



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

January 30, 2015

Control #: SBSE-04-0115-0015
Expiration Date: January 30, 2016
Impacted IRMs: 4.25.10 and 4.25.11

MEMORANDUM FOR ALL SB/SE ESTATE AND GIFT TAX EMPLOYEES

FROM: Barbara J. Fiebich/s/
SB/SE Specialty Examination Policy and Quality

SUBJECT: Interim Guidance on Letter 5262-D, Additional Information Due – Estate and Gift

This memorandum issues interim guidance on the use of Letter 5262-D, *Additional Information Due – Estate and Gift Tax*. Please ensure this information is distributed to all affected employees within your organization.

Background/Source(s) of Authority:

The Office of Appeals is an independent and impartial forum for both the Government and the taxpayer to resolve disputes without litigation; and in so doing promote voluntary compliance by demonstrating the fairness and effectiveness of the tax administration system. To be effective, the administrative appeals process must not only be fair but must appear to be fair and free of conflict of interest. This is achieved by separating personnel involved in the final administrative appeals process from the personnel responsible for the compliance activity giving rise to the dispute.

Effectiveness of the settlement arm of the Service depends upon the confidence and trust taxpayers have in its fairness, objectivity, and impartiality. Appeals' mission cannot be accomplished if, in either fact or appearance, it seems to be an extension of the examination or collection processes. Therefore, Appeals must not be viewed by taxpayers as an adversary seeking to strengthen the Government's case, nor can it be a proponent unreasonably assisting the taxpayer.

The Appeals Judicial Approach and Culture (AJAC) project was designed to reinforce 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. AJAC's implementation created changes requiring that all documents requested by Examination be provided by the taxpayer or that the taxpayer confirms they do not exist prior to issuance of a 30-day letter. In response to the new AJAC

requirements, Estate and Gift created Letter 5262-D, *Additional Information Due — Estate and Gift*, for issuance by Estate and Gift examiners to assure consistency in taxpayer notification.

Procedural Change:

- (1) A primary function of examiners assigned to the Examination functions within the IRS is the original examination of estate, gift, generation-skipping transfer tax, fiduciary income tax, and other information returns. Examiners are the first finders of fact and are responsible for taking relevant testimony and examining books, papers, records, or memoranda, included in Federal tax returns. Therefore, when a taxpayer submits new information or evidence or raises a new issue to Appeals that warrants investigation and/or requires additional analysis in a non-docketed case, Appeals generally returns the case to Examination for a determination.
- (2) If information requested on Form 4564, *Information Document Request*, or through correspondence is not provided, the taxpayer may not be eligible for an Appeals conference.

Note: If a taxpayer or representative refuses to provide requested information to the examiner, the examiner's group manager will discuss the case with the taxpayer or representative to facilitate receipt of the requested information. Generally, the case file should not be sent to Appeals unless requested information has been provided. See IRM 1.4.40.4.11.5, *Unagreed Case Procedures*.

- (3) In order for the taxpayer to be eligible for an Appeals conference:
 - a. Information requested on Form 4564 or through correspondence must be provided by the taxpayer or a third party, or
 - b. The taxpayer/representative must confirm there is no additional information to resolve the outstanding issue(s). On each applicable lead sheet the examiner must inquire and document: the discussion, including the date and time, the parties to the discussion, what information was not provided and why it was not available, for each issue.
- (4) If the taxpayer has met either of the requirements in paragraph (3), the examiner should issue a 30-day letter and provide the taxpayer with the opportunity to request an Appeals conference. See IRM 4.25.10.4.6.1, *Unagreed – 30 Day Letter*.
- (5) If the taxpayer has not met the requirements in paragraph (3), and therefore is not eligible for an Appeals conference, the examiner should issue the initial examination report with Letter 5262-D, *Additional Information Due — Estate and Gift*, along with:
 - a. The original information document request(s) (IDR) highlighting the information that was not received, or
 - b. A new IDR incorporating the original IDR language and original due date for the previously requested information.

NOTE: The examiner should give the taxpayer 15 days to provide or confirm they do not have the requested information. If the letter is returned as undeliverable, follow the procedures in IRM 4.10.8.12.9(2), *Follow-Up to 30-Day Letters*.

- (6) The issuance of Letter 5262-D does not replace traditional summons procedures. If time permits, the examiner will work with Counsel to prepare, issue and enforce a summons, prior to the issuance of Letter 5262-D.
- (7) Follow the procedures in the table below based on the **taxpayer's response or non-response** to Letter 5262-D:

If . . .	Then the examiner will . . .
The taxpayer or representative returns the signed report.	Close the case using normal agreed procedures. <ul style="list-style-type: none"> • IRM 4.25.10.4.1 - Case Closing Procedures for Survey After Assignment • IRM 4.25.10.4.2 - Case Closing Procedures for No Change No Adjustments • IRM 4.25.10.4.3 - Case Closing Procedures for No Change with Adjustments • IRM 4.25.10.4.4 - Case Closing Procedures for Agreed Cases • IRM 4.25.10.4.5 - Case Closing Procedures for Partially Agreed Cases
The taxpayer or representative provides the information requested.	Evaluate the information, determine if a new report is necessary, issue the appropriate 30-day letter or close agreed. See IRM 4.25.10.4.6 for unagreed case procedures.
The taxpayer confirms they do not have the information requested and there is no additional information to resolve the outstanding issue(s).	Issue the appropriate 30-day letter and document the case file in accordance with the instructions in paragraph (3) above. See IRM 4.25.10.4.6 for unagreed case procedures.
The taxpayer or representative provides additional information, but not the information requested, and the information provided does not resolve the outstanding issue(s).	Call the taxpayer/representative to discuss the information received: <ol style="list-style-type: none"> a. Taxpayer confirms they have no additional information, issue the appropriate 30-day letter and document the case file in accordance with the instructions in paragraph (3). See IRM

	<p>4.25.10.4.6, for unagreed case procedures.</p> <p>b. Taxpayer states they have additional information for consideration, provide the taxpayer with 14 days to provide the additional information.</p> <p>c. Taxpayer states they have additional information for consideration but refuse to provide it, document the refusal in the case file and close the case to Technical Services for issuance of a statutory notice of deficiency.</p>
The taxpayer or representative does not respond to the letter.	Try to contact the taxpayer to discuss the letter.
The taxpayer is non-responsive to both the letter and attempts to resolve the dispute by telephone.	<p>For deficiency cases, close the case to Technical Services for issuance of a notice of deficiency.</p> <p>For claim cases, close the case to Technical Services for issuance of a notice of claim disallowance.</p> <p>For no change with adjustment cases, see IRM 4.25.10.4.3.</p>

(9) See IRM 4.10.8.11 to determine a taxpayer's eligibility for an appeals conference and for preliminary letter procedures relating to the examination of Form 1041, *U.S. Income Tax Return for Estates and Trusts*.

Effect on Other Documents:

The guidance provided in paragraphs (1) – (8) will be incorporated into IRM 4.25.10, *Estate and Gift Tax Case Closing Procedures*, and the guidance provided in paragraph (9) will be incorporated into IRM 4.25.11 by January 30, 2016.

Effective Date:

This Interim Guidance is effective January 30, 2015.

Distribution:

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