



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FSLG IGM #52

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MEMORANDUM FOR ALL FEDERAL, STATE, AND LOCAL GOVERNMENTS (FSLG)
MANAGERS AND EMPLOYEES

FROM: Paul A. Marmolejo /s/ *Paul A. Marmolejo*
Director, Federal State & Local Governments

SUBJECT: Ad Hoc Closing Agreement (AHCA) Procedures

The purpose of this memorandum is to reissue and extend the guidance provided in FSLG Interim Memo #44 (TEGE 04-0411-02), dated April 21, 2011. That memo was issued to amend the established procedures for the processing of ad hoc closing agreements (AHCA) as outlined in IRM 4.90.9.4.2, *Ad Hoc Closing Agreement Procedures for Walk-In Cases/Cases not Under Examination*, and to establish some claims procedures that are related AHCA, as outlined in IRM 4.90.7, *Claims*. Effective immediately, FSLG will implement the following changes to improve the efficiency and effectiveness of the AHCA procedures for walk-in cases. The procedural and policy contents of this document will be incorporated into IRM 4.90.9.4 and 4.90.7 within one year of the date of this memorandum.

General Policy

FSLG closing agreements will generally require Forms W-2/W-2c to be furnished and filed as part of the agreement, unless a specific dollar amount per employee cannot be determined. Any deviation from such policy will be rare and will require the approval from both Chief Counsel and the Director of FSLG.

Closing agreement tax assessments will be made separately for each applicable tax year or period. However, closing agreement tax assessment for barred assessment statute years (i.e. Section 218 retroactive pay issues) will be made per current Chief Counsel guidance.

FSLG will generally pursue the assessment of tax on all open years for the closing agreement issue. Facts and circumstances will govern any exceptions to this general policy. Where appropriate, worker classification issues can be resolved via the classification settlement program governed by IRC section 7121, IRM sections 4.90.9.4 and 8.13.1, and Delegation Order 8-3 (formerly DO-97 in IRM section 1.2.47.4).

Establishing Customer Assistance Case on Reporting Compliance Case Management System (RCCMS)

When a taxpayer, who is not under examination, or representative submits a written request for an AHCA, the Compliance and Program Management (CPM) AHCA Coordinator will request establishment of a customer assistance case via the normal establishment procedures on the Reporting Compliance Case Management System (RCCMS). The CPM Manager will approve the case establishment. The AHCA Coordinator will create the case control using:

- Activity code 108, Taxpayer Assistance - Post-filing,
- Project code 4253, Closing Agreement Project, and
- Status code 12, Assignment for Evaluation - TP Contact.

The AHCA Coordinator will upload all electronic files received from the taxpayer into the RCCMS case file. Hard-copy documents will be scanned and imported to the RCCMS compliance activity record in the Case File Documents folder. The AHCA Coordinator will record all case-related activity on Form 9984, Examining Officer's Activity Record.

Change in Case Closing Agreement Procedures for Walk-In

If the FSLG Director has previously rejected or does not approve an AHCA, the AHCA Coordinator will close the customer assistance case in RCCMS using a disposal code 107, No Change, to denote a rejected, or withdrawn ad hoc closing agreement.

If the FSLG Director approves and signs the AHCA, the AHCA Coordinator will do the following:

- Prepare Form 3870, Request for Adjustment, for each assessment period. The Form 3870 should include a detailed explanation of the assessment reflected in the closing agreement. This explanation should also address the application of interest and penalties, which generally do not apply per IRC section 6205. Finally, the assessment should be made using transaction code 298, which denotes that interest will not be assessed on the tax assessment.
- Prepare Form 4668, Employment Tax Examination Changes Report, to reflect the calculation of the wage and tax amounts for the assessments included on Forms 3870. The Form 4668 should also include the appropriate item reference numbers to ensure that proper account modules are adjusted. These item reference numbers will be included on the Form 3870, as well, unless there is a waiver of the Form W-2/W-2c filing requirements.
- Upload the completed Forms 3870 and 4668, a scanned copy of the executed AHCA, and any other case related documents to the RCCMS case file.

- Select Disposal Code 104, Closing Agreement, RCCMS.
- Request the case be transferred to the CPM Manager for review.

The CPM Manager will review the case, annotate the F9984, and sign the Forms 3870. The RCCMS case will be transferred to a CPM tax examiner who will print out the Forms 3870 and supporting documents and submit them to the CPM AIMS coordinator for assessment.

Change in Payment Processing Procedures

When the AHCA Coordinator receives a check payment with an executed closing agreement, a Form 3244-A, Payment Posting Voucher – Examination, will be prepared per IRM section 4.90.12. The AHCA Coordinator will secure a transmittal number from the Austin CPM office and prepare the Form 3210, Document Transmittal. A copy of the check will also be scanned or faxed and sent to the CPM Manager. The Forms 3244-A, 3210, and check copy file, if applicable, will be forwarded by e-mail via secured messaging to the CPM Manager for review and approval signature.

After the CPM Manager signs the Form 3244-A and Form 3210, the AHCA Coordinator will mail the documents and check payment to the Ogden teller unit via overnight traceable mail. The Form 3210 Acknowledgement Copy received from the Ogden teller unit will be sent to the Austin CPM office to be associated with the official CPM 3210 log book. The AHCA Coordinator will monitor the taxpayer account until all applicable payments, whether by check or electronic funds transfer, have successfully posted and upload an IDRS print to the RCCMS case file as verification of payment posting.

Monitoring Closing Agreement – Post Assessment

Once the CPM Tax Examiner has prepared and transmitted the Form 3870 packets to the CPM AIMS coordinator he or she will be responsible for monitoring the posting of the assessment at 30 and 60 day intervals after the posting of the assessment. The CPM Tax Examiner will verify that all assessments and transaction codes have posted properly. If the Tax Examiner identifies a problem with the posted adjustments, he or she will notify the CPM Manager for resolution. Once validation of proper assessment posting has been achieved, the CPM tax examiner will make the appropriate documentation in the case history and process a request for closure of the RCCMS case to the CPM Manager for approval and final processing.

Claims

Upon receipt of a taxpayer claim for refund, the Specialist assigned to work the claim should forward the claim information to the CPM Claims Coordinator to determine whether or not the claim is related to an AHCA. The CPM Claims Coordinator will research both the RCCMS case library and other historic closing documents to determine if the entity has or had an AHCA for any of the periods and issues included in the claim.

If the claim involves periods or issues previously addressed in an AHCA, the CPM Claims Coordinator will send a copy of the signed AHCA along with instructions to contact the AHCA Coordinator to the Specialist assigned to the claim. The FSLG Director and the AHCA Coordinator will work with the Specialist to ensure that the closing agreement assessments are not included in amounts allowed per the claim.

In adjudicating the claim, the Specialist should do the following:

- Reconcile all assessments and adjustments from the original Form 941 (including all subsequent assessments and abatements).
- Reconcile the Form 941 amounts, as determined in the reconciliation, with the Forms W-2 and W-2c's filed by the taxpayer.

The Specialist may need to obtain information from the taxpayer, the ACHA Coordinator, RCCMS, and/ or the Campus to thoroughly complete the reconciliations.

Finally, the Specialist should confer with the FSLG Director and the AHCA Coordinator to ensure that the amount allowed for the claim does not include any portion of the amounts assessed per the AHCA.

If you have any questions, please contact Dwayne Jacobs, CPM Manager, at (307-672-7425 ext. 33).