

REQUEST FOR RECORDS DISPOSITION AUTHORITY (See Instructions on reverse)		LEAVE BLANK (NARA use only)	
TO NATIONAL ARCHIVES and RECORDS ADMINISTRATION (NWML) 8601 ADELPHI ROAD, COLLEGE PARK, MD 20740-6001		JOB NUMBER <i>N1-05</i> N1-58-08-1	
1 FROM (Agency or establishment) Department of the Treasury		DATE RECEIVED <i>11/14/07</i>	
2 MAJOR SUBDIVISION Internal Revenue Service (IRS)		In accordance with the provisions of 44 U S C 3303a the disposition request, including amendments, is approved except for items that may be marked "disposition not approval" or "withdrawn" in column 10	
3 MINOR SUBDIVISION Wage and Investment Division, Filing Compliance Withholding Compliance System (WHCS)			
4 NAME OF PERSON WITH WHOM TO CONFER Tracee Taylor	5 TELEPHONE (202) 283-9291	DATE <i>3/15/07</i>	ARCHIVIST OF THE UNITED STATES <i>Allen W. Bennett</i>
5 AGENCY CERTIFICATION I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached <u>1</u> page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified, and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies, <input checked="" type="checkbox"/> is not required, <input type="checkbox"/> is attached, or <input type="checkbox"/> has been requested			
DATE <i>11/6/2007</i>	SIGNATURE OF AGENCY REPRESENTATIVE <i>Daniel W. Bennett</i>		TITLE IRS Records Officer National Office, OS A RE L Washington, DC 20224
7 ITEM NO	8 DESCRIPTION OF ITEM OF PROPOSED DISPOSITION	9 GRS OR SUPERSEDED JOB CITATION	10 ACTION TAKEN (NARA USE ONLY)
	<p>Updates to IRM 1.15.29 for Service Center Operations, Item 85(5), Withholding Compliance Program</p> <p>See attached. Request to update the description and/or disposition for records covered under A Withholding Compliance System, Input Items A2a Responses from employees and A2b Responses from employers (No Longer Works letters)</p> <p>These records should not have been scheduled as inputs to the Withholding Compliance System covered under N1-58-07-9, rather as other related Withholding Compliance Program records</p> <p>IRS requests approval of updates to both these items under this job</p>		
<i>RE 4/4/08 copies sent to agency, NWML, & OR</i>			

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DO NOT WRITE IN THESE SPACES
JOB NUMBER N1-58-08- /

**IRM 1.15.29 for Service Center Operations, Item 85(5),
Withholding Compliance Program**

B. Correspondence with taxpayers and employers.

Description:

Responses to systemically-generated IRS "lock-in" letters and requested follow-up actions For employees (taxpayers) this means the process by which they can provide additional information to the IRS for purposes of determining the correct marital status and the appropriate number of withholding allowances For employers this includes follow-up actions based on whether or not the employee still works for them

Superseded Item:

~~a Responses from employees. Received in writing, fax, or telephone, summarized, and manually recorded into Desktop Integration (IRM 1.15.35, Item 30)~~

~~Temporary. Destroy documentation of employee response after input and verification into DI~~

Proposed Item:

1 Responses from employees Received in writing, fax, or telephone, summarized, and manually recorded into Desktop Integration.

Temporary Destroy documentation of employee response after input and verification into DI.

Superseded Item:

~~b Responses from employers. Written responses required if the employee no longer works for them Arranged by SSN of employee~~

~~Temporary. Cut off after calendar year. Destroy 3 years after cutoff.~~

Proposed Item:

2 Responses from employers. Written responses required if the employee no longer works for them.

Temporary. Destroy documentation of employer response after input and verification into DI

Job No. N1-58-07-9,
A(A2a)

Job No. N1-58-07-9,
A(A2b)

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Background:

NARA recently approved Job No N1-58-07-9 for the Withholding Compliance System (WHCS) Included in the disposition approval for system inputs were instructions for *Correspondence with taxpayers and employers*. In hindsight, these records should not have been scheduled in association with WHCS. The recordkeeping system for these records is Desktop Integration (DI) and IRS Records Management is in the process of verifying DI's scheduling status

To that end IRS requests approval of *Correspondence with taxpayers and employers* under this schedule, to be published as Item B under IRS IRM 1.15.29, Item 85(5) for the Withholding Compliance Program, with the following updates to the two subitems.

The description for *Responses from employees* has been slightly modified by removing the reference to IRM 1.15.35, Item 30 in relation to DI. DI's scheduling status still needs to be verified.

NARA previously approved disposition instructions for *Responses from employers* (No Longer Works letters) to be cut off after the calendar year, and destroyed 3 years after cutoff. Upon further consideration the Business Unit, along with IRS-Wage and Investment Counsel concurrence, has determined that there is no need to maintain the hard copy responses after input and verification in DI.

At issue is the employer's responsibility for paying the employment tax under IRC Section 3403. In these types of cases, in order to be responsible for withholding *at the rate proposed in the lock-in letter* the Service would need to demonstrate that the employee was "employed by" (within the meaning of the final regs. -- including the special rules) the employer at the time the lock-in letter was issued. This is a completely factual determination

IRS proof that the taxpayer was employed would be substantiated by employment and payroll records of the employer (and perhaps the bank records of the employee). If the IRS can prove the taxpayer was "employed" at the time of the issuance of the lock-in letter, the only other things the IRS would have to prove is that the lock-in letter was sent to the employer and the employer failed to comply with the letter. The fact that the employer provided a false statement to the IRS in response to the letter would not be a necessary factor in proving liability under Section 3403. Therefore, having a copy of the No Longer Works response would not be necessary in order to prove liability under IRC Section 3403

Even though the actual letter is not necessary to sustain a determination of the employer's liability, it is still necessary to document the response in DI. If the WHC Program failed to document the employer's response, the employment tax examiner would have no reason to determine whether the employer is potentially liable for withholding on the taxpayer under Section 3403 That is, if an examiner looked at the employer's records, and if the employer responded that the taxpayer "no longer works" for the employer, there would likely be no copy of the lock-in letter in the employer's files Thus, if

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the information is not captured in DI, the examiner would have no way of knowing that compliance with the lock-in letter is a potential issue

115-109

NSN 7450-00-634-4064
PREVIOUS EDITION NOT USABLE

STANDARD FORM 115 (REV. 3-91)
Prescribed by NARA
36 CFR 1228