



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

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Control No. AP-25-0313-01
Affected IRMs: 25.15.12 and 8.22.8

MEMORANDUM FOR DIRECTOR, CAMPUS OPERATIONS
DIRECTOR, FIELD OPERATIONS – EAST
DIRECTOR, FIELD OPERATIONS – WEST
DIRECTOR, SPECIALITY OPERATIONS
DIRECTOR, STRATEGY AND FINANCE

FROM: Susan L. Latham /s/ **Susan L. Latham**
Director, Policy, Quality and Case Support

SUBJECT: Interim Guidance on Changes to Innocent Spouse
Procedures to Explain Tax Court Rights

The purpose of this memorandum is to advise you of changes to the innocent spouse procedures based upon Chief Counsel's recommendation that we include an explanation of Tax Court rights with every innocent spouse determination, even if relief is fully allowed or the case is agreed.

The changes affect all innocent spouse cases, including "combo" cases. A combo case is a Collection Due Process/Equivalent Hearing (CDP/EH) case where an Innocent Spouse (INNSP) claim has been raised as a defense.

On all INNSP cases, the changes affect existing procedures in IRM 25.15.12 as follows:

The Appeals Officer (AO) will:

- No longer attempt to secure a Form 870-IS on fully denied requests for relief, even if the requesting spouse (RS) and/or non-requesting spouse (NRS) agrees with the determination. Instead, the AO will issue a final determination Letter 3288 that includes Tax Court rights on all fully denied requests for relief, except combo cases.
- Secure a Form 870-IS with instructions that include complete information on Tax Court rights on all agreed cases for which partial or full relief is granted.

Note: Follow the steps listed in the attachment to replace the current instructions on Form 870-IS (Rev. 8-2012) with the attached instructions until a corrected form is available on Publishing and APGolf. There is an error in the instructions in the 8-2012 revision. The Tax Court address was inadvertently omitted.

On combo cases, the changes affect existing procedures in IRM 25.15.12 and IRM 8.22.8 as follows:

Cincinnati Centralized Innocent Spouse Operation (CCISO) will:

- No longer issue a final determination letter on a fully allowed combo case.
- No longer adjust accounts based upon their determination.
- Continue to mirror accounts prior to sending the innocent spouse portion of a combo case to Appeals.
- Send all combo innocent spouse administrative files to the Cincinnati Campus Appeals Office for assignment to an AO.

APS will:

- Card a separate workunit number (WUNO) for the innocent spouse case following normal carding procedures - cross-reference the CDP WUNO, add feature code "DP" and forward the case to an Appeals Team Manager (ATM) for assignment.

The AO will work the INNISP part of the combo case and follow these instructions:

- Work the INNISP WUNO according to normal procedures, except at the conclusion of working the INNISP case, the AO prepares:
 - Form 5402, *Appeals Transmittal and Case Memo*, which will include instructions to APS regarding all required account adjustments and Innocent Spouse Tracking System (ISTS) updates, and be approved by the ATM.
 - ACM explaining the INNISP determination.
 - Form 870-IS, *Waiver of Collection Restrictions in Innocent Spouse Cases*, on all agreed cases for which partial or full relief is granted.
 - An electronic narrative explaining the INNISP determination so the Settlement Officer (SO) can adopt it in the final determination letter and/or closing letters.
 - Enter CARATS action code MS on ACDS when transferring the INNISP case to assigned SO.
 - Form 30/40 to transfer the INNISP case through APS to the SO.

Note: The AO will not input AC/FR on the INNISP WUNO. The ATM will not input an ACAPDATE on the INNISP WUNO. The SO is responsible for preparing the determination letter and/or closing letters.

The Settlement Officer (SO) will:

- Incorporate the AO determination into the closing letters and forms issued to the RS and NRS. See IRM 8.22.9.5 for the appropriate closing letter.
- Close all assigned WUNOs, including the INNSP WUNO with all appropriate closing information pertaining to the INNSP disposition.
- If the taxpayer(s) withdraws the CDP request, the SO will research ACDS to determine if the case is assigned to an AO:
 - **Case assigned to an AO:** The SO will deliver or fax a copy of the withdrawal Form12256 within 2 business days to notify the AO of the withdrawal. The AO will make a final determination and close the case following normal innocent spouse procedures.
 - **Case not assigned to an AO:** The SO will deliver or fax a copy of the withdrawal Form12256 within 2 business days to notify CCISO of the withdrawal. CCISO will retain the case and work it following their normal procedures.

All Appeals employees who work or process innocent spouse cases (including combo cases) are affected. Please disseminate this information to all Appeals employees involved with these cases.

This interim guidance is effective immediately and will remain in effect for one year from the date of issuance. These changes in procedures will be included in the next revisions of IRM 25.15.12 and IRM 8.22.8.

If you have any questions, please contact Theda Koors, Program Analyst, Tax Policy and Procedure.

Attachment

cc: www.irs.gov

Form 870-IS Instructions

Until the Form 870-IS (Rev. 8-2012) is corrected on Publishing and APGolf to include the Tax Court address in the instructions, Appeals Technical Employees will:

1. Generate Form 870-IS from APGolf.
2. Open Form 870-IS in MSWord.
3. Delete the Instructions from page 2.
4. Replace the instructions on page 2 with the following instructions:

Instructions
<p>If you agree with our determination regarding your claim for relief, sign and return this form. This will expedite processing of your case.</p> <p>If this form is based upon our initial review of your claim and there have been no prior administrative appeals of your claim, your (ex)spouse may appeal this decision. We will notify you of any appeal by your (ex)spouse that may delay processing your case.</p> <p>When you requested relief from joint and several liability, the statute of limitations on collection (the period of time the law allows us to collect taxes from you) was suspended. This period starts to run again 60 days after this form is signed on behalf of the Commissioner. However, when this form is signed on behalf of the Commissioner, we may begin to take action to collect any remaining amounts you owe, if any.</p> <p>Even if you sign Form 870-IS, you have the right to petition the United States Tax Court to review your request for relief in the following two situations:</p> <p>The IRS sends you a final determination letter regarding your request for relief. You do not receive a final determination letter from the IRS within six months from the date you filed F8857.</p> <p>To get a copy of the rules for filing a petition, write to: Clerk, United States Tax Court at 400 Second Street, NW, Washington, DC 20217 or access the Tax Court website at www.ustaxcourt.gov.</p> <p>WHO MUST SIGN:</p> <p>You can sign this form or your authorized representative can sign for you. However, if you want your representative to sign, we will need a completed Form 2848, <i>Power of Attorney and Declaration of Representative</i>. If you have not already given it to us, you can send it with this form.</p> <p>If you are signing in a fiduciary capacity (for example, as executor, administrator, or as a trustee), send us Form 56, <i>Notice Concerning Fiduciary Relationship</i>, with this form, unless we have it on file already.</p>