



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

October 8, 2014

Control Number: SBSE-05-1014-0077

Expiration: October 8, 2015

Impacted: IRM 5.1.9, IRM 5.7.6,

IRM 5.8.7

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Rocco A. Steco */s/ Rocco A. Steco*
Acting Director, Collection Policy

SUBJECT: Interim Guidance for Communications with Appeals

This memorandum issues guidance on communications with Appeals until IRM 5.1.9, IRM 5.7.6, and IRM 5.8.7 are published. Please ensure that this information is distributed to all affected employees within your organization.

Purpose: This clarifies the procedures to follow when it is necessary to send supplemental information to Appeals.

Background: While the administrative appeals file transmitted to Appeals should be complete and sufficient for Appeals to consider the issue, there may be rare instances where Collection later secures significant new information that needs to be provided to Appeals to allow Appeals to fully evaluate an issue. In these rare instances, supplemental information can be provided to Appeals as long as the taxpayer/representative is furnished a copy of the written communication at the same time. Appeals will give the taxpayer a chance to respond to the supplemental information.

This communication is permissible under the ex parte communication rules since the taxpayer/representative is given an opportunity to participate. Refer to [Revenue Procedure 2012-18](#), Section 2.01(1), *Ex Parte Communication*, and Section 2.01(3), *Opportunity to Participate*.

Procedural Change: See attached changes to IRM 5.1.9.5.2, *Prohibited Communications*, new IRM 5.1.9.5.2.2, *Opportunity to Participate*, changes to IRM 5.7.6.1.8, *Revenue Officer Disagrees with Protest*, and changes to IRM 5.8.7.7.6, *Ex Parte Issues when Rejected Offer Appealed*.

Effect on Other Documents: This guidance will be incorporated into IRM 5.1.9, IRM 5.7.6, and IRM 5.8.7 not more than one year from the date of this memorandum.

Contact: If you have any questions, please feel free to contact me, or a member of your staff may contact Senior Program Analyst Anastasia Agne regarding IRM 5.1.9, Senior Program Analyst Jeanne Dunford regarding IRM 5.7.6, and Senior Program Analyst Thomas B. Moore regarding IRM 5.8.7. Field personnel should direct any questions, through their management staff, to the appropriate Area contact.

Attachment

cc: Director, Enterprise Collection Strategy
Director, Field Collection
Chief, Appeals
www.irs.gov

Attachment to Interim Guidance Memorandum
SBSE-05-1014-0077

5.1.9.5.2 Prohibited Communications – Revised to move the information in former (3) to new IRM 5.1.9.5.2.1. Former (4) is now (3).

(1) A general discussion of the strengths and weaknesses of issues and positions should not be held, unless the taxpayer/representative is provided with an opportunity to participate in the discussion.

(2) Prohibited ex parte communications include:

- Discussions about the accuracy of the facts presented by the taxpayer/representative and the relative importance of the facts to the determination.
- Discussions of the originating function's perception of the demeanor or credibility of the taxpayer/representative.
- Discussions of the originating function's views concerning the level of cooperation (or lack thereof) of the taxpayer/representative during the originating function's consideration of the case.
- Discussions regarding the originating function's views concerning the strengths and weaknesses of the case or the parties' positions in the case.
- Communications from the originating function to advocate for a particular result or to object to a potential resolution of the case or an issue in the case.

(3) If a questionable communication is encountered, notify your immediate manager. The manager will review the issue. If appropriate, the manager will contact the Appeals manager regarding the potential ex parte violation. When contacting the Appeals manager, only the specific details of the questionable communication will be addressed. Both Appeals and Collection are responsible to ensure they do not initiate a prohibited ex parte communication. Appeals is responsible for taking the necessary steps to cure a prohibited ex parte communication. Refer to [Revenue Procedure 2012-18](#), Section 2.10, *Remedies Available to Taxpayers*, and [IRM 8.1.10.5, Curing Ex Parte Communication Breaches](#).

5.1.9.5.2.1 Opportunity to Participate – New section to be added to IRM 5.1.9 to provide the following procedures for sending supplemental information to Appeals.

(1) Communications between Collection and Appeals involving a discussion of substantive issues are not considered ex parte communications IF the taxpayer/representative is given an opportunity to participate in the communications.

- a. Oral Communication – The phrase “opportunity to participate” means that the taxpayer/representative will be given a reasonable opportunity to attend a meeting or be a participant in a conference call between Appeals and the originating function when the strengths and weaknesses of the facts, issues, or positions in the taxpayer’s case are discussed. If Appeals needs or agrees to an oral conference with the originating function, Appeals will invite the taxpayer/representative to participate. If the taxpayer/representative is not able to participate at the scheduled time, reasonable accommodations will be made to reschedule the discussion. This does not mean that Appeals will delay scheduling a meeting for a protracted period of time to accommodate the taxpayer/representative. Facts and circumstances will govern what constitutes a reasonable delay. If the taxpayer/representative declines to participate or seeks to delay the meeting/conference call beyond a reasonable time, Appeals can proceed with the meeting or discussion. Refer to [Revenue Procedure 2012-18](#), Section 2.01(3), *Opportunity to Participate* and [IRM 8.1.10.4, Opportunity to Participate](#).
- b. Written communications – A taxpayer/representative is considered to have been given an “opportunity to participate” with respect to a written communication that is received by Appeals if the taxpayer/representative is furnished a copy of the written communication and given a chance to respond to it either orally or in writing. Refer to [Revenue Procedure 2012-18](#), Section 2.01(3)(b), *Written communications*. If Collection submits a written communication addressing substantive issues to Appeals, Collection must concurrently provide the same to the taxpayer/representative. See below for further discussion and examples.

(2) The administrative appeals file transmitted to Appeals should be complete and sufficient for Appeals to consider the issue. However, after a case has been sent to Appeals, there may be rare instances where Collection will secure significant new information that needs to be provided to Appeals to allow Appeals to fully evaluate an issue. In these rare instances, supplemental information can be provided to Appeals in writing as long as Collection concurrently provides the same information to the taxpayer/representative. Appeals will give the taxpayer/representative the chance to respond to the supplemental information.

When supplemental information is provided to Appeals, the group manager will prepare a letter to the taxpayer/representative that identifies the new information and explains that the information is being provided to Appeals. Include a copy of the written communication to Appeals and any documents being sent to Appeals. Document issuance of the letter in the ICS history (AOIC remarks if additional information is being transmitted by a Centralized Offer in Compromise (COIC) offer examiner) and include a copy of the letter with the supplemental information and any documentation sent to Appeals.

Example: After transmitting a CDP to Appeals, the revenue officer obtains approval and files a special condition Notice of Federal Tax Lien (NFTL). The revenue officer seeks

group manager concurrence that this is significant new information needed by Appeals. The group manager concurs. The manager issues a letter to the taxpayer/representative explaining what information will be shared with Appeals regarding the special condition. This letter is sent along with the taxpayer's Letter 3886, "Notice to Taxpayer of [special condition] Federal Tax Lien Filing," a copy of the special condition NFTL and a copy of the transmittal memo to Appeals. The manager includes a copy of the letter sent to the taxpayer/representative with the supplemental information sent to Appeals.

IRM 5.7.6.1.8, Revenue Officer Disagrees With Protest – Is revised to add new (7) which provides procedures for sending supplemental information to Appeals.

(7) There may be rare instances, after a protest has been sent to Appeals, that Collection will secure significant new information that needs to be provided to Appeals to allow Appeals to fully evaluate the protest. In these rare instances, supplemental information can be provided to Appeals as long as Collection concurrently provides the same information (copy of the written communication sent to Appeals) to the taxpayer/representative. Appeals will give the taxpayer/representative the chance to respond to the supplemental information.

When supplemental information is provided to Appeals, the group manager will prepare a letter to the taxpayer/representative that identifies the new information and explains that the information is being provided to Appeals. Include a copy of the written communication to Appeals and any other documents being sent to Appeals. Document issuance of the letter in the ICS history and include a copy of the letter with the supplemental information sent to Appeals.

Example: After submitting a TFRP protest to CPM for transmittal to Appeals, the revenue officer attends a bankruptcy hearing for the business and discovers additional information to further support the TFRP recommendation. The revenue officer seeks group manager concurrence that this is significant new information that needs to be shared with Appeals. The group manager concurs and issues a letter to the taxpayer/representative with the information to be shared with Appeals (including copies of any documents/memos/letters being sent to Appeals) and sends the supplemental information to the Appeals Team Manager along with a copy of the letter sent to the taxpayer/representative.

Reminder: The ability to provide significant new information after a protest has been sent to Appeals does not relieve the revenue officer of his/her duty to ensure that TFRP recommendations are fully supported per IRM 5.7.4.2.4, *Evidence That May Support Recommendations*, at the time of Form 4183 submission to the group manager for approval.

IRM 5.8.7.7.6 - Ex Parte Issues when Rejected OfferAppealed – Is revised to add a new (7) which provides procedures for sending supplemental information to Appeals. Current (7) is renumbered to (8).

(7) There may be rare instances, after the taxpayer's request for Appeals consideration of a rejected offer in compromise has been forwarded to the Office of Appeals, that Collection will secure significant new information that needs to be provided to Appeals to allow Appeals to fully evaluate the offer in compromise. In these rare instances, supplemental information can be provided to Appeals as long as Collection concurrently provides the same information to the taxpayer/representative. Appeals will give the taxpayer/representative the chance to respond to the supplemental information.

When supplemental information is provided to Appeals, the group manager will prepare a letter to the taxpayer/representative that identifies the new information and explains that the information is being provided to Appeals. Include a copy of the written communication to Appeals and any documents being sent to Appeals. Document issuance of the letter in the AOIC remarks or ICS history and include a copy of the letter with the supplemental information sent to Appeals.

Example: After forwarding the taxpayer's request for Appeals consideration, the OE/OS is provided information from a revenue officer indicating that the taxpayer failed to disclose a significant asset on his/her financial statement and research conducted by the OE/OS did not reveal the existence of the asset. The OE/OS seeks group manager concurrence that this is significant new information that needs to be shared with Appeals. The group manager concurs and issues a letter to the taxpayer/representative with the information to be shared with Appeals (including copies of any documents/memos/letters being sent to Appeals) and sends the supplemental information to the Appeals team manager along with a copy of the letter sent to the taxpayer/representative.

Reminder: The ability to provide significant new information after the case file is forwarded to Appeals does not relieve the OE/OS of completing a thorough evaluation of the taxpayer's offer and ensuring a complete rebuttal is prepared prior to sending the case file to Appeals.

Note: This procedure should only be followed when assets are discovered by the OE/OS which were **not** disclosed by the taxpayer during the OIC or the information which would impact the offer determination was concealed by the taxpayer during the offer investigation. This procedure should **not** be used to provide to Appeals information from the further development of assets that **were** disclosed by the taxpayer during the OIC consideration unless the additional information was concealed by the taxpayer during the offer investigation.