



INDEPENDENT OFFICE  
OF APPEALS

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

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MEMORANDUM FOR ALL IRS INDEPENDENT OFFICE OF APPEALS  
EMPLOYEES

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

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

This memorandum supersedes interim guidance AP-08-0620-0008, Taxpayer First Act (TFA) Access to Case Files. This memorandum:

- **Explains case file actions related to TFA Case File Access provisions.**
- **Explains how to determine if a taxpayer is entitled to case file access under IRC 7803(e)(7).**
- **Assigns primary responsibility for scanning/copying and redacting case files to the Shared Team of Administrative and Redaction Support (STARS).**
- **Requires Appeals Technical Employees (ATEs) to submit a STARS service request for scanning/copying and redacting files, when taxpayers request access to their case file or documents, except under limited, impractical circumstances.**

Please ensure that this information is distributed to all affected employees within your organization.

**Purpose:** The purpose of this memorandum is to inform employees of the requirement to provide “specified taxpayers” access to the nonprivileged portions of their case file per Internal Revenue Code (IRC) Section 7803(e)(7) prior to their scheduled conference. This provision requires the IRS Independent Office of Appeals (Appeals) to provide access to only documents related to the disputed issues, not to documents which the taxpayer has previously provided to the IRS. ATEs will provide “specified taxpayers” with access to these documents no later than 10 days before the date of such conference. When a taxpayer or representative

elects to expedite the conference, the ATE will provide access to these documents no later than the date of such conference.

**Background/Source(s) of Authority:** The TFA was signed into law on July 1, 2019, and amended IRC 7803, making several changes affecting Appeals. The TFA 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 7803(e)(7)(C) who are offered appeals conferences scheduled after July 1, 2020.

**Procedural Change:** Prior to scheduling a conference, the ATE will determine if the taxpayer meets the definition of a "specified taxpayer" as defined in IRC 7803(e)(7)(C). If met, the ATE will notify the taxpayer of the right to access the nonprivileged portion of the case file regarding the disputed issues. If the taxpayer requests access, the ATE will provide access to the documents at least 10 days prior to the conference. When a taxpayer or representative elects to expedite the conference, the ATE will provide access to the documents no later than the date of such conference.

The ATE will communicate the taxpayer's right to access the nonprivileged portion of the case file in initial contact letters, initial letters scheduling a conference or initial contact with taxpayers by telephone. If the taxpayer meets the criteria of a "specified taxpayer" under IRC 7803(e)(7)(C), the ATE will document the Case Activity Record (CAR) with CARATS (Case Activity Record and Automated Timekeeping System) action code FA-TFA indicating that the taxpayer is a specified taxpayer. The ATE will also document the method used to offer case file access in the CAR. If the taxpayer requests access to the file, the ATE will use CARATS action code FA-REQ indicating that the taxpayer requested access to the file.

Specific guidance for Collection Appeals Program (CAP) cases is attached.

**Effect on Other Documents:** This guidance supersedes AP-08-0620-0008, Taxpayer First Act (TFA) Access to Case Files and will be incorporated into IRMs 8.6.1, Conference and Issue Resolution and 8.24.1, Collection Appeals Program (CAP) within two years from the date of this memorandum.

**Effective Date:** This guidance is effective as of the date of this memorandum.

**Contact:** Appeals employees may submit questions pertaining only to the Taxpayer First Act provisions to: [\\*AP Taxpayer First Act](#). Appeals employees can also access TFA related documents on the Appeals homepage by selecting the [Taxpayer First Act](#) link under the Guidance and Procedures tab.

Attachment(s):

- 1) New IRM 8.6.1.2.1, Access to Case Files
- 2) New IRM 8.24.1.3.1, Taxpayer Access to the Administrative File (CAP Cases)

cc: [www.irs.gov](http://www.irs.gov)

**8.6.1.2.1 Access to Case Files (New)**

- (1) [IRC 7803\(e\)\(7\)](#) requires Appeals to ensure that “specified taxpayers” with scheduled Appeals conferences are provided access to the nonprivileged portions of their case file regarding the disputed issues (other than documents provided by the taxpayer to the IRS) at least 10 days prior to their conference. When the taxpayer or representative elects to expedite the conference, the ATE will ensure access no later than the date of such conference.
- (2) Prior to contacting taxpayers or representatives to schedule initial conferences, the ATE will use the table below to determine if the taxpayer meets the definition of a “specified taxpayer” per [IRC 7803\(e\)\(7\)\(C\)](#).

If the taxpayer is...	And ...	Then ...
A natural person	AGI per the taxpayer’s original filed return for any one of the taxable years in dispute is \$400,000 or less.	The taxpayer is a “specified taxpayer.”
Not a natural person	Gross receipts per the taxpayer’s original filed return for any one of the taxable years in dispute is \$5,000,000 or less.	The taxpayer is a “specified taxpayer.”
Any type of entity	There is a substitute for return (SFR) at issue for any taxable year in dispute.	The ATE will conclude the taxpayer is a “specified taxpayer.”
A natural person	There is clearly no AGI for any taxable year in dispute or the dispute is not related to a specific taxable year(s). Examples could include, but are not limited to, Freedom of Information Act (FOIA) disputes, e-file authorization disputes, and certain actions against return preparers.	The taxpayer is not a “specified taxpayer.”
Not a natural person	There are clearly no gross receipts for any taxable year in dispute or the dispute is not related to a specific taxable year(s). Examples could include, but are not limited to, certain Estate tax or Tax Exempt and Government Entities TE/GE) determination cases.	The taxpayer is not a “specified taxpayer.”
Any type of entity	Conferences are not typically held for the type of case at issue. Example: Collection	The ATE will not determine whether the taxpayer is a “specified

If the taxpayer is...	And ...	Then ...
	Due Process (CDP) timeliness determinations.	taxpayer” or offer case file access unless a conference is actually scheduled.

**Note:** In penalty cases, the ATE will determine if the penalty relates to a specific tax period. If so, the ATE will use the AGI or gross receipts from the related tax period in determining whether the taxpayer is a “specified taxpayer.”

**Caution:** Whenever it is unclear whether the taxpayer meets the definition of a “specified taxpayer,” the ATE will treat the taxpayer as a “specified taxpayer” and offer case file access.

(3) If the taxpayer is a specified taxpayer, the ATE will

- offer case file access as discussed in IRM 8.6.1.2.1.1, Offering Case File Access.
- **document the CAR by using the FA-TFA CARATS action code and state in the CAR entry that the taxpayer meets the definition of a “specified taxpayer” per IRC 7803(e)(7)(C).**

(4) If the taxpayer is not a “specified taxpayer,” the ATE will document the CAR by stating that the taxpayer **does not** meet the definition of a “specified taxpayer” per IRC 7803(e)(7)(C). The ATE will not offer case file access and will continue to work the case according to established procedures.

#### **8.6.1.2.1.1 Offering Case File Access**

(1) If the taxpayer is 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 their right to case file access. Refer to [IRM 8.6.1.2](#), New Receipts and Initial Case Actions for the requirements for sending initial contact letters and enclosures.

(2) Depending on the type of case, the ATE will determine the appropriate method to initially contact and inform the taxpayer or representative of their right to case file access. When making initial contact with a “specified taxpayer” or the representative, the ATE will ensure:

- Any initial contact letter sent to the taxpayer and/or representative contains the selectable paragraph that offers access to the case file.
- Any other initial correspondence scheduling a conference contains language offering access to the case file.

- Any initial contact with the taxpayer or representative by phone includes a discussion of the right to case file access and offers access to the case file.

**Reminder:** The ATE must document the CAR with any actions taken to offer case file access.

- (3) A taxpayer or their representative may request access to the case file at any point up until the scheduled conference. If the taxpayer requests access, the ATE will ensure the requested records are provided at least 10 days prior to the initial conference. When the taxpayer or representative elects to expedite the conference, the ATE will ensure that the case file is received no later than the date of the initial conference. The ATE will reschedule the conference if necessary to meet these requirements.
- (4) When scheduling initial conferences with “specified taxpayers,” ATEs should allow enough time for:
- the taxpayer or representative to receive the letter,
  - the taxpayer or representative to respond to the ATE to request the file (generally 14 days),
  - the Appeals office to process the taxpayer’s request for the file (for example, copying, redacting, etc.), and
  - the taxpayer or representative to receive the case file at least 10 days prior to a scheduled conference (the day of the conference if the taxpayer or representative requested an expedited conference).

**Note:** For planning purposes, allow at least five business days for mailing actions.

- (5) If the taxpayer or representative requests access to the case file prior to the conference, the ATE will **enter the CARATS action code FA-REQ in ACDS** and follow the instructions in IRM 8.6.1.2.1.2, Providing Case File Access. If the taxpayer or representative does not request access to the case file prior to the conference, the ATE will document the CAR and proceed according to established procedures.
- (6) If the taxpayer or representative requests case file access after the conference, do not use CARATS code FA-REQ. This is not considered a request for case file access under the provisions of TFA. In these instances, follow instruction from PGLD to “[Respond Directly](#)” to the taxpayer’s request.

#### **8.6.1.2.1.2 Providing Case File Access**

- (1) When a “specified taxpayer” or representative requests access to the case file, the ATE will discuss with them the most efficient way to provide the file.

(2) Case file access includes only nonprivileged documents and/or records, whether hardcopy or electronic, related to the disputed issues.

(3) Case file access does not include:

- Privileged documents: Documents and/or records subject to any legal privilege preventing its discovery and/or disclosure in a legal proceeding.
- Taxpayer provided documents: Any documents submitted to the IRS by the taxpayer.

**Note:** In collection cases, case file histories from Collection databases, such as ICS case histories, will only be included if Collection forwards it to Appeals with the case.

(4) Available formats for case file:

- **EEFax**- preferred if case file 150 pages or less. 150 pages is the limit for faxes.
- **Flash Drive (USB)** – preferred if case file is more than 150 pages and taxpayer has access to a computer.
- **Hard Copy** – used as a last resort if the taxpayer or representative does not have access to a computer or an EEFax or prefers a hard copy.
- **PDF file** – used for transmittal via Taxpayer Digital Communications Secure Messaging.

(5) The ATE will submit a Shared Team of Administrative and Redaction Support (STARS) [service request](#) including the information outlined in the [request guide](#).

**Note:** In general, the ATE must submit a STARS request for scanning/copying and redacting of the file. However, the ATE may decide to redact and provide access to the file in circumstances where the use of STARS is impractical, including, but not limited to the following:

1. The taxpayer appears for an in-person conference and asks the ATE for a copy of a particular document from the file.
2. The ATE receives a docketed case and it is already on a trial calendar.

ATEs redacting case files may refer to PGLD's [Respond Directly](#) webpage for information relating to disclosure and release of case file information.

#### **8.6.1.2.1.3 Preparing and Completing the STARS Request**

(1) Creating the letters: The ATE will create a signed but undated file transmission Letter 6271 and upload it into ACDS. If the case file will be sent on a flash drive (USB), the ATE will also create the password and the signed but undated transmittal Letter 6270 and upload it to ACDS. The ATE should address these letters to the individual (taxpayer or representative) who requested access. The redactors will use these letters to send the case file to the requesting party.

(2) Transmitting the file to STARS: The ATE will prepare and submit the STARS [service request](#) according to the [request guide](#) and immediately send the file to the proper location and/or upload any electronic files to ACDS. If the ATE and case processor are co-located, ATE will place the case file in an agreed drop location if. If not co-located, the ATE will ship the file to the address provided by the [TFA Case Routing Tool](#) on the STARS webpage. 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.

**Note:** Generally, the ATE will not remove information provided by the taxpayer before sending the file to the case processor. However, if there is a large volume of information which is readily identified as provided by the taxpayer and easy to separate, the ATE may remove this information. Example: The taxpayer provided bank statements and cancelled checks that are contained in a separate file folder. The ATE may remove this information prior to providing the case to the case processor.

(3) Redaction request complete: Once STARS redacts and sends the copy of the case file to the taxpayer or representative, the ATE will receive a systemic email notification that the service request has been closed. The STARS employee or ATE who redacted the file will upload a copy of the following to ACDS:

- a copy of the case file as prepared for redaction, titled “Marked for Redaction”
- a copy of the dated transmittal letters

(4) Confirmation of case file access: Once STARS sends the case file to the taxpayer or representative, the ATE will ensure that the taxpayer or representative received the case file and has at least 10 calendar days before any scheduled conference to review the file. If the taxpayer or representative informs the ATE that they did not receive the case file documents, the ATE will either email \*AP Admin Support to request that STARS resend the redacted file, or pull the “Marked for Redaction” copy from ACDS, apply the redactions and resend to the taxpayer or representative.

(5) The ATE will then work the case according to established procedures.

**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 “specified taxpayers” have access to the non-privileged portion of the case file on record regarding the disputed issues (other than documents provided by the taxpayer to the IRS). ATEs will note the communications with each taxpayer regarding this issue in the case history.
- (2) “Specified taxpayers,” as defined in IRM 8.6.1.2.1(2), are entitled to request access to the case file. If the “specified 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 “specified taxpayer” has elected to receive the file no later than the date of the conference).

**Note:** If the taxpayer meets the definition of a “specified taxpayer,” but the ATE is unable to make phone contact with the taxpayer or authorized representative to schedule a conference and provide the taxpayer with an opportunity to gain access to the case file, note this information in the case history. This should be uncommon, but it may occur since there is no acknowledgement letter associated with CAP. See IRC 7803(e)(7)(A).

- (3) Because 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 “specified taxpayer” so that a conference can be held as swiftly as possible (at least 10 calendar days after the taxpayer receives access). In general, the ATE must submit a Shared Team of Administrative and Redaction Support (STARS) request for scanning/copying and redacting of the file. However, in circumstances in which the use of STARS is impractical (for example, the taxpayer appears for an in-person conference and asks the ATE for a copy of a particular document from the file), ATEs may decide to provide access and redact the file themselves. STARS requests will be reassigned to the lead redactor who will expedite redaction services. No conference should be held until access to the file has been offered and provided to “specified taxpayers” that request access.
- (4) If the “specified 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 Activity Record (CAR).

- (5) Our goal to resolve CAP cases within five business days from ATE receipt, as noted in IRM 8.24.1.3(4), will be extended to five business days from the end of the 10-day period if the "specified taxpayer" elects to access the file.
- (6) Below is an example of a communication with a "specified 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. The right to access applies to documents related to the disputed issues and does not include access to documents you previously provided to the IRS. If you want access to the nonprivileged portion of your case file, please advise me and we will schedule our conference no sooner than 10 days from your access to the file.