



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.2.1

JUNE 1, 2021

EFFECTIVE DATE

(06-01-2021)

PURPOSE

- (1) This transmits revised IRM 8.2.1, Pre-90-Day and 90-Day Cases, Agreed Pre-90-Day Income Tax Cases.

MATERIAL CHANGES

- (1) Added new IRM 8.2.1.1, Program Scope and Objectives, and its related subsections to comply with the Deputy Commissioner of Services and Enforcement and Operations Support memo, dated September 14, 2016, entitled Heightened Awareness, Sensitivity and Understanding of Internal Controls. See IRM 1.11.2.2.5 , Address Management and Internal Controls. Incorporated information from IRM 8.2.1.1, Introduction to Pre-90-Day Income Tax Cases. Included in IRM 8.2.1.1.6, Related Resources, information on the Taxpayer Bill of Rights (TBOR), based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration).
- (2) Revised IRM 8.2.1.2, Written Protests and Small Case Requests in Protested Cases.
- (3) Revised IRM 8.2.1.3, Receipt of a Pre-90-Day Case, and moved to this section information from paragraph (1) of IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE).
- (4) Revised and reorganized IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE), deleted paragraph (4) that references the obsolete Letter 4141, Case Received in Appeals - Acknowledgement Letter, and moved information from paragraphs (4) and (6) to new IRM 8.2.1.4.1, Exception to 45-Day Time Frame for Initial Case Actions, and IRM 8.2.1.4.2, No Initial Contact Letter Required for Certain Cases.
- (5) Revised IRM 8.2.1.6, Preliminary Review of a Case - ATE, as Appeals Coordinated Issues (ACI) now include ACI, category of case, (ACIcc) and Emerging Issues (EM).
- (6) Revised IRM 8.2.1.7.2, Verification of New Material or Request for Further Development - ATE, with added reference citations.
- (7) Revised IRM 8.2.1.8, Requesting Work from Tax Computation Specialist, with updated links throughout.
- (8) Revised IRM 8.2.1.9 , Reaching a Conclusion in the Case, to clarify that settlement authority is delegated to Appeals Team Managers and Appeals Team Case Leaders as to their respective cases.
- (9) Updated IRM 8.2.1.9.1, Reviewing Official's Acceptance of Settlement Proposal, with revised conference procedures.
- (10) Updated IRM 8.2.1.9.2, Reviewing Official's Rejection of Settlement Proposal, with revised conference information and deleted the "Note".
- (11) Updated IRM 8.2.1.9.2.1, Reviewing Official Rejects Settlement Proposal - ATE Accepts, with revised procedures.
- (12) Updated IRM 8.2.1.9.2.2, Reviewing Official Rejects Settlement Proposal - ATE Does Not Accept, with revised procedures.

- (13) Updated IRM 8.2.1.11, Preparing the Case to Close to APS, with revised citations to reference materials. Revised title to, Preparing a Paper Case File for Closing to APS.
- (14) Made editorial changes throughout including revising and updating website addresses and IRM references and making grammatical, spelling and punctuation corrections.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 8.2.1 dated October 1, 2016.

AUDIENCE

Appeals

Steven M. Martin
Director, Case and Operations Support

8.2.1

Agreed Pre-90-Day Income Tax Cases

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8.2.1.1
(06-01-2021)
Program Scope and Objectives

- (1) **Purpose:** This IRM section describes the process and procedures for working pre-90-day income tax cases in the IRS Independent Office of Appeals (Appeals). Many of these procedures are used on every case regardless of the type of tax, assessment status, or determination involved; however, certain cases also require special procedures. See IRM 8.2.1.1.1, Background, for other IRM sections with special procedures that take precedence over general instructions found in this IRM section. Appeals receives these cases from Wage and Investment (W&I), Small Business and Self-Employed (SB/SE), Large Business and International (LB&I), and Tax Exempt and Government Entities (TE/GE).
- (2) **Audience:** The primary users of the IRM section are Appeals Technical Employees (ATEs); including Appeals Officers (AOs), Appeals Team Case Leaders (ATCLs) and Appeals Team Managers (ATMs).
- (3) **Policy Owner:** Policy, Planning, Quality and Analysis is under the Director, Case and Operations Support.
- (4) **Program Owner:** Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization and is under the Director, Planning, Policy, Quality and Analysis.
- (5) **Contact Information:** Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.2.1.1.1
(06-01-2021)
Background

- (1) Appeals' mission is to resolve Federal tax controversies without litigation on a basis which is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the Internal Revenue Service. See IRC 7803(e)(3), Purposes and Duties of Office. Appeals accomplishes this mission by considering protested and Tax Court cases, holding conferences, and negotiating settlements in a manner which ensures Appeals employees act in accord with the TBOR in every interaction with taxpayers. See IRM 8.1.1.1, Accomplishing the Appeals Mission.
- (2) The procedures for this IRM are general in nature and cover the processing of a pre-90-day income tax case, also called a non-docketed case, from the time the case is received in Appeals until it is closed. A pre-90-day case is a protested case in which a statutory notice of deficiency or other final letter of determination has **not** been issued.
- (3) Special procedures take precedence over the general instructions found in this IRM section. The following is a list of other IRM sections where these special procedures can be found:
 - a. IRM 8.7.1, Guidelines for Cases with Special Issues
 - b. IRM 8.7.4, Appeals Estate and Gift Tax Cases
 - c. IRM 8.7.5, Transferee and Transferor Liabilities
 - d. IRM 8.7.6, Appeals Bankruptcy Cases
 - e. IRM 8.7.7, Claim and Overassessment Cases
 - f. IRM 8.7.8, Tax Exempt and Government Entities (TE/GE) Cases
 - g. IRM 8.7.9, Joint Committee (JC) Cases
 - h. IRM 8.7.10, Excise Tax Cases and IRA Adjustments

- i. IRM 8.7.11, Working Appeals Team Cases
- j. IRM 8.7.13, e-file Cases
- k. IRM 8.7.16, Appeals Employment Tax Procedures
- l. IRM 8.11, Penalties Worked in Appeals
- m. IRM 8.19, Appeals Pass-Through Entity Handbook
- n. IRM 25.15.12, Relief from Joint and Several Liability, Appeals Procedures

8.2.1.1.2
(06-01-2021)

Authority

- (1) Appeals' authority to settle protested and Tax Court case is delegated to the Appeals Team Managers (ATMs) and Appeals Team Case Leaders (ATCLs) as to their respective cases. See IRM 1.2.2.9, Delegations of Authority for the Appeals Process, and its related subsections.

8.2.1.1.3
(06-01-2021)

Responsibilities

- (1) The Policy Analyst shown on the Product Catalog Information page as the point of contact (POC) is the assigned author of this IRM.

8.2.1.1.4
(06-01-2021)

Program Reports

- (1) Policy, Planning, Quality and Analysis (PPQA) provides trend and data analysis and detailed summary reports for Appeals.

8.2.1.1.5
(06-01-2021)

Terms and Acronyms

- (1) See Exhibit 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8.
- (2) This table lists commonly used acronyms and their definitions as cited in this section:

Acronym	Definition
ACDS	Appeals Centralized Database System
ACM	Appeals Case Memo
APGolf and ACDS 2.0	Appeals Generator of Letters and Forms
APS	Account and Processing Support
ASED	Assessment Statute Expiration Date
ATE	Appeals Technical Employee
ATCL	Appeals Team Case Leader
ATM	Appeals Team Manager
CARATS	Case Activity Record and Automated Timekeeping System
RAR	Revenue Agent Report
TCS	Tax Computation Specialist
TBOR	Taxpayer Bill of Rights

8.2.1.1.6
(06-01-2021)

- (1) This IRM section is the primary source of guidance for Appeals employees working non-collection cases. The following table lists related resources.

Related Resources

Reference	Title
IRM 1.4.28	Appeals Managers Procedures
IRM 8.2.2	Statutory Notice of Deficiency Cases
IRM 8.2.3	Related, Whipsaw and Inactive Cases
IRM 8.6.1	Conference and Settlement Practices, Conference and Issue Resolution
IRM 8.7.3	Domestic and International Operations Programs
IRM 8.7.8	Technical and Procedural Guidelines, Tax Exempt and Government Entities (TE/GE) Cases
IRM 8.17.5	Special Computations Formats, Forms and Worksheets
IRM 8.18.1	Valuation Assistance Procedures
IRM 8.20.3	Appeals Centralized Database System
IRM 8.20.5	Carding New Receipts
IRM 8.20.5.3.1	Receiving Returns and Administrative Files
IRM 8.21.6.2.2	Appeals Statute Responsibility-Statute Information on TEFRA Cases, Appeals Technical Employees (ATE) Statute Responsibility for TEFRA Key Cases
Publication 5	Your Appeal Rights and How to Prepare a Protest if You Disagree

- (2) Visit Appeals' *Examination Policy Resources* SharePoint page.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayers rights. See IRC 7803(a)(3), Execution Of Duties In Accord With Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.2.1.2
(06-01-2021)

Written Protests and Small Case Requests in Protested Cases

- (1) Publication 5, Your Appeal Rights and How to Prepare a Protest if You Disagree, provides taxpayers with detailed information on their appeal rights if they disagree with Compliance's determination. The taxpayer or authorized representative must submit the protest to Compliance, who is responsible for forwarding the protested case to Appeals for consideration. This publication tells taxpayers:

- What happens if Compliance closes an unagreed case when the taxpayer doesn't appeal.
- How to prepare a small case request or formal written protest for the taxpayer's unagreed non-docketed case.
- How to prepare for an Appeals conference.

8.2.1.3 (06-01-2021)
Receipt of a Pre-90-Day Case

(1) For Appeals' procedures on receiving case files, see IRM 8.20.5.3.1, Receiving Returns and Administrative Files. Appeals controls its inventory on the Appeals Centralized Database System (ACDS), following procedures in IRM 8.20.3, Appeals Centralized Database System, and IRM 8.20.5, Carding New Receipts.

8.2.1.4 (06-01-2021)
Receipt of New Assignment by an Appeals Technical Employee (ATE)

(1) The ATE will take the following actions within **45 calendar days** of receipt of a newly assigned and/or transferred case (i.e., date of CR/NR), except as stated in IRM 8.2.1.4.1, Exception to 45-Day Time Frame for Initial Case Actions, and IRM 8.2.1.4.2, No Initial Contact Letter Required for Certain Cases.

Step	Action
1.	<p>Complete the statute verification. Ensure there are at least 365 days (270 days in estate tax cases or IRC 6206 cases) remaining on the Assessment Statute Expiration Date (ASED) when the case was received by Appeals. See IRM 8.21, Appeals Statute Responsibility, for detailed procedures on statutes and consents.</p> <p>Exception: There must be at least 180 days remaining on the ASED when the case is received in Appeals when the originating function returns a case that was previously returned to them for consideration of new information or a new issue.</p>
2.	<p>Validate all ACDS critical data fields (CDFs). See IRM 8.10.3, Appeals Inventory Validation Process, for more information on the ATE Assignment Validation of CDFs.</p>
3.	<p>Determine whether the case is ready for Appeals' consideration. See IRM 8.2.1.5, Returning a Case to Examination - ATE, for more information on grounds for returning a case when it is not ready for Appeals' consideration.</p> <p>Note: If the ATE determines that a conference is not appropriate, the ATE will not send an initial contact letter. Instead, go to IRM 8.2.1.4.2, No Initial Contact Letter Required for Certain Cases.</p>
4.	<p>Make initial contact. The ATE may make initial contact by contact letter or by telephone in lieu of using a contact letter. See IRM 8.2.1.4.2, No Initial Contact Letter Required for Certain Cases. If the ATE makes initial contact by letter, issue contact Letter 5157 , Nondocketed Acknowledgement & Conference, or another approved contact letter. For a list of Appeals' initial contact letters, See Exhibit 8.6.1-1 .</p> <p>Note: The ATE must generate the initial contact letter through ACDS 2.0, which is programmed to systemically create the CARATS entry "CO-UAL".</p>
5.	<p>Attempt to settle the case based on factual hazards when the case submitted by the originating function is not fully developed and the taxpayer has provided no new information or evidence. A fully developed case has all pertinent evidence well documented with an easy to follow audit trail. Generally, the case contains the evidence needed to support the adjustments proposed in the RAR.</p>

- (2) On the initial contact letter, the ATE identifies the specific IRS publications, IRS notices or IRS brochures enclosed with the letter. These enclosures are pre-selected based upon the category and type of case, whether the case is in docketed or non-docketed status, and whether the case is worked in campus or field operations. The selected enclosures were identified as information adding value to the taxpayer. If the ATE eliminates a pre-selected enclosure, the reason for the decision must be documented in the CAR. See Exhibit 8.6.1-1, Pre-Selected Enclosures for Initial Contact Letters Based on Category and Case Type.
- (3) The ATE will document in CARATS the enclosures sent with the initial contact letter. This documentation serves as the employee’s written explanation of the procedures described in the publications or notices to the taxpayer. The following pre-selected enclosures for Appeals’ initial contact letters include the following:

By enclosing	You are explaining
Notice 1016, How to Stop Interest on Your Account	How to stop interest on a proposed or potential liability.
Publication 4227, Overview of Appeals Process Brochure	Appeals’ mission, overview and expectations of the appeals process.
Publication 4167, Introduction to Alternative Dispute Resolution	Appeals’ mission, Early Referral (ER), Fast Track Settlement (FTS), Rapid Appeals Process (RAP), and Post Appeals Mediation (PAM).
Publication 4576, Orientation to the Penalty Appeals Process	Appeals’ mission, the appeals process, right to representation, taxpayers’ options for an unagreed closure, and payment options.

8.2.1.4.1
(06-01-2021)
Exception to 45-Day Time Frame for Initial Case Actions

- (1) ATMs will be reasonable in extending the contact time frame if circumstances (e.g. leave, workload, case complexity or other priorities) prevent the ATE from meeting the time frame. If the ATM extends the time frame, the ATE will document this decision and the agreed upon time frame in the CAR for the case. Also, see IRM 1.4.28.4.1, Assignment of Work Units and Initial Case Actions.

Reminder: The statute verification time frame will not be extended beyond 45 calendar days. If the contact time frame is extended beyond **75 calendar days**, then the ATM will contact the taxpayer/representative by correspondence providing a status of the case and to whom the case is assigned.

- (2) For Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 and Bipartisan Budget Act (BBA) of 2015 key cases, the 45-day time frame for statute verification applies to field ATEs only. See IRM 8.21.6.2.2, Appeals Technical Employees (ATE) Statute Responsibility for TEFRA Key Cases. **The TEFRA ATE will verify the statute within five workdays prior to assignment of the case to a field ATE.**

8.2.1.4.2
(06-01-2021)

**No Initial Contact Letter
Required for Certain
Cases**

- (1) The ATE may make initial contact by contact letter or by telephone in lieu of using a contact letter. If the ATE makes initial contact by telephone, during such contact, the ATE must ensure that the substance of the contact letter is discussed with the taxpayer and documented in CARATS with the time action code/sub-action code of TC-SCM (telephone contact-substantive contact made by phone).
- (2) If the ATE determines that a conference is not appropriate, in lieu of sending Letter 5157 or another approved contact letter, **within a reasonable time frame**, the ATE will complete the appropriate closing actions identified in the table below:

For a	The ATE will
Premature Referral	<ul style="list-style-type: none"> • Prepare Letter 5209, Appeals Referral to Examination • Secure additional documentation, if applicable • Submit the case to the ATM for closing • Document this action in CARATS by inputting "AC-OD"
Full Concession Case	<ul style="list-style-type: none"> • Notify the taxpayer/representative, if appropriate • Prepare the appropriate closing letter/documents • Submit the case to the ATM for closing • Document this action in CARATS by inputting "DM"

8.2.1.5
(08-11-2015)

**Returning a Case to
Examination - ATE**

- (1) Appeals will not return cases to Examination for further development.
- (2) The following circumstances, which are not all-inclusive, are grounds for returning a case:
 - a. Missing protest, or the protest, when required, fails to set forth the taxpayer's position, lacks detail, or fails to meet the requirements of Publication 5, Your Appeal Rights and How to Prepare a Protest if You Disagree;
 - b. Contrary to IRS practice, the case is a reopening of a previously closed case as set forth in Rev. Proc. 2005-32;
 - c. Some action must be taken or some event must occur before Appeals can adequately consider the case. For example, completion of Headquarters' consideration of some aspect of the case (e.g., valuation of art work when a mandatory referral is required), or required coordination with appropriate offices within Counsel, or Criminal Investigation (CI), or a rebuttal to the taxpayer's protest on large team cases;
 - d. There is a failure to secure timely consents extending the period of limitation for assessment unless the statute is open for other reasons, e.g., fraud, IRC 6501(e);
 - e. The case involves claims for abatement of excise tax, employment tax, or trust fund recovery penalty which are not deemed meritorious by the IRS;
 - f. There is failure to comply with significant IRM requirements, the case should have been held in suspense in Examination pending clarification of IRS position; required information was not included in the report or case file, there is an open CI freeze , etc.;
 - g. Technical advice was pending at the time of the referral;
 - h. Appeals discovers potential fraud, malfeasance or misrepresentation of a material fact;

- i. The taxpayer provides new information or evidence;
- j. The taxpayer raises new issue(s) that the originating function has not considered.

8.2.1.6
(06-01-2021)
Preliminary Review of a Case - ATE

- (1) Close unnecessary original returns or files discovered during the preliminary review to the campus or the originating office, as appropriate.
- (2) During the preliminary review, the ATE identifies all Appeals Coordinated Issues (ACI), and international Issues found in IRM 8.7.3, Domestic and International Operations Programs. The ATE is responsible for preparing and forwarding a referral, through their ATM, to Technical Guidance and/or Area 11 (International) on Form 13381, Appeals Technical Guidance Referral, when the case has any of the following issues:
 - a. International issues (including international penalty issues)
 - b. Appeals Coordinated Issues (ACI)
- (3) Referrals of Estate & Gift valuation issues with tax of \$10 million or more are made in accordance with IRM 8.18.1, Valuation Assistance Procedures.
- (4) Refer all TEGE issues to the Appeals TEGE Team Manager in accordance with IRM 8.7.8 , Technical and Procedural Guidelines, Tax Exempt and Government Entities (TE/GE) Cases. TEGE cases include issues involving the following:
 - Exempt Plans (EP)
 - Exempt Organizations (EO)
 - Tax Exempt Bonds (TEB)
 - Government Entities (GE)

8.2.1.7
(10-01-2016)
Conducting the Conference - ATE

- (1) Appeals conference techniques are described in IRM 8.6.1 Conference and Settlement Practices, Conference and Issue Resolution.

8.2.1.7.1
(10-01-2016)
Assistance from Counsel in Pre-90-Day Cases

- (1) Appeals may request informal assistance from Counsel when advice is needed on the hazards of litigation, interpretation of the law, and/or evaluation of the evidence. Counsel’s assistance is provided through informal arrangements between Counsel and Appeals. This informal procedure is not intended to take the place of, or alter in any way, Technical Advice procedures.
- (2) While a case is in Appeals, Appeals has the sole authority to resolve the case through settlement and when requested, Counsel acts solely as an advisor and/or consultant.

8.2.1.7.2
(06-01-2021)
Verification of New Material or Request for Further Development - ATE

- (1) ATEs are not investigators or examiners and may not act as such and will not take investigative actions or perform analysis of new information or new issues. Conduct the preliminary review of a case as soon as possible to determine whether the case must be returned to the originating function. While taxpayers may present new information or evidence to Appeals, Appeals usually must return the case to the originating function to examine the new information and make a determination.

- (2) New information is defined in IRM 8.6.1.7.5, Taxpayer Provides New Information. If the taxpayer raises a new issue or presents new information to Appeals and that information relates to an issue in controversy, see the following for more information:
 - IRM 8.6.1.7.4, Taxpayer Raises New Issue
 - IRM 8.6.1.7.5, Taxpayer Provides New Information
- (3) Follow the procedures in IRM 8.6.1.7.7, Jurisdiction Released, to return a case to the originating function.
- (4) If Appeals determines that the taxpayer is raising a relevant new theory, or alternative legal argument, which requires further development, retain jurisdiction of the case and share the information with the originating function for review and comment. See IRM 8.6.1.7.6, Taxpayer Raises New Theory or Alternative Legal Argument.
- (5) When the taxpayer offers to make payment of additional tax liability for slush fund or improper payment deductions, or reveals their existence to Appeals officials for the first time, discontinue Appeals' consideration of the case and return the case to Compliance for appropriate action.

8.2.1.8 (06-01-2021)

Requesting Work from Tax Computation Specialist

- (1) Generate Form 3608 (CG), Request for Tax Computation Specialist (TCS) Service, from APGolf and prepare as follows:
 - a. Boxes 1 through 6 - Populated with information from ACDS, when available
 - b. Box 7 - Mandatory Entry
For **Other** include a brief description of the type of work requested
 - c. Box 8 - Complete only when Priority Consideration is requested
 - d. Box 9 - Complete as applicable
 - e. Box 10 - Identify the disposition of the case/issue
 - f. Box 11 - The AO may add the name of the prior TCS assigned to the case if any.
 - g. Box 12 - Complete only if there are supplemental instructions to the Schedule of Adjustments
 - h. Box 13 - Select the Appeals TCS Team Manager using the drop down box "Select TCS Manager to send the request to" - Use the appropriate TCS assignment grid to select the TCS Manager. TCS Assignment Grids are located on the TCS website under "**FOR APPEALS ONLY**". The TCS website can be accessed from the following link: *Technical Support (Tax Computation Specialists)*.
- (2) After completing Form 3608 (CG), the ATE should select the "Submit Request" button, which automatically sends the request to the Appeals TCS Team Manager and uploads the request into the Appeals Officer's CAR on ACDS as a case attachment.

Note: Before the TCS Customer selects an Appeals TCS Team Manager the button is labeled "Generate Letter/Form" and after the Appeals TCS Team Manager is selected the button label changes to "Submit Request."
- (3) Upload the Schedule of Adjustments to the taxpayer CAR in ACDS as a case attachment.

- (4) The Appeals TCS Team Manager receives the case to assign in the ACDS notification screen and assigns the case to a TCS.
- (5) Immediately upon TCS assignment, the TCS Appeals customer, assigned TCS and Appeals TCS Team Manager will receive a system generated notification e-mail with the contact information of the TCS assigned to the case.
- (6) The ATE can upload any additional information needed by the TCS (e.g. RAR and tax returns) to the CAR in ACDS, or as an alternate, may e-mail or E-fax it to the assigned TCS.
- (7) When the ATE fully sustains Compliance’s determination, settlement computations are not required; however, IRC 6404(g), Form 2285, Concurrent Determinations of Deficiencies, and/or May/Sequa worksheets may be required if certain interest suspension rules are applicable. Also, Form 5403 Instructions to APS Worksheet, is completed by the ATE or TCS who prepares the settlement computation. This worksheet provides specific account adjustment information for closing AIMS-controlled tax periods. APS employees use this information to prepare Form 5403, Appeals Closing Record. Notify the TCS if Form 5403 instructions, and the special interest worksheet are required. See IRM 8.17.5, Special Computation Formats, Forms and Worksheets.
 - a. IRC 6404(g) - This interest suspension period could apply to timely filed Forms 1040 if the additional tax liability is not yet assessed. An IRC 6404(g) worksheet must be prepared for each individual income tax period (MFT 30 or MFT 31) if applicable. The IRC 6404(g) worksheet is available at *Technical Support - Tax Computation Specialists*.
 - b. Rev. Rul. 99-40, May/Sequa – This interest suspension period may apply if Transaction Codes (TC) **836** or **830** are posted on the taxpayer’s account and there is a current or prior deficiency. A May/Sequa worksheet must be prepared for each applicable income tax period.
 - c. Form 2285, Concurrent Determinations of Deficiencies (Restricted Interest Worksheet), is required when a case involves restricted interest due to loss or credit carrybacks.
- (8) ATEs must recognize the potential for the conditions in paragraph (7) and request TCS assistance to make this determination. If applicable, include the appropriate completed worksheets in the closed case file for APS to use in preparing accurate interest calculations.

Note: In addition to providing APS with special worksheets, the ATE must notate on Form 5402, Appeals Transmittal and Case Memo, if IRC 6404(g) and/or May/Sequa apply.

8.2.1.9
(06-01-2021)
**Reaching a Conclusion
in the Case**

- (1) This subsection covers actions taken by an ATE after carefully considering and discussing facts, law and arguments of the case with the taxpayer and either reaching a basis of settlement or determining there is no mutually acceptable basis for settlement.
- (2) The authority to settle protested cases and Tax Court cases is delegated to Appeals Team Managers (ATMs) and Appeals Team Case Leaders (ATCLs) as to their respective cases. See IRM 1.2.2.9.8, Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev. 15), Authority of Appeals in Protested and Tax Court Cases.

- (3) The ATE will communicate to the taxpayer/representative that any settlement proposal is subject to the review and approval of the ATM as the reviewing official. This should be communicated and documented in the CAR when initial contact is made and when a proposed settlement is reached.
- (4) When the case is agreed, the ATE will discuss the conclusion with the taxpayer and/or representative to ensure they have a complete understanding of the effects of the settlement.

Example: Where allowance of a net operating loss deduction reduces or eliminates a potential deficiency, advise the taxpayer that interest will be assessed on the potential deficiency. Where desirable or advisable the taxpayer may also be advised in writing.

- (5) When the case is unagreed, the ATE will explain the following to the taxpayer:
 - The evaluation of the case
 - Additional action to be taken
 - Taxpayer's rights
- (6) Unagreed case dispositions of pre-assessed liabilities generally fall into the categories identified below:
 - a. Pre-90-day case disposition with a deficiency (defined in IRC 6211.) A statutory notice of deficiency is issued to dispose of the sustained income tax (Subtitle A), estate and gift tax (Subtitle B), or excise tax (Chapter 41, 42, 43 or 44 of Subtitle D) case. The tax can be litigated in Tax Court.
 - b. Pre-90-day case disposition without a deficiency. A statutory notice of deficiency is not issued to dispose of the case because there is no deficiency to litigate in the Tax Court.
 - c. Pre-90-day case disposition of employment taxes (Subtitle C) attributable to a determination of worker status. Employment taxes do not fall under the definition of a deficiency. However, IRC 7436 requires the IRS to follow deficiency procedures for the portion of the unagreed employment tax determination resulting from a worker status determination. The taxpayer can litigate this determination in Tax Court in response to an IRS notice of employment tax determination under IRC 7436.
 - d. Case disposition of excise tax (Subtitle D other than Chapter 41, 42, 43 or 44.) The sustained taxes are assessed without issuing a statutory notice of deficiency because these taxes cannot be litigated in Tax Court.
 - e. Case disposition of employment tax (Subtitle C), not attributable to a determination of worker status. The sustained taxes are assessed without issuing a statutory notice of deficiency because these taxes cannot be litigated in Tax Court.

Note: For details on preparing 90-day letters, see IRM 8.17.4, Notices of Deficiency, and IRM 8.7.16.11.1 , Letter 3523-A, Notice of Employment Tax Determination Under IRC 7436.

- (7) Use Form 5402, Appeals Transmittal and Case Memorandum, to record the case conclusion, and include settlement computations (sometimes called an audit statement) and an Appeals Case Memo (ACM), when appropriate. See IRM 8.6.2, Appeals Case Memo Procedures, and IRM 8.17.2, General Settlement and Rule 155 Computations.

- (8) When an agreement is reached, the ATE will send an agreement letter, i.e., Letter 969, Agreement Form Transmittal - Non-Docketed Case, and enclose an agreement form and in most instances, the settlement computation. The ATE **must** enclose a detailed interest computation when the agreement letter contains a stated interest amount.
- (9) IRM 8.6.4, Conference and Settlement Procedures, Reaching Settlement and Securing an Appeals Agreement Form, includes additional information concerning soliciting agreement forms.
- (10) Actively encourage the taxpayer to pay any deficiency in full. If the taxpayer indicates they are unable to pay, discuss alternatives to full payment such as installment agreements or offers-in-compromise. Point taxpayers to the IRS Direct Pay tool available at <https://www.irs.gov/payments/direct-pay>, which is a free online tool which allows individuals to securely pay their income tax directly from their checking or savings account without any fees or pre-registration. Direct Pay is available 24 hours a day, seven days a week. Any taxpayer who uses the tool receives instant confirmation that their payment was submitted. Also, if they prefer an Installment Agreement direct them to the IRS Online Payment Agreement application at <https://www.irs.gov/payments/online-payment-agreement-application>.
- (11) Prepare the appropriate closing letter for APS to send after the reviewing official accepts the settlement proposal.

Note: See subsections below for information on acceptance and rejection of the settlement proposal by the reviewing officials.

- (12) Form and pattern letters for use as agreement letters and closing letters are contained in ACDS 2.0 or APGolf.

8.2.1.9.1
(06-01-2021)
**Reviewing Official's
Acceptance of
Settlement Proposal**

- (1) If the taxpayer disagrees with a settlement that is approved by the ATM or other reviewing official the taxpayer can request but is not entitled to a conference with the reviewing official.

8.2.1.9.2
(06-01-2021)
**Reviewing Official's
Rejection of Settlement
Proposal**

- (1) When a reviewing official rejects a settlement proposal, the reviewing official will discuss the case with the ATE. The discussion will include the facts, law and argument the ATE and the reviewing official considered in reaching their respective conclusions.
- (2) If a revised settlement is reached that's agreeable to the ATE and the reviewing official, see IRM 8.2.1.9.2.1.
- (3) If a revised settlement is not reached that's agreeable to the ATE and the reviewing official, see IRM 8.2.1.9.2.2.

8.2.1.9.2.1
(06-01-2021)
**Reviewing Official
Rejects Settlement
Proposal - ATE Accepts**

- (1) When the ATE accepts the reviewing official's position to reject the settlement or when a revised settlement is reached, the ATE will contact the taxpayer to discuss the status of the case, the reasons for the change in the settlement, and that the taxpayer may request a conference with the ATE or the reviewing official.

- (2) If a conference is granted and the revised settlement is accepted, the ATE will secure all revised tax computations and agreement documents reflecting the revised settlement. If the taxpayer does not agree with the new settlement, the ATE will take all necessary actions to close the case unagreed.
- (3) The ATE will maintain inventory control of the case including monitoring the statute, preparing the case for final closing, etc.
- (4) The ATE will prepare a revised ACM with the revised settlement and process the case through normal closing procedures.

8.2.1.9.2.2
(06-01-2021)

**Reviewing Official
Rejects Settlement
Proposal - ATE Does Not
Accept**

- (1) As the reviewing official with settlement authority delegated under Delegation Order 8-8, IRM 1.2.2.9.8, an ATM may reject a settlement proposal. Circumstances, which are not all-inclusive, for rejection of a settlement proposal are:
 - Misapplication of the law
 - Facts or circumstances that don't support the conclusion reached
 - Hazards settlement not fully supported in the ACM

The ATM must clearly communicate to the ATE and document the CAR why the settlement proposal is being rejected.

- (2) When the ATE does not accept the reviewing official's position or when a revised settlement is not reached, the ATE will prepare a written rebuttal. The rebuttal must clearly state the factual and/or legal reasons a change in the original settlement proposal is not warranted or provide a revised settlement proposal for the reviewing official to consider.
- (3) If the rebuttal changes the position of the reviewing official and the reviewing official can either accept the original settlement proposal or the revised settlement proposal, no further action is needed; however, the ATE must update the final ACM.
- (4) If the rebuttal does not change the position of the reviewing official, the ATE will contact the taxpayer and advise them that the settlement proposal previously reached has been rejected by the reviewing official.
- (5) If the taxpayer is willing to work toward an agreement, the ATE will attempt to settle the case. If the taxpayer is unwilling to work toward an agreement, the ATE will take all necessary action to close the case unagreed.
- (6) The ATE will secure all required tax computations and agreement documents reflecting any settlement position.
- (7) The ATE will maintain inventory control of the case at all times, including monitoring the statute, preparing the case for final closure, etc.

8.2.1.10
(10-01-2016)

Closing the Case to APS

- (1) The ATE will assemble the administrative file in chronological order and include all documents necessary for APS to close the case.
- (2) For detailed information covering the procedures taken by the ATM when the case is submitted for closing by the AO, see IRM 1.4.28, Appeals Managers Procedures.
- (3) After the ATM completes the "Closing Cases" on ACDS and inputs an ATM approval date known as the ACAP date, the case information automatically goes to the Processing Employee Automated System (PEAS) Unassigned box.

(4) The ATM then submits the case to APS.

8.2.1.10.1
(06-28-2012)
**Expedite Processing for
Certain Large Dollar
Cases**

(1) Appeals will expedite the closing of a certain “agreed and unpaid deficiency” or overpayment case, if the case meets the “large dollar” criteria described in IRM 4.4.18, Large Dollar Cases. This guidance does not apply to a deficiency and/or overpayment case that requires Joint Committee Review. See IRM 8.7.9.3, Cases Requiring JC Review.

(2) A case meets the large dollar criteria, if the total amount of a period’s “agreed and unpaid deficiency” plus penalties (or overpayment plus penalties) exceeds \$100,000.

(3) Expedite processing is required to accomplish the following:

- a. To avoid the unnecessary accrual of overpayment interest under IRC 6611 for **large dollar** cases.
- b. To avoid the unnecessary suspension of deficiency interest in respect to “large dollar” income, estate, gift, and/or certain excise taxes. IRC 6601(c) requires an interest suspension if notice and demand is not made within 30 days of the *filing of a waiver of restriction on the assessment*.

Note: Interest is suspended if notice and demand is not made within 30 days of IRS’ receipt of a Form 870 type agreement. If the case involves a Form 870-AD type agreement, interest is suspended if notice and demand is not made within 30 days of the execution (by the ATM or ATCL) of the special agreement form. See IRM 8.6.4.4. Agreement Forms Secured in Appeals Cases. Also, see IRM 8.7.10, Excise Taxes and IRA Adjustments, to identify the excise taxes that require deficiency procedures.

(4) The following procedures apply for expediting certain “large dollar” cases:

- a. The ATE will identify and “flag” the case for expedited closing, by attaching any “expedite sticker, note, or tag” that contains a notation similar to the following: “\$100,000 Agreed and Unpaid Deficiency” and/or “\$100,000 overpayment”. The ATE will include a similar notation on Form 5402. The ATE will close the case within five calendar days of Appeals’ receipt of the signed waiver form. The ATE will close the case within 10 calendar days of the receipt of a Form 870 type agreement or within 10 days of the execution of a Form 870-AD type special agreement. The ATE should include an explanation for the delay (if any) on the CAR.
- b. The ATM will ensure the case is properly “flagged” for expedited processing. The ATM will close the case to APS within 10 days of the Appeals’ receipt of the waiver form.

8.2.1.10.2
(06-01-2021)
**Closing Cases with
Specialized Issues or
Procedures**

(1) IRM 8.20.7, Closing Procedures, covers some of the specialized issues that may arise when closing cases. The following is a list of those issues along with a link:

- a. Conversion of Tax Returns, IRM 8.20.7.21
- b. Department of Justice Cases, IRM 8.20.7.23
- c. Substitute for Return (SFR) Cases Processed in Appeals, IRM 8.20.7.46.3
- d. Delinquent Return Included in an Appeals Case, IRM 8.20.7.46.2

- e. Non-Master File (NMF) Processing, IRM 8.20.7.48
- f. Petitioning/Non-Petitioning Spouse Case Closing Procedures, IRM 8.20.7.51
- g. Premature Referrals or Improper Referrals - Jurisdiction Released; Jurisdiction Not Released, IRM 8.20.7.52.1 and IRM 8.20.7.52.2

8.2.1.11
(06-01-2021)

Preparing a Paper Case File for Closing to APS

- (1) This section contains the procedures for the ATE to prepare cases that have a physical administrative paper case file for closing to APS. Paperless case files do not have a physical administrative file and are identified with a "PL" feature code. Paperless cases are closed electronically. More information on preparing the case for closure is available in IRM 8.20.7.13, Administrative File Closing Assembly Order, and in Exhibit 8.20.7-15, Assembly Order for Non-Collection Cases.
- (2) Arrange the administrative file to be sure it includes all returns, documents, and other papers which were in the case file when it was received plus any returns and papers added while Appeals had the case. Remove all documents from the left side of the case file since that is usually torn from the file once it gets to the Campus.
- (3) Arrange the contents chronologically (date order).
- (4) Ensure there are sufficient copies of the following items in the file (or uploaded to ACDS as a case file attachment, as directed):
 - Form 5402 or other transmittal
 - Closing letter
 - Envelopes for taxpayer and POA (if applicable)
- (5) Place all tax returns in the administrative file.

8.2.1.12
(08-11-2015)

Statute Open with Form 872-A

- (1) If the statute is open under Form 872-A, Special Consent to Extend the Time to Assess Tax, **and** the return is closed no-change, prepare Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, for APS to send to the taxpayer with the closing letter.

Caution: Exercise caution prior to sending a Form 872-T on a no change case. Carryback years with statutes controlled by the originating year with Form 872-A must be protected or assessed. The statute date for any carryback returns open under an originating year Form 872-A is 90 days from the date Form 872-T is mailed.