



APPEALS

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

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MEMORANDUM FOR APPEALS EMPLOYEES

FROM: Steven M. Martin /s/ *Steven M. Martin*
Director, Case and Operations Support

SUBJECT: Taxpayer First Act (TFA) Access to Case Files

This memorandum provides interim guidance in accordance with the "Taxpayer First Act (TFA) Access to Case Files" provisions. Effective July 1, 2020, employees are required to provide certain "specified" taxpayers who have conferences scheduled on or after July 1, 2020, access to the nonprivileged portions of their case files regarding the disputed issues. Please ensure that this information is distributed to all affected employees within your organization.

Purpose: The purpose of this memorandum is to ensure employees are aware of the requirement to provide "specified" taxpayers with conferences scheduled on or after July 1, 2020, access to the nonprivileged portions of the case file per Internal Revenue Code (IRC) Section 7803(e)(7). This access is only for documents related to the disputed issues and does not include access to documents which the taxpayer has previously provided to the IRS. Appeals Technical Employees (ATE) are to provide taxpayers with access to documents no later than 10 days before the date of such conference. For an expedited conference, the ATE will ensure access no later than the date of such conference.

Background/Source(s) of Authority: The Taxpayer First Act was signed into law on July 1, 2019. The Act amended IRC Section 7803 and made several changes affecting Appeals. A significant change made by the Act gave Appeals one year to develop a process for providing taxpayers access to the administrative case file received from Compliance. This "access to case files" requirement applies to "specified" taxpayers as described in IRC Section 7803(e)(7)(C).

Effective Date/Effect on Other Documents: This guidance is effective on July 1, 2020, and will be incorporated into the affected IRMs within two years from the date of issuance.

Procedural Change: Prior to initial contact to schedule a conference, the ATE will determine if the taxpayer meets the definition of a "specified" taxpayer as defined in IRC Section 7803(e)(7)(C). If yes, the ATE will notify the taxpayer of the right to access the nonprivileged portion of the case file regarding the disputed issues for any conference to be held on or after July 1, 2020. If the taxpayer requests access, the ATE will ensure the requested documents are provided at least 10 days prior to the conference.

The taxpayer's right to access the nonprivileged portion of the case file will be communicated in initial contact letters, initial letters scheduling a conference or initial contact with taxpayers telephonically. The ATE will document whether the taxpayer meets the criteria of a "specified" taxpayer under IRC Section 7803(e)(7)(C). If the taxpayer meets the criteria, the ATE will document the Case Activity Record (CAR) with a new CARATS (Case Activity Record and Automated Timekeeping System) action code indicating that the taxpayer was notified of their right to access the case file. If the taxpayer requests access to the file, the ATE will use a new CARATS action code indicating that the taxpayer requested access to the file.

Additional guidance for Collection Appeals Program (CAP) cases are included at the end of the attachment.

Contact: An internal mailbox has been created for Appeals employees to submit questions pertaining only to the Taxpayer First Act provisions. Questions regarding the Taxpayer First Act may be submitted to: [*AP Taxpayer First Act](#). Appeals employees can also access TFA related documents on the Appeals homepage under the [Taxpayer First Act](#) tab.

Attachment: Access to Case File Actions

Distribution:

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IRM 8.6.1.2.1, Access to Case Files (New)

(1) Prior to contacting taxpayers or representatives to schedule initial conferences that are held after July 1, 2020, the ATE will determine if the taxpayer meets the definition of a “specified” taxpayer as defined in IRC 7803(e)(7)(C). If the ATE determines the taxpayer meets the definition of a “specified” taxpayer, the ATE will inform the taxpayer verbally or will select the paragraph in the appropriate initial contact letter to notify the taxpayer of the right to access the nonprivileged portion of the case file. This access is only for documents related to the disputed issues and does not include access to documents which the taxpayer previously provided to the IRS. If the taxpayer requests access, the ATE will ensure the requested documents are provided at least 10 days prior to the conference. For an expedited conference, the ATE will ensure access no later than the date of such conference.

Note: Nonprivileged Documents – Documents and/or records, whether hardcopy or electronic, which are not subject to any legal privilege which prevents its discovery and/or disclosure in a legal proceeding.

(2) IRM 8.6.1.2, New Receipts and Initial Case Actions, contains the requirements for sending initial contact letters identified in Exhibit 8.6.1-1, Pre-Selected Enclosures for Initial Contact Letters Based on Category and Case Type.

(3) Depending on the type of case, the ATE will determine the appropriate method to initially contact and inform the taxpayer via:

1. Initial contact letters,
2. Initial letters scheduling a conference, or
3. Initial contact with the taxpayer telephonically.

(4) Case File Actions:

Step	Description	Action
1	Determine whether taxpayer is a “specified” taxpayer	IRC 7803(e)(7)(C) defines a “specified” taxpayer as follows: Individuals: - In the case of any taxpayer who is a natural person, a taxpayer whose adjusted gross income does not exceed \$400,000 for the taxable year to which the dispute relates, and

		<p>Other Taxpayers:</p> <ul style="list-style-type: none"> - In the case of any other taxpayer, a taxpayer whose gross receipts do not exceed \$5 million for the taxable year for which the dispute relates. <p>NOTE: If there are multiple tax periods associated with the dispute, Appeals has decided that any one period meeting the criteria would make the taxpayer eligible for access to the case file. Adjusted gross income and gross receipts pertain to the taxpayer’s original filed return.</p> <p>Appeals has determined that certain types of cases are exempt from the case file access procedures, including certain Estate and Gift, Collection Due Process Timeliness Determinations, Freedom of Information Act, E-file cases, Return Preparer cases and Tax Exempt and Government Entities determination cases. Typically, in these cases, gross receipts and AGI data are not applicable or conferences are not held.</p> <p>For Substitute For Return (SFR) assessments, offer the taxpayer access to the case file. For transparency purposes, whenever in doubt, offer the taxpayer access to the case file.</p>
2	<p>If the taxpayer does not meet the criteria for a “specified” taxpayer under the code</p>	<p>The ATE will document the CAR by stating that the taxpayer does not meet the criteria set forth in IRC 7803(e)(7)(C) regarding “specified” taxpayers. The ATE will then work the case according to established procedures.</p>
3	<p>If the taxpayer meets the criteria for a “specified” taxpayer</p>	<p>The ATE will document the CAR by using the FA-TFA CARATS action code and will state that the taxpayer meets the criteria set forth in IRC 7803(e)(7)(C) regarding “specified” taxpayers.</p>

	under the code	
4	When contacting a “specified” taxpayer”	<p>The ATE must ensure that:</p> <ol style="list-style-type: none"> 1. Any initial correspondence sent to the taxpayer and or representative contains language offering access to the case file. 2. Any initial correspondence scheduling a conference must contain the selectable paragraph that offers access to the case file. 3. If initially contacting the taxpayer and or representative by phone, the ATE discusses and offers access to the case file. <p>In any of these three instances, the CAR must be updated, documenting the appropriate action taken.</p>
5	CAUTION	<p>A letter scheduling a conference must allow enough time for:</p> <ul style="list-style-type: none"> (i) the taxpayer or representative to receive the letter; (ii) the taxpayer or representative to respond to the ATE to request the file (generally 14 days); (iii) the Appeals office to process the taxpayer’s request for the file (e.g., copying, redacting, etc.); and (iv) the taxpayer or representative to receive the case file at least 10 days prior to a scheduled conference (unless the taxpayer has elected to receive the file no later than the date of the conference). <p>For planning purposes, ATEs should allow at least 5 business days for mailing actions.</p> <p>NOTE: A taxpayer or representative may request access to the case file at any point up until a scheduled conference. In such occurrences, the ATE will reschedule the conference and ensure that the taxpayer has at least 10 calendar days to review the case file contents.</p>

6	Taxpayer does not request file	If the taxpayer or representative does not request access to the case file, proceed according to established procedures.
7	Taxpayer requests access to case file	<p>If the taxpayer or representative requests access to the case file, the ATE will enter the CARATS action code FA-REQ in ACDS.</p> <p>The ATE will discuss with the taxpayer or representative the most efficient way to provide access to the case file.</p> <p><u>Available Formats for case file:</u></p> <p>EEFax- preferred if case file is under 100 pages.</p> <p>Flash Drive – preferred if case file is more than 100 pages and taxpayer has access to a computer.</p> <p>Hard Copy – used if taxpayer or representative does not have access to a computer or an EEFax or prefers a hard copy.</p> <p>NOTE: The ATE will make the determination on the most efficient manner to provide access to the file depending upon the type of case and the number of documents. If the case file is already in electronic form (such as a Collection Appeals Program (CAP) case) or if there are a minimal number of documents, the ATE may decide to provide access and redact the file themselves or to submit a Shared Administrative Support request.</p>
8	Shared Administrative Support Service Request	<p>The ATE will submit a Shared Administrative Support Service Request.</p> <p>The service request will include information outlined in the request guide.</p>

9	Create Transmittal Letters on ACDS	<p>ATE will create, sign and upload into ACDS the file transmission Letter 6271.</p> <p>If the case file is being sent on a USB (flash drive), create the password transmittal Letter 6270, sign and upload to ACDS.</p> <p>The redactors will use these letters to send the case file to the party requesting access (taxpayer or representative).</p>
10	Service Request is Assigned	<p>Once service request is assigned, the ATE will place the case file in an agreed drop location, if the ATE and case processor are co-located.</p> <p>If not co-located, the ATE will ship the file to the address provided by the TFA Case Routing Tool on the Shared Administrative Support webpage.</p> <p>The case processor will scan/copy the file and return the file to the ATE. The case processor will upload the scanned file to ACDS. The service request will be reassigned to the Lead Redactor for assignment.</p>
11	Service Request is closed	<p>Once the copy of the case file has been redacted and sent to the taxpayer or representative, the ATE will receive an email notice that the service request has been closed.</p> <p>A copy of the case file will be uploaded to ACDS by the redactor containing the proposed redactions. Dated transmittal letters will also be uploaded to ACDS.</p> <p>Once the case file has been sent to the taxpayer or representative, the ATE will ensure that the taxpayer or representative receives the case file at least ten calendar days before any scheduled conference. The case will then be worked according to established procedures.</p>

IRM 8.24.1.3.1, Taxpayer Access to the Administrative File (CAP Cases)**(New)**

- (1) In accordance with the Taxpayer First Act (TFA) and IRC 7803(e)(7), ATEs will ensure that qualifying taxpayers have access to the nonprivileged portion of the case file on record regarding the disputed issues. ATEs will note the communications with each taxpayer regarding this issue in the case history.
- (2) Taxpayers who fall within the established parameters (adjusted gross income of \$400,000 or less for any taxable year in question for an individual and gross receipts that do not exceed \$5 million for any taxable year in question for a business entity) are entitled to request access to the case file. If the taxpayer requests access to the case file, ensure that they are provided access no later than 10 days before the date of the scheduled conference (unless the taxpayer has elected to receive the file no later than the date of the conference).
- (3) Since all CAP cases are received electronically, the privileged portion of the case file should be redacted and the non-privileged portion of the case file should be made immediately available to the taxpayer so that a conference can be held as swiftly as possible (at least 10 calendar days after the taxpayer receives access). If the privileged portion of the file can be swiftly redacted, the ATE should perform the redaction and immediately make arrangements to convey the file to the taxpayer. If the file needs extensive redaction, the ATE will submit a Shared Administrative Support [Service Request](#) for CAP cases. The service request will be reassigned to the lead redactor who will then expedite redaction services. No conference should be held until access to the file has been offered and provided to qualified taxpayers that request access.
- (4) If the taxpayer elects to view the case file and requests a conference sooner than 10 days from access, the ATE may hold the conference and record the taxpayer's request in the case history.
- (5) Our goal to resolve CAPs within 5 business days from ATE receipt, as noted in IRM 8.24.1.3(4), will be extended to 5 business days from the end of the 10-day period if the taxpayer elects to access the file.
- (6) Below is an example of a communication with a taxpayer concerning this issue.

Example: In accordance with the Internal Revenue Code, you have the right to access the nonprivileged portion of your case file. If you want your case file, please advise me and we will schedule our conference no sooner than 10 days from your access to the file.