DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

February 11, 2025

Control Number: SBSE-05-0225-0011
Expiration Date: 02/11/2027
Affected IRM: 5.7.4

MEMORANDUM FOR DIRECTOR, FIELD COLLECTION

FROM: Thomas Kramer
Director, Collection Policy

Thomas D. Kramer

Digitally signed by Thomas D. Kramer
Date: 2025.02.11 06:34:16 -08'00'

SUBJECT: Guidance for Application of Payments When Calculating the Trust Fund Recovery Penalty (TFRP) on Tax Periods with Reduced or Fully Reversed Employer Tax Credits

This memorandum provides interim guidance to Collection employees who conduct Trust Fund Recovery Penalty (TFRP) investigations. Please distribute this information to all affected employees within your organization.

Effective Date: This guidance is effective from 02/11/2025 through 02/11/2027.

Source of Authority: The source of authority for the TFRP is 26 U.S. Code § 6672, Failure to collect and pay over tax, or attempt to evade or defeat tax.

Purpose: The purpose of this memorandum is to clarify guidance on the application of payments when calculating the TFRP in cases where a nonrefundable and/or refundable employer tax credit has been reduced or fully reversed.

Background: During the COVID-19 pandemic, the Families First Coronavirus Response Act (FFCRA), Coronavirus Aid, Relief, and Economic Security (CARES) Act, Consolidated Appropriations Act, 2021 (CAA), American Rescue Plan Act (ARP), and the Infrastructure, Investment, and Jobs Act (IIJA) allowed certain employers to claim certain nonrefundable credits for eligible tax periods in 2020 and 2021.

Separate from the COVID-19 legislation, eligible employers may also claim a nonrefundable credit for increasing research activities under IRC section 41, Credit for Increasing Research Activities.

Updated Guidance: This guidance addresses the application of payments when calculating the TFRP in cases where there is an adjustment reducing or fully reversing the nonrefundable and/or refundable portion of an employer tax credit. Situations that may result in the reduction or full reversal of a credit may include, but not limited to:

- Examination,
- Participation in the Employee Retention Credit (ERC) Voluntary Disclosure Program (VDP), or
- Filing an adjusted employment tax return.

There are also instances (Credit for Qualified Sick and Family Leave Wages for Leave Taken Before April 1, 2021, and/or Credit for Qualified Sick and Family Leave Wages for Leave Taken After March 31, 2021) where IRS adjusts social security taxes reported on line 5ai, Qualified sick leave wages and/or line 5aii, Qualified family leave wages, Form 941, Employer's QUARTERLY Federal Tax Return, (originally taxed at a 6.2% rate). However, the wages reported on the tax return remain unaltered. The only change made in this scenario is a tax rate change (from 6.2% to 12.4%).

Employees can identify the reduction or full reversal of an employer tax credit on IDRS CC TXMODA via TC 767 with the following credit reference numbers (CRN):

- CRN 296 (Employee Retention Credit (ERC))
- CRN 299 (Credit for Qualified Sick and/or Family Leave Wages Taken Prior to 04/01/2021)
- CRN 271 (Credit for Qualified Sick and/or Family Leave Wages for Leave Taken After 03/31/2021)
- CRN 276 (COBRA Credit)

If the reduction or full reversal of an employer tax credit has resulted in a net tax underpayment, and **only** when the assessment statute expiration date (ASED) on the original assessment has not expired, then IRS will apply federal tax deposits (FTD), refund offsets, and other non-designated payments in accordance with Revenue Procedure 2002-26, and IRM 5.7.4.3.1, Sequence of Payment Application in Employment Tax Cases. As with any TFRP investigation, employees must establish and document willfulness existed before recommending assessment of the TFRP.

Reminder: An additional tax assessment does not create a new ASED for the purpose of assessing the TFRP. See IRM 5.7.3.6, Statutory Assessment Period, for more information on TFRP ASEDs.

Effect on Other Documents: This guidance will be incorporated into IRM 5.7.4.3(7), Investigation and Recommendation of the TFRP, Calculating the TFRP, by 02/11/2027.

Contact: If you have any questions regarding the guidance in this memorandum, you may contact Kerri Hansen, Employment Tax Program Manager, or a member of your staff may contact, Javier A. Escudero, Senior Program Analyst.

Attachment: IG Control #SBSE-05-0225-0011

Distribution:
Director, Civil Enforcement Advice and Support Operations
Director, Collection Operations – Quality and Technical Support
Director, Specialty Collection – Offer in Compromise

Director, Specialty Collection – Insolvency
Director, Campus Collection
Director, Appeals, Collection
Taxpayer Advocate Service
Special Counsel, Litigation and
Advisory (L&A) Division
IRS.gov (https://www.irs.gov/)

Attachment: IG Control #SBSE-05-0225-0011
The following changes are hereby effective 02/11/2025 for the IRM sections listed below:

IRM 5.7.4.3
Calculating the TFRP

(7) 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 IRM 5.7.3.4.2, Establishing Willfulness, for guidance when determining if an additional assessment should be included in the TFRP calculation. Under certain circumstances the previously unfiled return that resulted in a CAWR (Combined Annual Wage Reconciliation) assessment (TC 290) may have been filed by the taxpayer after the CAWR assessment. ROs should do further research to determine if the TC 290 should be excluded from TFRP calculation, as the wages/taxes reported on these previously missing returns, may no longer need to be considered for TFRP assessment purposes (See IRM 5.1.15.7.2, IRS-Combined Annual Wage Reconciliation (IRS-CAWR) for more information).

Exception: If the additional tax assessment (TC 290/298/300) is the result of the reduction or full reversal of an employer tax credit the taxpayer was not entitled to receive and which reduced the non-trust fund portion and/or trust fund portion of tax, and **only** when the assessment statute expiration date (ASED) on the original assessment has not expired, then the IRS may reallocate any previously applied payments in the best interest of the Government in accordance with Revenue Procedure 2002-26 and the sequence of payment application in employment tax cases, as described in IRM 5.7.4.3.1, Sequence of Payment Application in Employment Tax Cases. Employees can identify the reduction or full reversal of an employer tax credit on IDRS CC TXMODA via TC 767 followed by the related Credit Reference Number (CRN). Please refer to IRM 21.7.2.7.6, COVID-19 Related Employment Tax Relief and Forms 94XX, for a list of Item Reference Numbers (IRN) and CRNs that will assist with identifying the type of employer tax credit being reversed.

If the additional tax assessment is related to the reversal of an employer tax credit **and** additional, unreported wages (e.g., CAWR assessment), then the IRS may only reallocate previously applied payments to the amount of tax that increased due to the reversal of the employer tax credit. As with any TFRP investigation, employees must establish and document willfulness existed before recommending assessment of the TFRP.

Reminder: An additional tax assessment does not create a new ASED for the purpose of assessing the TFRP. See IRM 5.7.3.6, Statutory Assessment Period, for more information on TFRP ASEDs.

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