



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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MEMORANDUM FOR APPEALS EMPLOYEES

FROM: John V. Cardone /s/ *John V. Cardone*  
DIRECTOR, POLICY, QUALITY AND CASE SUPPORT

SUBJECT: Implementation of the Appeals Judicial Approach and  
Culture (AJAC) Project  
Examination and General Matters - Phase 2

The purpose of this memorandum is to provide guidance to Appeals employees pertaining to the second phase of implementation of the AJAC Project recommendations with respect to Examination cases worked in Appeals and general matters.

The AJAC Project is reinforcing Appeals' quasi-judicial approach to the way it handles cases, with the goal of enhancing internal and external customer perceptions of a fair, impartial and independent Office of Appeals.

**The attachments** to this memorandum provide guidance pertaining to all Appeals employees who open/close cases and hold hearings, conferences or otherwise resolve open case issues in the affected Examination work streams in Appeals.

Unless otherwise provided, the attached guidance applies to nondocketed cases and does not change any practice with respect to docketed cases. Similar procedures for docketed cases are forthcoming in the future.

**IRM sections** affected by these changes are listed in the *Table of Contents* included with each attachment.

**The effective date of this memorandum is September 2, 2014, except for IRM 8.4.1.15.4, which will have an effective date of October 1, 2014. This guidance is in effect for all new Appeals case receipts on or after September 2, 2014, and will be incorporated into the Internal Revenue Manual (IRM) within two years from the effective date of the memorandum.**

Appeals employees should elevate any questions through their appropriate management chain.

**Attachments:**

- (1) Examination
- (2) General Matters

**Distribution:**

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**8.2.1.3**  
**Receipt of a Pre-90-Day Case**

- (1) For Account and Processing Support (APS) procedures regarding receipt of returns and administrative files, refer to IRM 8.20.5.3.1, *Receiving Returns and Administrative Files*.

**8.2.1.4**  
**Receipt of New Assignment**

- (1) Determine the statute date and ensure there are at least 365 days (270 days in estate tax cases or IRC 6206 cases) remaining on the statute when the case was received by Appeals before accepting the case. See IRM 8.21.3, *Appeals Technical Employee Statute Responsibility*, for detailed procedures on statutes and consents.

**Exception:** There must be at least 180 days remaining on the statute of limitations when the case is received in Appeals when the originating function returns a case that was previously returned to them for consideration of new information or a new issue.

- (2) You must validate all critical data fields (CDFs). See IRM 8.10.3, *Appeals Inventory Validation Process*, for more information on the ATE Assignment Validation critical data fields.
- (3) A fully developed case has all pertinent evidence well documented with an easy to follow audit trail. Generally, the case contains the evidence needed to support the adjustments proposed in the RAR. Attempt to settle a case based on factual hazards when the case submitted by the originating function is not fully developed and the taxpayer has provided no new information or evidence.

**8.2.1.5**  
**Returning a Case to the Originating Function**

- (1) Appeals will not return cases to Examination for further development.
- (2) The following circumstances, which are not all-inclusive, are grounds for returning a case:
  - a) Missing protest, or the protest, when required, fails to set forth the taxpayer's position, lacks detail, or fails to meet the requirements of Publication 5;
  - b) Contrary to Service practice, the case is a reopening of a previously closed case as set forth in Rev. Proc. 2005-32, 2005-23 IRB 1206;
  - c) Some action must be taken or some event must occur before Appeals can adequately consider the case. For example, completion of Headquarters

- consideration of some aspect of the case (e.g., valuation of art work when a mandatory referral is required), or required coordination with appropriate offices within Counsel, or Criminal Investigation (CI), or a rebuttal to the taxpayer's protest on large team cases;
- d) There is a failure to secure timely consents extending the period of limitation for assessment unless the statute is open for other reasons, e.g., fraud, IRC 6501(e);
  - e) The case involves claims for abatement of excise tax, employment tax, or trust fund recovery penalty which are not deemed meritorious by the Service;
  - f) There is failure to comply with significant requirements of the IRM, the case should have been held in suspense in Examination pending clarification of Service position; required information was not included in the report or case file, there is an open CI freeze (i.e., -Z or Z- freeze due to an unreversed TC 914, 916, or 918 on the tax module), etc.;
  - g) Technical advice was pending at the time of the referral;
  - h) Appeals discovers potential fraud, malfeasance or misrepresentation of a material fact;
  - i) The taxpayer provides new information or evidence;
  - j) The taxpayer raises new issue(s) that the originating function has not considered.

### **8.2.1.8.3**

#### **Verification of New Information**

- (1) Appeals hearing officers are not investigators or examining officers and may not act as such. Therefore, Appeals hearing officers will not take investigative actions or perform analysis of new information or new issues. Conduct the preliminary review of a case as soon as possible to determine whether the case must be returned to the originating function. While taxpayers may present new information or evidence to Appeals, Appeals usually must return the case to the originating function to examine the new information and make a determination.
- (2) New information is defined in IRM 8.6.1.6.5, *Taxpayer Provides New Information*. If the taxpayer raises a new issue or presents new information to Appeals, and that information relates to an issue in controversy, see IRM 8.6.1.6.4, *Taxpayer Raises New Issue*, and IRM 8.6.1.6.5 *Taxpayer Provides New Information*, for more information.
- (3) Follow the procedures in IRM 8.6.1.6.7, *Jurisdiction Released*, to return a case to the originating function.
- (4) If Appeals determines that the taxpayer is raising a relevant new theory, or alternative legal argument, which requires further development, retain jurisdiction of the case and share the information with the originating function for review and

comment. See IRM 8.6.1.6.6, *Taxpayer Raises New Theory or Alternative Legal Argument*.

- (5) When the taxpayer offers to make payment of additional tax liability for slush fund or improper payment deductions, or reveals their existence to Appeals officials for the first time, discontinue Appeals consideration of the case and return the case to Compliance for appropriate action.

### **8.2.3.7**

#### **Compliance Follow-Up Action on Related Years or Taxpayers**

- (1) When an Appeals settlement affects the taxpayer's liability for other years or the tax liability of a related taxpayer not under Appeals' jurisdiction, notify Compliance so appropriate follow-up action may be taken at their discretion.
- (2) The Appeals Case Memorandum (ACM) will discuss subsequent year impact and include a clear and concise discussion of the impact in the conclusion element of the ACM or attachments.

**Example:** Basis adjustment – Include depreciation schedules.

**Example:** Carryback adjustments – schedule showing corrected use of the carryback and years affected.

- (3) Ensure Form 5402 identifies the settlement as one affecting other years or other taxpayers and send a copy of the Form 5402 and ACM to Examination Planning and Delivery. See <http://appeals.web.irs.gov/APS/caserouting.htm>.

### **8.4.1.15.4**

#### **Assistance to Counsel/Appeals**

- (1) Counsel and Appeals may request and provide assistance to each other in working of docketed cases.
- (2) Appeals may request Counsel's assistance in docketed cases by following the informal procedures discussed in IRM 8.2.1.8.2, *Assistance from Counsel in Pre-90-Day Cases*.
- (3) During trial preparation, Counsel may request that Appeals evaluate the hazards of litigation in a case. Appeals will provide this assistance if resources and workloads permit. Appeals will not take investigative actions or perform analysis of new information or new issues. An Appeals Area Director will inform Counsel if Appeals is unable to provide the requested assistance. Counsel will need to secure this type of assistance from Examination.

**8.6.1.6.4  
Taxpayer Raises New Issue**

- (1) Appeals gives full, fair, and impartial consideration to the merits of each new issue a taxpayer raises once the originating function has had an opportunity to examine the issue.
- (2) If the taxpayer raises a relevant new issue and there will be less than 210 days remaining on the statute of limitations when the originating function receives the case, solicit a consent to extend the statute of limitations. If the taxpayer will not sign a consent, follow the procedures in IRM 8.21.3.1.3.1 to protect the statute.

**Note:** When soliciting a consent, ensure there is sufficient time remaining on the statute of limitations for Examination to complete its actions on the new issue and potentially return the case to Appeals.

- (3) If the taxpayer raises a new issue and there will be at least 210 days remaining on the statute of limitations when the originating function receives the case, follow the procedures in IRM 8.6.1.6.7, *Jurisdiction Released*, to return the case.
- (4) For LB&I-sourced cases, see IRM 8.7.11.5.3 *Returning a Case to LB&I*.
- (5) If a taxpayer repeatedly raises a new issue as a delay tactic, refer to IRM 8.6.1.6.5, *Taxpayer Provides New Information*.

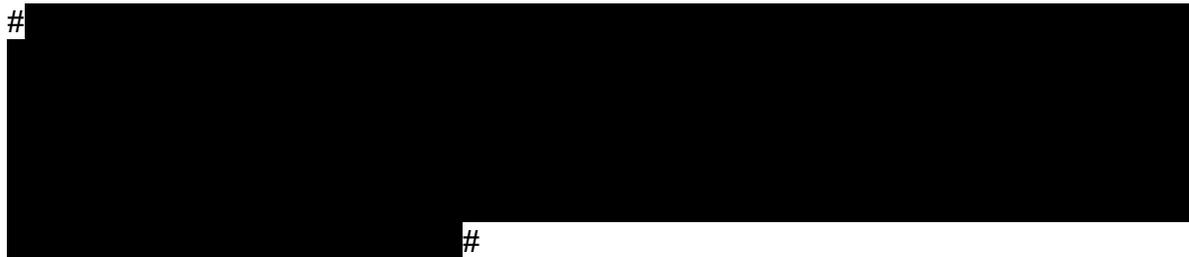
**8.6.1.6.5  
Taxpayer Provides New Information**

- (1) New information or new evidence is any item or document related to a disputed issue that the taxpayer did not previously share with the examiner, and in the judgment of the Appeals hearing officer, merits *additional analysis* or *investigative action by Examination*.
  - a) Additional analysis means anything that is not self-evident, or involves voluminous information. Simply adding up items that are not voluminous does not constitute additional analysis. Categorizing, sorting, reviewing large volumes of records, or requiring additional steps or reasoning to reach a conclusion constitutes additional analysis.
  - b) Investigative action means actions required for fact finding, to make inquiries or to verify the authenticity of an item.

**Note:** If a taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in the RAR, Protest or Rebuttal, such information will not be provided to Compliance for review and comment, unless subject to the provisions of IRM 8.7.11.5.3(2).

**Exception:** In Collection Due Process (CDP) cases where there is an underlying liability, UNTIL FURTHER NOTICE, follow the procedures in IRM 8.22.8.5.1. Under IRC 6330(d)(2), Appeals has to retain jurisdiction of these cases; therefore jurisdiction can't be released.

- (2) If the case is IRS Campus-sourced (including claims, PENAPs, International penalties, and International Individual Compliance (IIC) - Tax Examiner cases as identified on Form 3198), determine if it meets the exception after you receive all new information. If the case meets the exception, review the new information and proceed with normal consideration. If the case does not meet the exception, go on to paragraph (3).



- (3) If the taxpayer provides new information or evidence and there will be less than 210 days remaining on the statute of limitations when the originating function receives the case, solicit a consent to extend the statute of limitations. If the taxpayer will not sign a consent, inform the taxpayer that you cannot consider their new information because the originating function has not had an opportunity to review it. Proceed with normal consideration of the case. If you cannot reach settlement, follow the procedures in IRM 8.21.3.1.3.1 to protect the statute.

**Note:** When soliciting a consent, ensure there is sufficient time remaining on the statute of limitations for Examination to complete its actions on the new information provided by the taxpayer and potentially return the case to Appeals.

- (4) If the taxpayer provides new information or new evidence and there will be at least 210 days remaining on the statute of limitations when the case will be received by the originating function, consider the following conditions before releasing jurisdiction:

If	Then
1) The evidence is relevant to the proposed deficiency; and 2) The evidence is not already in or referenced in the case file; and 3) The evidence requires investigative action or additional analysis.	If <b>ALL</b> conditions are met, release jurisdiction and return the case to the originating function. See IRM 8.6.1.6.7, <i>Jurisdiction Released</i> .
	If any condition is <b>NOT</b> met, proceed with normal consideration.

**Note:** In the judgment of the Appeals hearing officer, if the taxpayer or representative unreasonably delays the process by intentionally submitting new information or raising new issues multiple times to impede the process, after obtaining approval from the ATM, the Appeals hearing officer will notify the taxpayer or representative that they will not return the case to Examination for consideration of the new information or new issues and will make their determination based on factual hazards. The Appeals hearing officer will document the Case Activity Record (CAR) accordingly.

- (5) For information received in LB&I-sourced cases, see IRM 8.7.11.5.3, *Returning a Case to LB&I*.
- (6) Primary Business Code (PBC) 315, (IIC) field (Revenue Agent and Tax Compliance Officer) cases, should be worked following the procedures and guidelines outlined in this section.

**8.6.1.6.6  
Taxpayer Raises New Theory or Alternative Legal Argument**

- (1) If the taxpayer raises a relevant new theory or alternative legal argument and the case is an SB/SE field, office examination, or an LB&I case, follow these steps:

<b>Step</b>	<b>Action</b>
1.	Return the information package to the original exam group.
2.	<p>Prepare an INTERIM customized Form 5402 using ACDS APGolf. Include the following information:</p> <ul style="list-style-type: none"> <li>1) JURISDICTION RETAINED</li> <li>2) [Reason for sending information (i.e., Taxpayer is raising a new theory or alternative legal argument.)]</li> <li>3) IRS Examination Group address</li> </ul> <p><b>Note:</b> If Form 5402 requires a closing code, use Closing Code 00 – Not Applicable. Do not close the case on ACDS. This is not a closing action.</p>

Step	Action
3.	<p>Update the following in CARATS:</p> <ul style="list-style-type: none"> <li>• Action: SU</li> <li>• Subaction: PI</li> <li>• Suspense Action Reason Code: E/DD – Inactive, waiting for info/action by DD</li> <li>• Feature Code: EA – Examination Assistance Case</li> </ul> <p><b>Note:</b> If there are other issues that you can continue working, there is no need to put the case in suspense.</p>
4.	<p>Prepare Letter 5209 to the taxpayer. Sign it but do not date or mail it. Include a copy for the file and representative, if any, and envelope(s) for mailing. Letter 5209 advises the taxpayer that you are sending their new theory or argument to the original exam group to assign to an examiner for review and comment and retaining jurisdiction of their case.</p>
5.	<p>Submit the case to the ATM for approval. If approved, the ATM will mail the letters and forward the information package to the original Examination Group.</p>

(2) For LB&I sourced cases, also see IRM 8.7.11.5.3, *Returning a Case to LB&I*.

(3) The ATM will send the information package along with all supporting information to Exam, allowing at least 45 days for written review and comment (subject to ex parte requirements) and granting an extension of time if mutually agreed.

**Exception:** In Collection Due Process (CDP) cases where there is an underlying liability, UNTIL FURTHER NOTICE, follow the procedures in IRM 8.22.8.5.1. Under IRC 6330(d)(2), Appeals has to retain jurisdiction of these cases; therefore jurisdiction can't be released.

8.6.1.6.7  
Jurisdiction Released

(1) Follow these procedures to release jurisdiction and return a case to the originating function:

Step	Action
1.	<p>Determine where to send the case:</p> <p>a) SB/SE field and office examination sourced cases and LB&amp;I cases – return case to the Examination Technical Services location that serves the originating Exam group.</p> <p>IRS Technical Services [Address] <a href="http://mysbse.web.irs.gov/AboutSBSE/Exam/ts/contact/14354.asp">http://mysbse.web.irs.gov/AboutSBSE/Exam/ts/contact/14354.asp</a> x</p> <p>b) For all other cases - refer to the Case Routing tab on the Appeals Home Page at <a href="http://appeals.web.irs.gov/APS/caserouting.htm">http://appeals.web.irs.gov/APS/caserouting.htm</a></p>
2.	<p>Prepare a customized Form 5402 using ACDS APGolf.</p> <p>1) Include the following information:</p> <p>JURISDICTION RELEASED</p> <p>[Reason for releasing jurisdiction (i.e., Taxpayer provided new information, Taxpayer raised a new issue, etc.)]</p> <p>Return case to [Originating function’s address (i.e., Technical Services, IRS Campus, etc.)]</p> <p>2) Use Closing Code 20.</p>
3.	<p>Prepare Letter 5209 to the taxpayer. Sign it but do not date or mail it. Include a copy for the file and representative, if any, and envelope(s) for mailing by APS. Letter 5209 advises the taxpayer that you are returning the case to the originating function and the reason, i.e., because they raised a new issue, submitted new information, etc., and releasing jurisdiction of their case.</p>
4.	<p>Submit the case to the ATM for approval and processing. The ATM approves the case closure, closes the case on the ATM Case closing screen, and gives it to APS. APS closes the case on ACDS, mails Letter 5209, and returns the entire administrative file to the originating function using Form 3210.</p>

(2) For LB&I sourced cases, also see IRM 8.7.11.5.3, *Returning a Case to LB&I*.

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**8.7.4.2  
Estate Tax Cases Worked in Appeals**

- (1) Estate tax cases are filed on Form 706.
- (2) This subsection provides information on procedures or issues that are unique to estate tax cases.
- (3) Procedures for establishing and closing estate tax cases, acknowledging receipt of cases, setting up and holding the conference, preparing the Appeals Case Memo (ACM) and securing agreement, and preparing settlement computations or statutory notices of deficiency are basically the same for estate tax cases as those used in income tax cases.
- (4) Verify the statute of limitations on all new case receipts and follow the guidelines contained in IRM 8.21.3, *Appeals Technical Employee Statute Responsibility*, with respect to protecting the statute.
- (5) Do not accept non-docketed estate tax cases if less than 270 days remain on the statute of limitations for assessment.
- (6) Refer to IRM 8.20.5.3.1.3, *Cases Not Accepted by Appeals*, for additional information on statute of limitations requirements for new case receipts in Appeals.
- (7) The statute cannot be extended for estate tax cases. Form 872 is not applicable for estate tax cases.
- (8) Refer to IRM 8.2.1.8.3, *Verification of New Information*, for procedures regarding the verification of new information or evidence received during the appeals process.
- (9) For Administrative Expenses defined under IRC 2053, if the taxpayer submits new information or new evidence claiming additional administrative expenses incurred after the close of the examination that requires additional analysis or further investigation, refer to the review and comment procedures outlined in IRM 8.6.1.6.6, *Taxpayer Raises a New Theory or Alternative Legal Argument*. When new information regarding administrative expenses is submitted to support a deduction claimed on the original return, follow the general rule under IRM 8.6.1.6.5, *Taxpayer Provides New Information*.

### 8.7.4.3

#### Introduction to Gift Tax Cases

- (1) This subsection covers procedures and information that apply to gift tax cases received in Appeals. The gift tax return is filed on Form 709.
- (2) Do not accept non-docketed gift tax cases if less than 365 days remain on the statute of limitations for assessment.
- (3) Gift tax returns are required when taxpayers give someone money or property during their life that is subject to federal gift tax. These cases are generally received from Compliance function with AIMS records established.
- (4) For information on determining statutes of limitation, see IRM 8.21, *Appeals Statute Responsibility*.

### 8.7.5.1

#### Introduction to Working Transferee Cases in Appeals

- (1) IRC 6901 provides a transferee liability against a recipient (transferee) of property from the transferor, for the tax liability of the transferor and is a tool used to collect a taxpayer's tax liability. A **transferor** is the person or entity who created the tax liability and transferred assets to another party. The **transferee** is the person or entity who is additionally liable for the tax (because they received the transferred assets for less than full, fair and adequate consideration).
- (2) The government can assess another taxpayer's (transferor's) liability against a transferee to collect this tax liability based on some other provision of state or federal law. The liabilities include taxes, penalties and interest. Taxes and penalties are computed through the date of the transfer, while interest may not be limited to the date of the transfer. It also includes additional liabilities resulting from an examination.
- (3) Appeals considers and processes transferee cases in much the same manner as other cases. The administrative file of a transferee case must contain the tax returns of the transferor with a revenue agent's report.
- (4) Use current transcripts to confirm the liability was assessed against either the transferor or one or more transferees.
- (5) Refer to IRM 8.2.1.8.3, *Verification of New Information*, for procedures regarding the verification of new information or evidence received during the appeals process.

8.7.5.5

Consents and Period of Limitations on Transferee Cases

- (1) Immediately obtain a current transcript on the transferor since the transferee's statute of limitations is based upon the transferor's statute of limitations.
  - a) The statute of limitations for the initial transferee is one year after the expiration of the period of limitation for assessment against the transferor.
  - b) The statute of limitations for a transferee of a transferee is one year after the expiration of the period of limitations against the preceding transferee, but no more than three years after the expiration of the limitations period against the original transferor.
  - c) See IRM 25.6.1.9.7.2, *Fiduciaries and Transferees* and IRM 25.6.22.6.17.1, *Transferee Liability*, for additional information.
- (2) Verify the statute of limitations on all new case receipts and follow the guidelines contained in IRM 8.21, *Appeals Statute Responsibility*, with respect to protecting the statute. Appeals will not accept non-docketed cases if less than 365 days (or less than 180 for a case being returned from Compliance after their consideration of a new issue or new information) remain on the statute of limitations for assessment. Refer to IRM 8.20.5.3.1.3, *Cases Not Accepted by Appeals*, for additional information on statute of limitations requirements for new case receipts in Appeals.
- (3) Extend the period of limitations for assessment against the transferee by using Form 977, Consent To Extend the Time To Assess Liability at Law or in Equity for Income, Gift and Estate Tax Against a Transferee or Fiduciary. **This will not extend the period for assessment against a transferee of a transferee.**
- (4) Separate extensions are necessary for each transferee.
- (5) In the case of a statutory merger, consolidation or a mere change in identity, form, place or organization, the new or surviving corporation is held to be the same as the old and is primarily liable for the debts of the old. Take action against the new or surviving corporation within the statutory period of limitation for assessment against the transferor.
- (6) See IRM 8.21, *Appeals Statute Responsibility*, for additional information on consents and statutes for Appeals cases.

8.7.7.1

**Introduction to Appeals Consideration of Claim and Overassessment Cases**

- (1) Appeals considers claim and overassessment cases on any taxes or other matters considered by the Internal Revenue Service. **Exceptions** to this general authority are in Delegation Order (DO) 8-8 (formerly DO-66). See IRM 1.2.47.9.
- (2) IRM 8.7.7 basically covers three separate categories of information as follows:
  - a) General information pertaining to claims and overassessments,
  - b) General information pertaining to audit reconsideration cases, and
  - c) Specific procedures for claims for abatement of interest under IRC 6404(e).
- (3) Claims or Overassessments can be:
  - a) Part of a case file received by Appeals,
  - b) Filed by the taxpayer during Appeals consideration, and/or
  - c) Pursued by the taxpayer for the same period for which Compliance proposed a deficiency.

**Note:** The term “Compliance” refers to the “originating function,” as defined in IRM 8.1.10.1(6).

- (4) An **overassessment** case becomes an **overpayment** case when there is a refund indicated. If an overpayment exists for a tax period, the time limits prescribed by law apply for making a refund or credit of an overpayment. See IRC 6401 for *amounts treated as overpayments*.
- (5) An **overassessment** could be considered an **abatement** if the assessment is unpaid. An abatement is the reduction or elimination of an assessment. The time limits - under IRC 6511 and IRC 6532(a) which, per IRC 6514, indicate that the Service has no authority to issue a refund or credit if a suit has not been filed within the two-year period (or extended period) after the notice of claim disallowance was mailed. These statutory time limits don't apply to “requests for abatement”. See IRM 25.6.1.10.1, *Requests for Abatement*.
- (6) An **overassessment** could be determined by Compliance or Appeals. If a *claim for refund or credit of an overpayment* is not filed - as required under IRC 6511, a *refund or credit of an overpayment* could be allowable if made before “the time for filing a claim” has expired. A refund or credit of an overpayment might also be allowable - where a refund claim was not timely filed - if the Service *secures an agreement form* before the *time for filing a claim for refund or credit of overpayment* expires. See IRM 8.7.7.5, *Securing an Agreement Form*.
- (7) **Requests for abatement** - filed with reasons acceptable to Compliance – are considered by Appeals on their merits, if protested. Also, see IRM 1.2.12.1.15,

*Policy Statement 3-15 (formerly Policy Statement 2-89) - Reconsideration of an Unpaid Assessment.*

- (8) For an overassessment involving a whipsaw situation, see IRM 8.2.3.12, *Overassessment Resulting from Adjustment to a Related Return* and IRM 1.2.13.1.13, *Policy Statement 4-34*.
- (9) See IRM 8.7.7.2.1, *Statutory Period For Assessment Remaining—Claims and Overassessments*, for Appeals' policy on accepting claim and overassessment cases involving expiring statutes of limitations.

### 8.7.7.2

#### Periods of Limitation in Claim and Overassessment Cases

- (1) If the claim is for a period with a proposed deficiency, the Appeals hearing officer will determine the need to protect the assessment statute. Appeals does not accept claim or overassessment cases if Compliance has proposed a deficiency and the number of days remaining on the statute for assessment is less than 365 days (270 days in estate tax cases or IRC 6206 cases) for a new receipt or less than 180 days for a case being returned from Compliance after their consideration of a new issue or new information. See IRM 8.7.7.2.1, *Statutory Period for Assessment Remaining - Claims and Overassessments*, for additional information.
- (2) The tax law imposes various deadlines for performing certain acts for making a refund or credit of an overpayment. These limitations include the following:
  - a) **Time period for filing** a refund claim; [See IRC 6511(a) and IRC 6511(b)(1).]
  - b) Limitation on a **claim amount**; [See IRC 6511(b)(2).]
  - c) Time period for filing a **refund suit**; [See IRC 6532.] and
  - d) Inadvertently **making a refund or credit of an overpayment** after the expiration of the time periods. [See IRC 6514.]
- (3) Under IRC 6511(h), the statute of limitations **for filing** a claim for refund or credit of an overpayment may be **suspended** during the time a taxpayer is unable to handle his or her financial affairs for either of the following reasons:
  - a) Mental or physical impairment that is medically determinable which has lasted or is expected to continuously last for not less than twelve months; or
  - b) Mental or physical impairment that is medically determinable and can be expected to result in the death of the taxpayer. (See *Rev. Proc. 99-21*, 1999-1 C.B. 960 or its successor regarding the statements to be submitted with the refund claim regarding the medical determination of impairment.)

**Note:** IRC 6511(h) does not affect the time for filing a refund suit under IRC 6532.

**Note:** See IRM 25.6.1.10.2.5.1.1, *Appeals Determinations* to identify the information needed to move a payment from the *Excess Collection* file to allow for a refund under IRC 6511(h).

- (4) A *claim for refund or credit of an overpayment* must be filed within three years after the filing of the original return or within two years after payment, whichever is greater. If the overpayment is shown on a delinquent return, the refund claim is timely filed within the three-year period required under IRC 6511(a). No consideration is given to the *filing extension period* for determining the three-year **period for filing** a refund claim. A timely filed claim could result in no refund or overpayment allowable, if the payments fall outside the *lookback period* described under IRC 6511(b)(2). Refer to IRM 25.6.1.10.2.7.1 See paragraph 6 below. See also IRC 6511(d) for other *filing time limits* that might apply; see also IRM 25.6.1.10.2.8.
- (5) IRC 7502 (the *timely mailing equals timely filing* rule) applies to a refund claim postmarked within the three-year period after the original return's filing date. See IRM 25.6.1.10.2.7.1.4. A claim filed on a delinquent original income tax return that is postmarked on the last day of the three year period, is deemed to be filed on the postmark date. See AOD 2000–09, *Weisbart v. U. S. Dep't of Treasury*, 222 F.3d 93 (2d Cir. 2000), action on dec., 2000-09 (November 13, 2000). See also *Treasury Regulation Section 301.7502-1(f)*.
- (6) IRC 6511(b)(2) imposes a **limitation on the amount** available for refund or credit of an overpayment (see IRM 25.6.1.10.2.7.2, and the *filing extension period* is considered in determining the *lookback period* described in IRC 6511(b)(2), see IRM 25.6.1.10.2.7.2.1, *Three-year Rule* at (2) Example (b) for determining the **limitation on the amount** under the three-year rule. Also, see IRM 25.6.1.10.2.7.2.2, *Two-year Rule*.
- (7) Advance payments have deemed payment dates under IRC 6513. See IRM 25.6.1.7.2(3) regarding filing extensions specifically excluded in determining the *statutory payment date* for “estimated income taxes”. See IRC 6513(b). This provision indicates the possibility that “income taxes withheld” (with a *deemed statutory payment date* that considers a filing extension) could fall within the *look back period* and that “estimated tax payments” (with a different *deemed statutory payment date* - that doesn't consider a filing extension) could fall outside the “*look back period*”.

8.7.7.2.1

**Statutory Period for Assessment Remaining - Claims and Overassessments**

- (1) Appeals does not accept claim or overassessment cases if Compliance has proposed a deficiency for the claim period and the **statute of limitations for assessment (ASED)** has
- a) Less than 365 days remaining for a new receipt; or
  - b) Less than 180 days remaining for a case previously returned to Compliance for consideration of a new issue or new information.

**Note:** Appeals can return a case to Compliance for consideration if the taxpayer raises a new issue or provides new information. For a deficiency case, 210 days must remain on the ASED at the time the case is received by the originating function in order to return the case to Compliance. 180 days must remain on the ASED for Appeals to accept the “returned case” after Compliance’s consideration of the new issue or new information. See IRM 8.21, *Appeals Statute Responsibility*.

- (2) If the case does not involve a proposed deficiency for the claim period, then paragraph (1) above will not apply.

8.7.7.2.2

Claim and Overassessment Cases Involving Expiring Statutes of Limitations

(1) The following table reflects Appeals' policy on accepting claim and overassessment cases that involve expiring statutes of limitations:

If...	Then...
Compliance has proposed a deficiency for the claim period and less than 365 days (270 days in estate tax cases or IRC 6206 cases) remain on the ASED for a new receipt	Appeals will not accept the case. See IRM 8.20.5.3.1.3, <i>Cases Not Accepted by Appeals</i> .
Compliance has proposed a deficiency for the claim period and less than 180 days remain on the ASED for a "returned case"	Appeals will not accept the case. See IRM 8.20.5.3.1.3, <i>Cases Not Accepted by Appeals</i> .
The taxpayer appealed the denial of a request for refund or credit of an overpayment (where a claim has not been filed) and less than 180 days remain for filing a claim (RSED)	Appeals can accept the request, but if Appeals decides to allow the claim, a refund or credit <b>must be made</b> before the RSED expires. [See IRC 6514(a)(1)].  <b>Reminder:</b> The taxpayer is responsible for protecting his or her interest by timely filing a claim before the refund statute expires. See also IRM 8.7.7.3 (1), <i>General Information About Refund Claims and Overassessment Cases</i> .
The taxpayer appeals the denial of a claim for refund or credit of an overpayment and less than 180 days remain for filing suit.	Appeals can accept the "previously disallowed claim", but if Appeals decides to allow the claim, a refund or credit of an overpayment must be made before the time for filing a refund suit expires. [See IRC 6514(a)(2).]  <b>Reminder:</b> The taxpayer is responsible for protecting his or her interest by timely filing a refund suit within the time allowed under IRC 6532.

**8.7.7.11**

**General Guidelines for Appeals Consideration after the Mailing of a Statutory Claim Disallowance Letter**

- (1) Taxpayers may ask Appeals to reconsider a claim disallowed by Compliance. A taxpayer must make this request within the period for bringing suit because IRS employees cannot legally make a refund or credit an overpayment after the time for filing suit has expired. See IRM 8.7.7.2.4.
- (2) Appeals can reconsider a claim with less than 180 days remaining on the two-year period for filing a refund suit under IRC 6532. However, the taxpayer remains responsible for monitoring the deadline for filing a refund suit. See IRM 8.7.7.2.2.
- (3) Any reconsideration of the claim by Appeals does **not** extend the period for filing a refund suit. IRC 6514 provides that a refund or credit is erroneous if made after the time for filing suit has expired, unless the taxpayer has initiated a suit within the limitations period.
- (4) **Do not issue a second notice of claim disallowance when a claim is reconsidered.** This could confuse the taxpayer or result in the taxpayer missing the deadline for filing suit.
- (5) The customized Form 5402, Appeals Transmittal and Case Memo, is the appropriate form to use for all Appeals cases.
- (6) Letter 2681, Letter 2682, and Letter 2683, are used to advise the taxpayer of the decision on claim or overassessment cases.

**8.7.7.11.1**

**Reconsideration of Claim Disallowed by Compliance Field Operations or Compliance Campus Operations**

- (1) Appeals reconsiders claims disallowed by Compliance Field Operations or Compliance Campus Operations if they were not previously considered by Appeals. The Appeals hearing officer should determine whether a statutory claim disallowance letter was mailed or Form 2297 was filed. If either has occurred, the Appeals hearing officer should identify the time remaining for the taxpayer to bring suit under IRC 6532. Appeals will not reconsider a claim for a case previously "closed with finality". See IRM 8.7.7.11.2.

8.7.7.11.2

**Reconsideration of Claim Previously Disallowed and Previously Considered by Appeals**

- (1) Compliance will forward claims filed in cases previously closed by Appeals. Compliance will not forward a claim for a case dismissed by the United States Tax Court for “lack of jurisdiction”. Compliance will follow the guidance in IRM 4.13.3.1.3, *Cases Closed in Appeals*, to determine whether to route the case to Appeals.
- (2) Upon receipt, determine if the case was previously “closed with finality” as described in paragraph (3) below.
- (3) An issue is considered “closed with finality” if the issue was previously closed under the following circumstances:
  - a) Form 870-AD type agreements described in IRM 8.6.4.3; (See also IRM 1.2.17.1.3.)
  - b) Closing agreements under IRC 7121 described in IRM 8.6.4.5;
  - c) Decision documents;
  - d) Dismissals for lack of prosecution;
  - e) Tried cases;
  - f) The appealed issue would result in a refund or credit of an overpayment that is considered erroneous under IRC §6514; or
  - g) Any other closing process described under tax law and or other IRM guidance as a closure not subject to reopening.
- (4) If the case was not previously “closed with finality” and new information is provided requiring Compliance’s consideration, forward the case to Compliance to consider the new information. See IRM 8.6.1.6.5, *Taxpayer Provides New Information* and IRM 8.6.1.6.7, *Jurisdiction Released*, for instructions on returning a case. Notify Compliance when the two-year period for filing a refund suit will expire, if the claim disallowance letter was previously issued or the taxpayer previously filed Form 2297. The taxpayer can appeal the unresolved issue. An unresolved issue is not appealable if the allowance of the claim would be time-barred. See also IRM 8.7.7.2.
- (5) If you determine that the issue was previously “closed with finality”, provide an explanation to the taxpayer of Appeals’ decision not to reopen the issue(s). Provide the taxpayer with the following information:
  - a) Amount of the claim(s) for which a refund was requested.
  - b) Tax periods in the request.
  - c) Date the statutory notice of claim disallowance letter was sent or the date the taxpayer previously filed Form 2297, Waiver of Statutory Notification of Claim Disallowance.
  - d) Additional legal action (if any) that the taxpayer can take related to the disallowed claim and the relationship to the previously issued claim

disallowance letter or previously filed Form 2297, Waiver of Statutory Notification of Claim Disallowance.

**Note:** If the two-year period for filing a refund suit has not expired, prepare Letter 2682, Full Disallowance After Previous Claim Disallowance. See IRM 8.7.7.10. If the two-year period has expired for filing a refund suit and a suit has not been filed, advise the taxpayer that a refund or credit of an overpayment is barred by statute.

### **8.7.7.11.3**

#### **Claims Disallowed by Compliance Based on Timeliness Determinations**

- (1) If the taxpayer appeals Compliance's disallowance of a claim based solely on the decision that the claim was not timely filed and Appeals concludes that the claim was timely filed, Appeals will do the following:
  - a) Consider whether the issue was previously "closed with finality", as described in IRM 8.7.7.11.2(3);
  - b) Determine whether Compliance considered the merits of the claim.
- (2) If you determine that the claim was timely filed and the merits were previously considered and accepted by Compliance, allow the claim with no further consideration if the issue(s) was not previously "closed with finality".
- (3) If you determine that the claim was timely filed, and Compliance did not previously consider the merits, return the case to Compliance to consider the merits if the issue(s) was not previously "closed with finality."
- (4) To return a claim for consideration of the merits, prepare Letter 5209 advising the taxpayer that Appeals has determined that their claim was timely filed and you are returning it to the originating function for consideration of the underlying merits of the claim. Prepare Form 5402 to return the case. The Form 5402 must include the following:
  - "Claim submitted timely. Jurisdiction released for consideration of underlying issue. Return to originator."
  - Closing Code 20
  - Feature Code "TC"
  - Indicate where the case is being sent.

**Note:** For field-sourced work, return the case to the appropriate Technical Services. For campus-sourced work, please refer to the Case Routing tab on the Appeals Home Page at <http://appeals.web.irs.gov/APS/caseroouting.htm>.

- (5) If you determine that the claim was previously closed with finality, see IRM 8.7.7.11.2 (5).

8.7.7.12  
Audit Reconsideration Cases

(1) An “audit reconsideration” case is the reevaluation of the results of a prior audit when a taxpayer disagrees with the original determination. The taxpayer should provide information “not previously considered during the original examination”. Also, “audit reconsideration” is the process the IRS uses when the taxpayer contests an *Automated Substitute for Return (ASFR)* or *Substitute for Return (SFR)* determination by filing an original delinquent return, and the assessment remains unpaid, or as a result of the assessment, the tax credit is reversed. See IRS Pub 3598, *What You Should Know About the Audit Reconsideration Process*.

**Note:** Audit reconsiderations are not claims for refund or credit of an overpayment since the tax liability in dispute has not been paid.

(2) Audit reconsiderations on cases closed by Appeals as *dismissed for lack of jurisdiction* don’t come directly to Appeals without consideration by Compliance. Compliance will route these cases in accordance with IRM 4.13.2.2, *Function Responsible & Routing Instructions*. The taxpayer can appeal the result of the audit reconsideration.

(3) When the taxpayer requests Appeals consideration, the full administrative file should accompany the taxpayer’s request. See IRM 4.13.3.16, *Request for Appeal*. Compliance will follow the guidance in IRM 4.13.3.1.3, *Cases Closed in Appeals* to determine whether to route the case directly to Appeals without further action.

(4) Upon receipt of the audit reconsideration, determine if the case was previously “closed with finality” as described in IRM 8.7.7.11.2(3).

- a) If the case was previously “closed with finality”, then follow the instructions in paragraph (5) below.
- b) If the case was not previously “closed with finality”, then consider whether the taxpayer provided new information.

**Note:** If the taxpayer provides new information, return the case to Compliance for consideration. See IRM 8.6.1.6.5, *Taxpayer Provides New Information*.

(5) If reconsideration is inappropriate, send the taxpayer a letter explaining why the issue doesn’t qualify for reconsideration. Prepare Form 5402, Appeals Transmittal and Case Memo to close the case with no change to the account.

8.7.8.1

Introduction to Appeals TE/GE Cases

- (1) This section outlines procedures for Appeals to handle appeals from adverse actions proposed by Tax Exempt and Government Entities (TE/GE). See Exhibit 8.7.8-1. This exhibit contains a listing of TE/GE areas and their jurisdiction.
- (2) Because of the specialized nature of TE/GE issues, route all TE/GE cases to the following address for assignment to Appeals Officers (AO) with expertise in these cases:

Internal Revenue Service - Appeals  
ATTN: Account and Processing Support  
10 Causeway St.  
Suite 493  
Boston, MA 022221083

- (3) Cases containing TE/GE issues may also originate from income tax examinations under the jurisdiction of Small Business/Self Employed (SB/SE) and Large Business and International (LB&I). For example, a pension plan deduction on Form 1120 is disallowed due to the employer's use of incorrect actuarial assumptions. The procedures contained in this section **do not** apply to these cases. Refer to IRM 8.20.6, *Interim Actions*, to determine whether to transfer these cases to the Baltimore Appeals Office for assignment to Appeals Officers who have expertise in Employee Plan and Exempt Organization (EP/EO) matters.

**Note:** Pre-conference and post-conference procedures for examinations of large cases (under LB&I's jurisdiction) apply to all TE/GE Coordinated Examination Program (CEP) cases in which TE/GE requests a conference. Any references in those sections to examination personnel apply to TE/GE personnel. See IRM 8.7.11, *Appeals Team Cases*.

- (4) Verify the statute of limitations on all new case receipts and follow the guidelines contained in IRM 8.21, *Appeals Statute Responsibility*, with respect to protecting the statute. Do not accept non-docketed cases if less than 365 days remain on the statute of limitations for assessment. Refer to IRM 8.20.5.3.1.3 for additional information on statute of limitations requirements for new case receipts in Appeals.
- (5) Refer to IRM 4.71, IRM 4.75 and IRM 4.76 for additional guidance when working cases involving issues relating to EP/EO matters.
- (6) Refer to IRM 8.2.1.8.3 for procedures regarding the verification of new information or evidence received for the first time during the appeal process.
- (7) Compute Private Foundation changes in tax liability on Form 4883, Private Foundation Audit Changes.

**8.7.8.11**

**Federal, State and Local Government (FSLG) Cases**

(1) The Director of FSLG is responsible for providing Federal tax compliance assistance to four distinct customer market segments:

- Federal agencies
- State agencies
- Local governments
- Quasi-governmental entities

(2) Compliance efforts for FSLG cases are generally focused on employment taxes (Form 940, Form 941, Form 945) and information return reporting (Form 1099, Form W-2 and Form W-2G). Refer to IRM 4.23.16 for specific procedural guidance on employment tax issues.

(3) FSLG cases are transmitted to Appeals on Form 3210, Document Transmittal. All unagreed cases originating in FSLG are sent to the following Appeals office:

Internal Revenue Service - Appeals  
ATTN: Account and Processing Support  
10 Causeway St.  
Suite 493  
Boston, MA 022221083

(4) The procedures in IRM 8.6, *Conference and Settlement Practices*, cover an Appeals hearing officer's responsibilities for conducting conferences and preparing Appeals Case Memos in FSLG cases.

(5) Procedures regarding statutes are found in IRM 8.21, *Appeals Statute Responsibility*.

(6) For tax deficiencies and overassessments see IRM 8.6.4, *Reaching Settlement and Securing an Appeals Agreement Form*. See IRM 4.23.16 regarding Form 2504-AD.

**8.7.10.3**

**Preliminary Review of Excise Tax Cases by Appeals Officer**

(1) Appeals will not return cases to Compliance as a premature referral when the case is not fully developed. Appeals will attempt to settle a case on factual hazards when the case submitted by Compliance is not fully developed and the taxpayer has presented no new information or evidence.

(2) In resolving disputes, the Appeals hearing officer may consider new theories and/or alternative legal arguments that support the parties' positions when evaluating the

hazards of litigation in a case. See IRM 8.6.1.6.6, *Taxpayer Raises New Theory or Alternative Legal Argument*, for additional information.

- (3) If a taxpayer raises a new issue, please refer to IRM 8.6.1.6.4, *Taxpayer Raises a New Issue*.
- (4) If a taxpayer presents new information, please refer to IRM 8.6.1.6.5, *Taxpayer Provides New Information*.

**8.7.10.3.1  
Statute Review**

- (1) New case receipts should have at least one year remaining on the period of limitations. Return cases with less than 365 days remaining on the statute to the originating function.

**Exception:** IRC 6206 cases: The time period for making assessments of tax under IRC 6206 may not be extended. Appeals will accept non-assessed cases with at least 270 days remaining on the statute for consideration. Cases with less than 270 days remaining on the statute will be returned to Compliance for assessment.

- (2) If income tax and other taxes are involved, the "kind of tax" portion of the consent form should indicate each type of tax.

**Example:** One of the issues on a Form 1040 may involve an individual retirement account (IRA). The IRA issue may give rise to a Chapter 43 excise tax. If the "kind of tax" line of the consent is completed only for "income tax," the statutory period for assessing any Chapter 43 excise tax deficiency may expire, barring the assessment. Thus, in the above example, the "kind of tax" on the consent form reads "income and Chapter 43."

- (3) Use Form 872-B, Consent to Extend the Time to Assess Miscellaneous Excise Taxes, if the statute needs to be extended.
- (4) Use Form 872-EX, Consent to Extend the Time to Assess Miscellaneous Excise Taxes, if the statute needs to be extended for the assessment of the civil penalty imposed by IRC 6675 on a Form 720-TO or 720-CS information report.
- (5) For additional information regarding statute see IRM 8.21.3, *Appeals Technical Employees Statute Responsibility*.

**8.7.10.12.4**

**New Information Provided by the Taxpayer**

- (1) Taxpayers may provide new information and/or evidence to Appeals. New information is defined in IRM 8.6.1.6.5, *Taxpayer Provides New Information*. If the new information is relevant to the proposed deficiency and requires investigative action or additional analysis, and there is sufficient time remaining on the statute, then return the case to the originating function for consideration of the new information, releasing jurisdiction. See IRM 8.6.1.6.7, *Jurisdiction Released*, for additional information.

**8.7.11.3.1**

**Responsibilities of Team Leader and Team Members**

- (1) The team leader recommends disposition of the work unit. Any understanding reached at an interim level on an issue-by-issue basis between a team member and a taxpayer or representative is tentative and must fit in with recommendations of the team leader who must be fully acquainted with the strengths and weaknesses of major issues and their proposed disposition.
- (2) Team members are responsible for considering their portion of the work assignment independently unless the manager believes authority over a team member's issue rests with the team leader. The team leader will ascertain that the required concurrence is obtained from Domestic/International Operations.
- (3) The team leader and team members are responsible for providing LB&I the opportunity to consider and timely review and comment on new information or evidence presented by the taxpayer. See IRM 8.2.1.4, *Receipt of New Assignment*, for more information and documentation requirements.
- (4) Periodic team meetings are held to discuss the possible impact of each member's issues on those of other members, to define objectives and to otherwise coordinate team activities. The team leader is consulted on technical and procedural questions consistent with the degree of independence given the team members by the team leader.
- (5) The team leader is responsible for meeting target dates and identifying and attempting to eliminate obstacles when problems are encountered by team members. Periodically, the team leader's ATM is updated on the progress and informed of any problems that may develop in the case.
- (6) When disagreements/differences arise between team members (including members from Domestic/International Operations), please see IRM 8.1.1.1 (6) for additional information.

- (7) The ATCL has settlement authority on all related work units assigned. However, his/her manager may propose a change to the proposed settlement and if an agreement cannot be reached, the issue is resolved by the Area Director.
- (8) Team members are responsible for preparing Appeals Case Memoranda (ACMs) for the issues assigned to them. The team leader coordinates preparation of the ACM and Form 5402 except where a case within the work unit is handled entirely by one team member. If the team leader resolves an issue assigned to a non-Domestic/International Operations team member without the member's agreement, the team leader must prepare the ACM for that issue. If the team leader revises the team member's ACM, the team leader will provide a copy of the revised ACM to the team member as soon as practical.
- (9) The Area Director decides who signs Form 5402. However it may be delegated to the ATM.
- (10) The team leader is responsible for statute of limitations control except in a multi-case unit where cases are assigned to another team member; then, the team member to whom the case is assigned is responsible.

#### **8.7.11.5.1**

##### **Team Leader Review of the Statute of Limitations**

- (1) When assigned a case, immediately examine all returns to determine the statute of limitation expiration date and to verify the expiration date appearing on the case summary card.

**Note: There must be at least 365 days remaining on the statute of limitations when the case is received in Appeals. If a case is returned to Examination, there must be at least 210 days remaining on the statute of limitations when the case is received in Examination and at least 180 days remaining when the case is returned to Appeals.**

- (2) Full responsibility for obtaining the proper consents to extend the period of assessments, when necessary, is the team leader's even when a portion of the case is separated and assigned to a team member. Although the team member may take action to extend the statute on his/her assignment, the team leader is responsible for assuring the statutes are protected.
- (3) Since a team leader case generally takes a significant period of time to resolve, request statute extensions to cover the time frame. A team leader case assignment may involve numerous corporations, partnerships, etc., which must be reviewed to verify any unique statutes.

(4) There are many unusual statute situations which require special consideration, such as:

- a) Successors in Interest - If, since the last statute extension, there has been a successor in interest, it is necessary to determine who is authorized to sign for the predecessor corporation and it is necessary to determine the proper captions to use. One of the sources for determining this information is the Board of Directors resolution. It is also advisable to consult with local Counsel in making this determination. See IRM 25.6.22.6.2.5 regarding merged corporations.

**Note:** For consolidated income tax returns, one consent will suffice to cover all companies included in the consolidated tax return, but the years included on a single consent must be years during which the group is considered to have remained in existence. See IRM 25.6.22.6.2.1 regarding successors for a group of affiliated companies that filed a consolidated return.

- b) TEFRA Considerations - TEFRA creates problems concerning statutes. See TEFRA IRM 8.19 for additional information on TEFRA cases and IRM 8.21 for additional information on statutes.
- c) Reference Returns - If it is determined a consent is unnecessary, prepare a memorandum for the file (or other approved form) setting out the facts. Attach the original of the memorandum to the return, and give a copy to APS to update ACDS.
- d) Returns Held Off Site – In situations where the original returns are held offsite, which is a practice in a number of offices, copies of all consents, POAs, and the front page of the returns must be kept by the team leader.

### **8.7.11.5.3**

#### **Returning a Case to LB&I**

- (1) Appeals hearing officers are not investigators or examining officers and may not act as such. Therefore, Appeals hearing officers will conduct a preliminary review of a case as soon as possible to determine whether the case must be returned to Examination. While taxpayers may present new information or evidence to Appeals, the presentation of new factual information generally will require that the case be returned to Examination. See IRM 8.2.1.5, *Returning a Case to Examination*, for general guidelines for returning a case.
- (2) These guidelines apply to LB&I-sourced work excluding Primary Business Code (PBC) 315, International Individual Compliance (IIC) cases. Use the following chart to determine when information is returned to LB&I:

<b>TYPE OF INFORMATION RECEIVED</b>	<b>ACTION TO BE TAKEN</b>
(1) Taxpayer provides Appeals with information that LB&I previously requested during the examination	Appeals will release jurisdiction of the case to LB&I
(2) Taxpayer, on its own initiative, provides Appeals with information not previously shared with LB&I during the examination	Appeals will release jurisdiction of the case to LB&I
(3) Taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in the RAR, Protest or Rebuttal	Appeals will provide LB&I with an opportunity to review and comment on the information within a specified time frame
(4) Taxpayer makes a new argument (not including new information)	Appeals will provide LB&I with an opportunity to review and comment on the new argument within a specified time frame

(3) In instances where new information (see Item 1 or 2 above), is provided by the taxpayer during Appeals consideration, the ATCL may offer Rapid Appeals Process (RAP) to resolve the Appeals-ready issues (issues that do not require additional analysis or investigative action).

- For cases where no issues are yet settled (agreed in principle by Appeals and the taxpayer) at the time new information is received, the ATCL will determine if RAP is appropriate for the unsettled issues (no agreement in principle between Appeals and the taxpayer) and ensure the taxpayer is aware of the RAP option. If the taxpayer and LB&I elect to address the issues using RAP, Appeals will retain jurisdiction to resolve those issues. After working the issues via RAP and securing closing or partial agreement forms on the agreed issues, Appeals will release jurisdiction to address the new information or issue. On LB&I-sourced cases where RAP is not being utilized, jurisdiction will be released to address new information or new issue and make a determination.
- For cases involving unsettled and settled issues at the time new information is received, the ATCL will determine if RAP is appropriate for the unsettled issues and ensure the taxpayer is aware of the RAP option. If the taxpayer and LB&I agree to address the issues using RAP, Appeals will retain jurisdiction to work those issues. After working the issues via RAP and securing agreement closing or partial agreement forms on the agreed issues, Appeals will release jurisdiction to address the new information or issue and make a determination.

- (4) For those cases where the taxpayer provides information in response to a question or request from Appeals for clarification and for those cases where the taxpayer makes a new argument (not including new information), the Appeals hearing officer will send the information or argument with all supporting information to LB&I, allowing at least 45 days for written review and comment (subject to ex parte requirements). An extension of time can be granted if mutually agreed.
- (5) See IRM 8.6.1.6.7, *Jurisdiction Released*, for procedures on returning a case to the originating function.

**Note: The office that has jurisdiction of the case at the time of closing will be responsible for performing the closing procedures.**

#### **8.7.11.7.1**

##### **Team Leader Assignment of Work to Team**

- (1) Conduct a team orientation meeting to discuss the nature, number and complexity of the issues or cases in the team case work unit.
- (2) The ATM or designee will mail Letter 4046, *Appeals Team Case Leader Uniform Acknowledgement Letter*, or other approved Uniform Acknowledgement Letter (UAL), to the taxpayer and/or representative.
- (3) With the concurrence of the team leader and team members' ATM, the team leader assigns work to team members commensurate with their grade. This may be by specific issues, by cases, or any other appropriate division of the work.
- (4) Consolidate interrelated issues or problems when assigning issues to avoid overlap.
- (5) After the team members have an opportunity to study the file and their assigned issues, each should determine the need for outside assistance, e.g., valuation, technical advice, information reports, etc. These needs must be identified as early as possible and discussed with the team leader. The requests for assistance are prepared by the AO handling the particular issue and are routed through the team leader for approval.
- (6) The team member is responsible for providing the Large Case Quarterly Status Report to the team leader by the 5th business day of the month following the end of the quarter. This report is mandatory for all team members.

**8.7.11.7.2**

**Team Member Planning Meeting**

- (1) The team discusses tentative target dates and those issues or procedures which may impede the prompt closing of the case and decide the actions necessary to prevent delay.
- (2) It is suggested a separate file be created for each issue. The file would contain all relevant information regarding that issue, such as sections of the examiner's report, engineer's report, conference notes, rough draft supporting statements, etc.
- (3) It is desirable to discuss and agree upon these target dates at the first meeting with the taxpayer. The goal is to set firm dates, agreed to by Appeals and the taxpayer, and to resolve specific issues. Furnish the taxpayer with a list of team members and their respective work assignments. Clearly define the role and authority of the team leader and team members for the taxpayer.
- (4) Apply the aspects of Fast Track Settlement to the team leader case process as a means of efficient resolution.
- (5) The team will discuss and develop a complete list of questions to be addressed by the parties (taxpayer and LB&I) during the pre-conference and taxpayer conference. To comply with the ex parte requirements, a copy of the questions for LB&I must be shared with the taxpayer.
- (6) After the planning conference is complete, the team leader will complete the ACDS Electronic Work Plan (See IRM 8.7.11.7.5) incorporating the agreements reached with the taxpayer or his/her representative.
- (7) The team leader is responsible for planning and controlling the progress of the work unit. Although initial responsibility to follow up (requests for corroborating information from taxpayers, requests for information from Headquarters, Justice Department or other sources) lies with the team member assigned that segment of work, the team leader monitors this aspect of the team's actions.
- (8) The team leader must be involved in the case management practices of all team members. This is accomplished by periodic monitoring, issue reviews, mandatory written feedback or other appropriate techniques. Each team member's manager ensures the team member maintains a written activity record which includes the team member's contacts with the taxpayer and all significant actions on the case.

**8.7.11.7.3**

**Pre-Planning Conference Contacts**

- (1) When faced with complicated technical issues, contact available resources early. For example, obtain input from Counsel, Headquarters, the Appeals Technical Specialist and/or the taxpayer prior to the pre-conference and planning conference.
- (2) Contact Examination immediately upon case assignment to ensure the Appeals team has access to the entire administrative file on a particular issue for effective discussion at the preconference meeting.
- (3) Contact the Appeals Technical Specialist for a coordinated issue paper or informal advice on any industry issue as early as possible.

**8.7.11.7.4**

**Ongoing Communications**

- (1) Ongoing communications, whether in the form of conferences between the team or other communications between Appeals and LB&I are encouraged. Open lines of communication greatly expedite the completion of the case when new arguments are presented by the taxpayer or there are other developments which were not anticipated at the time of the pre-conference meeting. Always keep in mind ex parte communication provisions do apply.
- (2) Return the case to LB&I for consideration if the taxpayer presents new information or evidence. If Appeals receives a case that is not fully developed and the taxpayer does not provide any new information, attempt to settle the case on factual hazards. The case will not be returned for further development.
- (3) If the taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in the RAR, Protest or Rebuttal, or makes a new argument, Appeals will promptly refer the information package along with all supporting information to LB&I allowing at least 45 days for written review and comment (subject to ex parte requirements) and granting an extension of time if mutually agreed. See IRM 8.6.1.6.6 for procedures on retaining jurisdiction. LB&I handles these requests for review of information on a priority basis and makes additional contacts with the taxpayer as necessary to perform a complete review of additional information.

**8.7.11.8  
Pre-Conference Meeting**

- (1) This text establishes guidelines for conferences (pre-conferences) held between Appeals and LB&I on certain protested cases. The pre-conferences take place prior to Appeals' meeting with the taxpayer. These guidelines are minimum standards for communication between Appeals and LB&I.
- (2) The pre-conference procedures apply to all LB&I cases meeting Appeals' definition of a team case. The procedures may be used for LB&I cases which do not meet the definition of a team case and for other cases upon election by either LB&I or Appeals. For definition of a team case, see Introduction to Working Appeals Team Cases found at the beginning of this IRM.

**8.7.11.8.1  
Purpose of Pre-Conference Meeting**

- (1) The purpose of the conference is to discuss the issue, protest, and LB&I's written rebuttal to the protest. A frank discussion of the issues adds to Appeals' knowledge of the case.
- (2) The taxpayer is notified of, and given an opportunity to participate in, any pre-conference in accordance with requirements involving ex parte communications.
- (3) The need for any additional resources, specialists or expert witnesses, etc., are discussed at this meeting which serves to establish lines of communication between Appeals and LB&I that are maintained throughout consideration of the case. Always keep the ex parte communication provisions firmly in mind.
- (4) LB&I is encouraged to share its views on the disputed issues, including its assessment of litigating hazards and the strategies involved in setting up adjustments on particular issues. However, the conference is not used as a vehicle for securing a commitment from Appeals to defend any particular issues, commit to particular settlement positions, or otherwise "negotiate" the settlement posture of Appeals on the case.

**8.7.11.9  
Partial Agreements on Team Cases**

- (1) When a partial agreement for work units over \$1 million is secured, additional steps must be taken to close the existing ACDS record with the partial agreement information so Appeals results can be captured timely. Submit a request to APS for a new ACDS record to control the remaining unagreed issues/tax periods. APS

instructions for this process are provided in IRM 8.20.6, *Partial (Interim) Assessments on Workunits Over \$1 Million*.

- (2) If one tax year was agreed in a multiple-year unit, rather than part of the issues within one tax year, only include the unagreed tax years in the new work unit.
- (3) This procedure applies only to assessable partial agreements. Both a Form 870 and a stipulation of agreed issues, entered by the Tax Court, must be secured on docketed cases.
- (4) This procedure may also be used when Appeals settles one or more issues in a case and then returns the case to Examination for consideration of new issues raised by the taxpayer or new information or evidence presented by the taxpayer.

### **8.11.3.2**

#### **Origin of Return Preparer Penalty Cases**

- (1) Small Business/Self Employed (SB/SE) Campus and Area, Large Business and International (LB&I) and Tax Exempt and Government Entities (TE/GE) Divisions are responsible for identifying tax returns to which return preparer penalties apply. See IRM 20.1.6.4, *IRC 6694 Understatement of Taxpayer's Liability by Tax Return Preparer*, for detailed procedures.
- (2) Some penalties are related to positions taken or items reported on underlying tax returns (the related tax return). In general, if there is an unagreed related income tax case, the unagreed preparer penalty case will not be sent to Appeals before the related income tax case is submitted to Appeals. Examination will include in the preparer case file information on the current status and location of the related return.
  - a) IRC 6694, IRC 6695, and IRC 6713 penalties generally have pre-assessment appeal rights. Refer to IRM 20.1.6.19.1, *Pre-Assessment Appeals IRC 6694, IRC 6695, IRC 6707A, and IRC 6713*.
  - b) A preparer conduct penalty may not be submitted to Appeals if there is less than 365 days remaining on the statute of limitations. If the Appeals hearing officer returns the case due to new evidence or new issues, there must be 210 days remaining on the statute of limitations at the time the case is received by Examination. When these cases are returned to Appeals, there must be 180 days remaining on the statute of limitations.
  - c) If the statutory period for assessment of the IRC 6694(a) penalty is about to expire and the taxpayer will not agree to an extension, Compliance assesses the penalty.
  - d) Examination sends the preparer Letter 1125, which provides the preparer with information on appeals rights.
  - e) If there is no response to the letter, the penalty is assessed.

- (3) Provide the preparer, upon request, the same appeal rights post-assessment as would have been provided if the appeal was received in a pre-assessment status.

**8.11.4.1.6**

**PENAP Consideration**

- (1) Review the case and contact the taxpayer for further clarification if needed to provide prompt resolution.

**Note:** No contact is required if the case is fully conceded based upon the information in the file. The closing letter to the taxpayer confirms the decision to fully abate the penalty.

**Note:** Appeals will resolve campus-sourced PENAP cases worked in a Campus Appeals office as expeditiously as possible, generally within 90 days of receipt.

- (2) Apply reasonable cause criteria when considering a PENAP case. See IRM 8.11.1.1.7.1, *Reasonable Cause*, for more information on reasonable cause.
- (3) Also consider hazards of litigation to settle PENAP cases. See IRM 8.11.1.1.7.5, *Hazards of Litigation*.
- (4) Also consider:
- Statutory exceptions, see IRM 8.11.1.1.7.2,
  - Administrative waivers, see IRM 8.11.1.1.7.3, and
  - Service errors, see IRM 8.11.1.1.7.4.

- (5) See IRM 8.11.1.1.3, *Assessed Penalty Settlement Authority*.

**Note:** A \$25,000 limitation may apply.

- (6) Prepare ACDS Letter 3324, Proposal to Taxpayer Requesting Penalty Appeal. This letter is issued prior to closing the case and provides the taxpayer 30 days to provide corroborating information supporting their position. If you do not receive a response within the time allotted, then send Letter 4774, PENAP Follow-Up Letter, which gives the taxpayer an additional 15 days to respond.
- (7) Taxpayers may provide new information and/or evidence to Appeals. New information is defined in IRM 8.6.1.6.5, *Taxpayer Provides New Information*. If the new information or evidence is relevant to the penalty and requires investigative action or additional analysis, then return the case to the originating function for consideration, releasing jurisdiction. See IRM 8.6.1.6.7, *Jurisdiction Released*, for additional information. Please refer to the exception in IRM 8.6.1.6.5(2).

(8) In resolving disputes, Appeals may consider new theories and/or alternative legal arguments that support the parties' positions when evaluating the hazards of litigation in a case. However, do not develop evidence that is not in the case file to support the new theory or argument. See IRM 8.6.1.6.6, *Taxpayer Raise New Theory or Alternative Legal Argument*.

(9) Use a judicial approach in deciding penalty appeal cases. Provide general guidance to taxpayers on establishing reasonable cause. Do not request specific documents or develop the taxpayer's position.

**Example:** Do not make a written request for a list of specific documents in the Letter 3324.

**Example:** When requested by a taxpayer in a conference, provide general guidance as to the type of information that might establish reasonable cause given the facts of their case. Refer to IRM 20.1.1.3.2.1 for Standards and Authorities.

(10) Many documents received during a PENAP consideration may not meet the definition of "new information". Many penalties are assessed without deficiency procedures and reasonable cause needs to be established for the abatement of these penalties. Documents received during a PENAP consideration are generally not voluminous or require additional development, and in many instances, are corroborating the taxpayer's testimony. You should consider the probative value of any evidence that does not meet the definition of "new information" above and apply hazards of litigation in making a determination.

### **8.11.6.2 FBAR Administrative Case Files**

(1) Appeals requires 365 days remaining on the assessment statute of limitations at the time the administrative file is received in Appeals Return cases with less than 365 days remaining on the assessment statute of limitations at the time the case is received by Appeals to the originating function as a premature referral so an extension may be secured or the penalty assessed. If the penalty is assessed, the taxpayer will be given post-assessment appeal rights and the 365-day statute requirement is no longer applicable.. Refer to IRM 8.11.6.3.1 for information on the statute of limitations for FBAR cases. If an FBAR case is being returned to Examination with new evidence, there must be at least 210 days remaining on the statute of limitations at the time Examination *receives* the case. Refer to IRM 8.6.1.6.7, *Jurisdiction Released*.

**Exception:** In those instances, when Examination sends back a previously returned case, there must be 180 days remaining on the statute of limitations.

**Note:** The FBAR penalty is assessed separately and **not** jointly. There should be **one** individual under examination per FBAR case file.

(2) Administrative files are generally forwarded to the Appeals Office by:

<b>Type of FBAR case</b>	<b>Sent by</b>
Post-assessed FBAR penalty  <b>Note:</b> Verify penalty assessment by reviewing Form 13448 <i>Penalty Assessment Certification Summary (Title 31 "FBAR")</i> , which should be in the case file.	The FBAR Penalty Coordinator at the Enterprise Computing Center
Pre-assessed FBAR penalty	Compliance Technical Services

**Note:** Email "**\*SBSE BSA Compliance - FBAR Penalty Coordinator**" for information on the penalty assessment or contact the Appeals FBAR Coordinator regarding the FBAR assessment. The Coordinator can be found in the Appeals Domestic & International Issue Locator by searching either Issue: FBAR or UIL:9999-99-01 (Uniform Issue List) on the Domestic & International Issue Locator.

[http://appeals.web.irs.gov/TG\\_locator/application/query.asp](http://appeals.web.irs.gov/TG_locator/application/query.asp)

(3) The administrative file will contain the following documents:

- A brief summary memorandum explaining the FBAR violation(s) containing statistical information which includes:

<b>Item Number</b>	<b>Description</b>
1.	A discussion of the FBAR violations.
2.	The number of penalty assessments.
3.	The dollar amounts.
4.	The FBAR case disposition.

- Form 13535, Foreign Bank and Financial Accounts Report Related Statute Memorandum, signed by the designated Program Manager affirming that the information shows the FBAR violations were committed in furtherance of income tax violations, when appropriate.
- A copy of any delinquent FBAR(s) secured by examination
- FBAR issue workpapers
- FBAR 30-Day Letter

**Note:** Use Letter 3709 for pre-assessment.

**Note:** Use Letter 3708 for post-assessment.

- Taxpayer's protest. The protested years should be the same as the years on the case summary card.
- FBAR/Title 31 Power of Attorney Form 2848, if applicable.
- IRS Counsel Opinion memo for FBAR penalties larger than \$10,000 (for willful penalties only).
- If it is not clear that the summary memorandum was shared with the taxpayer, follow the appropriate ex parte requirements.

### **8.11.7.6 IRC 6707A Penalties Overview**

- (1) IRC 6707A penalties are one of several “stand-alone” penalties (penalties that do not require an associated income tax examination) that are not subject to deficiency procedures. IRC 6707A penalties are assessable penalties with no reasonable cause exceptions. The 6707A penalty is in addition to any other penalty that may be imposed and applies without regard to whether the transaction ultimately results in an underpayment.
- (2) Generally, IRC 6707A penalty cases originate in Compliance [Large Business and International (LB&I), Small Business Self Employed (SBSE) or Tax Exempt/Government Entities (TE/GE)]. See IRM 20.1.6.17.2, *Operating Division IRC 6707A Functional Procedures*.
- (3) Compliance Examiners are responsible for identifying income tax returns to which the IRC 6707A penalty applies. Examiners are responsible for submitting to Appeals both the related unagreed income tax return case and the unagreed IRC 6707A penalty case file. If there is no related income tax case, the IRC 6707A penalty case file must include a copy of the original income tax return and related documents.
- (4) Once the 30-day letter is issued, the taxpayer or an authorized representative can request that Appeals consider the proposed penalty by filing a protest with Compliance.
- (5) An IRC 6707A penalty and/or the underlying liability income tax case may not be submitted to Appeals if there are less than 365 days remaining on the statute of limitations. If Appeals returns a case to Examination with new evidence or new issues, there must be at least 210 days remaining on the statute of limitations when the case is received in Exam. Examination may not return the case to Appeals with less than 180 days remaining on the statute of limitations when received in Appeals.
- (6) If the statutory period for assessment of the IRC 6707A penalty is about to expire and the taxpayer will not agree to an extension, complete Form 8278 to have the

penalty assessed and continue consideration of the case giving the taxpayer post-assessment appeal rights.

- (7) If both the underlying income tax liability issue and the IRC 6707A penalty are appealed, Compliance will mail both case files to the appropriate Field Appeals Office according to the zip code routing instructions posted on the Appeals web site. Compliance should send the 6707A case to Appeals when the protest is received and should not “hold” the case pending receipt of a protest in any income tax case. Similarly, if the income tax case is completed and a protest is received, Compliance should send that case to Appeals and should not “hold” the case pending completion of the 6707A case and receipt of the 6707A protest.
- (8) If the underlying income tax liability issue is agreed, Compliance will forward only the appealed IRC 6707A penalty case to the appropriate Field Appeals Office, according to the zip code routing instructions posted on the Appeals web site. Compliance will include the taxpayer’s protest and copies of the following documents in the penalty case file:
- Original filed income tax return
  - Power of Attorney, if any
  - Agreement form
  - Current transcripts of income tax return
  - 30-day letter and IRC 6707A penalty computation
  - Information from flow-through entities (Form K-1, etc...)

**8.19.2.8.1  
Key Case**

- (1) The statute of limitations for assessment is generally three years from the unextended due date of the partnership return or the date filed, whichever is later.
- (2) This statute may be extended by mutual agreement. However, Chief Counsel's office does not recommend allowing a representative to sign any legally significant documents (consents) on behalf of the TMP. It is therefore recommended that all consents be signed by the TMP unless the requirements of Treas. Reg. 301.6229(b)-1 are met for a non-TMP authorized by the partnership. See IRM 8.19.1.6.6.8.1.2, *When a non-TMP Executes Consents*.
- (3) Copies of consents secured from either a TEFRA partnership or a partner in a TEFRA key case should be sent to both the Ogden and Brookhaven CTFs. Instructions for sending consents to the CTFs are found on the Appeals TEFRA website.

**Note:** A TEFRA key case should not be accepted in Appeals unless there are **at least** 365 (or at least 180 for cases being returned from Compliance after their consideration of a new issue or new information) days remaining on the statute

**8.19.2.8.2  
Partner Case**

- (1) The statute on the partner's return is controlled by the statute on the TEFRA partnership until the partnership items are resolved. At that time, the partner statute becomes the one-year assessment period provided by IRC 6229(d) or IRC 6229(f).
- (2) For a discussion of ACDS guidelines for CIC corporation, Joint Committee, or other corporate specialty partner cases, see IRM 8.19.6.4 and IRM 8.20.
- (3) Copies of TEFRA partner consents extending a TEFRA statute should be sent to both CTFs by the AO. See IRM 8.19.2.8.1.

**Note:** A TEFRA partner case should not be accepted in Appeals unless there are **at least** 365 (or at least 180 for cases being returned from Compliance after their consideration of a new issue or new information) days remaining on all one-year statute dates (one-year assessment dates) for the partner if the partner is a CIC corporation, a Joint Committee case or other corporate specialty case. Compliance is responsible for computing and assessing the tax from all TEFRA linkages which have a live one-year statute date before the case reaches Appeals for CIC corporation, Joint Committee and other corporate specialty cases. The ATM has discretion whether to accept a partner case with a live one-year statute date or to return the case to Compliance for computation and assessment of the live one-year statute date before returning the case to Appeals for consideration of the non-TEFRA issues. See IRM 8.19.6.2 for an explanation of other corporate specialty cases.

**8.19.6.5  
Partner Case Statutes**

- (1) For any taxpayer who invests in a TEFRA partnership, the Service has a minimum of two dates of expiration for the period of limitations for assessments on the taxpayer's tax return. IRC 6501 provides the period of limitations for assessing all taxes assessed under the Code, while the period under IRC 6501 for assessing any income tax attributable to partnership items (or affected items) for a partnership taxable year may be extended by IRC 6229. The taxpayer will have additional expiration dates for the period of limitations if he/she is a partner in more than one TEFRA partnership.
- (2) Non-TEFRA issues on a taxpayer's return are always controlled by IRC 6501. Generally, the period for assessment under IRC 6501 is the later of three years from

the date the return is due or filed, unless extended by consent. Other exceptions may apply to extend the time the IRS has to assess. See IRM 25.6.1 for more information.

- (3) The limitations period for partnership items and affected items is controlled by the partner's statute under IRC 6501, as extended by IRC 6229(a) until such time as the partnership items become nonpartnership items under IRC 6231(b). The most common circumstance listed in subsection (b) is a TEFRA settlement executed by the Service. See IRM 8.19.1.6.9.2.1 for additional information.
- (4) Once the conversion to nonpartnership items occurs, the statute on the partner's return relative to such items becomes the one-year assessment period under IRC 6229(f). This statute may be extended with either Form 872-F, Form 872 or Form 872-A. This one-year assessment period is sometimes called the one-year statute date or the one-year assessment date or the one-year date.
- (5) For defaulted FPAA's and entered court decisions, the statute on the partner's return is the one-year assessment period controlled by IRC 6229(d). This statute may be extended with either Form 872 or Form 872-A. Form 872-F cannot be used in this situation.
- (6) It is at the discretion of the ATM whether to accept a partner case with a one-year statute date or to return the case to Examination for computation and assessment of the tax before returning the case to Appeals for consideration of the non-TEFRA issues.
- (7) If a partner case with a one-year statute date is accepted in Appeals, at least 365 (or at least 180 for cases being returned from Compliance after their consideration of a new issue or new information) days must remain on the statute for all partner cases which are CIC corporation, Joint Committee, or other corporate specialty cases. If there are not at least 365 days remaining on the one-year statute date, it is recommended that the case be returned to Examination as a premature referral. Compliance is responsible for computing and assessing the tax from all TEFRA linkages which have a live one-year statute date before the case reaches Appeals for CIC corporation, Joint Committee, and corporate specialty cases.

#### **8.19.6.21**

#### **Best Practices for Appeals Team Case Leaders and Appeals Officers**

- (1) Return a partner case to Compliance for assessment of any open TEFRA linkages that have one-year statute dates (one-year assessment date) on the TSUMYI when the case is received in Appeals with less than 365 (or at least 180 for cases being returned from Compliance after their consideration of a new issue or new information) days remaining on the one-year statute date.

- (2) Instruct APS to make the assessment of the tax from TEFRA partnership adjustments as soon as possible after settlement or other event triggers the one-year statute date. This protects the interest assessment.
- (3) If the taxpayer requests an extension of the one-year statute date to avoid the expense of computations while the case is in Appeals for non-TEFRA consideration, advise the taxpayer as follows:
  - a) For pass-thru entity tax years beginning prior to August 6, 1997, interest is not suspended. Recommend an advance payment of tax.
  - b) For partnership tax years beginning after August 5, 1997, when a settlement agreement has been executed, interest is suspended after 30 days while the computation of tax and the assessment are delayed. Encourage an advance payment of tax to avoid the loss of interest if the one-year statute date is extended.
- (4) Remember that the assessment of tax resulting from a defaulted FPAA or final court decision of the partnership cannot be extended using a Form 872-F.
- (5) Keep all assessments and closings as partial on AIMS and IDRS until all TEFRA and non-TEFRA issues are resolved for this taxpayer.
- (6) When Appeals resolves its issues (for CIC, Corporate, Joint Committee, and other corporate specialty cases) and there are open TEFRA linkages, do the following:
  - a) Update ACDS as if the case were a full closure whether or not there are open TEFRA linkages with no one-year statute date.
  - b) Return the case to Examination Technical Services, status 21, if there are open TEFRA linkages. Notate the case is returned to Examination through Technical Services due to open TEFRA linkages. Also notate if the issues settled by Appeals have already been assessed/refunded or Examination is responsible for the assessment/refund and the one-year statute date. Examination will suspend the case pending the outcome of the TEFRA partnership proceedings.
- (7) When a case is transferred to Counsel jurisdiction and there are open TEFRA linkages with no one-year statute date, notify associate area counsel by written memorandum that Counsel now has responsibility for the open TEFRA linkages.
- (8) Before forwarding a case outside Appeals or issuing a statutory notice of deficiency, ensure that the tax from all open TEFRA linkages with one-year statute dates are assessed and PCS updated.

- (9) Review entries on ACDS to ensure accuracy of statute controls for both the non-TEFRA aspects of the case and the TEFRA aspects of the case.
- (10) Ensure assessments of TEFRA adjustments that show 11111111 on the TSUMYI have been made. If not in the administrative file, secure closing packages or interim computations to reflect assessments showing on the transcript. This will be needed when Appeals makes its tax computation.
- (11) Protect the affected items as well as the partnership level items. Ensure that the computational affected items are assessed with the partnership level items. For partner level affected items that are not computational, either assess if previously agreed, secure an agreement or issue a statutory notice of deficiency.
- (12) Request assistance from an Appeals TEFRA resource person.

**8.19.10.2.2.1  
Processing Steps**

- (1) These are the steps APS takes when a non-docketed case is received:
  - a) Verify the statute of limitations date. At least 365 (or at least 180 for cases being returned from Compliance after their consideration of a new issue or new information) days must remain on the statute when non-docketed TEFRA partnership cases are received in Appeals.
  - b) Ensure that two clean copies of Form 886-Z are in the file. The clean copies should show taxpayer information, but adjustments should not be filled in. These copies may be used to record any adjustments made in Appeals.
  - c) Complete ACDS processing as shown below.

**8.19.10.4.5  
Statute of Limitations**

- (1) Refer to IRM 8.19.1.6.6 for guidelines in determining the expiration date for the statute of limitations for TEFRA partnerships.

**Reminder:** A TEFRA partnership case should not be accepted in Appeals unless there are at least **365 days** (or at least 180 for cases being returned from Compliance after their consideration of a new issue or new information) remaining on the statute.

- (2) Refer to IRM 8.19.1.6.6.8 for information on extending the statute of limitations. The Service must notify the taxpayer (or authorized representative executing a consent) on each occasion when the taxpayer is requested to extend the statute by consent as to the following rights as required by IRC 6501(c)(4)(B):

**ANY LINE MARKED WITH A # IS FOR OFFICIAL USE ONLY**

- a) The right to refuse to extend the limitations period.
- b) The right to request the extension to be limited to particular issues held open for further examination or appeal.

**Note:** The taxpayer or their representative may request, verbally or in writing, restrictive wording on the Form 872-P or Form 872-O. The Appeals hearing officer will review the return for other issues and verify the use of a restrictive paragraph. If the use of a restrictive paragraph is approved, refer to IRM 25.6.22.8 for instructions in preparing the restrictive paragraph consent.

- c) The right to request the limitations period.
- (3) See IRM 8.21.6.2 for statute procedures for TEFRA partnership cases.
- (4) If an entity files as a partnership and it is later determined that the filing was incorrect (i.e., it was not a partnership), the unified (TEFRA) proceedings, including the statute of limitations provisions under IRC 6229 still apply unless it is found that the entity was a small partnership or a return was filed only in order to make an election under IRC 761(a).
- (5) The TMP, not a representative, is the best person to sign consents on behalf of the partnership.
- (6) For consolidated tax years beginning before June 28, 2002, if a subsidiary in a consolidated filing group is the TMP of a partnership, both the signature of the parent (signing on behalf of the subsidiary TMP) and the signature of the subsidiary TMP are recommended on any statute extension on behalf of the partners of the TEFRA partnership. The signature blocks would appear as follows:
- [Name of common Parent corporation] by [name of authorized representative of Parent corporation, title], as common parent of the [name of Parent corporation] and Subsidiaries consolidated group, on behalf of [name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership].
  - [Name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership] by [name of authorized representative, title].
- (7) For consolidated tax years beginning on or after June 28, 2002, if a subsidiary in a consolidated filing group is the TMP of a partnership, the signature of the subsidiary TMP is recommended on any statute extension signed by the TMP on behalf of the partners of the TEFRA partnership. See Treas. Reg. 1.1502-77(a)(3)(v). The signature block would appear as follows:
- [Name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership] by [name of authorized representative, title].

- (8) The Appeals hearing officer will send a copy of all partnership case statute extensions to both CTFs. Current contact information may be found on the Appeals TEFRA website.

**25.15.12.10  
Appeals Consideration**

- (1) This is an overview of actions you should take during consideration of an innocent spouse case (not all inclusive).
- (2) Consider the facts and circumstances of the case and all pertinent information when making a determination.
- (3) There is only one issue to consider in an innocent spouse claim: Is the requesting spouse an innocent spouse? The revenue procedure provides a nonexclusive list of factors/criteria to use in making an innocent spouse determination. The factors/criteria are not new issues. An alternative theory or argument is not a new issue. In resolving disputes, you may consider new theories and/or alternative legal arguments that support the parties' positions when evaluating the hazards of litigation in a case.

**Example:** If Compliance denies relief, the RS has the right to dispute the denial which requires a review (alternative argument or theory of the factors/criteria). The RS provides information that will support his or her arguments.

**Example:** If Compliance grants relief, the NRS has the right to dispute the relief which requires a review (alternative argument or theory of the factors/criteria). The NRS provides information that will support his or her arguments.

**Reminder:** You must give each spouse or ex-spouse an opportunity to respond to any information provided by the other spouse.

- (4) If the RS and/or the NRS attempt to argue that the tax liability is not correct, explain that the only issue before Appeals is the innocent spouse determination. Inform the taxpayer that they may file an audit reconsideration with the Examination function.

**Note:** The above only applies to stand alone cases in which an innocent spouse claim is made.

- (5) If Compliance's preliminary determination was not a merit based determination, then you must return the case to Compliance for a merit based determination. Appeals should never make the first determination on an innocent spouse claim.

**Example:** The RS was denied relief for res judicata. During the Appeals conference, the RS was able to establish that he/she did not meaningfully participate in the proceeding and that Compliance never addressed the factors/criteria.

(6) See IRM 8.6.1.6.4, *Taxpayer Raises New Issue*, and IRM 8.6.1.6.5, *Taxpayer Provides New Information*, for additional information on returning cases to Compliance.

(7) Consider whether the government faces litigating hazards under the following provisions:

a) Under IRC 6015(b) or (c), a RS may elect relief for a deficiency/understatement of tax liability (but not an underpayment), and under IRC 6015(f), a RS may request relief for a deficiency/understatement or an underpayment. In response to a Notice of Final Determination under any subsection, the RS may petition the Tax Court to contest the determination. The Tax Court may also consider an IRC 6015 claim under any subsection in a deficiency proceeding or a CDP proceeding.

**Note:** The Tax Court will review the IRC 6015 claim using a de novo standard of review under all subsections.

b) IRC 66(c), traditional or equitable relief for married taxpayers filing separate returns in community property states, does not allow the taxpayer to petition the Tax Court for a redetermination in a stand alone proceeding. See Bernal v. Commissioner, 120 T.C. 102 (2003) for additional information. Instead, IRC 66(c) relief may only be raised in the Tax Court in a petition from a notice of deficiency.

(8) Fully explain joint and several liability and the criteria for relief under applicable IRC sections.

**Note:** The RS cannot withdraw a request for relief after the preliminary determination letter has been issued.

(9) Fully document the determination in workpapers.

(10) Prepare required reports, letters, agreement forms, computations, etc.

(11) Send separate notices to each spouse as required by law. See Rev. Proc. 2003-19; Treas. Reg. § 1.6015-6; and IRC 6015(h)(2).

(12) Prepare a Customized Form 5402 for the Innocent Spouse case using ACDS APGolf.

(13) Fully explain the reasons for the determination to either grant or deny relief in the Appeals Case Memorandum (ACM), as needed, or on the Customized Form 5402, if the case is very simple or the taxpayer concedes in full. See IRM 25.15.12.7.9, *Customized Form 5402, Appeals Transmittal and Case Memo, for Innocent Spouse Cases*, for additional requirements for an ACM.

(14) Upon reaching a final decision, Appeals:

- a) Solicits and executes a waiver, Form 870-IS with instructions that include complete information on Tax Court rights on all agreed cases for which partial or full relief is granted from the RS. No longer attempt to secure a Form 870-IS on fully denied requests for relief, even if the RS agrees with the determination. Instead, issue a final determination letter for relief, except combo cases.

**Note:** If the case has multiple tax years with several different determinations that include a denied year(s) and the RS is in agreement with all determinations, then you can include the denied tax year(s) for administrative purposes on Form 870-IS.

- b) Issues the final determination letter to the RS if no waiver is signed or determination is fully denied, except combo cases.
- c) Notifies the NRS of the final determination.
- d) Completes processing of partially or fully allowed claims
- e) Completes the required updates to the Innocent Spouse Tracking System (ISTS).

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**8.1.10.3.1  
Permissible Communications**

- (1) Not all communications between Appeals and employees of originating functions are prohibited, even if ex parte. This section outlines instances of permissible communications, specifically:
- a) Ministerial, administrative, or procedural matters
  - b) Communications to the originating function from Appeals detailing new information or issues addressed, or other reasons why a case is being returned as a premature referral
  - c) Post-settlement conferences

See section 2.03(2)(a) of [Revenue Procedure 2012-18](#) for several examples of permissible communications that are considered ministerial, administrative, or procedural.

- (2) Briefings on generic, non-case specific discussions of issues, including Appeals' participation in collaborative efforts with Counsel and originating functions in developing Service-wide settlement initiatives are also permissible. See section 2.04 of [Revenue Procedure 2012-18](#), *Participation in Multifunctional Meetings*, and [IRM 8.1.10.2](#) above for additional details.
- (3) Appeals domestic and international technical specialists may participate in certain communications detailed in section 2.03(12) of [Revenue Procedure 2012-18](#), *Review of Coordinated Issues*, without offering the taxpayer/representative an opportunity to participate.

**8.1.10.3.1.2  
Premature Referrals**

- (1) Cases that were improperly sent to Appeals or that are not ready for Appeals consideration will be returned for reasons described in:
- [IRM 8.2.1.5](#), *Returning a Case to Examination*
  - [IRM 8.2.1.8.3](#), *Verification of New Information*
  - [IRM 8.22.5.2.4](#), *Premature Referrals*
  - [IRM 8.23.2.4](#), *Premature Referral Issues*
  - [IRM 8.24.1.2](#), *Collection Appeals Programs (CAP)*
  - [IRM 8.25.2](#), *Working Trust Fund Recovery Penalty Cases in Appeals*
- (2) Appeals may communicate an explanation of the reason(s) why the case is being returned, but must be mindful to not engage in a discussion beyond ministerial, administrative, or procedural matters. See section 2.03(6) of [Revenue Procedure 2012-18](#), *Premature Referrals*.

- (3) When returning a case to the originating function, Appeals must promptly notify the taxpayer/representative. See section 2.03(6) of [Revenue Procedure 2012-18](#).

**Example:** Review IRM 8.22.5 for instructions on improper referrals if Collection referred a CDP case to Appeals even though no CDP notice was issued and thus there was no right of appeal.

- (4) The originating function may not communicate ex parte with Appeals while reconsidering the case, other than with respect to ministerial, administrative, or procedural matters, without offering the taxpayer or representative an opportunity to participate in the discussion because Appeals may ultimately review the case.

- (5) If a case is later returned to Appeals, ensure that the originating function shared the supplemental report reflecting the additional development with the taxpayer/representative in the same manner as described in sections 2.03(4)(b) and (c) of [Revenue Procedure 2012-18](#), *Administrative File, Transmittal, and Rebuttal to Protest*.

### **8.1.10.3.1.3**

#### **New Information Received or New Issues Raised**

- (1) Appeals will follow the general principles in [IRM 8.2.1.8.3](#), *Verification of New Information*, and section 2.03(7) of [Revenue Procedure 2012-18](#), *Submission of New Information*, if new information or evidence is received from the taxpayer/representative. The results of the originating function's review of the new information must be shared with the taxpayer/representative.
- (2) Appeals will follow the general principles in [IRM 1.2.17.1.2](#), *Policy Statement 8-2*, and [IRM 8.6.1.6.2](#), *General Guidelines*, regarding raising new issues. Communications with the originating function on new issues must be in accordance with the guidance on communications with other IRS functions in section 2.02(7) of [Revenue Procedure 2012-18](#), *Communications with Other IRS Functions*.
- (3) Refund claims filed with Appeals during the Appeals process generally are referred to the originating function with a request for expedited review. Referral of these refund claims to the originating function should not involve any discussion about the strengths and weaknesses of the issue and, thus, falls within the ministerial, administrative, or procedural matters exception set forth in [IRM 8.1.10.3.1.1](#) above. Appeals must timely notify the taxpayer/representative when the refund claim is referred to the originating function. See [IRM 8.7.7](#), *Claim and Overassessment Cases*, and [IRM 8.20.5.11](#), *Receipt of Claim Cases or Overassessment Cases*, for further guidance.

**8.20.5.3.1.2**

**Verifying Administrative File Contents**

- (1) Verify the contents of the administrative file to determine if all documents, returns, etc. which are listed on the transmittal are present in the file upon receipt.
- (2) Do not accept the administrative file if there are less than 365 days remaining on the assessment statute.

***Exception:***

- Estate tax cases (Form 706) - 270 days
- IRC 6206 Excise tax cases - 270 days
- Examination returning a case previously returned by Appeals - 180 days

Refer to IRM 8.21.2.4 for steps to take when the statute date is uncertain.

**Note:** For instructions on docketed cases received in Appeals and processing information for Non-Petitioning Spouse cases see [IRM 8.20.5.5.2](#) and [IRM 8.20.6.9.12\(6\)](#). Do not return docketed cases and non-petitioning spouse cases to the originating function.

- (3) Once the contents of the administrative file and the statute date are verified, date stamp the Form 3210, sign the acknowledgment copy of the [Form 3210](#) and return it to the originator. Make a copy of [Form 3210](#) to remain in the case file.

**8.20.5.3.1.3**

**Cases Not Accepted by Appeals**

- (1) There are several cases that Appeals will not accept.
- (2) If an APS employee receives any of the following cases for carding in, alert the PTM prior to returning the case to Compliance:
  - a) Cases where the Assessment Statute Expiration Date (ASED) statutory period of limitations has expired on any tax year in the case.

**Note:** Appeals accepts CDP/Equivalent Hearing (EH) cases where the Collection Statute Expiration Date (CSED) statutory period of limitations has expired.

- b) Compliance/Examination type cases with less than 365 days remaining on the assessment statute. See exceptions in IRM 8.20.5.3.1.2(2).
- c) Rejected OIC cases in which the appeal was not received timely. Statute dates on untimely appeals are not suspended.

**Note:** Most Collection cases can now be appealed per statutory provisions. Those provisions may suspend the statute dates.

- d) Pre-Assessed TFRP (TBOR2) cases where the taxpayer appealed beyond the 60 days from the date of [Letter 1153](#) (DO).

**Note:** [Letter 1153](#) (DO) gives the taxpayers 60 days to appeal a proposed TFRP assessment (75 days if the letter was mailed to an address outside the United States). If a taxpayer appeals a proposed TFRP beyond the 60 day period, there is no suspension period while the untimely filing is rejected (although the assessment period will not expire until the date 90 days after the date on which the 60-day notice was mailed or delivered in person). In counting the 60 days, do not include the date on the [Letter 1153](#) (DO) or the delivery date, if the letter was delivered in person by the revenue officer.

**Note:** In determining the timeliness of the protest, the guidelines in [IRC 7503](#) should be followed, which state, in part: "When the last day prescribed under authority of the Internal Revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday."

**Note:** If the protest was not timely, the case will be returned to the Collection Advisory control point monitor for assessment. To receive an appeal, the taxpayer will be required to file a [Form 843](#), Claim for Refund and Request for Abatement. If the ASER will expire within 30 days, inform Collection Advisory by telephone that the case is being returned.

- e) Cases that are in 90-day status.

**Note:** If a 90-day case has [Form 8626](#) (Agreement to Rescind Notice of Deficiency) signed by both the taxpayer and/or representative, and the designated official of the Internal Revenue Service, accept the case as long as at least 365 days remain on the statute.

- d) Cases that involve Jeopardy or Termination Assessments, unless an SND has been issued. The exception to the above is cases received in Appeals for administrative review, pursuant to [IRC 7429](#).

- f) Cases that have an unassessed agreement in the file.

- g) CDP cases that do not include Form 14461.

**8.20.5.4.2  
Non-Docketed Receipts**

- (1) Verify the contents of the administrative file to determine if all documents, returns, etc., listed on transmittal [Form 3210](#) were received.
- (2) The administrative file must contain the following items:
  - a) Original or copy of one or more examined tax returns; [IRM 8.2.1.3.1](#)
  - b) Valid consents extending the statute (if needed);
  - c) Examining officer's report;
  - d) Other documents relating to the taxpayer's liability for the year or years involved, such as protests, claims for refund or abatement, and other pertinent documents or papers.
- (3) Depending on the type of case, the administrative file may also contain the following collection documents:
  - a) History;
  - b) Correspondence;
  - c) Financial information;
  - d) Other documents related to collection action taken on the taxpayer.
- (4) Determine the statute date and ensure there are at least 365 days remaining on the statute before accepting the case. See exceptions in IRM 8.20.5.3.1.2 (2). See [IRM 8.21](#), *Appeals Statute Responsibility*, for detailed procedures on statutes and consents.
- (5) Once the contents of the administrative file and the statute date are verified, sign the acknowledgment copy of the [Form 3210](#), return it to the originator, and keep a copy in the case file.

**8.20.5.34.5.2.1  
Processing Steps**

- (1) These are the steps APS takes when a non-docketed TEFRA partnership case is received:
  - a) Verify the statute of limitations date. At least 365 days must remain on the statute when non-docketed TEFRA partnership cases are received in Appeals.
  - b) Ensure that two clean copies of [Form 886-Z](#) are in the file. The clean copies should show taxpayer information, but adjustments should not be filled in. These copies may be used to record any adjustments made in Appeals.
  - c) Complete ACDS processing as shown below.

8.20.5.34.5.4  
Carding TEFRA Cases

- (1) APS updates ACDS to reflect case level information and return level information. The information listed below emphasizes elements unique to TEFRA cases. See [IRM 8.20.3](#) for up-to-date information on ACDS processing and [IRM 8.19.10-2](#) for an example of a case summary card for a TEFRA partnership case.

**Reminder:** A TEFRA partnership case should not be accepted in Appeals unless there are at least **365 days** remaining on the statute.

8.20.7.39.1  
Counsel Review of Accepted OIC

- (1) When a case is returned from Counsel through APS, refer the case to the Appeals hearing officer or ATM.
  - a) The Appeals hearing officer or ATM will complete the case, enter the ACAPDATE, and submit the case to APS for closing.
  - b) APS is responsible for verifying and monitoring the Statute Date on all tax periods and returns under their jurisdiction in accordance with IRM 8.21.2 *Account and Processing Support (APS) Statute Responsibility*.

8.21.2.2.1  
Examining Consent Forms 872, 872-A, etc.

- (1) Analyze the most recent consent (Form 872, 872-A, etc.) to ensure that it is properly executed, contains the correct taxpayer information, and covers all years and types of tax included in the workunit.

**Note:** Although APS employees are not responsible for determining the validity of prior consents as long as the current consent is valid, the validity of prior consents should be determined by the Appeals Officer assigned to the case.

- (2) If the current consent is not valid, the APS employee will need to verify the validity of the next prior consent. If valid, the statute date reflected on that prior consent will be used as the statute control date.
- (3) The above actions will be repeated until it can be determined that there is a valid statute on **all** the returns included in the workunit.
- (4) If a valid statute date cannot be determined, immediately seek assistance from the PTM in determining what statute date to use.

- (5) If it is determined that a valid statute exists but there are less than 365 days remaining on the statute, follow the procedures found in IRM 8.20.5.3.1.3 (2) for additional information. See IRM 8.20.5.3.1.2 (2) for exceptions.

**8.21.2.3  
Cases Not Accepted by Appeals**

- (1) There are several cases that Appeals will not accept. See IRM 8.20.5.3.1.3, *Cases Not Accepted by Appeals*.

**8.21.3.1.1  
New Receipts and Transfers**

- (1) Appeals will not accept a proposed deficiency case if the number of days remaining on the Assessment Statute Expiration Date (ASED) for a new receipt is less than 365 days, with exceptions for estate tax cases and certain excise tax cases as shown below:
- a) Appeals will not accept an estate tax case for assessment if less than 270 days remain on the ASED. See also IRM 8.21.3.1.3.2.
  - b) Appeals will not accept a case for an IRC 6206 assessment on excessive claims if less than 270 days remain on the ASED. See also IRM 8.21.3.1.3.22.
- (2) Appeals can return a case to Compliance for consideration if the taxpayer raises a new issue, new argument, or provides information not previously considered by Compliance during the appeals process providing there are at least 210 days remaining on the ASED at the time the case is received by Compliance. 180 days must remain on the ASED for Appeals to accept the case back from Compliance after their consideration of the new issue, new argument or new information.
- (3) Within five (5) business days from receipt of the case, the Appeals hearing officer must review the file to validate that all statute dates are correctly shown on ACDS. This includes the verification of the original statute, as well as validation of all extensions. Verifying the statute date in ACDS signifies that the Appeals hearing officer has reviewed the available source documents, IDRS, and completed any necessary research. If the Appeals hearing officer determines that the statute date reflected on ACDS is not correct and changes are necessary, the Appeals hearing officer must update the statute critical data fields using the SVS. See IRM 8.21.3.1.1.1, *Procedures to Update Statutes on ACDS*.
- (4) Since many cases are transferred due to workload considerations, additional consideration is necessary with respect to special consents. If the preliminary review indicates one or more statutes are extended using a Form 872-A, Form 872-IA,

Form 872-O, or Form 872-R special consent, then mail Form 872-U, Change of IRS Address to Submit Notice of Termination of Special Consent to Extend the Time to Assess Tax, to the taxpayer.

**Note:** Form 872-I and Form 872-IA are obsolete with the October 2009 revisions of Form 872 and Form 872-A.

An entry in the Case Activity Record (CAR) is made automatically by the Statute Validation System when a statute validation has been completed. A sub-action code entry of "VA", with the date of validation, is added to the CAR for every workunit in the case. The "VA" entry on the CAR will indicate that the ATE has verified the statute date on ACDS. Any further explanations or unusual circumstances should be documented in the CAR.

- (5) If the statute date shown on ACDS is incorrect, the Appeals hearing officer will use the "Validations" link at the bottom of the Case Summary Card screen to access the SVS menu. Select **ATE-Statute** from the list to proceed to the Statute Validation screen and make the necessary updates to the statute date or statute code.
- (6) If assigned a docketed case, the Appeals hearing officer must review the following documents to verify that the non-petitioning spouse (NPS) and all non-petitioned years (NPY) are assessed:
  - a) Form 5403 with a noted DLN and 23C date.
  - b) TXMOD/IMFOL/BMFOL showing the assessment.
- (7) Appeals hearing officers should request a transcript every six months on any tax period with an ACDS statute code "SUB" to determine if a return was filed by the taxpayer. The filing of a return starts the running of a live statute from the date the return is received.
- (8) Appeals hearing officers are responsible for monitoring their time sheet and monthly statute lists to ensure all statute updates, modifications and changes are correctly updated on ACDS and are noted correctly in the Validation Tracking Log (VTL).

#### **8.21.3.1.3.2**

##### **Protecting Statutes on Estate Tax Cases**

- (1) Statute dates on estate tax cases cannot be extended by consent under any circumstance, so the time to consider and resolve an estate tax case may be very limited. Appeals will not accept an estate tax case if less than 270 days remain on the ASED.
- (2) Appeals hearing officers must consult with their ATM on any estate tax case that has only 120 days remaining on the statute. Written permission from the ATM is required to keep a case beyond the 120-day guideline. It is recognized that under these

guidelines, a statutory notice of deficiency may need to be prepared even though Appeals consideration is just getting underway. Granting permission does not address the performance aspects of the employee's critical elements.

- (3) Follow the time frames below. However, if a settlement is imminent, the ATM and Appeals hearing officer should discuss whether to allow more time in order to proceed to preparing a settlement computation, rather than preparing an SND.
  - a) Initiate preparation of SND when no settlement is reached and only 90 days remain on the statute.
  - b) Notify the ATM, PTM and the ATCTM by secure e-mail that the case is being submitted for SND preparation with only 90 days remaining on the statute.

#### **8.21.6.2.1**

##### **Account and Processing Support (APS) Statute Responsibility for TEFRA Key Cases**

- (1) Account and Processing Support (APS) statute responsibility for TEFRA key cases is the same as covered in IRM 8.21.2. Whenever a TEFRA key case consent is signed by a POA, APS will make a notation in the notes section of the Case Summary Card (CSC) to alert the ATM and the assigned Appeals employee of this fact.
- (2) Verify the statute of limitations on new case receipts to ensure that **at least** 365 days remaining on the statute of non-docketed TEFRA key cases.
- (3) When Appeals managers and employees outside of APS make statute changes using the AIVP Statute Validation System (SVS), and the AIMS indicator ="Y", they select a PTM (Processing Team Manager) from the available menu options to request the AIMS statute update. When the PTM receives the request, the PTM assigns it to an APS TE to update AIMS using Command Code AMSTUB. This automatically changes PCS.

#### **8.21.6.2.2**

##### **Appeals Technical Employees Statute Responsibility for TEFRA Key Cases**

- (1) See IRM 8.21.3.1, *General Guidelines for Appeals Technical Employees*, for information on the ATE's statute responsibility for TEFRA key cases.
- (2) Refer to IRM 8.19.1.6.6 and IRM 8.19.10.4.5 for guidelines in determining the expiration date for the statute of limitations. You are responsible for verifying the accuracy of the statute determination on the ACDS generated CSC within 5 business days of receipt of the case.

- (3) Make an entry in the Case Activity Record (CAR) stating that statute verification was made and the CSC is accurate or the CSC is inaccurate. When the statute of limitations on the CSC is inaccurate, update the statute date and/or code on ACDS, using the AIVP Statute Validation System (SVS). If the AIMS indicator = "Y", select the PTM from the available menu options to submit the request for the AIMS update. When the PTM receives the request, the PTM assigns it to an APS TE to update AIMS using Command Code AMSTUB. This automatically changes PCS.
- (4) Do not accept a TEFRA key case in Appeals unless there are **at least** 365 days remaining on the statute.

#### **8.21.6.3.1**

##### **APS Responsibility for TEFRA Partner Cases**

- (1) Upon receipt of an income tax case (other than a case referred to Appeals under the early referral, fast-track mediation, or fast-track settlement ADR programs), the APS employee will check the AMDIS and/or AMDISA to determine if there is a PICF Code 4 or 5 on the Partnership Control System (PCS), indicating a TEFRA partnership linkage. See IRM 8.19.10.3.4.2, Partnership Inventory Control File (PICF) Indicator.
  - a) The Partnership Control System (PCS) is a separate database for flow-through entity information. PCS interfaces with Master File and AIMS.
  - b) Information in PCS includes TEFRA and non-TEFRA information for linked flow-through entities and their partners. See IRM 8.19.10.3, Partnership Control System (PCS), for an overview of PCS and references to complete PCS information.
- (2) If there is a PICF Code 4 or 5 and the case is either a CIC corporation, Joint Committee, or other corporate specialty case, APS will obtain a TSUMYI to determine if there is an open TEFRA linkage (the one-year statute date field is either blank or contains an eight digit date). The one-year statute date field appears in the column with the heading "1YR-ST/P".
- (3) If TSUMYI reflects "11111111" in the one-year statute date field, the assessment has been made and that TEFRA partnership linkage will not need to be input on ACDS.
- (4) If the TSUMYI reflects an open TEFRA linkage (the one-year statute date field is either blank or contains an eight digit date), the TEFRA partnership will be input on ACDS as a REF (reference) return to the case and a Case Summary Card (CSC) will be generated.

- a) Refer to IRM 8.19.6.4, Appeals Centralized Database System (ACDS) Processing, for instructions for carding TEFRA partner cases with an open TEFRA linkage.
  - b) If there is an open TEFRA linkage, the APS employee will also input type code TEFRAI for the TEFRA partner case on ACDS. A sample CSC for a REF return is shown in IRM Exhibit 8.19.6-5.
- (5) The APS employee will include the CSC on the case, together with the AMDIS or AMDISA and the TSUMYI and any REF CSCs on the open TEFRA linkages, along with the case file when it is forwarded to the ATM.
- (6) Appeals generally will not accept a case with less than 365 days remaining on the statute, including a one-year statute date for a TEFRA partner. If the case is either a CIC corporation, Joint Committee, or other corporate specialty case, and there is an eight digit date in the "1YR-ST/P" field of the TSUMYI that has less than 365 days remaining, or the eight digit date has expired, the APS employee will notify the ATM by secure email on the same day the statute information is discovered.
- a) The email should include the name of the taxpayer, the tax years, the number of linkages, the one-year statute date(s), and the Employee Group Code (EGC) of the case.
  - b) If the ATM decides to accept the case in Appeals, include the reply email in the case file along with the CSC, the AMDIS or AMDISA, the TSUMYI, and the REF CSCs.
  - c) If the ATM decides to return the case to Compliance, include the reply email in the case file, and return the file to Compliance no later than the next business day (using Form 3210, Document Transmittal). Clearly identify the TEFRA one-year statute date(s) on a transmittal memorandum to the Case Manager/Team Manager.
- (7) APS will update the statute on AIMS within 5 business days of the receipt of the update request.
- (8) APS is responsible for the TEFRA one-year statute date until the case is received by the ATM (if Appeals will retain the case) or is returned to Compliance (if Appeals will not be retaining the case).

### **8.21.6.3.3**

#### **Appeals Team Manager Responsibility for TEFRA Partner Statutes**

- (1) Upon receipt of the case from APS, there may be TEFRA one-year statute dates that either have less than 365 days remaining and/or have expired.

- (2) When determining whether to accept jurisdiction, the ATM should consider if these TEFRA one-year statute dates have been extended, or if they relate to no-change examinations which Compliance has not updated on PCS.
- (3) The Compliance Case Manager/Team Manager as well as the examining agent may need to be contacted before determining whether the case will be retained by Appeals.

**Note:** If any one-year statute dates need to be updated on PCS, it is strongly recommended that Compliance assume this responsibility.

- (4) If a case has one or more one-year statute dates with less than 365 days remaining, the ATM will notify APS by secure email as to whether the case will be retained by Appeals. Any discussions between the ATM and Compliance will be summarized and included in the secure email that is sent to APS. Include a copy of the secure email with the case file when it is assigned.
- (5) If the case is not retained by Appeals in whole or in part because of the TEFRA one-year statute date(s) with less than 365 days, APS will return the case immediately to Compliance. Every effort should be made to return the case no later than the next business day (using controlled correspondence).
- (6) The ATM will call the Case Manager/Team Manager to alert him/her that the case is being returned. The file should be documented accordingly.
- (7) The ATM is responsible for the TEFRA one-year statute dates while the case is assigned to his or her team or group.