

## Internal Revenue Code Section 8.7.16.4.2(2) (10-01-2015)

### Verifying the Statutory Period of Limitations

- 
1. Within five (5) workdays from receipt of the case, the ATE must review the file to determine all statute dates are correctly shown on ACDS. This review includes verification of the original statute, as well as validation of all extensions. Make an entry on the case activity record to indicate the statute date was verified. If you determine the statute date reflected on ACDS is not correct and changes are necessary, you must update the statute critical data fields using the Statute Validation System (SVS). See IRM 8.21.3.1.1.1, *Procedures to Update Statutes on ACDS*.
  2. The statutory period of limitations on assessment of FICA and income tax withholding is three years from the later of (1) April 15 of the year following the year in which the return was filed, or (2) the date return was filed. For RRTA and FUTA taxes, the statutory period is three years from due date of return or the date the return was filed, whichever is later. If no return was filed, the statute remains open for the assessment of these taxes.
  3. Form SS-10, *Consent to Extend the Time to Assess Employment Taxes*, must be used to extend the period for assessment of taxes imposed by FICA, including FICA tax on tip income (for exceptions, see IRM 25.6.22.6.10, *Employment Taxes*), FUTA, RRTA, and Code provisions relating to withholding of income tax on wages at the source.

#### Note:

Docketed cases involving worker classification issues may have two statutes, the FICA statute date and a statute date for the self-employment tax.

4. When a parent in a consolidated income tax return executes Form 872, Form 872-A, Form 872-I, or Form 872-IA covering Chapter 1 Income Taxes, the authority of the parent does not automatically extend to taxes outside Chapter 1 Income Taxes such as excise taxes and employment taxes.
5. For elections by religious orders for social security and Medicare coverage, see IRC 3121(r).
6. Form 1040, *U.S. Individual Income Tax Return* is a multi-purpose tax return reporting both income and FICA taxes (i.e., Social security tax, Medicare tax, and Additional Medicare Tax). If the employee filed Form 1040, but did not report any FICA taxes on the return and:
  - Attach Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*,
  - Attach Form 8919, *Uncollected Social Security and Medicare Tax on Wages*, or
  - Attach Form 8959, *Additional Medicare Tax*, the period of limitations for FICA taxes does not begin to run. FICA taxes may be assessed even if the statute of

limitations has expired for the assessment of income taxes. See Rev. Rul. 79-39, 1979-1 C.B. 435. See also IRM 25.6.22.6.10.2, *FICA Tax on Tips Not Reported to Employer*.

7. See IRM 8.21, *Appeals Statute Responsibility*, and IRM 25.6.22, *Statute of Limitations - Extension of Assessment Statute of Limitations By Consent*, for detailed information concerning statute of limitations on employment tax cases, including employee share of FICA, FICA on tips and trust fund recovery penalty cases.