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**Part 5. Collecting Process****Chapter 1. General Collecting Procedures****Section 11. Delinquent Return Accounts (Cont. 1)****5.1.11 Delinquent Return Accounts (Cont. 1)**

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**5.1.11.6  
No Return Secured****5.1.11.6.3  
Enforcement Referrals - Individual Master-file(IMF) Del Ret's****5.1.11.6.3.2 (03-01-2007)  
Referral to HINF - SFR (Formerly, Substitute for Return for Revenue Officer)**

1. Refer a Del Ret(s) using the HINF - SFR (formerly SFR for RO) referral process ONLY if the case is ineligible for an ASFR referral. Generally, HINF - SFR referrals involve a Del Ret with an open Bal Due module, and/or a nonfiler with more than 60 IRP documents, conditions that make it ineligible for an ASFR referral. In addition the case must meet:
  - A. IRP must be posted to the Information Returns Master-file for the nonfiled year (IRMF), and;
  - B. A Bal Due will result
2. The HINF - SFR process is virtually the same process as ASFR, using IRP to calculate tax due, however the referral is processed by the Campus Examination function using a referral to an electronic mailbox through secure e-mail. Refer a Del Ret(s) to HINF-SFR by:
  - A. Use "**Option E, Exam Referral**" to close the ICS Del Ret module(s);
  - B. Document the Total IRP HINF amount(s) for each tax year(s) in ICS history, and;
  - C. Document the reason for not using an ASFR referral in ICS history, (see section 5.1.11.6.3.1.(3)) and;

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6. If a Del Ret is for any other Form 5500 series or where the plan number is 501 or higher, close the ICS Del Ret using **Option C** and sub-menu action "Not Liable" which will post a TC 590 cc 50 to the module.

#### **5.1.11.6.7 (05-27-1999)**

##### **Employer/Employer Relationship Questions**

1. The Employment Tax Program is responsible for determining when income of independent contractors or officers of corporations should be reported as wages subject to income tax and or FICA. The program responsibilities involve determining the appropriateness of the following:
  - A. Withholding of income tax on wages of employees reported on Form 941, 941-M, 944 and Form 1042;
  - B. Employer tax and employee tax (Social Security) under the General Insurance Contribution Act Form 941, Form 942, Form 943, Form 944 and Schedule H (Form 1040);
  - C. Employer tax and employee tax for retirement purposes imposed on employers of individuals performing railroad services and the railroad employee representatives tax reported on CT-1 and CT-2;
  - D. Withholding on certain gambling winnings reported on Form 941, Form 945 and Form 1042 by the payor of winnings;
  - E. Backup withholding;
  - F. Tax for unemployment insurance under the Federal Unemployment Act reported on 940;
  - G. Withholding of tax under IRC 1441 and 1442.
2. Refer a case to the area Employment Tax Program or the PSP Support Manager in Compliance when it is determined during an investigation that a taxpayer may be treating employees as independent contractors or officers may be taking draws, loans, dividends, professional or administrative fees, etc., to avoid reporting taxable wage. Refer potential Employee/Employer relationship determinations on Form 3449 relating all the facts of the case and close the ICS Del Ret using **Option E**.
3. Internal Revenue Manual 4600, Employment Tax Handbook, contains additional information for all functions pertaining to the administration of Employee/Employer classification issues.

#### **5.1.11.6.8 (03-01-2007)**

##### **IRC 6020(b) Authority**

1. The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):
  - A. Form 940, Employer's Annual Federal Unemployment Tax Return;
  - B. Form 941, Employer's Quarterly Federal Tax Return;
  - C. Form 943, Employer's Annual Tax Return for Agricultural Employees;
  - D. Form 944, Employer's Annual Federal Tax Return;
  - E. Form 720, Quarterly Federal Excise Tax Return;

F. Form 2290, Heavy Vehicle Use Tax Return;

G. Form CT-1, Employer's Annual Railroad Retirement Tax Return;

H. Form 1065, U.S. Return of Partnership Income.

2. Pursuant to IRM 1.2.44.5, Delegations of Authority, Order Number 182 (rev. 7), dated 5/5/1997, revenue officers GS-09 and above, and Collection Support Function managers GS-09 and above, have the authority to prepare and execute returns under IRC 6020(b).

#### **5.1.11.6.8.1 (05-27-1999)**

##### **Taxpayer Contact**

1. When the taxpayer is contacted, set a specific date for filing. Secure sufficient information so that an accurate return can be prepared if the taxpayer fails to file by the specified date.

**Example:**

- A. Total wages, number of employees, and tax withheld for each delinquent return (Forms 941, 944 and 943).
  - B. Name of states in which wages were paid (Form 940).
  - C. Number of partners in the partnership, their names, addresses, social security numbers/employer identification number, each partner's interest percentage in the partnership, and the partnership's gross income (Form 1065/K-1). If possible, obtain copies of the partnership agreement and copy of the last filed Form 1065.
  - D. Type of truck, number of axles, gross weight of vehicle and tax due (Form 2290).
2. Advise taxpayers who are personally contacted that failure to file by the specified date will be considered a refusal to file. This could subject the taxpayer to a fine, criminal penalties, or both, under IRC 7203.
  3. Explain the trust fund recovery penalty, if applicable.
  4. If collection of the tax on a delinquent return appears to be in jeopardy, follow the procedures for prompt and jeopardy (IRM 5.1, section 4) assessments.
  5. If the taxpayer is in a receivership or probate proceeding, follow the procedures for quick assessments in IRM 5.1, Section 4.
  6. A summons is not required before using IRC 6020(b) procedures. However in some cases, a summons may be the appropriate action if the revenue officer cannot establish an estimated amount of tax liability, and the taxpayer is being uncooperative. See IRM 25.5, Summons Handbook, for further guidance.
  7. A field call is required before using IRC 6020(b) authority to obtain information and ensure that the entity is liable for the return.
  8. If the taxpayer fails to file employment, excise and partnership tax returns by the specified date, prepare the returns under the authority of IRC 6020(b).

#### **5.1.11.6.8.2 (05-27-1999)**

##### **Preparation and Approval of 6020(b) Returns**

1. ICS now provides revenue officers the ability to prepare returns and letters on their ICS laptop. Compliance Territory Managers are encouraged to fully utilize the ICS 6020(b) program. However at local management option, and with the concurrence of the Compliance Services, Case Processing, Territory Manager, the Centralized Case Processing Unit may perform all phases of the IRC 6020(b) clerical and review process using information from section I of F5604. This includes signing of returns