) IRM 5.7.2.3(6)(2) added reference to IRM 5.17.4.17.1, *Standards for Injunctive Relief under IRC § 7402(a)*.
- (4) IRM 5.7.2.3(6)(9) added reference to IRM 25.3.2.6, *Revenue Officer Referral and Account Disposition*.
- (5) Editorial changes were made throughout the document.

Effect on Other Documents

This material supersedes IRM 5.7.2, dated September 28, 2012

Audience

All revenue officers of SBSE and W&I Collection Employees.

Effective Date

(03-19-2015)

Kristen Bailey
Acting Director, Collection Policy

5.7.2.1 (09-28-2012)

Overview of the Letter 903 Process

1. Letter 903, *You Haven't Deposited Federal Employment Taxes* is used by revenue officers to alert taxpayers to the provisions of IRC §7402(a), which provides the Federal district court with the jurisdiction to pursue civil injunctions under Title 26 and Title 18 of the Internal Revenue Code.

Note:

These procedures should be used in egregious cases of noncompliance and the collection procedures have already been unproductive or would be futile to stop or reduce trust fund pyramiding.

2. The Letter 903 was previously provided to pyramiding taxpayers prior to the revenue officer requiring the taxpayer to file monthly 941 returns or obtain a special bank account to ensure timely compliance in accordance with IRC §7215.
3. Although IRC §7215 remains in the Internal Revenue Code, 941M Monthly Filing and Special Deposit Procedures are no longer required prior to proceeding to the next collection action.

5.7.2.2 (03-19-2015)

Issuance of Letter 903

1. If levy sources have been exhausted and the repeater or pyramiding taxpayer has no assets to assist in resolving or offsetting the liability, consider issuing Letter 903 with Notice 931.
2. Issuance of Letter 903 is required before a taxpayer can be recommended for civil injunction or criminal prosecution (see IRM 25.1.8.2, *Fraud Handbook, Trust Fund Violations*) for additional guidance.
3. Conditions for Issuing Letter 903:

IF

The taxpayer is an in-business trust fund violator.
The levy upon property of the business or its responsible persons would be ineffective to reduce pyramiding behavior.

THEN

Consider issuing Letter 903.
Consider issuing Letter 903.

The taxpayer is identified as a repeater, no assets exist and/or levy sources have been exhausted.

Recommending issuance of Letter 903.

The manager does not approve the recommendation.

Consider issuing Letter 903 along with Letter 1058 during initial contact.

Generate the Letter 903 on ICS and send to the group manager for review and approval.

Note the reason in the case file.

4. When the Letter 903 is approved:

- A. Hand deliver Letter 903 and Notice 931, *Deposit Requirements for Employment Taxes*, to the taxpayer. If the taxpayer is not available, the letter and notice may be left at the place of business.
- B. Notate the delivery method on ICS. Once the delivery method is selected, ICS will upload TC 148-09 to IDRS. This provides for systemic control and subsequent follow-up. If a subsequent BAL DUE, DEL RET, or FTD Alert is issued, it will be coded with an "L" and it will be accelerated to the field.
- C. Associate a copy of Letter 903 with the case file.

Note:

Criminal charges could be pursued based on the failure to adhere to the reporting and payment requirements mandated under the IRC. Convictions under Title 18 and Title 26 may include substantial fines and terms of imprisonment.

5. If the taxpayer has previously abandoned other business ventures, leaving unpaid and uncollectible tax liabilities, consider seeking a civil injunction to stop further pyramiding. See IRM 5.17.4.17, *Civil Injunctions under IRC 7402(a) to Restrain Pyramiding*. Consult with SBSE Counsel when dealing with this situation.

5.7.2.2.1 (03-19-2015)

Revenue Officer Follow-up After Letter 903 Issuance

1. Inform the taxpayer that failure to comply may result in:

- Prompt assessment of unpaid liabilities.
- Assessment of liabilities based upon a return executed under IRC §6020(b).
- Possible civil or criminal referral.

2. If the taxpayer is in compliance, request input of TC 149 to reverse the TC 148-9.

5.7.2.3 (03-19-2015)

Referrals For Civil Enforcement

1. **All appropriate administrative collection procedures should be taken before initiating these Trust Fund Compliance procedures. For instance, appropriate levies and liens should be considered first, as well as timely and appropriate trust fund recovery penalty investigations. With approval from local counsel, it may also be appropriate to pursue a civil injunction while a taxpayer is exercising its collection due process hearing and appeal rights under IRC §6320 or 6330.**

2. Taxpayers could be recommended for civil injunction action pursuant to IRC §7402(a) for repeated failure to comply with the Employment Tax provisions listed in the Internal Revenue Code.

Note:

This action is normally appropriate for taxpayers with minimal or no equity, or where seizure may not resolve the problem.

3. Revenue Officers should be able to establish that the taxpayer is knowledgeable regarding federal tax deposits laws and that further administrative collection effort would be futile.

4. Some examples of proof of federal tax deposit law knowledge may include:

- A. The taxpayer received a Letter 903 in the past.
- B. The taxpayer was previously assessed a Trust Fund Recovery Penalty.
- C. The taxpayer has/is engaged in multiple entities to avoid the payment of the trust fund taxes.
- D. The taxpayer has a history of filing bankruptcies to avoid collection of employment taxes and/or pyramids employment taxes while in bankruptcy.

5. Ensure the case is properly documented regarding the following:

- A. History of non-compliance (evidence of prior assessments and penalties).
- B. Verification of the taxpayer's responsibility to withhold taxes.
- C. Deposit requirements were explained to the taxpayer.
- D. Prior enforcement actions taken and the results of those actions.
- E. Review IRM 25.1.8, *Fraud Handbook, Field Collection*, if appropriate.

6. The Revenue Officer will:

- A. Prepare a narrative report to SBSE Counsel through your group manager addressing the facts of the case.
- B. Refer to the Legal Reference Guide, IRM 5.17.4.17.1, *Standards for Injunctive Relief under IRC § 7402(a)* and IRM 5.17.12 *Investigations and Reports* for guidelines.
- C. Recommend in the report that SBSE Counsel consider instituting civil proceedings under IRC § 7401 and 7402 requesting an injunction against the taxpayer to prohibit the incurrence of future unpaid trust fund tax obligations.
- D. Prepare Form 4477, *Civil Suit Recommendation*.
- E. Include copies of pertinent material from the case file.
- F. Refer to IRM 5.7.2.2(4) in the narrative report.
- G. Forward to the group manager for review and approval.
- H. Submit to Advisory for technical review before it is forwarded to SBSE Counsel.

I. For additional information, see IRM 25.3.2.6, *Revenue Officer Referral and Account Disposition*.

5.7.2.4 (07-20-2012)

Referrals For Criminal Enforcement

1. Criminal charges could be pursued based on the failure to adhere to the reporting and payment requirements mandated by the Internal Revenue Code. When the taxpayer fails to comply with the IRC provisions, do the following:
 - A. Consult your group manager as to the appropriate course of action, which may include a referral to Criminal Investigation.
 - B. Review IRM 25.1.3, *Criminal Referral* and discuss potential fraud indications with the Fraud Technical Advisor (FTA) for additional guidance.
 - C. If a criminal referral is appropriate, then prepare Form 2797, *Referral Report of Potential Fraud Cases*. Refer to IRM 25.1.3.2, *Preparation for Form 2797* and submit the report to the FTA.
2. If the referral is accepted by Criminal Investigation, the special agent assigned to the case will contact the revenue officer.
3. If at any time during the investigative or criminal process the Collection Area Director believes that suspension of the civil aspects will impact the ultimate collection of civil liabilities, bring the matter to the attention of SBSE Counsel. SBSE Counsel will coordinate with Criminal Tax Counsel for the POD.

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Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 3. Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP)

5.7.3 Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP)

- 5.7.3.1 [Introduction](#)
- 5.7.3.2 [Automated Trust Fund Recovery \(ATFR\) Program](#)
- 5.7.3.3 [Basis for Liability Under IRC 6672](#)
- 5.7.3.4 [Considerations for Employment Tax Examination \(ETE\) Assessments](#)
- 5.7.3.5 [Statutory Assessment Period](#)
- 5.7.3.6 [Extension of Statutory Assessment Period](#)
- 5.7.3.7 [Cases Received With Less Than Six Months Remaining on the Assessment Statute](#)
- 5.7.3.8 [Reporting Expiration of the TFRP Statute](#)
- 5.7.3.9 [Issuance of CP 527 ASED Notice](#)
- Exhibit 5.7.3-1 [Trust Fund Recovery Penalty \(TFRP\)](#)

Manual Transmittal

July 19, 2012

Purpose

(1) This transmits revised IRM 5.7.3, Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty.

Material Changes

- (1) Minor editorial changes made throughout the text.
- (2) Added 5.7.3.3.3, Third-Party Payers and Common Law Employers/Clients, to incorporate SB-SE-05-0711-044, Interim Guidance for Conducting Trust Fund Recovery Penalty Investigations in Cases Involving a Third-Party Payer.

Effect on Other Documents

This material supersedes IRM 5.7.3, dated January 14, 2011. This IRM incorporates Interim Guidance Memorandum SB-SE-05-0711-044, Interim Guidance for Conducting Trust Fund Recovery Penalty Investigations in Cases Involving a Third-Party Payer, dated 7/1/2011.

Audience

Small Business/Self-Employed Collection Employees

Effective Date

(07-19-2012)

Scott Reisher
Director, Collection Policy

5.7.3.1 (11-12-2010)

Introduction

1. The TFRP is based on IRC 6672 and is used to:
 - Facilitate the collection of tax and enhance voluntary compliance
 - Serve as an alternative means of collecting unpaid trust fund taxes when taxes are not fully collectible from the company/business that failed to pay the taxes
2. To administer the TFRP and for additional guidance, refer to:
 - Policy Statement P-5-14 (IRM 1.2.14.1.3, Trust Fund Recovery Penalty Assessments)
 - IRM 5.17.7, Legal Reference Guide for Revenue Officers, Liability of Third Parties for Unpaid Employment Taxes
3. The TFRP is a penalty provided by IRC 6672 against any person required to collect, account for, and pay over taxes held in trust who willfully fails to perform any of these activities. The penalty is equal to the total amount of tax evaded, not collected, or not accounted for and paid over. Assessments of the TFRP are possible based on liabilities for the following tax forms:
 - 941, Employer's QUARTERLY Federal Tax Return
 - 720, Quarterly Federal Excise Tax Return (see IRM 5.7.3.1.1)
 - CT-1, Employer's Annual Railroad Retirement and Unemployment Return
 - 943, Employer's Annual Federal Tax Return for Agricultural Employees
 - 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
 - 945, Annual Return of Withheld Federal Income Tax

- 944, Employer's ANNUAL Federal Tax Return
 - 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests
 - 8804, Annual Return for Partnership Withholding Tax (Section 1446)
4. TFRP assessments against individuals are assessed on the Individual Master File (IMF) using Master File Tax Account Code (MFT) 55 and reference number 618.
 5. The TFRP may be imposed, with respect to the taxes described in (3) above for:
 - Willful failure to collect tax
 - Willful failure to account for and pay over tax
 - Willful attempt in any manner to evade or defeat tax or the payment thereof
 6. Although the TFRP is normally applied to employment tax returns for withheld income tax, withheld Social Security tax, or withheld Railroad Retirement Tax, the TFRP provided by IRC 6672 also applies to those excise taxes which are commonly referred to as "collected excise taxes". Collected excise taxes (see IRM 5.7.3.1.1, TFRP for Collected Excise Taxes) are those which are imposed on persons other than the person who is required by law to collect the tax and pay it over to the Government (a collecting agent).
 7. The revenue officer will explore the possibility of asserting the TFRP against the collecting agent's responsible persons and will follow the same procedures for investigation and recommendation of the TFRP on employment taxes or collected excise taxes.
 8. The full unpaid trust fund amount will be collected only once in a particular case, whether it is collected from the employer/collecting agent, from one or more of its responsible persons, or from a combination of the employer/collecting agent and one or more of its responsible persons.

5.7.3.1.1 (11-12-2010)

TFRP For Collected Excise Taxes

1. A determination must be made on a case-by-case basis whether a "collected" excise tax is, in fact, collected. Only the following excise taxes imposed by Chapter 33 are taxes which may be subject to the TFRP:
 - Tax on certain communication services (IRC 4251)
 - Tax on certain transportation by air (IRC 4261 or 4271)
2. Excise taxes which are imposed by Chapter 33 of the Internal Revenue Code are reported on Form 720, IRS Nos. 22, 26, 28 and 27.

5.7.3.1.2 (07-19-2012)

Personal Liability for Excise Taxable Fuel Taxes

1. Section 4103 creates personal liability for certain people who are under a duty to assure payments of tax under Sections 4041(a)(1) or 4081, reported on Form 720, who either willfully fail to perform that duty or willfully cause the taxpayer to fail to pay such tax. Once a willful failure under either Sections 4041(a)(1) or 4081 has occurred, Section 4103 imposes personal liability for willful failure to perform (Section 4103(1)) or for willfully causing the taxpayer to fail to pay the tax (Section 4103(2)). The main difference between the TFRP for collected excise taxes and the personal liability for excise taxes is that the TFRP is an assessment of a civil penalty under Master File Transaction (MFT) code 55, while the personal liability for excise taxes is an assessment of the actual unpaid tax as either transaction code (TC) 150 or 290 under the responsible person's Social Security number.
2. Taxes reported on Form 720 that are imposed by Section 4041(a)(1), 4081 and 4091 (pre-2005) are:
 - 060 - Diesel fuel
 - 071 - Dyed diesel fuel used in trains
 - 035 - Kerosene
 - 062 - Gasoline
 - 069 - Kerosene for use in Aviation
 - 014 - Aviation gasoline
 - 077 - Kerosene fuel for use in commercial aviation (other than foreign trade)
 - 105 - Dyed diesel fuel, LUST (Leaking Underground Storage Tanks) tax
 - 107 - Dyed kerosene, LUST tax
 - 119 - LUST tax, other exempt removals
 - 104 - Diesel-water fuel emission
 - 111 - Kerosene for use in aviation, LUST tax non-taxable uses
3. Responsible and willful persons can become jointly liable with the business taxpayer for the excise taxes listed above which the business has reported on Business Master File (BMF) Form 720. When assessed against an individual, he/she will owe the same tax liability as the business taxpayer who filed the Form 720. The responsible person will also be liable for interest and certain penalties from the same date as the business taxpayer.
4. The following procedures should be followed for investigating both TFRP and personal liability for excise tax cases:
 - Establishing Responsibility — IRM 5.7.3.3.1
 - Establishing Willfulness — IRM 5.7.3.3.2
 - Collectibility Determination — IRM 5.7.5
 - Form 4180 — IRM 5.7.4.2.1

5.7.3.2 (11-12-2010)

Automated Trust Fund Recovery (ATFR) Program

1. The Automated Trust Fund Recovery (ATFR) program is a National Standard Application used to control TFRP case inventories.
2. Revenue officers use the program to:

- Systemically download from IDRS the business master file name, address, and tax period data to establish a case
 - Control trust fund recovery case inventories
 - Calculate the trust fund penalty
 - Monitor assessment statute expiration dates (ASED) and determination dates
 - Make recommendations regarding assertion and non-assertion of the penalty
 - Systemically generate and control managerial approvals
 - Generate required forms and letters
3. The application is divided into the following components:
- Area Office Application (ATFR-AO)
 - Control Point Monitoring (ATFR-CPM)
 - Compliance Center Application (ATFR-CC)
4. Cases must be worked on the ATFR system whenever possible. This ensures that the correct means of calculation and the current procedures have been followed in case processing, and that systemic records are created of the determination and assessment.

Note:

In those rare instances (e.g., excise taxes) when you cannot use ATFR, contact your local ATFR coordinator to verify the action cannot be completed on ATFR before completing the process manually.

**5.7.3.2.1 (07-19-2012)
Monitoring TFRP Cases**

1. The ATFR system is used by the revenue officer to:
 - Review cases for imminent statute concerns
 - Ensure the decision whether to pursue the TFRP is made within the determination time period
 - If the decision is to pursue the TFRP, ensure that the Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, is submitted to the group manager within the recommendation time period
 - Complete timely follow-up actions on the case and monitor follow-up dates regarding Letter 1153(DO) issuance
 - Update the TFRP calculation
2. The group manager uses the ATFR system to:
 - Monitor the period within which the employee must determine whether to pursue the TFRP as a tool to collect the liability
 - Monitor the recommendation period regarding assertion of the TFRP (i.e., submit Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, for approval
 - Determine if imminent statute cases have been addressed
 - Periodically review TFRP reports to ensure timely investigation and recommendation of the TFRP
 - Approve revenue officer actions
3. Control Point Monitoring (CPM) and the Advisory units use the ATFR system to:
 - Track and monitor trust fund cases received from the field
 - Release the Form 2749, Request for Trust Fund Recovery Penalty Assessment(s), to the Compliance Center
 - Monitor cases assigned to Appeals
 - Input pertinent bankruptcy information
 - Set the final case disposition

**5.7.3.3 (11-12-2010)
Basis for Liability Under IRC 6672**

1. The revenue officer must establish responsibility and willfulness when determining whether to proceed with assertion of the TFRP. A person is liable for the TFRP if the two statutory requirements below are met:
 - A. The person against whom the penalty is assessed must be "responsible" (IRM 5.7.3.3.1).
 - B. The responsible person must have "willfully" failed to collect or pay over trust fund taxes to the government (IRM 5.7.3.3.2).
2. Unpaid withholding taxes may also be pursued under the provisions of:
 - Performance Bond Provisions of the Miller Act (IRM 5.1.14.1.1)
 - IRC 3505 (IRM 5.1.14.3, Liability for Third Party Paying Wages or Supplying Funds for Payment of Taxes)

**5.7.3.3.1 (07-19-2012)
Establishing Responsibility**

1. Responsibility is a matter of status, duty, and authority. A determination of responsibility is dependent on the facts and circumstances of each case.
2. Potential responsible persons include:
 - Officer or employee of a corporation

- Partner or employee of a partnership
- Corporate director or shareholder
- Another corporation
- Employee of a sole proprietorship
- Limited liability company (LLC) member, manager or employee
- Surety lender
- Other person or entity outside the delinquent business organization
- Payroll Service Provider (PSP)
- Responsible parties within a PSP
- Professional Employer Organization (PEO)
- Responsible parties within a PEO
- Responsible parties within the common law employer (client of PSP/PEO)

Note:

See IRM 5.7.3.3.3, Third-Party Payers and Common Law Employers/Clients for additional information.

3. A responsible person has:

- Duty to perform
- Power to direct the act of collecting trust fund taxes
- Accountability for and authority to pay trust fund taxes
- Authority to determine which creditors will or will not be paid

4. To determine whether a person has the status, duty and authority to ensure that the trust fund taxes are paid, consider the duties of the officers as set forth in the corporate by-laws as well as the ability of the individual(s) to sign checks. In addition, determine the identity of the individuals who:

- Are officers, directors, or shareholders of the corporation
- Hire and fire employees
- Exercise authority to determine which creditors to pay
- Sign and file the excise tax or employment tax returns, such as Form 941, Employer's Quarterly Federal Tax Return
- Control payroll/disbursements
- Control the corporation's voting stock
- Make federal tax deposits

5. The TFRP is available and may be appropriately asserted when the taxpayer is organized as a Limited Liability Company (LLC). The need for a TFRP investigation is based on how the LLC is classified for tax purposes and when the liability accrued .

A. When the LLC is a disregarded entity -

1. For certain excise taxes that accrue prior to January 1, 2008 and for employment taxes on wages paid before January 1, 2009, a single member LLC that did not elect to be treated as a corporation is disregarded as an entity separate from its owner, and the owner (SMO) is personally and fully liable for all employment taxes, not just the trust fund portion. However, a TFRP investigation may need to be conducted for other potentially responsible individuals, such as a manager.
2. A TFRP investigation is required under regulations changes that provide for the otherwise disregarded LLC to be treated as a corporation for certain excise taxes that accrue on or after January 1, 2008 and for employment taxes on wages paid on or after January 1, 2009.
3. If the SMO and the LLC are the liable taxpayers for different tax periods under the same Employer Identification Number, see IRM 5.7.4.3, Calculating the TFRP.

B. When the LLC is classified as a corporation or partnership for tax purposes, the usual procedures for determining responsibility and willfulness apply.

Note:

The TFRP determination must be made on an LLC classified as a partnership. Under state law the members of an LLC classified as a partnership are not liable for the debts of the partnership.

**5.7.3.3.1.1 (04-13-2006)
Indicators of Responsibility**

1. The full scope of authority and responsibility is contingent upon whether the person had the ability to exercise independent judgment with respect to the financial affairs of the business.
2. If a person is an officer or owns stock in the corporation, this cannot be the sole basis for a responsibility determination.
3. If a person has the authority to sign checks, the exercise of that authority does not, in and of itself, establish responsibility.

Note:

Signatory authority may be merely a convenience.

4. Persons with ultimate authority over financial affairs may generally not avoid responsibility by delegating that authority to someone else. If a potentially responsible person asserts that the duty to pay taxes or otherwise handle the financial affairs of the business was delegated to an employee:
 - Evaluate the facts and circumstances of the case
 - Determine whether the delegation rendered the person (delegator) powerless to disburse funds or dictate fiscal policy

Note:

Delegation may be relevant when determining willfulness.

- 5. Persons serving as volunteers solely in an honorary capacity as directors and trustees of tax exempt organizations will generally not be considered responsible persons unless they participated in the day-to-day or financial operations of the organization and they had actual knowledge of the failure to withhold or pay over the trust fund taxes. This does not apply if it would result in there being no person responsible for the TFRP. Refer to IRC 6672(e).

5.7.3.3.1.2 (11-12-2010)

Non-Owner Employees

- 1. Policy Statement P-5–14 (IRM 1.2.14.1.3) states that individuals performing ministerial acts without exercising independent judgment will not be deemed responsible. In general, non-owner employees who act solely under the dominion and control of others, and who are not in a position to make independent decisions on behalf of the business entity, will not be assessed the TFRP. Non-owner employees are those who do not own any stock, interest, or other entrepreneurial stake in the company that employs them.
- 2. Ministerial acts are performed under the supervision of someone else and do not require independent judgment or decision-making ability.

Example:

The bookkeeper of a company is not an owner and is not related to an owner. She has check signing authority and she pays all of the bills that the treasurer gives her. She is not permitted to pay any other bills, and when there are not sufficient funds in the bank account to pay all of the bills, she must ask the treasurer which bills to pay. The bookkeeper is performing a ministerial act and should generally not be held responsible for the TFRP.

- 3. A person is "responsible" for purposes of the TFRP if that person has "significant control" over the company's finances. "Significant control" means more than having the mere mechanical duty of signing checks or preparing tax returns or having a title that appears to have authority. However, a responsible person need not have the final word in the company regarding the payment of creditors. Officers and higher level employees of a company who are non-owners may still be required to sacrifice their jobs (i.e., quit) to avoid being responsible for the TFRP, rather than obey the orders of an owner to pay other creditors but not to pay current federal trust fund taxes as they become due. See Brounstein v. United States, 979 F.2d 952, 956 (3rd Cir. 1992).
- 4. A non-owner employee is generally not a "responsible person" if the employee's function was solely to pay the bills as directed by a superior, rather than to determine which creditors would or would not be paid. However, if a non-owner employee, such as an officer, has significant control over making the company's other financial decisions about who to pay or has the ability to obtain financing for the company, then such an employee cannot avoid being responsible for the TFRP by merely showing that an owner or a lender limited his discretion on the specific matter of paying taxes that the company owed. See the examples below.

Example:

A non-owner employee works as a clerical secretary in the office. She signs checks and tax returns at the direction of and for the convenience of the owner or a supervisor who is a non-owner. She is directed to pay other vendors, even though payroll taxes are unpaid. The secretary is not a responsible person for the TFRP because she works under the dominion and control of the owner or of a supervisor who is a non-owner and she is not permitted to exercise independent judgment.

Example:

The long-time controller of a company was never a shareholder, director, or officer of the company, but he was responsible for overseeing the finances of the company, including the preparation of the payroll and filing the company's federal employment tax returns. He had the authority to sign checks in any amount and he dealt with the company's lender on a regular basis when the company experienced financial troubles, though he did not arrange or sign the lending agreement on the company's behalf. When the lender directed the company to pursue an orderly liquidation of its assets, the controller requested funds from the lender to make full payroll and pay the taxes due on the remaining employees, but the lender forwarded only enough funds for the company to make net payrolls. The controller made out net payroll checks to the remaining employees and paid none of the taxes due, rather than prorate the funds available to the company between payroll and taxes. The controller could be a responsible person for the TFRP. See Hochstein v. United States, 900 F.2d 543 (2nd Cir. 1990).

Example:

An experienced businessman was never a shareholder, director, or officer of a new company, but he served as the general manager of the new company during a seven month period. As general manager, he signed most of the company's checks to creditors, as well as signing net payroll checks to employees, and there was no monetary limit placed on his check signing authority. He told the bookkeeper which bills to pay. When the company was experiencing cash flow problems, he spoke to one of the owners about the company's delinquent payroll taxes. The owner told the general manager that these unpaid taxes were none of the general manager's business and he should not worry about paying the company's net payroll and missing its tax payments. Both the general manager and the owner believed that the general manager could not be held liable for the TFRP because he was not an owner or officer of the company; the general manager turned down an offer to become the company's president specifically because he was worried about the company's tax situation. The general manager could be a responsible person for the TFRP. See Gephardt v. United States, 818 F.2d 469 (6th Cir. 1987).

5.7.3.3.2 (11-12-2010)

Establishing Willfulness

- 1. Willful means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
- 2. To show willfulness, the government generally must demonstrate that a responsible person was aware, or should have been aware, of the outstanding taxes and either intentionally disregarded the law or was plainly indifferent to its requirements. A responsible person's failure to investigate or correct mismanagement after being notified that withholding taxes have not been paid satisfies the TFRP "willfulness" element. See IRM 5.17.7.1.3, Willfulness, and Exhibit 5.7.3-1, Trust Fund Recovery Penalty (TFRP).
- 3. It is difficult to establish "willfulness" in the types of assessments shown below:

If . . .	Then . . .
The assessment is a Combined Annual Wage Reporting (CAWR) assessment	It is normally difficult to establish willfulness to the degree necessary to assert the TFRP (see Exhibit 5.7.3-1 for situations where the TFRP should be pursued).
An employment tax assessment is made under IRC 3509	It requires a determination of intentional disregard of the requirements to deduct and withhold taxes (see Exhibit 5.7.3-1).
The assessment involves a volunteer director or trustee of a tax exempt organization	The Service may need to show the person's "actual knowledge" of the organization's failure to collect or pay over trust fund taxes, if the person was serving as a volunteer solely in an honorary capacity (IRC 6672(e)).

5.7.3.3.3 (07-19-2012)

Third-Party Payers and Common Law Employers/Clients

- 1. Common law employers may designate a third party who is not the common law employer or a statutory employer under Section 3401(d)(1) to take over some or all of the employer's Federal employment tax withholding, reporting, and payment responsibilities and obligations. The common law employer becomes the "client" of the third party. A common law employer is any person who has the status of employer under the usual common law rules applicable in determining the employer-employee relationship. Generally an employer-employee relationship exists when the person for whom the services are performed has the right to direct and control the worker who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. Some common third-party arrangements include:

- Payroll Service Provider (PSP)
- Professional Employer Organization (PEO) that is not the common law employer or statutory employer

Note:

Professional Employer Organizations are commonly referred to as employee leasing companies.

2. Each recommendation for assertion of the TFRP against a third-party payer, i.e., a related responsible person (RRP), must stand on its own merits based on the facts the revenue officer discovers during the TFRP investigation regarding "responsibility" and "willfulness."
3. The factors to be considered when determining the potential "responsibility" and "willfulness" of a third-party payer are:
 - Responsibility - Identification of the person(s) within the third-party payer who had significant control over the payment of the client's employment taxes.
 - Willfulness - Willful means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
4. The factors to be considered for establishing "responsibility" and "willfulness" of a responsible person within a common law employer/client where there is a third-party payer arrangement are:
 - Responsibility - The use of a third-party payer such as a PSP or a PEO does not relieve the common law employer and employees of the common law employer who are responsible for collecting, accounting for, and paying over the common law employer's employment taxes from the responsibility of ensuring that all of the common law employer's Federal employment tax obligations are met.
 - Willfulness - Willful means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
5. Additional factors to be considered when determining "willfulness" include:
 - Whether the responsible person had knowledge of a pattern of noncompliance by the third-party payer at the time the delinquencies were accruing.
 - Whether the third-party payer used fraud or deception to conceal the noncompliance from detection by the client.
 - Whether the client had received prior IRS notices indicating that employment tax returns have not been filed, or are inaccurate, or that employment taxes have not been paid.
 - The actions the client has taken to ensure its Federal employment tax obligations have been met after becoming aware of the tax delinquencies, e.g. timely reporting the problem(s) to the IRS and the proper authorities, ensuring current tax debts have been timely reported and paid, and working with the IRS on a reasonable plan to resolve past debts.
6. Consult with your local Area Counsel in any case involving whether a third-party payer is a responsible person(s) under IRC 6672 for the TFRP.

Note:

The same guidance for contacting third parties and for issuing L3164A, as outlined in IRM 5.7.4.2.2, Third-Party Interviews and Third-Party Contact Considerations, applies when working TFRP investigations involving third-party payers.

**5.7.3.4 (11-12-2010)
Considerations for Employment Tax Examination (ETE) Assessments**

1. IRC 3509 applies to an audit or adjustment procedure reclassifying workers from independent contractors to employees. Under this section, the tax is assessed at a lower rate.
2. The TFRP assessment would not be applicable on Section 3509 balance due accounts unless there is a combination of full and IRC 3509 rates. The TFRP could be asserted against that portion of the ETE assessment that represents full rates.
3. To determine the portion of the ETE assessment that represents full rates for assertion of the TFRP:
 - Request Form 941 for the last quarter of each year of the audit
 - Review the attached Form 4668, Employment Tax Examination Changes Report, to determine the amount assessed at the full rate
4. To determine the portion of the Employment Tax Adjustment Program (ETAP) assessment that represents full rates upon which the TFRP can be asserted:
 - Request the Form 941 for the first quarter of each year of the adjustment
 - Review ETAP under-reporter or full rate issues

Note:

No combination of rates applies to ETAP adjustments.

5. By comparing the balance due assessment amounts with the rates as shown below, the revenue officer will be able to determine if the assessment is at the reduced rate or full rate, as long as the assessment is not a mixture of IRC 3509 rates:
 - Single rate (all applicable returns filed timely by the employer) – Employer's portion of FICA; 20% of the employee's portion of FICA plus 1.5% of the wages as income tax withholding
 - Double rate (no applicable returns filed timely by the employer) – Employer's portion of FICA; 40% of the employee's portion of FICA plus 3% of the wages as income tax withholding

**5.7.3.4.1 (11-12-2010)
Referral from Examination**

1. If during examination of the employment tax returns, the examiner finds that the TFRP may apply, the examiner should secure Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, if the ASER is within one year on agreed cases and on unagreed cases to allow sufficient time for the case to go through the appeal process plus one year. The examiner should also request input of TC 971-330 on the corporate account to indicate that the potentially responsible party has signed Form 2750. If Form 2750 cannot be secured, Form 6238, Referral Report for Potential Trust Fund Recovery Penalty Cases, should be completed by the Examiner and sent to Advisory.
2. Advisory will determine within 30 days whether or not an investigation will be opened by Collection and notify Examination of that determination.
3. If an investigation is to be opened, Advisory will issue a Courtesy Investigation with a copy of the Form 6238.

**5.7.3.5 (11-12-2010)
Statutory Assessment Period**

1. Before beginning a full investigation for the assertion of the penalty, determine whether the statutory period for assessment is still open.
2. The usual limitation period for assessment of the TFRP is as follows:

Type of Tax

Statutory Assessment Period

Withholding or Federal Insurance Contribution Act (FICA)	With respect to any taxable period within a calendar year, 3 years from the succeeding April 15 or from the date the return was filed, whichever is later.
Excise or Railroad Retirement Tax Act (RRTA)	3 years from the due date of the return (without regard to any extension) or from the date the return was filed, whichever is later.

3. There is no limitation period for assessing the TFRP on withholding, FICA, excise, or RRTA until a return is filed; however, the following returns do not start the limitations period:

- Substitutes for returns prepared by the Service under IRC 6020(b)(1)

Note:

The statutory assessment period **does** apply to a return that the taxpayer files after the Service had created a liability for the same period under IRC 6020(b)(1).

- False return or fraudulent return (IRC 6501(c)(1))
- A filing made in connection with a willful attempt to evade tax (IRC 6501(c)(2))

4. See IRM 5.7.3.6, Extension of Statutory Assessment Period, for actions that extend the statutory period for assessment.

5.7.3.6 (11-12-2010)

Extension of Statutory Assessment Period

1. The table below identifies whether or not a particular action extends the TFRP assessment statute.

If . . .	Then . . .
A responsible person filed a bankruptcy petition after October 21, 1994	The statutory period for assessment of the TFRP will not be automatically extended by the bankruptcy filing.
A responsible person filed a bankruptcy petition before October 22, 1994	The statutory period for assessment is automatically suspended for the period the automatic stay is in effect, plus 60 days.
The corporation is in a bankruptcy proceeding	The statutory period for assessing the TFRP against potential responsible persons is not automatically extended.
An Offer in Compromise is submitted for the corporate tax liability	The corporate offer does not automatically extend the statute for assessing the TFRP against any responsible corporate officer, employee, or other responsible person.

2. ATFR will display the IDRS ASED for the underlying employer module. The revenue officer will verify that the ASED is correct and applicable to potentially responsible parties since certain actions, such as submitting an Offer in Compromise, extend the assessment date for assessing additional tax on the corporate account, but do not extend the assessment date for purposes of the TFRP.

5.7.3.6.1 (01-14-2011)

Form 2750 Waiver

1. In order to extend the ASED, a potentially responsible person may sign Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty. This waiver can extend:
 - The ASED to a date where the TFRP investigation may reasonably be expected to be resolved
 - An ASED already extended by a previous waiver
2. Form 2750 extends the ASED only for the person who signs the waiver; therefore, a waiver must be secured from all potentially responsible persons in order to properly protect the statute.
3. The law does not impose a maximum limit on the time period the assessment statute for TFRP may be extended by a potentially responsible person and the Service.
 - A. In the case of approved and adhered to business installment agreements and bankruptcy payment plans, it is ordinarily the Service's policy to withhold TFRP assertion recommendations if there are no statute considerations. If there are statute concerns, Form 2750 can be secured to extend the assessment limitation period beyond the projected length of the business installment agreement or bankruptcy payment plan. See Policy Statement P-5-14.
 - B. Otherwise, unless there are unusual circumstances, the Service ordinarily should not seek extension dates of the TFRP assessment period beyond December 31 of the year following the year in which the ASED will expire (e.g., 1 year and 260 days after the April 15 statutory due date of the Form 941 returns for statute of limitation period purposes).

Note:

This policy, ordinarily applicable outside of business installment agreement or bankruptcy payment plan circumstances, allows the Service to make its TFRP determinations when the evidence is still likely to be available.

4. The IRS Restructuring and Reform Act of 1998 (RRA 98) states the Service must:
 - Ensure that taxpayers are aware that they have the right to refuse to extend the limitations period for tax assessments
 - Notify the taxpayer of such right
5. Every time an extension is requested (IRC 6501(c)(4) as amended by RRA 98), the Service must notify the taxpayer that they may:
 - Refuse to extend the period of limitations
 - Limit the extension to particular issues or a particular period of time
6. If a third party is authorized to act on behalf of the potentially responsible person, Form 2750 may be solicited from and signed by the authorized representative. If the third-party information is not available on the Centralized Authorization File (CAF), the instrument which authorizes the representative to act for the responsible person should be attached to Form 2750 or included in the TFRP case file.
7. After the potentially responsible person or representative executes the waiver:
 - A. Have the authorized delegate for the Service manually sign and date the waiver and include the authorized delegate's title.

Note:

Form 2750 is considered invalid if it is not signed by an authorized Service representative.

- B. Write, type or stamp the Collection Area Director's name. Refer to Delegation Order 25-2 (IRM 1.2.52.3).
- C. Give Part 2 to the responsible person or authorized representative.
- D. Follow the procedures in IRM 5.7.3.6.3, Disposition of Executed Waivers.

5.7.3.6.2 (11-12-2010)

Impact of Letter 1153(DO) on Assessment Statute

1. For IRC 6672 assessments made after the enactment of the Taxpayer Bill of Rights 2 on July 30, 1996, the following actions are required:
 - A. A 60-day preliminary notice, Letter 1153(DO), must either be mailed to the potentially responsible person's last known address or, after July 22, 1998, delivered in person to the potentially responsible person.

Note:

See IRM 5.7.4.7, Notification of Proposed Assessment, for instructions on proper delivery and documentation regarding the delivery of Letter 1153(DO).
 - B. The Service must wait 60 days after issuance of Letter 1153(DO) before issuing notice and demand for payment (Form 3552, Prompt Assessment Billing Assembly).

Note:

See IRM 5.7.4.7 for exceptions to the 60-day requirement for jeopardy situations or if the taxpayer signs Form 2751, Proposed Assessment of Trust Fund Recovery Penalty, agreeing to the assessment.
2. If the 60-day notice was properly mailed or delivered in person to the potentially responsible person before the expiration of the assessment limitation period for the TFRP, then the assessment statute will not expire before the later of:
 - The date 90 days after the date on which the 60-day notice was mailed (or delivered in person)
 - 30 days after Appeals' "final administrative determination" if the potentially responsible person files a timely protest (mailed, or faxed, if applicable, on or before the 60th day after the proper mailing or personal delivery of Letter 1153(DO))

Note:

See IRM 5.7.4.7 for instructions on proper delivery and documentation regarding the delivery of Letter 1153(DO).

5.7.3.6.3 (04-13-2006)

Disposition of Executed Waivers

1. The revenue officer will take the following actions when a waiver is secured:
 - A. Update the ATFR-AO application with the date the waiver was signed.
 - B. Include Part 1 of Form 2750 in the TFRP recommendation file.
 - C. Retain Part 3 in the balance due case file.
2. After a waiver has been secured, request input of transaction code 971–330 on the corporate account to indicate that the potentially responsible party has signed a waiver. The transaction code will include the Social Security number of the potentially responsible party and the date the ASED is extended to for that individual. This will allow the information to be readily available on IDRS in order to determine if the ASED has been extended for a particular party. The transaction code must be input for each potentially responsible party for each period for which a waiver was secured. Until the information is able to be systemically uploaded via ATFR, request input using Form 4844, Request for Terminal Action.

Reminder:

Securing a waiver from one or more potentially responsible parties will not change the corporate ASED shown on IDRS or ATFR.

5.7.3.6.4 (11-12-2010)

Waivers on Examination Cases

1. In order to determine if Examination has already secured a waiver to extend the TFRP assessment statute:
 - A. Request the return and examination papers; the waiver will be in the file if secured by examination.
 - B. Check IDRS for TC 971 AC 330 indicating the responsible party signed a waiver
2. If a waiver is appropriate and was not previously secured, follow the instructions in IRM 5.7.3.6.1, Form 2750 Waiver, for securing Form 2750.

5.7.3.7 (11-12-2010)

Cases Received With Less Than Six Months Remaining on the Assessment Statute

1. When a balance due account is received with less than six months remaining on the assessment statute, immediately bring it to the attention of the group manager and determine:
 - Priority of the case
 - Whether there is adequate time to conduct the TFRP investigation

Note:

Whenever possible, a reasonable effort should be made to conduct the penalty investigation.
2. If there is not sufficient evidence to substantiate an assessment before the statute expires, do not assess the penalty. Prepare Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, outlining the facts and circumstances and submit the form for approval (IRM 5.7.4.5, Form 4183 Penalty Assessment Recommendation). The ATFR system will automatically upload the ASED with the appropriate definer code (generally definer code "2" - see IRM 5.7.3.9.1, Input of ASED Definer Codes) when the "Not Assert" request is approved by the manager.
3. If there is evidence of liability but there are issues that need to be resolved, attempt to secure a waiver (IRM 5.7.3.6.1). If the waiver cannot be secured, issue Letter 1153(DO) and wait 60 days for assessment of the TFRP.

Note:

The quality of the investigation and determination should not be compromised because of an imminent statute. If additional documentation is needed, the investigation should continue during this 60-day time period.

5.7.3.8 (11-12-2010)

Reporting Expiration of the TFRP Statute

1. When a balance due account is received after the assessment statute has expired, document the case file that the case was received after expiration of the ASERD.
2. When a statute expires on a case assigned to a revenue officer, the revenue officer will:
 - A. Report the expiration of the statute by memorandum.
 - B. Forward the memorandum through appropriate management channels to the Collection Area Director - Group Manager, Territory Manager, Area Director.

Note:

Managers will attach any comments they may have to the revenue officer's report, including indications of performance deficiencies and what corrective actions have or will be taken.

3. A report is not required for the following types of cases:
 - Aggregate trust fund below the dollar criterion in Exhibit 5.7.3-1 (also consider the potential liability on unfilled returns when making this determination)
 - CAWR assessment and willfulness cannot be established
 - Employment Tax Assessment under IRC 3509 where willfulness cannot be established
 - Received by the revenue officer with less than six months remaining on the assessment statute and the TFRP assessment could not be completed (see IRM 5.7.3.7, Cases Received With Less Than Six Months Remaining on the Assessment Statute)

5.7.3.9 (07-19-2012)

Issuance of CP 527 ASERD Notice

1. To reduce the instances of non-assertion of the TFRP caused by expiration of the assessment statute, CP 527, TFRP Assessment Statute Expiration Date Notice, is generated once per module when there are 58 to 70 weeks left before the statute expires.

Note:

Beginning July 2000, no paper CP 527s will be generated on accounts that are in status 26 — ICS provides ASERD notifications to alert the employee of potential ASERDs when there is one year remaining on the ASERD, and subsequent notifications at six months, three months, one month and then weekly. CP 527s will continue to be generated on other statuses.

2. Upon receipt of the ICS ASERD notification, the revenue officer will determine if the notification is valid or if an ASERD indicator (IRM 5.7.3.9.1) should be input.

Note:

ASERD notices are issued on partnership entities as well as for corporations (IRM 5.17.7.1.1.3, Partners). Since the assessment is not precluded in certain partnership situations, processing of ASERD notices on these cases is required.

3. If the notification is valid, the revenue officer will ensure the:
 - Investigation is proceeding properly
 - The potentially responsible person will receive all required pre-assessment appeal rights
 - Final decision on the penalty will be made before the assessment statute expires
 - A waiver will be secured (IRM 5.7.3.6.1) when appropriate
4. If the notification is not valid, follow the procedures in IRM 5.7.3.9.1 for input of the appropriate ASERD indicator.

5.7.3.9.1 (04-13-2006)

Input of ASERD Definer Codes

1. The ASERD indicator should be selected as follows:

ASERD Definer Code Definition

1	TFRP Assessed and the corporate account is not being closed
2	Unable to locate any responsible person
3	No collection potential exists for any responsible person
4	All trust fund amounts paid
5	TFRP is not applicable

2. ASERD indicators of 2, 3, 4, or 5 should be input via Form 4844, Request for Terminal Action, with managerial approval, if the related action has already been completed and the ASERD did not automatically upload from ATFR. Complete the entity and employee information blocks, and enter in the Remarks section "Request input of Command Code ASERD" with the appropriate indicator shown.

Note:

The ASERD with the appropriate indicators should automatically be uploaded from ATFR after the "2749 to SC" date is input.

3. ASERD indicator 1 is input by checking the appropriate block on Form 2749, Request for Trust Fund Recovery Penalty Assessment, when the assessment is recommended.
4. Only one indicator can be requested per module. Select the most appropriate indicator based on the facts of the case.
5. ASERD indicators will appear on ICS Module Summary Screen.
6. If an ASERD indicator of 1, 2, 3, 4, or 5 is input to IDRS, the appropriate indicator will appear on Entity and on the ATFR reports.

Exhibit 5.7.3-1

Trust Fund Recovery Penalty (TFRP)

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Note:

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[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 4. Investigation and Recommendation of the TFRP

5.7.4 Investigation and Recommendation of the TFRP

- 5.7.4.1 [Determination to Pursue and Recommend Assessment of the TFRP](#)
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Manual Transmittal

August 05, 2013

Purpose

(1) This transmits revised IRM 5.7.4, *Investigation and Recommendation of the Trust Fund Recovery Penalty*.

Material Changes

- (1) Minor editorial changes made throughout the text.
- (2) Updated IRM 5.7.4.2.1(7) about Form 4180 format and the appropriate use of the abbreviated page one format.
- (3) Updated IRM 5.7.4.5(10) that due to ex parte communication restrictions, the Form 4183 narrative and ICS history made at the time of Form 4183 submission for approval must provide sufficient detail to support TFRP recommendations.
- (4) Updated IRM 5.7.4.7(2) to note that the TC 130 is systemically uploaded by ATFR when a Letter 1153(DO) delivery date is entered on ATFR.
- (5) Updated IRM 5.7.4.7.2 on the use of Letter 1153W.

Effect on Other Documents

This material supersedes IRM 5.7.4, dated June 26, 2012. This IRM incorporates Collection Interim Guidance Memorandums SB-SE-05-0812-062, *Interim Guidance for Ex Parte Communications with Appeals*, SB-SE-05-0812-065, *Interim Guidance for Form 4180 Revision* and SB-SE-05-1212-085, *Interim Guidance for Letter 1153W, Proposed Trust Fund Recovery Penalty Rescission Notification*.

Audience

Small Business/Self-Employed Collection Employees

Effective Date

(08-05-2013)

Scott Reisher
Director, Collection Policy

5.7.4.1 (06-26-2012) Determination to Pursue and Recommend Assessment of the TFRP

1. The decision whether to pursue the TFRP should be made:
 - After the initial contact with the BMF trust fund taxpayer
 - As soon as possible, but no later than 120 calendar days after assignment of the balance due account(s) to a revenue officer (ICS will provide a warning notice when there are 60 days remaining on the determination date and when the determination date has expired)

Note:

The determination date may be shortened if there is an imminent assessment statute expiration date (ASED). See IRM 5.7.3.5, *Statutory Assessment Period*, for information on the ASED.

2. The 120-day determination date will appear on the Automated Trust Fund Recovery Penalty (ATFR) system. A decision to pursue or not pursue the TFRP must be made within this time period, unless the trust fund tax balance is less than ≡ ≡ ≡ (see IRM 5.7.4.1.1, *Factors When Considering Trust Fund Balance Owed Amounts*) or the group manager authorizes a delay to the TFRP determination time frame (e.g., when the taxpayer/potentially responsible persons cannot be located or identified) prior to its expiration. The decision to pursue or not pursue the TFRP will be documented in the ICS history.
3. The decision whether to pursue the TFRP should be made unless one of the following is present:
 - The taxpayer is out of business and the responsible party cannot be identified or located. See IRM 5.1.18, *Locating Taxpayers and Their Assets*, for guidance on locating taxpayers.

- The taxpayer meets the criteria for an In-Business Trust Fund Express Installment Agreements (IBTFIA). (See IRM 5.14.5.4, *Streamlined, Guaranteed and In-Business Trust Fund Express Installment Agreements*) and the decision has been made to grant the agreement. The taxpayer must meet **all** the following conditions before the revenue officer may decide to not pursue the TFRP in IBTFIA situations:

- Unpaid Balance of Assessment (UBA) is \$25,000 or less; **and**,
- Outstanding liabilities only include current year or prior calendar year periods; **and**,
- BMF entity does not meet the current definitions of a "Repeater" trust fund taxpayer, as described in IRM 5.7.8.3, *Pyramiding Taxpayers*.

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

Note:

If the revenue officer determines during pre-contact analysis that the outstanding trust fund balance is under \$25,000, and the taxpayer is not accruing additional liabilities, the revenue officer may waive the requirement to secure Form 4180 if a resolution for immediate full payment, short term (less than 120 days) full payment, or IBTFIA meeting the criteria in IRM 5.7.4.1(3) is agreed upon during the initial contact with the taxpayer.

5. If the determination to pursue the TFRP is delayed beyond the 120-day period, the determination screen on the ATFR system must be updated to request the delay. If the delay option is selected, the user must enter an explanation and provide a new determination date. The request must be made prior to the expiration of the 120-day determination period.
6. If the delay request is approved by the group manager, the determination date will change on the ATFR screen.

Note:

If the request is not approved, a notification will appear on the ATFR corporate screen and the reason for the disapproval will be shown in the history.

7. If the case cannot be processed on ATFR, the request to delay the TFRP determination beyond the 120-day time period should be requested via Form 8213, *Recommendation to Delay Decision re: Assessment of Trust Fund Recovery Penalty or Personal Liability for Excise Tax*.
8. If the revenue officer's decision is to pursue the TFRP, Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, will be submitted to the group manager for approval no later than 120 calendar days from the date the decision was made to pursue the TFRP, unless the group manager determines circumstances exist to warrant more time. Group managers will grant additional time for recommendation to assert or not assert the TFRP by making an entry in the ICS history. See IRM 5.7.4.8.1 through 5.7.4.8.3 for situations in which the business wishes to enter into an installment agreement or the business or a responsible party has filed bankruptcy.

5.7.4.1.1 (06-26-2012)

Factors When Considering Trust Fund Balance Owed Amounts

1. Regardless of the amount of the trust fund, revenue officers will make a reasonable attempt to collect the entire liability in full.
2. Revenue officers will not solicit partial designated payments to bring the amount of the total aggregate trust fund below \$25,000 for the sole purpose of non-asserting the TFRP.
3. There is no prohibition against assessing the TFRP if the amount is below \$25,000. See below for factors to consider when making an assessment determination on trust fund balances below \$25,000.
4. There may be situations that warrant the assertion of the TFRP when the TFRP amount is below \$25,000. Consideration will be given to the following factors:
 - A. Potential to incur additional liabilities on an in-business taxpayer who is not remaining current.
 - B. Potential for additional liabilities from unfiled returns.
 - C. Taxpayer's history of non-compliance that extends beyond the open balance due accounts.
 - D. Responsible person's history of employment tax non-compliance.
5. The total aggregate trust fund amount should be computed by including any previously assessed TFRP amounts. Revenue officer and group manager discretion should be used if the unassessed amount does not justify the additional expense and effort to prepare a TFRP assertion package.
6. Group manager approval on ATFR is required to dispose of a case as below IRM criteria.

5.7.4.1.2 (06-26-2012)

Additional Actions to Consider

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

5.7.4.2 (06-26-2012)

TFRP Interviews and Investigations

1. During the initial contact with the taxpayer (IRM 5.1.10.3.2, *Effective Initial Contact*), the revenue officer will *attempt* to conduct interviews with potentially responsible persons. The revenue officer will take the following actions during the interview:
 - A. Provide Publication 1, *Your Rights as a Taxpayer*, and document in the history that the publication was delivered.
 - B. Explain the TFRP.
 - C. Present a copy of the TFRP calculation (Page 4 of Form 4183) (see IRM 5.1.10.1(6), *Pre-Contact*) to all potentially responsible persons and advise them that the IRS can personally assess the TFRP against those it determines liable for the penalty in that amount and collect the liability from their personal income and assets. Also, see IRM 5.7.4.4, *Payments by Responsible Party on Behalf of the Employer*.

- D. Provide Notice 784, *Could You Be Personally Liable for Certain Unpaid Federal Taxes?*, to the person interviewed and provide sufficient copies of Notice 784 to allow distribution to all other persons associated with the business who, based on the interview and other preliminary investigation, may be liable.
- E. Advise the person(s) being interviewed of the proper actions to take to avoid such liability.
- F. Begin asking questions and securing core documentation items (See IRM 5.7.4.2.4(1)) from the taxpayer in support of assertion of the penalty. If the documents are not secured, establish deadlines for the information and documents.
- G. Attempt to secure at least one Form 4180, *Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes*, from a potentially responsible person (See IRM 5.7.4.2.1, *Form 4180*, and IRM 5.7.4.2.4, *Evidence That May Support Recommendations*).

Note:

Secure additional Forms 4180 from all potentially responsible persons to the extent possible.

**5.7.4.2.1 (08-05-2013)
Form 4180**

- 1. Form 4180 is the form to be used for conducting TFRP interviews. It is intended to be used as a record of a **personal interview** with a potentially responsible person. During the initial contact, attempt to personally secure the form from potentially responsible persons. If Form 4180 cannot be secured, document the case history with the reasons why it was not secured.
- 2. The purpose of the personal interview and completion of Form 4180 is to secure direct, detailed information regarding the individual's or other person's involvement in the business in order to determine if he or she meets the criteria for responsibility (IRM 5.7.3.3.1, *Establishing Responsibility*) and willfulness (IRM 5.7.3.3.2, *Establishing Willfulness*). The questions on the form are intended as a guide and are not all inclusive; supplemental questions may be asked.

Note:

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

- 3. **Do not** give or mail Form 4180 to the potentially responsible person(s) or representative for completion by that person or for review prior to the interview. The form must be completed in person or over the phone.
- 4. A summons may be necessary to require the potentially responsible person's presence at the interview (See IRM 25.5, *Summons*, and IRM 5.17.6, *Legal Reference Guide for Revenue Officers, Summonses*, for summons procedures, rights and privileges).
- 5. Enter "unknown" in the appropriate block on the form if the person interviewed cannot answer a specific question.
- 6. Enter "not applicable" in the appropriate block on the form if a question does not apply. **If any information has already been completed on Form 433-B, Collection Information Statement for Businesses, the revenue officer can enter "See 433-B" in the applicable blocks.**
- 7. Form 4180 is formatted to allow for an abbreviated interview when the potentially responsible party is determined to be the only responsible party or in situations when a business structure is not complicated. This format allows the revenue officer to more easily tailor the depth of their TFRP investigation based upon the complexity of the business entity/ownership structure. Form 4180 should be used as follows:
 - A. Page 1 incorporates core willfulness and responsibility questions to support assertion recommendations and may be used as an abbreviated interview when there is only one responsible party or in situations when the business entity and ownership structure is not complex.

Question responses on page 1 will prompt revenue officers to make determinations as to whether the TFRP interview should be continued on subsequent pages. For example, if the party being interviewed indicates they used the services of a third-party payer, or if the party being interviewed is the third-party payer, the form will direct the revenue officer to complete subsequent section(s) on page 3 related to third-party payers. If the party being interviewed indicates that other individuals had the responsibility or authority to perform the core responsibilities in Section II, the form will direct the revenue officer to complete Section IV and V on page 2.

If the revenue officer determines that page 1 of the form sufficiently addresses willfulness and responsibility, and is not prompted to complete additional sections of the form, the taxpayer's signature may be obtained on page 1.

- B. Section VI on page 3 has Payroll Service Provider (PSP) or Professional Employer Organization (PEO) questions to assist the revenue officer in TFRP investigations when a PSP or PEO is involved. If the business has never used the services of a PSP or PEO, Section VI will not require completion.
 - C. Section VII on page 3 will only require completion for excise tax case investigations.
 - D. Page 4 provides narrative space to record any additional information provided by the taxpayer.
 - E. If the revenue officer determines page(s) 2 and/or 3 of the form must be completed, the taxpayer's signature should be obtained on page 4.
8. After the interview is completed, ask the potentially responsible person to sign Form 4180. The revenue officer will also sign the form.

Note:

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

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

Note:

A statement can be updated at a later date with the changes initialed by the revenue officer and the person interviewed.

- 10. If the potentially responsible person agrees to the assessment during an interview:

- A. Advise the individual of his or her appeal rights and document the history accordingly.
- B. Secure his or her signature on Form 2751, *Proposed Assessment of Trust Fund Recovery Penalty*.

Reminder:

A Form 4180 interview must still be completed, even if the responsible party or parties sign Form 2751.

- C. Advise the taxpayer that interest will accrue on the TFRP from the date of assessment to the date of payment on the underlying trust fund liability and on any unpaid interest. (See IRM 5.7.7.2, *Pre-Assessment Payment*, for information on processing payments received prior to the assessment of the TFRP).

Note:

Provide Letter 1153(DO) to the taxpayer (IRM 5.7.4.7, *Notification of Proposed Assessment*) as soon as possible when Form 2751 is executed during an interview and explain to the responsible person he is waiving the 60-day restriction on notice and demand set forth in IRC §6672(b).

5.7.4.2.2 (06-26-2012)

Third-Party Interviews and Third-Party Contact Considerations

1. It may be necessary to contact a third party for the purpose of gathering information concerning officers or employees. In these cases, be sure the potentially responsible person has received the advance notice (Letter 3164A, *Third-Party Contact Letter*) that a third-party contact may be made (See IRM 5.1.17, *Third-Party Contacts*). The letter will be personally delivered or mailed to all parties who may be investigated as soon as they are identified. Letter 3164A is available on ATFR and as an ICS template.

Note:

If the revenue officer knows the identity of potentially responsible officers, or other parties, such as a third-party payer, prior to conducting the interview, all potentially responsible parties will be provided with Letter 3164A before any interviews are conducted. Completing the Form 4180 interview should not be viewed as a third-party contact with respect to persons who are being identified for the first time during the interview. During the Form 4180 interview, if the revenue officer becomes aware of additional potentially responsible parties, the revenue officer will continue conducting the interview and completing Form 4180. The revenue officer does not need to stop in the middle of an interview whenever another potentially responsible party is identified. If the revenue officer intends to contact third parties to investigate the other potentially responsible parties identified during the interview, he or she must mail or personally deliver Letter 3164A prior to making any further contacts for purposes of determining whether they may be held liable.

2. If an interview cannot be conducted with the third party, send Form 4181, *Questionnaire Relating to Federal Trust Fund Tax Matters of Employer*.
3. If the third party is subsequently implicated as potentially responsible and willful, a personal interview will be recorded on Form 4180.

5.7.4.2.3 (06-26-2012)

Courtesy Investigations

1. If one or more responsible persons is located in another area or territory and it is necessary to secure Form 4180 in order to determine responsibility and willfulness, it may be necessary to issue an ICS Other Investigation (OI).
2. An ICS OI should not be issued if the information necessary to recommend assertion is available where the employer balance due accounts are assigned.
3. The initiating office will furnish the receiving area or territory with all information and documents which relate to the responsibility of the person to be interviewed, including page 4 of Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*; Form 2751; and information regarding issuance of Letter 3164A.
4. The receiving office will:
 - A. Initiate all appropriate correspondence, conduct the necessary interviews, and secure Form 4180.
 - B. Ensure compliance with third-party notice requirements.
 - C. Secure Form 433–A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*.
 - D. Secure waivers (IRM 5.7.3.6.1, *Form 2750 Waiver*), if appropriate.
 - E. Secure the responsible party's signature on Form 2751 if the responsible party agrees to the assessment following the guidelines in IRM 5.7.4.2.1(9).
 - F. Secure and include in the file documentation of sources of income and assets and all necessary supporting documents in order for the initiating revenue officer to make a recommendation for assertion or nonassertion of the TFRP, including nonassertion due to collectibility.
 - G. Close the courtesy investigation and submit the documentation to the initiating office for the TFRP determination to be completed.

5.7.4.2.4 (06-26-2012)

Evidence That May Support Recommendations

1. In the majority of cases, the core evidence necessary to support a TFRP recommendation will be:
 - Form 4180 interviews
 - Articles of Incorporation
 - Bank signature cards or electronic PINs/Passwords
 - Copies of a sampling of cancelled checks demonstrating payment to other creditors in preference to the government or
 - **If the taxpayer predominately uses electronic banking**, bank statements demonstrating debit transaction payments in preference to the government.

Note:

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

2. The documentation, including bank records, will be requested from the business entity whenever possible. If the business entity does not provide the requested records by the deadline provided, a summons will be served on either the business entity, the bank, or both, to secure the required documents (See IRM 25.5, *Summons*, and IRM 5.17.6.8, *Third-Party Contact Requirements of IRC § 7602(c)*, for summons procedures).

Note:

See IRM 25.5.1.4.1, *Documents from Financial Institutions in the Tenth Circuit*, for summons issues specifically related to Kansas, Oklahoma, Wyoming, Utah, Colorado, and New Mexico.

3. The ICS Form 6639, *Financial Records Summons*, template provides the option of summoning a bank for additional data, such as bank statements, loan applications and related records, and corporate resolutions. These additional documents should not be routinely requested if responsibility and willfulness is supported by the core documents listed in IRM 5.7.4.2.4(1). The time frames for the documents requested should relate to the tax periods associated with the TFRP investigation. In most instances, only the front of the cancelled checks will need to be secured.
4. Individual case factors will influence the amount of additional documentation needed to support the TFRP determination. The revenue officer must exercise judgment to determine if documentation beyond the core items is needed prior to submitting the TFRP recommendation for managerial approval. Photocopies of the documentation should be maintained in the TFRP case file as evidence to support the recommendation to assert the TFRP.

Note:

There must be sufficient documentation in the file to support each recommendation for assertion for **each** specific period of the liability.

5. In some circumstances, TFRP case files may contain limited documentation if all responsible parties sign Form 2751 prior to Form 4183 submission and approval. Trust Fund Recovery Penalty Investigations in which Forms 2751 are obtained from all responsible persons prior to managerial approval of Form 4183 and the amount to be assessed is less than $\$100,000$ do not require additional documentation to prove responsibility. The responsible parties willfulness must still be established. **The basic requirement to conduct Form 4180 interviews contained in IRM 5.7.4.2(1) TFRP Interviews and Investigations, and IRM 5.1.10.3.2(11), Effective Initial Contact, is not waived by the securing of a signed Form 2751.** Trust fund recovery penalty investigations where Forms 2751 are obtained from all responsible persons prior to managerial approval of Form 4183 and the amount to be assessed is greater than $\$100,000$, also require at least one piece of documentary evidence that shows persons signing the Form 2751 are responsible. The examples below show the varying degrees of documentation required when Form 2751 is signed prior to Form 4183 approval:

Example:

A revenue officer (RO) completes an initial analysis and determines who the probable officers are through the information reviewed in the Articles of Incorporation. The business is not current with Federal Tax Deposits. The RO makes a field call to the business and both officers are present. The RO completes Form 433B and determines the business is unable to pay the liability. The RO secures Forms 4180 and 433-A *Collection Information Statement* from both officers. Both officers state they are responsible and they each sign a Form 2751 for $\$100,000$. The RO in this example has the Articles of Incorporation secured during initial analysis as well as Forms 4180 and 433-A from each officer. No additional documentation is required.

Example:

A RO completes an initial analysis and determines who the probable officers are through the information reviewed in the Articles of Incorporation. The RO makes a field call to the business and both officers are present. The RO secures Forms 4180 and 433-A from both officers. Both officers state they are responsible and both sign a Form 2751 for $\$100,000$. The RO secures a copy of bank signature cards from the officers. The RO in this example has the Articles of Incorporation secured during initial analysis and Form 4180s and 433-As. The Articles of Incorporation are a core documentation item and satisfy the requirement for one additional piece of documentary evidence.

6. Unless the TFRP amount to be assessed is less than $\$100,000$, there should be sufficient documentation in the TFRP case file to support each recommendation, for each specific period of the liability. See IRM 5.7.4.2.4(1) for the core documentation requirements. The example below shows an appropriate assertion recommendation based upon the core documentation items:

Example:

A RO completes an initial analysis and determines who the probable officers are through the information reviewed in the Articles of Incorporation. The RO makes a field call to the business, speaks to the one officer present and secures Forms 4180 and 433-A *Collection Information Statement*. The RO requests bank documents from the taxpayer and establishes a deadline for the information. The RO schedules and completes a Form 4180 interview with the officer who was not present during the initial field call. When the taxpayers fail to submit the requested documents, the RO prepares Form 6639 requesting bank signature cards and a sampling of the front copy of checks for the periods of the liability. Following the expiration of the bank summons quash period, the RO reviews the bank records and determines there are no additional signature authorities on the account. Based upon review of the cancelled checks, the RO determines that payments were made by both officers to other creditors in preference to the accruing taxes. The RO has secured the core documentation items and has sufficient documentation to support recommendation of the TFRP against both parties.

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

Note:

For cases in which the employment tax returns were submitted in an electronic format (E-file or TeleFile), the signature information is not available on the printed document because the forms are signed via an IRS issued PIN. The Reporting Agent File (RAF) database holds the Reporting Agent Records and related taxpayer/client records. Reporting Agents (RAs) are companies (not individuals) that perform payroll services for other businesses. In connection with the payroll services, RAs may file their client's employment tax returns on magnetic tape or electronically. Taxpayers designate authorization to the RA using Form 8655, *Reporting Agent Authorization*. IDRS Command Code RFINK will identify the forms and tax periods authorized for the Reporting Agent. The information obtained is mainly to establish a relationship that existed between the taxpayer and the payroll service provider. RFINK data could necessitate a deeper investigation of the responsible parties and the payroll service provider(s) to ensure that we have addressed all potentially responsible parties. The RO's investigation of who is authorizing payroll and payment of other creditors will provide the most important elements of who is responsible and willful. See IRM 21.3.9, *Processing Reporting Agents File Authorizations* and IRM 5.1.23.3.4, *Authority Granted by Form 8655*, for additional information on Reporting Agents.

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

Note:

Consult with your local Area Counsel in any case involving whether a third-party payer is a responsible person(s) under IRC § 6672 for the TFRP.

9. The business records may be reviewed to determine:

- Duties (and changes to duties) of officers, directors, etc.
- Appointments and resignations of officers, directors, etc.
- Responsibilities of individuals to file and pay tax returns
- Issuance of stock to officers, directors, etc.
- Assets transferred to officers, directors, etc.
- Loans made to officers, directors, etc.
- Unreported payroll and other taxes
- Diversion of funds
- Borrowing of funds not used to pay taxes

- Responsible parties within a Payroll Service Provider (PSP)
- Responsible parties within a Professional Employer Organization

10. Additional bank records that may be reviewed include:

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

11. The bank records can be reviewed to determine:

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

5.7.4.3 (06-26-2012) Calculating the TFRP

1. If a taxpayer submits a partial payment of a liability when there are assessments for more than one taxable period, and does not provide specific written instructions as to the application of the partial payment, then apply the payment in a manner serving the best interests of the government. The payment will generally be applied to satisfy the liability for successive periods in descending order of priority until the payment is absorbed. When considering the best interests of the government and period of priority, in addition to statute and lien priority issues, consideration will be given to applying payments first to non-trust fund modules such as Form 1120, 940, and 1040 (for disregarded LLCs). If the amount applied to a period is less than the liability for the period, the amount will be applied to tax, penalty, and interest, in that order, until the amount is absorbed (Rev. Proc. 2002-26, 2002-1 C.B. 746, Sec. 3.02). This procedure also applies if there are unassessed amounts for which the Service and the taxpayer agree the taxpayer is liable.
2. Do not solicit partial designated payments for the sole purpose of reducing the trust fund balance on the case below ≡ ≡ ≡ ≡ ≡ ≡ .
3. The ATFR system should be used to calculate the TFRP balance. The system interfaces with IDRS and receives from IDRS all open trust fund modules with a balance due when it is calculating the trust fund amount. In addition, the user has the ability to add pre-assessed periods and local payments. ATFR may be used at any time during the investigation to determine the current outstanding TFRP balance.

Reminder:

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

4. The following TFRP assessments can and should be processed on ATFR:

- Form 941, *Employer's Quarterly Federal Tax Return* - TFRP is equal to the amount of the employees' share of FICA and withholding.
- Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees* - TFRP is equal to the amount of the employees' share of FICA and withholding.
- Form 944, *Employer's Annual Federal Tax Return* - TFRP is equal to the amount of the employees' share of FICA and withholding.
- Form 945, *Annual Return of Withheld Federal Income Tax* - TFRP is 100 per cent of the tax.
- Form 1042, *Annual Withholding Tax Return for US Source Income of Foreign Persons* - TFRP is 100 per cent of tax.
- Form CT-1, *Employer's Annual Railroad Retirement Tax Return* - Due to the different rates on Tier 1 versus Tier II, the ATFR FICA and Withholding amounts downloaded from IDRS will require adjustment. Please seek Collection Automation Coordinator assistance.

Note:

See IRM 5.7.3.1.2, *Personal Liability for Excise Taxable Fuel Taxes*, for Form 720, *Quarterly Federal Excise Tax Return*, procedural guidance.

5. When the single member owner (SMO) and the LLC are the liable taxpayers for different tax periods under the same Employer Identification Number, contact the Area ATFR coordinator to create two cases on ATFR. Locate contact information for your Area ATFR coordinator on the ATFR website at: <http://wiki.sd.is.irs.gov/index.php/Coordinators>. When there are separate cases on ATFR, separate actions may be taken:

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

6. When the original trust fund amount reported (i.e., TC 150) on a return has been satisfied and there is a subsequent assessment of additional tax (e.g., TC 290, 294 or 298, Additional Tax Assessment; TC 300, TC 304, TC 308, Additional Tax or Deficiency Assessment by Examination Division or Collection Division) on the module, any payments made towards the previously satisfied tax may not be reapplied to any part of the additional tax assessment for purposes of the TFRP calculation. There is no distinction if the original assessment was satisfied by Federal Tax Deposit(s) or subsequent payment(s), as the operative fact is that the original tax had been satisfied prior to the additional assessment. The ATFR system has been programmed to take this situation into account and will ask if the user wants the additional assessment included in the TFRP calculation. Refer to 5.7.3.3.2, *Establishing Willfulness*, for guidance when determining if an additional assessment should be included in the TFRP calculation.

Note:

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

7. Before submitting Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, for approval, the TFRP calculation must be updated.

8. In order to determine the TFRP balance:

- On cases where the Letter 1153(DO) is issued on or after June 19, 2000
- For all payments received on or after January 1, 2003, for cases where the Letter 1153(DO) was issued before June 19, 2000,

all undesignated payments on a tax period are applied following the guidelines below:

SEQUENCE OF PAYMENT APPLICATION

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

Category of Payment

Apply to

- | | |
|---|--|
| – Federal Tax Deposit (timely or late),
– Partial payment on or before due date, or
– Full payment of tax on or before date return is filed | 1 and 2 |
| – Partial payment after due date and before date of assessment | 1, 2, 6 and 7 |
| – Partial payment on or after date of assessment, or
– Involuntary payment | 1 through 7 |
| – Designated payment | Apply as designated (see IRM 5.1.2.8, <i>Designated Payments</i>) |

9. For TFRP assessments when the Letter 1153(DO) was issued prior to June 19, 2000, involuntary payments and undesignated payments received through December 31, 2002 were applied to the non-trust fund portion of the tax (Sequence 1) before being applied to the amounts described in Sequences 3 through 7 above, and then finally to the trust fund portion of the tax (Sequence 2). Policy Statement P-5-14 reflects the effective date of the revised manner of applying payments.

Note:

If the taxpayer established that a deposit was in the amount required by Treasury Regulation 31.6302–1 (after December 31, 1992, with allowance for the safe harbor rule), the FTD will be applied to 1 and 2 for the specific period covered by the FTD, even before June 19, 2000. The taxpayer must provide payroll records that show the composition of the FTD and that the FTD was timely. The records must reflect exactly how much of the FTD was employer FICA, employee FICA, and income tax withheld. The procedures on ATFR for using designated (split) TC 650 payments should be used in these types of cases.

5.7.4.3.1 (06-26-2012)

Special Payment Application Rules

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

Note:

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

5.7.4.4 (06-26-2012)

Payments by Responsible Party on Behalf of the Employer

1. When efforts to collect the tax, penalty, and interest from the employer have been unsuccessful, advise the responsible persons that they have two options:
 - Pay the withheld tax liability on behalf of the business. This is the total amount of the tax withheld and not a portion to reduce the withheld amount below $\equiv \equiv \equiv$.
 - Have the TFRP assessed against them.
2. If a responsible person chooses to pay on behalf of the business then:
 - A. Payment will be made by cash, cashier's check, certified check, or other acceptable payment form.
 - B. The responsible person may provide the funds to the business and pay with a business check.
 - C. If the payment is not made with a business check, the responsible person(s) will provide a signed statement certifying that payment is being made on behalf of the business for application to the trust fund tax liability.
 - D. The statement will read as follows: "I/We {Name(s)}, hereby tender payment of \${Amount} and specifically request that such funds be applied to the trust fund tax liability of {Business Name}, {Business EIN} for the period(s) ending {List Each Period}."
 - E. This statement protects the government's position in cases in which a responsible person later files a claim for refund of the TFRP, claiming that their personal tax payment was misapplied or applied against their wishes to the business liability.
 - F. Retain the signed statement along with a copy of Form 4183 as part of both the balance due and any TFRP case files.

Note:

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

- G. The TFRP investigation will continue while awaiting designated payments from a responsible person.

3. If the payment is not made with a business check and the statement described in IRM 5.7.4.4(2)(d) is not provided, the employee will:

- A. Apply the payment to the trust fund portion of tax for the employer business in question;

- B. Send the person who made the payment a letter that states "in accordance with our understanding of your specific intention to pay the trust fund tax liability on behalf of {insert name of the employer business}, {insert EIN of the employer business}, we have applied your payment of \${insert amount} received on {insert date} toward that company's trust fund tax liability for the period(s) ending {list each period}. If our understanding is incorrect and you intended the payment for a different liability, please respond in writing within thirty days of the date of this letter to the person and address that appear above stating to which liability you wanted the payment applied;"
 - C. Retain the letter (and any written response) or copy as part of both the balance due and TFRP case files;
 - D. Initiate credit transfer action according to the payor's direction, move the payment(s), and continue with the TFRP assessment process if the person timely responds in writing that we have applied the payment incorrectly against his/her wishes.
4. If a responsible party pays the entire withheld tax liability in full **after** approval of Form 4183 and issuance of Letter 1153(DO), once the payment clears and posts to accounts, the TC 130 should be reviewed to determine if TC 131, *Reversal of TC 130 Refund Freeze*, is appropriate. The TC 130 may remain appropriate on an individual account, if there are additional pending TFRP assessments from a different business, or related sole proprietor liabilities. If appropriate, the revenue officer will prepare Form 3177, *Notice of Action for Entry on Master File*, to request input of the TC 131 to release the freeze of any potential refunds for all individuals determined to be responsible for the TFRP.

5.7.4.5 (08-05-2013)

Form 4183 Penalty Assessment Recommendation

1. Review all of the documentation in the case file as well as all Forms 4180 in order to make a determination regarding responsibility (IRM 5.7.3.3.1) and willfulness (IRM 5.7.3.3.2) for each potentially responsible party.
2. A collectibility determination must be completed (IRM 5.7.5, *Collectibility Determination*) for each potentially responsible person determined to be both responsible and willful. If the TFRP will not be recommended based on collectibility, prepare Form 9327, *Nonassertion Recommendation of Uncollectible Trust Fund Recovery Penalty or of Uncollectible Personal Liability for Excise Tax*, prior to submitting Form 4183 for approval.
3. The revenue officer must address all person(s) considered for assertion of the TFRP on Form 4183 and must state the reasons for assertion or nonassertion for each person considered. This will include all individuals who were in a position that would warrant consideration. The revenue officer must also indicate whether the individual is fully responsible for all periods or partially responsible for some periods.

Note:

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

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

Example:

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

Note:

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

5. The following statement is not adequate to support a recommendation for assessment:

Example:

Mr. B. was an officer. He should have known that taxes had not been paid. He was also authorized to sign corporate checks. He is responsible and willful.

6. The TFRP case file must contain adequate information to support the recommendation for assertion of the penalty. The core documentation items listed in IRM 5.7.4.2.4(1) will be secured in most cases. As Control Point Monitoring (CPM) must review the ICS history to determine if the RO addressed the absence of any core documentation item, a brief ICS history addressing missing core documentation items should be made prior to sending the TFRP file to CPM. A notation in the TFRP case file regarding the missing documentation is insufficient.
7. Prepare and submit a completed Form 4183 recommending assertion or nonassertion to the group manager for approval as soon as possible after the investigation has been completed. Before submitting the file for approval, the revenue officer will consider the following:
 - Are all periods addressed, including unfiled returns?
 - Is the computation correct? That is, are all payment applications in compliance with IRM guidelines?
 - Are the core documentation items included in the TFRP case file, or has a reason for their absence been documented in the ICS history?
 - Is documentation beyond the core items required to support the assertion?
 - Does the TFRP case file contain evidence covering all periods of the liability?
 - Have all potentially responsible individuals been considered?
 - Has collectibility been addressed on each potentially responsible person?
 - Was all information submitted by the potentially responsible person considered before making the recommendation?
 - Are ICS and ATFR histories printed and present in TFRP case file?
 - Have all issues been adequately addressed?
8. If collection appears to be in jeopardy based on the reasons identified in IRM 5.1.4.2, *Jeopardy and Termination Assessment Overview*, the revenue officer will prepare and submit Form 2644, *Recommendation for Jeopardy/Termination Assessment*, for approval.
9. If the trust fund balance is below $\equiv \equiv \equiv$ and assertion of the TFRP is not being recommended, update the calculation of the unpaid trust fund balance on page four of Form 4183. The potential liability of any unfiled returns must be considered prior to closing the TFRP account based on the dollar criteria.

- Revenue officers must ensure the Form 4183 narrative and ICS history entry made **at the time** of the Form 4183 submission to the group manager for approval provides sufficient detail to support a TFRP assertion recommendation. Due to ex parte communication restrictions on supplemental documentation to support TFRP assertions *after* receipt of a taxpayer protest, group managers must ensure the TFRP assertion is fully supported and documented **prior** to approving the assertion on ATFR and documenting concurrence in ICS. The TFRP case file must contain the necessary core documentation items, or the reason for their absence must be documented in ICS.

5.7.4.6 (06-26-2012)

Manager's Review of Trust Fund Recommendations

- The group manager must complete a thorough review of the TFRP recommendation to determine the adequacy of the TFRP recommendation prior to the revenue officer issuing Letter 1153(DO). Due to ex parte related restrictions on supplemental documentation to support TFRP assertions after receipt of a taxpayer protest, the group manager must ensure *prior* to Form 4183 approval that the assertion is fully supported and documented.
- The group manager must also review and approve any related Forms 9327 for nonassertion due to collectibility prior to approving Form 4183. If the Form 9327 is not approved, Form 4183 must be updated before it can be approved.
- The manager's review of the recommendation must address the same issues that the revenue officer addressed before submitting Form 4183 for approval (IRM 5.7.4.5(7), *Form 4183 Penalty Assessment Recommendation*). When the answer to any of the questions is "no," the manager will consider whether to return the recommendation to the revenue officer for corrective action and/or further development. Managers must ensure all required documents are in the case file and a collectibility determination has been made on each potential responsible officer. Group managers should document their concurrence with the proposed TFRP assessment in ICS when Form 4183 is approved.

5.7.4.6.1 (04-19-2011)

Centralized Processing of TFRP Actions and Files

- Local management may determine that a centralized unit will be responsible for processing the TFRP files after the Form 4183 has been approved.
- These actions may include:
 - Generating and delivering Letter 1153(DO) and Form 2751.
 - Monitoring the responsible person's response to Letter 1153(DO).
 - Forwarding any appeals documents to the revenue officer for a determination.
 - Generating Form 2749, *Request for Trust Fund Recovery Penalty Assessment(s)*, (including updating the computation) and inputting "2749 to CPM" date on ATFR to release it to the Advisory CPM unit responsible for processing of the file.
 - Forwarding the case file to CPM Advisory on Form 3210, *Document Transmittal*.

5.7.4.7 (08-05-2013)

Notification of Proposed Assessment

- Once Form 4183 is approved by the group manager, the revenue officer can issue Letter 1153(DO).
- Letter 1153(DO) and Form 2751 should be prepared on the ATFR system. Letter 1153(DO) and Form 2751 will be delivered to the responsible person(s) within 20 calendar days of the Form 4183 approval. The ATFR system does not input a date on the Letter 1153(DO), therefore **it is important that the revenue officer either date stamp or hand write the date of service on the Letter 1153(DO), as well as document the ATFR and ICS histories regarding service of the Letter 1153(DO). It is important that the copy of Letter 1153(DO) maintained in the TFRP case file also be dated.** Publication 1 will be included with Letter 1153(DO) and Form 2751 when they are delivered to the taxpayer (see IRM 5.7.4.7(3) for the recommended method of delivery). A copy of page 4 of Form 4183, showing the penalty computation, may also be included with the documents delivered to the taxpayer so they are aware of how payments were applied to the account. ATFR will systemically upload TC 130, *Entire Account Frozen from Refunding*, to freeze any potential refunds when a Letter 1153(DO) delivery date is entered on ATFR.

Reminder:

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

Letter 1153(DO)

- Notifies the responsible party of the proposed assessment
- Contains a description of the available appeal rights
- Affords the responsible party the opportunity to agree to or to appeal the assessment
- Will be modified if the responsible person has filed a bankruptcy proceeding and the automatic stay is still in effect, to delete any references to:
 - The Service "collecting" the TFRP
 - Any actions the taxpayer should take to delay collection activity by the Service
 - Any collections the Service may take in Jeopardy circumstances
- The modified version will print from the ATFR system if the responsible party's bankruptcy information is input to the ATFR system

Form 2751

- Provides a report of the business liability
- Provides a breakdown of the proposed TFRP assessment for each quarter for which the TFRP assessment is proposed
- Allows the responsible party to agree to the proposed assessment
- Waives the 60-day restriction on notice and demand if signed by the taxpayer
- May be signed by the responsible party at any time during the TFRP investigation or after the Service has issued Letter 1153(DO)
- An authorized representative may sign Form 2751 on behalf of a responsible person if the Form 2848, *Power of Attorney and Declaration of Representative*, executed by that responsible person is filled in properly. Item 3 of Form 2848 must say "Trust Fund Recovery Penalty (TFRP)" under type of tax, and "Form 2751" under Form and all periods for which the TFRP is proposed to be assessed must be listed.

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

Note:

The method of delivery and any discussions with the responsible party related to receipt of the Letter 1153(DO) will be documented in the ICS history for the employer's case. These procedures are recommended in order to ensure that the responsible person learns of the Service's proposed TFRP assessment and has an opportunity to question the revenue officer about potential appeal opportunities. If the responsible person later forgets having received the Letter 1153(DO), the ICS history notes regarding the method of delivery may help show that the responsible person is not entitled to another opportunity to contest the correctness or amount of the TFRP in a Collection Due Process hearing.

Required Action

Recommendations/ Exceptions

•A 60-day preliminary notice of proposed TFRP assessment, Letter 1153(DO), must be mailed to the responsible person's last known address or (after July 22, 1998) delivered in person to the responsible party before giving notice of assessment and demand for payment to the responsible party.
•See IRM 5.7.3.6.2, *Impact of Letter 1153 (DO) on Assessment Statute*.

— It is highly recommended that the Service now deliver Letter 1153(DO) in person, whenever practical.
— Alternatively, for domestic mail delivery use U.S. Postal Service Certified Mail Receipt Form 3800 requesting a return receipt. International delivery will be made via registered mail.

The Service must wait 60 days (75 days if the letter is addressed to the responsible person outside the United States), plus an additional five days for receipt and processing of timely mailed protests, after proper delivery of Letter 1153(DO) before issuing notice and demand for payment (Form 3552, *Prompt Assessment Billing Assembly*).

The 60-day rule does not apply:
— To a Jeopardy Assessment (Form 2644)
— If the responsible person signs Form 2751, *Proposed Assessment of Trust Fund Recovery Penalty*, waiving the restriction on notice and demand set forth in IRC 6672(b)

4. If the Service is apprised that an individual determined to have been responsible is deceased prior to issuing the Letter 1153(DO), determine if a fiduciary exists. Do not assume that a surviving spouse is the personal representative of the decedent. A fiduciary is required to give notice to the Service of the fiduciary relationship. Form 56, *Notice Concerning Fiduciary Relationship*, may be used for this purpose. Other legal documents establishing fiduciary relationships may be substituted for Form 56. If a fiduciary relationship is unknown, the Letter 1153(DO) should reflect the pattern "John Doe (deceased)" and be mailed to the taxpayer's last known address. If a fiduciary relationship is known, the letter should reflect the pattern "John Doe (deceased), Richard Doe, Executor" and be sent to the executor's address as well as to the taxpayer's last known address via certified mail.
5. The ATFR program will be updated when Letter 1153(DO) is delivered. Include a copy of Letter 1153(DO) and part 3 of Form 2751 in the TFRP case file. Process the case file according to the instructions in IRM 5.7.6.1, *Taxpayer's Response to Letter 1153(DO)*, based on the potentially responsible person's response to the Letter 1153(DO).

5.7.4.7.1 (06-26-2012)

Increases to TFRP Amount after L1153(DO) Issuance

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

Note:

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

5.7.4.7.2 (08-05-2013)

Rescission of Proposed Assessment

1. Letter 1153W, *Proposed Trust Fund Recovery Penalty Rescission Notification*, is used to rescind issuance of L1153(DO).
2. If information that was not available prior to the issuance of Letter 1153(DO) is received before the assessment of a TFRP and results in a decision by the revenue officer to reverse all or a portion of the periods on Letter 1153(DO), the revenue officer will take the following actions:
 - Document ICS history with the facts supporting the decision to reverse the prior recommendation.
 - Amend Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, on ATFR and submit the TFRP case file for managerial review and approval.
 - After group manager approval of the amended Form 4183, generate L1153W using ATFR for the applicable periods no longer recommended for assertion.
 - Issue Letter L1153W and a copy of Letter 1153(DO) to the taxpayer.
 - Retain a copy of Letter 1153W in the TFRP case file.
 - If the assessment recommendation is reversed for all periods, the TFRP file should not be forwarded to CPM. Retain the information in the business case file.

Example:

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

Caution:

Letter 1153W cannot be issued after a protest has been forwarded to Appeals. See IRM 5.7.6, *Trust Fund Penalty Assessment Action*, for procedures when a protest has been received.

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

5.7.4.8 (04-19-2011)

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

1. The TFRP will normally be pursued when efforts to collect the unpaid tax, penalty, and interest from the employer have been unsuccessful.

2. In certain situations, the Service may decide to withhold assertion of the TFRP while the employer is attempting to resolve the liability through another method. These situations could involve an in-business installment agreement (IRM 5.7.4.8.1, *Considerations for In-Business Installment Agreements*) or bankruptcy (IRM 5.7.4.8.2, *Trust Fund Taxpayer in Bankruptcy*, and 5.7.4.8.3, *Responsible Party in Bankruptcy*).

Note:

If the revenue officer determines during pre-contact analysis that the outstanding trust fund balance is under $\equiv \equiv \equiv$, and the taxpayer is not accruing additional liabilities, the revenue officer may waive the requirement to secure Form 4180 if a resolution for immediate full payment, short term (less than 120 days) full payment, or IBTFIA meeting the criteria in IRM 5.7.4.1(3) is agreed upon during the initial contact with the taxpayer.

5.7.4.8.1 (06-26-2012)

Considerations for In-Business Installment Agreements

1. A revenue officer can secure an in-business installment agreement rather than recommending immediate assertion of the TFRP, as long as:

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

Exception:

No TFRP determination is required on cases that meet the requirements for In-Business Trust Fund Express Installment Agreements (see IRM 5.14.5.4 and IRM 5.7.4.1(3)).

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

- A. Complete interviews for all potentially responsible persons and any other interviews necessary to determine responsibility and willfulness.
- B. Secure the appropriate Collection Information Statement from all potentially responsible persons and complete the collectibility determination (IRM 5.7.5).
- C. Request a signature on Form 2750, *Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty*, from all potentially responsible persons (see IRM 5.7.3.6.1 for the actions required when securing a waiver) to extend the statute to the expected end-date of the agreement plus one year.
- D. Assemble all documentation for completion of the penalty to the point of assessment (including securing approval of Form 4183).

Note:

If a potentially responsible person refuses to extend the ASED and his or her TFRP is determined to be collectible, or if Appeals has already upheld the TFRP recommendation, submit the TFRP file for assessment. After assessment, collection may be withheld (IRM 5.14.7.4, *Trust Fund Recovery Penalties and Installment Agreements*) on these cases if appropriate.

3. For cases where the installment agreement will fully pay all balances due at least one year prior to the earliest ASED, the revenue officer and the group manager should determine how far to proceed with the TFRP investigation in the event the agreement defaults. The decision should be based on the facts of the case, including:

- Financial condition of the business
- Financial position and actions by the responsible parties
- Length of the agreement compared to the ASED
- Ability to secure documentation in the future to support the recommendation

4. Inform the responsible parties whether or not the penalty will be assessed. If the assessment of the TFRP is being held pending completion of the terms of an installment agreement, advise the responsible parties that default of the agreement will result in the processing of the recommendation for assessment.
5. When an in-business trust fund (IBTF) installment agreement is granted, and the TFRP is not being assessed, the TFRP file must be sent along with the IBTF installment agreement to Centralized Case Processing where the agreement is being monitored. Label the TFRP file, "Unassessed TFRP-IBTF IA Backup Documents - Earliest ASED is: {insert date}" Additional information on processing and monitoring these cases is contained in IRM 5.14.7.4, *In-Business Trust Fund Installment Agreements Requiring Financial Analysis and Determining Ability to Pay*.

Note:

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

6. If an in-business installment agreement defaults (usually some time prior to the actual termination of the installment agreement), Centralized Case Processing (CCP) will assign the case to a revenue officer in the FORT unit of CCP for appropriate collection activity which may include the completion of the TFRP process that was started by the originating RO.
7. If the responsible party was not previously given appeal rights, follow the procedures in IRM 5.7.4.7 for notifying the responsible party of the proposed assessment and of his or her appeal rights.
8. If the responsible party was already given appeal rights and Form 2751 was previously secured:
 - A. Compute the new balance using ATFR (no assessment may be made for periods or balances for which the taxpayer was not previously given appeal rights).
 - B. Update the assessment information on the ATFR system.
 - C. Advise the taxpayer of the pending assessment.
 - D. Process the case according to IRM 5.7.6.2, *Revenue Officer Assessment Actions*.

5.7.4.8.2 (06-26-2012)

Trust Fund Taxpayer in Bankruptcy

1. If an employer who owes trust fund taxes files bankruptcy, the TFRP ASED is **not** suspended with respect to the assessment. When a revenue officer learns that an employer who owes trust fund taxes has filed bankruptcy, he or she should immediately contact Insolvency. Also, see IRM 5.9.3.10, *Trust Fund Recovery Penalty*.

Note:

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

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

5.7.4.8.3 (04-19-2011) **Responsible Party in Bankruptcy**

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

Note:

If the bankruptcy was filed before October 22, 1994, the statutory period for assessment is extended for the period the automatic stay is in effect, plus 60 days.

2. If the potentially responsible person has filed bankruptcy, immediately contact Insolvency and advise them of the potential liability so that a proof of claim may be filed. See IRM 5.9.3.10, *Trust Fund Recovery Penalty*.
3. If the bankruptcy is a Chapter 13, it is crucial to file a timely proof of claim because of the super discharge provision under Section 1328(a) of the Bankruptcy Code.

Note:

For bankruptcy cases filed on or after October 17, 2005, the super discharge in Chapter 13 does not include trust fund taxes.

Reminder:

Use the appropriate L1153(DO) when a potentially responsible party is in bankruptcy (IRM 5.7.4.7(2)). The modified version will print from the ATFR system when entering "Y" when asked if the responsible party is in bankruptcy during the L1153 generation process on ATFR.

5.7.4.9 (06-26-2012) **TFRP and Offers in Compromise**

1. It is the Service's policy that before an offer to compromise trust fund tax will be investigated for entities in which the trust fund recovery penalty is applicable, i.e. determined to be responsible and willful in regard to the unpaid employment taxes (in business or out of business), the trust fund portion of the taxes must be paid, the TFRP must be assessed against all responsible persons, the trust fund package forwarded for assessment, or a determination has been made by an RO to not assert due to collectibility. See IRM 5.7.4.9(2) Note below in circumstances when the aggregate outstanding trust fund liability is under ≡ ≡ ≡ ≡ .
2. The amount offered by an entity to compromise unpaid trust fund liabilities will represent what can be collected from that entity. If the Service enters into a compromise for a portion of the trust fund tax liability, the remainder of the trust fund taxes may still be collected from a responsible person pursuant to Section 6672 of the Internal Revenue Code. See IRM 5.8.4.22.1, *Trust Fund Liabilities*.

Note:

If the taxpayers' aggregate outstanding trust fund liability is under ≡ ≡ ≡ ≡ ≡ ≡ , the business is out of business with no potential to incur additional liabilities, and the RO determines no other prior TFRP assertions (from unrelated entities) were made against the responsible parties, a determination may be made by an RO to not assert the TFRP.

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

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 5. Collectibility Determination

5.7.5 Collectibility Determination

- 5.7.5.1 [Overview](#)
- 5.7.5.2 [Collectibility](#)
- 5.7.5.3 [Verification of Ability to Pay](#)
- 5.7.5.4 [Nonassertion of Trust Fund Recovery Penalty on Taxpayer Residing Overseas](#)

Manual Transmittal

November 12, 2014

Purpose

(1) This transmits revised IRM 5.7.5, Trust Fund Compliance, *Collectibility Determination*.

Material Changes

- (1) Minor editing changes made throughout the text.
- (2) Added overview of Collectibility Determinations
- (3) New IRM 5.7.5.1.1 contains content formerly found in IRM 5.7.5.1.
- (4) Added guidance in IRM 5.7.5.1.1(3) that Form 4183 and Form 9327 are not required if the aggregate trust fund balance is under the amount in IRM 5.7.4.1 if there is no potential for the taxpayer to accrue additional liabilities.
- (5) Added reminder in IRM 5.7.5.3.1(2) that all Form 9327 Section II items must be addressed and action dates should correspond with ICS history dates.
- (6) Added guidance in IRM 5.7.5.3.1(7) that TFRP nonassertions based on collectibility do not require submission to CPM.

Effect on Other Documents

This material supersedes IRM 5.7.5, dated June 28, 2011.

Audience

Small Business/Self-Employed Collection Employees

Effective Date

(11-12-2014)

Rocco A. Steco
Acting Director, Collection Policy

5.7.5.1 (11-12-2014)

Overview

1. This chapter provides guidance for Collection employees when making a collectibility determination during a trust fund recovery penalty (TFRP) investigation.

5.7.5.1.1 (11-12-2014)

Collectibility Determinations

1. A collectibility determination must be made in order to determine if the TFRP should be assessed. The decision not to assess based on collectibility determination will be noted in the "Non-assertion" block of Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, for all responsible persons against whom the TFRP is not being recommended by checking the "Responsible - not collectible (Form 9327 required for inability to pay)" box. See IRM 5.7.5.3.1(1) for TFRP case file documentation requirements.

Note:

Please see IRM 5.7.5.3.2, *Assertion with Pre-Assessed Form 53*, for additional information.

2. The TFRP will normally not be assessed when:
 - There is no present or future collection potential.
 - Neither the responsible person nor their assets/income sources can be located.
3. When investigation has determined there is no collection potential, the aggregate trust fund balance is below the amount in IRM 5.7.4.1(2), *Determination to Pursue and Recommend Assessment of the TFRP*, and there is no potential the taxpayer will accrue additional liabilities, the Automated Trust Fund Recovery Penalty (ATFR) system case should be closed as "Under IRM 5.7.4 criteria." Preparation and submission of Form 4183 and Form 9327, *Nonassertion Recommendation of Uncollectible Trust Fund Recovery Penalty* or of *Uncollectible Personal Liability for Excise Tax*, is unnecessary.

5.7.5.2 (06-28-2011)

Collectibility

1. Secure Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*, in order to determine collectibility. Form 433-F, *Collection Information Statement*, may be used instead of Form 433-A if the individual is a wage earner and the potential TFRP liability is less than \$100,000.

Exception:

Although a Collection Information Statement (CIS) is not required if one was obtained within the past twelve months, current research of the taxpayer's information is still required.

2. If the taxpayer will not complete the CIS, determine if a summons can be issued (if there are other open existing assessments IRM 25.5, *Summons*) or if the financial analysis can be completed using the sources in IRM 5.7.5.3(2).
3. As part of the collectibility investigation, current compliance with IMF filing requirements will be verified.

5.7.5.3 (06-28-2011)

Verification of Ability to Pay

1. The following factors will be considered when determining collectibility of the TFRP:
 - Current financial condition
 - Involvement in a bankruptcy proceeding
 - Income history and future income potential
 - Asset potential (likelihood of increase in equity in assets and taxpayer's potential to acquire assets in the future)
2. Research the taxpayer's information by using the following internal and external sources, as well as any other applicable sources, to verify and determine collectibility:

To Verify:

Income

Income and assets, e.g., income tax interest deduction for real property, IRA contributions, etc. RTVUE or BRTVUE

Addresses

INOLE

Motor Vehicles

Motor Vehicle Records

Real Estate

Property Records

Caution:

Do not request a full credit bureau check on the potentially responsible party if there is no assessment against the individual (See IRM 5.1.18.18.2, *Limitations on Ordering Consumer Credit Reports*.)

3. Below are guidelines to assist in determining whether to assert the penalty based on collectibility:

If responsible person financial analysis shows. . .

Any present or future ability to pay

Then. . .

Assess the penalty and take the appropriate collection action based on an analysis of the taxpayer's financial condition.

No present, but future ability to pay

Assess the TFRP based on future income potential and possible refund offset. Prepare a pre-assessed Form 53 and file lien if appropriate.

The responsible person cannot be located or contacted but internal research identifies assets or income sources

Assess the TFRP since there is a good possibility of some collection from the assets/income sources that were located.

No present or future income potential exists over the collection statute period

Do not assess the TFRP since the financial analysis shows there is little prospect that the taxpayer will receive any increase in income or acquire assets that will enable the Service to collect any of the penalty.

5.7.5.3.1 (11-12-2014)

Nonassertion Based on Collectibility

1. If there is no present or future collection potential after reviewing and verifying the financial information, do not recommend assertion of the TFRP.

Note:

Information secured as part of the collectibility determination, including the analysis of the factors in IRM 5.7.5.3(1), must be included in the TFRP case file. If the information is included in the history and not as a separate document, the TFRP case history should include a reference to the date the collectibility determination is documented in the ICS history.

2. Using ATFR, prepare Form 9327 based on collectibility:

A. Include all recommendations of nonassertion based on collectibility.

B. Provide a narrative as to why the penalty should not be assessed.

C. Submit the form for approval by the group manager for all dollar amounts above the IRM 5.7.4.1, *Determination to Pursue and Recommend Assessment of the TFRP*, criterion along with all appropriate supporting documentation (CIS, income/expense/asset verification). See IRM 5.7.5.1.1(3) if the aggregate trust fund balance is below the "IRM 5.7.4 criteria."

Reminder:

All Form 9327 Section II items must be addressed. The action dates entered should correspond to the research or review actions in the ICS history. If an item was not completed, document ICS with the reason, such as taxpayer would not provide a CIS and RO determined summons not appropriate.

3. Include one copy of Form 9327 with the TFRP file. Include a copy of Form 9327 with a copy of the approved Form 4183 in the balance due case file.
4. Nonassertion of the penalty should be recommended if a responsible person cannot be located, nor can any assets or income sources be located.
5. Assertion of the penalty should be recommended if the responsible person cannot be located but assets or income sources can be located.
6. If the TIN of the responsible party is unknown but assertion of the TFRP is still being recommended, contact the Entity Control unit at the appropriate Campus to have an Internal Revenue Service Number (IRSN) assigned (See IRM 3.13.5.22, *Internal Revenue Service Number (IRSN) Format*). In order to establish the account you will need to provide the initiator's name, address, and phone number, the purpose for which the number is needed (TFRP assessment), and the following information on the taxpayer:
 - Name
 - Address

- Filing Status
- First period for which assessment is anticipated

Note:

After the IRSN is assigned, the account will be established on IDRS in approximately three weeks. Once it is established on IDRS, the account can be worked on ATFR using normal assessment procedures.

7. Associate the case files for TFRP nonassertions based on collectibility with the balance due case file after group manager approval. No TFRP case file submission to CPM is necessary.

5.7.5.3.2 (06-28-2011)

Assertion with Pre-Assessed Form 53

1. If the present collection potential is minimal but future collection potential exists:
 - A. Recommend assertion of the TFRP for group manager approval.
 - B. Advise the taxpayer that one notice will be sent reflecting the balance due, and a Notice of Federal Tax Lien will be filed, if appropriate.
 - C. Prepare Form 53, *Report of Currently Not Collectible Taxes*, for the TFRP (enter a mandatory follow-up date in item 22 if appropriate).
 - D. Forward the entire package through the group manager for Form 53 approval.
 - E. Document the ICS case history and annotate on Form 2749 that Form 53 was prepared.
 - F. Process the TFRP assessment per IRM 5.7.6.1, *Taxpayer's Response to Letter 1153 (DO)*. Attach part 2 of Form 53 to Form 2749 in the TFRP case file. Process the currently not collectible file per IRM 5.16.1.2(15), *Currently Not Collectible Procedures*.

Note:

Please see IRM 5.16.1.4, *Requesting Currently Not Collectible Input for Assessed and Pre-assessed Tax Periods*.

5.7.5.4 (04-13-2006)

Nonassertion of Trust Fund Recovery Penalty on Taxpayer Residing Overseas

1. The revenue officer assigned the balance due account should determine responsibility and willfulness for all potentially responsible persons, including U.S. citizens residing overseas and foreign nationals having no assets within the United States.
2. If a potentially responsible officer resides overseas, the revenue officer will conduct an investigation to determine if there are any assets located within the U.S.
3. If no assets are found, the revenue officer will initiate a Courtesy Investigation, using the ICS Other Investigation (OI) process, to the office responsible for International Collection since recommendations for nonassertion of the penalty for these cases are the responsibility of this office. (See IRM 5.1.8.9, *Courtesy Investigations to International*).
4. The revenue officer in International Collection assigned the OI will consider the facts of the case and make a decision regarding assertion of the penalty based upon treaty considerations.
5. If this revenue officer determines that there is no collection potential, he or she should:
 - A. Prepare Form 9327 and forward it to his or her group manager for approval.
 - B. Return the approved form, along with all related information, to the revenue officer who initiated the OI.

Note:

The revenue officer who initiated the OI will handle the final disposition.

6. If the revenue officer assigned the OI determines that the responsible person will return to the United States in the future and collection may be possible, assertion of the penalty should be recommended.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 6. Trust Fund Penalty Assessment Action

5.7.6 Trust Fund Penalty Assessment Action

- 5.7.6.1 [Taxpayer's Response to Letter 1153\(DO\)](#)
- 5.7.6.2 [Revenue Officer Assessment Actions](#)
- 5.7.6.3 [Quick and Prompt Assessment Actions](#)
- 5.7.6.4 [Case File Documentation](#)
- 5.7.6.5 [Retrieving TFRP Case Files](#)

Manual Transmittal

August 05, 2013

Purpose

(1) This transmits revised IRM 5.7.6, *Trust Fund Penalty Assessment Action*.

Material Changes

- (1) Minor editorial changes have been made throughout the text.
- (2) Updated IRM 5.7.6.1.7(3) with guidance for issuance of Letter 1153W when revenue officer agrees with protest and added a reminder to determine if TC 130 should be reversed if all periods are conceded.
- (3) Updated IRM 5.7.6.1.8 with guidance that Letter 1153W cannot be issued after a protest is forwarded to Appeals.

Effect on Other Documents

This material supersedes IRM 5.7.6, dated December 7, 2012. This IRM revision incorporates Collection Interim Guidance Memorandum SB-SE-05-1212-085, *Interim Guidance for Letter 1153W, Proposed Trust Fund Recovery Penalty Rescission Notification*, dated 12-03-2012.

Audience

Small Business/Self-Employed Collection Employees

Effective Date

(08-05-2013)

Scott Reisher
Director, Collection Policy

5.7.6.1 (08-27-2010)

Taxpayer's Response to Letter 1153(DO)

1. After Letter 1153(DO) and Form 2751, *Proposed Assessment of Trust Fund Recovery Penalty*, have been properly delivered (IRM 5.7.4.7, *Notification of Proposed Assessment*), the responsible party has 60 days (75 if the letter was addressed outside of the United States) from the date of the mailing of the notice or the date of personal delivery to respond.

A protest is timely if it is postmarked or mailed by certified or registered mail, so that the mailing date can be proven, on or before the 60th day (75th day if the letter was addressed outside of the United States) after the date the Letter 1153(DO) was mailed or personally delivered. A private postage meter stamp is not evidence of when a request for appeal was mailed; it merely establishes when it was stamped.

In determining the timeliness of the appeal, the guidelines in IRC 7503 should be followed which state in part:

When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.

Allow an additional 5 days *beyond the response period allowed in the Letter 1153(DO)* to enable the Service to receive and process all timely mailed requests.

2. The responsible party can take the following actions in response to Letter 1153(DO):

- Agree to the assessment by signing Form 2751
- Appeal the proposed assessment
- Provide no response

3. The ATFR application will not allow you to proceed until one of the following actions occurs:

- The 60-day (or 75-day) time period expires
- Form 2751 is signed (which waives the 60-day restriction on notice and demand if signed by the taxpayer — IRM 5.7.4.7(2) and (3))

- A protest letter is received
 - A jeopardy assessment is being made
4. In all cases regardless of the taxpayer's action, the revenue officer will complete TFRP (Trust Fund Recovery Penalty) processing and forward the case to Advisory, Control Point Monitoring (CPM) not later than 30 calendar days after the required response period allowed in the Letter 1153 (DO), (60 days after the date the Letter 1153 (DO) was mailed or personally delivered, 75 days if the letter was addressed outside of the United States). In the event that an employee is unable to meet the 30-day time period, he/she shall document the reason for the delay in the ICS history.

5.7.6.1.1 (08-27-2010)

No Response (Unagreed) Cases

1. If the taxpayer fails to respond to Letter 1153(DO) within 60 days after the mailing or personal delivery date, (75 if the letter was addressed outside of the U.S.) plus five days to allow the Service to receive and process all timely mailed protests, then the case is considered unagreed.
2. For regular assessments, follow the procedures in IRM 5.7.6.2 for requesting assessment of the TFRP. For cases requiring quick or prompt assessment action, follow the procedures in IRM 5.7.6.3.

Note:

Quick assessment action should be taken when there are less than 30 days remaining on the ASED; prompt assessment action should be taken when immediate collection action is needed on the account.

3. Follow the procedures in IRM 5.7.7.2, *Pre-Assessment Payment*, for processing payments received from the responsible party prior to the actual assessment of the TFRP.
4. If the taxpayer is unable to full pay the proposed assessment, follow the instructions in IRM 5.15.1, *Financial Analysis Handbook*, to determine the appropriate case resolution based on an analysis of the taxpayer's financial condition. This may include a pre-assessed CNC or pre-assessed installment agreement or, if appropriate, taking the necessary actions to have the TFRP account assigned via ICS.

5.7.6.1.2 (08-27-2010)

Agreed Cases

1. If the taxpayer agrees to the assessment by signing Form 2751, prepare Letter 1155(DO) and deliver the letter to the responsible person no later than 14 calendar days after receipt of the signed Form 2751. Prepare the letter using the ATFR application whenever possible. Document the case file with an explanation if Letter 1155(DO) is delivered more than 14 days after receipt of the signed Form 2751.
2. Input the date the Form 2751 was signed onto the ATFR application.
3. For regular assessments, follow the procedures in IRM 5.7.6.2 for requesting assessment of the TFRP. For cases requiring quick or prompt assessment action follow the procedures in IRM 5.7.6.3.

Note:

Quick assessment action should be taken when there are less than 30 days remaining on the ASED; prompt assessment action should be taken when immediate collection action is needed on the account.

4. Unless the responsible person has filed bankruptcy, request full payment from the responsible person when he or she agrees to the assessment by signing Form 2751.

Note:

Contact Insolvency for advice on how to proceed on cases where the responsible person has filed bankruptcy. See IRM 5.7.4.8.3, *Responsible Party in Bankruptcy*, for information on ensuring a timely proof of claim is prepared for these cases.

5. Follow the procedures in IRM 5.7.7.2, *Pre-Assessment Payment*, for processing payments received from the responsible party prior to the actual assessment of the TFRP.
6. If the taxpayer is unable to full pay the proposed assessment, follow the instructions in IRM 5.15.1, *Financial Analysis Handbook*, to determine the appropriate case resolution based on an analysis of the taxpayer's financial condition. This may include a pre-assessed CNC or pre-assessed installment agreement or, if appropriate, taking the necessary actions to have the TFRP account assigned via ICS.

5.7.6.1.3 (12-07-2012)

Appealing the Proposed Assessment

1. Letter 1153(DO) advises the responsible party of his or her appeal rights. The form that the appeal must take is based on the dollar amount of the proposed assessment.
2. Letter 1153(DO) also advises the responsible party that they may contact the revenue officer within ten days of the Letter 1153(DO) if:
 - They don't agree with the proposed assessment.
 - Have additional information to support their case.
 - Wish to try to resolve the matter informally.

Note:

In order to preserve their appeal rights, the responsible party must mail (or fax, if applicable) a written appeal within 60 days of the mailing or personal delivery of the letter (75 days if the letter is addressed to the responsible party outside of the United States). If the revenue officer does not agree with the information submitted informally, then the revenue officer should advise the taxpayer that they must follow the appeal procedures included in the Letter 1153(DO).

3. TFRP cases are also eligible for Fast Track Mediation (FTM). This program is designed to expedite case resolution since the entire process normally takes 30-40 days to complete. Additional information can be found in Publication 3605, *Fast Track Mediation - A Process for Prompt Resolution of Tax Issues*. Publication 3605 should be provided to the taxpayer to explain the FTM process.

Note:

Fast Track Mediation involves Appeals employees serving as mediators and facilitating settlement discussions while jurisdiction of the case is still with Collection. The prohibition against ex parte communications between Appeals employees and originating function employees **does not** apply to FTM because the Appeals employees are not acting in their traditional Appeals settlement role. Ex parte communications, such as a private caucus between the Appeals mediator and Collection employees during the course of the mediation session, is permissible under the ex parte communication rules. Part of the role of the mediator is to meet separately with each side in order to bring about a resolution.

4. The ASED is only extended for cases where the taxpayer files a proper appeal within the allowable time period; FTM has no impact on the ASED or the regular appeals procedures. Advise the taxpayer that even if they choose FTM, they must continue to follow the procedures in Letter 1153(DO) by filing the appropriate request within 60 days of issuance of the Letter 1153(DO) if they wish to have the case considered by the Appeals office in case the FTM is not resolved in their favor.

5. Both the taxpayer and the revenue officer must agree to mediate. The taxpayer must have completed a Form 4180, *Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Tax*, and supplied all requested back-up documentation related to the trust fund recovery penalty investigation. To initiate the FTM process, the revenue officer will complete a Form 13369, *Agreement to Mediate*, and a brief summary of issues in memorandum form and forward the documents to Appeals within three days of securing the taxpayer's signature.
6. If the parties do not reach an agreement, then the case will be forwarded to Appeals through Advisory if the taxpayer followed the instructions in Letter 1153(DO) regarding the formal appeal process. The case will then be assigned to a different Appeals officer. If the taxpayer did not follow the formal appeal process, the case should be forwarded for assessment. The taxpayer may still file a claim for refund after assessment if appropriate payment has been made.
7. If the revenue officer agrees with the information that was submitted informally or if the parties reach an agreement through the mediation process, then the revenue officer should change the determination by following the procedures in IRM 5.7.6.1.7.
8. If the revenue officer does not change the determination based on the information submitted informally, he or she should advise the taxpayer to follow the formal protest procedures outlined in Letter 1153(DO) in order to protect his/her appeal rights.
9. If the amount of tax liability proposed for the period is:

Dollar Amount	Type of Appeal
\$25,000 or Less	Small Case Request
More than \$25,000	Formal Written Protest

Note:

If one tax period is more than \$25,000 the taxpayer must submit a Formal Written Protest.

10. IRM 5.7.6.1.4 contains the guidelines on the information that the taxpayer should include in a Small Case Request. IRM 5.7.6.1.5 contains the information that the taxpayer should include in a Formal Written Protest. The responsible party should submit any additional information or documentation that he or she wants the Settlement Officer/Appeals Officer to consider.

Note:

Usually appeals of penalty cases involve issues of responsibility and/or willfulness or how the penalty was calculated.

**5.7.6.1.4 (04-13-2006)
Small Case Request**

1. The potentially responsible party should submit a Small Case Request in duplicate and should include:
 - A copy of the Letter 1153(DO) or the responsible party's name, address, Social Security number, and any other identifying information.
 - A statement that the responsible party wants an Appeals conference.
 - A list of issues the responsible party disagrees with and an explanation of why he or she disagrees.

**5.7.6.1.5 (04-13-2006)
Formal Written Protest**

1. The potentially responsible party should submit a Formal Written Protest in duplicate and should include:
 - The responsible party's name, address, and Social Security number.
 - A copy of the Letter 1153(DO) or date and number of the letter.
 - A statement that the responsible party wants a conference.
 - The tax periods involved (from Form 2751).
 - A list of issues the responsible party disagrees with and an explanation of why he or she disagrees.

Note:

The following statement must be added to declare that the information submitted in this item is true: "Under penalties of perjury, I declare that I have examined the facts presented in this statement and any accompanying information, and, to the best of my knowledge and belief, they are true, correct, and complete."

- If applicable, the law or other authority the responsible party is relying on to support his or her arguments along with an explanation of what the law is and how it applies.
2. If an authorized representative (Form 2848, *Power of Attorney and Declaration of Representative*, or a properly written power of attorney or authorization is acceptable) prepares and signs the protest for the responsible party, he or she must substitute a declaration stating:
 - That he or she submitted the protest and accompanying documents.
 - Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

**5.7.6.1.6 (12-07-2012)
Receipt of Protest**

1. If the responsible party responds to Letter 1153(DO) within the appropriate time frames (see IRM 5.7.3.6.2, *Impact of Letter 1153(DO) on Assessment Statute*, and IRM 5.7.6.1(1)), review the request within 10 days of receipt to determine if the information is complete as discussed in IRM 5.7.6.1.4, *Small Case Request*, or IRM 5.7.6.1.5, *Formal Written Protest*.

Note:

A protest filed within the appropriate time frame is considered timely even if it is incomplete. Retain the protest mailing envelope (or original faxed document) so the timeliness of the protest can be determined. Stamp the protest with the date it was received and document receipt of the protest in the ICS case history. **If a protest is timely filed in a case in which Letter 1153 (DO) was properly delivered before the expiration of the ASED, the ASED will not expire before 30 days after Appeals' final administrative determination or 90 days after the date of the mailing or delivery of the Letter 1153 (DO), whichever is later.**

Note:

A timely filed protest that is signed by a representative, who has either failed to submit a power of attorney or submitted a defective one, is considered timely. This original filed protest is still valid even if the responsible party later decides to represent him/herself.

2. If the information in the protest is incomplete, contact the taxpayer/representative to inform him/her that any defects in the protest should be corrected. If the responsible party does not provide a perfected protest prior to the end of the 30-day period to complete TFRP processing and forward the case to Advisory CPM, the revenue officer should still follow the procedures in IRM 5.7.6.1.8. Appeals will accept jurisdiction of a TFRP protest even if all information as outlined in IRM 5.7.6.1.4, *Small Case Request*, or IRM 5.7.6.1.5, *Formal Written Protest*, is not included in the protest.
3. The responsible party is not entitled to appeal the proposed TFRP if he/she did not file a timely protest. Refer to instructions contained in IRM 5.7.6.1 to determine whether the protest is timely. If the taxpayer's protest is untimely, the employee handling the proposed TFRP assessment will:
 - A. Contact the taxpayer to notify that the protest was late and the Service will assess the TFRP;
 - B. Advise that the taxpayer may file Form 843, *Claim for Refund and Request for Abatement*, once the TFRP is assessed;
 - C. Not transmit the case to Appeals;
 - D. Assess the trust fund recovery penalty.

5.7.6.1.6.1 (12-07-2012)

Review of TFRP Protest for New Information

1. The revenue officer will review the taxpayer protest to determine if the taxpayer has raised new information. New information is information that was not previously discussed with or raised by the taxpayer, or not previously investigated and documented by the revenue officer.

Example:

A revenue officer conducts a Form 4180 interview with a taxpayer who states he did not sign checks for the business. Subsequent to the Form 4180 interview, the revenue officer documents a review of a sampling of checks and determines that the individual did sign checks for the quarters of the proposed TFRP. The taxpayer submits a protest stating that he did not sign checks for the business. This is not new information.

Example:

A taxpayer submits a protest stating that he was not willful because the business did not have funds to pay the taxes. The revenue officer had previously documented that the taxpayer allowed payments to other creditors in preference to the taxes. This is not new information.

Example:

A taxpayer submits a protest that states he was out of the country for a sustained period during the liability periods, and had not previously shared this information with the revenue officer. This is new information that may require additional investigation by the revenue officer.

5.7.6.1.6.2 (12-07-2012)

Protest Does Not Include New Information

1. If the taxpayer protest **does not** identify new information requiring additional investigation by the revenue officer, the revenue officer will:
 - A. Document receipt of the protest in the ICS history with a statement that the taxpayer protest was received on (date), did not contain new information and the case is being forwarded to the group manager for review prior to transmission to Advisory.

Caution:

Due to ex parte communication rules the revenue officer should not make any commentary in the ICS or ATFR histories regarding the merits of the protest and should not prepare any memorandum discussing the issues or the basis for the original assertion recommendation. (See Revenue Procedure 2012-18, *Ex Parte Communications between Appeals and other Internal Revenue Service Employees.*)

- B. Input the "Protest Received" date on ATFR.
- C. Submit the TFRP case file for managerial review.

Note:

The manager must ensure that no prohibited ex parte communications are included in the TFRP case file or the case history before approving the transmittal of the case to Advisory.

Example:

A revenue officer received a protest from a taxpayer protesting a proposed TFRP. The revenue officer determined the protest did not contain any new information, and documented receipt of the protest in the ICS case history with a statement that the case would be forwarded for managerial review prior to submission to CPM. The revenue officer did not violate the ex parte communication rules in transmitting the administrative file to Appeals as no history discussing the merits of the issues raised in the taxpayer's protest were documented in the ICS case history.

5.7.6.1.6.3 (12-07-2012)

Protest Includes New Information

1. If the taxpayer protest includes new information requiring additional investigation by the revenue officer, the revenue officer will:
 - A. Document receipt of the taxpayer protest in the ICS history and **only** the facts concerning the new information requiring additional investigation.
 - B. Input the protest received date on ATFR.
 - C. Conduct additional investigation of the new information as appropriate, and document the ICS history with the investigation actions and results of the investigation. The revenue officer will complete the additional development within the 30-day period to complete TFRP processing. In the event that an employee is unable to meet the 30-day time period, he/she will document the reason for the delay in the ICS history.
2. If the additional investigation results in a decision by the revenue officer to concede all or a portion of the assertion, follow the procedures in IRM 5.7.6.1.7, *Revenue Officer Agrees With Protest*.
3. If the additional investigation **does not** result in a decision by the revenue officer to concede, follow procedures in IRM 5.7.6.1.8, *Revenue Officer Disagrees With Protest*.

5.7.6.1.7 (08-05-2013)

Revenue Officer Agrees With Protest

1. If the information that the responsible party submits changes the revenue officer's determination on the case, the revenue officer may concede the case in whole or in part. See IRM 5.7.6.1.8, *Revenue Officer Disagrees With Protest*, for the procedures to follow if the revenue officer does not change his or her determination based on the information that was submitted with the protest.

2. To make the appropriate change on Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, input the protest received date on ATFR and change the responsibility to partial or none for each period. The TFRP should then be re-calculated and the applicable forms updated. Group manager approval must be secured on an amended Form 4183.
3. When the decision is made to reverse all or a portion of the periods on Letter 1153(DO), the revenue officer will take the following actions:
 - Document ICS history with the facts supporting the decision to reverse the prior recommendation.
 - Amend Form 4183 on ATFR and submit the TFRP case file for managerial review and approval.
 - After group manager approval of the amended Form 4183, generate Letter 1153W, *Proposed Trust Fund Recovery Penalty Rescission Notification*, using ATFR for the applicable periods no longer recommended for assertion.
 - Issue Letter L1153W and a copy of Letter 1153(DO) to the taxpayer. Retain a copy of Letter 1153W in the TFRP case file.
 - If the assessment recommendation is reversed for all periods, the TFRP file should not be forwarded to CPM. Retain the information in the business case file.

Note:

Letter 1153W cannot be issued after a protest has been forwarded to Appeals.

Caution:

Due to the clarification on ex parte communication with Appeals contained in Revenue Procedure 2012-18, *Ex Parte Communications between Appeals and other Internal Revenue Service Employees*, which applies to communications that take place after May 15, 2012, it is important that revenue officers document ICS regarding the determination factors only for those periods being conceded. The revenue officer should not make any comments in the ICS or ATFR histories regarding the merits of the protest for the periods not conceded and should not prepare any memorandum discussing the issues or the basis for the original assertion recommendation.

Note:

If Letter 1153W is issued, it will nullify Letter 1153(DO) for the periods listed on Letter 1153W, and there will be no effect on the Assessment Statute Expiration Date (ASED).

4. If a responsible party protests the **entire** assessment and:

IF:	THEN:
the revenue officer concedes the case in part	make the appropriate changes per IRM 5.7.6.1.7(2), issue Letter 1153W for the conceded periods only, and follow the procedures in IRM 5.7.6.1.8 for the portion of the TFRP that is still being protested
the revenue officer concedes the case in whole	make the appropriate changes per IRM 5.7.6.1.7(2) and issue Letter 1153W

5. If the taxpayer is only protesting part of the assessment and the revenue officer agrees with the information submitted, the revenue officer will make the changes on Form 4183 as indicated in IRM 5.7.6.1.7(2), issue Letter 1153W for the tax periods being conceded, and attempt to secure the taxpayer's signature on the updated Form 2751.

Example:

An RO conducts a TFRP investigation, secures managerial approval of Form 4183, and issues Letter 1153(DO). After issuing Letter 1153(DO), the RO receives a protest with additional information that results in a decision by the RO to reverse the original assessment recommendation in part. The RO documents ICS, addressing only the information related to the periods being conceded, prepares an amended Form 4183, and submits the TFRP case file for managerial review and approval. Following managerial approval of the amended Form 4183, the RO generates and issues Letter 1153W to the taxpayer for the periods being conceded only. The RO follows guidance in IRM 5.7.6.1.8, *Revenue Officer Disagrees With Protest*, to transmit the non-conceded periods to Advisory.

Reminder:

If the TFRP will not be assessed on any periods, the TC 130, *Entire Account Frozen from Refunding*, which is systemically generated following the input of Letter 1153 delivery date on ATFR, must be reviewed to determine if reversal of the TC 130 is appropriate. The TC 130 may remain appropriate on an individual account, as there may be additional pending TFRP assessments from a different business or related sole proprietor liabilities. If none of these circumstances are present, initiate action to input TC 131, *Reversal of TC 130 Refund Freeze*.

**5.7.6.1.8 (08-05-2013)
Revenue Officer Disagrees With Protest**

1. If the information that the responsible party submits does not change the revenue officer's determination on the case, or if the responsible party protests the entire assessment and the revenue officer only concedes the case in part, the revenue officer will:
 - A. Secure managerial concurrence of decision.
 - B. Attempt to make telephone contact with the taxpayer to explain the results of the additional investigation.
 - C. Document the ICS history, notating if contact was made with the taxpayer and the details of the discussion.
 - D. If the revenue officer is unable to make contact with the taxpayer within a reasonable time period, the revenue officer will forward the TFRP case file to the group manager.
2. Upon receipt of the TFRP case file, the group manager will take the following actions:
 - A. Review the file to determine that the assessment is fully supported and the case file contains all the necessary documents, and document this review action in ICS.
 - B. Review the TFRP case file and ICS history to determine if any **new** information has been sufficiently addressed and documented.
 - C. If the new information requires additional investigation, the group manager will return the TFRP file to the revenue officer.
 - D. If the new information has been sufficiently addressed and documented, and the revenue officer was unable to make telephone contact with the taxpayer, the group manager will prepare a letter to the taxpayer that identifies the new information and a brief summary of the results of the additional investigation.
 - E. Document issuance of the letter to the taxpayer in the ICS history, and place a copy of the letter in the TFRP case file.

Note:

The group manager must ensure that no prohibited ex parte communications are included in the TFRP case file or the case history before approving the transmittal of the case to Advisory. If the case history contains commentary that is determined to violate the ex parte communication rules, the manager will take appropriate action, which could include sharing the information with the taxpayer, or following ICS history removal procedures detailed in IRM 5.1.10.7, *Case Histories*.

3. After group manager approval, the revenue officer will take the following actions:

- A. Send Letter 1154(DO) to the responsible party and enter the date in ATFR.
- B. Generate and print Form 2749, *Request for Trust Fund Recovery Penalty Assessment*, and Form 3210, *Document Transmittal*.

Note:

If the taxpayer submits a **timely appeal** do not make a quick assessment. (See IRM 5.7.3.6.2(2).)

- C. Input the "2749 to CPM" date onto ATFR
- D. Forward the case file, with the printed Form 2749 and supporting documents, including the protest mailing envelope (or original faxed document) in the appropriate case file tabs, (Document 9708), to Advisory. Advisory will review the file for completeness and forward to Appeals. **Revenue Officers are NOT to send the case file directly to Appeals.**

Example:

A revenue officer received a protest from a taxpayer protesting a proposed TFRP. The revenue officer documented the ICS case history that the protest contained new information. The revenue officer conducted an additional investigation of the new information and determined that the recommendation to assert the TFRP remained appropriate for three of the four quarters originally recommended for assertion. The revenue officer amended the Form 4183 on ATFR to remove the quarter no longer recommended for assertion. The revenue officer contacted the taxpayer by telephone to advise the taxpayer of the results of the investigation and documented the ICS history of the contact. The revenue officer did not violate the ex parte communication rules in transmitting the administrative file to Appeals because the additional investigation results were shared with the taxpayer, which was documented in the ICS case history. The revenue officer forwarded the TFRP case file to the group manager, who reviewed it to determine if the new information had been sufficiently addressed and documented and that no prohibited ex parte communications were included in the TFRP case file or the case history before approving the transmittal of the case to Advisory.

Example:

A revenue officer received a protest from a taxpayer protesting a proposed TFRP. The revenue officer documented the ICS case history that the protest contained new information. The revenue officer conducted an additional investigation of the new information and determined that the recommendation to assert the TFRP remained appropriate. The revenue officer attempted to contact the taxpayer by telephone to advise the taxpayer of the results of the investigation, but was unable to reach the taxpayer and documented ICS. The revenue officer submitted the TFRP case file to the group manager, who after reviewing the case file to determine if the new information had been sufficiently addressed and documented, issued the taxpayer a letter advising of the final determination, documented ICS, and placed a copy of the letter in the TFRP case file. No ex parte communication rules were violated by transmitting the administrative file to Appeals because the additional investigation results that were documented in the ICS history were shared with the taxpayer in the letter from the group manager.

Example:

A revenue officer received a protest from a taxpayer protesting a proposed TFRP. The revenue officer documented the ICS case history that the protest contained new information. The revenue officer conducted an additional investigation of the new information and determined that the recommendation to assert the TFRP remained appropriate. The revenue officer documented the results of the additional investigation, but did not contact the taxpayer by telephone to advise the taxpayer of the results of the investigation and the manager did not send a letter to the taxpayer containing the results of the additional investigation. The revenue officer forwarded the TFRP case file to Advisory for transmission to Appeals. The revenue officer violated the ex parte communication rules because the written communication in the ICS history addressing the new information raised in the taxpayer's protest was not shared with the taxpayer.

- 4. The administrative TFRP case file transmitted to Appeals is not an ex parte communication since it sets forth the boundaries of the dispute between the taxpayer and the Internal Revenue Service and forms the basis for Appeals to assume jurisdiction. The TFRP case file should include all information that supports the original recommendation, as well as any work papers reflecting the manner in which payments have been applied, specifically any payments directed by the taxpayer, court order, etc.
- 5. Upon receipt of the TFRP package, Advisory will conduct a technical review of the case file, and if it is complete and acceptable, will forward it to Appeals. (See IRM 5.7.6.1.9)
- 6. **Letter 1153W cannot be issued after a protest has been forwarded to Appeals.**

5.7.6.1.9 (08-27-2010)

Transmittal of Case to Appeals

- 1. After receipt of the TFRP file, Advisory will review the case file for completeness and the information available on ATFR prior to transmitting the case to Appeals.
- 2. When the case is sent to Appeals, Advisory will:
 - A. Enter onto ATFR the date sent to Appeals.
 - B. Annotate Form 2749 in red "ASED extended by TBOR 2" and the earliest ASED for cases where a timely protest was filed. This will alert Appeals to any statute situation and alert Advisory of the need to quick assess (IRM 5.7.6.3) if the proposed assessment is sustained by Appeals.
 - C. Attach Form 3210 to the case file. Notate "Case under Taxpayer Bill of Rights 2". The remarks section of Form 3210 must reflect "TFRP Appeal Case - Advisory Review Completed."
 - D. Control the case on ICS by creating a case and a Non-Field (NF) OI under the SSN of the potentially responsible person.
- 3. Submit related cases (two or more responsible persons for the same corporation) together whenever possible.

Note:

For cases where one or more responsible party agrees to the assessment and at least one other party is protesting the assessment, submit all files together to Advisory for cases that are being protested. Since the ASED is not protected for the cases that are not being protested, Advisory will complete the review and will submit the non-protested cases for assessment and will forward the protested cases to Appeals.

5.7.6.1.10 (08-27-2010)

Controlling and Monitoring Appeals Cases

- 1. Each territory should establish a system for reviewing decisions made by Appeals to determine whether quality issues exist that need to be addressed. The territory should arrange periodic meetings with Appeals to discuss trends, workloads and other issues of interest. Advisory may also establish a process to follow-up on overage Appeals cases.
- 2. If Appeals sends a case back asking for further information, provide the information within 45 calendar days. This date may be extended by mutual agreement. Appeals will retain jurisdiction on these cases if the ASED is held open only by the timely protest. This is to preserve the time in Appeals plus 30 days, under IRC 6672(b).
- 3. Once a final determination has been made, Appeals will:
 - Notify Advisory of its decision.

- Notate their memorandum "ASED expires 30 days from (the specific date Appeals has made their determination)" when applicable.

Advisory will update ATFR with the date the case was returned from Appeals and the decision (i.e., No change, Partial Change, or Not Responsible) made by Appeals. Advisory will also make an ICS history entry with the same information and note when ATFR was updated.

Note:

If a responsible person has been determined to be responsible for only part of a quarter, the amount of that quarter will have to be changed to reflect the amount specified in the decision by Appeals.

4. If Appeals does not sustain the original proposed assessment, a new Form 2749 must be printed to reflect the correct TFRP amount based on the decision by Appeals.
5. **Advisory will be responsible for completing any necessary quick assessment action (IRM 5.7.6.3) and ensuring the ASED is protected on these Appeals cases.**

**5.7.6.2 (08-27-2010)
Revenue Officer Assessment Actions**

1. The revenue officer will generate and print a Form 2749 for each responsible person. The revenue officer will check IDRS to make sure all periods are included on Form 2749.

Note:

Do not include any periods for which there is no outstanding trust fund balance.

2. On Form 2749, the revenue officer will:
 - A. Annotate "Bankruptcy" in red on top of the form and provide basic bankruptcy information for cases where the responsible party or the employer has filed bankruptcy.
 - B. Verify the correct entity name, address and TIN by using CC INOLE.

Note:

Prepare Form 2363, *Master File Entity Change*, when the information on CC INOLE is not current.

- C. Leave blank the blocks for "Amount of Penalty Assessed," "Assessment Date," and "Identifying Number."

3. The revenue officer will prepare Form 3210A, enter the "2749 to CPM" date onto ATFR, and forward the case file to Advisory.

Note:

Include Form 2750 if a waiver to extend the statutory period to assess the TFRP was secured from the taxpayer. Verify that the form was signed and dated before the ASED expiration by both the responsible person (or authorized representative) and an authorized Service delegate.

4. If levy information was secured for a responsible party, prepare Form 4844, *Request for Terminal Action*, so the levy information can be loaded to the IDRS levy file. The name, address, and TIN of the responsible party will be included on the Form 4844, and the Remarks section will contain:
 - Levy source name and address
 - Ending period of current tax year
 - Current IDRS cycle period
 - Wage Earner Code (P-Primary if taxpayer files Form 1040 individually or if the taxpayer files a joint Form 1040 and has the primary TIN; S-Secondary if the taxpayer files a joint Form 1040 and has the secondary TIN)
 - Levy Literal = "RT"

**5.7.6.3 (08-27-2010)
Quick and Prompt Assessment Actions**

1. Quick assessment procedures are required when the assessment statute expires within 30 days.

Note:

If a timely appeal is received, do not make a quick assessment. (See IRM 5.7.3.6.2(2).) Advisory is responsible for making the quick assessments once the appeals determination is final (IRM 5.7.6.1.10).

2. Prompt assessment procedures should be used when collection appears to be at risk and the intention is to proceed with collection action immediately following the period for notice and demand.
3. Do not prompt assess the TFRP if:
 - The taxpayer will be granted or already has an existing defaulted installment agreement.
 - The assessment will be reported as Currently Not Collectible.
 - There are no distrainable assets or levy sources.
 - No enforcement action is planned.
4. Quick or prompt assessment for a TFRP may be made only after the taxpayer takes one of the following actions:
 - Signs Form 2751
 - Fails to respond to the Letter 1153(DO) within the appropriate time period
 - Completes the appeal process
5. Quick and prompt assessments may be submitted as facsimile (fax) requests (IRM 5.7.6.3.1).

• **Note:**

Ensure that the information is submitted to the Manual Assessment Unit at the Ogden SB/SE Compliance Center since only that center is staffed to make these types of assessments.

- The initiating office will prepare a separate Form 2859, *Request for Quick or Prompt Assessment*, for each period that is to be assessed. If one period on Form 2749 must be quick assessed in order to protect the statute, all periods on the Form 2749 must be quick assessed. Complete Form 2859 with all necessary information, including the initiator's name and address. Also include information as to whether the assessment is "agreed" or "unagreed." Managerial approval of Form 2859 is required.

Reminder:

Only use "agreed" if the taxpayer signed Form 2751.

- For fax assessments, the Ogden Manual Assessment Unit will prepare Form 3552, *Prompt Assessment Billing Assembly*, and forward it to the initiator. The initiator will immediately deliver or mail certified Parts 3 and 4 of Form 3552, along with Publication 1, to the taxpayer. Notice 960 may also be included with Form 3552 to remind the taxpayer of the procedures to follow in order to file a claim for refund and request abatement of the liability. Multiple Forms 3552 for the same taxpayer may be mailed together. Accounting Control/Services will also forward copies of the Forms 2749 and 3552 to the TFRP unit in Compliance Services Collection Operations (CSCO) for input of the appropriate cross-referencing information and UNLCER information.
- Send the TFRP case file to CPM Advisory where it will be maintained until retired to the Federal Records Center (see IRM Exhibit 1.15.28-1 for TFRP records retention information).**

5.7.6.3.1 (08-27-2010)

Fax Requests for Quick or Prompt Assessments

- For fax requests, the initiating office will fax the following information to the Ogden Manual Assessment Unit:
 - Form 3210, *Document Transmittal*, listing each manually assessed period, one per line, so the assessment DLN can be written next to the period and faxed back to the originator
 - Parts 1 of Form 2859 (a separate Form 2859 is required for each period)
 - Parts 1 of Form 2749

Note:

These forms must be submitted for each separate period that is to be assessed.

- Upon receipt, the Ogden Manual Assessment Unit will process the request and fax the Form 3210 to the initiator and provide the 23–C date and the DLN.
- After receiving the documents from the initiator and making the assessment, the Ogden Manual Assessment Unit will send a copy of Form 2749 (with the DLN and 23–C date entered) and Form 3552 to the TFRP unit in CSCO for input of the appropriate cross referencing and UNLCE information.

5.7.6.4 (12-07-2012)

Case File Documentation

- A completed TFRP case file will consist of the following documents:

Form/Letter	Description
Form 3210A	Document Transmittal for Trust Fund Recovery Penalty Cases
Form 2749	Request for Trust Fund Recovery Penalty Assessment
Form 4183 (including page 4)	Recommendation Re: Trust Fund Recovery Penalty Assessment
Form 4180 (or an explanation as to why the form is not included)	Report of Interview or Personal Liability for Excise Tax with Individual Relative to Trust Fund Recovery Penalty
Letter 1153(DO) with proof of mailing, if not personally delivered	Letter giving taxpayer 60–day notice of proposed Trust Fund Recovery Penalty (file copy must be dated)
Form 2751	Proposed Assessment of Trust Fund Recovery Penalty
	Corporate ICS balance due case history
	TFRP Investigation history (ATFR or otherwise)
	Collectibility determination (or reference to history date when collectibility determination was completed if not prepared as a separate document)
	Core documentation items per IRM 5.7.4.2.4, <i>Evidence That May Support Recommendations</i> , or an ICS history stating why not secured or included in the case file

- Copies of the following documents, **if** secured or prepared as part of the TFRP investigation, must also be included in the TFRP case file:

Form/Letter	Description
Form 433A or Form 433F	Collection Information Statement
Form 2750	Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty
	Photocopies of related Forms 941, <i>Employers Quarterly Federal Tax Return</i> or other tax returns
Form 9327	Nonassertion Recommendation of Uncollectible Trust Fund Recovery Penalty or of Uncollectible Personal Liability for Excise Tax
Form 4181	Questionnaire Relating to Federal Trust Fund Tax Matters of Employer
Letter 1154(DO)	Letter advising that protest is being forwarded to Appeals
Letter 1155(DO)	Letter advising taxpayer the Service received taxpayer's consent to assess Trust Fund Recovery Penalty
Form 2859	Request for Quick or Prompt Assessment
Form 2644	Recommendation for Jeopardy or Termination Assessment
Form 3552, Part 5; proof of certified mailing, if not personally delivered, or the taxpayer's copies of Form 3552 (Parts 3 and 4)	Prompt Assessment Billing Assembly
Form 3210 with DLN and assessment date from Campus	Document Transmittal

- Other information that must be included in the TFRP case file, if it was secured or prepared, includes:

- Protest letters along with the mailing envelope
- Documents submitted with a responsible person's protest
- Copy of letter issued to taxpayer by the group manager concerning investigation results of new information provided with a protest
- Back-up documentation for collectibility determinations

Note:

Adequate supporting documentation must be contained in the file(s) to fully support all recommendations for assertion. If the core documentation items listed in IRM 5.7.4.2.4, are not included in the case file, document the ICS history as to why they are not included and are not necessary.

4. Create and maintain a separate TFRP file for each party against whom the TFRP is assessed. If multiple related assessments are made with regard to a single employer, the supporting documentation should be maintained in the key file (Document 9600C) and cross-referenced in the supplemental files (Document 9526). Keep all related TFRP files together whenever possible (see IRM 5.7.6.1.9(3) for situations when not all parties are appealing the assessment).

Note:

If there are **no** responsible parties being assessed the TFRP on a particular account (for example, **if all** responsible parties were determined to be not collectible), maintain the TFRP files with the balance due case file. Do not submit these files to Advisory.

5. Include copies of any approved Forms 4183, Forms 9327, as well as any Form 2750 waivers that were secured in the balance due case file.

5.7.6.5 (08-27-2010)

Retrieving TFRP Case Files

1. TFRP case files are maintained in the Control Point Monitoring unit in Advisory for two years after the assessment. After two years the files are sent to the Federal Records Center where they are destroyed 12 years after assessment (this allows for the CSED plus 2 years for the taxpayer to file a claim for refund (Exhibit 1.15.28-1, Item 41(c)).
2. Submit requests for TFRP case files to the CPM unit in the office where the assessment was made. If the case file is no longer in the CPM unit, the CPM unit will follow the guidelines in IRM 1.15.4.9 for requesting records from the Federal Records Center using Form 2275, *Records Request, Charge, and Recharge*.

Note:

If you are unsure where the assessment was made, contact your local Advisory office for assistance.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 7. Payment Application and Refund Claims

5.7.7 Payment Application and Refund Claims

- 5.7.7.1 [Installment Agreements on the BMF Liability after TFRP Assessed](#)
- 5.7.7.2 [Pre-Assessment Payment](#)
- 5.7.7.3 [Cross-Referencing of Payments Made on Employer Balance Due and TFRP Accounts](#)
- 5.7.7.4 [Claim for Refund](#)
- 5.7.7.5 [Abatements and Adjustments of a TFRP](#)

Manual Transmittal

August 02, 2013

Purpose

(1) This transmits revised IRM 5.7.7, *Payment Application and Refund Claims*.

Material Changes

- (1) Minor editing changes made throughout the text.
- (2) Added direction in IRM 5.7.7.4(5) for revenue officer actions when Form 843, *Request for Refund and Request for Abatement*, is received.
- (3) Added direction in IRM 5.7.7.4.1.2(5) concerning ex parte communication and Fast Track Mediation.
- (4) Added direction in IRM 5.7.7.4.5(3) for Advisory actions when an appeal is received on a denied claim.

Effect on Other Documents

This material supersedes IRM 5.7.7 dated April 19, 2011. This IRM incorporates Collection Interim Guidance Memorandum SB-SE-05-0812-062, *Interim Guidance for Ex Parte Communication with Appeals*.

Audience

Small Business/Self-Employed Collection Employees

Effective Date

(08-02-2013)

Scott Reisher
Director, Collection Policy

5.7.7.1 (04-13-2006) Installment Agreements on the BMF Liability after TFRP Assessed

1. Even after assessment of the TFRP, revenue officers may still secure an installment agreement for an in-business BMF trust fund taxpayer. Once the agreement has been approved by the group manager, the revenue officer and the group manager will give consideration to withholding collection on the TFRP balance due accounts.
2. Determine the potential success of the installment agreement and consider:
 - A. What is the collection potential of the TFRP balance due accounts?
 - B. Is collection of the TFRP balance due accounts in jeopardy?
 - C. Will a Notice of Federal Tax Lien be filed?
 - D. If no lien will be filed, will the person held responsible provide a bond, other collateral, or adequate protection (IRM 5.6.1, *Collateral Agreements and Security Type Collateral*)?

Example:

Adequate protection includes otherwise unencumbered assets of the business currently secured by a federal tax lien for the same periods and having sufficient equity from which the BMF tax (non-trust and trust fund) can be paid in full.

3. When the decision is made to stay collection of the TFRP, the revenue officer will follow the procedures in IRM 5.14.7.4.1(8), *Trust Fund Recovery Penalties and Installment Agreements*.

5.7.7.2 (04-13-2006) Pre-Assessment Payment

1. A payment received on a responsible person's account prior to assessment of the TFRP will be applied using Form 3244, *Payment Posting Voucher*.
 - A. Enter IRC 6672/55 in the Form Number/MFT block.
 - B. Enter the dollar amount of the payment next to the TC 640 "Advance Payment on Deficiency" block.

C. Enter a designated payment code (DPC) with all TC 640 payments.

Note:

DPC information can be found in Document 6209, *ADP and IDRS Information*. DPC 99 is normally used; however, use DPC 10 if the payment is for a manually monitored pre-assessed installment agreement, or use another appropriate code based on the type of payment being made.

D. Enter in the Remarks section "Trust Fund Recovery Penalty Pending" followed by the name and TIN of the business and the approximate assessment date so the payment can be properly identified.

E. Submit the payment with the posting voucher on Form 795.

F. Retain a copy of Form 3244 in the TFRP case file.

5.7.7.3 (07-30-2010)

Cross-Referencing of Payments Made on Employer Balance Due and TFRP Accounts

1. After the TFRP has been assessed, payments/credits may be applied to the underlying trust fund liability, as well as to the TFRP assessment(s).
2. Compliance Services Collection Operations (CSCO) is responsible for cross-referencing already posted payments and credits among related BMF and TFRP accounts, as well as computing and cross-referencing interest on TFRP accounts. IRM 5.19.14, *Trust Fund Recovery Penalty (TFRP)*, contains the operating instructions for these activities. CSCO does not decide where to apply the incoming remittances.
3. Unless interest was also fully paid by the underlying trust fund taxpayer, the TFRP taxpayer will still be liable for the interest on the TFRP assessment.

5.7.7.3.1 (07-30-2010)

Disclosure of TFRP Payment Information

1. Section 902 of the Taxpayer Bill of Rights 2 (TBOR 2) expanded IRC 6103(e) to add subsection (e)(9) which provides for certain disclosures to persons who have been assessed the TFRP pursuant to IRC 6672. IRC 6103(e)(9) provides for disclosure to each person who has been assessed the TFRP, certain limited information regarding other persons assessed the penalty for the same underlying tax. See IRM 5.1.22.4, *Disclosure of Trust Fund Recovery Penalty Payment Information*, for additional information on what information can and cannot be disclosed, as well as the method of disclosure.

5.7.7.4 (08-02-2013)

Claim for Refund

1. The taxpayer should submit a claim for refund involving a TFRP on Form 843, *Request for Refund and Request for Abatement*. See IRM 5.7.7.4.2 for information on the additional actions the taxpayer must take and the required time frames in order for the Service to be required to withhold collection action. The taxpayer must submit a separate Form 843 for each period that the taxpayer wants considered for refund and abatement.
2. In order to file a claim for refund of a TFRP, for each applicable tax period the taxpayer must pay the portion of penalty attributable to either:
 - One employee if the TFRP is based on employment taxes
 - One transaction if the claim relates to a TFRP for excise taxes

Note:

If the taxpayer files suit the government will place the unpaid portion of the TFRP before the court by means of counterclaim.

3. Generally, the Service will consider TFRP claims for refund (and for related abatement of unpaid TFRP portions) if they are filed within two years after the date the required payment was made.
4. The Advisory office where the claimant resides should work the claim.

If:

The claimant does not reside in a location covered by the Advisory office where the claim was submitted

The Form 843 claim is received in the office where the claimant resides, but the TFRP was not assessed in that office

Then:

Use Form 3210, *Document Transmittal*, to forward the Form 843, the TFRP files, as well as any associated Appeals or other files to the Advisory office where the claimant resides.

Contact the Advisory group in the originating office to have them transmit the TFRP files as well as any other needed files or documentation.

5. If the revenue officer receives a Form 843, the revenue officer will:
 - Document receipt of the Form 843 in the ICS history.
 - Date stamp Form 843 and attach the envelope if received via mail.
 - Forward Form 843 to Advisory on Form 3210, *Document Transmittal*.

As part of Collection's ordinary consideration of a case, the revenue officer may make history entries in ICS or ATFR regarding the original basis for TFRP assessment as the Form 843 has not been denied and no appeal has been filed.

5.7.7.4.1 (04-19-2011)

Advisory Actions

1. Date stamp Form 843 upon receipt. Advisory should complete the initial review of the claim within 30 days of receipt. Form 843 claims must be processed promptly since the taxpayer may file suit if the claim is not acted upon within six months of filing. Advisory should issue interim status letters as needed to avoid unnecessary litigation. When circumstances dictate, the employee should use problem solving and negotiation techniques, and in so doing consider the applicant's perspective when analyzing the claim.
2. Open an ICS NF Other Investigation (OI) to control the claim no later than 7 calendar days of receipt in the group. Check ICS for any prior claims or inquiries. Review the closed files for any prior claims.

Note:

All actions taken on the claim will be documented in the ICS history including, but not limited to:

- Results of research and reviews
- Dates any correspondence was initiated to the claimant
- Deadlines established for the claimant, that the claimant was advised of consequences and that follow-up deadlines were established

- Determinations and reasons for the determinations

Note:

If a prior claim was rejected and the current claim provides no additional information, notify the claimant in writing that the new claim cannot be considered. Explain that the right to bring suit was lost if not exercised in a timely fashion after denial of the earlier claim. Contact Area Counsel for any questionable issues involving the taxpayer's right to bring suit. Update the ICS history with the date the claimant was notified and the reason(s) for not being considered.

3. Review transcripts to identify payments or credits made within two years of receipt of Form 843; these are the only amounts that may be considered for refund (see IRC 6511(a)).

Note:

If the taxpayer is determined to be not responsible for the TFRP, payments made beyond this two year period may not be refunded to the taxpayer but must be transferred to excess collections (see IRM 5.7.7.5.1(1)).

4. Review Form 843 for processability and to identify the issues involved. Generally, a Form 843 claim is processable if the taxpayer and tax periods can be identified, the required payment has been made, and there is some type of explanation provided. If the form is not processable:
 - A. Address the basic issues of the case, even if the claim is not processable.
 - B. Prepare a letter to the claimant outlining and explaining the defects, needed corrections, and the additional information needed.
 - C. Include a reasonable time frame for response (generally 30 days).
 - D. Close the control with no further action if no response is received.

Note:

In some cases, an incomplete claim may be considered a valid claim. In such cases, issue a formal denial (IRM 5.7.7.4.4) advising the taxpayer of his or her right to file suit. Consult Area Counsel to resolve uncertainties as to the proper response.

5. Retrieve the TFRP file(s) and review them to determine:

- If any basic procedural defects exist
- If sufficient file information exists to evaluate and respond to the issues raised

Note:

If the TFRP balance due or the employer balance due accounts are assigned to a revenue officer, identify that person and coordinate all actions and determinations with him/her.

6. If an Appeals determination was already made in regard to the TFRP at issue (whether in the form of Letter 1153 protest, claim, doubt as to liability offer in compromise, etc.), neither Advisory nor field collection employees can reverse the prior determination made by Appeals. Only Appeals can reverse such a determination. Consult Appeals to determine how a particular case should be processed.
7. If the TFRP clearly cannot be substantiated, Advisory should follow the procedures in IRM 5.7.7.4.3 for accepting the claim and preparing Form 3870 to abate the assessment. Consult Area Counsel if there are questions over the validity of the assessment.
8. Possible actions by Advisory include:
 - Acceptance of the claim (IRM 5.7.7.4.3)
 - Use of Fast Track Mediation (IRM 5.7.6.1.3(3))
 - Denial of the claim (IRM 5.7.7.4.4 or 5.7.7.4.5)
 - Referral to Appeals (may be interim or final action - IRM 5.7.7.4.1.2)

**5.7.7.4.1.1 (04-19-2011)
Incomplete TFRP Files**

1. If the information in the file is not sufficient to support assertion and/or if any procedural defects are identified, the Advisory employee will determine the need for field group assistance and, if necessary, issue a Courtesy Investigation no later than 14 calendar days after completion of the initial review to secure additional documentation.

Note:

Some procedural defects may invalidate the assessment. Consult Area Counsel if there are questions over the validity of the assessment.

2. Identify the specific additional documentation and/or corrective actions that are needed. Transmit all TFRP files with the Courtesy Investigation via Form 3210 and set a reasonable deadline for response. If the specified deadline is missed, the Advisory employee will initiate a follow-up action no later than 10 calendar days of the missed deadline date.
3. Send an interim response to the claimant.
4. If the TFRP file(s) cannot be located and/or reconstructed, consult with Counsel to make a determination as to whether the claim should be accepted (IRM 5.7.7.4.3) or if the claim should be denied (IRM 5.7.7.4.4 and IRM 5.7.7.4.5) based upon the hazards of litigation for defending the Service's position if the taxpayer later files suit.

Note:

The Service is not required to concede a case solely because the case file cannot be located or has been destroyed. If this situation arises, consult with local counsel in deciding whether or not to concede the case.

**5.7.7.4.1.2 (08-02-2013)
Referral to Appeals and Fast Track Mediation (FTM)**

1. If Advisory does not fully abate the TFRP, determine if a referral to Appeals is appropriate.

Reminder:

Neither Advisory nor field collection employees can reverse a prior determination made by Appeals. Only Appeals can reverse such a determination.

2. Situations where referral to Appeals may be appropriate include the following:

- Appeals has already made a determination on the case.
- It is not clear that the claimant was given adequate access to the appeal process (or if it is clear that they did not), and a determination by Appeals would be beneficial to the government's position.
- Other situations in which it is deemed advisable, generally to ensure or strengthen the Government's position in potential litigation.

3. If referral to Appeals is appropriate, the revenue officer will:

- Update the TFRP file.
- Prepare and mail Letter 1154(DO) to the claimant.
- Return the files to Advisory to be forwarded to Appeals.

4. Advisors should consider FTM as an option since taxpayers may also use the FTM process for Form 843 claims that are being rejected. The advisor may advise the taxpayer of FTM at any time during the review process. If FTM has not been discussed prior to issuance of the rejection letter (see IRM 5.7.7.4.4 and 5.7.7.4.5), include Publication 3605, *Fast Track Mediation - A Process for Prompt Resolution of Tax Issues*, with the letter denying the claim.

Note:

Remind taxpayers that even if the IRS agrees to use FTM, the time frames for formally appealing the denial and filing suit still apply.

5. The prohibition against ex parte communications between Appeals employees and originating function employees does not apply to FTM because the Appeals employees are not acting in their traditional Appeals settlement role. Ex parte communications, such as a private caucus between the Appeals mediator and Collection employees during the course of the mediation session, is permissible under the ex parte communication rules. Part of the role of the mediator is to meet separately with each side in order to bring about a resolution.

5.7.7.4.2 (07-30-2010)

Withholding Collection — IRC 6672(c)

1. Under IRC section 6672(c), the Service may not levy or file a suit to collect the remainder of the TFRP if the taxpayer takes the three following actions within 30 days after notice and demand for payment:

- Makes payment to satisfy the divisible assessment concept (IRM 5.7.7.4(2)).
- Submits Form 843.
- Furnishes a bond for an amount equal to 1 1/2 times the unpaid portion of the TFRP. See IRM 5.6.1, *Collateral Agreements and Security Type Collateral*.

Note:

When collection of the TFRP is in jeopardy, the Service may take immediate collection action, even if the taxpayer complies with the provisions of Section 6672(c).

- Request input of TC 520, Closing Code 82, to stay collection until the final resolution of the court proceedings and the taxpayer's claim for refund. If the taxpayer's claim is later denied, the Service must continue to stay levy action and refrain from initiating proceedings in court for collection if the taxpayer files suit within 30 days of the date of the letter denying their claim. If the taxpayer fails to file suit within this time period, the Service may take action to apply the bond to the liability. See IRM 5.6.2, *Maintenance*.
- During the pendency of a taxpayer's TFRP refund suit for tax periods beginning after December 31, 1998, the Service is also now generally required by IRC section 6331(i) to refrain from issuing new levies to collect the remainder of the taxpayer's unpaid TFRP amounts that are at issue in the suit. See IRM 1.2.14.1.4, *Policy Statement 5-16*.

5.7.7.4.3 (04-19-2011)

Claim Accepted

1. Advisory will take the actions below if the claim is allowed. Advisory will take actions a, b, and c no later than 14 calendar days of the Advisory determination that the claim is allowed.

- Notify the taxpayer in writing (Letter 3782, *Letter Accepting TFRP Refund Claim*).
- Initiate action to release bond (IRM 5.6.1, *Collateral Agreements and Security Type Collateral*) to the taxpayer if taxpayer complied with the provisions of IRC 6672(c). See IRM 5.7.7.4.2(1).
- Prepare Form 3870, *Request for Adjustment*, to adjust the TFRP account accordingly and forward to CSCO for abatement action.
- Close the ICS NF OI control once the Form 3870 is correctly processed and properly posted to IDRS.
- Print out a copy of the ICS history and include in the TFRP file along with the claim and copy of the Form 3870.
- Process the TFRP file based on the records retention schedule.

5.7.7.4.4 (04-19-2011)

Claim Denied — IRC 6672(c) Not Applicable

1. Advisory will take the actions below if the claim is denied and the taxpayer did not take the actions outlined in IRM 5.7.7.4.2. Advisory will take actions a, b, and c no later than 14 calendar days of the Advisory determination that the claim is denied.

- Issue a certified letter (Letter 3784, *Letter Denying TFRP Refund Claim - IRC 6672(c) Not Applicable*) to indicate disallowance of the claim and to notify the taxpayer of the 2-year period to file a suit. Enclose Publication 3605 if appropriate (see IRM 5.7.7.4.1.2(4)). Taxpayers should be instructed to mail appeals of denied claims to Advisory.
- Prepare and submit Form 4844 for input of TC 290 for \$0.00 (use blocking series 98) to establish a record of the claim denial on the taxpayer's account for future reference. Attach a copy of the denial letter to the input document.
- Establish a 60-day follow-up on ICS, pending receipt of an appeal.

Reminder:

Letter 3784 only grants the taxpayer a 30-day period to request an Appeals conference. The 60-day ICS follow-up allows the Service time to receive and process all timely mailed appeals.

- At the expiration of the 60 days, if a timely appeal has not been received, close the NF OI on ICS.
- Print out a copy of the ICS history and include in the TFRP file along with the claim and denial documents.
- Process the TFRP file based on the records retention schedule

G. If an appeal is received timely, follow IRM procedures for processing the appeal.

5.7.7.4.5 (08-02-2013)

Claim Denied — IRC 6672(c) Applicable

1. Advisory will take the actions below if the claim is denied and the taxpayer took the actions outlined in IRM 5.7.7.4.2. Advisory will take actions a and b no later than 14 calendar days of the Advisory determination that the claim is denied.
 - A. Issue a certified letter (Letter 3783), signed by the appropriate individual, to indicate disallowance of the claim and to notify the taxpayer of the 30-day period in which the taxpayer must bring suit under IRC 6672(c)(2) if the taxpayer wants to stay collection. Enclose Publication 3605 if appropriate. See IRM 5.7.7.4.1.2(4). Taxpayers should be instructed to mail appeals of denied claims to Advisory.
 - B. Establish a 30-day hold file and monitor the file to determine if a suit is filed timely (contact Area Counsel, if necessary, to make this determination).
 - C. Follow the procedures in 5.7.7.4.5(2) if the suit is not filed timely.
 - D. If the suit is filed timely, the TC 520 will remain on the account to stay collection until the final resolution of the court proceedings and the taxpayer's claim for refund.
 - E. Close the control on the inventory database at the end of the 30-day hold period.
 - F. Associate the closed control file with the TFRP file. Maintain the TFRP file in the Advisory office for at least 45 days following issuance of the denial letter. If the taxpayer later files an appeal, then the TFRP file can more easily be submitted to Appeals for their review.
2. If the suit is not filed timely, the bond, or other collateral, will be converted to satisfy the TFRP liability in accordance with the agreement. Request reversal of the TC 520, and process the bond or other collateral in accordance with procedures in the IRM 5.6.2, *Maintenance*. Do not assign the balance due accounts to the field.
3. Advisory will take the actions below if the claim is denied and the taxpayer submits a timely request for appeal:
 - Document receipt of the appeal request in the ICS history with a statement that the taxpayer appeal was received on (date), and the case is being forwarded for managerial review prior to transmission to Appeals.
 - Issue a letter advising the taxpayer that the case is being forwarded to Appeals.
 - Forward the TFRP case file and Form 843 to Appeals on Form 3210.
 - Maintain the NF OI to monitor for the final Appeals decision.

Reminder:

Advisory should not make any additional commentary in the ICS history regarding the merits of the appeal and should not prepare any memorandum discussing the issues raised in the appeal.

5.7.7.4.6 (07-30-2010)

Informal Claims for Refund or Abatement

1. Revenue officers may process claims that are not submitted on Form 843. If the taxpayer submits a letter requesting refund and the letter contains the required elements from Form 843, contact Area Counsel to determine if the letter should be considered a valid informal claim.
2. If you allow the claim, the appropriate adjustment or abatement should be requested using Form 3870. Form 3870 should be submitted to the TFRP unit in CSCO for input of Form 3870. These adjustments or abatements may not be input in the local offices.
3. If you propose to deny the claim, prepare a letter to the taxpayer advising:
 - The proposed action
 - The reason(s) for disallowance
 - The available options (OIC, etc.)

5.7.7.5 (04-19-2011)

Abatements and Adjustments of a TFRP

1. **Abatement** of a TFRP liability is made in any of the following circumstances:
 - A. Collection determines that all or a portion of the liability is not owed.
 - B. Appeals decides that all or part of the liability is not owed and should be conceded.
 - C. Federal court judgment is issued in favor of the taxpayer and the government decides not to appeal (Assessments of other responsible persons should not be abated based on this judgment).
2. Only Advisory is authorized to request abatements on cases outlined in b) and c) above. Advisory employees will submit abatement requests no later than 14 calendar days of notification that abatement is appropriate.
3. **Adjustment** of a TFRP liability is made in any of the following circumstances:
 - A. Taxes were collected from the underlying employer by payment or refund offset.
 - B. Payment of the TFRP has been made by one or more related TFRP taxpayers.
 - C. The Service has accepted an employer's offer in compromise of trust fund taxes for which abatement of an assessed TFRP is a condition.
4. Abatements and adjustments are requested using Form 3870. Responsibility for preparation of Form 3870 is determined as follows:

If the case is assigned to . . .

FC (balance due or other investigation) and the TFRP will be abated or adjusted
ACS and an adjustment is to be made, or abatement of TFRP does not involve a question as to responsibility and/or willfulness
ACS and abatement of TFRP involves a question as to responsibility and/or willfulness
ACS and involves payment/credit posted to be adjusted
neither FC nor ACS

Then . . .

the revenue officer assigned the case should prepare the Form 3870.
ACS should prepare Form 3870.
forward case to FC or Advisory for consideration and preparation of Form 3870
ACS should prepare Form 3870 after contacting Advisory to determine the amount and quarters of liability to be adjusted for an underlying trust fund liability.
Advisory will be responsible for preparation of Form 3870.

5.7.7.5.1 (07-30-2010)

Preparation of Form 3870 for an Adjustment or Abatement

1. Prior to completing Form 3870 for an adjustment, carefully analyze the BMF account and all related IMF accounts to ensure the adjustment is necessary. Request Forms 3870 at the same time for all related parties. Interest will be due on the IMF accounts unless the interest was already fully paid on the underlying BMF account. See IRM 5.19.14.3.6, *Computing and Cross Referencing Interest*. Since most credits will be cross-referenced systemically, do not request any adjustment for credits that have been applied to an account for less than 60 days. All TCs 241 with credit reference numbers 699 or 697 as well as TCs 538 on the BMF account need to be accurately analyzed to determine if an abatement is necessary. Check UNLCER for the BMF and all related IMF accounts since the responsible parties are not always assessed the same amount for the same quarters.

- Credit reference number 699 will be reflected on all TCs 241 input on an IMF account for payments made by any related responsible parties.
- Credit reference number 697 will be reflected on all TCs 241 input on an IMF account for payments made by the related BMF account.
- Transaction code 538 will be input on the BMF account to reflect payments made by any of the responsible parties.

2. Prepare Form 3870 for an abatement or adjustments as follows:

- Complete all information in line items 1–10 as stated.

Note:

Joint name lines do not apply to TFRP accounts.

- Enter line item 11- Reason for Adjustment: **Requested action:** Abate <\$ amount applicable> of TC 240, reference number 618, dated <enter assessed date>, or Adjust <\$ amount applicable> of TC 240, reference number 618, dated <enter assessed date> and assessed for <assessed amount of TC 240>.

Reminder:

An **abatement** is requested if the individual is determined to be not responsible for all or a portion of the TFRP; an **adjustment** is requested when the balance due needs to be updated based on payments made by other responsible persons or the employer (IRM 5.7.7.5).

- **Justification:** For abatements, the reasons specified must address responsibility and willfulness. "The taxpayer is not liable" is not sufficient justification.

Reminder:

Abatements of TFRP accounts may not be based on reasonable cause.

- Complete line item 13, including the preparer's phone number.
- Submit for approval by the preparer's immediate manager (line item 14).
- Attach an account transcript (and UNLCER print) for all applicable periods and all related accounts. The Campuses need a corrected list of periods adjusted and the resulting trust fund amounts so they can correct UNLCER and the Memo Money Amounts. For abatement requests, identify the payments to be refunded to the taxpayer and those that must be transferred to excess collections. Under IRC 6511(a), only payments made within 2 years of filing the Form 843 claim for abatement may be refunded to the taxpayer. Indicate if any collection fees, bad check fees, etc. should be abated. Be sure to include instructions to reverse any applicable TCs 241 with reference numbers 699 or 697 on other responsible parties or any TCs 538 on the corporate account based on the adjustment you are requesting.
- Send to the CSCO TFRP unit via Form 3210 or other suitable transmittal.

Reminder:

An e-mail option for Form 3870 TFRP adjustments is available through ICS templates.

Note:

Request release of lien when applicable.

3. If the Form 3870 is prepared by a revenue officer, forward to Advisory:

- A. Copy of Form 3870
- B. Revised TFRP computation for association with the TFRP administrative file.

4. In order to ensure that the appropriate adjustments are made to UNLCER and that the appropriate cross-referencing takes place, only the TFRP unit in the compliance center can input Form 3870 TFRP adjustments. Forms 3870 on TFRP accounts may not be processed in the local offices.

5.7.7.5.2 (07-30-2010)

Reversal of TFRP Adjustments

1. The following procedures will be used on reversal of prior TFRP adjustments for:

- TFRP payments and credits from related TFRP accounts
- Compromise of Employment Excise and Partnership Tax Liabilities

2. Advisory will prepare:

- Another Form 3870, *Request for Adjustment*
- Memorandum of authority which requests a reversal of the adjustment and refers to the related Form 3870.

If . . . Then . . .

the account is on UNLCER prepare Form 3870 using UNLCER.

the account is not on UNLCER contact compliance center TFRP Unit for the information needed to prepare Form 3870

3. Manual coordination procedures must be used to assure that over collection does not occur. The employee posting a payment or credit to a balance due account must notify all other persons to whom a related case is assigned.

4. If one of the accounts is fully satisfied, other responsible units will be so advised. Form 3870 and a memorandum of authority will be prepared to adjust the account(s). The Form 3870 and memorandum are to be forwarded to the compliance center.

5. For those cases adjusted with TC 241, reference number 699, reversal of adjustments will be accomplished as follows:

- A. Advisory will advise CSCO by Form 3870 and memorandum of authority to reverse adjustment of the assessment. In the case of a reversal related to the refund suit, a suspense file should be opened so that the balance due account can be assigned to Advisory.
- B. Instruct CSCO to post TC 240, reference number 699, with an identical date and amount for each TC 241 reference number 699, posted to the module. Include dates and amounts of transactions to be reversed.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 8. In-Business Repeater or Pyramiding Taxpayers

5.7.8 In-Business Repeater or Pyramiding Taxpayers

- 5.7.8.1 [Repeater Taxpayers](#)
- 5.7.8.2 [Identifying Repeater Taxpayers](#)
- 5.7.8.3 [Pyramiding Taxpayers](#)
- 5.7.8.4 [Working Repeater Trust Fund Taxpayers to Address Pyramiding](#)
- Exhibit 5.7.8-1 [Repeater Evaluation Process Flow Chart](#)

Manual Transmittal

May 7, 2012

Purpose

(1) This transmits a complete revision with Table of Contents and text for IRM Part 5, Collecting Process, Chapter 7, Section 8.

Background

This section provides guidelines and instructions for working in-business repeater or pyramiding taxpayer cases.

Material Changes

- (1) Replaced 5.7.8.2(1) with a complete, detailed description of how a Repeater Taxpayer is identified.
- (2) Included a definition of terms in 5.7.8.2(2) to assist in identifying a Repeater Taxpayer.
- (3) 5.7.8.3(3), 5.7.8.4(5) and 5.7.8.4.2 *NOTE* identifies when a taxpayer is no longer considered a pyramider.
- (4) 5.7.8.4(4) removed reference to monthly filing and special bank accounts and replaced with reference to injunctive relief.
- (5) Added flowchart/exhibit demonstrating how a taxpayer is identified as a repeater - see IRM 5.7.8.2 (3) and Exhibit 5.7.8 - 1.

Effect on Other Documents

This material replaces text contained in IRM 5.7.8

Audience

SB/SE Revenue Officers

Effective Date

(05-07-2012)

Signed by
Scott D. Reisher
Director, Collection Policy

5.7.8.1 (05-07-2012) Repeater Taxpayers

1. The large number of in-business taxpayers who repeatedly accrue trust fund taxes is a major compliance problem. We need to properly identify these taxpayers and take appropriate action to bring them into compliance with their filing and paying requirements.

5.7.8.2 (05-07-2012) Identifying Repeater Taxpayers

1. A repeater taxpayer is defined as a taxpayer that has had more than one module with a TDA or TDI delinquency that first came into existence [see IRM 5.7.8.2(2)(c)] in the immediate past two years (i.e., 104 cycles) from the current cycle. In order for a repeater taxpayer to no longer be considered a repeater, they must achieve a good compliance record by having no TDA or TDI delinquencies first come into existence for 104 cycles. Although a taxpayer may have multiple delinquencies outstanding, the taxpayer is not considered a repeater if none of those delinquencies first came into existence within 104 cycles from the current cycle.
2. Definition of terms.
 - A. The current cycle is the cycle that corresponds with the current date. When evaluating if the taxpayer met the criteria in the past, the cycle used to determine repeater status is the cycle that includes the date you choose as the starting point to do the evaluation.
 - B. A delinquency status is defined as master file status 22 for ACS TDA, 24 for Queue TDA, 26 for Field TDA and status 03 for TDI.
 - C. The date that a delinquency first came into existence is determined on a module by module basis and there can be multiple delinquency statuses within each module. In order to determine the date that a delinquency first came into existence within a module, review the master file delinquency status history to identify the first date that one of these delinquency statuses [i.e., master file status 03, 22, 24, or 26] arose within the module.

Module Delinquency Example 1:

- 10-12-2005 master file balance due first notice status 21
- **12-1-2006 master file status 22**
- 5-10-2007 master file status 24
- 8-30-2010 master file status 26
- 12-1-2006 is the date that a delinquency first came into existence for this module.

Module Delinquency Example 2:

- **6-15-2002 master file status 03**
- 10-12-2005 master file balance due first notice status 21
- 12-1-2006 master file status 22
- 5-10-2007 master file status 24
- 8-30-2010 master file status 26
- 6-15-2002 is the date that a delinquency first came into existence for this module.

D. The modules to be considered can be currently open or resolved. Therefore, when determining if a taxpayer is considered a repeater, all modules in the account must be reviewed. Consideration should be made if the account was open for a minor penalty or small balance issue that was quickly resolved, or a del ret that was closed as not liable.

3. See Exhibit 5.7.8.1 showing the process for evaluating if a taxpayer is a repeater.

Repeater Evaluation Process Flow Chart. This is the start of the flow chart.

Process One

1. In the current cycle, is there more than one delinquency that first came into existence?
2. If yes, taxpayer is a repeater.
3. If no, continue to process two.

Process Two

4. Is there at least one delinquency?
5. If yes, continue to process three.
6. If no, continue to process five.

Process Three

7. Starting with the current cycle, evaluate whether there are any other modules with delinquencies that first came into existence in the immediate past two years or one hundred and four cycles, from this cycle?
8. If yes, taxpayer is a repeater.
9. If no, continue to process four.

Process Four

10. Starting with the cycle just prior to the cycle of that one delinquency, are there any other modules with delinquencies that first came into existence in the immediate past two years or one hundred and four cycles from that cycle?
11. If yes, continue to process five.
12. If no, taxpayer is not a repeater.

*(see note at end) Process Five

13. Are there two or more delinquencies?
14. If yes, taxpayer is a repeater.
15. If no, continue to process six.

Process Six

16. Is there at least one delinquency?
17. If yes, continue to process seven.
18. If no, taxpayer is not a repeater.

Process Seven

19. Starting with the cycle just prior to the cycle of that one delinquency, are there any other modules with delinquencies that first came into existence one hundred and four cycles prior to that cycle?
20. If yes, continue to process five.

21. if no, taxpayer is not a repeater.

Note:

This part of the process is structured to determine if a taxpayer, who was labeled as a repeater in the past, is still a repeater because they failed to achieve a good compliance record by having no TDAs or TDIs first come into existence for a two year period after they became a repeater. It is very unlikely, but possible that this part of the process may continue to loop back to the beginning of the taxpayer's filing history.

**5.7.8.3 (05-07-2012)
Pyramiding Taxpayers**

1. The large number of in-business taxpayers that are pyramiding trust fund taxes is also a major compliance problem. A pyramiding taxpayer is defined as:
 - A. In business
 - B. Not current with Federal Tax Deposits (FTDs), and
 - C. Has two or more trust fund modules assigned to Field Collection.
2. A taxpayer that is pyramiding taxes is not demonstrating a good faith effort to comply. Early intervention and continuous monitoring of Federal Tax Deposits can prevent in-business taxpayers from pyramiding.
3. Taxpayers who, after contact begin making timely and adequate Federal Tax Deposits based on the appropriate deposit schedule and have filed all outstanding tax returns, are in compliance and are no longer to be considered to be pyramiding.
4. When determining the appropriate course of action to resolve these accounts, additional weight must be given to the fact that prior efforts to educate the taxpayer on the importance of maintaining compliance have not resulted in continuous compliance.

**5.7.8.4 (05-07-2012)
Working Repeater Trust Fund Taxpayers to Address Pyramiding**

1. When a taxpayer is identified as a repeater, attempt initial contact within 45 days from receipt of the case (see IRM 5.1.10.3.1(1)) and prevent the pyramiding of trust fund taxes. Normally arrange to meet the taxpayer and his/her representative at the place of business. If such arrangements are not made, the reason why must be documented in the case history. Such a visit will be more productive and provide an opportunity to view and assess the business operation and its assets in the event a risk analysis determination needs to be completed. The field visitation will also facilitate review of any books and payroll records. In the event the RO is not able to meet the TP at the business location on initial contact, IRM 5.1.10.3(3) requires that a field call be made to the business location to view the assets when practical, but prior to closure of the case.
2. Prepare to conduct a 4180 interview at the time of the initial contact. Calculate the potential TFRP based on the current assessment and provide to the taxpayer. Use the ATFR system to make a rough calculation of the penalty and be prepared to discuss the process and the potential amount of the trust fund recovery penalty during initial contact. See IRM 5.7.3 (TFRP) for additional information.
3. Get the taxpayer current with FTDs from the date of first contact. Document the case history as to what type of depositor the business is (monthly, semi-weekly). Secure EFTPS confirmation to verify timeliness and accuracy of deposit. The Revenue Officer will monitor compliance with FTDs and verify that the FTDs being made are accurate based on the amount of the current payroll. See IRM 5.1.10, Taxpayer Contacts for more specific requirements regarding what information must be obtained during initial contact.
4. It is important for Revenue Officers to recognize the distinction between a taxpayer identified as a Repeater (IRM 5.7.8.2) and one that is pyramiding (IRM 5.7.8.3). Any decision about case actions such as IA, CNC or OIC should not be based solely on these indicators but in conjunction with other relevant aspects of the specific case. These aspects include the taxpayer's cooperation in working with the IRS to resolve the tax delinquencies; the taxpayer's ability to remain current with present and future tax obligations; and the taxpayer's ability to remain solvent while making payments on the delinquent taxes.
5. Pyramiding must be stopped immediately. Advise the taxpayer that enforcement action will be taken if acceptable proof of compliance is not provided as required while the delinquent tax problem is being resolved. In the event the taxpayer continues to pyramid, all appropriate remedies will be used to bring the taxpayer into compliance and to immediately stop the pyramiding. If routine case actions have not been an effective way to stop the pyramiding, consider alternative solutions including seizure and sale, injunctive relief and/or pursuit of TFRP.
6. Taxpayers who begin making timely and adequate Federal Tax Deposits after contact and are in compliance are no longer considered pyramiding. Follow procedures in IRM 5.7.4.8 and 5.14.7 when considering an installment agreement for these taxpayers.
7. Secure sufficient financial information during the initial contact so that enforcement action can be taken, when appropriate.
8. If it is determined during contact with the taxpayer that the business is actually "Out of Business" or the business is no longer required to file returns, the RO will immediately complete Form 2363, Masterfile ENTITY Change, or Form 4844, Request for Terminal Action, to close out the filing requirements on IDRS. Continue procedures to pursue the TFRP investigation. (See IRM 5.7.4).
9. Make a determination of the taxpayer's ability to pay current and delinquent taxes without delay.
10. Set specific deadlines when requesting information from the taxpayer. Form 9297, Summary of Taxpayer Contact, will be used in face-to-face meetings where deadlines are set. Use of the Form 9297 will ensure the taxpayer has a clear understanding of what has been requested and the specific deadline date by which the information is required to be submitted. The requirement to make FTDs and the date required to provide verification of FTD can also be listed on the Form 9297.
11. Installment agreements are not appropriate for taxpayers who continue to accrue tax liabilities after contact because they are not in compliance. See IRM 5.14.7, BMF Installment Agreements and IRM 5.7.4.8.1, Considerations for In-Business Installment Agreements, for the procedures to follow when considering an installment agreement for BMF taxpayers who begin making FTDs after contact and are no longer considered to be pyramiding.
12. Oftentimes, cases involving repeater and pyramiding taxpayers will require enforcement action. On initial contact, when a deadline is set for a specific action, the L-1058, Notice of Intent to Levy and Notice of Your Right to a Hearing will be issued with all required enclosures. Issue L-903 at the same time if no assets exist and / or levy sources are exhausted. Receipt of L-1058, or L-903 during initial contact, may prompt the repeater or pyramiding taxpayer to comply. (See IRM 5.11.1.2.2.2)
 - A. If contact is made, explain to the taxpayer the L-1058 is being issued to ensure their compliance with filing and paying requirements and failure to comply will result in enforcement action. The Revenue Officer must provide the taxpayer with their CDP rights and clearly explain the CDP process. The right to submit a Collection Due Process appeal will expire 30 days after issuance of the letter. The taxpayer will still have the opportunity for an "equivalent" hearing (See IRM 5.1.9.3.2.2) and/or to appeal a specific planned or actual collection action under the Collection Appeals Program (CAP) (See IRM 5.1.9.4).
 - B. If attempts to contact the taxpayer are unsuccessful, consider issuing L-1058 and immediate enforcement action as the next course of action.
 - C. If the taxpayer previously requested a CDP hearing for employment taxes and pyramided additional liabilities, a Disqualified Employment Tax Levy may be appropriate. (See IRM 5.11.1.4.2)
 - D. In situations of continued taxpayer non-compliance, and no viable levy sources exist, revenue officers should consider pursuing Civil Injunctions per IRM 5.17.4.17.
13. Make a lien determination within the prescribed timeframes using IRM 5.12.2 for specific guidance on whether to file or defer filing of the notice. Ensure CDP / CAP rights are provided.

14. If levy sources are exhausted and the repeater or pyramiding taxpayer has no assets which can be seized to resolve or offset the liability, consider issuing Letter 903 (DO) and Notice 931.
 - A. These procedures should be used in the most egregious cases of non-compliance and where the collection procedures have already been unproductive.
 - B. Issuance of the Letter 903 (DO) will assist in promoting compliance.
 - C. Once the Letter 903 (DO) is issued, subsequent delinquencies by the taxpayer will be accelerated to the field for prompt enforcement action.
15. During a taxpayer contact, when the taxpayer asks to be referred to the Taxpayer Advocate Service (TAS) or the taxpayer meets TAS criteria (See IRM 13.1.7) and the taxpayer's issue cannot be resolved within 24 hours, prepare and forward Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order) to the Local Taxpayer Advocate (See IRM 13, Taxpayer Advocate Service). Generally, when a case has been assigned to TAS, collection actions, such as liens and levies, should be suspended until TAS has had a reasonable opportunity to resolve the disputed issue.

Note:

If the issue cannot be completely resolved within 24 hours but steps are taken to begin resolving the taxpayer's issues within 24 hours, do not forward Form 911 except in cases where the taxpayer has requested to be assigned to TAS unless the case meets the criteria in IRM 13.1.7.4.

5.7.8.4.1 (05-07-2012)

Seizure and Sale of Repeater Taxpayer's Assets

1. The repeater taxpayer's history of non-compliance is an important factor when seizure of an in-business taxpayer's assets is contemplated (See Policy Statement P-5-34). However, if additional unpaid trust fund liability accrues after contact with the taxpayer, a seizure should be made if, after conducting a risk analysis (IRM 5.10.1.3.2(3)), the seizure is determined to be the most appropriate action. The Revenue Officer must ensure that there will be expected net proceeds from the sale and that all other IRM and IRC requirements are followed.

Note:

Taxpayers who continue to pyramid liabilities after contact are considered "won't pay " taxpayers as indicated in IRM 5.10.1.6(2) and the Revenue Officer must proceed with enforced collection as necessary.

5.7.8.4.2 (05-07-2012)

Trust Fund Recovery Penalty Procedures

1. If the liability is not fully paid on initial contact or a payment alternative to result in full payment is not imminent (within 90 days - see IRM 5.7.4.1(3)), and/or the taxpayer fails to remain current with FTD's and filing requirements the pursuit of the TFRP investigation and possible assessment as outlined in IRM 5.7.4.1 should be considered.
2. Make a collectability determination (See IRM 5.7.5) against those determined to be both responsible and willful under the TFRP.

Note:

Taxpayers who begin making appropriate Federal Tax Deposits after contact and are in compliance are no longer considered pyramiding. A TFRP determination must still be made. The procedures in IRM 5.7.4.8 and/or 5.14.7 should be followed when considering an installment agreement for these taxpayers.

3. When conducting the TFRP investigation, be sure to consider the potential for additional liabilities from unfiled returns.

5.7.8.4.3 (05-07-2012)

Offers in Compromise

1. In-business taxpayers who submit an offer to compromise on employment taxes must demonstrate compliance by timely filing and making timely Federal Tax Deposits while the offer is being investigated. If the taxpayer fails to do so, an offer that was previously determined processable will be returned. (See IRM 5.8.7.2.2(3)).

Exhibit 5.7.8-1

Repeater Evaluation Process Flow Chart

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 9. Federal Contractors

5.7.9 Federal Contractors

- 5.7.9.1 [Overview](#)
- 5.7.9.2 [Identifying Federal Contractor Cases](#)
- 5.7.9.3 [Working Federal Contractor Cases](#)
- 5.7.9.4 [Federal Contractors and the Federal Payment Levy Program \(FPLP\)](#)
- 5.7.9.5 [Federal Contractors and Form 668-A\(ICS\)/Form 668-A\(c\)\(DO\), Notice of Levy](#)
- 5.7.9.6 [Federal Contractors Awarded an IRS Contract](#)
- Exhibit 5.7.9-1 [Indebted Federal Contractor Awarded an IRS Contract - Case Status 26](#)
- Exhibit 5.7.9-2 [Indebted Federal Contractor Awarded an IRS Contract - Case Status 22 or 24](#)

Manual Transmittal

June 20, 2014

Purpose

(1) This transmits revised text for IRM 5.7.9, Trust Fund Compliance, *Federal Contractors*.

Material Changes

- (1) 5.7.9.2.3 Added information about manual input and reversals of the Federal Contractor Indicator (FCI) during case investigation.
- (2) 5.7.9.3 Added information about working federal contractor cases, including:
 - Clarification of Collection Statute Expiration Date (CSED) considerations when FEDCON levies are used.
 - Decision points for recognizing a federal contractor for FEDCON levy purposes.
 - When to request input of the FCI (TC 971 AC 647).
- (3) 5.7.9.3(5) Deleted "Note" because FPLP now levies 100% of specified payments to federal contractors. The "Reminder" previously located in (4) is relocated to (5).
- (4) 5.7.9.4 Added information about FEDCON levy considerations for Federal Payment Levy Program (FPLP) Block cases.
- (5) 5.7.9.5.1 Added information about FEDCON levy with post levy CDP rights.
- (6) 5.7.9.5.2 Added information about ICS considerations for FEDCON levies.
- (7) Minor editorial changes made throughout.

Effect on Other Documents

This IRM supersedes IRM 5.7.9, *Federal Contractors*, dated February 8, 2013. This IRM incorporates Collection Interim Guidance Memorandum SBSE-05-0214-0007, *Interim Guidance Memorandum for Federal Contractor Levies Issued By Field Collection*, issued 2/10/2014.

Audience

The target audience is Small Business/Self-Employed Revenue Officers

Effective Date

(06-20-2014)

Rocco A. Steco
Acting Director, Collection Policy
Small Business/Self Employed Division
SE:S:ECS:CP

5.7.9.1 (10-28-2011)

Overview

1. This IRM provides instruction for identifying taxpayer cases involving federal contractors and vendors. Other employees in SB/SE and employees in other functions may refer to these instructions. *IRM 5.7.9.2.1* and *IRM 5.7.9.2.2*
2. Additionally, this IRM provides direction specifically for revenue officers in Field Collection (FC) for identifying and handling taxpayer cases involving federal contractors and vendors.

5.7.9.1.1 (02-08-2013)

Federal Contractors and Vendors

1. Federal executive agencies of the U.S. Government contract with independent contractors or vendors to accomplish government business.

2. The definition of federal contractor or vendor in this section applies to each taxpayer (person or entity) contracting with the Federal Government to provide property, goods, or services. A contract means a mutually binding legal relationship obligating the contractor to furnish the supplies or services (including construction) and the federal executive agency to pay for them.
3. Federal law does not prohibit a taxpayer with unpaid federal taxes from entering into contracts from the federal government.
4. The Federal Acquisition Regulation (FAR) sets forth statutory regulations and limitations, and governs the role and responsibilities of all Federal agency contracting officials. The FAR was established to codify uniform policies for acquisition of supplies and services by executive agencies, including the requirement that federal agencies do business only with responsible contractors. See FAR section 9.103(a).
5. Prior to 2008, the FAR did not require contracting officers to consider a contractor's tax delinquency as part of the responsibility determination. The only mention of tax issues in the pre-award registration process was a requirement that prospective contractors reveal whether they had been convicted of a variety of offenses which included tax evasion. The FAR was revised in 2008 to better address tax delinquency by prospective federal contractors. The revised section 9.104-5, *Certification Regarding Responsibility Matters*, requires all businesses seeking a contract with the Federal Government above the simplified acquisition threshold to certify whether they have been notified, within a three-year period preceding submission of its proposal, of any delinquent federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied. See FAR section 9.104-7 and 52.209-5.
6. IRC 6050M requires Federal executive agencies to file IRS Form 8596, *Information Return for Federal Contracts*, for taxpayers awarded certain federal contracts.
7. Most federal agencies centralize their filing of Form 8596 through the General Services Administration (GSA) Federal Procurement Data System (FPDS), and GSA reports them quarterly to the IRS. The United States Postal Service (USPS) files the Forms 8596 directly with the IRS.

Note:

The Centers for Medicare and Medicaid Services (CMS) do not consider Medicare or Medicaid providers/suppliers federal contractors subject to the Form 8596 requirement.

8. Because federal contractors and vendors are frequently paid in whole, or in part, from funds appropriated by Congress, it is imperative these entities are identified as doing business with the government and appropriate and prompt actions are taken to ensure they remain in full compliance with all Federal tax laws.

**5.7.9.2 (10-28-2011)
Identifying Federal Contractor Cases**

1. Our computer systems identify federal contractor cases on the Individual Master File (IMF) and the Business Master File (BMF). To confirm the entity is a federal contractor, check the following:
 - A. Federal Contractor Indicator. See *IRM 5.7.9.2.1*.
 - B. Federal Payment Levy Program (FPLP) Transaction Code (TC) 971 Action Code (AC) 062 Document Locator Number (DLN). See *IRM 5.7.9.2.2*.
2. Federal contractor cases can also be identified during case investigations by revenue officers. *IRM 5.7.9.2.3*.

**5.7.9.2.1 (02-08-2013)
Federal Contractor Indicator (FCI)**

1. The Federal Contractor Indicator (FCI) is a systemic and efficient means for the IRS to "identify" taxpayers who are also federal contractors.
2. The IRS matches the taxpayer identification number (TIN) from the quarterly Form 8596, against the Individual Master File (IMF) and Business Master File (BMF) TINs.
3. The matched records systemically post up to the Master File (MF) with a TC 971 AC 647 on the entity. The posting cycle and date of the TC is the quarter end date of the Form 8596. The TC 971 AC 647 indicates the taxpayer is a federal contractor and also used for TC 972 (reversal).
4. The TC 971 AC 647 transaction will cause a federal contractor indicator to be set on the IMF and BMF.

Reminder:

The federal contractor indicator is an "entity" indicator.

5. The TC 971 AC 647 will post to the entity, regardless of whether the taxpayer has a balance due or unfiled return.
 - A. The TC 971 AC 647 displays the quarterly posting cycle, and a "contract end" date that is reported on the Form 8596.
 - B. If there are multiple Forms 8596 reported for one taxpayer in a quarter, then the latest of the contract dates is displayed.
 - C. If no contract end date is on the Form 8596, then a default 3 year date expiration (from the posting cycle/date) is displayed.
 - D. If the contract end date has expired, then a TC 972 AC 647 is posted. BMF generates these reversals once a year in January, and IMF posts the reversals twice yearly (January and June).
 - E. The TC 971 AC 647 may also be updated or overlaid by a new or additional Forms 8596 reported later.
6. Our computer systems identify the federal contractor indicator with the following codes:

IDRS Screen	Descriptor	Instruction
Integrated Data Retrieval System (IDRS) BMF Command Code (CC) ENMOD screen	"FCI>1"	
IDRS Command Code (CC) ENMOD screen for IMF	"FED-CON-IND>1"	
IDRS CC BMFOLE	971 MM-DD-YYYY ACTION CD: 647 SEC DT:MM-DD-YYYY	<ul style="list-style-type: none"> • BMF indicator "971 MM-DD-YYYY" will display a date which is the actual posting date of the latest TC 971 AC 647. • BMF will also display a date in the secondary date field "SEC DT:MM-DD-YYYY" which is the actual contract end date from the Form 8596. • If we did not get an actual contract end date from the Form 8596, then we "default" a date to display there. That default date is defined as 3 years from the 971 transaction date. • IMF indicator "971 MM-DD-YYYY" will display a date which is the actual posting date of the latest TC 971 AC 647.

IDRS CC IMFOLE:

971 MM-DD-YYYY DLN AC:0647
SECONDARY-DT:MMDDYYYY

- IMF will also display a date in the secondary date field "AC:0647 SECONDARY-DT:MMDDYYYY" which is the actual contract end date from the Form 8596.
- If we did not get an actual contract end date from the Form 8596, then we "default" a date to display there. That default date is defined as 3 years from the 971 transaction date.
- Since 2010, ICS displays a red literal "FCA" indicator on the case summary screens.
- The red "FCA" is generated from the IDRS entity screen indicator "FCI>1" or "FED-CON-IND>1"

Integrated Collection System (ICS) case summary screen

"FCA"

5.7.9.2.2 (10-28-2011)

Federal Payment Levy Program (FPLP) Transaction Code (TC) 971 Action Code (AC) 062 Document Locator Number (DLN).

1. (1) The FPLP TC 971 AC 062 DLN may indicate if the taxpayer is receiving federal contractor or vendor payments.
2. If the TC 971 AC 062 DLN positions 11 and 12 are '03', then the taxpayer may be a federal contractor or vendor.

Caution:

The DLN is also identified for federal employee travel payments or 'miscellaneous' payments, so further research may be necessary to confirm whether the taxpayer is a contractor or vendor.

3. See IRM Exhibit 5.11.7-5, *TC 971 AC 062 (Document Locator Number (DLN) Format, Miscellaneous Field, XREF Field)*.

5.7.9.2.3 (06-20-2014)

Federal Contractors Identified Through Case Investigation

1. Revenue officers will need to identify taxpayers who do not have a current Federal contractor indicator posted to their entity during initial case analysis.
2. If a federal indicator code is not present, on initial contact, take the following actions:
 - A. Ask the taxpayer if they are a federal contractor or vendor,
 - B. Secure the name of the agency the taxpayer does business with, the contract number and contract end date, and
 - C. Document the case history accordingly.

Note:

There is no requirement that an unreversed TC 971 AC 647 be present on an account before a FEDCON levy is issued but the taxpayer must currently be a federal contractor when the levy is initiated. Request input prior to issuing a FEDCON levy.

3. Revenue officers should request input of TC 971 AC 647 (FCI) if the case investigation reflects that a taxpayer is currently in a contractual relationship with the federal government and:
 - You have confirmed that the TP has been awarded a federal contract.
 - The master file does not yet contain an unreversed FCI.

Exception:

TC 971 AC 647 should not be input for Medicare providers/suppliers. This is because these providers/suppliers are not federal contractors under IRC 6330.

4. Use the Form 4844 template in ICS to request input of the FCI. The input requires an entry in the field for "contract end date". If the contract end date is known, request input of that date. If the contract end date is not known, select a date 1 year from the input request date. Conduct further research to ascertain the correct end date.

Caution:

Make sure the taxpayer is not the employee of the federal contractor entity. If the taxpayer is the employee, do not request the TC 971 AC 647 on the account.

5. A systemic process posts reversals of the FCI to the Master File once a year for BMF accounts and twice a year for IMF accounts based on the expiration of the contract end date. TC 972 AC 647 is posted when the FCI indicator is reversed. Reversals may also be manually input at any time by requesting input of TC 972 AC 647. A manual reversal would be appropriate if you determine that the taxpayer federal contract has been completed or the end date has expired. For example:
 - Case investigation and verification supports a finding that the taxpayer has not received any federal payments during the current year.
 - Most recent contract end date has expired.
 - RO determines that the FCI was erroneously input because the taxpayer was never a federal contractor.

5.7.9.3 (06-20-2014)

Working Federal Contractor Cases

1. Follow all of the appropriate IRM procedures for each case in your inventory.

Note:

In FEDCON levy cases, when taxpayers file a timely request for CDP hearing, the collection statute is suspended on the periods that are the subject of the CDP *even if* FEDCON levy action continues for those periods. See IRM 5.1.9.3.5.1, *Levy Action During the Period of the CDP or EH*.

2. Part of the initial analysis of every assigned case must include documentation as to whether the taxpayer is a federal contractor. If there is an unreversed TC 971 AC 647, also known as a Federal Contractor Indicator (FCI), on the taxpayer's Master File (MF) record, and the taxpayer has a current federal contract, consider the taxpayer a federal contractor. See *IRM 5.7.9.2.1*. Often, this indicator is systemically input based on a Form 8596, *Information Return for Federal Contracts*, filed with the IRS. The indicator may also be manually input. If you determine during a case investigation that a taxpayer is a federal contractor and has been awarded a contract, *request input of the TC 971 AC 647*.

Conditions, which support a RO finding that a taxpayer is a federal contractor subject to FEDCON levy, include:

- A. Unreversed TC 971 AC 647 and current federal contract.
- B. Taxpayer interview confirms they are currently a federal contractor. See *IRM 5.7.9.2.3, Request input of the TC 971 AC 647*.
- C. Certain FPLP cases annotated with TC 971 AC 062. The FPLP TC 971 AC 062 DLN may indicate if the taxpayer is currently receiving federal contractor or vendor payments. See *IRM 5.7.9.2.2*, further research may be necessary to confirm whether the taxpayer is a current contractor or vendor. *Request input of TC 971 AC 647 if confirmed*.
- D. Taxpayer answers "yes" to question 55, "Is the business a Federal Contractor" on Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals* or question 15, "Is the business a Federal Government Contractor", on Form 433-B, *Collection Information Statement for Businesses*. *Request input of the TC 971 AC 647*.

Reminder:

An ICS case activity history pick list item exists for a revenue officer to identify that a taxpayer is a federal contractor. The pick list asks for the agency name and the contract number.

3. A revenue officer must also include documentation as to whether the taxpayer is included in the FPLP and if not included, the reason why. See *IRM 5.11.7.2.3.1, Case and Module Selection Process (TC 971 AC 060)*, for information on how to identify if the taxpayer is currently included in the FPLP and if not included, the reason why. See *IRM 5.7.9.4*
4. As part of the strategy for case resolution, revenue officers must determine and document whether taxpayers for whom continuous FPLP levy payments are being received will remain in the FPLP. See *IRM 5.7.9.4*
5. If the decision is made to manually block the taxpayer from inclusion in the FPLP, document the case history with the reason why. See *IRM 5.7.9.4*.

Reminder:

For employment taxes on wages paid prior to January 1, 2009, if the assessment is in the name and Employer Identification Number (EIN) of a single member Limited Liability Company (LLC) that is a disregarded entity, block the assessment from inclusion in the FPLP because a levy in the name of the disregarded entity would be inappropriate as it is not the taxpayer. However, it would be appropriate for the revenue officer to issue a paper levy in the name of the owner of the disregarded entity. See *IRM 5.11.7.2.5.1, FPLP or Paper Levy (Form 668-A(c)(DO)/668-W(c)(DO))*. For employment taxes on wages paid on or after January 1, 2009, the LLC is the taxpayer, regardless of its classification. Here, inclusion of the assessment would be appropriate.

6. When a taxpayer is identified as a federal contractor or vendor and a TC 971, AC 062, indicating a federal payment levy or match is present on at least one module, request research of the yK-1 database. The yK-1 database will identify other entities related to the taxpayer. The yK-1 database or Link Analysis:
 - A. Is a collection of analytic tools specifically designed to help explore relationships between taxpayers. Currently, it focuses on flow-through relationships (K-1 data) created by partnerships, trusts, S corporations, and corporations.
 - B. Is most beneficial when it is known the taxpayer has flow through income, e.g., parent/subsidiary relationships, abusive transaction, other related entity relationships.
 - C. Provides a graphic representation of the taxpayer and his or her investment relationship to other entities. It is not limited to direct investment and displays multiple levels of investment tiering, i.e., one entity is invested into another that is invested into a third.
 - D. Uses information from filed Forms 1120, 1120S, 1041, and 1065, and the K-1 associated with those returns.
 - E. Uses individual tax return information of high income individuals.
 - F. Can be searched using an SSN or EIN.

Caution:

Accessing yK-1 Link Analysis and reviewing the information obtained from it is only allowed when the information is needed to carry out assigned tax administration duties. Accessing or reviewing this information without a tax administration reason is a UNAX violation.

7. The output from the yK-1 Link Analysis Tool (electronic or hardcopy) contains tax return information of multiple taxpayers.

Note:

yK-1 Disclosure: Pursuant to IRC Sections 6103, 7213, 7213A, and 7431 this information cannot be disclosed to the taxpayer or their representative.

8. Each Area has designated Collection Field Representatives who can retrieve yK-1 research for revenue officers. More information on how to use yK-1 and a list of yK-1 users can be found on the yK-1 Link Analysis Tool website at Access <http://k1.soi.irs.gov/>.
9. Other research resources to consider accessing when investigating a taxpayer who is a federal contractor or vendor include,
 - ccUNLCER
 - cclRPTR
 - Currency Banking and Retrieval System
 - Lexis/Nexis
 - Google
10. Throughout the investigation, monitor the taxpayer's compliance with filing and payment requirements.

5.7.9.3.1 (05-01-2006)

Case Transfer to Abusive Tax Avoidance Transaction (ATAT) Group

1. When the investigation of the taxpayer reveals one or more of the following, transfer the case to an Abusive Tax Avoidance Transaction group:
 - A. Three or more in-business or out-of-business related entities identified .
 - B. Any of the responsible parties has outstanding Trust Fund Recovery Penalty assessments from three or more entities.
 - C. Case has a foreign component.

5.7.9.3.2 (10-28-2011)

Secured Delinquent Returns

1. When unpaid delinquent returns are secured from a federal contractor or vendor, the delinquent returns will be promptly assessed unless it is determined that prompt assessing will not facilitate collection, i.e., nominal balance due, installment agreement to be entered into, accounts to be reported currently not collectible. See IRM 5.1.4.5, *Prompt Assessments*.

5.7.9.3.3 (02-08-2013)

Trust Fund Recovery Penalty

1. Assessment of the TFRP must be given serious consideration and the decision to not recommend assertion must be made based on a complete collectibility investigation.
 - A. If the Trust Fund Recovery Penalty (TFRP) is collectible from the individual(s) determined to be responsible and willful, then assess the penalty and pursue collection of it.
 - B. If present and future collection potential of the TFRP is minimal, do not recommend assertion of the TFRP. See IRM 5.7.5, *Collectibility Determination*, and follow the procedures therein to thoroughly substantiate the determination of no present or future collection potential.

5.7.9.3.4 (02-08-2013)

Other Federal Contractor Case Activity

1. Follow the standard IRM procedures when additional collection alternatives are initiated on federal contractor cases. See the relevant section of the IRM for procedures to be followed on other case activity, for example:
 - IRM 5.7.2, *Letter 903 Process*
 - IRM 5.8, *Offer in Compromise*
 - IRM 5.10, *Seizure and Sale*
 - IRM 5.11.7.2.6.1, *Requesting Assistance from the FPLP Coordinator on Certain Emergency Levy Release Situations*
 - IRM 5.14, *Installment Agreement*

5.7.9.4 (06-20-2014)

Federal Contractors and the Federal Payment Levy Program (FPLP)

1. IRC 6331(h) permits the Service to serve a continuous levy on 100 percent of the payment owed to federal contractors. See IRM 5.11.7.2.1.1, *IRS/FMS Interagency Agreement - Federal Payments Subject to the FPLP*, for information on which Federal payments are systemically levied by the FPLP and the percentage of the payment due that the levy will attach to.
 - A. Levy source information obtained through the FPLP is uploaded to IDRS.
 - B. The FPLP matches and levies Federal payments identified under the secondary or cross-reference (X-REF) SSN on IMF joint tax liabilities and BMF sole proprietor liabilities.
2. FPLP incorporated the post-levy CDP FEDCON levy process starting in January 2012. See IRM 5.11.7.2.3.4(4), *Levy Service Process*, for more information about those cases. FPLP systemically identifies accounts with unreversed FCI annotations, including those accounts in status 22, 24 and 26. This automated levy program may issue FEDCON levies on cases that are in ACS, the Queue and in RO inventories.
3. Generally it may be more effective to allow FPLP to levy the federal payment source under the provisions of IRC 6331(h)(3) rather than using a paper levy under the provisions of IRC 6331(a) because, in federal contractor cases, levies under IRC 6331(a) are not likely to be of continuing effect. FPLP would be the more effective method since IRC section 6331(h)(3) allows for continuous levy of up to one hundred percent (100%) of any specified payment due to a vendor of property, goods or services sold or leased to the Federal government.

Note:

Even if FPLP remains in place, consider using a paper FEDCON levy to reach other sources.

4. A balance due module or entity may not be included in the FPLP because of a certain condition or freeze code. See IRM Exhibit 5.11.7-3, *FPLP Exclusion Criteria*, for a list of entity and module transaction and freeze codes that are not included in the FPLP. Determine if the exclusion from FPLP is appropriate or if action needs to be taken so the module or entity is included in the FPLP.

Example:

The taxpayer previously requested a CDP hearing and the case has been returned from Appeals, but the TC 520, closing code 77 was never reversed.

5. A balance due module or entity may be manually or systemically blocked from inclusion in the FPLP with a TC 971 AC 061. If you contemplate using the FPLP block see IRM 5.11.2.2, *Releasing Levies*, for guidance about when levy release is appropriate. Document the ICS case history with the reason(s) when an FPLP block is requested. Current procedures require GM approval of FPLP block requests. See IRM 5.11.7.2.6(1), *Blocking or Releasing FPLP Levy*. ICS will provide a reminder notification to the primary user every 90 days for modules manually blocked from inclusion in the FPLP. Upon notification, determine if the module or entity should continue to be excluded from the FPLP.

Example:

The FPLP was blocked because the taxpayer was in full compliance and was cooperating to resolve the tax liabilities; however, now the taxpayer is no longer in compliance or cooperating and should be included in the FPLP.

Note:

A TC 971 AC 061 must be manually input on each applicable module and will systemically expire in 52 cycles.

6. For expedited release of an FPLP levy, see the procedures in IRM 5.11.7.2.6.1, *Requesting Assistance from the FPLP Coordinator on Certain Emergency Levy Release Situations*. On the IRS intranet Servicewide Electronic Research Program (SERP) page, under "Who/Where", there is a current listing of the FPLP coordinators based on geographical location.

5.7.9.5 (02-08-2013)

Federal Contractors and Form 668-A(ICS)/Form 668-A(c)(DO), Notice of Levy

1. Prior to serving a levy on the Federal agency with Form 668-A(ICS) or Form 668-A(c)(DO) on either the primary or secondary taxpayer, release or block the module from the FPLP, if necessary.
 - Request an FPLP block (TC 971, AC 061).

- Wait at least 30 days after the module(s) is removed from the FPLP (TC 972 AC 060 posting date) to ensure that Financial Management Service (FMS) or the Federal agency source's records no longer have the FPLP in effect.
- Issue Form 668-A(c)(DO) directly to the Federal agency.
- See IRM 5.11.7.2.5.1, *FPLP or Paper Levy (Form 668-A(c)(DO)/668-W(c)(DO))*.

Example:

During your investigation you identify the taxpayer has recently secured a federal contract with General Services Administration (GSA), but the account is still not in the FPLP (no TC 971 AC 060) for it to levy 100 percent of the contract payments. To ensure you receive the levy proceeds, you decide to issue the Form 668-A(ICS)/Form 668-A(c)(DO) to GSA directly, and block the account from inclusion in the FPLP so that the Form 668-A(c)(DO) and FPLP do not levy the same payment at the same time.

Note:

The FPLP is not considered a third-party contact because the contact is made between electronic databases; however, issuing a paper levy is considered a third-party contact.

2. See IRM 5.11.6, *Notice of Levy* Exhibit 5.11.6-1, for contract levy addresses at several agencies.

Note:

Current federal contractor levy sources can be found on IDRS using "CC LEVYS." The contract number may appear on the levy source's name line after, "Contract #," "FC" to the right of the number means this is a federal contract.

**5.7.9.5.1 (06-20-2014)
FEDCON Levy/Post Levy CDP Rights**

1. The Small Business Jobs Act of 2010 amended IRC 6330 (f) and (h), to permit the IRS to issue any levy on a taxpayer *prior to* providing them with their Collection Due Process (CDP) notice and hearing if the taxpayer is a federal contractor.
2. FEDCON levies may be served during a timely requested pre- or post-levy CDP hearing or judicial review of such hearing to collect liabilities for all outstanding balance due periods including periods that are the subject of the hearing. Prior to levying, you are required to determine if Appeals or Counsel has information that prohibits levy (OIC, IA etc.) or may affect the decision to levy. Follow the guidance in IRM 5.1.9.3.5.1, *Levy Action during the Period of the CDP or EH*, for contacting Appeals or Counsel.
3. A Federal contractor is any person or entity who currently has a contract with the federal government to sell or lease property, goods or services. For FEDCON levy purposes, this **does not include** a taxpayer who was in the past a federal contractor but currently is not involved in any contractual relationship with the federal government. A contract is a mutually binding legal relationship obligating a person or entity to furnish property, goods, or services and the federal executive agency to pay for those property, goods, or services.
4. Field Collection (FC) revenue officers may issue FEDCON levies in ICS to collect any IMF or BMF liability, for which the IRC 6331(d), Notice of Intent to Levy (CP 504 notice) period has expired **if the taxpayer is a federal contractor**. See *IRM 5.7.9.2* and *IRM 5.7.9.3*.
5. FEDCON levies may be issued for any levy source, not just federal payments.
6. If the tax period meets the criteria for issuing a FEDCON levy and levy action is determined to be appropriate:
 - Document the ICS case history regarding the FEDCON determination.
 - Make sure the IRC 6331(d), *Notice of Intent to Levy*, was properly issued at least 30 days prior to levy action. This refers to the CP 504 notice or the "Status 58" notice.

Caution:

If the CP 504 notice was not issued, issue the pre-levy CDP notice, L1058. This meets the IRC 6331(d) and IRC 6330 requirement. FEDCON levy can only be issued 30 days after you issue the L1058 per IRC 6331(d).

**5.7.9.5.2 (06-20-2014)
ICS Considerations for FEDCON Levies**

1. ICS Cases in which there is an unreversed Federal Contractor Indicator (FCI) are flagged with a red literal (FCA) on the Case Summary screen.
2. ICS will block revenue officer issuance of the FEDCON levy unless the revenue officer answers "yes" when ICS prompts with the following: "Final Notice Delivery Date is not 30 days prior to levy. Is this a FEDCON levy? (Yes or No)?"

Caution:

This is a requirement because there would be no TC 971 AC 069 on the module.

3. Include Letter 1058-F, *Post Levy Federal Contractor Collection Due Process*, with the taxpayer's copy of a FEDCON levy for post-levy CDP notices.

Caution:

If the taxpayer was issued a pre-levy CDP notice (L1058) for the FEDCON tax period(s) being levied, do not issue a post-levy CDP notice (L1058-F).

4. See the ICS User Guide for more information about using ICS to issue FEDCON levies.

**5.7.9.6 (02-08-2013)
Federal Contractors Awarded an IRS Contract**

1. It is the policy of the Government to award contracts only to responsible prospective contractors.
2. In order to determine the responsibility of prospective contractors, the Contracting Officers (CO) must examine the contractor's financial capability, production capabilities, performance record, integrity, experience, organization, accounting practices, operational controls, and technical skills.
3. If an award is made to a contractor with a Federal tax debt to the Government or to a contractor who has proposed a subcontractor who has a Federal tax debt to the Government, the CO shall notify the Director, Collection Policy or his/her delegate.
 - A. For an explanation of the process for status 26 cases and actions required during the investigation, see flowchart in *Exhibit 5.7.9-1, Indebted Federal Contractor Awarded an IRS Contract - Case Status 26*.
 - B. For an explanation of the process for status 22 and 24 cases and actions required during the investigation, see flowchart in *Exhibit 5.7.9-2, Indebted Federal Contractor Awarded an IRS Contract - Case Status 22 or 24*.

4. The status definitions are as follows
 - A. Status 26 case means, Tax Delinquent Account issued (TDA) awaiting paper or ICS assignment, Field Collection.
 - B. Status 22 case means, TDA issued ACS, Queue.
 - C. Status 24 case means, Tax Delinquent Account issued, awaiting paper or ICS assignment, Queue.
5. Upon notification of a federal contractor with unpaid Federal taxes who was awarded a contract by the IRS, Collection Policy (CP) will complete IDRS research to verify balance/delinquent and current case assignment. Collection Policy will determine correct case routing based on current case assignment status. Federal contractors with tax balances greater than \$100,000 should be considered as a factor supporting accelerated assignment to Field Collection.
6. Collection Policy will send a secure encrypted email to the Area Director or Territory Manager based on the location of the taxpayer award. The email will include the following:
 - Taxpayer name
 - Taxpayer address
 - Taxpayer Identification Number
 - Award Contract Number
 - Amount Funded by the Award
 - Award Contract Specialist or Contracting Officer
7. Prior to issuing a levy to the Beckley Finance Center, the Area Director or Territory Manager should notify the Director, Collection Policy or his/her delegate. Approval of the levy by Collection Policy is not required.

Note:

The IRS is a levy source for the taxpayer awarded the contract. Use the following address on Form 668-A(ICS) or Form 668-A(c)(DO), *Notice of Levy*:
Internal Revenue Service
Beckley Finance Center
110 North Heber Street
Beckley, WV 25801
Attention: Accounts Payable

8. The Territory Manager or his/her delegate assigned to the investigation should send an encrypted email message to Collection Policy contact when the investigation is closed, advising of actions taken to resolve the case in accordance with applicable IRMs.
9. Once the case is closed the Director, Collection Policy or his/her delegate will notify the Contracting Officer of the actions taken to resolve the IRS contractor's Federal taxes.

**Exhibit 5.7.9-1
Indebted Federal Contractor Awarded an IRS Contract - Case Status 26**

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.7.9-2
Indebted Federal Contractor Awarded an IRS Contract - Case Status 22 or 24**

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Part 5. Collecting Process

Chapter 7. Trust Fund Compliance

Section 10. Control Point Monitoring (CPM) Trust Fund Recovery Penalty (TFRP) Case Processing

5.7.10 Control Point Monitoring (CPM) Trust Fund Recovery Penalty (TFRP) Case Processing

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- 5.7.10.2 [Case Review and Processing](#)
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- 5.7.10.7 [Inventory Management and Control](#)
- 5.7.10.8 [Case Retention and Retirement](#)
- 5.7.10.9 [Requests for Closed TFRP Files](#)
- Exhibit 5.7.10-1 [TFRP CASE FILE CHECK SHEET for Review of TFRP Case Files](#)

Manual Transmittal

May 15, 2015

Purpose

(1) This transmits revised IRM 5.7.10, *Control Point Monitoring (CPM) Trust Fund Recovery Penalty (TFRP) Case Processing*.

Material Changes

(1) Minor editorial changes have been made throughout the text.

(2) Updated IRM 5.7.10.6(1) to incorporate Collection Interim Guidance Memorandum SBSE-05-0814-0022, *Interim Guidance for Trust Fund Recovery Penalty Protest Cases and Form 843, Claim for Refund and Request for Abatement, processing by Advisory*, which clarifies CPM Advisory actions if Appeals requests additional information.

Effect on Other Documents

This material supersedes IRM 5.7.10, dated March 15, 2013. This IRM revision incorporates Collection Interim Guidance Memorandum SBSE-05-0814-0022, *Interim Guidance for Trust Fund Recovery Penalty Protest Cases and Form 843, Claim for Refund and Request for Abatement, processing by Advisory, dated August 05, 2014*.

Audience

AI Advisory - Control Point Monitoring Employees

Effective Date

(05-15-2015)

Kristen E. Bailey
Acting Director, Collection Policy

5.7.10.1 (05-03-2010)

Introduction

1. The Automated Trust Fund Recovery (ATFR) program is a National Standard Application used to control Trust Fund Recovery Penalty (TFRP) case inventories. Control Point Monitoring (CPM) is one of three components of the ATFR program. The CPM component of the program, located in Advisory, is responsible for ensuring that TFRP case files are complete and accurate, the Assessment Statute Expiration Dates (ASED) are protected, and the final disposition of the case has been accurately recorded on the ATFR system.

The ATFR CPM Inventory consists of four separate inventories:

- "Pending" - Cases transmitted to CPM which are awaiting receipt of the TFRP case files.
- "Accepted" – Case file has been received and accepted for review.
- "2749 to SC" – Case file has been reviewed and transmitted to the campus for assessment.
- "Appeals" – Case file has been reviewed and forwarded to Appeals.

2. CPM has the ability to record the following information:

- Processing dates for Form 2749, *Request for Trust Fund Recovery Penalty Assessment(s)*
- Appeals case information
- Date TFRP package is sent to Federal Records Center (FRC)
- TFRP assessment information
- Closed TFRP file requests

5.7.10.1.1 (05-03-2010)

Initial Case Receipt and Processing

1. Cases are systemically added to the CPM inventory in Advisory after the Revenue officer (RO) selects "2749 to CPM" to dispose of the responsible person's file. Upon receipt of the physical TFRP file, Advisory will:
 - Acknowledge Form 3210, *Document Transmittal*.
 - Attach the required "Case File Review Sheet" (See IRM Exhibit 5.7.10-1, *TFRP CASE FILE CHECK SHEET for Review of TFRP Case Files*).
 - Review the ATFR CPM "Pending" inventory and accept the case into the CPM "Accepted" inventory.
2. If the case does not appear in the "Pending" inventory, check ATFR using the "Find" option, to determine if the "2749 to CPM" date has been entered.
 - A. If the date has not been entered, CPM will contact the RO by phone or E-mail requesting input of the "2749 to CPM" date. Allow five business days for the RO to take the requested action. If the date is not entered within five business days of the request, return the case to the RO by preparing an "Information Only" Form 5942, *Reviewer's Report - Technical Services Advisory*, to the RO Group Manager (GM) with a copy to the Field Collection (FC) Territory Manager (TM).

NOTE: If there are less than 30 calendar days remaining on the ASED, the RO must prepare a quick assessment before resubmitting the case. Include the imminent ASED and the requirement that the RO prepare a quick assessment on the Form 5942 to ensure the FC territory manager and group manager are aware of the situation. Returning the physical case file with a copy of the Form 5942 to the RO will allow the RO to take the necessary action in a timely fashion.

- B. Check your ATFR Employee control to determine if this RO has been input to your CPM "Employee Control Structure". If the RO is not listed in your "Employee Control Structure", verify that you are responsible for the RO and add the RO to your control structure.
3. If you identify a case in "Pending" inventory, and determine that the originating RO is not assigned to you, contact the appropriate CPM to ensure that the RO is reflected in the correct CPM "Employee Control Structure". Once the appropriate CPM has added the RO to their "Employee Control Structure", the case will be systemically assigned to that CPM pending inventory. You should then delete that RO from your "Employee Control Structure".
4. If you receive a physical file in error, you should immediately forward the file to the CPM location working that assignment area.

5.7.10.1.2 (05-03-2010)

ATFR Case in Pending Inventory No Case File Received

1. Review the "Pending" inventory to identify cases assigned for more than 10 business days. If you identify cases in "Pending" inventory for greater than 10 business days without receipt of the physical file, contact the RO by phone or E-mail requesting the file. Allow the RO 10 business days for receipt of the file. If the file is not received within this time frame:
 - A. Remove the "2749 to CPM" date.
 - B. Select the "Return to RO" option and notate the systemic Form 5942 ATFR history with the reason for returning the case to the RO.
 - C. Issue an "Information Only" Form 5942 to the RO GM, with a copy to the FC TM.

5.7.10.1.3 (05-03-2010)

Pending Inventory and Receipt of Case File

1. Within 5 business days of receipt of the paper file and acceptance of the case file into the CPM "Accepted" inventory, a case must be created on Integrated Collection System (ICS). Use the following selections for the Action Requested field when creating the NF OI (Non Field OI):
 - 171 – TFRP Processed
 - 176 – Appeals Case

5.7.10.2 (03-15-2013)

Case Review and Processing

1. A check sheet has been developed to assist in reviewing TFRP case files. The use of this check sheet is mandatory. See IRM Exhibit 5.7.10-1. Within five business days of the ICS creation date, CPM Advisory will review the case and perform the following actions:
 - A. Determine that all ASEDs are protected (See IRM 5.7.3.5(2), *Statutory Assessment Period*, on how to calculate an ASED.). If an expired ASED is found, consult with your Advisory GM. Inform your GM of any cases in inventory with 60 days or less remaining on the ASED.
 - B. Recalculate the current trust fund amount on ATFR to verify that the current amount as shown on page 4 of the Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, is equal to or is less than the amount shown on the Form 2749 and Form 2751, *Proposed Assessment of Trust Fund Recovery Penalty*. If the TFRP amount on the ATFR system is the same as reflected on the Form 2749 and Form 2751, proceed with the case review.
 - C. If the TFRP amount on the ATFR system is less than the amount reflected on the Form 2749 and Form 2751, a new Form 2749 must be generated, printed and included in the file.
 - D. If the balance is greater than the Form 2751, the case must be returned to the RO by completing the following actions:
 - Complete the case review to identify any other case deficiencies so they may be addressed by the RO before resubmitting the case to CPM.
 - On ATFR, return the case to the "Pending" inventory and select "Return to RO".
 - From the pick list provided on the ATFR system, mark the case deficiencies that will be systemically notated in the ATFR history. Use the "comments" block to identify any additional information.
 - Prepare an "Information Only" Form 5942, identifying all case deficiencies and explaining the need to determine if the increased dollar amount needs to be included in the TFRP assessment. The original Form 5942 and case file will be sent to the RO GM. A Form 3210 will be used to return the file. The Form 3210 will be monitored for acknowledgement. A copy of the Form 5942 will be sent to the FC TM.
 - Close the NF OI ICS Code 171 case.
 - E. Using the physical file, compare the periods on Form 2749 and Form 2751 to the Form 4183 page 4, to ensure that all trust fund periods are listed and included in the proposed assessment.
 - 1) If a period(s) is listed on the Form 2751 and not included on the Form 2749, check IDRS to determine if the period(s) has been satisfied. If the period(s) is satisfied, process the Form 2749 to the Campus for assessment.
 - 2) If the period(s) is not satisfied, check the ICS corporate history to determine if there is a reason these periods have not been included. Note both the ATFR and ICS history with the information you have found.
 - 3) If ICS and IDRS have not identified a valid reason for the period(s) not being included, issue an "Information Only" Form 5942 to the RO GM with a copy to the FC TM to determine why these periods have not been included.
 - On ATFR, return the case to the "Pending" inventory and select "Return to RO".
 - From the pick list provided on the ATFR system, mark the case deficiencies that will be systemically notated in the ATFR history. Use the "comment" block to identify any additional information.

- The original Form 5942 and case file will be sent to the RO GM. A Form 3210 will be used to return the file. The Form 3210 will be monitored for acknowledgement. A copy of the Form 5942 will be sent to the FC TM.
- Close the NF OI, ICS Code 171 case.

If these periods are now barred by statute, but were a part of the original Form 4183 recommendation, verify that the ASED has expired and issue a Form 5942 requiring a 30 day follow-up through the FC TM to the RO GM requesting that a Statute Expiration Memo be completed (See IRM 5.7.3.8, *Reporting Expiration of TFRP Statute*). You can continue to process the unexpired modules on ATFR. When the case is transmitted to the campus a new Form 2749 will generate and the expired period(s) will not be included. Open an NF OI ICS Action Requested 173 TFRP-ADJ OTHER case to monitor the Form 5942 response.

Note: Determine if Trust Funds were full paid or if the ASED expired prior to ICS assignment to the RO. If either of these apply, do not send Form 5942 and continue with normal processing.

Absent statute concerns, "Information Only" Forms 5942 will be issued and the case returned to the RO on ATFR as outlined in IRM 5.7.10.2(1)(e)(3). The original Form 5942 and case file will be sent to the RO GM. A copy of the Form 5942 will be sent to the FC TM. Form 3210 will be used to return the file. The Form 3210 will be monitored for acknowledgement.

- F. Determine if the proposed assessment is a quick, prompt or regular assessment by checking the ATFR system against the Form 2749. If it is a quick or prompt assessment, the Forms 2859, Form 3210 from the campus containing the assessment date, Document Locator Number (DLN), and Forms 3552 must be in the case file.
 - G. Determine if the taxpayer has submitted a protest requiring the case to be sent to Appeals. See IRM 5.7.10.5, *Appeals Case Review and Case Processing*, for Appeals case processing.
2. Review the physical file to ensure that the documents provided comply with the core documentation requirements for a complete case file as outlined in IRM 5.7.6.4, *Case File Documentation*. Record your findings on the check sheet.

Note: If a Form 4183 has been signed by a RO GM, assume that a collectibility determination has been made even if it is not noted on the Form 4183.

If a required form is missing from the file that can be printed from the ATFR program, print the form and include it in the file. If the ATFR or ICS history is missing from the TFRP case file, it should also be printed and included in the case file. **Do not issue Form 5942 and return TFRP cases solely for missing ATFR or ICS case histories.**

If the file is incomplete for reasons other than missing forms that can be printed from the ATFR/ICS program, the ICS history should be reviewed to determine if the missing core documentation items were addressed by the RO. If not addressed, the case must be returned to the RO by taking the following actions:

- A. Return the case to the "Pending" inventory and select "Return to RO" .
- B. From the pick list provided on the ATFR system, mark all case deficiencies. These deficiencies will be systemically noted in the ATFR history. Use the "comments" section to add any additional information.
- C. Prepare an "Information Only" Form 5942 identifying all case deficiencies. Forward the case file and original Form 5942 to the RO group manager and a copy of Form 5942 to the FC TM. Follow the procedures in IRM 5.7.10(1)(e)3) to return the case to the RO on ATFR. A Form 3210 will be used to return the file. The Form 3210 will be monitored for acknowledgement.
- D. Close the NF OI ICS Code 171 case.

3. If the file is complete and a regular assessment is being proposed, enter the date the Form 2749 is being transmitted to the campus for assessment in the "2749 to SC" field on ATFR. This action automatically moves the case on ATFR from the "Accepted" inventory to the "2749 to SC" inventory.

Note: The CPM function will receive TFRP files when the assessment has been made by a RO via the quick, prompt, or jeopardy assessment process. These cases will require CPM ATFR inputs outlined in IRM 5.7.10.3. See IRM 5.7.6.3, *Quick and Prompt Assessment Actions*, for Quick, Prompt, or Jeopardy processing.

4. CPM is accountable for ensuring that all paperwork needed to process the TFRP assessment and the mandatory core documentation items are in the case file or that the reason for their absence is documented in the ICS history. The revenue officer and group manager are responsible for decisions regarding the willfulness and responsibility factors of TFRP assessments based on these documents.

5.7.10.3 (05-03-2010) Processing Quick, Prompt and Jeopardy Assessments Received from the Field

1. The CPM function will receive quick (Q), prompt (P), or jeopardy (J) assessments made by ROs. After the initial case review and processing have been completed, CPM will verify and update ATFR with the following information:
 - Type of assessment (Q, P, or J). It is critical that the correct type of assessment is posted to eliminate any duplicate assessments when the "2749 to SC" date is input
 - Assessed amount
 - DLN
 - Date of Assessment

NOTE: In order to enter the above information, click on "View/Edit Assessments" and highlight the period you want to edit. Click on "Edit" , enter the above data, and save the information.

2. Select "Form 2749 to SC" .

5.7.10.4 (05-03-2010) Monitoring of 2749 to Campus Inventory

1. The systemic transmission of Form 2749 to the campus for assessment creates the ATFR "2749 to SC" inventory. This inventory will be reviewed weekly.

This weekly monitoring will identify cases that have been successfully assessed through the campus and are ready to be closed on the ATFR system. It will also identify cases that have been rejected by the campus having possible assessment problems (e.g., unpostable periods, calculation problems). The cases returned to CPM by the campus will be identified by an "R" for reject.

Any case remaining in this inventory for more than 21 calendar days requires IDRS research or contact with the campus for resolution. Exception: manual assessments may take up to 8 cycles to post.

2. Review the "2749 to SC" inventory to determine if a "P" indicator has posted to the case. For regular assessments, the assessment date, DLN and assessment amount will be entered systemically by the ATFR system.

Verify the posting of the TC 240 DLN, 23C date, assessed balance and TC 971 AC 097 by checking IDRS. When it has been determined that all assessments, DLNs, 23C dates and TC 971s have posted to IDRS, close the case on ATFR within 10 calendar days using the "Close 2749" option on the ATFR case. This action closes the case from the CPM's "2749 to SC" inventory listing. Also close the corresponding ICS NF OI Time Code 171 case when closing the case from the ATFR system.

Notate the front of case file folder with date of assessment. This will identify the file for future retirement to the FRC.

5.7.10.5 (05-03-2010)

Appeals Case Review and Case Processing

1. Upon receipt of a TFRP file containing a taxpayer protest, ensure that an ICS NF OI module 176 Code has been opened.
2. Complete the same initial case receipt and review as outlined in IRM 5.7.10.2. Upon completion of this review the case file will require additional analysis to ensure that:
 - The protest is timely. See IRM 5.7.3.6.2, *Impact of Letter 1153(DO) on Assessment Statute*, and IRM 5.7.6.1, *Taxpayer's Response to Letter 1153(DO)*. Appeals will not accept for processing a case not protected by Taxpayer Bill Of Rights (TBOR-2). See IRM 5.7.6.1.6, *Receipt of Protest*.
 - All potentially responsible officers have been recommended for assertion or have a valid appeal that is being addressed.
3. When the case is ready to be sent to Appeals:
 - A. Annotate Form 2749 in red "ASED extended" by "TBOR-2" for cases with a timely filed protest.
 - B. Prepare Form 3210 indicating "ASED protected by TBOR-2".
 - C. Enter the date sent to Appeals in ATFR. This action automatically moves the case from the "Accepted" inventory to the "Appeals" inventory.

Note: If more than one person of the same corporation is protesting, the files should be submitted to Appeals as a package, whenever possible. If a co-obligor is not protesting, that case should remain in CPM for normal processing (IRM 5.7.10.2) to be associated with the protest file upon its return from Appeals. The file going to Appeals will be considered the "Key" file, which includes all supporting documentation.

5.7.10.6 (05-15-2015)

Appeals Cases - Controlling and Monitoring

1. Appeals may request additional information. Appeals will retain jurisdiction on these cases if the ASED is held open only by the timely protest under TBOR-2. This is to preserve the time in Appeals plus 30 days, under IRC 6672(b). An Appeals hearing officer may determine that new information submitted by a potentially responsible party requires investigative analysis. In this situation, Appeals will retain jurisdiction of the case and forward the new information request via Form 10467, *Appeals Division Feedback Report and Transmittal Memorandum*, to the originating CPM Advisory group for processing. The CPM should consult with an advisor and if it is determined additional investigative analysis by a revenue officer is necessary, CPM Advisory will follow guidance in IRM 5.1.8.5.1, *Types of Mandatory OIs*, to issue an OI to FC. The information should be provided within 45 calendar days of the request. This date may be extended by mutual agreement. These situations should be highly uncommon. To avoid ex parte communications, Appeals has the responsibility for informing the potentially responsible party that the information was sent to Field Collection for investigation, sharing Field Collection's response with the potentially responsible party and allowing the potentially responsible party time to comment.
2. When a final determination is rendered, Appeals will return the case to CPM with Form 5402, *Appeals Transmittal and Case Memo*, which will reflect the Appeals decision. CPM will update the ATFR system with the:
 - 5402 Approved Date (the date the Form 5402 was signed by the Appeals Manager)
 - ICS and ATFR history entries will be made reflecting the Appeals determination
 - The Appeals Decision may be:
 - a) No Change, i.e., fully responsible (F)
 - b) Partially Responsible (P). If partially responsible the periods must be edited to reflect the revised amount to be assessed as determined by Appeals
 - c) Not Responsible (N). CPM will close the case no later than 10 calendar days after receiving the Appeals determination not to assess.

Note:

TFRP cases that are returned from Appeals as non-sustained must be reviewed by CPM to determine if the release of Transaction Code (TC) 130, *Entire Account Frozen from Refunding*, is appropriate. Individual case circumstances will dictate if the release is appropriate. TC 130 is a taxpayer entity freeze. If additional TFRP assessments are pending, or there is a prior sole proprietor TC 130 offset in place, release of the TC 130 is not appropriate.

3. If Appeals sustains the original proposed assessment in full or in part, a new Form 2749 must be generated and printed to reflect the correct TFRP amount based on the Appeals determination.
4. CPM will be responsible for timely completing any assessment action (See IRM 5.7.6.3, *Quick and Prompt Assessment Actions*), ensuring the ASED is protected on all Appeals cases, and inputting the Appeals determination information on ATFR. If there are more than 30 calendar days remaining on the ASED, process the TFRP assessment as a regular assessment.
5. While the ASED was extended by TBOR-2 for the time the case was pending in Appeals and under their jurisdiction, it is only protected for an additional 30 calendar days from the date of the final Appeals determination as indicated by the managerial signature on the Form 5402, *Appeals Transmittal and Case Memo*, Form 866, *Agreement as to Final Determination of Tax Liability*, or Form 906, *Closing Agreement on Final Determination Covering Specific Matters*. The following steps will be taken to ensure the assessment is completed within the 30 calendar day period.
 - A. Reflect the correct type of assessment to be completed (Quick, Prompt, Regular).

- B. Generate and print a new Form 2749 for the case file to use when making a quick assessment under TBOR-2 if the dollar amounts on the trust fund assertion have changed.
- C. Generate and print the Form 2859 quick assessment documents from the ATFR system.
- D. Complete all required information on the Form 2859, including the requestor's full address, phone number, and employee ICS assignment number.
- E. Prepare Form 3210 with the taxpayer's name, last four digits of the social security number and each period to be assessed listed. Include CPM requestor's fax number. (This page will be faxed back to CPM with the assessment date and the DLN for each period assessed.)
- F. Prepare a fax cover sheet with the taxpayer's name and social security number and fax it to the Ogden Manual Assessment Unit with the following documents:
 - Form 3210 complete with all information
 - Form 2749
 - One copy of Form 2859 for each period to be assessed, with the group manager's signature.

The Ogden Manual Assessment Unit will fax back Form 3210 with the assessment date and DLN for each period. Upon receipt of this information, update ATFR with the DLN and assessment date and transmit the "2749 to SC" . (Inputting this date automatically moves the case from the Appeals inventory to the "2749 to SC" inventory). Follow the "2749 SC" monitoring procedures as outlined in IRM 5.7.10.5.

For fax assessments, the Ogden Manual Assessment Unit will prepare Form 3552, *Prompt Assessment Billing Assembly*, and forward it to the initiator. The initiator will immediately deliver or mail certified Parts 3 and 4 of Form 3552, along with Publication 1, to the taxpayer. Notice 960, *Explanation of Penalty Assessment on Form 3552 (Part 3)*, *Notice of Tax Due on Federal Tax Return*, will also be included with Form 3552 to remind the taxpayer of the procedures to follow in order to file a claim for refund and request abatement of the liability. Multiple Forms 3552 for the same taxpayer may be mailed together. Accounting Control/Services will also forward copies of the Forms 2749 and 3552 to the TFRP unit in Compliance Services Collection Operations (CSCO) for input of the appropriate cross-referencing information and UNLCER information.

5.7.10.7 (05-03-2010)
Inventory Management and Control

1. CPM inventory is to be matched against ICS inventory on a monthly basis. All ATFR open cases listed in the "Accepted" , "2749 to SC" , and "Appeals" inventory must have a corresponding ICS NF OI.
2. A reverse match should also be conducted monthly to ensure that the current ICS inventory of Action Requested 171 cases and ICS Action Requested 176 cases are accurately represented by a corresponding ATFR case in the appropriate category.
3. Quarterly reconciliations will be conducted with Appeals to ensure that cases are still open in Appeals.

5.7.10.8 (05-03-2010)
Case Retention and Retirement

1. TFRP case files are retained in Advisory until retirement to FRC (See IRM Exhibit 1.15.28-1, *Records Control Schedule for Collection*, for TFRP records retention information.). The FRC requirement to retire the TFRP file, forms and documents 2 years after assessment, should be interpreted as 2 years from the latest assessment date of all responsible parties. This will insure that all files related to a specific TFRP are associated and retained for 12 years from assessment at the FRC.
2. When cases are to be retired to the FRC, Advisory CPM employees will add the accession number and FRC location in the designated field on ATFR.

5.7.10.9 (05-03-2010)
Requests for Closed TFRP Files

1. CPM may receive requests for closed TFRP files from various requesters (Field, Appeals, Disclosure, etc.) via Form 2275. If the case file is in CPM's closed TFRP file (assessment date within 2 years):
 - A. Pull file and replace with a file charge-out card and send the entire case to the requester via Form 3210.
 - B. Open an ICS 174 TFRP Files case under the corporate EIN to monitor the case while it is charged out. Notate ICS history with the requester's name, location and phone number, as well as the responsible party's name(s), SSN, and date of assessment.
 - C. Close 174 module when the case is returned to CPM and return to closed files.
2. If the case file has already been sent to the FRC:
 - A. Complete Optional Form 11 (OF Form 11), Sections I & III, including the Accession Number and Records Center Location Number (available on ATFR CPM Information Screen or local CPM closed FRC file listing).
 - B. Fax OF 11 to the Area AWSS Support Services Specialist, who will request the file from the FRC.
 - C. Open an ICS 174 TFRP Files case under the corporate EIN to monitor receipt of the closed file from FRC. Notate ICS history with the requester's name, location and phone number, as well as the responsible party's name(s), SSN, and date of assessment. When received, forward the file to requester via Form 3210. Monitor case periodically to ensure file is still in requester's possession.
 - D. Close the ICS 174 TFRP Files case module when case file is returned to CPM from the requester, and return the file to the FRC for re-filing.

Exhibit 5.7.10-1
TFRP CASE FILE CHECK SHEET for Review of TFRP Case Files

Responsible Person: _____
CORP: _____
Earliest ASED Date: _____
RO Name and Assignment Number : _____

SSN: _____
EIN: _____

- Is Form 3210 included?
- Is Form 4183 with Page 4 included?
- Is Form 2750 included?
- Is Letter 1153(DO) included? If yes:
 - Enter Date of Letter 1153:
 - If mailed – Is Certified information or Proof of mailing included?

- Is Form 2749 included?
- Are any barred statutes addressed?
- If yes, is 2750 signed and dated by TP and IRS?

Method of Delivery:

If no, is reason documented in ICS history?
Is Form 2751 included?
Is Form 1155 included?
Is Form 4180 included?
Is Form 9327 included?
Is Form 2859 included?
Is Form 3552 included?
Is CPM History input?

Core Documentation Items

Per 5.7.4. and 5.7.10

Note:

If the following documents are not secured, the ICS history must be documented with the reasons they were not secured and why they are not necessary to support the recommendation. Prepare Form 5942 and return to originator if not included or documented.

Is Form 4180 included?
Are Bank Signature Cards or PIN assignment included?
Are Checks or Bank Statements included?
Are Articles of Incorporation included?
Are ICS Corporate Investigation History and ATFR History included?

APPEALS FILE

Is Letter 1154 included?

Is Appeal Timely?

If yes or no, Appeals Request Received by: _____

If Hand Delivery or Fax – Is ICS documented?

If Mail – Is postmarked envelope included?

CPM REVIEWED DATE

If yes, is Form 2751 signed and dated?

If no, is reason documented in ICS history?

If yes, is Form 3210 with DLN and 23C date included?

If yes, is mailing documented in ICS history?

Was 5942 / E-MAIL issued?

If no, is reason documented in the ICS history?

If no for both, is reason documented in the ICS history?

If no for both, is reason documented in the ICS history?

If no, is reason documented in the ICS history?

Is Written Protest included? If no, return to RO

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