



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
Washington, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR SB/SE EXAMINATION EXECUTIVES

FROM: Shelley M. Foster */s/ Shelley M. Foster*  
Acting Director, Examination Policy

SUBJECT: Interim Guidance Regarding Appeals Judicial Approach and  
Culture (AJAC) Project and Unagreed Case Processing

The purpose of this memorandum is to provide guidance regarding AJAC and unagreed case processing. Please ensure this information is distributed to all affected employees within your organization. This guidance is effective September 2, 2014.

Appeals initiated the AJAC project to review how they handle Compliance cases and identify changes to improve their actual and perceived independence. As part of the AJAC project, effective September 2, 2014, Appeals will return cases to the originating function when the taxpayer provides new information or evidence, or raises a new issue the originating function has not considered.

The attachment to this memorandum provides guidance pertaining to unagreed case processing for all examiners and managers. IRM sections affected are listed in the *Table of Contents* included with the attachment.

This guidance will be incorporated into IRM 4.10.8, *Report Writing*, by August 28, 2015.

If you have questions, you may contact me or a member of your staff may contact Cathy Demetra, Program Manager, Examination Policy, Examination General Processes.

cc: [www.irs.gov](http://www.irs.gov)

| <b>IRM Number</b> | <b>Title</b>   | <b>Page Number(s)</b> |
|-------------------|--|-----------------------|
| 4.10.8.2          | No Change and No Liability Cases   | 2-6                   |
| 4.10.8.3          | Regular Agreed Cases (SB/SE Field and Office Examiners Only)                                       | 7                     |
| 4.10.8.9.3        | Claims Disallowed in Full or Part (SB/SE Field and Office Examiners Only)                          | 8                     |
| 4.10.8.11         | Eligibility for Appeals Conference and Preliminary Letters (SB/SE Field and Office Examiners Only) | 9-11                  |
| 4.10.8.12         | Unagreed Case Procedures (SB/SE Field and Office Examiners Only)                                   | 12-29                 |

**4.10.8.2****No Change and No Liability Cases**

(1) This section contains procedures for closing a case when the examination results in no adjustments, or there are adjustments that result in no additional liability.

(2) \*\*\*\*\*  
 \*\*\*\*\*  
 \*\*\*\*\*#.

**4.10.8.2.1****No Change (No Adjustments) (SB/SE Field and Office Examiners Only)**

(1) Upon completion of a field or office examination resulting in no adjustments (disposal code 02), the examiner will prepare and provide Letter 3401, *No Change Report Transmittal Letter*, or Letter 3401-S, *Flow Through Entity No Change Transmittal Letter (Non-TEFRA)*, to the taxpayer(s) and, if applicable, to the taxpayer's representative. Letter 3401 (or Letter 3401-S) advises the taxpayer that a no change is proposed but is subject to review.

**Note:** See IRM 4.31.2, *TEFRA Examinations-Field Office Procedures*, for additional report preparation guidance and letters to be issued by the examiner, the Field TEFRA Coordinator and/or the Campus TEFRA Function (CTF). The IRM also provides direction for completion of Form 3198, *Special Handling Notice for Examination Case Processing*, in TEFRA examinations.

(2) The examiner must generate a "no change" report using RGS and provide it to the taxpayer and, if applicable, the taxpayer's representative, at the conclusion of the examination. The "Other Information" or "Remarks" section of the report must include the statement "No Change Subject to Approval by Area Director, Area Manager, or Director of Field Operations".

(3) The examiner must prepare an undated Letter 590, *No Change Final Letter* (or Letter 992, *No Change Letter*, for Form 1120-S, *U.S. Income Tax Return for an S Corporation*, Form 1065, *U.S. Return of Partnership Income*, or Form 5500, *Annual Return/Report of Employee Benefit Plan*), have it signed by the group manager, and place it in the case file when the case is closed from the group. Letter 590 (or Letter 992) is issued by Exam Centralized Case Processing (CCP) and notifies the taxpayer the report has been reviewed and accepted.

(4) On Form 3198, check the blocks for "No Change Letters" and "Letter 590" or "Letter 992" in the "Letter Instructions for CCP" section.

(5) Re-opening procedures do not apply if subsequent changes are needed before issuance of Letter 590 or Letter 992.

(6) The "no change" report may be acceptable documentation for repetitive audit verification in lieu of Letter 590 (or Letter 992) if the transaction code on the transcript corroborates the taxpayer's no change report. The examiner should research IDRS using command code IMFOLZ or BMFOLZ which will display the results of the last two audits. This command code will show the "No Change Issue Codes", also known as "IMF Issue Codes", disposal codes and any deficiency amount. The "No Change Issue Codes" can be found using the link in the *Form 5344 - Item 41, No-Change/IMF Issue Codes* article on the MySB/SE website.

#### **4.10.8.2.2**

#### **No Change with Adjustments Report Not Impacting Other Tax Year(s)**

(1) This section contains procedures for an examination that results in adjustments that do not change the taxpayer's liability in the year examined and do not impact any other tax years.

(2) In cases where the examination results in adjustments but no change to the tax liability in the year examined and there is no impact to any other tax year(s), it is still important to notify the taxpayer of the adjustments so the taxpayer treats the issue(s) properly when filing subsequent year returns.

**Caution:** For adjustments or items impacting a prior or subsequent tax year, follow the applicable procedures in IRM 4.10.8.2.3.

(3) Upon completion of a field or office examination resulting in no change with adjustments (disposal code 01), and there is no impact to other tax years, the examiner will prepare and provide Letter 3402-A, *Examination Report Transmittal - No Change with Adjustments Not Impacting Other Tax Years*, to the taxpayer(s) and, if applicable, to the taxpayer's representative. Letter 3402-A advises the taxpayer that a no change with adjustments is proposed but is subject to review. It is not necessary to secure the taxpayer's agreement since there is no tax liability.

**Note:** No-change with adjustments report procedures do not apply to partnership or S corporation examinations.

(4) The examiner must generate an "agreed" report using RGS and provide it to the taxpayer and, if applicable, the taxpayer's representative, at the conclusion of the examination.

(5) The examiner must prepare an undated Letter 1156, *Change/No Change Final Letter*, have it signed by the group manager, and place it in the case file

when the case is closed from the group. Letter 1156 is issued by CCP and notifies the taxpayer the report has been reviewed and accepted.

(6) On Form 3198, check the blocks for "No Change Letters" and "Letter 1156" in the "Letter Instructions for CCP" section.

(7) Re-opening procedures do not apply if subsequent changes are needed before issuance of Letter 1156.

#### **4.10.8.2.3**

##### **No Change Report with Adjustments Impacting Other Tax Year(s) Filed, Delinquent or Not Due**

(1) If the examination results in adjustments that do not change the taxpayer's liability in the year examined but impact other tax year(s) that are filed or delinquent, the examination must be expanded to include the other tax year(s). If expanding the examination to other impacted tax years results in a tax liability, follow the procedures in IRM 4.10.8.2.4.

(2) If the examination is expanded to other tax year(s), there is no tax liability in any of the other tax year(s), and the taxpayer agrees to the adjustments, the examiner must:

- a) Prepare and provide Letter 3402, *Examination Report Transmittal - No Change with Adjustments Impacting Other Tax Years*, to the taxpayer(s) and, if applicable to the taxpayer's representative. Letter 3402 advises the taxpayer that a no change with adjustments is proposed but is subject to review.
- b) Generate an "agreed" report using RGS and provide it to the taxpayer and, if applicable, to the taxpayer's representative, at the conclusion of the examination. The examiner should secure the taxpayer's signature since there are adjustments to the return(s) and they impact other tax year(s).
- c) Close the case to CCP using disposal code 01. The examiner must prepare an undated Letter 1156, have it signed by the group manager, and place it in the case file when the case is closed from the group. Letter 1156 is issued by CCP and notifies the taxpayer the report has been reviewed and accepted.
- d) Prepare Form 5346, *Examination Information Report*, and submit to Planning and Special Programs (PSP), if the examination results in adjustments that impact other tax years that are not yet due.

(3) If the no change with adjustments examination impacts other tax years, there is not a deficiency, and the taxpayer does not agree to the adjustments, they may be offered the opportunity to go to Appeals. Generally, cases considered by Appeals involve a disputed tax liability. However, Appeals will consider cases that do not have an immediate tax consequence but may impact the tax liability

of year(s) that have not been examined. See IRM 8.1.1.3.2, *No Immediate Tax Consequence Cases*.

**Example:** Adjustments made to an NOL carryforward, or timing issues such as depreciation.

(4) If the taxpayer does not agree to the adjustments, before issuing the report, the examiner must first determine whether the taxpayer is eligible for an Appeals conference. See IRM 4.10.8.11 (1) through (3) for guidance on how to determine if the taxpayer is eligible for an Appeals conference and then proceed as follows:

- a) If the taxpayer is eligible for an Appeals conference, the examiner should follow the 30-day letter procedures in IRM 4.10.8.12.
- b) If the taxpayer is not eligible for an Appeals conference, the examiner should follow the procedures in IRM 4.10.8.11(5) through (7).

#### **4.10.8.2.4**

##### **Multiple Year Exams Including No Change Years**

(1) When a multi-year examination results in both change and no change year(s), the examiner should:

- a) Prepare a separate report for the no change year(s), depending on the type of no change, i.e., no adjustments impacting other tax years, etc. See IRM 4.10.8.2.1 through IRM 4.10.8.2.3.
- b) Follow the specific report writing procedures that apply to the change year(s). For example, if the taxpayer does not agree to the adjustments, the examiner should follow the procedures in IRM 4.10.8.11 to determine if the taxpayer is eligible for an Appeals conference.

(2) See IRM 4.10.8.6 for procedures for closing cases that contain at least one agreed/no change year and one unagreed year.

#### **4.10.8.2.5**

##### **No Change Letters**

(1) The following form letters are issued as no-change notification letters:

- a) Letter 570 – Final closing letter for claim allowed in full;
- b) Letter 590 – Final closing letter for no change cases with no adjustments;
- c) Letter 992 – Final closing letter for Non-TEFRA flow through entities;
- d) Letter 1156 – Final closing letter for no change with adjustment cases;
- e) Letter 2684 – Audit being stopped due to repetitive audit;
- f) Letter 3401 – No adjustments impacting the taxpayer's liability or other tax periods;

- g) Letter 3401-S – No adjustments impacting the taxpayer's liability or other tax periods (Non-TEFRA Flow Through Entities);
- h) Letter 3402 – Adjustments impacting the taxpayer's liability of other tax periods;
- i) Letter 3402-A – Adjustments not impacting the taxpayer's liability of other tax periods;
- j) For TEFRA Partnership or S-Corporation cases:
  - Letter 1864 – No more than 45 days have elapsed from the date on the Letter 1787 or Letter 1855; Letter 2062 – More than 45 days have elapsed from the beginning of the administrative proceedings for an S Corporation; Letter 2064 – More than 45 days have elapsed from the beginning of the administrative proceedings for a partnership; or Letter 2621 – No adjustments;
- k) For nonfiler cases closed without an examination report:
  - Letter 2769 – Delinquent return accepted as filed and the nonfiler did not have reasonable cause for the failure to file; or Letter 2778 – Delinquent return accepted as filed and no penalty is asserted

#### **4.10.8.2.6**

#### **No Change Issue and Disposal Codes**

- (1) For no change cases with no adjustments, RGS will populate the no change issue codes on the Form 5344 from the issues created and no changed.
- (2) Enter the disposal code on the appropriate line of Form 5344 as:
  - 01 - No Change with Adjustments
  - 02 - Regular No Change
  - 07 – Appealed

**4.10.8.3****Regular Agreed Cases (SB/SE Field and Office Examiners Only)**

- (1) This section contains instructions for the preparation of reports when the taxpayer agrees with the examiner's proposed liability. Some cases are **excepted** from the procedures outlined in this section. See IRM 4.10.8.4.1.
- (2) The regular agreed report is designed to cover a three-year period and should include an adequate explanation (e.g. standard paragraphs or redacted lead sheet(s)) to support the proposed adjustment(s).
- (3) Generally, regular agreed report forms require the taxpayer's signature and include a statement that the report is subject to acceptance by the Area Director (or comparable level of management).
- (4) Be very cautious in accepting waivers where taxpayers have added writing other than their signatures. If possible, a new waiver should be obtained with just the taxpayer's signature. If this is not possible, all facts will be obtained to determine the taxpayer's intent. Conditional statements will invalidate a waiver.
- (5) **FIELD EXAMINATION:** Letter 4121 can be used to mail taxpayers a report when they have indicated agreement to all adjustments.
- (6) **OFFICE EXAMINATION:** Generally, Letter 950, *30 Day Letter-Straight Deficiency*, will be used to issue both agreed and unagreed reports. Update ERCS action code to 03.
- a) If there are 240 days or more remaining on the statute of limitations and the taxpayer is eligible for an Appeals conference, issue Letter 950. See IRM 4.10.8.11 to determine the taxpayer's eligibility for an Appeals conference.
  - b) If there are fewer than 240 days remaining on the statute of limitations, and the taxpayer is eligible for an Appeals conference, follow the procedures in IRM 4.10.8.12.1 (3).
  - c) If a taxpayer is not eligible for an Appeals conference, issue Letter 5262, *Examination Report Transmittal - Additional Information Due (Straight Deficiency)*, (or appropriate letter depending on the type of case) with the report. See IRM 4.10.8.11 to determine the taxpayer's eligibility for an Appeals conference.



**4.10.8.9.3****Claims Disallowed in Full or Part (SB/SE Field and Office Examiners Only)**

(1) When a claim is disallowed in full or in part the examiner must determine whether the taxpayer is eligible for an Appeals conference before issuing a report. See IRM 4.10.8.11 (1) through (3) for guidance on determining the taxpayer's eligibility.

(2) If the taxpayer is eligible for an Appeals conference, the examiner should prepare:

- a) Letter 569, *Full/Partial Preliminary Claim Disallowance Letter*;
- b) Form 2297;
- c) Form 3363,; and
- d) Form 4549 if additional tax is due or there is a partial disallowance.

(3) If the taxpayer is not eligible for an Appeals conference, the examiner should follow the procedures in IRM 4.10.8.11 (5) through (7) and issue Letter 5261, *Examination Report Transmittal - Additional Information Due (Claim for Refund)*, along with Form 2297, Form 3363, and, if applicable, Form 4549.

**Caution:** If the taxpayer is not eligible for an Appeals conference and the claim disallowance includes additional tax due, issue Letter 5262 instead of Letter 5261.

**4.10.8.11****Eligibility for Appeals Conference and Preliminary Letters (SB/SE Field and Office Examiners Only)**

(1) A primary function of examiners assigned to the Examination functions within the IRS is the original examination of income (including partnership and fiduciary), estate, gift, excise, employment, exempt organizations, and information returns. Examiners are the first finders of fact and are responsible for taking relevant testimony and examining books, papers, records, or memoranda, included in Federal tax returns. Therefore, when a taxpayer submits new information or evidence or raises a new issue to Appeals that warrants investigation and/or requires additional analysis in a non-docketed case, Appeals generally returns the case to Examination for a determination.

(2) If information requested on Form 4564, *Information Document Request*, is not provided, the taxpayer may not be eligible for an Appeals conference.

**Note:** If a taxpayer or representative refuses to provide requested information to the examiner, the examiner's group manager will discuss the case with the taxpayer or representative to facilitate receipt of the requested information. Generally, the case file should not be sent to Appeals unless requested information has been provided. See IRM 1.4.40.4.11.5, *Unagreed Case Procedures*.

(3) In order for the taxpayer to be eligible for an Appeals conference:

- a) Information requested on Form 4564 must be provided by the taxpayer or a third party, **or**
- b) The taxpayer/representative must confirm there is no additional information to resolve the outstanding issue(s). The examiner must inquire and document the discussion, including date and time, the parties to the discussion, what information was not provided and why it was not available, on each applicable issue lead sheet.

**Reminder:** Examiners must follow the requirements of IRM 4.10.4, *Examination of Income*, with respect to minimum income probes and the scope and proper development of income issues.

(4) If the taxpayer has met either of the requirements in IRM 4.10.8.11 (3), the examiner should issue a 30-day letter and provide the taxpayer with the opportunity to request an Appeals conference. See IRM 4.10.8.12 (or IRM 4.10.8.9 for claim for refund cases)

(5) If the taxpayer has not met the requirements in IRM 4.10.8.11 (3), and therefore is not eligible for an Appeals conference, the examiner should issue the initial examination report (see IRM 4.10.8.3) with Letter 5262, Letter 5261, or

Letter 5262-A, *Examination Report Transmittal - Additional Information Due (No Change with Adjustments)*, along with:

- a) The original information document request(s) (IDR) highlighting the information that was not received, or
- b) A new IDR incorporating the original IDR language and original due date for the previously requested information. The examiner should give the taxpayer 15 days to provide or confirm they do not have the requested information. Office examiners will update the ERCS action code to 04. If the letter is returned as undeliverable, follow the procedures in IRM 4.10.8.12.9 (2).

(6) Follow the guidance in IRM 4.10.4.3.6, *Minimum Income Probes, No Show and/or No Response Cases*, and IRM 4.10.2.7.2, *Locating the Taxpayer*, prior to issuing Letter 5262, Letter 5261, or Letter 5262-A in no-show/no-response cases.

(7) Follow the procedures in the table below based on the **taxpayer's response** to Letter 5262, Letter 5261, or Letter 5262-A:

| If...  | Then the examiner will...   |
|--|---|
| The taxpayer or representative returns the signed report   | Close the case using normal agreed procedures.<br>See IRM 4.10.8.3.7 for deficiency and claim cases.<br>See IRM 4.10.8.2.3 (1) for no change with adjustment cases.   |
| The taxpayer or representative provides the information requested on Form 4564   | Evaluate the information, generate a new report, if applicable, and issue the appropriate 30-day letter. See IRM 4.10.8.12 for unagreed case procedures.  |
| The taxpayer confirms they do not have the information requested on Form 4564 and there is no additional information to resolve the outstanding issue(s)                               | Issue the appropriate 30-day letter and document the case file in accordance with the instructions in IRM 4.10.8.11(3)b. See IRM 4.10.8.12 for unagreed case procedures.  |
| The taxpayer or representative provides additional information, but not the information requested on Form 4564, and the information provided does not resolve the outstanding issue(s) | Call the taxpayer/representative to discuss the information received. If the taxpayer or representative:<br>1) Confirms they have no additional information, issue the appropriate 30-day letter and document the case file in accordance with the instructions in IRM 4.10.8.11 (3). See IRM 4.10.8.12 for unagreed case procedures.<br>2) States they have additional |

|  |  |
|--|--|
|  | <p>information for consideration, states they have additional information for consideration but refuses to provide it, or the examiner cannot make contact, issue Letter 5441, <i>Response to Letter 5262 – Additional Information Received (Straight Deficiency)</i>, Letter 5441-A, <i>Response to Letter 5262 – Additional Information Received (Claim for Refund)</i>, or Letter 5441-B, <i>Response to Letter 5262 - Additional Information Received (No Change with Adjustments)</i>, with a revised report, if applicable, and allow the taxpayer 10 days to respond. Office examiners will update the case using ERCS action code 07.</p> <p>a) If the taxpayer signs the report, close the case using normal agreed procedures (see above).</p> <p>b) If the taxpayer provides the requested information, or states they have no additional information, issue the appropriate 30-day letter. See IRM 4.10.8.12 for unagreed case procedures.</p> <p>c) If the taxpayer does not respond, does not provide the requested information, or the information provided does not resolve the outstanding issue(s), close the case to Technical Services for issuance of a statutory notice of deficiency or statutory notice of claim disallowance. For no change with adjustment cases, see IRM 4.10.8.2.3 (2)(c).</p> |
|--|--|

**4.10.8.12****Unagreed Case Procedures (SB/SE Field and Office Examiners Only)**

(1) Managerial involvement is required in all unagreed cases. Examiners should be aware of the procedures in IRM 1.4.40.4.11.5, *Unagreed Case Procedures*, and inform their group manager when they believe a case will have unagreed issues. The group manager's actions must be documented in the case file. Form 9984 may be used for this purpose.

(2) If the case is eligible for SB/SE Fast Track Settlement (FTS) and there are unagreed issues remaining after the group manager has contacted the taxpayer or representative in an attempt to resolve all issues, the examiner or group manager will explain and offer FTS to the taxpayer. FTS should not be offered if the group manager has not spoken to the taxpayer/representative. See the *SB/SE Fast Track Settlement* website for additional information.

**4.10.8.12.1****30-Day Letters**

(1) If the taxpayer is eligible to go to Appeals, a 30-day letter is issued to transmit the examination report and allow the taxpayer 30 days to request Appeals consideration of their case. See IRM 4.10.8.11 to determine the taxpayer's eligibility for Appeals.

**Note:** When a case is initially received in Appeals, there must be at least 365 days remaining on the statute (270 days for estate tax cases or IRC 6206 excessive claim cases). If Appeals previously released jurisdiction of the case and returned it to Examination for additional work, there must be at least 180 days remaining on the statute of limitations when the case is received in Appeals. The group must allow a minimum of 30 days for shipping and processing a case through Technical Services. Therefore, a case should have a minimum of 395 days (or 210 if the case was returned) remaining on the statute when it is closed from the group.

(2) At a minimum, there should be 240 days remaining on the statute of limitations when the 30-day letter is issued. This provides 30 days for the taxpayer to respond to the letter plus sufficient time for Technical Services to issue the notice of deficiency if the taxpayer fails to respond. See IRM 25.6.23.8.1, *Minimum Time Remaining to ASERD*.

(3) When fewer than 240 days remain on the statute of limitations, the examiner should prepare and issue an agreed examination report with Letter 5153, *Examination Report Transmittal*, Letter 5153-A, *Examination Report Transmittal (Claim for Refund)*, or Letter 5153-B, *Examination Report Transmittal (No Change with Adjustments)*, to transmit the report and notify the taxpayer additional time is needed on the statute of limitations for Appeals to consider their

case if it is unagreed, and allow 10 days to respond. Office examiners will update the ERCS action code to 07. If a statute extension has not been solicited, the examiner should follow the procedures in IRM 25.6.22, *Extension of Assessment Statute of Limitations By Consent*, then proceed as follows:

- a) If the case is agreed, close using normal agreed procedures. See IRM 4.10.8.3.7 for deficiency and claim cases, or IRM 4.10.8.2.3 (1) for no change with adjustment cases.
- b) If the case is unagreed and the taxpayer signs a consent to extend the statute of limitations that will allow sufficient time for the case to be considered by Appeals, prepare and issue a 30-day letter.
- c) If the case is unagreed and the taxpayer does not sign a consent, close the case to Technical Services for issuance of a notice of deficiency.

(4) 30-day letter procedures are applicable to income, estate, gift, excise, and employment tax cases. See IRM 4.23.10, *Report Writing Guide for Employment Tax Examinations*, IRM 4.24.10, *Excise Tax Examination Reports, Case Closing and Appeals Procedures*, or IRM 4.25.6, *Report Writing Guide for Estate and Gift Tax Examinations*, for procedures related to employment tax, excise and estate and gift examinations.

(5) 30-day letters are issued in unagreed change (deficiency or overassessment) cases and formal claim disallowance cases. Exceptions are fraud cases involving pending criminal prosecution and frivolous filers/nonfilers.

(6) If an examination of a return results in a deficiency or overassessment that is offset (no deficiency or overassessment results) by a net operating loss carryback, a manual computation of interest may be required. If the taxpayer disagrees with the examination results, they will be afforded the same opportunity to request an Appeals hearing, as if a deficiency/overassessment were involved.

(7) The following form letters, specific to the type of case, are 30-day letters used to transmit the examination report and allow the taxpayer 30 days to request Appeals consideration of their case:

- a) Letter 950 — for straight deficiency, straight overassessment, or mixed deficiency and overassessment cases
- b) Letter 950-F — for no change with adjustments cases
- c) Letter 569 (DO) — for claim disallowance cases
- d) Letter 953 (DO) — for reconsideration of disallowed claims when no modification of prior determination is warranted
- e) Letter 962 (DO) — for straight deficiency, straight overassessment, or mixed deficiency and overassessment fiduciary cases
- f) Letter 921 — for flow-through entities (partnerships, fiduciaries, S-corporations, etc.)

- g) Letter 3391 — for nonfiler cases
- h) Letter 955 – for transferee/transferor cases
- i) Restricted Interest Cases — the examiner will need to prepare and the group manager approve a letter patterned after the form letters listed in a–h above. Form letters are not available for restricted interest cases due to infrequent use. The letter created by the examiner should address the restricted interest issue, rather than a deficiency or overassessment of tax.

(8) The following items must be included with the 30-day letter:

- a) Examination report (including redacted lead sheets or standard explanations as required in IRM 4.10.8.12.4) and waiver (when required); and
- b) Pub 3498, *The Examination Process*.

**Note:** Pub 3498 must always be enclosed with a 30-day letter even if it was provided with a previous report or letter.

(9) 30-day letters should be prepared by the examiner, and include the examiner's or group manager's name, in the contact area, depending on the type of letter.

(10) The authority to sign and issue 30-day letters is delegated to group managers. See Delegation Order 4-55, *Authority to Sign 30-Day Letters*.

(11) IRC 6651(f), *Fraudulent Failure to File (FFTF) Cases* — The portion of a FFTF penalty attributable to the amount of tax shown on a return is assessable immediately and is not subject to deficiency procedures. To ensure the facts of a particular case support fraud, and because the assessment of a FFTF penalty attributable to the amount shown on a return will not be reviewed by the Tax Court, all 30-day letters proposing a FFTF penalty must be reviewed and approved by Area Counsel prior to issuance. Furthermore, the period of limitations on assessment of such portion would not be suspended by the issuance of a notice for the other portion.

**Exception:** When proposing the FFTF penalty on an income tax substitute for return (SFR), Counsel's review and approval is not required prior to the issuance of the 30-day letter. However, Counsel will review the case prior to the issuance of a notice of deficiency.

#### **4.10.8.12.2**

##### **Unagreed Reports**

(1) The unagreed report forms listed below are generally used to present the audit findings for an unagreed case. They are similar to those used for agreed cases and the instructions for completing agreed case reports generally apply.

However, unagreed report forms do not include a statement regarding the acceptance of the report by the Area Director. They also do not include a signature line for the taxpayer's consent to assessment and collection, so a waiver is required. See IRM 4.10.8.4.2 for instructions for preparing waivers.

(2) The following report forms are used for unagreed income tax cases.

**Note:** Office Examination can use Form 4549 in lieu of Form 4549-A. If Form 4549 is used, a waiver is not required.

| Type of Taxpayer                          | Report Form      | Agreement Form (Waiver) |
|---|------------------|-------------------------|
| Individual (1040)                         | 4549-A           | 870                     |
| Corporations (1120)                       | 4549-A           | 870                     |
| Non-TEFRA Partnerships (1065)             | 4605-A and 886-S | 875                     |
| Non-TEFRA S Corporations                  | 4605-A and 886-X | 870 (entity tax)<br>875 |
| Fiduciary                                 | 4605-A and 886-W | 875                     |
| Domestic International Sales Corporations | 4605-A and 886-Y | 870                     |

#### 4.10.8.12.3

#### Separate Assessments on Joint Taxpayers

(1) In certain cases, it may be necessary to set up separate assessments for taxpayers who filed a joint return. For example, when only one spouse signs an agreement and the deficiency is not fully paid, an assessment may need to be made on the agreeing, or "obligated", spouse in order to protect the statute of limitations for that taxpayer while unagreed procedures are applied to the other spouse. Similarly, a separate assessment would need to be made when only one spouse does not petition Tax Court after receiving a 90-day letter. In these situations, separate assessments are made using MFT 31, as long as the SSN's are valid (no asterisks). If invalid, Non-Master File procedures found in IRM 21.7.12, *Non-Master File (NMF) Adjustments*, and IRM 3.17.46, *Automated Non-Master File Accounting*, will apply.

(2) Although an assessment will be made on the obligated spouse, no collection notices will be mailed until the case is ultimately resolved (and assessment adjusted if necessary). At that time, an MFT 31 assessment will be set up for the other spouse.

(3) If only one spouse signs an adequate protest requesting Appeals consideration and no response is received from the other spouse, the case will



normally be sent to Appeals as long as there is sufficient time on the statute of limitations for both spouses. In other words, one signature on the protest may be adequate.

(4) However, if one spouse agrees and one protests, a separate assessment may be necessary on the obligated spouse especially if the statute of limitations for that spouse is imminent. In any event, note on the Form 3198 that one spouse has signed a waiver, so CCP can calculate interest accordingly.

(5) If one spouse agrees and the other does not respond to the 30-day letter, a separate assessment needs to be set up on the obligated spouse before the case is sent to Technical Services for 90-day letter procedures.

(6) Procedures for creating an MFT 31 account:

- a) Request the creation of the MFT 31 account for the obligated spouse by preparing Form 3177, *Notice of Action for Entry on Master File*. The top section of Form 3177 will be completed, using the primary SSN.
- b) In the "Other" section, put TC 971 as the transaction code in the empty box, and on the line state "Action Code 103". Also include the obligated (agreeing) spouse's SSN as "XREF SSN: XXX-XX-XXXX".
- c) On the "Other" line, MFT Code column reflect 30 and ensure the taxable period is listed in the correct column (a separate Form 3177 is needed for each year). The TC 971 and appropriate action code on the MFT 30 account will create an MFT 31 account for the XREF SSN listed.

(7) Efax the Form 3177 to CCP and request a partial assessment be made on the obligated spouse:

- a) Form 3198, Form 5344 and the agreed report are needed in addition to the Form 3177.
- b) Note on Form 3198 "input TC 971 per attached Form 3177". Include your name and fax number so CCP can fax a copy of Form 5344 to you after the partial assessment has been made.
- c) Form 5344 must be manually prepared and should reflect MFT 30 and the primary SSN. In the top left of the Form 5344 put an "S" in the blank following AMCLS. In Item 56 put either "P" or "S" depending on whether the assessment is being made on the primary or secondary spouse.
- d) Efax these forms to CCP while you continue to hold the case.
- e) See the CCP website for the Exam Efax numbers.

(8) Continue normal unagreed procedures for the disagreeing/petitioning spouse. Associate an IMFOLT or copy of the Form 5344 received from CCP showing that the partial assessment on the other spouse has been made on MFT 31. Close the case using normal RGS procedures and check the "MFT 31 Assessment" checkbox on Form 3198.

(9) Examiners should refer to IRM 21.6.8, *Split Spousal Assessments (MFT 31)* for additional information.

#### **4.10.8.12.4**

##### **Explanation of Items**

(1) For most Office Examination reports, examiners will use the standard explanations in IRM 4.10.10, *Standard Paragraphs and Explanation of Adjustments*, and RGS. The explanation must include enough information to enable the taxpayer to challenge the issue. See IRM 4.10.8.19 for additional information. As an option, lead sheets may be attached to the report to explain the issue(s) but examiners should follow the format in IRM 4.10.8.12.4 (2).

(2) For Field Examination, a copy of the examiner's lead sheet relating to each issue will be attached to the report to explain the items. A separate lead sheet must be used for each issue. If the issue is applicable to more than one year, the issue should be shown on one combined lead sheet. The copy of each issue lead sheet used as an attachment to the examination report must be modified to remove extraneous information that does not address the Conclusion, Facts, Applicable Law, and Taxpayer's Position (e.g. audit steps and workpaper references should generally be redacted, depending on the facts and circumstances). The following format should be used:

- a) Title — Each lead sheet must be numbered and titled to correspond with the adjustment on the audit report. See IRM 4.10.9.2.5, *Workpaper Indexing*. Lead sheets for issues with specific adjustment amounts must reflect the amount per return, the amount per audit, and the resulting adjustment.
- b) Conclusion — State a conclusion of the Service's position. Relate the facts, as previously stated, to the cited authority through a narrative discussion to support the Service's position. Also include the Service's rebuttal to the taxpayer's position reflected on the lead sheet. See IRM 4.10.8.12.10.3 (7) for information regarding preparing rebuttals in response to a protest.
- c) Facts — Each lead sheet must include a statement of the facts upon which the adjustment is based. The statement should be in narrative form. The facts must be relevant to the issue and should be stated accurately and objectively. Facts favorable to both the Service's and taxpayer's position must be included.
- d) Applicable Law — The applicable authority must be correctly cited and explained (if necessary). Rulings, opinions, and decisions relied upon must be clearly stated and identified in the explanation. Citations are not required when the adjustment is predicated entirely on facts (e.g. identity theft issues). However, reports should be informative for the taxpayer. If the adjustment is supported by multiple code sections of tax law, they all must be reflected. For example, to support a disallowance of business

- expenses, IRC 162(a), ordinary and necessary business expenses, and IRC 6001, lack of substantiation, should be incorporated into the narrative.
- e) Taxpayer's Position — The taxpayer's position should be stated (in narrative form) if known. The legal authority, if any, that the taxpayer is using as the basis of their argument should also be cited. If the taxpayer has provided a written position statement, include the entire statement in this section or summarize the statement and include the entire document in the report as an exhibit.

#### **4.10.8.12.5**

##### **Alternative Positions**

(1) An alternative position is a secondary position the Service may ultimately rely on if the primary position is not upheld. The primary position should be the one resulting in the larger liability when two positions are considered. All alternative positions must be addressed or Appeals will not raise them in the event they do not sustain the primary position. Therefore, the examiner must thoroughly document the facts, law, taxpayer's position and conclusion for all alternative positions that may be applicable if the primary position is not sustained.

(2) Alternative positions must be discussed with the taxpayer, or his or her authorized representative prior to issuing the examination report.

(3) An alternative position must be used for tax law that supports two totally separate positions. For example:

- a) When an adjustment is proposed to disallow a loss due to IRC 183, activities not engaged in for profit; any IRC 162 adjustments to business expenses should be included as an alternative position to IRC 183.
- b) When an Employer did not issue Form(s) 1099 and did not secure TINs from the workers the examiner may propose disallowing the expense as the primary position. A strong alternative to disallowing the expense is backup withholding. See IRM 4.10.8.12.5.1 (4) for report writing procedures for this alternative position.
- c) When the fraud penalty is asserted, the negligence/substantial understatement portion of the accuracy-related penalty should be addressed as an alternative position.
- d) When the fraudulent failure to file penalty (FFTF) is asserted, the failure to file penalty (FTF) should be addressed as the alternative position.
- e) When the accuracy-related penalty attributable to a substantial understatement of income tax is not asserted due to the assertion of negligence or disregard of the rules or regulations, include the substantial understatement penalty as an alternative position.
- f) When the substantial understatement penalty is asserted, the negligence portion of the accuracy-related penalty should be addressed as the

alternative position in the event tax is decreased resulting in the substantial penalty no longer being applicable.

(4) References for alternative positions in unagreed cases:

- IRM 4.10.6.4, *Finalizing Penalty Determinations*
- IRM 4.23.10.17.3, *Alternative and Whipsaw Positions in Unagreed Cases*
- IRM 20.1.5.2, *Common Features of Accuracy-Related and Civil Fraud Penalties*
- IRM 25.1.4.3.9, *Preparation of Pre-Prosecution Report*

#### **4.10.8.12.5.1**

##### **Reports for Alternative Positions**

(1) Include in the Other Information section of the primary examination report “This report includes alternative issue(s) for which the tax computation has not been computed. Refer to the attachments labeled “Alternative Issue” for the facts, law, taxpayer’s position, and conclusion related to the alternative issue(s).”

**Note:** If the taxpayer requests a report reflecting the tax computation resulting from the alternative issue(s), the examiner may generate a report and provide it to the taxpayer. The report should be clearly labeled “ALTERNATIVE ISSUES” at the top of the report.

(2) The facts, law, taxpayer’s position, and conclusion for the alternative position on an issue will be presented on a separate lead sheet from the primary position. The top of each lead sheet for the alternative position will be marked “ALTERNATIVE ISSUE”.

(3) The lead sheets for the alternative issue(s) will be placed behind the unagreed report for the primary position.

(4) For a backup withholding alternative position, the examiner must discuss the backup withholding issue with the taxpayer and include a lead sheet or Form 886-A including the Facts, Law, Taxpayer Position, and Conclusion, as well as Form 4668-B, *Employment Tax Examination Changes Report*, as attachments to the unagreed report. Write “ALTERNATIVE ISSUE” at the top of the attachments and place behind the unagreed report for the primary position. See IRM Exhibit 4.23.10-4, *Form 4668-B, Report of Examination of Withheld Federal Income Tax*, for instructions on how to complete Form 4668-B.

**Note:** Do not create a separate backup withholding case file or establish the case on ERCS.

**4.10.8.12.6****Form 4665, Report Transmittal**

(1) Form 4665 can be used to transmit a case file to Appeals, but examiners must ensure the Form 4665 or any similar document does not contain statements or comments intended to influence Appeals' decision-making process. This includes recommendations concerning what Appeals should consider and how Appeals should resolve the case. It is permissible to include a neutral list of unagreed issues, without discussion, and indicate which ones, if any, are coordinated issues. Information related to the managerial conference should be documented on Form 9984, not on Form 4665.

(2) If Form 4665 includes statements or comments that may be construed as prohibited ex parte communications, or includes prohibited communications, regardless of whether such content is included as part of a document that is either placed on top of the case file as a transmittal or inserted into the case file in conjunction with preparing the case for transmission to Appeals, the document must be shared by the examiner with the taxpayer and representative at the time the case file is sent to Appeals.

**Note:** An "ex parte communication" is an oral or written communication that takes place between any Appeals employee and employees of other IRS functions, without the taxpayer/representative being given an opportunity to participate in the communication. See Rev. Proc. 2012-18, 2012-10 I.R.B. 455.

(3) See IRM 4.2.7, *Ex Parte Communication Procedures*, and the *Ex Parte Communications* website for additional information and guidance.

(4) Items that need safeguarding from unauthorized or inadvertent disclosure with Form TDF 15-05.11, *Sensitive But Unclassified (SBU) Cover Sheet*, should not be included or referenced on Form 4665. Examples include fraud referrals and identification of informants.

**4.10.8.12.7****Mailing 30-Day Letters**

(1) Generally, 30-day letters should be issued to the taxpayer and representative in person. However, if circumstances necessitate mailing the 30-day letter, the examiner should follow the procedures in this section.

(2) 30-day letters will be sent by ordinary mail unless it is considered necessary to document the mailing and delivery. In such cases, certified or registered mail should be used and a return receipt requested.

(3) In the case of a joint return, follow the procedures in IRM 4.10.1.6.8, *Separate*

*Notice Requirements for Joint Returns*, to mail the 30-day letter.

(4) A copy of the 30-day letter, with all enclosures, should be sent to the taxpayer's representative if authorized to receive such communication.

(5) A copy of the 30-day letter and report must be maintained in the case file. See IRM 4.10.9.9, *Case File Assembly for Closing*.

(6) For Field Examination, after issuing the 30-day letter, the case must be updated to status code 13.

(7) For Office Examination, examiners should update the case for 30 days using ERCS action code 03.

#### **4.10.8.12.8**

##### **Extension of Time to Respond**

(1) In general, Statement of Procedural Rules § 601.105(d)(1), does not provide for an extension of time to reply to a 30-day letter. However, as a matter of practice, extensions may be granted under reasonable circumstances.

(2) Reasonable circumstances include but are not limited to the following:

- a) The taxpayer retains a representative and demonstrates a need for more time to prepare a meaningful protest.
- b) The taxpayer retains a new representative.
- c) Sickness or injury of the taxpayer or representative.
- d) Issues are complex and require extensive research.

(3) Requests for extensions should be in writing and should state the reason(s) why additional time is needed. Since many requests are made by telephone, the extension may be granted verbally and confirmed in writing upon receipt of the written request.

(4) Extensions should not be granted if the statute of limitations will expire within 240 days and the granting of an extension will not leave sufficient time to process the case. Under such circumstances an extension to respond to a 30-day letter will be contingent upon securing an extension of the statute of limitations.

(5) Extensions are granted by the group manager or a designated management official. The taxpayer should be notified in writing of the extension and the specific extended response date. Letter 686, *Extension of Time for Certain Actions*, will be used for this purpose. Extensions are normally granted for no more than 30 days unless a specific reason supports additional time.

(6) If the taxpayer lives outside of the United States, the 30-day letter can be modified to allow for a reasonable period of time to respond.

#### **4.10.8.12.9**

##### **Follow-Up to 30-Day Letters**

(1) If the taxpayer does not file a protest within the time allowed, **but indicated their intent to do so**, send Letter 923, *Letter Extending Time to File Protest*, Letter 923-C, *Letter Extending Time to File Protest (Claim for Refund)*, or Letter 923-D, *Letter Extending Time to File Protest (No Change with Adjustments)*. Letter 923 (or applicable letter) to the taxpayer as a reminder to file a protest. Letter 923 should be issued no later than seven calendar days after expiration of the original 30-day letter. Office examiners will update the case file using ERCS action code 07.

(2) If the 30-day letter is returned as undeliverable to the address on file, then an attempt must be made to obtain the correct address.

- a) If the taxpayer's correct address is determined, the 30-day letter will be mailed to the new address. The period in which the taxpayer may reply starts with the date the letter was mailed to the new address.
- b) If the taxpayer's correct address cannot be determined, then the case will be processed as outlined in IRM 4.10.8.12.11.

(3) If the taxpayer doesn't respond to the 30-day letter and the 30-day letter proposes an overassessment or disallowance of a claim with no change in tax liability, no follow-up action should be taken. The case should be closed as outlined in IRM 4.10.8.12.11.

(4) If no response to a follow-up letter is received, the case will be processed as outlined in IRM 4.10.8.12.11.

#### **4.10.8.12.10**

##### **Response to 30-Day Letters**

(1) The taxpayer may respond to the 30-day letter in a variety of ways. The remainder of this section provides instructions depending on the type of response.

##### **4.10.8.12.10.1**

###### **Additional Information Received**

(1) If the taxpayer provides additional information after a 30-day letter has been issued, the examiner should evaluate the information. Take the following steps, as appropriate:

- a) If there is no change to the examination report, or the corrected report reduces the previous report and no new issues are raised, solicit an agreement by sending Letter 692, *Response to 30-day Letter – Additional Information Received (Straight Deficiency)*, Letter 692-A, *Response to 30-day Letter – Additional Information Received (Claim for Refund)*, or Letter 692-B, *Response to 30-day Letter – Additional Information Received (No Change with Adjustments)*, and allow the taxpayer 15 days to respond. A new 30-day letter is not needed. Office examiners will update the case using ERCS action code 07.
- b) If the corrected report raises new issue(s) or the proposed deficiency is increased, a new 30-day letter must be issued, if sufficient time remains on the statute of limitations. If sufficient time does not remain on the statute of limitations, follow the instructions in IRM 4.10.8.12.1 (2).

**Note:** If the examination report changes as a result of the additional information, follow the corrected report procedures in IRM 4.10.8.14(4) through (6).

#### **4.10.8.12.10.2**

##### **Full or Partial Agreement and Remittance**

(1) If a signed agreement form (or full payment not designated as a "6603 deposit") is received in response to the 30-day letter, the case will be closed from the group within 10 days from the date the agreement or full payment is received using agreed case closing procedures.

(2) If the taxpayer indicates agreement to part of the report, solicit a partial agreement. If a partial agreement is received, process according to the procedures in IRM 4.10.8.5.

(3) If an agreement form is not signed, but a partial remittance is received (not specifically designated as a deposit in the nature of a "6603 deposit") the payment will not be treated as a partial payment of tax unless the taxpayer designates it as such.

- a) Contact the taxpayer by phone to ask whether the payment was intended to be a payment of tax or a "6603 deposit". Document the conversation in the case file. If the taxpayer cannot be reached, draft a follow-up letter. The letter will inform the taxpayer that:
  - We received the remittance.
  - We did not receive a protest or a signed waiver agreeing to adjustments.
  - We need to know whether they intended the remittance to be a payment of the tax deficiency or a "6603 deposit".



- We need to receive a response within 15 days from the date of the letter or the case will be routed for issuance of a notice of deficiency.
- b) If the taxpayer was contacted and agrees with all adjustments but could not pay the entire liability at the time and intended the remittance to be a partial payment, have the taxpayer sign the waiver and determine if the taxpayer is eligible for an installment agreement. Process the payment as a partial payment. Do not hold the payment until the waiver is received.
- c) If the payment was intended to be a "6603 deposit", advise the taxpayer that if we don't receive a protest or signed waiver, a notice of deficiency will be issued.

**Note:** If the taxpayer has not signed an agreement form but has submitted a payment without specifically addressing how to apply the payment, the examiner must still process the payment within 24 hours. See IRM 4.4.24.2, *Form 3244-A*. If necessary, the Designated Payment Code (DPC) can be changed at a later date by completing Form 2424 and faxing it to CCP. See IRM 5.1.15.15(6), *Form 2424*. For the application of partial payments, see Rev. Proc. 2002-26.

#### 4.10.8.12.10.3

#### Request for Appeals Conference

(1) If the taxpayer responds by requesting an Appeals conference, and the total amount for any tax period is not more than \$25,000, the taxpayer may make a small case request instead of filing a formal written protest. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. The taxpayer may complete Form 12203, *Request for Appeals Review*. A case with a deficiency exceeding \$25,000 requires a formal written protest.

(2) If the taxpayer submits a written protest it will be reviewed at the group level, as designated by management, within seven days of receipt to determine whether the protest complies with the requirements as outlined in Pub 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*. Pub 5 contains instructions on preparing formal written protests and small case requests in unagreed cases. In addition, the protest should be reviewed to determine if:

- a) The case requires further development by the examiner;
- b) The examiner's report should be modified;
- c) The taxpayer's written protest includes any accompanying documents;  
and
- d) The examiner should write a rebuttal to refute arguments in the protest.

(3) If the taxpayer's representative submits the protest for the taxpayer, the representative may include a substitute for the taxpayer's declaration described in Pub 5. The declaration will state:

- a) The representative prepared the protest and accompanying documents;  
and
- b) Whether the representative knows personally that the facts contained in the protest and accompanying documents are true and correct.

(4) The protest should be returned to the taxpayer if it does not comply with the requirements as outlined in Pub 5 and additional time should be granted to perfect the protest. Use Letter 1025, *Incomplete Protest and/or Short Statute (Straight Deficiency)*, Letter 1025-A, *Incomplete Protest and/or Short Statute (Claim for Refund)*, or Letter 1025-B, *Incomplete Protest and/or Short Statute (No Change with Adjustments)*, for this purpose. The signature of only one spouse on a protest regarding a joint return does not make the protest incomplete.

**Note:** If the only item missing from the protest is a copy of the 30-day letter, the case can be closed using the copy in the file, therefore, there is no need to return the protest to the taxpayer for perfection.

(5) If there is not sufficient time remaining on the statute of limitations to send the case to Appeals, and a consent was not previously solicited, the examiner should follow the procedures in IRM 25.6.22, *Extension of Assessment Statute of Limitations By Consent*, to solicit a consent.

(6) If there is not sufficient time remaining on the statute of limitations to send the case to Appeals and a consent was previously solicited, the examiner should issue Letter 1025, *Incomplete Protest and/or Short Statute (Straight Deficiency)*, Letter 1025-A, *Incomplete Protest and/or Short Statute (Claim for Refund)*, or Letter 1025-B, *Incomplete Protest and/or Short Statute (No Change with Adjustments)*, to remind the taxpayer a consent is needed to send the case to Appeals, and give the taxpayer 10 days to respond.

(7) If the protest contains information warranting consideration, the case may require additional development. Cases requiring additional development should be considered priority work and given expedited consideration. If the examiner or group manager feels there is something in the protest that does not change the determination, but requires further comment or explanation, a rebuttal should be prepared and included in the case file before it is sent to Appeals. If a rebuttal is prepared, a copy must be provided to the taxpayer. Examiners should use Letter 5072, *Examiner's Rebuttal*, for this purpose.

(8) If the taxpayer verbally requests a transfer of jurisdiction for the appeal, and the written protest is complete, the case file will be sent promptly to the local Appeals office serving the examiner's area. This procedure applies even if the

taxpayer has requested a hearing in an Appeals office other than the one servicing the examiner's area.

(9) The fact that a notice of deficiency has been issued to the taxpayer does not preclude transfer of protested cases to Appeals for:

- a) Other taxable periods of the same taxpayer,
- b) Other types of tax for the same taxable periods for the same taxpayer, or
- c) An offer in compromise covering the same type of tax and the same taxable periods of the taxpayer.

(10) If a rebuttal is not prepared, when closing the case to Appeals, the examiner must prepare Letter 2280, *Transfer to Appeals*, to notify the taxpayer the case is being closed to Appeals. The letter must be signed by the group manager, and mailed to the taxpayer.

#### **4.10.8.12.10.4**

#### **Cases Returned from Appeals**

(1) If the taxpayer provides new information or evidence related to the issues in the unagreed report, Appeals will release jurisdiction and return the case to Examination so the examiner can evaluate the new information and make an audit determination. The examiner must document the issue lead sheet(s) and supporting workpapers to reflect the evaluation of the new information or evidence. In addition, the examiner must follow the table below to determine the appropriate actions required:

| <b>If...</b>              | <b>And...</b>                            | <b>Then...</b>  |
|---------------------------|--|---|
| The case is agreed        |  | The examiner will issue a corrected report, if warranted, and close the case using agreed case procedures.<br>See IRM 4.10.8.3.7 for deficiency and claim cases.<br>See IRM 4.10.8.2.3 (1) for no change with adjustment cases. |
| The case remains unagreed | There is a decrease in the tax liability | A corrected report should be issued to the taxpayer and included in the case file when it is sent back to Appeals.<br>The examiner will not issue a new 30-day letter.  |

|                           |   |   |
|---------------------------|---|---|
|                           |   | The taxpayer will not be required to submit another protest.  |
| The case remains unagreed | There is no change to the report          | The examiner will not issue a new 30-day letter. The taxpayer will not be required to submit another protest. The examiner will close the case to Appeals.  |
| The case remains unagreed | There is an increase in the tax liability | A new 30-day letter and corrected report should be issued to the taxpayer and included in the case file.<br>The taxpayer will be required to submit a new protest.<br>If the taxpayer submits a new protest, the examiner will close the case to Appeals; otherwise close to Technical Services for issuance of a notice of deficiency. |

(2) If the taxpayer raises a new issue to Appeals, Appeals will release jurisdiction and return the case to Examination so the examiner can evaluate the new issue and make an audit determination. The examiner must create an issue lead sheet(s) and supporting workpapers to reflect the evaluation of the new issue. In addition, the examiner must follow the table below to determine the appropriate actions required:

| <b>If...</b>       | <b>And...</b> | <b>Then...</b>  |
|--------------------|---------------|---|
| The case is agreed |               | The examiner will issue a corrected report, if warranted, and close the case using agreed case procedures.<br>See IRM 4.10.8.3.7 for deficiency and claim cases.<br>See IRM 4.10.8.2.3 (1) for no change with adjustment cases. |

|                           |   |  |
|---------------------------|---|--|
| The case remains unagreed | The new issue is allowed in full  | The examiner will issue a corrected report.<br>The examiner will not issue a new 30-day letter.<br>The taxpayer will not be required to submit another protest.<br>The examiner will close the case to Appeals.  |
| The case remains unagreed | The issue is partially allowed or there is an increase in the tax liability | A new 30-day letter and corrected report should be issued to the taxpayer and included in the case file.<br>The taxpayer will be required to submit another protest.<br>If the taxpayer submits a new protest, the examiner will close the case to Appeals;<br>otherwise: <ul style="list-style-type: none"> <li>• For deficiency cases, close the case to Technical Services for issuance of a notice of deficiency.</li> <li>• For claim cases, close the case to Technical Services for issuance of a notice of claim disallowance.</li> <li>• For no change with adjustment cases, see IRM 4.10.8.2.3 (2)c.</li> </ul> |
| The case remains unagreed | There is no change to the report  | The examiner will not issue a new 30-day letter.<br>The results of the review of the new issue must be shared with the taxpayer/representative.  |

|  |  |  |
|--|--|--|
|  |  | The taxpayer will not be required to submit another protest.<br>The examiner will close the case to Appeals. |
|--|--|--|

**4.10.8.12.11****No Response to 30-Day Letter**

- (1) Cases must be closed from the group within 20 days after the expiration of the time (including extensions) allowed to file a protest.
- (2) For deficiency cases, the examiner must close the case to Technical Services for issuance of a notice of deficiency when no response is received to the 30-day letter.
- (3) If the taxpayer fails to reply to a 30-day letter advising of a proposed overassessment (adjustments that decrease the tax liability exceed the adjustments increasing the tax liability), the case will be closed out of the group to CCP for assessment of the overassessment.
- (4) If the taxpayer fails to respond to a 30-day letter advising them of a claim disallowance, a statutory notice of claim disallowance will be issued by Technical Services. If there is no change to the tax liability (neither a deficiency or overassessment), or the claim is disallowed in part with a resulting overassessment, close the case and check the "Statutory Notice of Claim Disallowance – Letters 905 and 906" box under the "Forward to Technical Services" section on Form 3198.
- (5) For restricted interest cases, if the taxpayer fails to reply to the 30-day letter within the time allowed, the tax liability will be adjusted as proposed in the examination report.

**4.10.8.12.12****Time Reporting for 30-Day Letters for Revenue Agents**

- (1) Time spent by examiners to prepare the unagreed report and accompanying explanatory lead sheets or standard explanations is charged to the case under Direct Examination Time (DET).
- (2) Time spent by examiners on 30-day letter activities (including protest reviews, and follow-up letter) will be reported using non-examination Activity Code 646. Preparation of the report (including explanatory lead sheets or standard explanations) is not reported under Activity Code 646.