



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, EXAMINATION AREA DIRECTORS

FROM: Brad Bouton */s/ Brad Bouton*
Director, Examination Policy

SUBJECT: Interim Guidance for Small Business/Self-Employed Fast Track
Settlement, Technical Procedures and Guidelines

This memorandum provides interim guidance regarding the Small Business/Self-Employed (SB/SE) Fast Track Settlement (FTS) program. Please ensure this information is distributed to all affected employees within your organization. It is effective immediately.

Both SB/SE and Appeals are committed to reducing the time it takes taxpayers to complete the examination and resolution process. FTS is an optional strategy to reach resolution when the SB/SE examiner and manager, and the taxpayer have exhausted established issue resolution strategies. The FTS process is estimated to be completed within 60 calendar days of Appeals' acceptance of the FTS application.

For eligible cases, FTS allows taxpayers that have unagreed issues to work with SB/SE Examination and the Office of Appeals (Appeals) to resolve the issues while the case remains in SB/SE's jurisdiction. FTS may be initiated any time after an issue has been fully developed.

Managerial involvement is required in all unagreed cases. The group manager should review the case file to ensure the taxpayer has submitted requested information and all issues are fully developed and documented. In addition, Field Examination group managers are required to make contact in person or by telephone with taxpayers and/or representatives on all unagreed cases. Office Examination group managers are required to make contact in person or by telephone with taxpayers and/or representatives to offer a group manager's conference on cases where the taxpayer has requested their case be sent to Appeals. During conferences the group manager should discuss disputed issues with the taxpayer in an attempt to resolve the issues, obtain agreement, and limit taxpayer burden. If the issues cannot be resolved with the involvement of the group manager, the taxpayer should be informed of the following

resolution options:

- FTS for eligible cases (note: Fast Track Mediation should no longer be offered)
- Formal appeal with the Office of Appeals
- Pay the deficiency and file a claim for refund
- Receive a notice of deficiency and file a petition in U.S. Tax Court

There are many benefits of the SB/SE FTS program, including:

- Resolving issues at the lowest level possible by using the mediation skills and settlement authority of Appeals
- Reducing taxpayer burden
- Reducing overall case cycle time
- Reducing examiner burden in successful cases by eliminating the need for extensive write up, rebuttal memorandum, etc.
- Reducing resource needs for the Service

Attachment 1, *SB/SE Fast Track Settlement*, provides guidance and procedures for FTS. This guidance will be incorporated into IRM 4.10.7, *Issue Resolution*, by April 4, 2015.

If you have questions, you may contact me or a member of your staff may contact Cathy Demetra, Program Manager, Examination Policy, Exam General Processes.

Distribution: www.irs.gov

Attachment (1)

**SB/SE FAST TRACK SETTLEMENT
Technical Procedures and Guidelines**

This attachment provides guidance and procedures for actions an examiner and group manager (GM) must take related to [Fast Track Settlement](#) (FTS).

Part 1 - Determining Eligibility

Part 2 - When to Offer FTS

Part 3 - Application Process

Part 4 - Achieving Resolution through the FTS Program

Part 5 - Completing the FTS Process

Part 6 - Miscellaneous

Part 1 - Determining Eligibility

Section 1 – Determining Eligibility

- (1) Subject to the limitations below, SB/SE FTS is generally available for non-docketed SB/SE Examination cases with **no** regard to a dollar amount if:
 - a) Disputed issues are fully developed and facts, procedures, audit techniques, management involvement, applicable law, conclusions and adjustments are documented, see Part 1- Determining Eligibility, Section 1 - *Determining Eligibility*, paragraph (6),
 - b) All Examination issue resolution strategies have been exhausted, including the GM's conference, and
 - c) The taxpayer has stated a position in writing (or filed a small case request for cases in which the total amount for any tax period is less than \$25,000, as described in Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*).

- (2) Certain cases are excluded from the FTS program. The GM and/or examiner will determine if the case meets the FTS eligibility requirements according to the Case Eligibility and Exclusions section of [Announcement 2011-5](#), *Extension of Fast Track Settlement for SB/SE Taxpayers Pilot Program*. FTS should not be offered if the taxpayer:
 - a) Failed to cooperate, respond or submit requested information during the audit process, or
 - b) Failed to provide a stated position in writing in response to the proposed issues.

- (3) Any questions about FTS eligibility should be discussed with the GM.

- (4) The Appeals team manager (ATM) is available to assist the parties in making the eligibility determination, if necessary.
- (5) The ATM and GM may agree to consider issues or cases that otherwise are not eligible for FTS, depending on individual circumstances. If an issue is determined not eligible for FTS, all other issues in the case are not eligible for FTS.
- (6) The GM will review the case file to ensure the issue(s) is fully developed. An issue is considered to be fully developed when:
 - a) The examiner has considered all requested information and the issue can be written up as **unagreed** with supporting explanations ([IRM 4.10.8.11](#), *Unagreed Case Procedures: Preliminary (30) Day Letters*, and
 - b) The case contains properly documented lead sheets and workpapers supporting the examiner's position. The facts, applicable law, audit techniques used, management involvement and conclusions should be documented as described in [IRM 4.10.9.2.3.2](#), *Workpaper Body*, or if applicable, [IRM 20.1.7.1.6](#), *Examination Delinquent Information Return Procedures*).

Part 2 – When to Offer FTS

Section 1 - When to Offer FTS

- (1) The examiner will explain FTS to the taxpayer at the initial interview when he/she is informing the taxpayer of the examination and appeals process.
- (2) If a case is eligible for FTS, [Publication 5022](#), *Fast Track Settlement – A Process for Prompt Resolution of SB/SE Tax Issues*, should be provided as follows:
 - a) Field Examination—when there are unagreed issues,
 - b) Office Examination—when the 30-day letter is issued.
- (3) If the case is eligible for FTS and there are unagreed issues remaining after the GM has contacted the taxpayer in an attempt to resolve all issues ([IRM 1.4.40.4.11.5\(2\)c.](#) and [\(2\)d](#)), *Unagreed Case Procedures*, the examiner or manager will explain the benefits of the FTS program to the taxpayer. FTS should not be offered if the manager has not spoken to the taxpayer/representative.
- (4) For eligible cases, FTS should be offered:
 - a) Field Examination—prior to issuance of a 30-Day,
 - b) Office Examination—after the taxpayer has requested their case be sent to Appeals,

- c) Civil Penalty Cases (both Field and Office Examination)—where the taxpayer has not indicated agreement, prior to the case closing from the group.
- (5) If the case is eligible for FTS and the 30-Day letter has been issued but the case has not closed from the group, applications for FTS should still be referred to Appeals for consideration.
- (6) The taxpayer, the examiner or the GM may initiate the FTS process for eligible cases at any time after an issue is fully developed. Both parties must agree to the process.

Part 3 – Application Process

Section 1 - Application Process

- (1) The SB/SE FTS application package must contain the following:
- a) [Form 14017](#), *Application for Fast Track Settlement*, signed by the taxpayer(s), authorized representative, and GM (the territory manager signature is **not** required in the Approving Operating Division Official section of the form) for the key case and any prior and/or subsequent tax periods.
 - b) Separate Forms 14017 with required signatures for related tax returns and unagreed civil penalty cases (note “CVL PEN” in the “Type of Tax” block on Form 14017).
 - c) Summary of the unagreed issues and copies of pertinent examination lead sheets and workpapers.
 - d) The taxpayer’s written response to the proposed issues.
- (2) The examiner will work with the taxpayer to prepare Form 14017 and provide the taxpayer with copies of pertinent workpapers in order for the taxpayer to prepare a written response to the disputed proposed issues.
- (3) The examiner will continue to work the case towards closure while waiting for the taxpayer’s submission of the SB/SE FTS application.
- (4) Upon receipt of the taxpayer’s signed SB/SE FTS application and written position, the examiner will ensure the SB/SE FTS application package is complete with pertinent workpapers attached. The examiner will, by the close of the next business day, forward the SB/SE FTS application package to the GM for review, approval (signature) or denial, and processing.
- (5) Within **three business days** of the examiner’s receipt of the completed SB/SE FTS application package, the GM will:
- a) Review the SB/SE FTS application package,

- b) If approved, sign the Form 14017, and make two copies of the signed SB/SE FTS application package; mail one to the taxpayer and retain a copy in the examination case file, and
- c) Forward the original SB/SE FTS application package to the nearest [servicing Appeals office](#). The [MySB/SE Fast Track Settlement](#) website provides contact information and FAX numbers for where to send the completed application package. The GM will coordinate with Appeals to determine the appropriate method (fax or secure email) to send the SB/SE FTS application package to Appeals.

Note: If the GM does **not** approve the application, see Part 3 – Application Process, Section 2 - *Denied SB/SE FTS Application Package by Group Manager*.

- (6) The full administrative case file will **not** be forwarded to Appeals. All documents submitted with the SB/SE FTS application package will be made available by Appeals to all parties present at the first FTS session, if needed.

Section 2 – Denied SB/SE FTS Application Package by Group Manager

- (1) The GM should deny an application for FTS if the case is not eligible (see Part 1 - Determining Eligibility, Section 1 - *Determining Eligibility, paragraph (5)*). However, if the taxpayer was uncooperative, or did not respond to document requests or did not submit an adequate written response to the Service’s proposed issues, FTS must be denied.
- (2) Any FTS application denied by the GM, for reasons other than those defined in [Announcement 2011-5](#), requires review and concurrence by the SB/SE territory manager (TM).
- (3) The GM will provide the TM a copy of the SB/SE FTS application package and the GM’s written explanation for the denial within **three business days** of the examiner’s receipt of the signed SB/SE FTS application package from the taxpayer.
- (4) The TM will respond to the GM via email with their concurrence or non-concurrence. A decision by the TM not to accept a case into FTS is final.
- (5) The GM will discuss the decision to deny the application with the taxpayer. The GM must annotate the activity record to reflect the decision to deny the application and discussion with the taxpayer. The denied SB/SE FTS application package will remain in the case file.

Section 3 - Appeals Receipt of the FTS Application Package

- (1) The ATM will call the GM to confirm the GM’s eligibility determination within **three business days** of receipt of the SB/SE FTS application package.

- (2) If the SB/SE FTS application package is accepted, the ATM will assign the case to an Appeals Officer trained in mediation within **three business days** of receipt.

Section 4 - Denied SB/SE FTS Application Package by Appeals

- (1) If Appeals determines the eligibility requirements are not met, or the case is specifically excluded from FTS, the ATM will contact the GM within **three business days** of receipt, to explain the ineligibility determination, and return the SB/SE FTS application package to the GM. The GM will contact the taxpayer to inform the taxpayer the reasons why the case is not eligible. The case file will be documented accordingly.
- (2) If Appeals denies the application for a reason other than a failure to meet an eligibility requirement or the defined excluded cases, Appeals will notify the GM in writing within **three business days** to explain the reason for denial. Appeals will return the SB/SE FTS application package to the GM. Appeals will notify the taxpayer of the reason for the denial in writing. Examples of cases that **might not qualify** for SB/SE FTS include:
 - a) Numerous issues requiring more than 60 days to resolve, and
 - b) Exam or taxpayer is unable to meet during the 60 day time frame.

Section 5 – Appeals Considerations Prior to the SB/SE FTS Session

- (1) Within **5 business days** of case assignment, the Appeals official will contact the taxpayer and Examination to start the FTS planning process.
- (2) The Appeals official will work with Examination and the taxpayer/representative to identify and confirm the participants to the FTS session and ensure that all decision-making parties are present during the session. **The SB/SE GM will determine the SB/SE participants.** SB/SE participants may include the GM, the examiner, and others who have knowledge and expertise that may contribute to issue resolution. To facilitate resolution, the Appeals official should encourage the taxpayer's participation even if the taxpayer is represented.
- (3) The Appeals official has the right to ask either party for additional information to have full understanding of the issues and will share any information received with all parties prior to the session.
- (4) The Appeals official will schedule the FTS session at the servicing Appeals office or at another neutral site agreeable to the parties. The Appeals official will consider holding the session at a location that has the least cost or impact to the Service. In some instances, this could mean the Appeals official will travel to the examiner's post of duty (POD). The Appeals official should involve their manager and Examination in setting the location of the session. The parties should be **flexible** in

setting the meeting location and should allow participation by phone if all parties agree and it meets the needs of the parties.

Part 4 - Achieving Resolution through the FTS Program

Section 1 – SB/SE’s Roles and Responsibilities during FTS

- (1) The case activity record must reflect all examination action taken by the examiner and GM during the FTS process. If the examiner or GM fails to meet any of the FTS time requirements, the reason(s) must be documented accordingly.
 - (2) Examiners must update their case to **status 15** and **aging reason code (ARC) 23** when Appeals **accepts** the case into the FTS program. Upon completing the FTS session, the examiner should update the case back to status 12. The ARC 23 should remain on the case.
 - (3) If the FTS session takes place at the Examination office, the examiner and GM are responsible for reserving a conference room(s).
 - (4) Examination brings tax law expertise and specific knowledge of the case issue(s) to the FTS session. The examiner and GM are advocates for the government’s position during the FTS session. Examination may invite Counsel to attend the session to assist Examination, if needed.
 - (5) The examiner and GM will clarify and supplement the government’s position and provide information necessary to address arguments and information raised by the taxpayer.
 - (6) All parties will be active participants during the FTS session.
 - (7) The Appeals official has the ability to offer a settlement in both factual and legal issues in the event that the parties cannot reach settlement through mediation. Neither party is obligated to accept the settlement proposal offered by the Appeals official.
 - (8) If the settlement proposal is accepted by Examination and the taxpayer, the case will be closed agreed by the examiner based on the Appeals settlement.
 - (9) The examiner is expected to prepare a report (e.g. Form 4549), and the appropriate agreement forms at the conclusion of the session in order to secure agreement.
- NOTE:** FTS civil penalty cases require additional steps prior to closure. See Part 6 – Miscellaneous, Section 3, *FTS Agreed Civil Penalty Closures*.
- (10) If the settlement proposal is rejected by either party, the examiner will close the case using regular unagreed procedures. See Part 4 - Achieving Resolution through

the FTS Program, Section 4 - *SB/SE's Rejection of a Settlement Proposal*, paragraph (2).

Section 2 - What the Examiner should bring to the FTS Session

- (1) Case file containing workpapers
- (2) Copy of the SB/SE FTS application package
- (3) Laptop computer with RGS to prepare an examination report
- (4) Portable printer, if available

Section 3 - New Information Presented During FTS Session

- (1) It is expected that the examiner and taxpayer are aware of all issues and claims, and have presented all documentation before the FTS application package is submitted to Appeals.
- (2) If the taxpayer and/or Examination presents new information related to the issue(s) during the FTS session, and the parties agree that the process will not be delayed beyond the goal of 60 days, the FTS process can and should continue.
- (3) If the parties determine that the process will be delayed beyond the goal of 60 days, the Appeals official will consider terminating the session until both parties have had adequate time to review and evaluate the new information. If Appeals does terminate the FTS session, the case is removed from the FTS program, and the taxpayer would have to re-apply. The examiner would update ERCS to status 12 but retain ARC 23 on ERCS. Once the new information is evaluated, the examiner should close the case agreed, if possible, or follow unagreed procedures, including offering FTS.

Section 4 – SB/SE's Rejection of a Settlement Proposal

- (1) If the GM rejects the Appeals official's settlement proposal, which has been accepted by the taxpayer, by the close of the **next business day**, the GM will notify the TM the reasons for rejection of the settlement proposal in writing (e.g. memorandum, email). The TM must concur with such rejection in writing.
- (2) If the TM concurs with the GM's rejection of the Appeals official's settlement proposal, and an acceptable alternative settlement cannot be reached, the FTS session will be terminated and the case file will be documented accordingly. The examiner will close the case using normal unagreed case closing procedures ([IRM 4.10.8.11](#), *Unagreed Case Procedures – Preliminary 30-Day Letter*).
- (3) If the TM does not concur with the GM's rejection of the Appeals official's settlement proposal and agrees with the Appeals official's settlement proposal, the examiner will prepare the report (e.g. Form 4549) based on that proposal, secure

the taxpayer(s) signature and close the case using agreed closing procedures ([IRM 4.10.8.3](#), *Regular Agreed Cases*).

Section 5 - Withdrawal from SB/SE FTS

- (1) Both Examination and the taxpayer retain the right to withdraw from FTS throughout the entire process.
- (2) If after assignment in Appeals it is determined that the case is not ready for FTS or there is a change in the status of the case, Appeals and Examination will discuss a withdrawal of the case from FTS.
- (3) In the event of either party withdrawing, the Appeals official will notify the taxpayer and Examination, and return the SB/SE FTS application package to Examination.

Part 5 - Completing the FTS Process

Section 1 – FTS Closing Procedures

- (1) Examination is expected to prepare a report (e.g. agreed or excepted agreed) and compute the applicable deficiency/over assessment at the conclusion of the FTS session for all cases closing fully agreed.
- (2) If the Appeals official settles the issues based on **hazards of litigation**, he or she will secure the appropriate waivers or closing agreements and provide them to Examination. Examination will follow procedures as stated in [IRM 4.10.8.4](#), *Excepted Agreed Cases*, to prepare the report, to be associated with the waivers or closing documents provided by Appeals.
- (3) If the case is closing fully agreed, **without using hazards of litigation**, Examination will follow agreed closing procedures as stated in [IRM 4.10.8.3](#), *Regular Agreed Cases*.
- (4) If the taxpayer indicates agreement to some issues but not all of the issues at the conclusion of the FTS session, the examiner should secure a partial agreement.
- (5) The taxpayer will retain all appeal rights for issues that remain unagreed at the conclusion of the FTS session and Examination will close the case as either partially agreed or unagreed.

Section 2 - Form 14000, Fast Track Session Report

- (1) The Appeals official is required to complete [Form 14000](#), *Fast Track Session Report*, which assists in planning the SB/SE FTS session and reports the progress of the issues in dispute. The report includes the issues, adjustment dollars in dispute, and the disposition of each issue.

- (2) The Appeals official will obtain signatures from the taxpayer, representative, if applicable, the examiner and GM on the session report, and give all session participants a signed copy. The Appeals official will explain that the settlement is not final until the necessary closing documents or waivers are signed by all parties.
- (3) Form 14000 is not a waiver of restrictions on assessment; does not terminate consents to extend the statute of limitations; and does not start the running of any statute of limitations. The signature of an IRS official on the Session Report does not preclude the reopening of the case under [Policy Statement P-4-3](#).

Section 3 - SB/SE FTS Closing Package

- (1) When an SB/SE FTS case is closed (fully or partially resolved, not resolved, terminated or withdrawn) the Appeals official will prepare an “SB/SE FTS Closing Package” as stated in [IRM 8.26.2.15.2](#), *SB/SE FTS Closing Package*, which will be routed to SB/SE. The package may include the following documents:
 - a) [Form 5402](#), *Appeals Transmittal and Case Memo* - signed by the FTS appeals official,
 - b) Form 14000, *Fast Track Session Report* (signed by all parties),
 - c) Appeals Case Memorandum (ACM) required **only** on hazards settlements and prepared by the Appeals official,
 - d) Special Appeals Agreement Forms (AD) or Form 906/866 Closing Agreement required **only** on hazards settlements,
 - e) Correspondence received from and sent to the taxpayer/representative.
- (2) The examiner should retain the SB/SE FTS application package and/or closing package in the examination case file together with the related FTS documentation and all FTS correspondence.

Section 4 - Customer Satisfaction Survey

- (1) Appeals will provide a survey to all taxpayers/representatives after each FTS session.

Section 5 – FTS Data Collection Sheet

- (1) Examiners using the Fast Track Settlement process will complete a Data Collection Sheet (DCS) **for every case closed, unagreed or settled using the Fast Track Settlement process.**
- (2) Visit the *MySB/SE FTS* [website](#) for instructions on submitting the DCS.

Part 6 – Miscellaneous

Section 1 – *Ex Parte* Communications

- (1) The prohibition on *ex parte* communications between Appeals employees and other Internal Revenue Service employees does not apply to the communications arising in SB/SE FTS because Appeals employees are not acting in their traditional Appeals' settlement role ([Rev. Proc 2012-18, 2012-10, IRB 455](#), *Ex Parte Communications Between Appeals and Other Internal Revenue Service Employees*),
- (2) The FTS process is confidential with respect to all parties, pursuant to [IRC 6103](#), *Confidentiality and disclosure of returns and return information*. All information concerning any dispute resolution communication is confidential and may not be disclosed by any party except as provided under 5 U.S.C. Section 574. See [IRM 8.26.2.13](#), *SB/SE FTS Confidentiality*.

Section 2 – Other Administrative Responsibilities

- (1) Case controls, jurisdiction and statute of limitations responsibilities remain with the Examination group.

Section 3 – FTS Agreed Civil Penalty Case Closures

- 1) The examiner must manually issue [Letter 5320](#), *Fast Track Settlement – Civil Penalty*, to the taxpayer, in accordance with [IRC 6751](#), *Procedural requirements* and [IRC 6303](#), *Notice and demand for tax*.
- 2) The examiner must complete [Form 8278](#), *Assessment and Abatement of Miscellaneous Civil Penalties*, for each civil penalty with the FTS agreed civil penalty amount(s). To suppress incorrect computer-generated notices, write in the "Remarks" section of each page of Form 8278, the following: **"INPUT HOLD CODE 3 TO SUPPRESS NOTICE. PENALTY CASE HAS BEEN THROUGH FAST-TRACK SETTLEMENT PROCESS."**

NOTE: If the civil penalty case was not agreed or resolved in FTS, do not suppress the notice FTS may be initiated any time after an issue has been fully developed. However, do complete Form 8278 with the unagreed amount of the penalty.

- 3) Write **"Input hold code 3 to suppress civil penalty notice"**, in the Special Features section, "Other Instructions", of [Form 3198](#), *Special Handling Notice for Examination Case Processing*.