

[Auditing]

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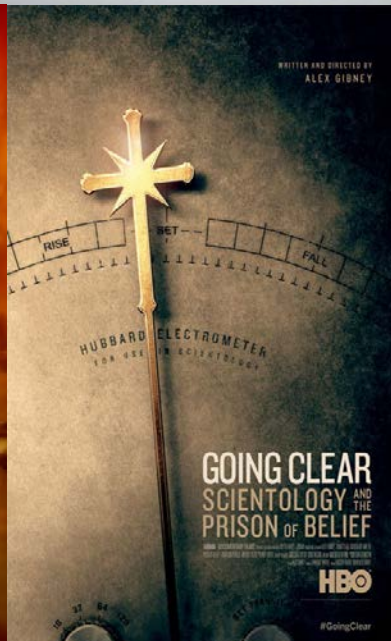
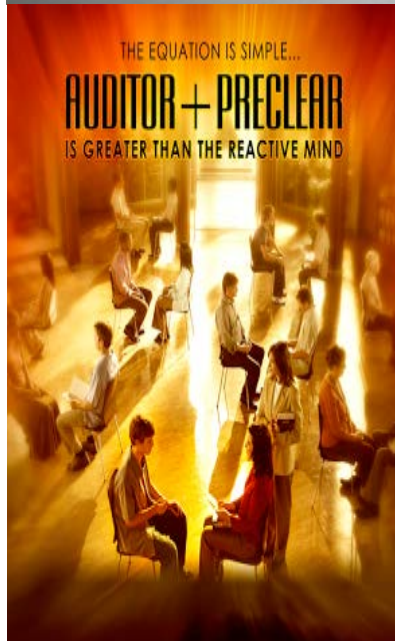
"LET'S JUST SAY I'VE DONE NOTHING WRONG, I REFUSE TO ANSWER ANY MORE QUESTIONS AND LEAVE IT AT THAT...THAT SEEMED TO WORK PRETTY WELL FOR YOU!"



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vs... What is Taxology ?

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Part 4. Examining Process
Chapter 12. Nonfiled Returns
Section 1. Nonfiled Returns

4.12.1 Nonfiled Returns

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4.12.1.1 (10-05-2010)
Overview

1. This section discusses the procedures involved in handling nonfiled returns.
2. Substitute for return (SFR) and delinquent return procedures were developed to deal with taxpayers who do not file required tax returns.
3. The purpose of the procedures is to assess the correct tax liability by either:
 - A. Securing a valid voluntary tax return from the taxpayer (**delinquent return**), or
 - B. If securing a return is not possible, computing tax, interest, and penalties based upon information submitted by payers, or based on other available information (**SFR**).

4.12.1.2 (10-05-2010)
Source of Cases

1. Examiners encounter nonfilers in several ways. For example,
 - From related cases/spin-off examinations
 - As project cases
 - As referrals from other functions

4.12.1.3 (10-05-2010)
Enforcement Period

1. Policy Statement 5-133 (P-5-133), IRM 1.2.14.1.18, *Delinquent returns—enforcement of filing requirements*,

discusses delinquent returns and the enforcement filing requirements. The enforcement period is not to be more than six years. However, the extent to which delinquency procedures will be enforced will depend upon the facts and circumstances of each case, and by reference to factors ensuring evenhanded administration of staffing and other Service resources. Enforcement for longer or shorter periods may be used when consideration has been given to:

- A. The taxpayer's prior history of noncompliance.
- B. The existence of income from illegal sources.
- C. The effect upon voluntary compliance.
- D. The anticipated revenue in relation to the time and effort, required to determine tax due.
- E. Any special circumstances existing in the case of a particular taxpayer, class of taxpayer, or industry, or which may be peculiar to the class of tax involved.

4.12.1.3.1 (10-05-2010) **Management Approval**

1. Management approval is necessary if the enforcement activity is less than or exceeds the six-year period. Document the case file by:
 - A. Outlining the facts of the case; and
 - B. Detailing the reasons on Lead Sheet 130, *Multi-year and Related Returns Lead Sheet*, why enforcement for the longer or shorter period is recommended. (Deviating from P-5-133). If warranted, attach supporting workpapers.
2. Group manager approval is not needed if the nonfiler voluntarily files returns beyond the established enforcement period.

4.12.1.4 (10-05-2010) **Discovery of Nonfiling**

1. When examiners discover during any examination that a taxpayer has failed to file required federal tax returns, they will, before soliciting any returns:
 - A. Determine the taxable periods for which the taxpayer was required to file returns.
 - B. Ascertain the reasons why the taxpayer failed to file the required returns.
 - C. Determine whether any indications of fraud exist. See IRM 25.1.2.3, *Indicators of Fraud*.
 - D. Perform IDRS research under both the primary and secondary TIN, if applicable. See IRM 4.12.1.5.2, *IDRS Research*.
 - E. IRM 4.10.5.2.6, *Returns Not Filed*, provides guidance on what steps must be taken when an examiner finds that a return has not been filed.

4.12.1.5 (10-05-2010)

Pre-Contact Analysis

1. Prior to contacting the taxpayer, certain steps should be taken to aid in the planning and completion of a quality examination.
2. See IRM 4.10.2.6, *Pre-Contact Planning of Examination Activities*, for guidance on pre-contact planning of examination activities.

4.12.1.5.1 (10-05-2010)

Contacting the Taxpayer

1. Examiners should follow the guidance in IRM 4.10.2.7, *Initial Contact: Overview*, to make initial contact with the taxpayer.
2. If a new address is secured, examiners should update address information using procedures outlined in IRM 4.10.2.7.2, *Locating the Taxpayer*.
3. When correspondence has been returned and a new address is secured, examiners should send correspondence to the new address and restart the response time.
4. If more than one address is secured and the examiner cannot determine the correct address, send correspondence to the identified addresses.
5. See IRM 4.12.1.5.6, *Locating the Taxpayer*.

4.12.1.5.2 (10-05-2010)

IDRS Research

1. Confirm that no return has been filed for the years assigned by using IDRS command codes IMFOL (I and T) and INOLE (X and S) or TXMODA.

Example:

If you used an IMFOL I, you would check for the posting of an SFR Transaction Code (TC) 150. On your IMFOL I you will see TC 150 - 0 and the letters "SUBST 4" .

2. Both the primary and secondary Social Security Numbers (SSNs) should be searched for prior filings and for pending assessment activity.
3. See IRM 4.4.9.2.2, *Transcripts/IDRS*, through IRM 4.4.9.2.2.1, *Dummy Present on MF*, for guidance on reading transcripts on nonfiler cases.

4.12.1.5.3 (10-05-2010)

Collectibility Considerations

1. Examiners are expected to consider collectibility during the pre-contact phase as a factor in determining whether to pursue the filing of a tax return. See IRM 4.10.2.4.3,

Collectibility, and IRM 4.20.2.2, General Collectibility Considerations.

2. Use Disposal Code (DC) 32 to survey the account if a SFR TC 150 is posted to the account. See IRM 4.20.2.5(3), *Non-filers*.

4.12.1.5.4 (10-05-2010) **Statute Considerations**

1. The assessment statute for a secured delinquent return is limited to three years, from the date the return was filed, despite the taxpayer's fraudulent failure to file a tax return prior to the submission of the delinquent return. After the delinquent return is filed, other exceptions to the normal 3-year period for assessment may apply such as the 6-year assessment statute under IRC 6501(e) or the unlimited period for assessment as a result of a false or fraudulent return statute under IRC 6501(c)(1). See IRM 25.6.1.9.5.3, *25% Omission* and IRM 25.6.1.9.5.2, *Fraudulent Return*.
2. The execution of a substitute for return does not trigger the running of the assessment or collection statutes. See IRM 25.6.1.9.4.5, *Substitute for Return (SFR)*.
3. An SFR carries an alpha statute "EE" until the taxpayer files a return.

4.12.1.5.5 (10-05-2010) **Establishing AIMS Control**

1. The nonfiled tax returns should be established on AIMS as soon as it is known that an examination will take place or that time will be applied. Form 5345-D, *Examination Request-ERCS (Examination Returns Control System) Users*, should be used to request establishment of the return.
2. See IRM 4.4.9.4.1, *Form 5345, Examination Request*, for establishing a nonfiler directly onto ERCS and AIMS.
3. If the taxpayer does not have a TIN or refuses to secure one, a NMF account should be established using Form 5354, *Examination Request Non-Master File*. See IRM 4.4.9.4.2, *AIMS Control When TP does not have a TIN*.

Note:

The IRS is allowing businesses to obtain Employer Identification Numbers (EINs) directly from the IRS website, via telephone, mail, or fax. Visit <http://www.irs.gov/businesses/small/article/0,,id=98350,0.html> for directions provided on how to obtain an EIN.

4.12.1.5.6 (10-05-2010) **Locating the Taxpayer**

1. IRM 4.10.2.7.2, *Locating the Taxpayer*, and subsequent subsections provides detailed instructions on how to locate a taxpayer, and the mandatory steps that must be taken for cases involving unlocatable taxpayers.

4.12.1.5.6.1 (10-05-2010) **Third-Party Contacts**

1. Due to the nature of nonfiler cases and the impact of IRC 6201(d) and IRC 7491 it is anticipated that third-party contacts may be warranted to confirm income sources reflected on the IRP or more current address information.
2. Publication 1, *Your Rights as a Taxpayer*, is used to provide the taxpayer with advance notification that IRS may contact third parties regarding the determination or collection of their tax liability in accordance with IRC 7602(c), *Notice of Contact of Third Parties*.
3. Additional information concerning third-party contacts is provided in IRM 4.11.57, *Examining Officers Guide - Third Party Contacts*.

4.12.1.6 (10-05-2010) **Income Probes (Nonfilers)**

1. If the examiner secures delinquent returns during the examination process, those returns are subject to the same minimum requirements for examination of income as timely filed returns. See IRM 4.10.4.3, *Minimum Requirement for Examination of Income*, and IRM 4.10.4.5, *In-Depth Examinations of Income*.
2. In determining income on a nonfiler case, the examiner should be aware of the impact of IRC 6201(d) and IRC 7491.
 - A. IRC 6201(d) was enacted to address perceived problems with respect to determinations of unreported income based on information returns (IRP documents). IRC 6201(d) creates a legal requirement to contact third parties to verify income where the taxpayer reasonably disputes the income and fully cooperated with the IRS. If the taxpayer does not respond or raises a frivolous dispute, the taxpayer has not made a reasonable dispute; there is no legal requirement for further verification with third parties, and an income adjustment based on the IRP document is appropriate.
 - B. IRC 7491(a) was enacted because Congress perceived taxpayers were at a disadvantage when forced to litigate with the Service. At the examination level, the taxpayer still has the same burden of proof to supply adequate documentation and statutory authority for their position. When going to court, the burden still does not shift to Government if taxpayer fails to provide credible evidence.

3. See also IRM 4.10.4.3.5, *Minimum Income Probes: Delinquently Filed Returns and Nonfiled Returns*.

Note:

Examiners should never determine income solely from statistical data.

4.12.1.6.1 (10-05-2010)

Minimum Income Probes on Nonfilers

1. See IRM 4.10.4.3.2, *Minimum Income Probes: "Nonbusiness" Returns*, for a discussion on examiner responsibilities of analyzing all IRP information to ensure that all other business or investment activities are considered.
2. See IRM 4.10.4.3.5(4), *Minimum Income Probes: Delinquently Filed Returns and Nonfiled Returns*, for a discussion of SFRs filed on behalf of a nonfiler under IRC 6020(b) and when reconstruction and examination of income is required on nonfilers.
3. See IRM 4.10.4.4.1, *Material Understatements and Managerial Involvement*, for unreported income.

4.12.1.6.2 (10-05-2010)

Forms 8300 and Currency Transaction Reports

1. For information concerning the minimum requirements with respect to required filing checks for Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business* see IRM 4.10.5.9, *Forms 8300 Report of Cash Payments Over \$10,000 Received in a Trade or Business and Currency Transaction Reports (CTR's)*. If problems are noted see IRM 4.26.10, IRM 4.26.11 *Bank Secrecy Act - Form 8300 History and Law, Bank Secrecy Act - Form 8300/IRC 6050I Examiner Responsibilities*, and IRM 4.26.12, *Bank Secrecy Act - Examination Techniques for Form 8300 Industries*, for detailed information about Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*. Examiners discovering serious Form 8300 violations should consider a referral to the Bank Secrecy Act (BSA) program in Fraud/BSA in SB/SE. The referral should be made to the Form 8300 specialist in BSA's WISDM Division. Contact information can be found on MySB/SE under Fraud/BSA using the 8300 link.
2. Title 31 forms are not part of required filing checks for income tax examiners. Forms such as [FinCEN Form 104](#), *Currency Transaction Report (CTR)*, and [FinCEN Form 103](#), *Currency Transaction Report for Casinos (CTR-C)*, are examined separately as part of the BSA program. Examiners working Title 26 examinations must not inquire about Title 31 forms, except as noted below.
3. TD F 90-22.1, *Report of Foreign Bank and Financial Accounts*, (FBAR), though not part of required filing

checks, may be examined by Title 26 examiners after a related statute determination has been made and a Related Statute Memorandum signed by the examiner's Territory Manager. Until that point, Title 26 examiners may not inquire about FBAR filings. See IRM 4.26.17, *Report of Foreign Bank and Financial Accounts (FBAR)*

Procedures, for FBAR case procedures. See IRM 4.26.17.2, *FBAR Procedures Starting the Case - Related Statute Memorandum*, for related statute procedures.

4. Title 26 examiners may accept and process delinquent CTR and FBAR forms if offered by the taxpayer, but should not solicit them, except in the case of an authorized FBAR examination. See IRM 4.26.8.4, *Delinquent BSA Forms*, for delinquent Title 31 return acquisition procedures.

4.12.1.7 (10-05-2010) Fraud Considerations

1. The examiner should be alert to potential tax fraud indicators when reviewing case information.
2. When indicators (signs) of fraud are uncovered, the examiner will initiate a discussion with their group manager. If the group manager concurs that there are indicators of fraud warranting fraud development, the examiner will contact the fraud technical advisor (FTA) assigned to that area. See IRM 25.1.2.2, *Fraud Development Procedures*.
3. The FTA will assist in identifying affirmative acts of fraud and in developing an investigative plan of action. The FTA will also help determine whether or not a criminal referral should be made. Developing a fraud case is a matter of progressing from the indicators of fraud, to affirmative acts of fraud, where the taxpayer deliberately took action to evade a tax.
4. See the SB/SE National Fraud Program website <http://sbaseservicewide.web.irs.gov/Fraud/default.aspx> for additional information.
5. Examiners should establish all the facts when considering a referral to the Office of Professional Responsibility (OPR) in cases involving tax professionals failing to file tax returns. The examiner will make a referral to the Office of Professional Responsibility if the non-filer is a tax practitioner (attorney, certified public accountant, enrolled agent, or enrolled actuary). See IRM 4.19.10.6.2, *Office of Professional Responsibility*.
6. See also Circular 230, section 10.51 *Incompetence and Disreputable Conduct*, for preparers of tax returns and disreputable conduct.
7. If the taxpayer furnishes delinquent returns to the examiner, or indicates the intention to file delinquent returns, the examiner should always consider the factors outlined in IRM 25.1.2, *Recognizing and Developing Fraud*.

4.12.1.7.1 (10-05-2010)

Fraud Indicators Present

1. IRM 25.1.7, *Fraud Handbook - Failure to File*, provides sources of information in developing the issue of fraud on a failure to file a return case.
2. IRM 25.1.7.2, *Pre-screening Non-filers*, provides a listing of indicators to consider in determining the presence of fraud.
3. In cases where fraud indicators are present, the examiner should **NOT**:
 - Solicit tax returns from the taxpayer
 - Volunteer advice to the taxpayer
 - Discuss referral possibilities with the taxpayer
4. Complete Form 11661, *Fraud Development Recommendation - Examination*.
5. IRM 25.1.7.4, *Development of Fraud*, provides guidance on developing a fraud case for a nonfiler.
6. IRM 25.1.7.6, *Secured Delinquent Returns (DEL RET)*, further discusses fraud considerations when securing delinquent returns and covers what examiners should consider when referring secured delinquent returns having a substantial understatement of income and/or substantial overstated deductions to Criminal Investigation (CI) for consideration. If it is determined that the substantial understatement of income and/or substantial overstated deductions are fraudulent and criminal criteria are met, the group manager and the FTA should become involved as discussed in IRM 25.1.7.5, *Criminal Referral*.

4.12.1.7.2 (10-05-2010)

Affirmative Acts (Firm Indication) of Fraud

1. Where there is a firm indication of fraud, the preparation and submission of an SFR will be postponed.
2. See IRM 25.1.7, *Fraud Handbook - Failure to File*, on how to proceed.

4.12.1.7.2.1 (10-05-2010)

Indications of Fraud Absent

1. If it is determined that indications of fraud are not present:
 - A. Advise the taxpayer of the requirement to file all delinquent returns without regard to the number of years or taxable periods involved.
 - B. Interview the taxpayer to gather information on his/her ability to pay and on the filing of delinquent returns.
 - C. Advise the taxpayer to deliver the returns promptly to the examiner along with a written statement explaining why they did not timely comply with filing requirements. It is important for the examiner to request a written statement from the taxpayer explaining any discrepancies, reasons for non-filing, and reasons which the

taxpayer believes would establish reasonable cause for penalty relief. See IRM 20.1.1.3.1, *Unsigned or Oral Requests for Penalty Relief*, for guidance on written versus verbal requests for penalty relief.

Note:

Each year stands alone; therefore, the taxpayer must establish reasonable cause for each and every year under consideration.

4.12.1.8 (10-05-2010)
Preparation of the Return(s)

1. When a taxpayer is advised to file all required delinquent returns but refuses to file, or states an inability to file all of the returns determine the extent to which the filing requirements should be enforced using the criteria in P-5-133 and prepare the return(s).

4.12.1.8.1 (10-05-2010)
SFR TC 150 Posted

1. Do not submit a delinquent or substitute return if TC 150 has posted or a SFR TC 150 has posted.
 - A. TC 150 posting with no taxability followed by a TC 240 posting for \$500 (W-4 penalty) indicates that the Campus has posted a dummy return.
 - B. If a TC 150 has posted, any adjustments must be made as subsequent adjustments (i.e. TC 300).

4.12.1.8.2 (10-05-2010)
IRC 6020(a)

1. If the taxpayer will consent to disclose all information necessary for the preparation of the return(s), IRC 6020(a) states, "... the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person." This does not include the taxpayer signing a waiver of restriction on assessment (e.g., Form 4549, *Income Tax Examination Changes*, or Form 870, *Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment*,) which does not constitute a return under IRC 6020(a).
2. Delinquency penalties are applicable. See IRM 20.1.2, *Failure To File/Failure To Pay Penalties*.

4.12.1.8.2.1 (10-05-2010)
IRC 6020(b)

1. IRC 6020(b) states, "If any person fails to make any return required by any Internal Revenue Law or

regulation made there under at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise."

- A. IRC 6020(b)(2) states, "Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes."
- B. This is an SFR.
- C. See IRM 20.1.2, *Failure To File/Failure To Pay Penalties*, to determine applicable penalties.

4.12.1.8.3 (10-05-2010) **Establishment on Masterfile**

1. To establish an SFR on Master File, follow the procedures in IRM 4.4.9.6, *Substitute for Return*.

4.12.1.8.4 (10-05-2010) **Substitute for Return**

1. When it has been determined that a taxpayer is liable for filing a return, and upon due notice from the Service fails to do so, an SFR will be prepared by Examination.
 - A. Examination uses this procedure to establish an account and examine the records of a taxpayer when the taxpayer refuses or is unable to file and information received indicates that a return should be filed.
 - B. The examiner will follow the steps outlined *IRM 4.12.1.5.2 IDRS Research*, to confirm no return has been filed.
 - C. An SFR, in and of itself, does not constitute a return under IRC 6020(b). For the purpose of asserting the Failure to Pay Penalty, additional steps should be taken before submitting the SFR package. See IRM 20.1.2.1.4, *Substitute for Return — IRC section 6651(g)*

4.12.1.9 (10-05-2010) **Examination of a Secured Delinquent Return**

1. When a delinquent return is secured, the examiner will generally examine the taxpayer's records to determine the accuracy of the return unless:
 - A. It is impracticable to do so (based on necessary time, research, etc.)
 - B. Under Required Filing Check procedures, it is not warranted. See IRM 4.10.5.2.7, *No Examination Warranted*.

4.12.1.9.1 (10-05-2010) **Additional Examination Techniques**

1. During the examination of a nonfiler, sampling techniques should be considered to determine if the recipients of payments made by the nonfiler filed returns reporting the payments:
 - A. Compensation to officers, wages and salaries, payments to individuals, etc. should be sampled and traced to Form 1099, *U. S. Information Return*, and/or Form W-2, *Wage and Tax Statement*, filed.
 - B. Files for Form 1099 and other information reports and Form W-2 should be sampled.
 - C. Master File research should be conducted for individuals who did not receive either a Form 1099 or a Form W-2 to determine if returns have been filed.
 - D. Invoices for cash payments to businesses should be sampled and Master File research should be conducted to determine if a return has been filed for the entity.
 - E. See IRM 4.10.5.2.3, *Assessing Audit Potential: Area of Expertise*, for guidance regarding when the examiner should pick up a return. See IRM 4.10.8.14, *Examination Information Reports- Form 5346*, for guidance regarding when a Form 5346, *Examination Information Reports*, should be prepared and submitted to PSP.

4.12.1.10 (10-05-2010)
Refund Returns- SFR TC 150 Posted

1. If more than one delinquent return has been secured and one or more of the delinquent returns shows a refund, special procedures apply if the returns are accepted as filed. The processing of the returns must be cycled to process the balance due returns first. See IRM 4.4.9.7.3.2, *Forward to Centralized Case Processing (CCP)*.

4.12.1.10.1 (10-05-2010)
Claim Case

1. If the delinquent return secured (with a SFR TC 150) shows a refund, a decision must be made by the examiner, based upon case file information, whether to hold the refund and audit the secured return. If the examiner determines that an audit of the secured return is warranted, then this becomes a claim case.
2. Claim procedures:
 - A. The Form 3198, *Special Handling Notice for Examination Case Processing*, for the partial assessment of the secured return should state "Claim Case: Hold Refund" - enter a "2" in item 7 (Hold Codes) of the Form 5344, *Examination Closing Record*, to stop master file notices and to prevent excess credits from refunding. See also

IRM 4.4.9.7, *Delinquent Return Received After SFR TC 150 Posted at Master File*.

- B. Claims procedures must be followed in cases where a refund was held and the refund was partially or fully disallowed.
- C. The starting point for the tax liability will be the tax shown on the secured delinquent return.
- D. The audit report will reflect additional tax assessments, changes to prepayment credits, and applicable penalties.

4.12.1.10.1.1 (10-05-2010)

Claims for Refunds where a SFR TC 150 has not posted

- 1. If you receive several delinquent returns AND accept them as filed, process the delinquent returns showing a balance due before processing those claiming a refund.
 - A. See IRM 4.4.9.5, *Delinquent Return Secured - No TC 150 Posted*, for nonfiler cases with an SFR TC 150 not posted.
 - B. See IRM 4.4.9.7, for nonfiler cases with an SFR TC 150 posted.

4.12.1.10.2 (10-05-2010)

Delinquent Returns Received after Statutory Notice Issued

- 1. Situations where the nonfiler submits a delinquent return after the statutory notice of deficiency has been issued should be handled as follows:
 - 1. If the Service accepts the figures shown on the return as substantially correct, the amount on the return should be assessed and the case closed. A revised report supplementing the notice of deficiency does not need to be issued even if the amount of tax shown on the return differs from the amount on the notice.
 - 2. If the Service does not accept the figures on the return as substantially correct, the amount of tax on the return should be immediately assessed as a partial agreement and a revised report supplementing the notice of deficiency should be sent to the nonfiler.
 - 3. See IRM 4.8.9.19.2.2, *Delinquent Return Secured*, for specific instructions see IRM 4.8.9.20.1, *Communications with Taxpayers*, and IRM 4.8.9.20.2, *Agreement Secured*.

4.12.1.10.3 (10-05-2010)

Delinquent Return Secured-with Reported Tax or Reasonable Cause in Question

- 1. If the SFR TC 150 procedures are used, partial assessments will need to be made in situations where the secured delinquent return is in question and the examination cannot be closed within seven days of receipt as per IRM 4.4.9.7.4, *Delinquent Return Secured after TC*

150 SFR Posted, With Audit Potential - Process Partial Assessment Procedures. In addition, if the nonfiler is appealing the delinquency penalties on the basis of reasonable cause, partial assessment for the tax will also need to be made.

2. IRM 4.4.9.7.4.1, through IRM 4.4.9.7.4.3.4 for step by step processing instructions on partial assessments.
3. After CCP makes the assessment, they will return Form 5344 to the group stamped "Request Completed." This form should be maintained in the case file. See IRM 4.4.9.7.4.3.4.

4.12.1.10.4 (10-05-2010)

No Return Secured- Agreed Closure IRC 6020(a)

1. If the nonfiler does not provide a delinquent return, all adjustments, tax, and penalties will be proposed on an income tax change report Form 4549. If the nonfiler signs this report agreeing to the deficiency, process as an agreed closing. The signed report does **not** constitute a return under IRC 6020(a) or any IRC section.
 - A. Form 3198 will be attached to the case with notation "IRC 6020(a) Return" and close the case with the applicable Disposal Code.
 - B. If a "SFR TC 150" has not been processed follow procedures in IRM 4.4.9.6, *Substitute for Return*, to create the SFR TC 150 on Master File.

4.12.1.10.5 (10-05-2010)

No Return Secured - Unagreed Closure

1. If a nonfiler is unable to provide a delinquent return, all adjustments, tax, and penalties will be proposed on Form 4549.
2. If this nonfiler does not agree with the proposed assessment, the case will be closed as an unagreed case.
3. If the nonfiler does not respond to our actions and continues to be uncooperative;
 - A. Managerial involvement should be obtained prior to issuance of a 30 day letter;
 - B. After consulting with the manager, the examiner will prepare and send the 30 day letter which includes an unagreed income tax change report reflecting all adjustments, tax, and penalties.

Note:

See IRM 4.10.8.11, *Unagreed Case Procedures: Preliminary (30-Day) Letters*, for the three frequently used 30-day letters by SB/SE Examination area offices. Also see IRM 4.10.8.11.4, *Form Letters*. The issuance of Letter 3391, *30-Day Nonfiler Letter*, allows the taxpayer 30 days to request Appeals consideration of their case.

4. The nonfiler can request a hearing with the Office of Appeals to review the proposed deficiency during closing and after receipt of 30-day letter.
5. If the nonfiler requests an Appeals hearing, the case file will be closed to Technical Services in status 21 on ERCS. See IRM 4.4.5.4, *Non-Docketed Cases*, for group procedures on how to close protested cases to their local Tech Services office for routing to Appeals.
6. If the nonfiler does not request an Appeals hearing in response to the 30 day letter, then the 90-day letters will need to be issued by Technical Services.

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https://www.irs.gov/irm/part4/irm_04-012-001.html