



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

June 30, 2020

Control Number: SBSE 04-0620-0013
Expiration Date: June 30, 2022
Affected IRMs: 4.24.10, 4.24.16, 4.24.17

MEMORANDUM FOR: DIRECTOR, SPECIALTY EXAMINATION, CHIEF ESTATE
& GIFT / EXCISE TAX, AND EXCISE TAX TERRITORY AND
GROUP MANAGERS

FROM:

Wanda R. Griffin

Digitally signed by Wanda R. Griffin
Date: 2020.06.30 13:55:59 -04'00'

Director, Specialty Exam Policy

SUBJECT: Determining the Adequacy of an Appeal in an Excise Tax
Exam Case

This memorandum issues guidance when determining the adequacy of a taxpayer protest until IRMs 4.24.10, 4.24.16 & 4.24.17 are published. Please ensure that this information is distributed to all affected employees within your organization.

Purpose: To align Excise Tax Policy IRMs to match the guidance provided in 4.10.8.12.9.3 (09-13-2019) *Request for Appeals Conference (SB/SE Field and Office Examiners only)* & 4.10.8.12.9.3.1 (09-13-2019) *Timely Actions - Request for Appeals Conference*.

Background/Source(s) of Authority: IRM 4.10.8.12.9.3 & IRM 4.10.8.12.9.3.1 were revised on September 13, 2019 based on the Taxpayer Advocate TAXPAYER RIGHTS IMPACT STATEMENT (TRIS) AND PROPOSED TAXPAYER ADVOCATE DIRECTIVE 2019-01 entitled *The Right to Appeal an IRS Decision in an Independent Forum*. The Advocate pointed out that Appeals (and not Exam) should have the authority to determine whether a protest is valid based on its substantive content, such as whether it contains sufficient factual support. The Advocate recommends that the IRS issue administrative guidance to clarify that Exam must timely forward otherwise valid protests to Appeals even if it disagrees with the substance of the protest, including any disagreement about whether the taxpayer has provided sufficient factual or legal support.

Procedural Change: Unless specifically excluded from Appeals consideration, all cases are eligible for an Appeals conference if the taxpayer submits an adequate formal

written protest (when required), or small case request as directed in IRM 4.10.8.12.9.3 (2),

(2) To be considered "adequate", a formal written protest and a small case request must contain all information required by [Pub 5](#) (with exceptions noted in Exhibit-1). Adequacy of a protest is generally not determined based on its substantive content, such as whether the protest contains sufficient factual or legal support. If a taxpayer submits a formal written protest that includes all the information required by [Pub 5](#) addressing the issues raised in the 30-day letter, reasons for disagreement, and factual information to support their position on the issues then the case must be forwarded for Appeals consideration. This is regardless of whether you disagree with the taxpayer's facts and/or do not consider the taxpayer's position sufficiently supported. A taxpayer protest is adequate when it contains all information required by [Pub 5](#). Determine if a rebuttal is needed prior to forwarding the case for Appeals consideration.

Effect on Other Documents: This guidance will be incorporated into IRMs 4.24.10, *Appeals Referral Procedures*, 4.24.16, *Excise Fuel Compliance Report Writing, Case Processing and Appeals Procedures*, and 4.24.17, *Excise Summary Terminal Activity Reporting System (ExSTARS) Compliance Examination Procedures* by June 30, 2022

Effective Date: June 30, 2020.

Contact: Phyllis Burnside, Technical Advisor, Specialty Exam Policy, (510) 907-5098.

Attachment (the changed procedures)

Distribution:

[IRS.gov \(http://www.irs.gov\)](http://www.irs.gov)

Exhibit-1:

IRM 4.10.8.12.9.3(3) When a taxpayer requests an Appeals conference, examiners must follow the applicable procedures in the table below: **(09-13-2019)**

If...	Then...
<p>(a) The total amount for any tax period is not more than \$25,000.</p> <p>Note: In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund.</p>	<p>The taxpayer may make a small case request instead of filing a formal written protest. The taxpayer may complete Form 12203, Request for Appeals Review.</p> <p>Note: Pub 5 contains instructions on preparing formal written protests and small case requests in unagreed cases.</p>
<p>(b) The total amount for any tax period is more than \$25,000.</p> <p>Note: In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund.</p>	<p>The taxpayer must submit a formal written protest.</p> <p>Note: Pub 5 contains instructions on preparing formal written protests and small case requests in unagreed cases.</p>
<p>(c) The taxpayer submits a formal written protest or small case request.</p>	<p>The protest must be reviewed at the group level, as designated by management, within seven days of receipt to determine whether the protest complies with the requirements as outlined in Pub 5. The protest review should include consideration of any new facts, law, or arguments presented to determine if:</p> <ul style="list-style-type: none"> • The case requires further development by the examiner; • The examiner's report should be modified; • The examiner should write a rebuttal to refute arguments in the protest.
<p>(d) The formal written protest or small case request does not comply with the requirements as outlined in Pub 5.</p>	<p>The protest should be returned to the taxpayer and additional time should be granted to perfect the protest.</p> <p>The examiner should use one of the following letters for this purpose:</p> <ul style="list-style-type: none"> • Letter 1025, Letter of Protest. • Letter 1025-A, Letter of Protest (Claims). • Letter 1025-B, Letter of Protest (No-Change with Adjustments). • Letter 1025-E, Letter of Protest – Excise Tax.

If...	Then...
	Note: The signature of only one spouse on a protest regarding a joint return does not make the protest incomplete. Also, if the only item missing from the protest is a copy of the 30-day letter, the case can be closed using the copy in the file, therefore, there is no need to return the protest to the taxpayer for perfection.
(e) The formal written protest or small case request contains information warranting consideration.	The case may require additional development because of additional facts raised and/or new information, issues, or legal arguments presented in the formal written protest or small case request. Cases requiring additional development are priority work and should be given expedited consideration. See IRM 4.10.8.12.9.3.1 . Reminder: Appeals does not return cases for further development.
(f) The examiner or group manager feels there is something in the formal written protest or small case request that does not change the determination, but requires further comment or explanation	A rebuttal should be prepared and included in the case file before it is sent to Appeals. See (4) below for additional guidance on preparing a rebuttal.
(g) The formal written protest or small case request is complete and the examiner does not prepare a rebuttal.	The examiner must prepare Letter 2280 , Transfer to Appeals, or Letter 2280-X , Transfer to Appeals, to notify the taxpayer the case is being closed to Appeals. The letter must be signed by the group manager and mailed to the taxpayer.
(h) There is not sufficient time remaining on the statute of limitations to send the case to Appeals, and a consent was not previously solicited.	The examiner should follow the procedures in IRM 25.6.22 , Extension of Assessment Statute of Limitations By Consent, to solicit a consent.
(i) There is not sufficient time remaining on the statute of limitations to send the case to Appeals and a consent was previously solicited.	The examiner should issue Letter 1025 , Letter 1025-A , or Letter 1025-B to remind the taxpayer a consent is needed to send the case to Appeals and give the taxpayer 10 days to respond.
(j) The taxpayer's representative submits the formal written protest or small case request for the taxpayer.	The representative must include a substitute for the taxpayer's declaration described in Pub 5 . The declaration will state: <ul style="list-style-type: none"> • The representative prepared the protest and accompanying documents; and • Whether the representative knows personally that the facts contained in the protest and accompanying documents are true and correct.

If...	Then...
(k) The taxpayer verbally requests a transfer of jurisdiction for the appeal, and the formal written protest or small case request is complete.	The case file will be sent promptly to the local Appeals office serving the examiner's area. This procedure applies even if the taxpayer has requested a hearing in an Appeals office other than the one servicing the examiner's area.
(l) A notice of deficiency has been issued to the taxpayer (and the taxpayer has not petitioned the Tax Court (or petitioned the Tax Court untimely)).	Transfer of protested cases to Appeals is generally precluded except for: <ul style="list-style-type: none"> • Other taxable periods of the same taxpayer not listed on the notice, • Other types of tax for the same taxable periods for the same taxpayer which are not listed on the notice, or • An offer in compromise covering the same type of tax and the same taxable periods of the taxpayer.