



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

February 2, 2018

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Affected IRM: IRM 8.6.1

MEMORANDUM FOR APPEALS EMPLOYEES

FROM: Anita M. Hill /s/ *Anita M. Hill*
Director, Case and Operations Support

SUBJECT: Reopening Closed IRC § 4980H Employer Shared Responsibility
Payment (ESRP) Issues

This memorandum issues guidance on the reopening of IRC § 4980H employer shared responsibility payment (ESRP) issues previously closed by Appeals. Please ensure that this information is distributed to all affected employees within your organization.

Background/Source(s) of Authority: Policy Statement 8-3 (formerly P-8-50) states the policy of the Internal Revenue Service (IRS) concerning the reopening of cases previously closed by Appeals. IRC § 4980H(d)(3) requires the IRS to repay to an employer any ESRP (including interest) to the extent such ESRP is based on the allowance or payment of an applicable premium tax credit with respect to an employee, and such allowance or payment is subsequently disallowed.

Procedural Change: The attachment to this memorandum provides guidance to all Appeals employees regarding the reopening of IRC § 4980H ESRP issues previously closed by Appeals.

Effective Date/Effect on Other Documents: This guidance is effective as of the date of this memorandum and will be incorporated into the affected IRM within two years from the date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on [How to Contact an Analyst](#).

Attachment:
IRM 8.6.1.6, *New Issues and Reopening Closed Issues*

cc: www.irs.gov

8.6.1.6 (MM-DD-YYYY)

New Issues and Reopening Closed Issues

- (1) [No changes from 10-01-2016 revision.]
- (2) Policy Statement 8-3 (formerly P-8-50) states the policy of the IRS concerning the reopening of cases previously closed by Appeals. Mutual concession cases will not be reopened based on action initiated by the Service except when the disposition involved fraud, malfeasance, concealment or misrepresentation of a material fact, an important mistake in mathematical calculation or discovery that a return contains unreported income, unadjusted deductions, credits, gains, losses, etc., resulting from the taxpayer's participation in a listed transaction. Reopening the case requires the approval of the Appeals Director of Operations with oversight of the case. See [IRM 1.2.17.4](#). The following explains references contained within this Policy Statement:

- a. Reference to a case closed on a basis of concessions made by both Appeals and the taxpayer, means a non-docketed case closed by a [Form 870-AD](#) or closing agreement.
- b. Reference to a case closed on a basis **not involving** concessions made by both Appeals and the taxpayer, means a non-docketed case closed by other than a [Form 870-AD](#) type of agreement. For example: A case closed by a [Form 870](#) or similar form, or closed by reason of failure of the taxpayer to file a timely petition with the United States Tax Court following issuance of a statutory notice of deficiency by Appeals, an excise or employment tax case closed without agreement as to the assessment, or a case under IRC section 4980H closed by a Form 14799 in Appeals.
- c. Reference to a serious administrative omission regarding non-mutual concession cases includes criticism of an issue by the Joint Committee.

Note: Appeals will not reopen a case (whether initiated by the taxpayer or the Service), if the case was closed with finality. See [IRM 8.7.7.12](#), *Audit Reconsideration Cases*.

- (3) Under Policy Statement 8-3, no approval is required to reopen previously closed cases in the following situations:
- To allow carrybacks provided by law which were not taken into account in a prior closing.
 - To assess an excessive portion of a tentative allowance.
 - To adjust matters previously reserved by the government or by the taxpayer in an agreement. See [IRM 8.6.4](#), *Reaching Settlement and Securing an Appeals Agreement Form*.
 - To allow the IRS to conduct a review required under IRC section 4980H(d)(3) for a previously-determined employer shared responsibility payment (ESRP).

Attachment to AP-08-0218-0002, *Reopening Closed IRC § 4980H Employer Shared Responsibility Payment (ESRP) Issues*

- To allow the IRS to commence an examination or audit under IRC section 7605(b) of an ESRP liability under IRC section 4980H outside of the Letter 226J process. See FAQs 55 and 56 on the [IRS's Questions and Answers page on the ESRP](#).

(4) [No changes from 10-01-2016 revision.]