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INTERNAL REVENUE SERVICE
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SMALL BUSINESS / SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, FIELD EXAMINATION, SB/SE DIVISION
DIRECTOR, CAMPUS EXAMINATION/AUR, SB/SE DIVISION
DIRECTOR, SPECIALTY EXAMINATION, SB/SE DIVISION
COMMISSIONER, WAGE AND INVESTMENT DIVISION
COMMISSIONER, LARGE BUSINESS AND INTERNATIONAL DIVISION

FROM: Scott E. Irick /s/ *Scott E. Irick*
Director, Headquarters Examination, SB/SE Division

SUBJECT: Docketed Case Examination Assistance

The purpose of this memorandum is to issue interim guidance reflecting procedures for Appeals to request examination assistance (EA) for docketed cases when petitioners provide new information, issues or arguments not previously considered by Examination. The attached, new IRM subsection [4.2.1.5.4](#), *Docketed Case Examination Assistance*, provides guidance for all LB&I Examination personnel, W&I Examination personnel and SB/SE Examination field, campus and specialty personnel. Please distribute this information to all affected employees within your organization.

Appeals will request EA when at least 60 days remain before the Tax Court calendar date and they receive new information, issues, or arguments not previously considered by Compliance and the information merits analysis.

This guidance is effective on November 1, 2016 and will be incorporated into [IRM 4.2.1](#), *General Examination Information*, within two years of issuance.

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

Attachment: [IRM 4.2.1.5.4](#), *Docketed Case Examination Assistance*

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4.2.1.5.4

Docketed Case Examination Assistance

- (1) [Rev. Proc. 2016-22](#) describes the practices for the administrative appeals process in cases docketed in the United States Tax Court (Tax Court). See [IRM 8.4.1](#), *Procedures for Processing and Settling Docketed Cases*, for additional information. These procedures do not apply to cases docketed in United States District Court or the United States Court of Federal Claims.
- (2) Jurisdiction of a **docketed** case must remain with the Office of Chief Counsel (Counsel) or the Office of Appeals (Appeals). Therefore, when Appeals receives “**new information**” (see [IRM 4.2.1.5.4.1](#) below) from a taxpayer, representative or counsel of record for a docketed case that merits analysis by Examination; Appeals can request examination assistance (EA). Appeals retains jurisdiction of the case while the new information is under review by Examination.

Note: When Appeals receives new information in a **non-docketed** case, Appeals generally releases jurisdiction of the case and returns it to the originating function to examine the new information and make an audit determination. See [IRM 8.2.1.8.3](#), *Verification of New Material or Request for Further Development - ATE*.

Note: In docketed Tax Court cases, a power of attorney is not required from the counsel of record. An attorney who is admitted to practice before the court becomes the counsel of record by filing a petition or entering an appearance in the case. A counsel of record is authorized to act on behalf of the taxpayer in the court proceedings, access the tax information of the person they represent and represent the taxpayer before the Internal Revenue Service. In a case docketed in the Tax Court, anyone other than the counsel of record must be eligible to practice before the IRS and, in order to be recognized, must present a [Form 2848](#), *Power of Attorney and Declaration of Representative*, or other power of attorney.

- (3) Standardized docketed case EA procedures ensure:
 - a. Examination is able to provide EA to Appeals by analyzing new information provided by petitioning taxpayers, consistent with its mission, and

- b. All petitioning taxpayers receive consistent treatment when they provide new information not previously made available to Examination.

(4) **Examination Assistance Exception.** If the docketed case is IRS Campus-sourced and meets the exception in paragraph (2) of [IRM 8.6.1.6.5](#), *Taxpayer Provides New Information*, Appeals will review the new information and proceed with normal consideration. If the case does not meet the exception, Appeals will generally request EA.

4.2.1.5.4.1

New Information Received in Appeals

(1) “**New information**” is information received in Appeals from the taxpayer, representative or counsel of record not previously made available to Examination for consideration prior to issuance of the IRS Notice, relating to issues:

- Previously examined,
- Raised in the petition, or
- Raised by the Government in its pleadings.

Note: For this purpose, an IRS Notice includes a Notice of Deficiency, a Notice of Final Determination, Final Partnership Administrative Adjustment (FPAA), a Notice of Determination of Worker Classification or any similar document that outlines the Service’s position on the particular tax matter and provides Tax Court rights.

(2) New information includes:

- New information, evidence or documentation.
- A relevant new issue for which Counsel has provided advice indicating that the issue does not require a formal amendment to the Tax Court petition.
- A new theory or alternative legal argument presented by the taxpayer that warrants analysis by Examination before Appeals can fully evaluate the hazards of litigation.

Note: Appeals must physically secure the new information and review it to determine if it merits analysis by Examination. **Analysis** may include categorizing, sorting or reviewing taxpayer records, or requiring additional steps or reasoning to reach a conclusion.

4.2.1.5.4.2

Examination Assistance Request Package

(1) Appeals will prepare an EA request package and forward it via encrypted e-mail to the EA Point of Contact (EA POC) within the appropriate originating function. The EA request package will include the following electronic files:

- a. [Form 14361](#), *Docketed Examination Assistance Request – Jurisdiction Not Released*, completed by Appeals.

- b. [Form 14362](#), *Docketed Examination Assistance Issues and Results*, partially completed by Appeals and used by Examination to approve or deny the EA request, and provide EA results to Appeals.
- c. IRS Notice and relevant attachments to the IRS Notice, if available.

Note: There must be at least 60 calendar days remaining before the Tax Court calendar date on the date Appeals sends the EA request package.

- (2) Appeals will use the *EA_Routing_Instructions* posted on the Appeals website to determine the correct EA POC based on guidance in [IRM 4.2.1.5.4.5](#) below.

4.2.1.5.4.3

Examination Assistance Point of Contact Actions

- (1) Generally, within five (5) business days of receiving the EA request package from Appeals, the EA POC will review [Form 14361](#) and [Form 14362](#) to ensure:
 - a. There are at least 45 calendar days from the date Appeals sent the request to the due date shown on [Form 14361](#), Part F, *Explanation*.
 - b. There are at least 60 calendar days from the date Appeals sent the request to the Tax Court calendar date shown on [Form 14361](#), Part F.
 - c. The issues to consider are identified on [Form 14362](#), Part C, *Issues and Results*.
- (2) The EA POC must communicate the decision to approve or deny the EA request to the Appeals Team Manager (ATM) within 30 calendar days or less.
 - If the EA request is **approved**, the EA POC completes [Form 14362](#), Part B, *Examination Assistance Approved/Denied*, indicating approval and sends the digitally signed form to the ATM via encrypted e-mail. The EA POC will personally provide the EA or assign and forward the EA request package to the examiner, via encrypted e-mail. See [IRM 4.2.1.5.4.5](#) below.
 - If the EA request is **denied**, the EA POC completes [Form 14362](#), Part B, by using the drop-down menu to indicate the reason the request was denied, and sends the digitally signed form to the ATM via encrypted e-mail.

Note: If the EA POC denies an EA request, Appeals (concerned that a significant risk to taxpayer compliance exists) can elevate the EA request to the Appeals Area Director for discussion with the EA POC's manager.

4.2.1.5.4.4

Examiner Secures New Information and Related Case File

- (1) After the Appeals Technical Employee (ATE) is notified of the examiner assignment, they will promptly contact the examiner using available means (e.g. phone, email, Office Communicator, etc.) to arrange for timely and efficient delivery of the new information and relevant administrative file information.

(2) The ATE and examiner will coordinate and agree upon a method of delivery of the new information and related administrative file information. The method of delivery may include, but is not limited to:

- Providing workspace in the Appeals office for the examiner to perform EA.
- Mailing/shipping using standard procedures, including [Form 3210](#), *Document Transmittal*.
- Using available electronic means of transmitting information, such as encrypted email, Enterprise e-Fax (EEFax), etc.

Note: The ATE will maintain physical possession of original tax returns, executed statute extensions, and required Tax Court-related documents. If the examiner needs any of these documents to perform the requested EA, the ATE will provide copies. If the examiner is providing EA in Appeals workspace, the ATE may provide the entire original administrative file to the examiner and secure the file from the examiner at the end of the business day.

4.2.1.5.4.4.1

Examiner Responsibilities

(1) The examiner **will**:

- a. Appropriately charge time for EA activities. LB&I and SB/SE field examiners will charge time to activity code 822, *Details out of Industry or Area to: Appeals Division*. Campus correspondence examiners will charge time and volume to Organization Function Program (OFP) code 91969. Campus AUR examiners will charge time to the applicable OFP code.
- b. Complete the assigned EA by the due date specified on [Form 14361](#), Part F.

Note: Examiners can request additional time to complete the EA, but Appeals can deny the request and require the immediate return of the EA package based on the needs of the case (e.g., Tax Court calendar date, Counsel requests return of case for trial preparation, etc.)

- c. Review and analyze the EA issues using the information received from Appeals.

Caution: The examiner **must not** contact the taxpayer, representative or counsel of record without the written concurrence (i.e. email) of the assigned Counsel attorney; [see IRM 4.2.1.5.4.4.1 \(3\)](#) below.

Note: If the new information affects a related FBAR case, consult with an Operating Division FBAR Coordinator.

- d. Prepare workpapers to support the EA findings (as applicable).
- e. Record the findings and EA time charged on [Form 14362](#), Part C.

Note: The ATE will have entered the issues to be addressed on Part C of [Form 14362](#), including the issue name, year/period, and per return amount. The examiner will enter the corrected amount, adjustment and explanation.

- f. Complete [Form 14362](#), Part D, *Examiner's Information*.
- g. Obtain manager's approval, if required, on [Form 14362](#), Part E, *Manager's Approval*.

- h. Send the approved [Form 14362](#) and any related electronic workpapers to the ATE via encrypted e-mail or other electronic method agreed upon by the ATE and examiner.
- i. Return applicable items to the ATE. See [IRM 4.2.1.5.4.4.2](#) below.
- j. Conduct any communications with Appeals in accordance with the ex parte rules. Appeals will invite the taxpayer, representative or counsel of record to participate in any substantive discussion of the disputed issues between Exam and Appeals. See [IRM 4.2.7](#), *Ex Parte Communication Procedures*.

Note: Appeals will issue [Letter 4642](#), *Docketed Case Examination Assistance*, to inform the taxpayer, representative or counsel of record that Appeals requested EA from Examination and will share any information provided by Examination with the taxpayer, representative or counsel of record for review and comment.

(2) **Although not required**, the examiner has the **discretion to**:

- a. Contact the assigned Counsel attorney at any time during the EA process.

Note: Appeals will identify the assigned Counsel attorney on [Form 14361](#) Part E, *Area Counsel Contact Information*. If the assigned Counsel attorney is not identified on [Form 14361](#), the examiner should contact the ATE for the identity of the assigned Counsel attorney.

- b. Verbally ask questions or request additional information from the taxpayer, representative or counsel of record to clarify the new information received from Appeals **but only after receiving the written concurrence (i.e. email) of the assigned Counsel attorney**. To avoid potential Tax Court discovery issues, the examiner **must not** issue an information document request (IDR). The examiner must document the conversation as well as information requested, date requested, date due, and requested method of delivery on [Form 9984](#), *Examining Officer's Activity Record*, or a workpaper.

Caution: If the examiner opts to interact with the taxpayer, representative or counsel of record as outlined above, the examiner must first contact the assigned Counsel attorney to secure the name of the appropriate party for such interaction in writing (i.e. email).

Note: Prior to requesting EA, the ATE will inform the taxpayer, representative or counsel of record of the critical importance of providing all information in support of their position to the ATE at the beginning of the Appeals process. Appeals will only request EA once on a case; therefore, the taxpayer, representative or counsel of record should have provided all necessary information to the ATE prior to the examiner receiving the EA request.

(3) The examiner **will not**:

- a. Prepare tax computations or create an examination report.
- b. Issue an IDR. See [IRM 4.2.1.5.4.4.1 \(2\)](#) above.
- c. Provide a summary of the results to the taxpayer, representative or counsel of record.
- d. Provide any assurances as to the final tax impact of the EA to the taxpayer, representative or counsel of record, as Appeals may base final settlement on additional factors, such as the hazards of litigation.
- e. Pursue the development of any issues not currently before the Tax Court for the specific case without written concurrence (i.e. email) of the assigned Counsel attorney.

4.2.1.5.4.4.2

Examiner Returns New Information and Related Case File

- (1) All administrative case file information including original documents and electronic files (CD-ROM, flash drive, etc.) provided by the taxpayer, representative or counsel of record through the ATE to the examiner will be returned to the ATE in the manner they were received.

Note: Information provided to the examiner electronically (e.g. email, OCS, Lync, etc.) does not need to be returned to the ATE since the ATE has the original documents.

- (2) The examiner will provide Appeals with any new information received and retained by the examiner from the taxpayer, representative or counsel of record during the EA.
- (3) The examiner will use [Form 3210](#) to track and acknowledge receipt of information returned to the ATE.

4.2.1.5.4.5

Examination Assistance Point of Contact

- (1) Appeals will use the [EA Routing Instructions](#) posted on the Appeals website to determine the correct EA POC. The following table provides the general business rules for determining the EA POC by Primary Business Code (PBC).

Primary Business Code	Originating Function and EA POC Information
190 - 195	<p>W&I Campus Cases - Forward EA requests to the appropriate, designated Campus Liaison (CL). Depending on the specific Campus (by PBC) there may be different CL EA POCs for the following programs:</p> <ul style="list-style-type: none"> • ASFR - Automated Substitute for Return • CORR - Campus Correspondence Examination • EITC - Earned Income Tax Credit <p>The CL will review and approve/deny the initial request. If approved, the CL may personally provide the EA or assign the EA work to another examiner.</p>
295 - 299	<p>SB/SE Campus Cases - Forward EA requests to the appropriate, designated CL. Depending on the specific Campus (by PBC) there may be different CL EA POCs for the following programs:</p> <ul style="list-style-type: none"> • ASFR - Automated Substitute for Return • AUR - Automated Underreporter • CORR - Campus Correspondence Examination • EITC - Earned Income Tax Credit

Attachment to SBSE-04-1016-0030, *Providing Examination Assistance on Docketed Cases IRM 4.2.1.5.4, Docketed Case Examination Assistance*

<p>Primary Business Code</p>	<p>Originating Function and EA POC Information</p>
	<p>The CL will review and approve/deny the initial request. If approved, the CL may personally provide the EA or assign the EA work to another examiner.</p>
<p>201 - 207</p>	<p>SB/SE Field Examination Cases - Forward to the appropriate, designated EA POC as follows (based upon information in the case file and AIMS/IDRS):</p> <ul style="list-style-type: none"> • If the Exam group is known, the EA POC will be the current Exam group manager. If approved, the EA POC may assign the EA to the original examiner or another examiner. • If the Exam group no longer exists or cannot be determined, the EA POC will be the Territory Manager. • If the Territory no longer exists or cannot be determined, Appeals will contact the Area PSP office for assistance in determining where to route the EA request. The Area PSP will not decide whether to approve or deny the EA request.
<p>212</p>	<p>SB/SE Field Employment Tax Cases - Forward to the appropriate, designated EA POC as follows (based upon information in the case file and AIMS/IDRS):</p> <ul style="list-style-type: none"> • If the Exam group is known, the EA POC will be the current Exam group manager. • If the Exam group no longer exists or cannot be determined, the EA POC will be the Territory Manager. • If the Territory no longer exists or cannot be determined, the EA POC will be the Chief Employment Tax.
<p>213</p>	<p>SB/SE Field Estate & Gift Tax Cases - Forward to the appropriate, designated EA POC as follows (based upon information in the case file and AIMS/IDRS):</p> <ul style="list-style-type: none"> • If the Exam group is known, the EA POC will be the current Exam group manager. • If the Exam group no longer exists or cannot be determined, the EA POC will be the Territory Manager. • If the Territory no longer exists or cannot be determined, the EA POC will be the Chief, Estate and Gift.
<p>214</p>	<p>SB/SE Field Excise Tax Cases - Forward EA requests to the appropriate, designated PBC 214 (Excise Tax) EA POC.</p> <ul style="list-style-type: none"> • If the Exam group is known, the EA POC will be the current Exam group manager. • If the Exam group no longer exists or cannot be determined, the EA POC will be the Territory Manager. • If the Territory no longer exists or cannot be determined, the EA POC will be the Chief Excise Tax.

Primary Business Code	Originating Function and EA POC Information
3XX	<p>LB&I Examination Cases - Forward EA requests to the appropriate, designated EA POC as follows (based upon the PBC):</p> <ul style="list-style-type: none">• If the Examination Group Code is known, the EA POC point will be the current Examination/Compliance Manager (Group/Team Manager).• If the Examination group no longer exists or cannot be determined, the EA POC will be the Compliance Territory Manager.• If the Territory no longer exists or cannot be determined, Appeals will contact the Compliance Function Director Field Operations (DFO) for assistance in determining where to route the EA request. The DFO will not decide whether to approve or deny the EA request.