



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

March 1, 2019

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Affected IRMs: 8.11.1 and 8.11.4

MEMORANDUM FOR APPEALS EMPLOYEES

FROM: Anita M. Hill /s/ *Anita M. Hill*
Director, Case and Operations Support

SUBJECT: Reissuance of Interim Guidance: Appeals Team Managers Will Review and Sign Form 5402 for Assessed Penalty Cases Worked in Appeals.

This memorandum reissues guidance in AP-08-0417-0002, *Appeals Team Managers Will Review and Sign Form 5402 for Assessed Penalty Cases Worked in Appeals*, issued on April 4, 2017. This guidance added the requirement for Appeals Team Managers (ATM) to review and sign Form 5402, Appeals Transmittal and Case Memorandum, for all assessed penalty cases worked in Appeals, except those worked by Appeals Team Case Leaders (ATCL).

Purpose: The purpose of this memorandum is to add a requirement for the ATM to review and sign the Form 5402 as part of the case closing process for all assessed penalty cases not worked by ATCLs.

Background: Previously, some Appeals employees had delegated authority to settle certain assessed penalty cases. On March 29, 2017, the Commissioner, Internal Revenue, rescinded Delegation Order 8-2 and signed Delegation Order 8-8 (Rev. 1). As a result, the authority to settle assessed penalty cases is only delegated to ATMs and ATCLs as to their respective cases.

Procedural Change: Pursuant to this guidance, the ATM will review and sign Form 5402 for all assessed penalty cases.

Effective Date/Effect on Other Documents: This guidance is effective as of the date of this memorandum and supersedes AP-08-0417-0002, *Appeals Team Managers Will Review and Sign Form 5402 for Assessed Penalty Cases Worked in Appeals* and will be incorporated into the affected IRMs by the expiration date of this memorandum.

Contact: If you have questions, please follow established procedures on [How to Contact an Analyst](#).

cc: www.irs.gov

8.11.1.1.3

Assessed Penalty Settlement Authority

- (1) Appeals Technical Employees (ATEs) consider settlements of appeals of **assessed** penalties for less than the full amount. Delegation Order 8-8 (Rev.1) delegates the authority to settle cases to Appeals Team Managers and Appeals Team Case Leaders as to their respective cases (See IRM 1.2.47.9).

Note: Delegation Order 8-2 was rescinded.

- (2) The ATM will sign the Form 5402, *Appeals Transmittal and Case Memo*.

8.11.4.1.7

Closing Actions for Appeals Technical Employee

- (1) This section discusses the process used by the Appeals Technical Employee to close PENAP cases.
- (2) Use ACDS APGolf to generate all forms and letters.
- (3) Prepare the Appeals Case Memo (ACM). The ACM should outline the facts and circumstances supporting sustention or abatement of the penalty. This could include, but is not limited to:
 - Taxpayer's filing history
 - Citing case law
 - Hazards of litigation

IRM 8.6.2 *Appeals Case Memo Procedures*, provides additional information on the preparation of ACMs.

- (4) Prepare the ACDS customized Form 5402, *Appeals Transmittal and Case Memo*:
 - Prepare a Form 5402 to adjust the taxpayers account based on the case determination
 - Show the affected tax periods included in the case
 - List penalty transaction codes
 - Input penalty adjustment amounts on the Form 5402 using the exact dollars and cents when making full abatements
 - Include special instructions related to processing the case
 - Notate the remarks section of the Form 5402 when a certified claim disallowance letter had been issued (Letter 1363 and/or Letter 1364), instructing APS to enter this information in the **Notes** field on ACDS. The reason for this requirement is to ensure duplicate certified letters are not issued which may erroneously extend the two-year period to file suit with the applicable court.

- Enter proper reason code on the Form 5402:
 - 40 - Complete removal of penalty
 - 41 - Appeals sustains penalty
 - 42 - Appeals partial abatement of penalty
- Route the case to the ATM, who will sign Form 5402 and then route the case to APS, who will process the adjustments

(5) The Closing Codes for PENAP cases are:

Determination Made	Closing Code
Sustained (penalties are not removed)	14
Abated (penalties are fully removed)	15
Partially Abated (only part of the penalties are removed)	16

(6) Prepare the applicable ACDS closing letters:

- Letter 1277 - Penalty Abatement Denied. Use the narrative section to provide the reason for denying the abatement request in full or in part
- Letter 1278 - Penalty Fully Abated

(7) Prepare (and leave undated) the closing letters for the ATM's signature. APS will mail the closing letters after the Appeals Team Manager/Team Leader has approved the decision.

(8) In rare situations, resolution of the case will involve a specific matter closing agreement. See IRM 8.13.1, Processing Closing Agreements in Appeals.