



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS
DIRECTOR, ADVISORY AND INSOLVENCY

FROM: Scott D. Reisher /s/ **Scott D. Reisher**
Director, Collection Policy

SUBJECT: Interim Guidance for Ex Parte Communications with Appeals

This memorandum provides interim guidance concerning ex parte communications with Appeals related to Trust Fund Recovery Penalty (TFRP) protest cases, Offer in Compromise (OIC) rejections, Collection Due Process (CDP), Equivalent Hearing (EH), and Collection Appeal Program (CAP), and non-TFRP penalty abatement appeal requests. Please ensure that this information is distributed to all affected employees within your organization. This guidance is effective immediately.

To implement the ex parte communications provision of the Internal Revenue Service Restructuring and Reform Act of 1998 requiring the Commissioner to ensure an independent Appeals function within the Internal Revenue Service, communications between Appeals employees and other Internal Revenue Service employees have been generally prohibited to avoid the appearance of compromising the independence of Appeals officers and other Appeals employees. An "ex parte communication" is a 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. Revenue Procedure 2012-18, Ex Parte Communications between Appeals and other Internal Revenue Service Employees, applies to communications that take place after May 15, 2012, and clarifies the rules about ex parte communications.

The attachments provide guidance for TFRP, OIC, EH, CAP, CDP and non-TFRP penalty cases.

If you have any questions, please contact me or a member of your staff may contact Program Analysts Jeanne Dunford (TFRP), Thomas Moore (OIC), Anastasia Agne (CDP/EH/CAP) or Sandra O'Shea (non-TFRP penalty). Territory personnel should direct any questions, through their management staff, to the appropriate Area contact.

Attachments (8)
cc www.irs.gov

Attachment 1 -TFRP Protest Cases

Form 4183 Documentation

Revenue officers must ensure the Form 4183 narrative and Integrated Collection System (ICS) history entry made **at the time** of the Form 4183 submission to the group manager for approval provides sufficient detail to support a TFRP assertion recommendation. Due to ex parte communication restrictions on supplemental documentation to support TFRP assertions *after* receipt of a taxpayer protest, group managers must ensure the TFRP assertion is fully supported and documented **prior** to approving the assertion on the Automated Trust Fund Recovery Program (ATFR) and documenting concurrence in ICS. The TFRP case file must contain the necessary core documentation items, or the reason for their absence must be documented in ICS.

Receipt and Review of Taxpayer TFRP Protests

The revenue officer will review the taxpayer protest to determine if the taxpayer has raised new information. New information is information that was not previously discussed with or raised by the taxpayer, or not previously investigated and documented by the revenue officer.

Example

A revenue officer conducts a Form 4180 interview with a taxpayer who states he did not sign checks for the business. Subsequent to the Form 4180 interview, the revenue officer documents a review of a sampling of checks and determines that the individual did sign checks for the quarters of the proposed TFRP. The taxpayer submits a protest stating that he did not sign checks for the business. This is not new information.

Example

A taxpayer submits a protest stating that he was not willful because the business did not have funds to pay the taxes. The revenue officer had previously documented that the taxpayer allowed payments to other creditors in preference to the taxes. This is not new information.

Example

A taxpayer submits a protest that states he was out of the country for a sustained period during the liability periods, and had not previously shared this information with the revenue officer. This is new information that may require additional investigation by the revenue officer.

Protest Does Not Include New Information

If the taxpayer protest **does not** identify new information requiring additional investigation by the revenue officer, the revenue officer will:

- Document receipt of the protest in the ICS case history with a statement that the taxpayer protest was received on (date), did not contain new information

and the case is being forwarded to the group manager for review prior to transmission to Advisory.

- Submit the TFRP case file for managerial review.
- The manager must ensure that no prohibited ex parte communications are included in the TFRP case file or the case history before approving the transmittal of the case to Advisory.

The revenue officer should not make any commentary in the ICS or ATFR histories regarding the merits of the protest and should not prepare any memorandum discussing the issues or the basis for the original assertion recommendation.

Protest Includes New Information

If the taxpayer protest includes new information requiring additional investigation by the revenue officer, the revenue officer will:

- Document receipt of the taxpayer protest in the ICS history and **only** the facts concerning the new information requiring additional investigation.
- Conduct additional investigation of the new information as appropriate, and document the ICS history with the investigation actions and results of the investigation.

If the additional investigation results in a decision by the revenue officer to concede all or a portion of the assertion, follow the procedures in IRM 5.7.6.1.7, *Revenue Officer Agrees With Protest*.

If the additional investigation does not result in a decision by the revenue officer to concede, the revenue officer will take the following actions:

- Secure managerial concurrence of decision.
- Attempt to make telephone contact with the taxpayer to explain the results of the additional investigation.
- Document the ICS history, noting if contact was made with the taxpayer and the details of the discussion.
- If the revenue officer is unable to make contact with the taxpayer within a reasonable time period, the revenue officer will forward the TFRP case file to the group manager.

The group manager will take the following actions:

- Review the TFRP case file and ICS history to determine if the new information has been sufficiently addressed and documented.
- If the new information requires additional investigation, the group manager will return the TFRP file to the revenue officer.
- If the new information has been sufficiently addressed and documented, the group manager will prepare a letter to the taxpayer that identifies the new

- information and a brief summary of the results of the additional investigation. (A suggested letter template is attached to this memorandum)
- Document issuance of the letter to the taxpayer in the ICS history, and place a copy of the letter in the TFRP case file.

The group manager must ensure that no prohibited ex parte communications are included in the TFRP case file or the case history before approving the transmittal of the case to Advisory. If the case history contains commentary that is determined to violate the ex parte communication rules, the manager will take appropriate action, which could include sharing the information with the taxpayer, or following ICS history removal procedures detailed in IRM 5.1.10.7, *Case Histories*.

After group manager approval, the revenue officer will follow existing procedures in IRM 5.7.6.1.8, *Revenue Officer Disagrees With Protest*, to enter dates in ATFR, issue Letter 1154(DO), and transmit the case file to Advisory.

The administrative TFRP case file transmitted to Appeals is not an ex parte communication since it sets forth the boundaries of the dispute between the taxpayer and the Internal Revenue Service and forms the basis for Appeals to assume jurisdiction. The TFRP case file should include all information that supports the original recommendation, as well as any work papers reflecting the manner in which payments have been applied, specifically any payments directed by the taxpayer, court order, etc.

Example

A revenue officer received a protest from a taxpayer protesting a proposed TFRP. The revenue officer determined the protest did not contain any new information, and documented receipt of the protest in the ICS case history with a statement that the case would be forwarded for managerial review prior to submission to Control Point Monitoring. The revenue officer did not violate the ex parte communication rules in transmitting the administrative file to Appeals as no history discussing the merits of the issues raised in the taxpayer's protest were documented in the ICS case history.

Example

A revenue officer received a protest from a taxpayer protesting a proposed TFRP. The revenue officer documented the ICS case history that the protest contained new information. The revenue officer conducted additional investigation of the new information and determined that the recommendation to assert the TFRP remained appropriate for three of the four quarters originally recommended for assertion. The revenue officer amended the Form 4183 on ATFR to remove the quarter no longer recommended for assertion. The revenue officer contacted the taxpayer by telephone to advise the taxpayer of the results of the investigation and documented the ICS history of the contact. The revenue officer did not violate the ex parte communication rules in transmitting the administrative file to Appeals because the additional investigation results were shared with the taxpayer, which

was documented in the ICS case history. The revenue officer forwarded the TFRP case file to the group manager, who reviewed it to determine if the new information had been sufficiently addressed and documented and that no prohibited ex parte communications were included in the TFRP case file or the case history before approving the transmittal of the case to Advisory.

Example

A revenue officer received a protest from a taxpayer protesting a proposed TFRP. The revenue officer documented the ICS case history that the protest contained new information. The revenue officer conducted additional investigation of the new information and determined that the recommendation to assert the TFRP remained appropriate. The revenue officer attempted to contact the taxpayer by telephone to advise the taxpayer of the results of the investigation, but was unable to reach the taxpayer and documented ICS. The revenue officer submitted the TFRP case file to the group manager, who after reviewing the case file to determine if the new information had been sufficiently addressed and documented, issued the taxpayer a letter advising of the final determination, documented ICS, and placed a copy of the letter in the TFRP case file. No ex parte communication rules were violated by transmitting the administrative file to Appeals because the additional investigation results that were documented in the ICS history were shared with the taxpayer in the letter from the group manager.

Example

A revenue officer received a protest from a taxpayer protesting a proposed TFRP. The revenue officer documented the ICS case history that the protest contained new information. The revenue officer conducted additional investigation of the new information and determined that the recommendation to assert the TFRP remained appropriate. The revenue officer documented the results of the additional investigation, but did not contact the taxpayer by telephone to advise the taxpayer of the results of the investigation and the manager did not send a letter to the taxpayer containing the results of the additional investigation. The revenue officer forwarded the TFRP case file to Advisory for transmission to Appeals. The revenue officer violated the ex parte communication rules because the written communication in the ICS history addressing the new information raised in the taxpayer's protest was not shared with the taxpayer.

Control Point Monitoring (CPM) TFRP Case Review

CPM is no longer required to review a TFRP protest case to determine if the revenue officer has included a rebuttal memo in the case file. CPM should not return cases to the originator for missing rebuttal memos. Refer to the attached revised TFRP Case File Checksheet.

Form 843, Claim for Refund and Request for Abatement related to TFRP

If the revenue officer receives a Form 843, Claim for Refund and Request for Abatement, the revenue officer will:

- Document receipt of the Form 843 in the ICS history.

- Date stamp Form 843 and attach the envelope if received via mail
- Forward Form 843 to Advisory on Form 3210, Document Transmittal.

As part of Collection's ordinary consideration of a case, the revenue officer may make history entries in ICS or ATFR regarding the original basis for TFRP assessment as the Form 843 has not been denied and no appeal has been filed.

Form 843 Claim Denied - Appeal Requested related to TFRP

Advisory will take the actions below if the claim is denied and the taxpayer submits a timely request for appeal:

- Document receipt of the appeal request in the ICS history with a statement that the taxpayer appeal was received on (date), and the case is being forwarded for managerial review prior to transmission to Appeals.
- Issue a letter advising the taxpayer that the case is being forwarded to Appeals.
- Forward the TFRP case file and Form 843 to Appeals on Form 3210, Document Transmittal
- Maintain the NF OI to monitor for the final Appeals decision.

Advisory should not make any additional commentary in the ICS history regarding the merits of the appeal and should not prepare any memorandum discussing the issues raised in the appeal.

Fast Track Mediation

TFRP protest and Form 843 cases are also eligible for Fast Track Mediation (FTM). This program is designed to expedite case resolution since the entire process normally takes 30-40 days to complete. Fast Track Mediation involves Appeals employees serving as mediators and facilitating settlement discussions while jurisdiction of the case is still with Collection. The prohibition against ex parte communications between Appeals employees and originating function employees **does not** apply to FTM because the Appeals employees are not acting in their traditional Appeals settlement role. Ex parte communications, such as a private caucus between the Appeals mediator and Collection employees during the course of the mediation session, is permissible under the ex parte communication rules. Part of the role of the mediator is to meet separately with each side in order to bring about a resolution.

This guidance will be incorporated into IRM 5.7.4, 5.7.6, 5.7.7 and 5.7.10 not more than one year from the date of this memorandum.

TFRP CASE FILE CHECKSHEET for review of TFRP case files

Responsible Person: _____ **SSN:** _____

Employer: _____ **EIN:** _____

Earliest ASED Date: _____

RO Name and Assignment Number: _____

Is Form 3210 included?

Is Form 2749 included?

Is Form 4183 with Page 4 included?

Are any barred statutes addressed?

Is Form 2750 included?

If yes, is 2750 signed and dated by TP and IRS?

Is Letter 1153(DO) included? If yes:

- Enter Date of Letter 1153: _____ Method of Delivery: _____
- If mailed – Is Certified information or Proof of mailing included?

If no, is reason documented in ICS history?

Is Form 2751 included?

If yes, is Form 2751 signed and dated?

Is Letter 1155 included?

Is Form 9327 included?

Is Form 2859 included?

If yes, is Form 3210 with DLN and 23C date included?

Is Form 3552 included?

If yes, is mailing documented in ICS history?

Is CPM History input?

Was Form 5942 / E-MAIL issued?

Are ICS /ATFR History included?

If no, print and include in case file

Core Documentation Items

Per 5.7.4 and 5.7.10. **Note:** If the following documents are not secured, the ICS history must be documented with the reasons they were not secured and why they are not necessary to support the recommendation. Prepare Form 5942 and return to originator if not included or documented.

Is Form 4180 included?

If no, is reason documented in ICS history?

Are Bank Signature Cards **or** PIN assignment included?

If no for both, is reason documented in the ICS history?

Are Checks **or** Bank Statements included?

If no for both, is reason documented in the ICS history?

Are Corporate Resolutions included?

If no, is reason documented in the ICS history?

=====

APPEALS FILE

Is Letter 1154 included?

Is Written Protest included?

If no, return to RO

Is Appeal Timely?

- If yes **or** no, Appeals Request Received by: _____
- If Hand Delivery or Fax – Is ICS documented?
- If Mail – Is postmarked envelope included?

CPM REVIEWED DATE _____

Attachment 3 - Offer in Compromise Rejection Appeals

AOIC/ICS Documentation

Offer Examiners/Offer Specialists (OE/OS) must document the Automated Offer in Compromise (AOIC)/ICS history in accordance with IRM 5.8.7.7.3, *Closing an Offer as a Rejection*, with sufficient information to support the rejection recommendation.

Receipt and Review of Taxpayer Appeals of OIC Rejections

Upon receipt of the taxpayer's appeal, the OE/OS will review the information provided to determine if any new information is identified or additional documentation has been submitted. If after review, the OE/OS determines rejection of the offer is still appropriate, additional discussion with the taxpayer may be necessary. Refer to the specific section of this memorandum outlined below detailing the required actions based on whether any new information or documentation not previously considered is provided by the taxpayer. New information is information that was not previously discussed with or raised by the taxpayer, or not previously investigated and documented by the OE/OS.

Example

A taxpayer's appeal states that their actual housing expense, which is higher than the local standard, should be allowed. The OE/OS had previously documented the basis for not allowing the actual expense and determined the local standard was appropriate for the taxpayer. This is not new information.

Example

A taxpayer submits an appeal that includes additional documentation of the taxpayer's current income. Since this documentation was not previously considered, this is new information that requires additional investigation or consideration by the OE/OS.

Appeal Does Not Include New Information

If the taxpayer appeal **does not** include new information requiring additional investigation or consideration by the OE/OS, the OE/OS will:

- Document receipt of the appeal in the AOIC remarks or ICS case history with a statement that the taxpayer appeal was received on (date), did not contain new information and the case is being forwarded to the group manager for review prior to transmission to Appeals.
- Submit the OIC case file for managerial review. The manager must ensure that no prohibited ex parte communications are included in the offer case file or the case history before approving the transmittal of the case to Appeals.

The OE/OS should not make any commentary in the AOIC remarks or ICS histories regarding the merits of the appeal and should not prepare any memorandum discussing the issues or the basis for the original determination.

Appeal Includes New Information

If the taxpayer appeal includes new information requiring additional investigation by the OE/OS, the OE/OS will:

- Document receipt of the appeal in the AOIC remarks or ICS case history. Annotate history with a statement that the taxpayer's appeal was received on (date), and include **only** the facts concerning the new information requiring additional investigation.
- Conduct additional investigation of the new information as appropriate, and document the AOIC remarks or ICS history with the investigation actions and results of the investigation.

If the additional investigation results in a decision to change the recommendation to an acceptance, follow the procedures in IRM 5.8.8.3, *Closing a Case as an Acceptance*.

If the additional investigation does not result in a decision to change the recommendation to an acceptance, the OE/OS will take the following actions:

- Attempt to make telephone contact with the taxpayer to explain the results of the additional investigation.
- Document the AOIC remarks or ICS history, noting if contact was made with the taxpayer and the details of the discussion.
- If the OE/OS is unable to make contact with the taxpayer within a reasonable time period, forward the offer case file to the group manager.

The group manager will take the following actions:

- Review the OIC case file, AOIC remarks or ICS history to determine if the new information has been sufficiently addressed and documented.
- If the new information requires additional investigation, the group manager will return the offer file to the OE/OS.
- If the new information has been sufficiently addressed and documented, the group manager will issue the AOIC transfer letter to the taxpayer. The manager will use the "open" paragraph to provide the taxpayer with a brief summary of the results of the additional investigation. Suggested language is included at the end of this attachment.
- Document issuance of the letter to the taxpayer in the ICS history, and place a copy of the letter in the offer case file.

The manager must ensure that no prohibited ex parte communications are included in the offer case file or the case history before approving the

transmittal of the case to Appeals. If the case history contains commentary that is determined to violate the ex parte communication rules, the manager will take appropriate action, which could include sharing the information with the taxpayer, or following ICS history removal procedures detailed in IRM 5.1.10.7, *Case Histories*.

The administrative OIC case file transmitted to Appeals is not an ex parte communication since it sets forth the boundaries of the dispute between the taxpayer and the Internal Revenue Service and forms the basis for Appeals to assume jurisdiction. The OIC case file should include all information that supports the original determination.

Example

An OE/OS received an appeal from a taxpayer appealing the offer rejection and documents AOIC remarks or ICS history as appropriate. The OE/OS determined the appeal contains new information. The OE/OS reviews the new information provided, contacts the taxpayer by telephone to discuss their investigation of the new information, and advises the taxpayer the determination to reject the OIC will not change. The discussion with the taxpayer is documented in the AOIC remarks or ICS history. Since the additional investigation was discussed with the taxpayer, there is no prohibited ex parte communication. The OE/OS forwarded the offer case file to the group manager, who reviewed it to determine if the new information had been sufficiently addressed and documented that no prohibited ex parte communications were included in the offer case file or the case history before approving the transmittal of the case to Appeals.

Example

An OE/OS received an appeal from a taxpayer appealing the rejection of their OIC. The OE/OS documented the ICS case history that the appeal contained new information. The OE/OS conducted additional investigation of the new information and concluded that the determination to reject the OIC remained appropriate. The OE/OS attempted to contact the taxpayer by telephone to advise the taxpayer of the results of the investigation, but was unable to reach the taxpayer and documented the AOIC remarks or ICS history. The OE/OS submitted the offer case file to the group manager, who after reviewing the case file to determine if the new information issue had been sufficiently addressed and documented, issued the taxpayer an AOIC transfer letter advising of the transfer of the offer to Appeals and discussing the new information in the “open” paragraph. The final determination was documented in AOIC remarks or ICS history, and a copy of the letter was included in the offer case file. No ex parte communication rules were violated in transmitting the administrative file to Appeals because the additional investigation results were shared with the taxpayer in the AOIC transfer letter.

Example

An OE/OS received an appeal of the offer rejection from a taxpayer. The OE/OS documented the AOIC remarks or ICS case history that the appeal contained new information. The OE/OS conducted additional investigation of the new information and concluded that the determination to reject the OIC remained appropriate. The OE/OS documented the results of the additional investigation, but did not contact the taxpayer by telephone to advise the taxpayer of the results of the investigation, and his or her manager did not send a letter to the taxpayer containing the results of the additional investigation. The OE/OS violated the ex parte communication rules because he communicated with Appeals through the AOIC remarks or ICS case history, which contained documentation regarding the results of the additional investigation of the new information that was not shared with the taxpayer.

Premature Referrals

If an offer previously forwarded to Appeals is returned as a premature referral, the originating function may not communicate ex parte with Appeals while reconsidering the case, other than with respect to ministerial, administrative, or procedural matters, without offering the taxpayer or representative an opportunity to participate in the discussion because Appeals may ultimately review the case. If necessary, the taxpayer should be contacted to discuss the results of any additional investigation or be provided with information by the group manager relative to the results of any additional investigation that was not discussed with the taxpayer via correspondence, prior to the offer being returned to Appeals.

Fast Track Mediation

Fast Track Mediation (FTM) in accordance with IRM 5.8.7.6, *Fast Track Mediation for Offers in Compromise*, may be utilized prior to the issuance of the rejection letter. This program is designed to expedite case resolution since the entire process normally takes 30-40 days to complete. Fast Track Mediation involves Appeals employees serving as mediators and facilitating settlement discussions while jurisdiction of the case is still with Collection. The prohibition against ex parte communications between Appeals employees and originating function employees **does not** apply to FTM because the Appeals employees are not acting in their traditional Appeals settlement role. Ex parte communications, such as a private caucus between the Appeals mediator and Collection employees during the course of the mediation session, is permissible under the ex parte communication rules.

This guidance will be incorporated into IRM 5.8.7 not more than one year from the date of this memorandum.

SUGGESTED LANGUAGE FOR "OPEN" PARAGRAPH

"... After review of the expense documentation provided, a determination was made that the rejection of your offer is still appropriate because (insert explanation). Your offer will be forwarded to the Appeals Division per your request."

"... After review of the additional information provided relative to the value of your real property, a determination was made that the rejection of your offer is still appropriate because (insert explanation). Your offer will be forwarded to the Appeals Division per your request."

NOTE: The communication to the taxpayer should include a brief summary of the additional investigation and must be at least as detailed about the reason for the rejection as the communication to Appeals. Appeals may not receive details about the basis for the determination that are not provided to the taxpayer.

Attachment 4 – Collection Due Process (CDP), Equivalent Hearing (EH) and Collection Appeals Program (CAP)

Receipt of a CDP, EH or CAP Appeal

When a taxpayer submits a request for a CDP, EH or CAP appeal, the request for Appeals' consideration does not mean collection actions need to stop with respect to the tax periods in Appeals, other tax periods not in Appeals, or both. When warranted, Collection can continue to work with the taxpayer to address collection alternatives and investigate collection potential on CDP periods as provided for in IRM 5.1.9.3.3, *Processing CDP and EH Requests*. Collection may continue work with the taxpayer to resolve non CDP periods as provided for in IRM 5.1.9.3.4, *Controlling and Monitoring Cases While in Appeals*. As such, statements or documents contemporaneously added to the administrative file by Collection after the taxpayer requests Appeals' review do not violate the ex parte communication rules if they are made to resolve the tax debt(s) or further evaluate the taxpayer's financial condition and are in accordance with established procedures. It is permissible to contemporaneously include statements or documents that are pertinent to Collection's consideration of the case in the administrative file even if the substance of those comments, statements, or documents would be prohibited if they were communicated to Appeals separate and apart from the administrative file.

If a CDP or EH hearing is requested, continue to follow the procedures in IRM 5.1.9.3.3, *Processing CDP and EH Requests*. If a CAP is received, follow the procedures in IRM 5.1.9.4.2, *Request for a CAP Appeal*.

Example: A revenue officer received a Form 12153 requesting a CDP hearing under IRC § 6330. The taxpayer attached a letter requesting an installment payment agreement for \$101/month. The revenue officer continued to work with the taxpayer by securing and evaluating financial information and contemporaneously documenting his case history. The revenue officer and the taxpayer were not able to agree on a monthly payment amount, so the CDP hearing request was sent to Appeals. There were no ex parte communication violations in this example because the revenue officer's case history entries, even the entries made after receipt of the Form 12153 regarding his evaluation of the taxpayer's financial information and installment payment agreement proposal, were made contemporaneously and were pertinent to Collection's consideration of the case, so they were properly included as part of the administrative file.

Transmitting a Case to Appeals

A narrative statement detailing the issues of the hearing request or CAP appeal is not required when transmitting the request to Appeals. The case actions documented in the history should be sufficient for Appeals to review the issue.

However, the transmittal to Appeals may include a neutral list of items being transmitted and neutral statements of key issues raised and actions taken without any discussion of the strengths and weaknesses of the taxpayer's appeal. Neutral items may include but are not limited to Form 433B, *Collection Information Statement for Businesses*, Form 433A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*, copies of tax returns, etc. The transmittal should not include any statements or information that is intended to advocate for a particular position or otherwise influence Appeals.

The manager must ensure that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. Refer to Prohibited Ex Parte Communication below.

Example: The RO notes on the Form 12153-A, Referral Request for CDP Hearing and Request for CDPTS, "Do not give the taxpayer an installment agreement. The request is solely to delay collection." This statement is directed to Appeals and is intended to advocate for a particular outcome. As such, it is a prohibited ex parte communication. The group manager returns the file and instructs the RO to prepare a revised Form 12153-A.

Fast Track Mediation

Fast Track Mediation (FTM) can be used for CDP and EH (refer to IRM 5.1.9.3.8, *CDP and Equivalent Hearing Fast Track Mediation (FTM)*). The prohibition against ex parte communications between Appeals employees and originating function employees does not apply to FTM because the Appeals employees are not acting in their traditional Appeals settlement role. Ex parte communications, such as a private caucus between the Appeals mediator and Collection employees during the course of the mediation session, is permissible under the ex parte communication rules.

Prohibited Ex Parte Communication

A general discussion of the strengths and weaknesses of issues and positions should not be held with Appeals.

- Do not discuss the strengths and weaknesses of issues or proposed collection alternatives.
- Do not discuss the accuracy of the facts presented by the taxpayer and the relative importance of the facts to the determination.
- Do not discuss the demeanor or credibility of the taxpayer or taxpayer's representative.
- Do not discuss the level of cooperation (or lack thereof) of the taxpayer/representative during the collection process.
- Do not contact Appeals to advocate for a particular result or to object to a potential resolution of the case or an issue in the case.

If discussions between Appeals and Collection are needed regarding the strengths and weaknesses of issues and positions, the taxpayer/representative

should be given an opportunity to participate in those discussions. Appeals will take the necessary actions to invite the taxpayer/representative to participate. Refer to Appeals procedures in IRM 8.1.10.4, *Opportunity to Participate*, for additional information.

Permitted Ex Parte Communication

Not all ex parte communications are prohibited. Appeals or the originating function may ask questions or provide information that involve ministerial, administrative, or procedural matters and do not address the substance of the issues. Refer to IRM 5.1.9.5, *Communication with Appeals*, and Revenue Procedure 2012-18, Section 2.03(2).

This guidance will be incorporated into IRM 5.1.9 not more than one year from the date of this memorandum.

Attachment 5 - Penalty Denial and Appeals

Receipt and Review of Taxpayer Penalty Abatement Requests

The revenue officer will inform the taxpayer of the determination to not abate a penalty for reasonable cause. The RO must provide written notification to the taxpayer of the denial and of the taxpayer's appeal rights, regardless of whether the request was received in person, over the phone, or in writing.

If the taxpayer disagrees with the determination and maintains that the penalty should be abated, provide written notification to the taxpayer using Pattern Letter 2413(P), available as an ICS template.

If the taxpayer submits a written appeal, the revenue officer that rejected the abatement request will review the appeal to determine if the taxpayer has raised new information. **New information is information that was not previously discussed with or raised by the taxpayer, or not previously investigated and documented by the revenue officer.**

Appeal Includes New Information – Decision Changed

If the appeal contains new information that changes the abatement decision, the revenue officer will take the following actions:

- Document receipt of the appeal in the ICS case history, and include details of the new information and basis for penalty abatement.
- Secure managerial approval of the penalty appeal and follow abatement procedures.

Appeal Does Not Include New Information

If the appeal does not contain any new information, the revenue officer will take the following actions:

- Document receipt of the appeal in the ICS case history with the statement that the taxpayer appeal was received on (date), did not contain new information and the case is being forwarded to the group manager for review prior to transmission to Appeals
- Prepare the appeal for transmittal to Appeals and attach the following:
 - a) The taxpayer's written request for appeal and other pertinent documents
 - b) Copy of the ICS history
 - c) Penalty Appeals Checksheet
 - d) Copy of the disallowance letter, Letter 2413 (P)
 - e) Form 3210, Document Transmittal

Forward the appeal to the group manager for review and concurrence. **The group manager must ensure that the ICS history is attached to the appeal**

request and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. If the case history contains commentary that is determined to violate the ex parte communication rules, the manager will take appropriate action, which could include sharing the information with the taxpayer, or following ICS history removal procedures detailed in IRM 5.1.10.7, *Case Histories*.

The revenue officer may then forward the request to the appropriate Appeals office. Incomplete packages will be returned to the originating RO. Refer to the Appeals Case Routing Guide available on the Appeals intranet site. [Case Routing to Appeals from External Sources](#)

Appeal Includes New Information Requiring Consideration

If the appeal contains new information that requires additional investigation or ICS documentation, the revenue officer will take the following actions:

- Document the receipt of the appeal request in ICS with a statement that the appeal was received on (date) and **only** the facts concerning the new information requiring additional investigation or consideration
- Conduct any additional consideration or investigation of the new information as appropriate and document the results in the ICS history
- Secure managerial concurrence of decision to sustain penalty abatement denial
- Attempt to make telephone contact with the taxpayer to explain the results of the additional investigation. The revenue officer will document the ICS history, noting if contact was made with the taxpayer
- If the revenue officer is unable to make contact with the taxpayer within a reasonable time period, the revenue officer will forward the case file to the group manager.

The group manager will take the following actions:

- Prepare a letter to the taxpayer that identifies the new information and a brief summary of the results of the additional investigation.
- Document issuance of the letter to the taxpayer in the ICS history and attach a copy of the letter to the taxpayer appeal.
- **The manager must ensure that the ICS history is attached to the appeal request and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals.**

The revenue officer will then prepare the request for transmittal to Appeals and attach the following:

- a) The taxpayer's written request for appeal and other pertinent documents
- b) Copy of the ICS history

- c) Penalty Appeals Checklist
- d) Copy of the disallowance letter, Letter 2413 (P)
- e) Copy of letter issued by the group manager
- f) Form 3210, Document Transmittal

The revenue officer may then forward the request to the appropriate Appeals office. Incomplete packages will be returned to the originating RO. Refer to the Appeals Case Routing Guide available on the Appeals intranet site. [Case Routing to Appeals from External Sources](#)

NOTE: The ICS case history made at the time of the original penalty denial determination should have sufficient documentation regarding the determination to sustain the penalty. No separate memorandum should be prepared for Appeals discussing the basis for the original penalty abatement denial. The Form 3210 transmittal must be limited to a list of attached documents.

This guidance will be incorporated into IRM 5.1.15 not more than one year from the date of this memorandum.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

Date:

John Doe
1 Any Street
Anytown, ST 00000

Dear _____

We have reviewed your ___(INSERT DATE)_____ protest of our decision to assess a trust fund recovery penalty against you as a responsible person of ___(business name) __. In your protest you stated that _____. Our investigation of this issue determined that _____.

We are forwarding your protest to our Appeals office for its consideration. An Appeals officer will contact you to schedule a conference.

If you have any questions or need more information, please contact me at the address or the telephone number listed below:

Internal Revenue Service

Phone#:

Sincerely,

Group Manager
Employee ID#:



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

Date:

John Doe
1 Any Street
Anytown, ST 00000

Dear _____

We have reviewed your ___(INSERT DATE)_____ appeal of our decision to deny the requested penalty abatement. In your appeal, you stated that_____. Our investigation of this issue determined that _____.

We are forwarding your appeal request to our Appeals office for its consideration. An Appeals officer will contact you to schedule a conference.

If you have any questions or need more information, please contact me at the address or the telephone number listed below:

Internal Revenue Service

Phone#:

Sincerely,

Group Manager
Employee ID#: