

<b><u>CONTROL FILE (SCCF)</u></b>	completed. The SCCF systems maintain separate totals for revenue receipts and other items.
<b><u>SOCIAL SECURITY NUMBER</u></b>	A unique nine-digit number used to identify an individual taxpayer account, in NNN-NN-NNNN format issued by the Social Security Administration.
<b><u>SOURCE DOCUMENT</u></b>	Backup documentation used by Service personnel to explain an adjustment to a taxpayer's account; for example, taxpayer correspondence.
<b><u>STATUS CODE</u></b>	A two-digit numeric code indicating the Master File and/or IDRS status of a tax module.
<b><u>STATUTE OF LIMITATIONS</u></b>	A set of rules specifying the period in which actions may occur, or within which rights may be enforced.
<b><u>SUBSEQUENT PAYMENT</u></b>	A payment received for an account that has been assessed and for which the taxpayer has been billed.
<b><u>SUBSTANTIAL AUTHORITY</u></b>	The objective determination that a position taken by a taxpayer is supportable.
<b><u>SUBSTITUTE FOR RETURN (SFR)</u></b>	A return prepared on behalf of a taxpayer by the Service pursuant to IRC section 6020(b). The return is prepared when it has been determined that a taxpayer is liable for filing the tax return but has failed to do so upon due notice from the Service.
<b><u>SUPERSEDING RETURN</u></b>	An amended return filed on or before the return due date. It is filed on an original return form, not an amended return form.
<b><u>TAX CLASS</u></b>	A one-digit code which identifies the type of tax involved in a transaction.
<b><u>TAX MODULE</u></b>	A record of one account for one taxpayer covering one type of tax for one tax period.
<b><u>TAX PERIOD</u></b>	The period of time for which a return is filed.
<b><u>TAXPAYER DELINQUENT ACCOUNT (TDA)</u></b>	An internal computer notice indicating the taxpayer has not responded to prior balance due notices or paid a balance due.
<b><u>TAXPAYER IDENTIFICATION NUMBER (TIN)</u></b>	A nine-digit number assigned to taxpayers for identification purposes. Depending on the nature of the taxpayer, the TIN is either an Employer Identification Number (EIN), a Social Security Number (SSN), or an Individual TIN.
<b><u>TAXPAYER INFORMATION FILE (TIF)</u></b>	The IDRS file which contains entity and module information.

**5.18.1.1 (01-01-2002)****Automated Substitute for Return (ASFR) Program Overview**

1. This chapter outlines ASFR duties.
2. Compliance Services Collection Operation (CSCO) administers the ASFR program. CSCO prepares a Substitute for Return under the authority of Internal Revenue Code (IRC) 6020(b) and issues a Statutory Notice of Deficiency as authorized by IRC 6212.
3. Exhibit 5.18.1-1 provides an overview of this section in flowchart format.

**5.18.1.2 (01-01-2002)****What is ASFR?**

1. ASFR is a program that requires compliance by taxpayers who have not filed individual income tax returns, but owe a significant income tax liability. ASFR determines and assesses the correct tax liability by:
  - Securing valid income tax return from the taxpayer
  - Computing tax, penalties, and interest, based upon Information Reporting Program (IRP) information submitted by payors, combined with other internally available information

- 4. Internal Revenue Manual 4600, Employment Tax Procedures, contains additional information for all functions pertaining to the administration of Employee/Employer classification issues.

**[5.1] 11.8 (05-27-1999)**

**Substitute for Returns**

1. The Service may prepare an individual's income tax return on their behalf under Section 6020(b) of the IRC. The Automated Substitute for Return (ASFR) system was designed to assess returns of wage earners who fail to file using Information Return Master File (IRMF) information. The automated process is located in the service centers.
2. TDIs are referred to ASFR for processing when there are no unresolved taxpayer delinquent accounts (TDA) associated with the taxpayer and if the case meets certain selection code criteria. The case may be sent to ASFR directly after the final TDI notice by the Automated Collection System (ACS) or by revenue officers.
3. Revenue officers may refer IMF TDIs to ASFR when they meet the following criteria:
  - A. the taxpayer is not self-employed
  - B. the total income is less than \$100,000

**EXCEPTION:**  
Refer the taxpayer whose module(s) is selection code 39.

  - C. the IRP income is more than 75% of the taxpayer's AGI or TPI shown for the last return filed (LRF)
  - D. the selection code is 12, 13, 14, 39, 93 or 94
  - E. the tax year is no older than six years prior to the current year
  - F. there is no current or pending TC 530 on the account.
  - G. the taxpayer address has been verified.
4. Prior to sending the TDI to ASFR complete the following:
  - A. Resolve all open TDAs.
  - B. Request on Form 4844, Request for Terminal Action, that the number DOAO8000, be input to reassign the case to ASFR.
  - C. Attach Form 4844 to the TDI and process the TDI as a closed case using routine local procedures.

**NOTE:**  
Terminal input operators will input directly on IDRS terminals the reassignment to ASFR.
5. Since installment agreement cannot be made if there are unfiled returns, TDIs with proposed installment agreements or in Collection status 60 cannot be processed through ASFR.
6. If TDAs are resolved by continuous levy (status 60 with the agreement locator number of XX08), refer a TDI to ASFR. Prepare Form 4844 to request that the service center open a control base for the delinquent years using CC ACTON, category code "SFR" , status code "B" . Do not assign the TDI to DOAO8000.
7. Infrequently, the revenue officer may receive a TDA after the related TDI is sent for ASFR processing. The TDI status will be identified by the literal "SFR" as the category code in the Case Control and History section of CC TXMOD.

If...	Then...
the 30 or 90 day letter has been sent to the taxpayer	the TDI will be T-signed to DOAO8000.

3. Lack of funds is an acceptable explanation for failure to pay any tax only when the taxpayer can demonstrate the lack of funds occurred despite the exercise of ordinary business care and prudence.
5. When the FTF/FTP penalties are abated for reasonable cause, TC 271 with RC 62, Master File will not restrict future computer computations of FTP penalty (provided it was not previously restricted). The computer continues to compute the FTP penalty but will waive the amount associated with RC 62.
  1. A TC 270 or 271 input without RC 62 restricts subsequent computation of the penalty.
  2. Input TC 272 with a zero amount to remove the manual restriction on failure to pay penalty, when you determine that a module was restricted in error. See IRM 120.1.2.4 for the procedures applicable when it is determined that the FTP penalty is to be computed from the original due date of the return.
  3. See 2.1.3.7 of LEM 120.1.2.

#### **[120.1] 2.1.4 (04-27-2000)**

#### **Substitute for Return**

1. A return, prepared for the taxpayer, pursuant to IRC section 6020(b) is a substitute for a return. Generally, the return is prepared by the Service when it is determined that a taxpayer is liable for filing the tax return but failed to do so after receiving notification from the Service.
2. Within the Service :
  1. Preparation of returns with regard to income, estate, gift and certain excise (IRC Chapters 41, 42, 43, and 44) tax deficiencies, are generally referred to as the SFR program. These returns are subject to statutory notice of deficiency procedures. See IRM 120.1.1.4 for a discussion of statutory notice of deficiency.
  2. Preparation of returns with regard to employment and excise tax deficiencies (not IRC Chapters 41, 42, 43, and 44) are generally referred to as the 6020(b) program. These returns do not require a statutory notice of deficiency.
3. In considering the application of either the FTF or FTP penalty for returns prepared under the SFR programs, the Service will:
  1. Recommend assertion or non-assertion of the FTF/FTP penalty;
  2. Explain the basis for the recommendation and comment on the taxpayer's statement in the report, report transmittal and/or workpapers, as appropriate;
  3. Compute any FTF/FTP penalty based on the total tax due for the period involved, less any tax withheld at source on wages and any estimated tax payments (the total tax due, plus any penalty, will be considered as a deficiency);
4. If a taxpayer fails to file a delinquent return when requested under the SFR program, but executes an agreement to waive the restrictions on assessment of a deficiency (by signing a form such as Form 870, 4549E or 4549), the Service will determine if the FTF/FTP penalty should be asserted.
5. For SFR returns and ASFR (generally income tax returns), statutory notice of deficiency procedures apply:
  1. A dummy tax return (TC 150) is created to open the account on the master file.
  2. If the taxpayer does not respond to the statutory notice of

- deficiency, the appropriate tax is assessed.
3. The FTF penalty is computed from the return due date, or the extended due date, to the TC 290 or TC 300 assessment date (23(c)date), or 5 months, whichever is earlier.
  4. Generally, the FTP penalty is computed from the original due date of the return to the date the tax is paid.
  5. See IRM 120.1.2.4 and 120.1.2.5 for discussions of various FTP penalty rates and identifying the FTP penalty start date in specific situations. See paragraphs (7) and (8) below.
  6. For 6020(b) program returns (generally employment or excise tax returns), statutory notice of deficiency procedures do not apply:
    1. Service Centers prepare the returns based on information obtained through various matching programs.
    2. The Service assesses the tax (TC 150) determined to be due and sends the taxpayer a completed employment or excise tax return.
    3. The FTF penalty is computed from the due date of the return, to the 23(c) date of the assessment or for 5 months, whichever is earlier.
    4. Generally, the FTP penalty is computed from the original due date of the return to the date the tax is paid.
    5. See IRM 120.1.2.4 and 2.5 for discussions of various FTP penalty rates and the FTP start date in specific situations.
  7. In both the SFR and 6020(b) program situations, the FTP penalty under IRC section 6651(a)(2) is computed from the original due date of the return until the date the tax is paid or the maximum penalty of 25 percent is reached.
  8. The FTP penalty under IRC section 6651(a)(2) applies to returns prepared by the Service only if the return was due (without regard to extensions) after July 30, 1996.
  9. The FTP penalty is automatically calculated and assessed from the due date of the return until the date the tax is paid. To allow automatic generation of the FTP by master file, input an adjustment to tax (or 290/300 for a zero amount) with a (1) Priority code 2 (ADJ54/TC290), or (2) Priority code 9 (ADJ47/TC300).

#### **[120.1] 2.1.5 (04-27-2000)**

##### **Excise Tax**

1. The filing and paying of an excise tax covering the tax on one of the categories (Abstract Numbers/IRS No.s) listed on Form 720, Quarterly Federal Excise Tax Return, does not constitute the filing of a return or paying a tax for any of the other categories (Abstract Numbers).
2. **Example** : A manufacturer of bows and arrows and fishing rods files a timely return for the tax on bows and arrows only. Do not consider this return as being a timely-filed return for the tax on fishing rods.

#### **[120.1] 2.1.6 (04-27-2000)**

##### **Restrictions on Assertions**

1. According to Policy Statement P-2-4, the Service does not assert penalties against federal agencies.
2. The statute of limitations for assessing the penalty on a filed return is three years from the due date, or the date filed, whichever is later. There is no statute of limitations for assessing the penalty where no return has been filed.

#### **[120.1] 2.1.6.1 (04-27-2000)**

**5.18.2.1 (08-01-2001)  
IRC 6020(b)**

1. IRC 6020(b) provides a way to prepare returns and secure assessments from non-filing business taxpayers who:
  - o Have an open filing requirement
  - o Are required to file a return
  - o Do not file a return as required
2. Exhibit 5.18.2-1 provides an overview of this section in flowchart format.

**5.18.2.2 (08-01-2001)  
What Is Business Returns IRC 6020(b) Processing?**

1. Internal Revenue Code Section 6020(b) is the authority given to the Commissioner of the Internal Revenue Service to prepare and process returns for non-filing taxpayers.
2. Delegation Order No. 182 (Rev. 7), extends 6020(b) authority to Internal Revenue Agents; Tax Auditors; Revenue Officers; GS-9 and above; Collection Support function managers, GS-9 and above; Service Center Collection Branch Managers GS-9 and above; Automated Collection Branch Unit Managers, GS-11 and above; Customer Service Collection Branch Managers, GS-10 and above; and Tax Resolution Representatives, GS-9 and above.

**5.18.2.3 (08-01-2001)  
Research Criteria for BMF Return--IRC 6020(b) Processing Research**

1. Process a return under the provisions of IRC 6020(b) for Business Master File (BMF) returns if:
  - o The entity appears to be liable for the return
  - o The person required to file the returns does not file it
  - o Attempts to secure the returns fail
2. The following BMF returns with corresponding Master File Tax (MFT) codes are the returns usually prepared under the provisions of IRC 6020(b):

TAX RETURN	RETURN TITLE	RETURN MFT
Form 720	Quarterly Federal Excise Tax Return	03
Form 940	Employer's Annual Federal Unemployment Tax Return	10
Form 941	Employer's Quarterly Federal Tax Return	01
Form 943	Employer's Annual Return for Agricultural Employees	11
Form 1065	U.S. Partnership Return of Income	06
Form 2290	Federal Use Tax Return on Highway Motor Vehicles	60

- Do NOT propose assessments on cases with the following characteristics: **See LEM**

**5.18.2.3**

- See LEM 5.18.2.3
- See LEM 5.18.2.3

**8.7.1.2.6 (11-30-2001)****IRC 6020(b) Case Processing Procedures**

1. When a taxpayer refuses to file an employment or excise tax return (except IRC Chapters 41, 42, 43, 44, and 45 excise tax returns), the return may be prepared by the Service under the authority of IRC 6020(a) in either of the following two ways:
  - A. Collection function personnel will prepare a return that reflects the proposed tax for assessment under I
  - B. Examination personnel will generally use a "substitute for return" procedure with the proposed tax shown as a deficiency in the examiner's report.

**NOTE:**

Cases developed under either method may be protested to Appeals and are subject to different procedures in Appeals.

2. Employment and excise tax cases (except IRC Chapters 41, 42, 43, 44, and 45 excise taxes) cannot be litigated in the Tax Court. Therefore, any unagreed tax is assessed without issuance of a notice of deficiency.
3. Most IRC 6020(b) cases originate in the area office Collection function. A Technical Advisory Unit reviewer will review area office cases prior to transmitting them to Appeals.
4. On agreed cases, Appeals will request that the taxpayer sign the prepared return. If the taxpayer agrees to a revised tax, request that the taxpayer sign a new return. In either case, the return is marked "Delinquent" .
5. If the proposed liability is conceded by Appeals, mark the prepared return "VOID-do not process" and retain in the case file.
6. On unagreed cases, the proposed tax return prepared by the originating office, or a revised tax return prepared by the Appeals Officer is processed for assessment. The Appeals Officer will sign, date and print his or her title on the "Date, Signature and Title" line of the return. The following statement will be typed or printed below the signature: "This return was prepared and signed under the authority of Section 6020 (b) of the Internal Revenue Code" . The authority to sign IRC 6020(b) returns is granted to appeals officers in Delegation Order 66 (as revised).
7. Forward a copy of the Appeals report providing information about the disposition of the case to the area Technical Advisory Unit.
8. See IRM 8.1.1, Appeals Returns Processing and Control Handbook, for IRC 6020(b) case processing procedures on AIMS.
9. See Exhibit 8.11.1-5 for information on application of the Failure to File and Failure to Pay penalties.

**8.7.1.2.7 (11-30-2001)****Substitute for Return Case Processing Procedures**

1. Most "Substitute for return" cases originate in area office Examination function.
2. For agreed cases, request that the taxpayer sign Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment-Excise or Employment, or Form 2504-AD, Excise or Employment Tax-Offer of Agreement of Acceptance or Overassessment. Use Form 5403, Appeals Closing Record, to process the liability for assessment.
3. For unagreed cases, process the determined tax on Form 5403.
4. See Exhibit 8.11.1-5 for information on application of the Failure to File and Failure to Pay penalties.

**Exhibit 8.11.1-5 (02/26/99)**  
**Computation of Failure to File and Failure to Pay Penalties on IRC 6020(b) Returns and Substitutes for Returns**

	<b>IRC 6651(a) (1)</b>	<b>IRC 6651(a) (2)</b>	<b>IRC 6651(a) (3)</b>
Taxpayer Signs Prepared Return	Applies <sup>1</sup>	Applies <sup>2</sup>	Does not apply
Taxpayer does not sign return but signs agreement form, i.e., Form 870, 2504 AD etc.. Return assessed under IRC 6020(b) or as "Substitute for Return"	Applies <sup>1</sup>	Applies <sup>2</sup>	Does not apply
Taxpayer does not sign.	Applies <sup>1</sup>	Does not apply	Applies <sup>3</sup>
Appeals Officer signs return under IRC 6020(b) or assesses tax as "Substitute for Return"			



**[7.3.1] 5.17 (04-30-1999)****Processing Delinquent and Substitute Returns**

1. A delinquent return is a return that was not filed before the due date, including extensions, which the taxpayer voluntarily files with the Service. All delinquent returns must be sent to the Tax Examiners unless received with remittance.
2. A substitute return is only prepared by the Examiner when a taxpayer refuses to file a required tax return.

**[7.3.1] 5.17.1 (04-30-1999)****Delinquent Returns and Substitute for Returns Procedures**

1. When evidence that a required return has not been filed, the Examiner/Specialist will request a transcript of the account to document what action has been taken. The request can be submitted on Form 6882, IDRS, Master File Information Request, or on-line research can be performed using CC EMFOL/INOLES for EP, or CC BMFOL/INOLES for BMF, or CC IMFOL for IMF.
2. Based on the above, a transcript of the account must accompany each delinquent or substitute for return. This transcript will be attached to the return when submitted to EP/EO-SP. The transcript will be used by the Special Processing Function to perform their verification responsibilities and will be kept with the suspense file.
  - A. EP --Do not submit a delinquent or substitute return if a TC 150 has posted.
  - B. EO --Do not submit a delinquent or substitute return if a TC 150 has posted. A TC 150 posting with no tax liability followed by a TC 240 posting for \$500, W-4 penalty, indicates that the Ogden Service Center has posted a dummy return. Any adjustments must be made as subsequent adjustments, i.e., TC 300.
  - C. If a return has not been filed (TC 150), then TC 599 Closing Code (CC) 96 (EO) or TC 599 CC 97 (EP) should be input into IDRS to close any Collection controls and halt any notice that may be issued requesting the return. The only time a TC 599 CC 96 or CC 97 should not be used is if you have a Non-Master File return or a Form 4720. Form 4844, Request for Terminal Action is used to input these codes.
3. Use the current or appropriate year's tax form, depending on local service center preference. Substitute for returns should contain entity information only. Do not attach additional schedules.
4. Delinquent/Substitute Returns must be forwarded to EP/EO-SP immediately upon pick-up or preparation in order that the return will post and the AIMS account will be established by the time the case is ready for closing.
5. Delinquent/Substitute Returns must be established on AIMS as soon as it is known that an examination will be made or when examination time is first applied. The appropriate Push Code must be used when establishing the case on AIMS in order to hold the TC 424 at the EPMF or BMF until the TC 150 posts. It is extremely important that the delinquent or substitute be submitted for processing since a CP 87 or CP 187 will be generated after the TC 424 posts, if a TC 150 has not posted. Establishing the returns on the EPMAF or BMF, immediately establishes inventory controls and avoids unnecessary delays in closing.

**[7.3.1] 5.17.1.1 (04-30-1999)****Delinquent Returns**

1. Upon receipt of a delinquent return, the Examiner/Specialist must ensure that the following items are on the return:
  - A. Name of the employer/organization--The employer's/organization's name must be typed or printed legibly, with no strikeovers. When possible, it must duplicate the name used on a previously filed return with the same Employer Identification Number (EIN). The name used with a recently acquired EIN should duplicate the employer's/organization's SS-4, Application for Employer Identification Number. If the name is not correct, prepare or secure a corrected return and solicit the employer's/organization's signature on the corrected delinquent return. Mark an "X" across the face of the incorrect return. Write the word "Invalidated," sign and date below the notation.
  - B. Address of the employer/organization--Verify with the employer or organization that the address shown on the return is the employer's or organization's current address.
  - C. Employer Identification Number--Verify the EIN shown on the return is correct by researching AIMS, EPMF or BMF. If the employer or organization does not have an EIN, refer to Section 5.17.4.4.2.
  - D. Required forms and schedules--Verify that all forms and schedules are

4. The following returns must be secured regardless of dollar amount:
  - A. nontaxable returns such as those in Form 990 series;
  - B. Form 1065, U.S. Partnership Return of Income.
5. For employment tax returns, the "net tax due" is determined before the application of credits.
6. The taxpayer will be informed, if personally contacted, that a refund will not be issued unless a return is filed within three years of the due date of the return.

**[5.1] 11.5 (05-27-1999)**

**Refusal to File -- Initial Activity**

1. Collection employees will not solicit delinquent returns when information is developed that a taxpayer's failure to file a required return is wilful, or there is any indication of fraud. The employee will suspend activities and promptly report the findings to the District Fraud Coordinator.
2. The revenue officer will set a specific date for filing a return(s) on initial contact if no willful failure to file is established or no indication of fraud exists.
3. The taxpayer will be informed that failure to file the delinquent return (s) by the specific date will be considered a refusal to file under the provisions of the Internal Revenue Code and enforcement action may be taken.
4. Enforcement action taken by Collection employees includes:
  - A. Referral to the District Fraud Coordinator
  - B. Referral to the Criminal Investigation Division, See Fraud Referral Handbook
  - C. Summons, see IRM 109.1
  - D. Referral to Examination, see Section 11.7 of this chapter
  - E. Referral to the ASFR unit
  - F. Processing of employment, excise tax and partnership returns under 6020(b) of the Internal Revenue Code.

**[5.1] 11.6 (05-27-1999)**

**Referrals to Criminal Investigation**

1. The Fraud Referral Handbook, IRM 104.2, is the comprehensive guide for compliance functions, covering the development of potential fraud issues, referrals for criminal fraud and the duties and responsibilities for joint investigations. This Handbook should be used as the revenue officer's reference for identifying and developing criminal investigation, referrals.
2. Fraud may exist where a taxpayer willfully attempts to illegally underreport taxes, not pay taxes or both. Willfulness means the individual acted deliberately with the specific intent of violating the law.
3. Refer issues of potential fraud to the District Fraud Coordinator.
4. The revenue officer is responsible for identifying potential fraud and referring that taxpayer to the Criminal Investigation Division. The majority of criminal fraud cases will be established based on violations of:
  - A. A taxpayer's willful failure to file a return (Section 7203) (See LEM V);
  - B. A taxpayer's willful failure to pay taxes owed (Section 7203);
  - C. A taxpayer's willfully submitting a false financial statement under

**[4.3.3] 8.2.3.5 (07-30-1999)****Substitute for Return**

1. When it has been determined that a taxpayer is liable for filing an excise tax return other than a Form 11-C, and upon due notice from the service fails to do so, a "Substitute for Return" should be prepared at the earliest possible date. It will be prepared on the return form prescribed for use in making such a return.
2. The procedures and guidelines in former IRM 48(13)1 should be followed in preparation and submission of the Substitute for Return.
3. The appropriate standard preliminary letters will be used in all cases in which there has been a failure to file returns.
4. The Group Manager will ensure that "Substitute for Return" procedure cases are controlled on AIMS as soon as practical during the course of the examination.

**[4.3.3] 8.2.3.6 (07-30-1999)****Execution of Return by the Secretary -- IRC 6020(b)**

1. When a taxpayer refuses to file a delinquent Form 11-C, Special Tax Return and Application for Registry--Wagering, determined to be due during an examination, the examiner will prepare a return under authority of IRC 6020(b) on Form 11-C showing the delinquent taxes due. The word "Delinquent" and "IRC 6020(b)" should be imprinted on the return. Since the return is being filed under protest, the examiner will immediately establish NMF-AIMS control and give the taxpayer appeal rights. If the taxpayer does not wish to protest, establish Master File AIMS control and process the return under the procedures in text 313 of former IRM 48(13)1, AIMS--Use of Forms and Special Handling Procedures. The temporary NMF-AIMS control previously established must be closed upon disposition of the case file from the group. This is accomplished by preparing and processing Form 5351 (Examination Nonexamined Closing) with Disposal Code 28.
2. If the taxpayer protests to Appeals, the return and case file will be closed to the Appeals office using NMF-AIMS. If the tax determined by the Examination Division is sustained in full, Appeals will forward the IRC 6020(b) return for processing. If the tax liability is increased or decreased by Appeals, Appeals will prepare and submit a new IRC 6020(b) return for processing. In all situations Appeals will close the case NMF-AIMS. This applies even if Appeals determines that there is no tax liability and no return due.

section 6651(a)(2) failure to pay addition to tax to returns prepared pursuant to section 6020(b): first, what constitutes a return prepared for or executed by the Secretary under section 6020(b); second, whether the addition to tax imposed under section 6651(a)(2), in the context of a section 6020(b) return, is subject to deficiency procedures; third, whether the Tax Court has jurisdiction over the section 6651(a)(2) addition to tax imposed pursuant to section 6020(b) returns; and fourth, how is the amount of the addition to tax to be expressed on the notice of deficiency, answer and decision document.

### **35.4.27.2 (11-16-1999)**

#### **What constitutes a return prepared for or executed by the Secretary under section 6020(b)?**

As discussed more fully below, a return prepared pursuant to the Automated Substitute for Return [hereinafter "ASFR" ] procedures and accompanied by a signed thirty day letter or revenue agent's report generally constitutes a valid section 6020(b) return. Section 6020(b)(1) authorizes the Secretary to make a return upon either a taxpayer's failure to file a return or upon a taxpayer's filing of a fraudulent return. Section 6020(b)(2) provides that this return, which is also known as a substitute for return, will be considered as prima facie valid for all legal purposes. Currently, the majority of substitutes for return are prepared pursuant to the Service's ASFR procedures, which allow the Service to generate substitutes for return via computer for non-filers. An ASFR, which is prepared by the Service through information gathered from past filings and/or third parties, generally contains the taxpayer's name, address, social security number, filing status and categories and amounts of taxable income. As part of the ASFR procedure, the Service simultaneously prepares and mails a thirty day letter to the taxpayer, and attaches an explanation of proposed adjustments (which contains the same information as is contained in the ASFR), as well as a tax calculation summary report. If the taxpayer fails to respond to the thirty day letter, the Service sends a statutory notice of deficiency to the taxpayer by certified mail with the same attachment.

A substitute for return prepared for a taxpayer pursuant to section 6020(b) must meet three requirements. First, the return must contain taxpayer identifying information, including the taxpayer's name, address and social security number. Second, the return must contain sufficient data to compute the taxpayer's liability. Third, the Secretary or his delegate must sign the return. I.R.C. § 6020(b)(2). See *Millsap v. Commissioner*, 91 T.C. 926, 930 (1988). See also *Hartman v. Commissioner*, 65 T.C. 542, 545, 546 (1975), holding that section 6020(b)(2) requires that the return be subscribed, but need not be signed under oath. Section 7701(a)(11) defines the Secretary as the Secretary of the Treasury or his delegate. A delegate includes any officer, employee or agency of the Department of the Treasury authorized by the Secretary of the Treasury to perform functions described in the context. I.R.C. § 7701(a)(12)(A)(i). The Regulations under section 6020(b) provide that such a return may be executed by the district director or other authorized internal revenue officer or employee. Treas. Reg. § 301.6020-1(b)(1). The Internal Revenue Manual provides that Service employees, such as revenue agents and tax auditors, as well as revenue officers and collection office function managers who are at least at the GS-9 level, may execute a section 6020(b) return. I.R.M., Handbook No. 1229, Handbook of Delegation Orders, Order No. 182. See also I.R.M. 5290-5293.3. A section 6020(b) return is not necessarily contained in a single document, but may consist of

several documents which, together, satisfy these requirements. Thus, for example, an ASFR and a thirty day letter or revenue agent's report will suffice to constitute a valid section 6020(b) return. A statutory notice of deficiency does not constitute a valid section 6020(b) return.

A return merely containing taxpayer identifying information, but no data which could be used to establish tax liability, commonly referred to as a "dummy return," does not *per se* constitute a valid section 6020(b) return. See Phillips v. Commissioner, 86 T.C. 433, 437, 438 (1986), *aff'd in part and rev'd in part*, 851 F.2d 1492 (D.C. Cir. 1988). See also Britt v. Commissioner, T.C. Memo. 1988-419 (front page of Form 1040 listing taxpayer's name, address, identification number, dependency exemptions and filing status is not a valid 6020(b) return, as it was unsigned and contained insufficient data to compute tax liability). A dummy return is generated to open up an account for the taxpayer on the master file, and normally consists of a first page of a Form 1040 which contains a taxpayer's name, address and social security number. If, however, a dummy return is accompanied by other documents which satisfy the three requirements listed above, then the dummy return and those documents will, together, constitute a valid section 6020(b) return.

The Tax Court has held that various combinations of documents meeting the above requirements constituted valid returns under section 6020(b). In Millsap v. Commissioner, the court held that a dummy return consisting of taxpayer's name, address and social security number, and a signed revenue agent's report containing an explanation of taxpayer's income, exemptions, deductions, and filing status represented a valid section 6020(b) return. Millsap v. Commissioner, 91 T.C. 926, 928 (1988). The Tax Court similarly found that a Form 1902E, Explanation of Adjustments, containing information on taxpayer's income, deductions, and exemptions, as well as a dummy return, consisting of taxpayer's name, address and social security number, satisfied the requirements of section 6020(b). Conovitz v. Commissioner, T.C. Memo. 1980-022, 39 T.C.M. 929, 930. See also Smallbridge v. Commissioner, 804 F.2d 125, 128, n.3 (10<sup>th</sup> Cir. 1986) (document signed by examiner containing taxpayer's name, address, social security number, wage and exemption information and filing status was valid under section 6020(b)). Although the Tax Court indicated in Millsap v. Commissioner that it would not follow the Smallbridge case outside of the 10<sup>th</sup> Circuit in reference to its analysis of section 6103, the court did not reject the portion of the opinion addressing the validity of the section 6020(b) return. See Millsap v. Commissioner, 91 T.C. 926, 935-37 (1988).

### **35.4.27.3 (11-16-1999)**

#### **Section 6651(a)(2) additions to tax imposed in the context of section 6020(b) returns are subject to deficiency procedures.**

In the context of section 6020(b) returns relating to subtitle A taxes, section 6651(a)(2) additions to tax are subject to deficiency procedures set forth in sections 6212 and 6213. Section 6651(a)(2) authorizes the imposition of an addition to tax where, without reasonable cause, a taxpayer has failed to pay the amount shown as tax on his or her return on or before the payment due date plus extensions. In addressing the application of the section 6651(a)(2) addition to tax to returns prepared under section 6020(b), section 6651(g)(2) states that a section 6020(b) return will be treated as a return filed by the taxpayer for purposes of determining the section 6651(a)(2) addition to tax.

**3.0.273.39 (01-01-2002)****Corresponding For Missing Information**

1. When it is necessary to correspond for missing information, all unprocessable conditions must be identified.
2. Do not correspond when any of the following conditions are present:
  - The notation "Substitute for Return Prepared by IRS" or "Dummy Return" ;
  - The return is prepared under authority of Section 6020(a)(Prompt Assessment);
  - The return is an Examination Adjustment Case with any of the following notations or attachments:
    - "Original Delinquent Return Secured by Examination" ;
    - Form 3198, Special Handling Notice;
    - Examination work papers; or,
    - Copy of form 5546.
  - Return is Tentative, Amended, Superseding; or,
  - It can be determined the return has been prepared by Adjustments (i.e. "Tentative" on return & routing slip shows it came from Adjustments).
3. Enter amounts in dollar and cents when corresponding with taxpayers.
4. Special procedures may have to be followed when corresponding on certain returns such as minors and decedents. See IRM 1.10.1 for specific procedures.

**3.0.273.39.1 (01-01-2002)****Forms to Request Missing Information**

1. Form 3531/6800, Request for Missing Information or Papers, is used to request missing information and is mailed with the unnumbered return that is:
  - A refund;
  - Credit elect;
  - Zero/even balance; or,
  - Non-compute return.
2. Form 3531 is not used when corresponding on:
  - APO/FPO;
  - Balance due;
  - Returns secured by Collection;
  - Returns with TC 59X-XX closing code indicated; or,
  - When the only correspondence item is support for withholding or missing signature.
3. Notice 779, Request for Missing Form(s) W-2 to Compute Return is used on unnumbered returns that are;
  - Overpaid;
  - Zero/even balance; or,
  - Non-compute returns when the only missing item is Form(s) W-2.
4. (3) Forms 6001, 3696, 3696A, Correspondence Action Sheets (CAS's) are forms used to generate a letter requesting information from the taxpayer. CAS's are used to generate letters because the returns cannot be sent back to the taxpayer. Returns that cannot be sent back are:
  - Numbered returns;
  - Unnumbered returns with balance due;
  - APO/FPO addresses;
  - Statute returns;
  - Reinput returns; or,

#### 4.7.2.5.5 (07-31-2000) "Dummy" Employees

1. "Dummy" or phantom employees are nonexistent employees that are created locally for a variety of reasons. Some of the reasons are they are used to monitor in-transit cases, monitor unassigned cases, monitor claims, control "transitional" manager's inventory, etc.
2. The use of "dummy" employees as an aid in managing inventory should be suspended. Users who feel they have a need to monitor should work with their functional coordinator and, if necessary, the functional coordinator work with the ERCS Hotline staff to try to provide a solution.

function, contact should be made to that area/employee to see whether the return can be forwarded to Examination.

3. If the return was received and subsequently lost, special searches must be performed.

#### **4.4.20.2.1 (02-08-1999)**

##### **Examination Not Warranted**

1. If the return cannot be located, and it is determined that an examination is not to take place, the account can be approved for closing. Form 10904, Request for Record Deletion from AIMS, must be prepared and all supporting documentation attached and forwarded to the AIMS Coordinator. Instructions are on the reverse side of the form. See Exhibit 4.4.20-1.
2. Accounts should not be closed without a written request on Form 10904 signed by the requester and the requester's manager. Sufficient documentation must be attached to the Form 10904 to permit the AIMS Coordinator to evaluate the closing request.
3. A current transcript (TXMODA, IMFOLT , or EMFOLT), ANDISA full display or TC424 Skeletal Record, and/or Form 5546 is required for all requests to delete the AIMS record. If a follow-up request for the return was input, appropriate documentation should also be attached.
4. The AIMS Coordinator will review the missing return research and advise management of any potential statute problems.
5. If the AIMS Coordinator determines that the group/function has taken all appropriate actions, the AIMS Coordinator should approve Form 10904 and forward it to the Field Territory Manager or designee. Approval is required by the Field Territory Manager or designee **unless** Form 5546 indicates the return was never received. Facsimile approval is not acceptable.
6. If the AIMS Coordinator determines that the group/function has not taken the appropriate research actions, Form 10904 will be returned to the requester with the additional actions to be taken notated on the form.
7. Approved Forms 10904 should be forwarded to the terminal input area for closure. Unless area instructions provide otherwise, the forms will be retained, in searchable order, by the AIMS Coordinator or in the Case Processing Support function for one year following terminal input.

#### **4.4.20.2.2 (02-08-1999)**

##### **Examination Warranted or Already in Progress**

1. If it is determined that an examination is warranted or was already in progress, and if all attempts to locate the return are unsuccessful, and a BRTVU/RTVUE print is not sufficient, contact with the taxpayer should be made to secure the necessary information in order to complete the examination. This could be a copy of the return, claim, examination report, etc.
2. If the original return was received and subsequently lost, or if the return was examined and the casefile cannot be located, the following procedures will be used to reconstruct the casefile when a copy cannot be secured from the taxpayer:
  1. The examining function will prepare a "DUMMY" return and annotate at the top of the return. "ORIGINAL DESTROYED/MISSING/LOST."
  2. The file must include documentation to support the preparation of the "DUMMY" return, specifically information on the efforts



### **Assigned List**

1. The assigned list provides a case workload and status report for each employee assignment number. This list will be used by management to identify the current workload of each employee to determine future assignments for an employee and for control purposes. This list will be used by employees to identify, resolve, and monitor their current case assignments.

### **4.4.35.23.3.3 (02-08-1999)**

#### **Statute Unpostables List**

1. The statute unpostables list is a working tool to show unpostable cases that originally did not meet statute criteria, but are now approaching statute criteria. This weekly listing will select unresolved unpostables which are within 90 days of their assessment statute expiration date (ASED) with MFT 02, 05, 30, 33, or 34 and are TC 150. This list will exclude E2 unpostables. Each week the list will highlight new unpostable cases with an asterisk. The case will remain on the list until it is resolved with a specific URC.

### **4.4.35.23.3.3.1 (02-08-1999)**

#### **Return/Document Unlocatable**

1. If a return or document cannot be secured or located within 10 workdays of the ASED, the following procedures should be followed:
  - A. Return--prepare "dummy" return and forward to Statutes. Statutes can assist in preparing the "dummy" return.
  - B. Document--forward a copy of TXMOD/TXDLN, UPCAS, and Form 4251 to Statutes for a quick/prompt assessment.

### **4.4.35.23.4 (02-08-1999)**

#### **Unpostable and Summary Reports**

1. A UP Report is produced for IMF, BMF, IRAF, and EPMF unpostable records. These reports identify the new unpostable cases and are generated weekly for each cycle. However, unpostable cases can be produced more than once per cycle for a Master File. Each time a New UP Report is generated, a summary report is also each Examination category by MF, repeats, and AUTO closures.
2. The report is produced in two parts. One complete master copy is kept in Unpostables and the other part is separated for routing to and/or processing by the appropriate responsible function. The reports are divided into specific categories within each Master File and each category. The sequence number is assigned to records after they are sorted into DLN sequence. The report starts a new page each time the category changes.
3. Upon receipt of the report, reassign all E1 and E2 cases (CC UPASG) . The assignment will be from the "unit" number automatically assigned by GUF to an individual employee assignment number. The cases cannot remain assigned to the unit number. CC UPASG is used to reassign a case or batches of cases. Generally, CC UPCAS will be used for E1 and E2, but only if these cases are not to be MASS closed. CC UPCAS is used to display the unpostable record. CC UPRES is used for the closure action of each record.

### **4.4.35.23.5 (02-08-1999)**

#### **Unpostable Rejected Activity List**

1. The Unpostable Rejected Activity List is a listing of reassignment,

the appropriate form. If the appropriate project code has not been input on AIMS before closing, it must be included on the closing document, Form 5599.

#### **[7.3.1] 5.4.11 (04-30-1999)**

##### **Referrals from Examination Division**

1. A transfer of an IRC 4947 Trust by Examination Division will be indicated on Form 3198 which will be attached to the case file. The case file will be transferred via Form 5351, Examination Nonexamined Closings, to the KDO and will have a notation that the case is an IRC 4947 Trust. The case file should also contain a blank Form 5351 for use by EP/EO. When the case file is received in the KDO, AIMS documents must be prepared either to close the case or to change the activity and organization codes on AIMS. This is necessary to remove the account and organization from Examination Division's inventory.
2. All farmers' cooperative cases identified by an Examiner in Examination Division will be closed to the EO function in the KDO. Examiners transferring cases, within the same district, must update the Source Code to 20, the Activity Code to 385, and the Organization to 7200 prior to the transfer to reflect the correct code on the AIMS data base. When the terminal action has been completed, the case should be hand carried to the Chief, Technical/Review Staff in EP/EO Division. Examiners transferring cases to the EO function, not within the same district, should transfer the case using Disposal Code 30 and the EO KDO code where the case is being transferred. Form 3185, Transfer of Returns/Transfer of Administrative File, must be attached to the case file and shipped to the Chief, Technical/Review Staff. Upon receipt of the case file in the EO function, the KDO must immediately update the data base to reflect the Source Code of 20, the Activity Code of 385 and the Organization Code of 7200 to remove the case from Examination Division's inventory.

#### **[7.3.1] 5.4.12 (04-30-1999)**

##### **Referrals to Examination Division**

1. When it is necessary to refer returns not under EO jurisdiction to Examination Division, the Examiner/Specialist must prepare Form 5666, EP/EO Information Report. Refer to Chapter 2, Section 2.41.2 and Exhibit 2-25 for instructions on completing this form. Use Form 5599, EO Examined Closing Record to update the project code during closing action.
2. If the account under examination is considered part of a Special Emphasis Program, the project code must identify that program. A SEP code always takes precedence over a referral code and must be recorded on AIMS at the time the account is established using the appropriate form. Form 5666 must still be prepared.

#### **[7.3.1] 5.5 (04-30-1999)**

##### **Processing Cases Without an Original Return**

1. In examination cases where the original return has been destroyed or a special search fails to locate the return, and we are unable to secure a copy of the return from the taxpayer, the following procedures will be used:
  - A. The Examining Officer will prepare a "DUMMY RETURN" and annotate at the top of the return "ORIGINAL DESTROYED."
  - B. EP/EO-SP will close the case using "COPY OF RETURN"