



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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MEMORANDUM FOR ALL LB&I AND SB/SE EMPLOYEES ASSIGNED TO
SYNDICATED CONSERVATION EASEMENT (SCE)
COMPLIANCE INITIATIVE PROJECT (CIP)
EXAMINATIONS

FROM: Douglas W. O'Donnell /s/ *Douglas W. O'Donnell*
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SUBJECT: Deviation of Established Time Frames Described in Interim
Guidance Memorandum [LB&I-04-1019-010](#) as it Pertains to
SCE CIP/Campaign Cases Audited Under the Centralized
Partnership Audit Regime of the Bipartisan Budget Act of 2015
(BBA).

The purpose of this memorandum is to (1) provide an overview with respect to IRC Section 6235, (2) provide an overview of issuing a Notice of Proposed Partnership Adjustments within time frames, (3) share Technical Services (TS) Legacy SCE workload and staffing concerns, and (4) entertain SB/SE Field Examination's request to deviate from the Interim Guidance Memorandum [LB&I-04-1019-010](#) when closing SCE BBA cases to TS with imminent adjustment statutes.

Background: SB/SE Field Examination, in relation to opening 2018 partnership returns for audit under the SCE CIP/campaign, recently asked "why does Technical Services need 1 year on the Section 6235 statute to close a BBA case?" This question leads to Field Examination's request for a deviation.

Overview of IRC 6235: IRC 6235 applies to partnerships subject to the BBA. The statute of limitations under IRC 6235 prescribes the time allowed to make partnership adjustments instead of time to make assessments. The general rule is that no partnership adjustment for any partnership taxable year may be made after the later of three specified dates. The **6235(a)(1) date**, the 6235(a)(2) date, or the 6235(a)(3) date. The Notice of Proposed Partnership Adjustment (NOPPA) must be issued prior to the expiration of the **6235(a)(1) date**. Refer to attachment 1 for additional information.

Time to issue the NOPPA: A NOPPA must be mailed (certified) on or before the expiration of the 6235(a)(1) date. If a NOPPA is not issued prior to the expiration of the section 6235(a)(1) date, the Service is precluded from issuing a Notice of Final Partnership Adjustment (FPA) under section 6235(a)(3). In simple terms, the adjustments, penalties, and interest are barred.

TS must have enough time to issue the NOPPA before the 6235(a)(1) date expires. There are various actions that TS must take on a BBA case before a NOPPA can be issued.

At a minimum:

- Review the case to ensure appropriate BBA and SCE procedures were applied;
- Work with the group and/or Tax Comp Specialists to address any questionable items;
- Solicit Counsel review/approval of the SCE adjustments and penalties reflected in the NOPPA. (This can take 45-60 days or longer).
- Request updated interest computations from Centralized Case Processing (CCP) for inclusion in the NOPPA package.

Note: In the event there is a problem that would cause the IRS to withdraw the NOPPA, a new one cannot be issued once the 6235(a)(1) date has expired.

TS SCE workload and staffing: There are several hundred SCE CIP/campaign cases currently under examination or projected to be opened in Field Examination over the next few months. All SCE cases will need to be closed to one of the six (6) Technical Services Passthrough Coordinators (TSPC) in TS for finalization and certified mailing of a Notice of Final Partnership Administrative Adjustment (FPAA) under TEFRA, and finalization and certified mailing of a Notice of Proposed Partnership Adjustment (NOPPA) under BBA.

Field Examination question / deviation: As stated above, a NOPPA must be mailed on or before the expiration of the 6235(a)(1) date. The earliest 6235(a)(1) expiration date on a timely filed 2018 partnership return is 03/15/2022. Interim Guidance Memorandum [LB&I-04-1019-010](#) states for cases with adjustments (no appeal) there must be 12 months (1 year) remaining on the statute at the time the case is received in TS. Applying this guidance to the SCE 2018 returns Field Examination would need to ensure all SCE cases are in TS with 1 year or more remaining on the 6235(a)(1) expiration date.

Fully developing audit issues and penalties and transferring a timely filed 2018 SCE BBA case with the earliest 6235(a)(1) expiration date to TS on or before 03/15/2021 means Field Examination would have 8 months or less to conduct the audit. The 8-month period is predicated on Field Examination mailing Letter 2205-D Notification of selection of Examination in July 2020 and mailing (certified) a Notice of Administrative Proceeding by August 15, 2020. Field Examination has expressed 8 months is an inadequate amount of time to conduct an SCE / BBA audit.

TS acknowledges the situation Field Examination is facing and has put forth a

proposal as described in attachment 2. The proposal is strictly with respect to SCE examinations subject to the Centralized Partnership Audit Regime (BBA).

Effect on Other Documents: None. This deviation should not be incorporated into IRM 4.31.2. IRM 4.31.9, the IG Memo [LB&I-04-1019-010](#), other BBA documents or other campaigns.

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cc: IRS.gov
Attachments (2)

Attachment 1

Interim Guidance Memorandum [LB&I-040-1019-010](#), page 47, states Field Examination is responsible for protecting the 6235(a)(1) date, which is the later of:

- 3 years after the date the return was due;
- 3 years after the date the return was filed; or
- 3 years after an Administrative Adjustment Request (AAR) is filed.

In some instances, there may be a BBA (campaign and non-campaign) case with an imminent statute. An imminent statute, as defined by Interim Guidance Memorandum [LB&I-04-1019-010](#), is a BBA return with adjustments (no Appeals) having (12) months remaining on the statute of limitations on making adjustments under section 6235(a)(1). In these instances, the assigned Revenue Agent should follow the procedures below.

With respect to a BBA Partnership return, a statute extension [Form 872-M](#) along with cover [Letter 907-M](#) should be solicited if the 6235(a)(1) date will expire within 14 months. If the taxpayer does not timely execute a statute extension, the Revenue Agent will need to finalize the adjustments & penalties write-ups, complete the Imputed Underpayment Workbook, work with a Tax Computation Specialist (TCS) to prepare a summary report, work with an Interest Computation Specialist (CCP) to obtain an interest calculation and issue the Summary Report package to the Partnership Representative (PR).

The Summary Report package per the Interim Guidance Memorandum page 62 will include:

- [Letter 5895, Preliminary Partnership Examination Changes and Imputed underpayment,](#)
- [Form 14791, Preliminary Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts, and](#)
- Forms 886-A, Explanation of Adjustments for both substantive issues and imputed underpayment amount.

During the 30-day period following the issuance of the summary report, if the Partnership Representative (PR) does not respond or informs the Revenue Agent they DO NOT wish to extend the section 6235(a)(1) date, the Revenue Agent will be required to prepare the Notice of Proposed Partnership Adjustment (NOPPA) package and close the case to TS for issuance of the NOPPA prior to the imminent statute of that particular case.

The NOPPA package per Interim Guidance Memorandum page 64 will include:

- [Form 14792, Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts,](#)
- [Letter 5892, Notice of Proposed Partnership Adjustments- Partnership,](#)
- [Letter 5892-A, Notice of Partnership Adjustments-Partnership Representative,](#) and
- Forms 886-A, Explanation of Adjustments for both substantive issues and imputed underpayment amount.

The Revenue Agent will prepare Letters 5892 and 5892-A without the following: The IRS person point of contact (name, ID, contact info); Date of issuance; 270-day submission period expiration date; and Response due date. The Revenue Agent must not issue the NOPPA package. Technical Services will issue the NOPPA packages to the partnership and PR. Prior to closure, the field manager must review and approve the NOPPA package. This managerial review and approval should be documented in the case file activity record.

Attachment 2

Normal procedures with respect to a timely filed 2018 SCE Partnership return subject to the BBA:

- 03/15/2022 is the earliest 6235(a)(1) expiration date. Therefore,
- 03/15/2021 is the date Field Examination in accordance with Interim Guidance Memorandum [LB&I-04-1019-010](#) would need to close the case to TS.

Proposed deviation for closing 2018 SCE/BBA imminent statute cases to TS. For explanation purposes, time frames are based on a timely filed 2018 partnership return with the earliest section 6235(a)(1) expiration date of 03/15/2022.

The SCE BBA case must have eight (8) months or more remaining on the 6235(a)(1) date when it is received in Technical Services. The eight (8) month mark applies if Counsel has NOT reviewed and concurred with the proposed adjustments, Forms 886-A substantive issues and penalties in accordance with SCE procedures and Counsel has NOT approved the NOPPA.

- The case must be in TS status 27, assigned to a Technical Services Passthrough Coordinator (TSPC), formally known as TEFRA Coordinators, by 07/15/2021 (eight (8) months remaining on the 6235(a)(1) date.) The case cannot be in the mail/in-transit status 21.
- The TSPC will review the case and consult with Counsel for finalization of the Forms 886- A (the adjustments and penalties) in accordance with SCE procedures and approval of the NOPPA package in accordance with BBA procedures.

NOTE: If concerns are raised by either TS or Counsel, Field Examination will be contacted to assist. If the amount of time spent in resolving all discrepancies results in the 6235(a)(1) date falling below 6 months (09/15/2021) the case may need to be returned to Field Examination status.

- Once the NOPPA is mailed (certified) by TS, the TSPC will update ERCS/AIMS turning on the section 6225(c)(7) date; the partnership 270-day period to request modification and the Services section 6235(a)(3) date; and the last date to mail an FPA if the partnership does not invoke modification. Note: The section 6235(a)(3) date is 330 days from the date of the NOPPA.

If the SCE BBA case has six (6) months or more remaining on the 6235(a)(1) date AND Counsel has reviewed and concurred with the proposed

adjustments, Forms 886-A substantive issues and penalties in accordance with SCE procedures AND Counsel has approved the NOPPA package; the field group manager must notify the TS-Legacy group manager to discuss the logistics of case movement and assignment of a TSPC.

- TS – Legacy group manager will provide instructions via email to the field group manager which include assignment of a TSPC after which the SCE BBA case can be closed to TS – Legacy.
- The TSPC will review the case, review Counsel concurrence memorandum, contact Counsel for a 2nd review of the NOPPA package or approval without a 2nd review to mail the NOPPA package in accordance with BBA procedures.

NOTE: If concerns are raised by either TS or Counsel, Field Examination will be contacted to assist. If the time spent resolving all discrepancies result in the 6235(a)(1) date falling below 4 months (11/15/2021), the case will be returned to Field Examination and case controls backed down to a Field Examination status until such time the NOPPA package can be mailed.

- Once the NOPPA is mailed (certified) by TS, the TSPC will update ERCS/AIMS turning on the section 6225(c)(7) date; the partnership 270- day period to request modification and the Services section 6235(a)(3) date; and the last date to mail an FPA if the partnership does not invoke modification.

If the SCE BBA case has less than six (6) months remaining on the 6235(a)(1) date AND Counsel has reviewed and concurred with the proposed adjustments, Forms 886-A substantive issues and penalties in accordance with SCE procedures AND Counsel has approved the NOPPA package in accordance with BBA procedures; **the case will remain in the assigned Revenue Agent's group**. The assigned Revenue Agent will work closely with TS to finalize the NOPPA package.

- TS – Legacy group manager will provide instructions via email to the field group manager including assignment of a TSPC.
- The TSPC will review the case, review Counsel concurrence memorandum, contact Counsel for a 2nd review of the NOPPA package or approval without a 2nd review to mail the NOPPA package in accordance with BBA procedures. If concerns are raised by either TS or Counsel, Field Examination will be contacted to resolve all discrepancies.
- Once the NOPPA is mailed (certified) TS, the TSPC will update ERCS/AIMS turning on the section 6225(c)(7) date; the partnership

270-day period to request modification and the Services section 6235(a)(3) date; the last date to mail an FPA if the partnership does not invoke modification, and then provide guidance to close the case to TS for suspense.

If the SCE BBA case has less than six (6) months remaining on the 6235(a)(1) date AND Counsel has NOT reviewed and concurred with the proposed adjustments, Forms 886-A substantive issues and penalties in accordance with SCE procedures and has NOT approved the draft NOPPA package in accordance with BBA procedures **the case will remain in the assigned Revenue Agent's group**. The assigned Revenue Agent will work closely with TS to finalize the NOPPA package.

- Field Examination group manager will contact the TS – Legacy group manager via email. The TS – Legacy group manager will provide instructions via email to the field group manager including assignment of a TSPC.
- The TSPC will review the case and consult with Counsel for finalization of the Forms 886-A (the adjustments and penalties) in accordance with SCE procedures and approval of the NOPPA package in accordance with BBA procedures. If concerns are raised by either TS or Counsel, Field Examination will be contacted to resolve all concerns.
- Once the NOPPA is mailed (certified) by TS, the TSPC will update ERCS/AIMS turning on the section 6225(c)(7) date; the partnership 270-day period to request modification and the Services section 6235(a)(3) date; the last date to mail an FPA if the partnership does not invoke modification, and then provide guidance to close the case to TS for suspense.

Managerial involvement and engagement are critical. Attempts to solicit statute extensions and managerial discussions regarding the imminent statute must be clearly documented in the case file. Additionally, except for this deviation as it pertains to closing SCE BBA cases with less than 1 year on the section 6235(a)(1) date, the assigned LB&I or SB/SE Revenue Agent will follow all procedures outline in Interim Guidance Memorandum [LB&I-04-1019-010](#) including but not limited to procedures in preparing Forms 886-As, preparing Summary Report Packages and preparing NOPPA Packages.

For questions, issues or concerns LB&I and SB/SE Revenue Agents should contact their assigned Technical Services TEFRA/Pass-Through Coordinator. Managers should contact Technical Services - Legacy Territory Manager Sheila Korth by email: shiela.b.korth@irs.gov or by phone at (585) 262-1914.