



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 27, 2020

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Affected IRM: 4.31.2

MEMORANDUM FOR ALL SB/SE and LB&I EMPLOYEES assigned to the Syndicated Conservation Easement (SCE) Examinations

FROM: Eric Hylton /s/ *Eric Hylton*
Commissioner, Small Business/Self-Employed Division

Douglas W. O'Donnell /s/ *Douglas W. O'Donnell*
Commissioner, Large Business and International Division

SUBJECT: Interim Guidance Memorandum for Syndicated Conservation Easement Examinations - IRM Deviation to Procedures in IRM 4.31.2 for TEFRA imminent statute of limitation cases

The purpose of this memorandum is to notify SB/SE and LB&I Revenue Agents (RA) conducting syndicated conservation easement examinations that a deviation from the Internal Revenue Manual (IRM), LB&I Examination Process (LEP), and other administrative procedures is required when closing cases to Technical Services (TS) - Legacy due to TEFRA imminent statute of limitation.

Background/Source(s) of Authority: On December 23, 2016, the IRS issued Notice 2017-10 (Listing Notice), announcing that certain syndicated conservation easement transactions are listed transactions for purposes of reporting and enhanced penalties. Both SB/SE and LB&I organized a special team of revenue agents assigned to handle these examinations of multi-tiered TEFRA pass-through entities. TEFRA policy was established in response to the partnership provisions of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Closing conference guidance is outlined in IRM 4.31.2.3.10. Summary Report guidance is outlined in IRM 4.31.2.3.9.4. Imminent Statute procedures is outlined in IRM 4.31.2.3.14.1.

Procedural Change: The updated procedures are found on Attachment

Effect on Other Documents: This guidance will not be incorporated into IRM 4.31.2.

Contact: Sheila Korth at (585) 262-1914; shiela.b.korth@irs.gov

cc: IRS.gov
Attachments (2)

Attachment 1 - IG SBSE-04-0320-0016

In some instances, there may be a SCE TEFRA case with an imminent statute of limitations. An imminent statute, as defined by the IRM, is a TEFRA return having less than 240 days or eight (8) months remaining on the statute of limitations. In these instances, the assigned revenue agent should follow the procedures below.

In a SCE examination where there is a TEFRA case with an imminent statute of limitation and the taxpayer has not timely executed a statute extension, the revenue agent will be required to issue a Summary Report to the Tax Matters Partner (TMP) prior to the issuance of the Notice of Final Partnership Administrative Adjustment (FPAA). The Summary Report package, per [IRM 4.31.2, Pass-Through Entity Handbook - TEFRA Examinations - Field Office Procedures](#), Section 4.31.2.3.9.4, will include:

- a. Form 4605-A, *Examination Changes - Partnerships, Fiduciaries, S Corporations, and interest Charge Domestic International Sales Corporations*
- b. Form 886-A, *Explanation of Items*, or Form 5701, *Notice of Proposed Adjustment*, for all substantive issues and penalties

When the taxpayer does not consent to extending the IRC 6229(a) statute of limitations, the revenue agent will not be required to offer and hold a closing conference with the taxpayer or representative prior to the issuance of the Notice of Final Partnership Administrative Adjustment (FPAA).

Until an approved form letter to accompany the Summary Report is developed, the assigned manager will take the following actions:

1. Complete the attached Manager Case Closing Checksheet for SCE Examinations and include in the case file.
2. Group Manager will contact the TMP/POA once the summary report is prepared, explain the actions the IRS is planning to take, and solicit a statute extension.
3. If the TMP/POA does not agree to extend the statute, the summary report is issued without Letter 1807.

Deviation procedures for closing SCE imminent statute cases to Technical Services (TS) – Legacy include:

- If a SCE TEFRA case has less than eight (8) months remaining on the statute of limitations at the time the summary report is issued AND Counsel has NOT reviewed and concurred with the proposed adjustments, Form 886-A narrative and penalties; the TEFRA case will remain in the assigned revenue agent's group. The assigned revenue agent will work closely with the TS – Legacy assigned TEFRA Coordinator to review; consult with Counsel and prepare the FPAA. Once the FPAA is issued by TS, the TS TEFRA Coordinator will notify the assigned revenue agent and group manager, provide the updated statute date, and give approval to close the case to TS – Legacy for suspense.
- If a SCE TEFRA case has a more than six (6) months remaining on the statute of limitations at the time the summary report is issued AND Counsel has reviewed and concurred with the proposed adjustments, Form 886-A narrative and penalties; the field group manager must notify TS – Legacy group manager to discuss the logistics of case movement to the assigned TEFRA coordinator. TS – Legacy group manager will provide instructions via email to the field group manager and assigned TEFRA coordinator after which the TEFRA case can be closed to TS – Legacy.

- If a SCE TEFRA case has less than six (6) months remaining on the statute of limitations at the time the summary report is issued AND Counsel has reviewed and concurred with the proposed adjustments, Form 886-A narrative and penalties; the TEFRA case will remain in the assigned revenue agent's group. The assigned revenue agent will work closely with TS – Legacy assigned TEFRA Coordinator to review; consult with Counsel and prepare the FPAA. Once the FPAA is issued by TS, the TS TEFRA Coordinator will notify the assigned revenue agent and group manager, provide the updated statute date, and give approval to close the case to TS – Legacy for suspense.

In all instances, the assigned LB&I or SB/SE Revenue Agent will follow normal procedures outline in IRM 4.31.2.3.9.4 for documenting case activities and steps taken when issuing the summary report.

Managerial involvement and engagement are critical. Attempts to solicit statute extensions, managerial discussions regarding the imminent statute, and issuing the summary report must be clearly documented in the case file.

For questions, issues or concerns LB&I and SB/SE revenue agents should contact their assigned TEFRA 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.