



INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 11, 2026

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Affected IRMs: 8.6.3, 8.6.4

MEMORANDUM FOR DIRECTOR, EXAMINATION APPEALS
DIRECTOR, SPECIALIZED EXAMINATION PROGRAMS AND
REFERRALS

FROM: Steven M. Martin /s/ *Steven M. Martin*
Director, Operations Support

SUBJECT: Processing cases in which Appeals' conclusion is inconsistent
with an IRS position and evaluating Actions on Decisions for
litigating hazards

This memorandum issues guidance on two conference and settlement issues until the affected IRMs listed above are republished: (i) processing cases in which the conclusion reached by the IRS Independent Office of Appeals (Appeals) on any issue is inconsistent with an IRS position, and (ii) considering Office of Chief Counsel-issued Actions on Decisions when evaluating litigating hazards. Please distribute this information to all impacted employees within your organization.

Background/Source(s) of Authority: On July 1, 2019, the Taxpayer First Act (TFA) was enacted. Most relevant part for this memorandum, the TFA:

- (i) Renamed the Office of Appeals as the IRS Independent Office of Appeals, which expressly confirms Appeals' independence from the remainder of the IRS;
- (ii) Codified the Appeals mission in IRC 7803(e)(3), which formally charges Appeals with, among other things, resolving "Federal tax controversies without litigation on a basis" that is "fair and impartial to both the Government and the taxpayer"; and
- (iii) Memorialized Congress' expectation in IRC 7803(e)(4) that the Appeals process will be "generally available to all taxpayers."

Following enactment of the TFA, Appeals reviewed its internal guidance to ensure it emphasizes our commitment to providing taxpayers with an independent review of their disputes and making settlement offers that resolve disputes fairly and impartially for both the government and taxpayers. With respect to only IRM 8.6.3, Appeals Rulings,

and IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form, Appeals' leadership determined that revisions were warranted to better enable Appeals' employees to act independently and evaluate issues impartially in resolving tax controversies.

On January 15, 2025, the IRS issued final regulations that provide guidance on the resolution of federal tax controversies by Appeals. In addition to addressing certain procedural and timing rules that must be met before Appeals can consider a federal tax controversy, the regulations also exclude certain specific categories of issues from consideration by Appeals. In relevant part, these regulations are also addressed in this guidance.

Procedural Change: The revisions to each of the affected IRMs are included in the attachment.

Effect on Other Documents: This guidance will be incorporated into the affected IRMs within two years from the date of this memorandum.

Effective Date: This guidance is effective as of the date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on How to Contact an Analyst.

Attachment

cc: www.irs.gov

IRM 8.6.3, Appeals Rulings, is modified as described below:

1. All occurrences of the phrase *Service position* in IRM 8.6.3, Appeals Rulings, are changed to the phrase *IRS position* to conform with The IRM Style Guide.
2. Paragraph (10) of IRM 8.6.3.3, Request for a Technical Advice Memorandum (TAM), is restated as follows:

(10) If an ATE wishes to take a position inconsistent with a conclusion reached in a TAM, they must discuss the case with their ATM before discussing the proposed settlement offer with the taxpayer. See IRM 8.6.3.4(2), Procedures If Appeals' Conclusion is Inconsistent with an IRS Position.

Exception: Appeals cannot settle an issue contrary to a TAM issued to the taxpayer under consideration concerning the initial or continuing recognition of tax-exempt status, an entity's classification as a foundation, the initial or continuing determination of employee plan qualification, or a determination involving an obligation, and the issuer of an obligation, under IRC 103 if: (a) the originating IRS function's adverse action is based on that TAM, and (b) that TAM was issued by an Office of Associate Chief Counsel before an appeal was requested. See IRM 8.6.3.4(3), Procedures If Appeals' Conclusion is Inconsistent with an IRS Position, and Treas. Reg. 301.7803-2(c)(15).

3. IRM 8.6.3.4, Procedures If Appeals Conclusion is Contrary to Service Position, is retitled and restated in its entirety to read:

IRM 8.6.3.4

Procedures If Appeals' Conclusion is Inconsistent with an IRS Position

(1) For purposes of this section, the term *IRS position* refers to a position set forth in published guidance, which includes regulations (including proposed regulations), revenue rulings, revenue procedures, and notices and announcements published in the Internal Revenue Bulletin. It also includes the conclusion on an issue as expressed in a letter ruling (as defined in Rev. Proc. 2026-1 (or its successor)) or TAM issued to the taxpayer under consideration.

(2) If an ATE is taking a position inconsistent with an IRS position, the ATE must discuss the case with their ATM before discussing the proposed settlement offer with the taxpayer.

(3) Appeals cannot settle an issue contrary to a TAM issued to the taxpayer under consideration concerning the initial or continuing recognition of tax-exempt status, an entity's classification as a foundation, the initial or continuing determination of employee plan qualification, or a determination involving an

obligation, and the issuer of an obligation, under IRC 103 if: (a) the originating IRS function's adverse action is based on that TAM, and (b) that TAM was issued by an Office of Associate Chief Counsel before an appeal was requested. See Treas. Reg. 301.7803-2(c)(15). For cases in which Appeals does not have the authority to settle an issue contrary to a TAM, but still disagrees with the conclusions in that TAM, it must request a new TAM. See Rev. Proc. 2026-2, 12.01 (or its successor).

(4) Appeals generally cannot review a decision by an Office of Associate Chief Counsel regarding whether to issue a letter ruling or the content of a letter ruling. Appeals can consider the subject of a letter ruling issued to the taxpayer, and settle any case contrary to a letter ruling, if:

- (a) After receiving the adverse letter ruling, the taxpayer takes a position on a return, the filing date of which is after the date of the letter ruling, that is contrary to the letter ruling;
- (b) The contrary position is examined by the IRS, and an adjustment is proposed or determined; and
- (c) The taxpayer's case meets all other requirements of Treas. Reg. 301.7803-2, IRS Appeals Resolution of Federal Tax Controversies Without Litigation.

See Treas. Reg. 301.7803-2(c)(17).

4. IRM 8.6.3.11, Change in Accounting Practice or Method, is modified as follows:

- a. Current paragraphs (4), (5), and (6) are renumbered (5), (6), and (7), respectively.
- b. Paragraph (3) is restated as follows:

(3) In a case where the taxpayer under consideration has received an adverse letter ruling from an Office of Associate Chief Counsel on a requested advance (non-automatic) consent accounting method change made on Form 3115, Application for Change in Accounting Method, the taxpayer does not have an immediate right to appeal that office's conclusion. See Rev. Proc. 2026-1, 10.02 (or its successor).

Exception: Appeals may consider the subject of the taxpayer's adverse letter ruling as a federal tax controversy if:

- 1. After receiving the adverse letter ruling, the taxpayer takes a position on a return, the filing date of which is after the date of the letter ruling, that is contrary to the letter ruling;
- 2. The contrary position is examined by the IRS, and an adjustment is proposed or determined; and

3. The taxpayer's case meets all other requirements of Treas. Reg. 301.7803-2, IRS Appeals Resolution of Federal Tax Controversies Without Litigation.

See Treas. Reg. 301.7803-2(c)(17).

- c. New paragraph (4) is stated as follows:

(4) In a case where the taxpayer has challenged the National Office's denial of a requested advance (non-automatic) consent for accounting method change made on Form 3115, the court will review the taxpayer's challenge under an abuse-of-discretion standard. Appeals will apply the same standard in its review of these cases.

5. Paragraph (4) of IRM 8.6.3.12, Extension of Time for Making Certain Elections, is restated as follows:

(4) In a case where the taxpayer under consideration has received an adverse letter ruling from an Office of Associate Chief Counsel on a request for relief under Section 9100, the taxpayer does not have an immediate right to appeal that office's conclusion. See Rev. Proc. 2026-1, 10.02 (or its successor).

Exception: Appeals may consider the subject of the taxpayer's adverse letter ruling as a federal tax controversy if:

1. After receiving the adverse letter ruling, the taxpayer takes a position on a return, the filing date of which is after the date of the letter ruling, that is contrary to the letter ruling;
2. The contrary position is examined by the IRS, and an adjustment is proposed or determined; and
3. The taxpayer's case meets all other requirements of Treas. Reg. 301.7803-2, IRS Appeals Resolution of Federal Tax Controversies Without Litigation.

See Treas. Reg. 301.7803-2(c)(17).

IRM 8.6.4.2.7, Case Evaluation for Settlement Purposes, is modified as described below:

1. In the third sentence of paragraph (1), the phrase *Service position* is changed to *IRS position*.
2. The following sentence is added to the end of paragraph (4):

Consult with Counsel, as necessary.

3. Current paragraph (5) is deleted in its entirety.
4. Current paragraphs (6) and (7) are renumbered as paragraphs (5) and (6), respectively, with no changes to the text of either paragraph.
5. Current paragraph (8) is renumbered as paragraph (7) and restated in full to read:

(7) When evaluating an issue which was the subject of litigation, if an Action on Decision (AOD) was issued by the Office of Chief Counsel, consider the applicability and persuasiveness of it.