



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.8.8

FEBRUARY 11, 2021

## EFFECTIVE DATE

(02-11-2021)

## PURPOSE

- (1) This transmits revised IRM 4.8.8, Technical Services, Miscellaneous Responsibilities.

## MATERIAL CHANGES

- (1) The table below identifies the significant changes in content since the December 1, 2017, revision of this IRM.

Reference	Description of Changes
IRM 4.8.8.1.1	Added the four Technical Services territories aligned with Central Area, South Atlantic Area, Midwest Area and Western Area.
IRM 4.8.8.3	Added HQ Exam Policy new guidance to preparing Form 906 - Closing Agreement for Voluntary Disclosure Practice (VDP) cases.
IRM 4.8.8.3.1	Added the Form 906 Pro-Forma Template and instructions and use for Abusive Transactions (AT) and VDP cases.
IRM 4.8.8.5.4	Specified to whom TAS sends their operations assistance request (OAR) in TS. The Functional Liaison assigns the OAR to the appropriated TS group.
IRM 4.8.8.8	Modified the instructions to the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) statute to ensure the TIPRA statute is on the Form 3198 and Form 895.
IRM 4.8.8.8.4	Added instructions for the use of the new required AOIC system when closing OIC-DATL withdrawal offers.
IRM 4.8.8.8.6	Incorporates Interim Guidance Memorandum SB/SE-04-0220-0009 new guidance to OIC-DATL Closing Procedures. Added the order of the documents required in an OIC-DATL case file.
IRM 4.8.8.11	Added Exhibit 25.6.1-4, SB/SE Statute Expiration Reporting Timetable to timely prepare and submit for review and approval by the field Area Director.
IRM 4.8.8.12.2.1.3	Added a link to the Internal Revenue Bulletins twice in this section once for SB/SE and the other one for LB&I to advise taxpayer's where to mail their determination letter request.
IRM 4.8.8.13	Added clarification of transferee liability as a secondary or derivative liability, and not a primary or direct liability.
IRM 4.8.8.15	Added the revised Memorandum of Understanding (MOU) Between Chief, Criminal Investigation (CI) and Commissioner, Small Business/Self Employed dated August 28, 2020 per TIGTA's audit recommendation on CI Imprest Fund Audit.

Reference	Description of Changes
IRM 4.8.8.15.1	Added the revised Memorandum of Understanding of CI Imprest Audit MOU TIGTA recommended guidance. No one individual auditor should conduct consecutive audit. The Examination function is responsible to rotate auditors and ensure that no one auditor conducts consecutive audits.
IRM 4.8.8.15.2	Clarified that some of the CI forms can only be generated by CI systems. CI provides the Imprest Fund Audits with these CI forms.
IRM 4.8.8.15.3	Updated the E-fax and E-mail address to send Quarterly the original CI Imprest Audit Form 2844.
IRM 4.8.8.15.4	CI Imprest Audit is now under the Director, Special Investigative Techniques instead of under the Special Agent in Charge (SAC).
IRM 4.8.8.16.1	Updated the list of Abusive Transactions schemes.
IRM 4.8.8.16.3	Deleted the Alternative Resolution Implementation group since no longer in Technical Services since the group was collapsed. Added Emerging Issue and Exam Quality and Technical Support/Abusive Transaction Group websites as resources.
IRM 4.8.8.18.1	Incorporated Interim Guidance Memorandum SB/SE-04-0719-0034 on Third Party Contact Notification Procedures. Added the new IRC 7602(c)(1) requirements.
IRM 4.8.8.18.2	Incorporated Interim Guidance Memorandum SB/SE-04-0719-0034 on Third Party Contact Notification Procedures. Added that third-party contact should occur on the 46th day.
IRM 4.8.8.18.3	Incorporated Interim Guidance Memorandum SB/SE-04-0719-0034 on Third Party Contact Notification Procedures. Deleted Publication 1 references by adding notification. Added guidance on documenting when the taxpayer was notified.
IRM 4.8.8.21	Added guidance when there is a TS program Subject Matter Expert (SME) vacant position.
IRM 4.8.8.21.1	Added guidance when SME's issues/trends/problem areas/concerns are elevated to the field Area Director. Area Directors must discuss the issue or solution with the other four field Area Directors with TS territory prior to implementing the solution.
IRM 4.8.8.22.2.1	Added three examples to clarify how the Rev. 92-93 collaterals should be named on ERCS. Added information on contacting the Rev. 92-93 Subject Matter Expert when a taxpayer files Form 1065 and it falls under Bipartisan Budget Act of 2015.
IRM 4.8.8.22.2.4	Added two notes on securing Form 921-I and the other note on taxpayer filing a partnership return to refer to IRM 4.8.8.22.2.1.'
IRM 4.8.8.22.2.5	Added instruction on destroying project files by referencing Form 11671, Certification of Records Disposal of Paper or Electronic Records.
Editorial Changes	Made editorial updates throughout the IRM by correcting citations, references and deleting breaks by adding examples instead

**EFFECT ON OTHER DOCUMENTS**

This material supersedes IRM 4.8.8 dated December 1, 2017. This revision incorporates Interim Guidance Memorandum SB/SE-04-0220-0009 to Update OIC-DATL Closing Procedures, dated February 12, 2020 and Interim Guidance Memorandum SB/SE-04-0719-0034 on Third Party Contact Notification Procedures, dated July 26, 2019.

**AUDIENCE**

Small Business and Self-Employed (SB/SE) Technical Services employees.

John H. Imhoff, Jr.  
Director, Field Examination  
Small Business/Self-Employed



4.8.8

Miscellaneous Responsibilities

## Table of Contents

4.8.8.1 Program Scope and Objectives

4.8.8.1.1 Background

4.8.8.1.2 Responsibilities

4.8.8.1.3 Acronyms

4.8.8.2 Accumulated Earnings Tax

4.8.8.3 Closing Agreements

4.8.8.3.1 Technical Services Responsibilities

4.8.8.4 Deficiency Dividends of a Personal Holding Company

4.8.8.4.1 Scope of Review

4.8.8.4.2 Reviewer Responsibilities

4.8.8.5 Interest Abatement Cases

4.8.8.5.1 Claims Worked by Technical Services

4.8.8.5.2 Claims Originating From an Open Examination

4.8.8.5.3 Claims Originating From the Campus

4.8.8.5.4 Claims Originating From Taxpayer Advocate Service

4.8.8.5.5 Claims Originating From Other Functions

4.8.8.5.6 Developing the Interest Abatement Claim File

4.8.8.5.7 Technical Services Interest Abatement Coordinator Procedures

4.8.8.5.7.1 Inventory Controls

4.8.8.5.7.2 Coordination with IRS Independent Office of Appeals and Collection

4.8.8.5.7.3 Procedures for Working Interest Abatement Cases

4.8.8.5.7.4 Interest Abatement Determination Letters

4.8.8.5.7.5 Closing Interest Abatement Cases

4.8.8.6 Involuntarily Converted Property

4.8.8.6.1 Technical Services' Responsibility

4.8.8.7 Jeopardy and Terminations

4.8.8.7.1 Reviewer Responsibilities

4.8.8.7.1.1 Assisting Examination

4.8.8.7.1.2 Technical Services Pre-Review

4.8.8.7.1.2.1 Review of Pre-Approval Report

4.8.8.7.1.2.2 Review of Approval Report and Approval Package

4.8.8.7.1.3 Preparing Notices of Deficiency

4.8.8.7.1.3.1 Jeopardy Notice of Deficiency

4.8.8.7.1.3.2 Termination Notice of Deficiency

4.8.8.7.1.3.3 Possessor of Cash Notice of Deficiency

- 
- 4.8.8.7.1.3.4 Review by Counsel
  - 4.8.8.7.1.3.5 Late Mailing
  - 4.8.8.7.1.4 Abating Jeopardy/Termination Assessments
  - 4.8.8.8 Offer in Compromise Cases
    - 4.8.8.8.1 Automated Offers in Compromised (AOIC)
    - 4.8.8.8.2 Overview
    - 4.8.8.8.3 Independent Administrative Review Procedures for Rejected Offers
    - 4.8.8.8.4 Withdrawn Offers
    - 4.8.8.8.5 Accepted Offers
    - 4.8.8.8.6 Case Closing Procedures
    - 4.8.8.8.7 Additional Offer in Compromise Issues
  - 4.8.8.9 Carryback Adjustments Requiring Form 2285
    - 4.8.8.9.1 Review of the Restricted Adjustment RAR and Form 3198
    - 4.8.8.9.2 Requirements for Preparation of a Form 2285
    - 4.8.8.9.3 Completion of Form 2285
  - 4.8.8.10 Specialist Referrals
  - 4.8.8.11 Statute Expiration Reports
  - 4.8.8.12 Formal and Informal Technical Assistance
    - 4.8.8.12.1 Requests for Advice From Examiners
      - 4.8.8.12.1.1 Informal Assistance From Chief Counsel
      - 4.8.8.12.1.2 Advice From Area Counsel
      - 4.8.8.12.1.3 Requests for Chief Counsel Advice
      - 4.8.8.12.1.4 Requests for Technical Advice Memorandum
    - 4.8.8.12.2 Request for Advice From Taxpayers
      - 4.8.8.12.2.1 Determination Letters
        - 4.8.8.12.2.1.1 Determination Letters Issued
        - 4.8.8.12.2.1.2 Determination Letters Not Issued
        - 4.8.8.12.2.1.3 Guidelines for a Determination Letter
        - 4.8.8.12.2.1.4 Technical Services' Responsibilities
      - 4.8.8.12.2.2 Information Letter
      - 4.8.8.12.2.3 Letter Ruling
    - 4.8.8.12.3 Technical Coordination Report
      - 4.8.8.12.3.1 General Information
      - 4.8.8.12.3.2 Technical Coordination Reports That Merit the Commissioner's Attention
      - 4.8.8.12.3.3 Technical Coordination Reports That Do Not Merit the Commissioner's Attention
      - 4.8.8.12.3.4 Procedures for Technical Coordination Reports
  - 4.8.8.13 Transferee Liability Cases
    - 4.8.8.13.1 Scope of Review
      - 4.8.8.13.1.1 Interest on Transferee Liability Addressed by Examiner

- 
- 4.8.8.13.2 Agreed Transferee Liability
  - 4.8.8.13.3 Unagreed Transferee Liability Case
  - 4.8.8.13.4 Statutory Notice of Transferee Liability
  - 4.8.8.13.5 Completing Form 1296
  - 4.8.8.14 Mitigation Cases—IRC Sections 1311-1314
  - 4.8.8.15 Imprest Fund Audits
    - 4.8.8.15.1 Memorandum of Understanding Between CI and SB/SE
    - 4.8.8.15.2 Forms
    - 4.8.8.15.3 Quarterly Audit
    - 4.8.8.15.4 Reconciling the Funds
  - 4.8.8.16 Abusive Transactions (AT)
    - 4.8.8.16.1 Identifying AT Cases
    - 4.8.8.16.2 Technical Services Case Reviews and Procedures
    - 4.8.8.16.3 Resources for AT Cases
  - 4.8.8.17 Appeals/Counsel Liaison
    - 4.8.8.17.1 Cases Returned From Appeals
    - 4.8.8.17.2 Feedback From Appeals
    - 4.8.8.17.3 Advice From Area Counsel
  - 4.8.8.18 Third-Party Contacts
    - 4.8.8.18.1 Advance Notice Procedures
    - 4.8.8.18.2 Basic Reviewer Responsibilities
    - 4.8.8.18.3 Advance Notice to the Taxpayer
    - 4.8.8.18.4 Record Each Third-Party Contact Made
    - 4.8.8.18.5 Provide a List of Third-Party Contacts to the Taxpayer Upon Request
    - 4.8.8.18.6 Exceptions or Contacts Not Considered Third-Party Contacts
  - 4.8.8.19 Report of Foreign Bank and Financial Accounts (FBAR) Coordination
  - 4.8.8.20 Qualified Offers
  - 4.8.8.21 Subject Matter Experts
    - 4.8.8.21.1 Communication
    - 4.8.8.21.2 Research and Identify/Elevate Issues
    - 4.8.8.21.3 Periodic Review
    - 4.8.8.21.4 Coordination
  - 4.8.8.22 Rev. Proc. 92-29, Alternative Cost Method for Real Estate Developers
    - 4.8.8.22.1 The Rev. Proc 92-29 Process
    - 4.8.8.22.2 Rev. Proc. 92-29 Coordinator's Responsibilities
      - 4.8.8.22.2.1 Rev. Proc. 92-29 Request
      - 4.8.8.22.2.2 Rev. Proc. 92-29 Annual Statement
      - 4.8.8.22.2.3 Rev. Proc. 92-29 Supplemental Request

- 4.8.8.22.2.4 Statute Protection
- 4.8.8.22.2.5 Other Miscellaneous Information

Exhibits

- 4.8.8-1 Sample Form 1296 for Transferee Assessment
- 4.8.8-2 Imprest Audit Worksheet
- 4.8.8-3 Imprest Audit Checklist
- 4.8.8-4 Imprest Audit Cover Memorandum
- 4.8.8-5 Qualified Offer Memo
- 4.8.8-6 Check Sheet to Determine if Rev. Proc. 92-29 Procedures Were Followed for the Request
- 4.8.8-7 Project Status Sheet—Revenue Procedure 92-29

4.8.8.1  
(12-01-2017)  
**Program Scope and Objectives**

- (1) **Purpose.** This IRM section includes duties and responsibilities assigned to Technical Services (TS), which are not addressed elsewhere. The following topics are included:
  - Accumulated Earnings Tax
  - Closing Agreements
  - Deficiency Dividends of a Personal Holding Company
  - Interest Abatement Cases
  - Involuntarily Converted Property
  - Jeopardy/Termination Assessments
  - Offer in Compromise Cases
  - Restricted Interest Cases
  - Specialist Referrals
  - Statute Expiration Reports
  - Formal and Informal Technical Assistance
  - Transferee Liability Cases
  - Mitigation Cases
  - Imprest Fund Audits
  - Abusive Transactions (AT)
  - Appeals/Counsel Liaison
  - Third Party Contacts
  - Report of Foreign Bank and Financial Account (FBAR) Coordination
  - Qualified Offers
  - Subject Matter Experts
- (2) **Audience:** These procedures apply to TS employees assigned to the various programs discussed in this IRM.
- (3) **Policy Owner:** The TS office is under Examination Deputy Operations, Field Examination.
- (4) **Program Owner:** TS is the program office responsible for processing and closing cases that may include the topics listed above.
- (5) **Contact Information:** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6 , Providing Feedback About an IRM Section - Outside of Clearance.

4.8.8.1.1  
(02-11-2021)  
**Background**

- (1) In July 2018 Technical Services area's four territories were realigned within the following four Field Examination Areas: Central Area-TS East, South Atlantic Area-TS Legacy, Midwest Area-TS Midstates and Western Area-TS West. This IRM includes duties and responsibilities assigned to TS territories, which are not addressed elsewhere in this manual. IRM 4.8.8, Miscellaneous Responsibilities will be utilized by TS technical personnel in SB/SE for accomplishing the objective of TS function. TS serves as the overall closing function for Field Examination cases and specifically for the various topics as listed in IRM 4.8.8.1 (1).

4.8.8.1.2  
(02-11-2021)  
**Responsibilities**

- (1) The Director, of SB/SE Examination Deputy Operations, Field Examination- is the Executive responsible for providing policy and guidance to field Area Directors with Technical Services employees.
- (2) Area Directors in Field Examination with Technical Services territories have executive responsibilities controlling inventory and case processing in their respective TS territories. The detailed responsibilities are outlined in this IRM.

4.8.8.1.3  
(02-11-2021)

(1) This list provides the acronyms and definitions used in this IRM.

**Acronyms**

<b>Acronym</b>	<b>Definition</b>
AOIC	Automated Offers in Compromise
AT	Abusive Transactions
BBA	The Bipartisan Budget Act of 2015
CCP	Centralized Case Processing
CTF	Campus TEFRA Function
DATL	Doubt as to Liability
EQTS	Exam Quality Technical Support
ERCS	Examination Return Controls System
FBAR	Report of Foreign Bank and Financial Accounts
GSI	Global Settlement Initiative
IAC	Interest Abatement Coordinator
IAR	Independent Administrative Reviewer
LCCI	Last Chance Compliance Initiative
MOU	Memorandum of Understanding
NOL	Net Operating Loss
OAR	Operations Assistance Request
OIC	Offer in Compromise
PHC	Personal Holding Company
POA	Power of Attorney
PSP	Planning and Special Programs
RGS	Report Generation Software
SAC	Special Agent in Charge
SLA	Service Level Agreement
SME	Subject Matter Expert
TAM	Technical Advice Memorandum
TAS	Taxpayer Advocate Service
TC	Transaction Code
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982
TIPRA	Tax Increase Prevention and Reconciliation Act of 2005
TS	Technical Services

Acronym	Definition
VDP	Voluntary Disclosure Practice

4.8.8.2  
(12-01-2017)  
**Accumulated Earnings  
Tax**

- (1) In any proceeding before the Tax Court involving the allegation that a corporation has permitted its earnings and profits to accumulate beyond reasonable business needs, the burden of proof is on the Commissioner unless a notification is sent to the taxpayer under IRC 534(b), Burden of Proof, before the issuance of a notice of deficiency. Letter 572, Proposal to Issue a Notice of Deficiency for Excess Accumulated Earnings Under IRC Section 531, is used for this notification. However, if such notification is sent to the taxpayer and the following exist, the burden of proof will be on the Commissioner as to the grounds given in the statement.

  - a. The taxpayer timely submits the statement (meaning the grounds on which the taxpayer relies to establish that there has been no accumulation of earnings and profits beyond the reasonable needs of the business) and
  - b. Such grounds are supported by facts contained in the statement.

See Treas. Reg. 1.534-2(a)(2).
- (2) The notification Letter 572 may be sent to the taxpayer before issuance of the 30 day letter or concurrently with the 30 day letter (in which case the purge date will allow for 60 days rather than the normal 30 days). The letter must be sent by certified mail, normally by the examiner using the examiner's contact information. However, only officials and TS' reviewers delegated to sign notices of deficiency pursuant to *Servicewide Delegation 4-8*, Authority to issue Notices of Deficiency or Execute Agreement are authorized to sign notifications under IRC 534(b) according to Rev. Proc. 56-11, 1956-1 C.B. 1028. Therefore, the case is forwarded to TS to sign Letter 572. TS will return the case to the group for certified mailing and suspense. See *SB/SE 4-1-1*, Authority to Sign Agreements for Personal Holding Company Tax.
- (3) If a taxpayer responds to Letter 572 with a rebuttal statement, the examiner will follow the instructions in IRM 4.10.13.2, Accumulated Earnings Tax (IRC section 531). If it is determined that a notice of deficiency should be issued, the case will be forwarded to TS. Specific language with regard to the accumulated earnings tax issue must be used for the notice of deficiency and can be found in IRM 4.8.9.16.1, Accumulated Earnings Tax (IRC section 531).
- (4) IMMEDIATE STATUTE CASES: A notice of deficiency will not be issued before expiration of the period of time granted by Letter 572 for filing the statement, except when the statute of limitations is imminent or when other compelling circumstances require earlier issuance. In the event that the statute of limitations is imminent, and the taxpayer will not consent to an extension, the case should be forwarded immediately to TS so a reviewer can prepare and mail the notification letter before issuance of the notice of deficiency.
- (5) IRM 4.10.13.2, Accumulated Earnings Tax (IRC 531), has an in-depth discussion of accumulated earnings tax and the notification process.

4.8.8.3  
(02-11-2021)**Closing Agreements**

- (1) IRC 7121, Closing Agreements, provides authority for entering into closing agreements. IRM 8.13.1, Processing Closing Agreements in Appeals, outlines situations requiring the use of a closing agreement and provides in-depth instructions about preparing a closing agreement. Closing agreements are final and are intended to completely dispose of debatable matters. Generally, Large Business and International (LB&I) does not route closing agreements through TS.
- (2) Joint Committee Cases—Closing agreements for joint committee cases should not be executed on behalf of the Commissioner before clearance by the joint committee of taxation. After clearance by the joint committee of taxation, the case will be returned to the originating group for execution of the agreement. See IRM 4.36.3.6.2, Closing Agreements, for further details.
- (3) Securing Agreements for Tax Assessments at the TEFRA Partnership or TEFRA Partner Level - Closing agreements for TEFRA Partnerships and TEFRA Partner level adjustments should be processed by a TS TEFRA/Pass Through coordinator, local counsel and the CTF. It is important the TS TEFRA/Pass Through coordinator be involved in the process to ensure all reports are correctly prepared and local area counsel has been involved in the preparation of the Form 906, Closing Agreement On Final Determination Covering Specific Matters. See IRM 4.31.2.3.12 , Securing Agreements for Tax Assessments at the Partnership Level, and IRM 4.31.2.7.2.12 , Closing a Case Agreed to at the Partnership Level.
- (4) Voluntary Disclosure Practice (VDP) cases - there is a formal review process for all VDP cases (Project Codes 0097 or 1140) closing with a Form 906. Technical Services and Counsel must review the Form 906 **PRIOR** to issuing it to the taxpayer. Refer to the *VDP home site* for more information.

4.8.8.3.1  
(02-11-2021)**Technical Services Responsibilities**

- (1) Generally, TS reviews all Small Business and Self-Employed (SB/SE) closing agreements before obtaining the taxpayer's signature.
- (2) After review, TS forwards the closing agreement to area counsel for approval of both the form and language used.
- (3) Pro-Forma Form 906 Templates have been created for some situations.
  - a. AT Schemes - The pro-forma closing agreement language relates to a specific AT scheme and it is developed by counsel. The Form 906 developed by Counsel is reviewed by Technical Services. The technical services reviewer performs the steps listed in paragraph (4) below. Since counsel is involved in drafting the agreement, it is not necessary to obtain separate counsel review and concurrence, as long as the pro-forma language is not modified. When pro-forma closing agreements are used, it is probable the area technical services reviewer will not receive the closing agreement for review until after the taxpayer signatures are obtained.
  - b. VDP cases - Form 906 templates are a work in progress and should only be used as a starting point. Examiners must customize the Form 906 to fit the specific facts and circumstance of the disclosure. Examiners will collaborate with their Analyst and Counsel when drafting. Two **mandatory** Checksheets for Examiners, Managers, Counsel and TS have been created to use in documenting each step of the review Form 906. Refer to the *VDP SharePoint* for the two **mandatory** Checksheets

and for more VDP information. The Checksheets are also outlined in the updated *Field Examiner Guide Paper* on the *VDP SharePoint site*.

- (4) Prior to taxpayer signature, the reviewer:
  - a. Ensures it will be advantageous to have the matter permanently and conclusively closed, or the taxpayer can show good and sufficient reasons for an agreement and the government will sustain no disadvantage.
  - b. Ensures the determined matters are stated in terms that can reasonably lead to only one interpretation.
  - c. Gives consideration to the impact a specific matter determination will have on other tax periods or other related cases.
  - d. Verifies that the examiner's report adequately includes all significant factors (see IRM 8.13.1).
  - e. Ensures the closing agreement is not dependent on the taxpayer's promise to perform a future act.
  - f. Ensures the correct closing agreement form is used.
  - g. Secures area counsel approval as required. Once approved, TS forwards the closing agreement to obtain the taxpayer's signature, either to the examiner working the case or directly to the taxpayer.
  
- (5) After the closing agreement is executed, the reviewer will do the following:
  - a. Ensure the closing agreement is properly executed, including the three required original copies pursuant to IRM 8.13.1.3.15, Number of Copies—One Taxpayer or Joint Return Agreements.
  - b. Ensure the reverse side of each original closing agreement reflects the dated signatures of both the receiving and reviewing officers.
  - c. Write the following in the top margin of the front page of the tax return: "Agreement under IRC 7121, years affected \_\_\_\_\_. Closing agreement attached to the return for the taxable period ended \_\_\_\_\_(latest return in file)."
  - d. Date stamp each executed copy of the closing agreement (on the reverse side) and forwards it to the appropriate delegated officer for signature.
  - e. Attach one copy of the original closing agreement signed by the delegated official to the reverse side of the first page of the tax return.
  - f. Forward the executed duplicate original of the closing agreement to the taxpayer along with Letter 1595-E, Exam Executed Closing Agreement Transmittal Letter. See IRM Exhibit 8.13.1-22 , Sample Letter Sending Taxpayer Copy of Closing Agreement—Letter 1595.
  - g. Attach the third original copy to the workpapers with a copy of Letter 1595-E and Form 4222, Closing Agreement Checklist.
  - h. Make a copy of the closing agreement and mark it as "Retention Copy." If a subsequent tax year is affected by the closing agreement, forward a copy with Form 5346, Examination Information Report, to Planning and Special Programs (PSP).
  - i. Forward the closing agreement, RAR, and any applicable workpapers for suspense, as appropriate.
  - j. Immediately forward a copy of the executed closing agreement to the Campus Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Function (CTF) if the closing agreement is for a TEFRA entity.
  - k. E-Fax Form 3177 with TC 971 AC 256 and agreement date using the following link for contact information: *CCP Exam Efax Numbers*.

4.8.8.4  
(12-01-2017)  
**Deficiency Dividends of  
a Personal Holding  
Company**

- (1) Personal holding company (PHC) tax is an additional 20% tax that discourages excessive accumulation of passive income. Treasury regulations under IRC 547, Deduction for Deficiency Dividends, provide a method (absent fraud) for a corporation to eliminate its personal holding company tax liability for a prior year by making a distribution of a deficiency dividend. The benefits of IRC 547 are applicable when an examination results in an agreed deficiency in PHC tax.
- (2) These procedures are not applicable to dissolved corporations.
- (3) IRM 4.10.8.11 , Deficiency Dividends, discusses closing procedures for deficiency dividend cases.

4.8.8.4.1  
(12-06-2013)  
**Scope of Review**

- (1) The TS reviewer will do the following:
  - a. Ensure there is sufficient time remaining on the statute of limitations for the PHC tax issues (twelve months recommended to complete procedures).
 

**Note:** Without an executed Form 2198, Determination of Liability for Personal Holding Company Tax, the case is unagreed and should be returned to the group for a 30 day letter (if sufficient time remains on the statute) or should be forwarded for a statutory notice of deficiency.
  - b. Ensure the file includes a signed waiver (Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment) from the taxpayer for all PHC and non-PHC adjustments.
  - c. Ensure the file includes a Form 2198 (informal) or Form 866, Agreement as to Final Determination of Tax Liability (closing agreement under IRC 7121), if the taxpayer indicated an intention to make a deficiency dividend.

4.8.8.4.2  
(12-06-2013)  
**Reviewer  
Responsibilities**

- (1) The TS reviewer will do the following:
  - a. Reviews Form 2198 and signs, on behalf of Commissioner, as outlined in *SBSE Delegation Order 4-1-1*.
  - b. Follow the closing agreement procedures if Form 866 is used.
  - c. Attach Form 2198 to the return of the latest taxable year covered by the closing agreement.
  - d. Forward Form 870 for non-PHC issues for partial assessment with instructions to return the documents to TS.
  - e. Prepare Letter 1152, Agreement Transmittal for Signed Personal Holding Company/Determination of Liability for Personal Holding Company Tax. Sends three copies of the executed Form 2198 and three copies of Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust, with Letter 1152 by registered or certified mail. The registered or certified receipt is maintained in the case file as evidence of the mailing date ("date of determination").
  - f. Place the case in suspense until the earlier of receipt of Form 976 from the taxpayer or 120 days from the "date of determination."

- g. Date stamp the claim if Form 976 is received and return the case to the examiner with the following six instructions provided in each of the following notes:

**Note:** 1. Verify information on Form 976.

**Note:** 2. Prepare examination report per IRM Exhibit 4.10.8-8, Sample Form 4549-A Personal Holding Company—Page 1.

**Reminder:** Report Generation Software (RGS) does not reflect a specific credit for a Deficiency Dividend Deduction. The examiner should select “Prepayment Credits” in issue setup for the offset to the PHC tax. The examiner should include a statement in “Remarks” to identify the Prepayment Credit as a Deficiency Dividend Deduction and to note restricted interest is applicable.

**Note:** 3. Ensure Transaction Code (TC) 300 on the Form 5344, Examination Closing Record, is accurate and Reference Code 321 appears on Line 15 of Form 5344.

**Reminder:** The Reference Code 321 will appear on a transcript after the assessment has been made to explain the reason for the restricted interest when a TC 300 of zero has posted.

**Note:** 4. Prepare Form 3198, Deficiency Dividend Deduction Case Transmittal, for restricted interest purposes. See IRM Exhibit 4.10.8-9, Examination of Returns, Report Writing, Sample Form 3198 - Deficiency Dividend Deduction Case Transmittal

**Note:** 5. Annotate page one of Form 3198, Special Handling Notice for Examination Case Processing, “Forward to Technical Services”. Check the box for “Personal Holding Companies.” Annotate page two of Form 3198 “Special/Restricted Interest Features”. Check the box for “Other Code Section,” “Section 547 Restricted Interest Computation”.

**Note:** 6. Return case to TS for final review.

- h. Return the case to the examiner for claim disallowance if Form 976 is filed after the 120 day period, although the reviewer may issue the claim disallowance to expedite case processing.
- i. Forward the file for closure and assessment if Form 976 is not received after the 120 day period.

**Note:** If the taxpayer executed a Form 2198, these procedures should be followed even if taxpayer stated no Form 976 would be filed.

4.8.8.5  
(12-01-2017)  
**Interest Abatement  
Cases**

- (1) An abatement of interest may be requested for interest that should not have been assessed. IRC 6404(a) authorizes the Service to abate the unpaid portion of an assessment, including one for interest, that is one of the following:
- is excessive in amount, or
  - is assessed after the statutory period of limitations has expired, or
  - is erroneously or illegally assessed.

See IRM 20.2.7.2, IRC 6404(a), Excessive or Not Legally Due.

**Note:** IRC 6404(b) prohibits taxpayers from requesting an abatement of the assessment of income, estate, or gift taxes, but it does not prohibit the Service from acting on such a request if it is not in the interest of the government to require the taxpayer to pay the assessment and then file a refund action. Compare IRM 25.6.1.10.1, Requests for Abatement, at (2).

- (2) Interest may need to be abated if:
  - a. There is an unreasonable error or delay attributable to the IRS in the performance of a ministerial or managerial act. (IRC 6404 (e)(1), Abatements, Abatement of Interest Attributable to Unreasonable Errors and Delays by the Internal Revenue Service. See Treas. Reg. 301.6404-2; IRM 1.2.2.13.1 , Delegation Order 20-1 (formerly DO-228, Rev. 3); IRM 20.2.7.5, IRC 6404(e)(1), Unreasonable Error or Delay in Performing a Ministerial or Managerial Act. I
- (3) Interest may also need to be abated if one or more of the following suspension periods, or if a postponement event, was not taken into account:
  - a. Due on an erroneous refund (IRC 6404 (e)(2)). See Treas. Reg. 301.6404-2; IRM 20.2.7.6, IRC 6404(e)(2), Erroneous Refunds.
  - b. Due on an increased liability of which the IRS does not notify the taxpayer in a timely manner (IRC 6404(g), Abatements, Suspension of Interest and Certain Penalties Where Secretary Fails to Contact Taxpayer). See Treas. Reg 301.6404-4; Rev. Proc. 2005-38, 2005-2 C.B. 81; IRM 1.2.2.13.2 , Delegation Order 20-2 (New), concerning the approval of a suspension for certain listed and reportable transactions addressed in Pub. L. 109-135 section 303 where the taxpayer has acted reasonably and in good faith. See further, IRM 20.2.7.8.1 , Undisclosed Reportable and Listed Transactions, IRM 20.2.7.7, IRC 6404(g) Interest Suspension.
  - c. Due on an account for a taxpayer located in a Presidentially declared disaster area (IRC 6404(i), Abatements, Cross Reference and IRC 7508A, Authority to Postpone Certain Deadlines by Reason of Presidentially Declared Disaster or Terroristic or Military Actions). See IRM 20.2.7.13 , IRC 7508A, Presidentially Declared Disaster or Terroristic or Military Actions.
  - d. Due on an account for a participant in a military combat zone, part of a contingency operation away from the taxpayer's permanent duty station, or recuperating during a qualified hospitalization, IRC 7508, Time for Performing Certain Acts Postponed by Reason of Service in Combat Zone or Contingency Operation. See IRM 20.2.7.11 , IRC 7508, Combat Zone.
  - e. Suspension per IRC 6601(c), if the Services does not assess a deficiency within 30 days after an agreement is received or executed by a Service official. For information on TEFRA agreements, see IRM 4.31.2.7.2.8, Agreed Cases and IRM 4.31.3.13.8 , Completion of Form 5344 - Examination Closing Record. See Treas Reg. 301-6601-1(d); IRM 20.2.7.8, IRC 6601(c), Suspension of Interest on Deficiencies.
  - f. Under the Servicemembers Civil Relief Act, interest (and the collection of the underlying tax and any penalty) is suspended for amounts due before or during military service and is deferred for a period not more than 180 days after termination of or release from military service if a servicemember's ability to pay such income tax is materially affected by military

service under 50 U.S.C.A section 4000, Income Taxes. If the taxpayer is not eligible for the interest suspension, interest on the debts incurred before military service is capped at 6% while the taxpayer is on active military duty under 50 U.S.C.A. section 3937, Maximum Rate of Interest on Debts Incurred Before Military Service. See IRM 5.1.7.12.2, Interest and Limitation on Collection; and IRM 20.2.7.12 , Military Deferment.

4.8.8.5.1  
(12-06-2013)  
**Claims Worked by  
Technical Services**

- (1) A “claim” and “request for abatement” should not be used interchangeably. However, the process used by TS is the same regardless of whether it is a paid assessment (claim for refund) or an unpaid assessment (request for abatement).
  - (2) Interest abatement cases may come from various sources such as the campus, the field, the taxpayer advocate office, or directly from a taxpayer or representative.
  - (3) For purposes of this section only, the terms “claim” and “request for abatement” are used interchangeably, and the process is the same regardless of whether it is a paid assessment (claim for refund) or an unpaid assessment (request for abatement). There is no authority to abate unagreed, unassessed interest.
  - (4) The claims or requests for abatement will only be worked by the TS interest abatement coordinator (IAC) if there is a TC 300 on the module and an examination indicator reflecting field (RA, TA, or TCO) examination (EGC 1XXX or 2XXX), AND are one of the following:
    - a. Claims or requests for abatement which allege a ministerial or managerial error or delay occurred during the course of an examination or an appeal of an examination, for both open examinations and closed examinations. These are known as IRC 6404(e)(1) claims.
- Note:** For both open and closed examinations, the majority of cases worked by the TS IAC will relate to IRC 6404(e)(1). Interest abatement claims (interest has been paid) or requests for interest abatement (interest has not been paid) on assessed accounts, both unpaid and fully paid, will be considered with regard to IRC 6404(e)(1).
- b. Claims or requests for abatement citing the “good faith” exception to IRC 6404(g).Reg. 301.6404–4, 26 CFR Treas. Reg. 301.6404-4.
- (5) Claims or requests for abatement that require coordination with other areas, such as claims alleging error or delay in both a collection matter and an examination or appeals matter, should be discussed with the Collection IAC and TS IAC to determine which function should work the claim.
- (6) Types of claims or requests for abatement NOT worked by the TS IAC include the following:
  - a. An error was made in the computation of interest (IRC 6404(a)).
  - b. An error was made in the assessment of interest (IRC 6404(a)).
  - c. An erroneous refund was made (IRC 6404(e)(2)).
  - d. Erroneous written advice was given (IRC 6404(f)).
  - e. An error was made in the application of suspension interest under IRC 6404(g).

**Note:** These claims generally do not cite the “good faith” exception.

- f. The taxpayer was affected by a federally declared disaster area (IRC 6404(i) and IRC 7508A).
- g. The taxpayer was in a combat zone (IRC 7508).

(7) A listing of IACs can be found on the *Interest Abatement Contacts* link.

4.8.8.5.2  
(12-06-2013)

**Claims Originating From  
an Open Examination**

(1) Taxpayers may request interest abatement during an ongoing examination. The examiner must take the following actions prior to sending the interest abatement case to TS:

**Note:** TS Interest Abatement Coordinators (IAC) are found on the *Exam Tech Services* in the Virtual Library link.

- a. Secured a completed Form 843, Claim for Refund and Request for Abatement, from the taxpayer.

**Note:** In the case of LB&I, a letter requesting net rate netting may be used in place of the Form 843. See IRM 4.10.26.4, Receiving a Request(s) for Net Rate Netting.

- b. Documented Form 4318-OA, Examination Workpapers Index—Office Audit / Form 4318, Examination Workpapers Index, and Form 9984, Examining Officer's Activity Record, regarding the filing of the claim.

**Note:** In the case of LB&I, Form 4318-OA / Form 4318 is not used. The claims or requests for abatement will be located under SAIN 060.

- c. Attached an explanation of the facts surrounding the claim or request for abatement to the Form 843.
- d. Contacted the TS IAC to discuss the closure of the examination file and arranged to provide the IAC with a copy of pertinent information from the administrative file including a copy of the Form 843 with an explanation of the facts surrounding the claim, a copy of the Form 9984, a copy of the report, and any other pertinent information or correspondence that may impact the abatement determination.

(2) At the conclusion of the examination, the examiner will mark Form 3198 directing Centralized Case Processing (CCP) to charge the case back to the applicable local TS group manager.

(3) The interest abatement claim will be addressed after the examination case is closed and the tax, penalty (if applicable), and interest are assessed.

4.8.8.5.3  
(12-01-2017)

**Claims Originating From  
the Campus**

(1) Interest abatement claims are commonly received from the campus after the examination has been completed, the tax assessed, and the case file closed. These claims are generally not on Audit Information Management System (AIMS) or on RGS.

(2) When the campus receives a claim for interest abatement, IRM 4.19.11.2, Examination Classification of Work, Abatement of Interest, states that the campus will complete the following:

- a. Obtained the historical examination/appeal file(s) for all years involved in the examination, and
- b. Make a determination as to where the case should be worked based on where the alleged error or delay occurred.

- (3) If the campus determines the case should be worked in TS in accordance with IRM 4.8.8.5.1 above, the campus will forward the claim or request for interest abatement and historical file(s) to the TS IAC's group manager.
- 4.8.8.5.4  
(02-11-2021)  
**Claims Originating From Taxpayer Advocate Service**
- (1) When a taxpayer contacts Taxpayer Advocate Service (TAS) for resolution of their claim and TAS determines action is required by TS, TAS will send an operations assistance request (OAR) along with supporting documentation to the designated TS Functional Liaison contact who will forward the OAR to the appropriated TS group to work timely. If the assigned TS reviewer determines additional information is required, he or she will request the information from the assigned TAS employee. The TS reviewer may return the OAR if the information is not received timely. The service level agreement (SLA) between the National Taxpayer Advocate and the SB/SE Commissioner outlines the guidelines and timeframes for the OAR process and can be located on SB/SE's home page. See the *Service Level Agreement*. OARs routed to the incorrect TS group should be returned to TAS per the SLA.
- 4.8.8.5.5  
(12-06-2013)  
**Claims Originating From Other Functions**
- (1) Claims and requests for interest abatement can be received from functions other than SB/SE examination groups, campus, or TAS. Claims can originate in Collection groups, as well as in LB&I groups.
- (2) If claims are received without the original examination case file and it is determined that the file is necessary, the case file should be requested using ESTAB procedures found in IRM 4.7.10.5.3, Processing ESTAB and Special Search Requests.
- 4.8.8.5.6  
(12-06-2013)  
**Developing the Interest Abatement Claim File**
- (1) If the original examination case file cannot be obtained, an attempt to reconstruct the file using the Form 843 data, transcripts, and information gathered from contact with the examiner and the Independent Office of Appeals. If a copy of Appeals' case activity record (CAR) is needed, contact the Appeals Account Resolution (AARS) Team for a copy of the CAR. For more information, visit the *AARS Customer Service* page. The examiner's oral testimony and time charged on the case (examiner's technical time report automated through the ERCS program) can provide insight into their activities during the alleged periods of delay. An OAR from TAS should be useful in writing a recommendation. If the OAR does not contain the necessary information, the IAC may request TAS provide additional information that outlines the delay.
- (2) For claims or requests for abatement on partners and or shareholders with respect to flow through adjustments where the alleged error or delay occurred during the partnership and or S-corporation examination, the historical investor files and the flow through entity files should be secured if necessary. If the alleged error or delay occurred during the assessment process, the claim or request for interest abatement should be forwarded to the Campus IAC to be addressed.
- (3) If the claim involves an alleged delay or error that occurred in the Collection Division or Wage and Investment—Field Assistance Division, the claim should be referred to the Collection Advisory IAC.

- 4.8.8.5.7  
(12-06-2013)  
**Technical Services  
Interest Abatement  
Coordinator Procedures**
- (1) Refer to IRM 20.2.7, Interest, Abatement and Suspension of Debit Interest, for additional information.
  - (2) The TS IAC will record the time spent on interest abatement cases on Form 9984, and charge time directly to the case. Time spent performing duties that cannot be charged directly to a particular case is charged to Activity Code 587 with Second Segment Code 008.
- 4.8.8.5.7.1  
(12-01-2017)  
**Inventory Controls**
- (1) Upon receipt of the claim and case file, the TS IAC will do the following:
    - a. Obtain a TXMOD to ensure the tax and or penalty has been assessed. The official assessment date is the “23C date,” which is the date the assessment actually posts to the module.
 

**Note:** A pending assessment is not the official date and does not protect the statute of limitations. However, the Service is not required to make a separate assessment of the accruals on the IRC 6651 (a)(2) and IRC 6651 (a)(3) additions to tax to collect the accruals. See IRM 25.6.1.9.13.3, The Period of Assessment.
    - b. Instruct the TS group clerk to add the claim to ERCS as a Non AIMS record, MFT C9, Review Type 08, Suspense Code 508, and Status Code 20.
    - c. Instruct the group clerk to input ACTON A history items to indicate that the IA claim or Form 843 has been received. This should prevent another area from working the issue, and also serves to alert other IRS employees of case activity that may affect any balance due. Refer to IRM 2.3.12, IDRS Terminal Responses—Command Code ACTON, for ACTON procedures.
- 4.8.8.5.7.2  
(12-06-2013)  
**Coordination with IRS  
Independent Office of  
Appeals and Collection**
- (1) If the original examination case is unagreed and protested, the original case should be forwarded to IRS Independent Office of Appeals. If the taxpayer submitted an interest abatement claim, the Form 3198 should be annotated in the TS section that an original Form 843 or informal claim is enclosed in the case file. Once the assessment determination has been made and the case is closed to Status Code 90, the case file will be re-charged to the TS IAC to address the interest abatement claim.
    - a. If the tax and or penalty are sustained by Appeals, the case should be forwarded to the TS IAC after the assessment has been made, similar to cases coming from examination groups.
    - b. If Appeals does not sustain the examiner’s adjustments, the interest abatement issue could be a non-issue.
    - c. Coordination with Appeals should be ongoing in order to provide the most efficient service to both the taxpayer and the Service. Claims regarding delays in the appeal process should be addressed at the same time as the examination delays when processed by the TS IAC. If the claim alleges a delay while in Appeals previously, Form 3198 should be annotated as such. The appeals officer should have documented any delay or error in the appeals process on his or her activity record. The activity record and Form 5402, Appeals Transmittal and Case Memo, should be included in the examination/appeals case at closing.
  - (2) Check the TXMOD or IMFOLS transcript to determine if the case is in collection Status Code 22, 24 or 26 and if so, contact Collection to request collection

activity be stopped, IF WARRANTED. Unless it is clear that interest will be abated and there will be no balance due, collection activity should not be routinely stopped.

4.8.8.5.7.3  
(12-06-2013)

**Procedures for Working  
Interest Abatement  
Cases**

- (1) Research IDRS and include a current INOLES and CFINK print in the file to document the correct taxpayer address and power of attorney (POA) information.
- (2) Claims or requests for interest abatement may be allowed without further consideration if they meet one of the following criteria:
  - a. Category A criteria (refer to IRM Exhibit 21.5.3-2, Account Resolution – General Claims Procedures, Examination Criteria (CAT-A) – General).
  - b. Claims or requests that fall below the tolerance level stipulated in IRM 20.2.7.5, IRC 6404(e)(1), Unreasonable Error or Delay in Performing a Ministerial or Managerial Act.
  - c. Claims or requests that fall below the tolerance level guidelines that may be established by TS.
- (3) Review the administrative case file and prepare a chronology of events that tracks the activities and delays, if any, that occurred during the examination.
- (4) Prepare a written narrative stating the facts, law, and recommended resolution. Form 886-A, Explanation of Items, is generally utilized for this purpose and is attached to the determination letter.
- (5) Determine the correct stop and start dates for any abatement that will be allowed. The TS IAC is not required to make any computations as to the amount of interest to be abated. CCP should be contacted if it is necessary to compute the allowable amount. The abatement amount secured from CCP will be included in the determination letter.
- (6) Prepare the appropriate determination letter, as explained in IRM 4.8.8.5.7.4, Interest Abatement Determination Letters, below.
- (7) A case summary sheet may be prepared describing the actions taken on the case, the taxpayer information, amounts (or dates) requested for abatement, the code section cited or referenced, the reasons for abatement/non-abatement and the level of signature approval necessary.

4.8.8.5.7.4  
(12-01-2017)

**Interest Abatement  
Determination Letters**

- (1) Once the TS IAC has reviewed all of the documents and made an abatement determination, the appropriate preliminary (30 day) determination letter and attachments will be prepared and forwarded to the TS group manager or territory manager for signature. Use the most recent revision of Letter 3010, Disallow Interest Abatement Request, Letter 3022, Disallow Partial Interest Abatement Request, or Letter 3023, Interest Abatement Request Allowed in Full. Attach Form 886-A with the explanation in support of the determination.
- (2) Letters granting abatements in excess of \$2,500.00 require the signature of the TS territory manager. Letters granting abatements of \$2,500.00 or less, and fully disallowed abatement requests require the signature of the TS group manager. The amount of interest to be abated may need to be obtained from CCP for partial or fully allowed abatements in order to determine the level of approval necessary (group manager or territory manager signature). See Del-

egation Order 20-1 (formerly DO-228, Rev. 3) in IRM 1.2.51.2. The determination letter should provide the allowed abatement amount.

- (3) The TS IAC has signature authority to issue notices of final determination disallowing the abatement of interest in any instance in which an IRC 6404(e)(1) claim for interest abatement is immediately disallowable because the claim falls outside the scope of the statute (for example, employment tax cases).
  - (4) After the appropriate preliminary determination letter is signed, the TS IAC will date and mail it to the taxpayer (and POA, if applicable). If the return was jointly filed, separate letters should be mailed to each spouse. Fully allowed claims should be closed immediately to the designated CCP office. For fully or partially disallowed claims, the case is generally suspended for 45 days (30 days plus an additional 15 days) to allow the taxpayer an opportunity to appeal the decision. ERCS will be updated to Status Code 22 and Suspense Code 528, effective as of the date of mailing. ACTON A should be entered to update the history of the case.
  - (5) If a timely protest is received on a fully or partially disallowed claim, the case is forwarded to Appeals using locally established procedures. If the taxpayer has filed an informal claim, it is recommended that Form 843 be solicited before transferring the case to Appeals. This formalizes the taxpayer's position and perfects the informal claim. ACTON A should be entered to update the history of the case. The ERCS MFT C9 record should be closed to Status Code 90 when the claim is forwarded to Appeals.
  - (6) If no agreement or protest is received, a final determination letter (180 day Letter) should be prepared and routed for signature using the same routing as discussed above for the 30 day letter. Use Letter 2392, Full Disallowance for Abatement of Interest - Final Determination, for fully disallowed claims and Letter 2391, Partial Disallowance for Abatement of Interest - Final Determination, for partially disallowed claims. After proper signatures are obtained, the TS IAC will insert the mailing date and issue the 180 day letter to the taxpayer (and POA if applicable). Again, separate letters are required in the case of a joint return. Final determination letters are sent via certified mail to the taxpayers (registered mail if addressed outside the United States). ERCS will be updated to Status Code 24 and Suspense Code 529. ACTON A should be entered to update the history of the case.
- Note:** If the TS IAC is in a remotely located office, both the 30 day and 180 day letters may be prepared and sent concurrently to the group manager or territory manager for signatures and held by the TS IAC until the appropriate time to issue them.
- (7) Final determination letters are sent out by certified mail and are suspended for 195 days (180 days plus an additional 15 days) to allow the taxpayer an opportunity to petition Tax Court. At the end of the suspense period, the U.S. Tax Court website ([www.ustaxcourt.gov](http://www.ustaxcourt.gov)) will be accessed to determine if the taxpayer has petitioned Tax Court. If the taxpayer has not petitioned Tax Court, the case should be closed to CCP as outlined in IRM 4.8.8.5.7.5, Closing Interest Abatement Cases, below. If the taxpayer has petitioned the Tax Court, the case should be closed to Appeals. ACTON A should be entered to update the history of the case. The ERCS MFT C9 record should be closed to Status Code 90 when the claim file is forwarded to CCP or Appeals.

4.8.8.5.7.5  
(12-06-2013)  
**Closing Interest  
Abatement Cases**

- (1) Close the case file to the appropriate Centralized Case Processing (CCP) office when the interest claim or request for abatement is fully allowed or when the required time period has expired and the taxpayer has not protested or petitioned the Tax Court.
- (2) Prepare Form 3870 for all cases. The required fields on Form 3870 include the following:
  - a. Line 1 TIN
  - b. Line 2 Name and Address
  - c. Line 4 MFT
  - d. Line 5 Period Ending
  - e. Line 6 Assessment Date
  - f. Line 7 Source
  - g. Line 10 Personal Contact
  - h. Line 11 Reason for Adjustment; specify "from" "to" dates
  - i. Line 19 Reason Code (use RC 080 for full disallowance, RC 081 for partial allowance, RC 082 for full allowance)
  - j. Line 21 Hold Code (3)
  - k. Line 29 Transaction Code (TC 290 for -0- if fully disallowed, or TC 290 for -0- and TC 34X with the notation, "amount to be determined by CCP.") See CCP's *Procedural Guidance for Processing Interest Abatement Claims* .
- (3) An authorizing signature on Form 3870 is required only on allowed interest abatement requests. Allowed abatements in excess of \$2,500.00 require the signature of the TS territory manager. Allowed abatements of \$2,500.00 or less require the signature of the TS group manager. For fully disallowed cases, note the signature block "No Signature Required." If an abatement of interest is allowed, the appropriate to and from dates will be shown on the form. CCP will compute the amounts and make the adjustment. The reason for adjustment section should include a brief explanation of the determination.

**Note:** If the TS IAC is in a remotely located office, Form 3870 can be sent concurrently with the 30 day and 180 day letters to the group manager or territory manager for signatures. The TS IAC will date Form 3870 when the case is closed.

- (4) Prepare Form 3198 with specific instructions for CCP to compute the correct abatement amount and post the adjustment. The most current revision of Form 3198 should be used. Note on the Form 3198 "Please store the interest abatement case file behind the most current interest abatement request year's TC 290 DLN."
- (5) ACTON A should be input to indicate the final disposition.
- (6) The historical examination file should be returned to the re-file section, since several years may be involved and they must be stored where they can be easily located.

4.8.8.6  
(12-06-2013)  
**Involuntarily Converted  
Property**

- (1) The provisions of IRC 1033, Involuntary Conversions, allow for the deferral of gains realized on the disposition of compulsorily or involuntarily converted property when a taxpayer purchases similar property within the specified replacement period. When the taxpayer is unable to replace the property within the normal replacement period, he or she can request an extension of the re-

placement period by writing to the area director. The area director will forward the taxpayer's request for an extension of time to TS for consideration.

- (2) Treas. Reg. 1.1033(a)-2(c)(3), 26 CFR 1.1033(a)-2(c)(3), describes the time period and circumstances in which a taxpayer may request an extension of time to replace involuntarily converted property from the area director or director of field operations.
- (3) Refer to IRM 4.2.1.23 , Extensions of the Replacement Period of Involuntarily Converted Property, for details regarding taxpayer applications.
- (4) Refer to IRM 4.8.8.12.2.1.1 (2) regarding determination letters issued by an area director on the replacement of involuntarily converted property.

4.8.8.6.1  
(12-01-2017)  
**Technical Services'**  
**Responsibility**

- (1) Technical Services is responsible for granting or denying extensions and for following up on taxpayers who fail to notify the Service if they have replaced the property or amended their returns.
- (2) The request for extension of the replacement period should be reviewed to ensure the taxpayer has provided all the necessary information as follows:
  - Name, address, and taxpayer identification number of the taxpayer
  - Legal descriptions of property converted
  - Date property was converted
  - Adjusted basis of converted property
  - Date(s) and amount(s) of payment(s) received
  - Copy of return that related to the deferral of the gain
  - Statement of action taken to replace the property
- (3) The taxpayer has 2 years to replace personal property. The taxpayer has 3 years to replace real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment.
- (4) The taxpayer must demonstrate reasonable cause for not replacing the converted property within the original required time period. Refer to Rev. Rul. 60-69, 1960-1 C.B. 294. Also, see Treas. Reg. 1.1033(a)-2(c)(3)(i) and (ii). Refer to *SB/SE 1-23-33*, Authority to Grant Extensions of Time to Replace Involuntarily Converted Property Under Section 1033 of the Internal Revenue, for authority to issue letters.
- (5) If the extension request is granted, Letter 1039, Extension Granted to Replace Involuntarily Converted Property, is sent to the taxpayer to advise him or her an extension has been granted. Generally, extensions are not granted for more than 1 year. The taxpayer must notify the Service when the property is replaced.
- (6) If the taxpayer has not provided enough information, the reviewer should request additional information from the taxpayer.
- (7) If the extension request is not granted, the taxpayer should be notified and provided the reason(s) why. Extensions can be denied if the request is premature.

**Example:** If the taxpayer requests an extension to replace real business property under IRC 1033(g) at the end of two years, the request can be denied since business property has a 3-year replacement period.

- (8) Follow-up is required as noted below:
- a. When the taxpayer notifies the IRS the property has been replaced, the following actions should be taken as explained in this example:
 

**Example:** If there is a gain to report, the reviewer should monitor the case to ensure an amended return is filed. If an amended return is not filed, prepare Form 5346 and forward to PSP.

**Note:** If the IRC 6501(a) three year statute has expired, the amended return will not post and a refund will be generated as explained in this example:

**Example:** On a yearly basis, send follow-up Letter 1954, Involuntary Conversion Follow-up Letter, to taxpayers whose replacement periods have expired and who have not notified the IRS replacement property has been acquired. For taxpayers who do not respond to Letter 1954, prepare Form 5346 and forward it to PSP.
- (9) The statute of limitations for the year in which gain is deferred remains open until 3 years after notification is received from the taxpayer indicating the replacement is completed or notification of an intention not to replace. See Treas. Reg 1.1033(a)-2 for method of notification. The statute remains open if the taxpayer does not complete the replacement within the time allowed. Alpha Code "RR" is used when the taxpayer has not notified the Service of the replacement. The correct statute is reflected if the notification has been received.

4.8.8.7  
(12-06-2013)  
**Jeopardy and  
Terminations**

- (1) This section discusses TS responsibilities with respect to Jeopardy and Termination cases, which include the following:
- a. Assistance for development, preparation, and review of jeopardy/termination assessments;
  - b. Preparation of statutory notices of deficiency for jeopardy/termination assessments; and
  - c. Abatement of improper or excessive jeopardy/termination assessments.
- (2) Refer to IRM 4.15, Jeopardy/Termination Assessments, for complete details regarding these types of cases.

4.8.8.7.1  
(12-01-2017)  
**Reviewer  
Responsibilities**

- (1) The TS group manager will designate a jeopardy/termination reviewer. The jeopardy/termination reviewer should be a reviewer with prior jeopardy/termination experience and or knowledge.
- (2) The jeopardy/termination reviewer is responsible for all of the following:
- a. Assisting field examination with developing and preparing jeopardy/termination assessments. Refer to IRM 4.15.1 , Jeopardy and Termination Examination Procedures, for complete examination procedures.
  - b. Reviewing possible jeopardy/termination cases to determine if a case meets jeopardy/termination criteria. See IRM 4.15.1.5 , Conditions.
  - c. Preparing notices of deficiency for jeopardy/termination cases that have been assessed. Refer to IRM 4.8.9.17.3, Technical Services—Statutory

Notices of Deficiency, Jeopardy and Termination Assessments, for notice of deficiency procedures for jeopardy/termination cases.

- 4.8.8.7.1.1  
(12-01-2017)  
**Assisting Examination**
- (1) The jeopardy/termination reviewer assists field examination in the development and preparation of jeopardy/termination assessments. Assistance can take the form of clarifying procedures, discussion with area counsel concerning the facts of the jeopardy/termination case, providing Examination personnel with updated information, pre-review of the case with the examiner, etc.
  - (2) A jeopardy/termination situation usually occurs over a relatively short period of time and must be resolved as quickly as possible.
  - (3) Multiple areas and functions, including Examination, Collection, TS, Criminal Investigation, Appeals, Area Counsel, and various Campus Units will be involved in these cases. TS helps to coordinate the process as a liaison between all functions per IRM 4.15.2.2.2, Contact and Coordination, so a proper outcome can be achieved in a timely manner.
- 4.8.8.7.1.2  
(12-01-2017)  
**Technical Services  
Pre-Review**
- (1) The jeopardy/termination reviewer reviews the case to determine if it meets the jeopardy/termination criteria. Any disagreements are discussed with the examiner and/or field coordinator (if appointed), and are elevated with all affected parties accordingly until a consensus is reached. Refer also to IRM 4.8.8.7.1.2.2 (4).
- 4.8.8.7.1.2.1  
(12-01-2017)  
**Review of Pre-Approval  
Report**
- (1) The jeopardy/termination reviewer reviews the pre-approval report noted in IRM 4.15.2.4.1.3, Preparing the Pre-Approval Report. The review includes determining the following:
    - a. The conditions for the jeopardy/termination exist.
    - b. The case is developed and documented properly.
    - c. The report is prepared properly.
    - d. The computations are correct.
  - (2) The jeopardy/termination pre-approval report and package is prepared as noted in IRM 4.15.2.4.1.3, Form 2644, Recommendation for Jeopardy/Termination Assessment, takes the place of Form 5344, Examination Closing Record.
  - (3) The case is not prepared the same way as a case under examination. Form 4665, Report Transmittal, Form 4318, Examination Workpapers Index, and Form 886-A are not required, but may be utilized as determined by the examiner and/or field coordinator, if appointed. However, under the jeopardy/termination provisions, a notice of deficiency must be issued to the taxpayer who is subject to the jeopardy/termination assessment.
  - (4) After review, if the jeopardy/termination reviewer agrees with the pre-approval report, it will be returned to the examiner. The reviewer will then assist the examiner to coordinate area counsel's review of the pre-approval report.
  - (5) If the jeopardy/termination reviewer does not agree with the pre-approval report, it will be returned to the examiner. The reviewer will provide the examiner with the reasons for the disagreement.

4.8.8.7.1.2.2  
(12-01-2017)  
**Review of Approval  
Report and Approval  
Package**

- (1) An examination is completed and the case is assembled according to general case file assembly procedures, except as otherwise provided or approved. The case is then closed on an expedited basis for issuance of the notice of deficiency. The only reasons to delay closing on an expedited basis are if one of the following conditions are met:
  - a. Appeals or the Department of Justice (DOJ) obtains an agreement by the taxpayer of the amount of his or her actual liability and waiver of the issuance of the notice of deficiency.

**Note:** Following the referral of a case to DOJ, DOJ has the exclusive authority to make and approve adjustments to the referred liabilities. See in general IRM 25.6.1.10.2.1.1.2, Unauthorized Abatements Made After Referral to the Department of Justice, regarding referred cases.
  - b. It appears that Appeals or the District Court is likely to find there was no jeopardy.
  - c. The amount of assessment is not “appropriate under the circumstances” as is required by IRC 7429 (b)(3)(A)(ii).
- (2) The reviewer will review the approval report noted in IRM 4.15.2.4.1.4 , Approval Report. The review will cover the items in the review of the pre-approval report noted in IRM 4.8.8.7.1.2.1, Review of Pre-Approval Report, above, and the following:
  - a. Ensure the forms are completed correctly.
  - b. Ensure the case file(s) is prepared properly. See IRM 4.15.2.4.1.3, Preparing the Pre-Approved Report Package, and IRM 4.15.2.4.1.4 (2), Approval Report.
- (3) After review, if the reviewer agrees with the approval report and package, the TS group manager will sign each Form 2644 in the appropriate area. The Form 2644 is then forwarded back to the jeopardy coordinator or examiner to secure the remaining signatures.
- (4) If the reviewer does not agree with the approval report and package, the approval report and package will be returned to the examiner. The reviewer will provide the examiner with the reasons for the disagreement.
- (5) If Examination management disagrees with the reviewer, the case will be discussed with the TS group manager.
  - a. If the issue in question can be resolved, the parties can proceed as agreed.
  - b. If agreement cannot be reached, the issue will be resolved through existing management channels.
  - c. If the examiner disagrees with the resolution of the issue, the examiner will adopt management’s position. However, the examiner has the right to submit a dissenting opinion, which will be maintained as a part of the administrative case file.

4.8.8.7.1.3  
(12-06-2013)  
**Preparing Notices of  
Deficiency**

- (1) A notice of deficiency is required to be mailed to the last known address of the taxpayer within a 60 day period, as prescribed in the jeopardy/termination provisions. Refer to IRM 4.8.9.17.3 and subsequent for procedures concerning preparation of a notice of deficiency that follows a jeopardy or termination assessment.

- (2) If the jeopardy/termination assessment exceeds the corresponding deficiency, the excess amount remaining unpaid should be abated. If all or part of the excess has been paid, no refund should be made until the case is closed.

4.8.8.7.1.3.1  
(12-01-2017)  
**Jeopardy Notice of  
Deficiency**

- (1) Under IRC 6861(b), Jeopardy Assessments of Income, Estate, Gift, and Certain Excise Taxes, a notice of deficiency is required to be mailed to the last known address of the taxpayer within 60 days of the date of the assessment.
- (2) If the notice of deficiency is not issued before the Appeals determination, the deficiency amount stated on the notice of deficiency will be either the amount of the assessment, or the reduced amount determined by Appeals. An increased deficiency amount may require another jeopardy assessment if there are any additional findings of jeopardy regarding the increase.
- (3) If the notice of deficiency is issued before the jeopardy determination, the jeopardy assessment may be greater than the amount in the notice; the Tax Court must be notified of the assessment (per the Court's Rule 41(a). Section 6861(c)).
- (4) If the decision of the Tax Court has become final, or after the taxpayer has filed a petition for review of the decision, a jeopardy assessment is limited to the deficiency determined in the decision Section 6861(d).

4.8.8.7.1.3.2  
(12-01-2017)  
**Termination Notice of  
Deficiency**

- (1) Under IRC 6851(b), Termination Assessments of Income Tax, if a termination assessment is made, a notice of deficiency is required to be mailed to the last known address of the taxpayer, for the taxpayer's full taxable year, within 60 days after the later of the following:
  - a. The due date of the taxpayer's return for the taxable year, determined with regard to extensions, or
  - b. The date the taxpayer files a return for the taxable year.
- (2) The deficiency amount stated on the notice of deficiency can be greater than, less than, or equal to the amount of the termination assessment.
- (3) If the taxpayer does not file a return, the notice of deficiency must be sent within 60 days after the due date of the return. In *Perlowin v. Sassi*, 711 F.2d 910, 912 (9th Cir. 1983), affirming in relevant part, but reversing on other grounds, 544 F. Supp. 89, 93 (N.D. Cal. 1982), the Court of Appeals concluded that the District Court was correct in its interpretation of IRC 6851(b). The District Court interpreted the statute to mean that if no return is filed, the IRS should issue a deficiency notice within 60 days of the due date of the tax return. The deficiency is calculated in accordance with the procedures for calculating deficiencies in jeopardy assessments where the taxpayer has failed to file a return.

**Example:** Examination terminates the taxpayer's period from January 1, 2019 through November 1, 2019. The taxpayer does not file a tax return for 2019. The taxpayer did not file any extensions. When preparing the notice of deficiency, the period will be for the full taxable year, January 1, 2019 through December 31, 2019. The notice of deficiency must be mailed on or before June 14, 2020.

**Example:** Examination terminates the taxpayer's period from January 1, 2019 through November 1, 2019. The taxpayer files a timely request for

extension of time to file the return until October 15, 2020. The taxpayer does not file a tax return for 2019. When preparing the notice of deficiency, the period will be for the full taxable year, January 1, 2019 through December 31, 2019. The notice of deficiency must be mailed on or before December 14, 2020.

- (4) **Return Filed**—A notice of deficiency is required when the correct tax liability is determined and a deficiency exists (the correct tax liability is greater than the tax shown on the return). Amounts collected under a termination assessment are not treated as payments that would be considered for purposes of determining the amount of a deficiency.

**Example:** A termination assessment is made against taxpayer A, a calendar year taxpayer, in the amount of \$18,000. The termination assessment is made for the period from January 1, 2019 through November 1, 2019. On or before April 15, 2020, taxpayer A files a Form 1040, U.S. Individual Income Tax Return, showing an income tax liability for the full year 2019 of \$10,000. The area director determines taxpayer A's liability for tax year 2019 is \$16,000. A notice of deficiency in the amount of \$6,000 must be sent to taxpayer A on or before June 14, 2020. Assuming the area director had collected the \$18,000 assessed, \$2,000 may be refunded to taxpayer A. No refund will be made until the case is closed.

**Example:** A termination assessment is made against taxpayer A, a calendar year taxpayer, in the amount of \$18,000. The termination assessment is made for the period from January 1, 2019 through November 1, 2019. The taxpayer files a timely request for extension of time to file returns until October 15, 2020. On July 31, 2020, taxpayer A files a Form 1040 showing an income tax liability for the full year 2019 of \$10,000. The area director determines taxpayer A's liability for tax for 2019 is \$16,000. A notice of deficiency in the amount of \$6,000 must be sent to taxpayer A on or before September 29, 2020. Assuming the area director had collected the \$18,000 assessed, \$2,000 may be refunded to taxpayer A. However, no refund will be made until the case is closed.

**Note:** When the tax reflected on the full year's return equals the termination assessment, and an examination of the full year's return results in no additional tax or overassessment, the notice of deficiency need not be issued.

- (5) **No Return Filed**—If the taxpayer fails to file a return, the tax per return is taken as zero. A notice of deficiency is required to be issued since the correct tax liability normally will be greater than zero. Amounts collected under a termination assessment are not treated as payments that would be considered for purposes of determining the amount of a deficiency. See IRC 6861(b).

**Example:** A termination assessment is made against taxpayer A, a calendar year taxpayer, in the amount of \$18,000. The termination assessment is made for the period from January 1, 2019 through November 1, 2019. Taxpayer A fails to file a tax return for 2019. The area director determines taxpayer A's liability for the full tax year 2019 is \$16,000. A notice of deficiency in the amount of \$16,000 must be sent to taxpayer A on or before June 14, 2020. Assuming the director had collected the \$18,000

assessed, \$2,000 may be refunded to taxpayer A. However, no refund will be made until the case is closed.

4.8.8.7.1.3.3  
(12-06-2013)

**Possessor of Cash  
Notice of Deficiency**

- (1) Under IRC 6867, Presumptions Where Owner of Large Amount of Cash is not Identified, if a possessor of cash jeopardy/termination assessment is made, IRC 6851 and IRC 6861 are followed. Therefore, a notice of deficiency is required to be mailed under the applicable jeopardy or termination procedures. The possessor of the cash is treated as the taxpayer for purposes of the notice of deficiency procedures, and the possessor of the cash is sent the notice of deficiency.
- (2) A new taxable entity is created with a temporary taxpayer identification number (TIN) for the possessor of cash. The use of the temporary TIN enables separate tax liability treatment for the possessed cash and avoids any effect on the possessor's individual personal tax liability, which remains separate from the IRC 6867 assessment.
- (3) All documents requiring entity information must use "(Possessor's Name) as Possessor of Certain Cash" as the name line.

4.8.8.7.1.3.4  
(12-01-2017)

**Review by Counsel**

- (1) All notices of deficiency prepared in jeopardy/termination cases will be reviewed by area counsel before issuance. Allow sufficient time for counsel review during the 60 day period. Since area counsel has 45 days to review and return a notice of deficiency per IRM 4.8.9.9.2.3, Technical Services, Statutory Notices of Deficiency, Area Counsel Review Time Frames, the notice should be ready for submission to area counsel shortly after making the jeopardy assessment. All notices of deficiency will comply with the IRS Restructuring and Reform Act requirements as defined in IRM 4.10.1.2.2, IRS Restructuring and Reform Act of 1998 (RRA 98).

4.8.8.7.1.3.5  
(12-01-2017)

**Late Mailing**

- (1) Failure to issue the notice of deficiency within the 60 day period nullifies the jeopardy/termination assessment (for filed returns and may nullify the assessment for non-filed returns), and entitles the taxpayer to an injunction restraining further collection of taxes.
- (2) Even if a notice of deficiency is not issued within the time prescribed by the jeopardy/termination provision, the Service can still make a determination of the correct tax liability as long as a notice of deficiency is sent to the taxpayer within the time prescribed by IRC 6501.

**Example:** Taxpayer A, a calendar year taxpayer, has not filed a Form 1040 for 2018. A jeopardy assessment is made for 2018 on February 15, 2020, before issuance of any notice of deficiency to taxpayer A. A notice of deficiency is mailed to taxpayer A on April 16, 2020. The jeopardy assessment is invalid because the notice of deficiency was issued after the 60 day period, which expired April 15, 2020. However, the notice of deficiency is still valid.

4.8.8.7.1.4  
(12-01-2017)  
**Abating  
Jeopardy/Termination  
Assessments**

- (1) During administrative and judicial reviews of the jeopardy/termination assessment actions, there will be some determinations that the assessment was improperly made or was excessive in amount.
- (2) TS is responsible for abating jeopardy/termination assessments. The jeopardy/termination assessment case file, including the statement of reasons, report of findings, and a new computation of tax, will be forwarded from the TS group manager.
- (3) TS will prepare an abatement file. The abatement file will be sent to Centralized Case Processing for processing the abatement. The abatement file will consist of the following:
  - a. Form 3198. Under "Letter Instructions for CCP," mark "Other Instructions," and write "Abatement of [jeopardy or termination] assessment of [type of tax (income or other)] tax. Please expedite."
  - b. Form 5344 or Form 3870, Request for Adjustment, with the necessary information placed on the form according to the instructions. The information is taken from the jeopardy/termination assessment file.

**Note:** It is advisable that the reviewer discuss the abatement with the field coordinator (if appointed) before submitting the adjustments to help ensure the adjustments are computed and prepared correctly.

4.8.8.8  
(02-11-2021)  
**Offer in Compromise  
Cases**

- (1) IRM 4.18, Exam Offer-in-Compromise, provides guidelines for the investigation of examination processing of examination doubt as to liability (DATL) offer-in-compromise cases (OIC). PSP handles the processing for eam. The PSP guidance is in IRM 4.1.1.6.16 , Offer in Compromise (OIC). Taxpayers who have a legitimate doubt that they owe part or all of a tax debt, may file an offer in compromise under the Doubt as to Liability basis. A DATL exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. If the offer is accepted, the offer in compromise becomes an agreement between the government and the taxpayer that settles the taxpayer's liabilities as agreed to in the offer.
- (2) Examination is responsible for the investigation and processing of OIC cases based on Doubt as to Liability (DATL).
- (3) TS is responsible for the administrative review and case closing procedures. This occurs after the investigation and processing of OIC- DATL cases are completed in Examination. Refer to IRM 5.19.24.6.1, Not Processable, for non-processable DATL return offers, IRM 5.19.24.10, Processable Return Procedures and IRM 5.19.24.15, Death of a Taxpayer for termination reference.
- (4) Grounds for an OIC-DATL does not exist if the offer includes periods for which a determination is pending before or upheld in a final determination made by the Tax Court, other courts or by the Commissioner's final Closing Agreement authorized under IRC 7121 (e.g., Form 866 or Form 906).
- (5) The filing by the taxpayer of a processable OIC-DATL extends the period of time for assessment in accord with the terms of the waiver provisions contained in the Form 656-L, Offer in Compromise-(Doubt as to Liability. See IRM 25.6.23.5.7.2.1, Offer in Compromise-Doubt as to Liability (OIC-DATL) Exam Controls.

- (6) The TS reviewer should complete the following:
  - a. Perform current IDRS research for all years listed on the offer, including CFINK to determine if there is a power of attorney.
  - b. Check ERCS to ensure the case is in status 20, review type 10 and suspense code 506.
  - c. Check for input of TC 480 for all years listed on the offer.
  - d. Verify the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) statute is correctly reflected on AIMS. See IRM 25.6.23.5.7.2.1, Offer in Compromise-Doubt as to Liability (OIC-DATL) Exam Statute Controls. Once verified, highlight the correct TIPRA statute on Form 3198 and on Form 895.
  - e. In the rare case of an additional assessment, confirm that the Form 656-L was received on or before the ASED.

4.8.8.8.1  
(02-11-2021)  
**Automated Offers in  
Compromised (AOIC)**

- (1) The AOIC is a Collection owned application that tracks, and controls offers in compromise that are filed with the Service. AOIC is the official system of record for the Offer in Compromise Program. Exam Area Planning and Special Programs (PSP) offices, Specialty Collection OIC, and Appeals all access this database to update, view and track the status of OIC cases. AOIC uploads transaction codes to the Master File and generates forms, letters and managerial reports. The AOIC system allows users to respond to taxpayer inquiries with the most up-to-date information and allows the program owner to monitor the Tax Increase Prevention and Reconciliation Act (TIPRA) statute to avoid a mandatory offer acceptance.
- (2) All OIC-DATL field exam (specialty exam and LB&I IC cases) closed to Technical Services for the independent administrative review (IAR) will be assigned and closed manually through AOIC by the TS group manager. The OIC-DATL cases will continue to be assigned and closed through ERCS by the TS group manager.
- (3) The TS group manager and the OIC-DATL IARs must reconcile their OIC-DATL cases in ERCS and AOIC to ensure OIC-DATL cases are assigned and closed timely through both systems. Any issues with the reconciliation should be resolved immediately.
- (4) The TS OIC IARs are required to generate OIC-DATL letters through AOIC.
- (5) The TS OIC-IARs are required to input the applicable information from the IAR OIC-DATL checklist in AOIC. The group manager should ensure that the applicable Checklist information is timely and correctly input in AOIC by the IARs through case reviews.
- (6) OIC-DATL coordinators must only work and review their assigned inventory and not view any other IAR's OIC-DATL inventory in AOIC.

4.8.8.8.2  
(12-01-2017)  
**Overview**

- (1) This section provides administrative review and closing procedures for OIC-DATL requests.
- (2) IRM 1.2.2.6.1 , Servicewide Policies and Authorities—Servicewide Delegations of Authorities for the Collecting Process, *Delegation Order No. 5-1*, To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Offers in Compromise, outlines the level of authority needed to approve an OIC-DATL.

- (3) As it pertains to TS, *Delegation Order No. 5-1* authorizes the following persons to take the actions listed pertaining to OIC-DATL:

Action	Employee Authorized to Approve
To accept an offer in compromise	a. TS territory manager approves accepted offers based on the following: <ul style="list-style-type: none"> <li>• 24-month mandatory acceptance under 7122(f) (i.e., expired TIPRA statute)</li> <li>• when liability (including tax, interest, penalties, and additional amounts) exceeds \$250,000.</li> </ul> b. SB/SE Exam group managers may approve offers for which the liability (including tax, interest, penalties, and additional amounts) is less than \$250,000.
To reject an offer in compromise	TS group manager.
To return an offer in compromise	a. SB/SE Exam group managers may approve returning processable offers that meet certain conditions. b. RA reviewers GS-11 and above may approve returning certain non-processable offers. Letter should be reviewed by TS group manager prior to issuing.
To terminate an offer in compromise upon death of taxpayer	Revenue agent reviewer GS-11 and above. Letter should be reviewed by TS group manager prior to issuing.
To acknowledge voluntary withdrawal of an offer in compromise	Revenue agent reviewers GS-11 and above. Letter should be reviewed by TS group manager prior to issuing.

4.8.8.8.3  
(12-01-2017)**Independent  
Administrative Review  
Procedures for Rejected  
Offers**

- (1) IRC 7122(e), Administrative Review, requires the Service to provide for independent administrative review of all proposed rejections of an OIC before the rejection is communicated to the taxpayer.
- (2) For Examination, this review should occur within the TS function where a reviewer is designated as the independent administrative reviewer (IAR). The IAR cannot be anyone who has worked on the case or is a part of the initial rejection or acceptance decision.
- (3) The grade level of the IAR should be the same or greater than the individual making the initial rejection or acceptance decision.
- (4) The IAR should be independent, defined as “free from influence, guidance, or control of others.” This indicates the review should be made by one who is not influenced by the maker of the original rejection decision, i.e. not an employee who reports to the reviewer. In instances where the IAR is the supervisor of the OIC-DATL reviewer, the supervisor must clearly make an independent judgment after a full review of the case. To the extent that an immediate supervisor may defer too much to the judgment of the OIC-DATL reviewer, the supervisor should not be appointed as the IAR. In instances where the OIC-DATL reviewer made the rejection recommendation, to avoid any possible question concerning independence, the area may want to consider appointing someone other than the OIC-DATL reviewer’s immediate supervisor as the IAR.
- (5) The IAR will review all proposed rejections of OIC-DATLs before any indication or notification of such action is given to the taxpayer. The purpose of the review is to evaluate the case and determine if rejection is the correct decision.
- (6) The review criteria include, but are not limited to the following:
  - a. Whether IRM requirements were followed (procedural and mathematical accuracy),
  - b. Whether the tax law was correctly considered and applied, and
  - c. Whether the facts/circumstances were thoroughly developed.
- (7) If the rejection is sustained, the IAR will take the following actions:
  - a. Sign Form 1271, Rejection Memorandum, as reviewer signifying concurrence with the recommendation. Briefly comment in the Remarks section on the findings/conclusions from the review.
  - b. Prepare a rejection letter using AOIC.
  - c. Forward the case file to the delegated official for approval of Form 1271 and signing, dating and mailing of the rejection letter to the taxpayer. Dual notification is required for joint offers.
  - d. A taxpayer is allowed 30 days to respond to the rejection letter. If a taxpayer lives outside of the United States, the rejection letter can be modified to allow for a reasonable period of time to respond. Once the rejection letter has been mailed to the taxpayer update the case to Status Code 22, Suspense Type 532. This may be requested via Form 5348, AIMS/ERCS Update, input by a TS tax examiner.
  - e. If a taxpayer responds by requesting an appeals conference, the protest to ensure that it is valid. Valid protests are both timely and adequate. If valid, forward the file to Appeals for consideration and update to Appeals on AOIC. Prepare Form 4665 summarizing the unagreed issues. Send Letter 2280, Transfer to Appeals, to notify the taxpayer the case is being

forwarded to Appeals and send a copy to the representative, if applicable. If a rebuttal to the protest is prepared, send a copy of the rebuttal to the taxpayer with Letter 5072, Examiner's Rebuttal, instead of Letter 2280.

- f. If the protest is not adequate, issue the appropriate Letter 1025, Letter of Protest, to the taxpayer with a copy to the representative, if applicable. Letter 1025 allows the taxpayer ten days to provide an adequate protest.
- g. If no protest is received, or if the protest is not timely, forward/close the file for final processing.

**Note:** When discussing cases with appeals officers, keep in mind the provisions of Rev. Proc. 2012-18, 26 CFR 601.106, regarding the prohibition on "ex parte" communications between appeals officers and other IRS employees.

- h. If the taxpayer does not request an appeals conference, forward the OIC-DATL file to Centralized Case Processing (CCP) for closing and close the offer on AOIC as a rejection without Appeals. The file should contain the documents listed in IRM 4.8.8.4(2) below.
  - i. Prepare Form 5348 to request the removal of the AIMS "8" freeze by a designated tax examiner in TS.
  - j. If an examination report has been prepared, review for accuracy and document in the workpapers. Prepare Form 3177 to have a STAUP 22 for six cycles input on module for cases in which there is an abatement report. STAUP 22 stops collection activity to allow time for the input of the abatement. Form 3177 should be e-faxed to the appropriate CCP site. If the STAUP 22 cannot be input (i.e., it rejects), do not authorize the posting of a TC 470.
  - k. In all cases, complete the IAR Checklist in AOIC system and make sure that a copy of the rejection letter is in AOIC. For rejected offers that are not appealed, this will generate the posting of the TC 481, OIC Rejected, and release the OIC "Y" freeze on IDRS.
- (8) If the IAR determines the rejection is not appropriate, the case file will be returned to the examiner via Form 3990, Reviewers Report, with an explanation stating why the rejection was inappropriate. If an agreement cannot be reached between the examiner and the IAR, the issue will be elevated to management levels as appropriate.

4.8.8.4  
(02-11-2021)  
**Withdrawn Offers**

- (1) An offer will be considered withdrawn upon the IRS' receipt of written notification of the withdrawal of the offer either by personal delivery or certified mail, or upon issuance of a letter by the IRS confirming the taxpayer's intent to withdraw the offer.
- (2) The TS reviewer complete the following:
  - a. Review the examiner's workpapers addressing the offer.
  - b. Check for a withdrawal statement signed by the taxpayer. The taxpayer's signature is always required on the letter of withdrawal. If the offer was filed jointly and both wish to withdraw, signatures of both spouses are required. The taxpayer's representative may authorize withdrawal of the OIC-DATL on the taxpayer's behalf. Taxpayers can sign Form 14773-A, Offer in Compromise, which is a request for withdrawal. The Form 4549, Report of Income Tax Examination Changes "under information" section of should have the following statement "I hereby withdraw my offer in

compromise. By withdrawing my offer, I waive my appeals rights” and provided to the taxpayer and POA for signature

- c. If an examination report has been prepared, review for accuracy and support in the workpapers including proper consideration of abatement of penalties, when tax is abated. Prepare Form 3177 to have a STAUP 22 input for six cycles on module for cases in which there is an abatement report. STAUP 22 stops collection activity to allow time for the input of the abatement. Form 3177 should be e-faxed to the appropriate CCP site. If the STAUP 22 cannot be input (i.e., it rejects), do not authorize the posting of a TC 470.
- d. Prepare a withdrawal confirmation letter using AOIC.
- e. Forward the case file to the delegated official for approval of Form 1271 and sign, date, and mail the withdrawal confirmation letter to the taxpayer. Dual notification is required for each spouse on a joint offer.
- f. Close the case to CCP. The file should contain the applicable documents listed in IRM 4.8.8.8.6, Case Closing Procedures.
- g. Prepare Form 5348 to request the removal of the AIMS “8” freeze by a designated tax examiner in TS.
- h. Complete the IAR Checklist through the AOIC system and make sure the withdrawal confirmation letter is in the AOIC system. Once the applicable information is completed in the AOIC system it will generate the posting of the TC 482 and release the OIC “Y” freeze on IDRS. The Checklist must be kept in the case file when the case is closed to CCP.

4.8.8.8.5  
(12-01-2017)  
**Accepted Offers**

- (1) An offer to compromise a tax liability should set forth the legal grounds for compromise and should provide enough information for the Service to determine where the offer fits within its acceptance policies. Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. Doubt as to liability does not exist where the liability has been established by a final court decision or judgement concerning the existence of the liability.
- (2) Accepted offers will be extremely rare. If an offer is accepted, the TS reviewer will complete the following:
  - a. Review Form 7249, Offer Acceptance Report, and
  - b. Prepare an acceptance letter on AOIC and forward it to the delegated official for signature.
- (3) Pursuant to IRC 7122 (f), an OIC will be deemed to be accepted if the Service did not otherwise make a determination regarding the OIC and notify the taxpayer of such determination within 24 months of the date the IRS received the offer. See IRM 5.8.8.12, 24-Month Mandatory Acceptance under IRC § 7122(f). If the Service makes a determination to accept the OIC, the acceptance letter must be signed by the current level of authority delegated permission to sign an OIC acceptance letter. The letter will then be sent to the taxpayer. See IRM Exhibit 5.8.8-1, 24-Month Acceptance Letter (Letter 5540).
- (4) Refer to IRM 4.8.8.8.6 below for case closing procedures.

4.8.8.8.6  
(02-11-2021)  
**Case Closing Procedures**

- (1) After the appropriate letter is sent to the taxpayer, the OIC-DATL file is forwarded to Centralized Case Processing for closure, unless the taxpayer has requested an appeal of a rejected offer.

- (2) The OIC-DATL case file should include the following documents in the order shown (as applicable):
1. Signed and dated file copy of the determination letter issued to the taxpayer and a copy of any correspondence sent to the representative.
  2. In the event of a withdrawal statement, the withdrawal request signed by the taxpayer and date stamped by the Service.
  3. In the event of a rejection, Form 1271, Rejection Memorandum, properly completed and signed and Form 886-A, Explanation of Items.
  4. In the event of an acceptance Form 7249, Offer Acceptance Report, signed and date stamped by the Service.
  5. Form 656-L, Offer in Compromise (Doubt as to Liability).
  6. Agreed or unagreed Form 4549, Report of Income Tax Examination Change, or Form 4549-A, Report of Income Tax Examination Change. When a request for abatement is received from PSP for an example use Form 3870 for OIC cases not established on AIMS/ERCS.
- Note:** Occasionally, the PSP coordinator, upon initial offer review, may determine that an abatement is warranted, and field examination is not required. PSP will proposed those abatements, secure a withdrawal statement from the taxpayer and then close the offer directly to Technical Services for the issuance of the withdrawal letter. If a withdrawal statement is not secured, PSP will close to TS for the issuance of a rejection letter. Form 3870, is then sent to CCP by TS prior to case closure for those abatements.
7. Form 5344, Examination Closing Record, attached to the front of the tax return.
  8. Tax return(s) (original, electronic print, copy or RTVUE (IDRS print)).
  9. Form 2848, Power of Attorney and Declaration of Representative, attached to the tax return as required.
  10. OIC-DATL workpapers.
  11. Copy of the completed IAR checklist. See table below for a copy of the checklist.
  12. Prior audit workpapers, report, letters, etc. clipped, banded and or placed in a separate folder.

OIC-DATL EXAM - IAR -TECHNICAL SERVICES CASE REVIEW - CHECKLIST
Office Number:
Review Date:
TIN:
Tax Periods:
TIPRA Date (IRS Received Date)
IAR -Technical Reviewer Name:
IAR Concurrence: ___ Yes ___ No
Comments:
Amount of Deposit:
Disposition of Deposit: ___ Refund ___ Apply
Tax Year Applied:

OIC-DATL EXAM - IAR -TECHNICAL SERVICES CASE REVIEW - CHECKLIST
Form or Letter Issued:
Mail Date of Letter:
Copy to PSP Date:
Date Closed CCP:
Final Disposition Code: <ul style="list-style-type: none"> <li>• 1 - Acceptance by Exam</li> <li>• 2 - Acceptance by Appeals</li> <li>• 3 - Reject Sustained by Appeals</li> <li>• 4 - Reject (Did not appeal)</li> <li>• 5 - Withdrawn</li> <li>• 6 - Terminated</li> <li>• 7 - Withdrawn in Appeals</li> <li>• 8 - Return (Processable and Not Processable)</li> </ul>

- (3) Form 656-L informs the taxpayer not to send any money with the offer. If the taxpayer sends money the IRS will apply the funds to the taxpayer's outstanding liability.
- (4) Accepted offers require the preparation of a Public Inspection File. The Public Inspection File will contain only a copy of the redacted Form 7249 and a sanitized AOIC Masterfile Screen transcript. These documents are retained for public inspection for a period of one year, after which they are destroyed. See *OIC Public Inspection File*, and IRM 21.2.3.5.7, Transcripts Restrictions and Special Handling. The TS IAR can obtain an AOIC Masterfile Screen transcript for an accepted offer. OIC Public Inspection File locations are based on the taxpayer's geographic area of residence. Public Inspection File locations can be found on the IRS Intranet.
- (5) The OIC-DATL reviewer frequently gets inquiries on recently closed OIC-DATL cases. To respond to these inquiries, the OIC-DATL reviewer should, at a minimum, maintain copies of Form 1271, Form 7249, and Form 2848, if applicable, and the confirmation letter for a period of six months. The copies should not be maintained longer than one year, after which they should be shredded since the originals are in the administrative case file.

4.8.8.8.7  
(12-01-2017)

**Additional Offer in  
Compromise Issues**

- (1) Collection Due Process Cases: The TS reviewer must review the case to ensure adjustments/reports are correct. Once completed, the case is forwarded to Appeals. Refer to IRM 4.18.7.4, Offers Under IRS Independent Office of Appeals Jurisdiction, and IRM 4.18.7.4.1, CDP and Equivalent Hearing Appeal Offer Processing.
- (2) Termination Offers: Consideration of an offer must be terminated upon the death of a single proponent. Offers closed as terminations do not require preparation of Form 1271. The TS reviewer is responsible for issuing a termination letter. The letter is forwarded to the TS group manager for signature. See Form 5.19.24.15, Death of a Taxpayer and Form 5.19.24.10, Processable Return Procedures. Many times the OIC-DATL under consideration was submitted jointly by a husband and wife. In that situation, contact with the surviving spouse should be made to determine whether there is a probate pro-

ceeding pending. See IRM 5.17.13.9, Decedents' Estates, for more information about decedent taxpayers and probate proceedings.

- (3) Returned Offers: Offers that have been received but are not processable may be closed as returned. This is the sole responsibility of the Centralized Offer in Compromise Unit (COIC). In other situations, a processable offer may also warrant closure as a returned offer. See IRM 5.8.7.2, Returned for detailed information.
- (4) If only one spouse submits an OIC-DATL, then the account may need to be split. See IRM 21.6.8, for procedures.

4.8.8.9  
(12-01-2017)  
**Carryback Adjustments  
Requiring Form 2285**

- (1) Interest is generally paid to taxpayers on tax overpayments under IRC 6611, Interest on Overpayments, for the time period the government has use of the taxpayer's money. Interest is charged on tax deficiencies under IRC 6601, Interest on Underpayment, Nonpayment, or Extensions of Time for Payment, of Tax, for the time period the taxpayer has use of the government's money. In most cases, the time period begins with the normal due date of the return.
- (2) "General adjustments" are adjustments made to the tax return as part of the audit for that particular year. These do not include any carryback adjustments arising from subsequent years that are applied to the audit year. However, anything carried forward into the current year from a prior year is a general adjustment or a current period adjustment. Interest on general adjustments is computed based upon the due date of the return being examined.
- (3) The Internal Revenue Code (IRC) specifies if certain deductions, credits, and items of income are present, the interest accrual period will be different and may need to be restricted. See IRM 20.2.5.6.1, Reasons to Manually Compute Interest, for a detailed list of the reasons for restricting interest on a tax module. IRM Exhibit 20.2.1-1, Provisions Restricting Interest, contains a table displaying various types of tax adjustments and their restricted interest treatment.
- (4) One of the reasons for restricting interest on a tax module is a claim or tentative allowance to carryback net operating losses (NOLs), net capital losses (NCLs) and credits. Interest is computed based upon the due date of the tax return from which the carryback originates. As compared to general adjustments, this shortens or "restricts" the period during which interest is computed. The carryback is called a "restricted adjustment."
- (5) When an examination includes both "general adjustments" and "restricted adjustments," the tax liability subject to the different interest start date must be identified and separated from the tax liability attributable to the "general adjustments." This identification and separation is accomplished by the completion of Section I of Form 2285, Concurrent Determinations of Deficiencies.

4.8.8.9.1  
(12-01-2017)  
**Review of the Restricted  
Adjustment RAR and  
Form 3198**

- (1) Restricted adjustment cases are controlled on ERCS by TS using Status Code 20, Review Type 09.

**Note:** This is only for cases where there is not a tax computation specialist (TCS) assigned in LB&I. The assigned TCS is responsible for preparing the Form 2285.

- (2) Restricted adjustment cases are sent to TS for special handling.

- (3) All cases requiring restricted interest treatment must be identified as such on Form 3198.
- (4) The reviewer should ensure Form 3198 has been properly notated. Form 3198 should contain the following notations:
- a. Restricted interest cases requiring Form 2285 must be identified as such on Form 3198 to ensure proper routing upon case closing. The following three review steps should be taken:

1.	Review page one of Form 3198 to ensure it has routing instructions to "FORWARD TO TECHNICAL SERVICES".
2.	Review page one to ensure the box is checked for "Restricted Interest (Form 2285 required)".
3.	If the restricted adjustment made is a NOL carryback, check the box on page 2 under the "Special/Restricted Interest Features," that says "NOL and Capital Loss Carryback" in addition to the "Other Code Section" check box.

**Reminder:** Case will be updated to Status Code 21 for routing to TS.

- b. Restricted interest cases **not** requiring a Form 2285, must be identified as such on Form 3198 to ensure proper routing upon case closing. Check the box on the left side of Page 1 and review page two of Form 3198 to ensure it has been annotated to indicate "Special/Restricted Interest Features", check box for "Other Code Section" and annotate "IRC 6611(f)—No Form 2285 Required."

**Note:** Case will be updated to Status Code 51 for routing to CCP unless other feature requires routing to TS, i.e. an unagreed closure.

- c. Agreed, no changed and surveyed Joint Committee cases as defined in IRM 4.36.2, Identification of Joint Committee Cases, should be sent directly to the Joint Committee Review Program. The Joint Committee reviewer will complete Form 2285 if required. Additional information may be found at the *Joint Committee Cases* Knowledge Management Library.
  - d. The reviewer's signature, date of signature, and telephone number will be entered on the Form 3198 before closing to CCP, Status Code 51.
- (5) IRM 4.10.8.15.3.4 (5)(a), Restricted Interest, with IRM Exhibit 4.10.8-10, Sample Form 4549A-Full Allowance of Tentative NOLD, through IRM Exhibit 4.10.8-13, Restricted Interest Decision Chart (Non-Joint Committee Cases Only), provide detailed instructions about the preparation of reports presenting carryback adjustments and general adjustments. The report should have been prepared and presented to the taxpayer detailing the source year of all carryback adjustments with appropriate remarks in "Other Information" as suggested in IRM 4.10.8.15.3.4 (5).
- (6) If the report consists of both carryback adjustments and general adjustments, the case file should contain a "Restricted Adjustment Report" that reflects the potential deficiency subject to interest per IRC 6601(d). This is a report generated without the carryback adjustments to reflect the taxpayer's deficiency attributable to the general adjustments until the due date of the offsetting source year carryback. More than one source year requires additional "Restricted Reports" until each source year is accounted for in order to

prepare Form 2285. The taxpayer's last marginal rate is computed as follows in the event the reviewer must separate the report:

- a. Merge the case into the RGS program.
  - b. Deal with only one year at a time.
  - c. Go into issue adjustments. Make note of the amounts of all the carryback adjustments.
  - d. Eliminate all of the carryback adjustments by deleting them or entering zero for the amount of the adjustment. Do the same for alternative minimum tax preference item for the alternative minimum tax net operating loss deduction. Compute the tax that should now reflect only the current period adjustments.
  - e. Print out the first page of the report reflecting the deficiency.
  - f. Go back into issue adjustments and re-enter the adjustment for the carryback(s) from the earliest subsequent year. Run the report again and print the page of the report reflecting the deficiency. The difference between this report and the last report would be the tax change due to the carryback from the earliest subsequent year.
  - g. Repeat this process for each subsequent year from which there was a carryback until the final report is the same as the examiner's report.
- (7) The reviewer ensures the NOL or credit adjustment on the report is not a combination of two or more source years. The Form 4318 or workpapers should be reviewed to determine if multiple NOLs or credit carrybacks make up the adjustment.

4.8.8.9.2  
(12-06-2013)  
**Requirements for  
Preparation of a Form  
2285**

- (1) Form 2285 is required when:
- a. Losses or credit carrybacks from more than one year are being carried back to the same year, or
  - b. A "general adjustment" resulting in more than \$100 in tax and a carryback (loss or credit) from at least one subsequent year are involved.

**Note:** Each source year is required to be separately identified.

- (2) Form 2285 is not required in the following instances:
- a. An unagreed case is either petitioned to the United States Tax Court or forwarded to Appeals for settlement.
  - b. A tentative allowance was made and the report approves the allowance (a no-change report).
  - c. The carryback arises from only one year and there is a partial recovery of the tentative allowance.
  - d. There are no general adjustments or there is a general adjustment resulting in \$100 or less in tax and a carryback from only one year.
- (3) IRM Exhibit 4.10.8-13 displays a quick reference "Restricted Interest Decision Chart (Non-Joint Committee Cases Only)."

4.8.8.9.3  
(12-01-2017)  
**Completion of Form  
2285**

- (1) TS is responsible for completing Section I of Form 2285. In LB&I, tax computation specialists (TCS) complete Section 1 of Form 2285 for all agreed and partially agreed cases. For further information see LB&I *Restricted Interest*.
- (2) Instructions about how to complete Form 2285 are outlined on the publishing website for the form. Additional references may be found in:

- a. IRM 20.2.9, Interest on Carryback of Net Operating Loss
  - b. *Joint Committee Spreadsheet Analysis* website.
- (3) The examiner is responsible for the accuracy and completeness of the reports required to complete the Form 2285. The reviewer should contact the examiner who worked the case to verify the amounts of the adjustments arising in various years. Use of RGS may net some carryback and carryforward adjustments, making preparation of Form 2285 confusing.
  - (4) The completed Form 2285 is placed on the top of the examiner's report inside the case file. The case will be closed to CCP in Status Code 51.

**Example:** If a taxpayer requests a payoff figure on a case requiring a Form 2285, the controls will typically be held in the examining group. The group will make the request to CCP for the payoff figure, but CCP will request the restricted interest reviewer complete Part I of Form 2285. The reviewer will obtain the report and appropriate documents to complete Form 2285 and forward to the CCP tax examiner.

- (5) On complex restricted interest computations, the reviewer may prepare a memorandum for an area counsel advisory.

4.8.8.10  
(12-06-2013)  
**Specialist Referrals**

- (1) When reviewing a case, the TS reviewer verifies that the examiner made referrals to specialists, as appropriate. When the mandatory referral criteria are met, examiners should document the consideration of referrals in the case file. Examiners should keep a copy of the referral (hard copy or electronic), or if not referred, the reason for not referring the case should be noted in the workpapers or the activity record.
- (2) See IRM 4.10.2.7.5, Specialist Referrals, for instructions to examiners and the mandatory referral criteria. See IRM 4.10.6.3.3, Referrals, for information regarding assistance from specialists in developing penalty issues.
- (3) Visit *Specialist Referral Systems* (SRS) for the mandatory referral criteria as well as information on the Specialist Referral System.
- (4) Other referrals, such as requests for informal advice from area counsel, requests for Chief Counsel advice, and requests for technical advice should be submitted to the technical coordinator in TS. See IRM 4.8.8.12, Formal and Informal Technical Assistance below, for more information.

4.8.8.11  
(02-11-2021)  
**Statute Expiration Reports**

- (1) The TS reviewer working with statute expiration cases must be knowledgeable of statute of limitations provisions and should know the following:
  - a. When a statute expires and or an assessment is barred.
  - b. When a Form 3999, Statute Expiration Report, is required.
  - c. Who is responsible for preparing the report.
  - d. What information is required for a preliminary and or final report.
  - e. How to route the report within the mandatory processing time frames.
  - f. How to close a case involving an expired statute.
  - g. Was the taxpayer contacted by the examiner.
- (2) Form 3999 is prepared when the statute of limitation expires before the appropriate assessment, overassessment or no-change and the case is in Examination. Form 3999-T, Statute Expiration Report (for TEFRA key cases),

is used for TEFRA key cases. IRM 25.6.1.13, Barred Assessments/Barred Statute Cases, provides detailed instructions for the preparation and routing of the report (both preliminary and final). Additional information can also be found in IRM 4.2.1.13 , Statute Expiration Reports.

- (3) Form 3999 and/or Form 3999-T may be prepared as a preliminary or final report. Management generally prepares a preliminary report when a function or employee discovers (but was not responsible for) the potentially expired statute. The final report is prepared by the manager of the individual responsible for the expired statute.
- (4) TS may review a case at the request of a group manager to determine if a Form 3999 is required, before the preliminary report is forwarded to the next level of management. The reviewer will determine whether the assessment is actually barred or if it can be assessed under one of the lesser known provisions of the statute. Refer to IRC 6501, Limitations on Assessment and Collection, for exceptions to the normal three-year limitation period as well as IRM Exhibit 25.6.23-3, Instructions for Updating the Statute on AIMS.
- (5) Refer to IRM 4.2.1.14 , Taxpayer Notification of Assessment Statute Expiration and Acceptance of Voluntary Payments on Expired Statute Returns When Taxpayer Was Contacted for Examination, for procedural guidance on notifying taxpayers of expired statutes.
- (6) The final report on Form 3999 is routed through the territory manager, to the area director. Refer to the SB/SE Statute Expiration Reporting Timetable in IRM Exhibit 25.6.1-4 , SB/SE Statute Expiration Reporting Timetable (for examination-related activities).
- (7) Refer to IRM 25.6.1.13.2.8.3 , Closing Cases Involving Expired Statute Returns, for case closing procedures once the Form 3999 is approved.
- (8) Refer to IRM Exhibit 25.6.1-4, SB/SE Statute Expiration Reporting Timetable (for examination-related activity) to timely prepare and submit the Form 3999 for review and approval to the area director Form 3999 coordinator

4.8.8.12  
(12-06-2013)  
**Formal and Informal  
Technical Assistance**

- (1) Examiners and taxpayers request advice regarding interpretation and proper application of the IRC and related regulation to a specific set of facts for which they want an authoritative response.
- (2) TS prepares responses to inquiries of a technical or procedural nature received from taxpayers. TS also responds to requests from within the Service for technical and procedural guidance, though the majority of these requests and responses are made via telephone or e-mail.
- (3) The first revenue procedure of each year (i.e., Rev. Proc. 2011-1) provides the conditions under which the Service will rule or issue an opinion regarding the application of tax law to a taxpayer's factual situation. This revenue procedure also sets forth the procedures taxpayers must follow in requesting a ruling letter, an information letter, or determination letter.
- (4) The second revenue procedure of each year (i.e., Rev. Proc. 2011-2) provides the conditions under which the Service will issue formal technical advice regarding the application of tax law to a specific taxpayer's factual situation. This revenue procedure also sets forth procedures both taxpayers and Service employees must follow when requesting technical advice.

- (5) TS becomes involved either in issuing an information letter or determination letter or in forwarding a request for technical advice. TS also coordinates the submission and receipt of requests for advice from area counsel, as well as requests for Chief Counsel advice.
- (6) The duties described in this subsection may be delegated to two or more area reviewers, as necessary.

4.8.8.12.1  
(12-06-2013)  
**Requests for Advice  
From Examiners**

- (1) Examiners and or group managers may informally request assistance. Reviewers should encourage open communication and resolution of a problem with minimum management involvement.
- (2) Some area counsel offices have specific attorneys assigned to each area group for informal advice. The appeals/counsel liaison in these areas should maintain a list of the attorney assignments for simple informal advice. Visit *SB/SE Counsel Contacts* for a listing of contacts in Counsel.

4.8.8.12.1.1  
(12-06-2013)  
**Informal Assistance  
From Chief Counsel**

- (1) TS reviewers may obtain informal assistance from the *Office of Chief Counsel* by telephone to assist examiners with technical inquiries. A current listing of contacts is contained at the Office of Chief Counsel's Intranet site.
- (2) Informal assistance directly from Chief Counsel is not routine. Reviewers should only request Chief Counsel assistance under limited circumstances. Instead, reviewers should request routine assistance from area counsel when needed.

4.8.8.12.1.2  
(12-01-2017)  
**Advice From Area  
Counsel**

- (1) Examiners frequently make direct contact with area counsel attorneys. Generally, LB&I and E&G do not direct requests for advice through TS.
- (2) Written requests for area counsel advice from examiners and or group managers (other than LB&I and E&G) should be routed through the Appeals/Counsel liaison in TS, who will ensure the pertinent facts are included, adequate research has been performed, and the request for advice is appropriate, given the issue. The Appeals/Counsel liaison will forward the written request to area counsel and maintain a log of such requests for follow-up. See *Counsel Liaisons - Technical Services* for a listing of liaisons.
- (3) When the advice response is received from area counsel, the Appeals/Counsel liaison will forward the original memorandum to the appropriate examiner. At the same time, a copy of the memorandum will be maintained by the Appeals/Counsel liaison. If it appears the issue is relevant to more than a single taxpayer, the Appeals/Counsel liaison may prepare a technical alert or other communication to notify all area examiners of the issue.

4.8.8.12.1.3  
(12-06-2013)  
**Requests for Chief  
Counsel Advice**

- (1) Chief Counsel Advice may include case specific advice provided to examiners by the Associate Chief Counsel. Chief Counsel Advice does not represent a final determination of the Service's position, even in the case for which it was requested.
- (2) Examiners will contact the Appeals/Counsel liaison to determine if a request for Chief Counsel Advice is appropriate. The Appeals/Counsel liaison will review the request for Chief Counsel Advice to determine if the request warrants Chief Counsel Advice.

- (3) If it is determined that Chief Counsel Advice is needed, Area Counsel sends the request to the appropriate Associate Chief Counsel office. The request should have factual information, and adequate research performed, the Appeals/Counsel liaison forwards the request to area counsel. Area Counsel will review the request to ensure the issue warrants Chief Counsel involvement.
- (4) The Appeals/Counsel liaison will maintain a log of all Chief Counsel Advice requests sent to Area Counsel for follow-up. Specific procedures for requesting Chief Counsel Advice are contained in the *Chief Counsel Directives Manual* (CCDM).

4.8.8.12.1.4  
(12-06-2013)  
**Requests for Technical  
Advice Memorandum**

- (1) A technical advice memorandum (TAM) is requested according to formal procedures contained in the second revenue procedure issued each year. This revenue procedure is updated annually, but may also be modified or amplified during the course of the year.
- (2) Because technical advice is issued to assist field offices, it is the field office that determines whether to request it. In determining whether to request technical advice, the field office should consider whether other forms of guidance, e.g., published guidance, generic advice, or some other form of advice, would be more appropriate. Before requesting technical advice, however, the field office must request assistance and a recommendation from field counsel.
- (3) As noted in IRM 4.8.8.12.1.2, Advice From Area Counsel, above, written requests for area counsel advice are routed through the Appeals/Counsel liaison in TS.
- (4) New streamlined procedures have been implemented in the processing of TAM requests. The field examiner and the assigned area counsel attorney will determine if a TAM is warranted. The field examiner will prepare the Form 4463, Request for Technical Advice or Technical Expedited Advice, and all required attachments and forward to the assigned area counsel attorney. The area counsel attorney will forward the request via electronic means directly to the Office of Chief Counsel.
- (5) TS role in the TAM process is limited to processing the original written request for area counsel advice. In some instances, area counsel may request additional assistance if necessary.
- (6) For complete TAM procedures, please refer to the second revenue procedure of the year (i.e., Rev. Proc. 2011-2) and IRM 4.2.3, Technical Advice to Taxpayers and Examination Personnel.

4.8.8.12.2  
(12-06-2013)  
**Request for Advice  
From Taxpayers**

- (1) Any employee who gives advice and assistance to taxpayers should use the following guidelines:
  - a. Ensure there is a clear understanding of the facts involved in the transaction under discussion and the applicable principles of law are identified and explained so the taxpayer understands the facts and law as discussed.
  - b. Advice should not be given until there is a clear understanding of the facts and applicable law. If the facts are not clear, clarify areas of doubt and request additional information as needed. If the applicable law is not

clear, follow through with necessary research to ascertain the correct answer before replying fully to the request.

- 4.8.8.12.2.1  
(12-01-2017)  
**Determination Letters**
- (1) A “determination letter” is a written determination issued by a director that applies the principles and precedents previously announced by the Service to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in a statute, a tax treaty, the regulations, a conclusion in a revenue ruling, or an opinion or court decision that represents the position of the Service.
  - (2) As used above, the term “Director” refers to the Director, Field Operations, LB&I; Area Director, Field Examination, SB/SE; Chief, Estate and Gift Tax Operations, SB/SE; Chief, Employment Tax Operations, SB/SE; Chief, Excise Tax Operations, SB/SE; Director, Compliance, W&I; Director, International Compliance, Strategy and Policy; Director, Employee Plans and Director, Exempt Organizations; Director, Federal, State and Local Governments; Director, Tax Exempt Bonds; or Director, Indian Tribal Governments, as appropriate.
  - (3) Determination letters will be issued by each director’s office in response to taxpayer requests. Specific guidance related to the issuance/submission of determination letters is found in the first revenue procedure issued each year.
- 4.8.8.12.2.1.1  
(12-06-2013)  
**Determination Letters Issued**
- (1) Directors issue determination letters in response to taxpayers’ written requests on completed transactions that affect returns over which they have examination jurisdiction.
  - (2) A director may issue a determination letter on the replacement, even though not yet made, of involuntarily converted property under IRC 1033 if the taxpayer has filed an income tax return for the year in which the property was involuntarily converted.
- 4.8.8.12.2.1.2  
(12-06-2013)  
**Determination Letters Not Issued**
- (1) Directors normally do not issue determination letters on the tax consequences of proposed transactions.
  - (2) A director will not issue a determination letter in response to any request if the following occurs:
    - a. It appears that the taxpayer has directed a similar inquiry to other business units or area offices.
    - b. The same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation or before an area office.
    - c. The determination letter is requested by an industry, trade association, or similar group.
    - d. The request involves an industry-wide problem.
  - (3) Under no circumstances will a determination letter be issued unless it is clearly shown that the request concerns a return that has been filed or is required to be filed and over which the director has, or will have, examination jurisdiction.
- 4.8.8.12.2.1.3  
(02-11-2021)  
**Guidelines for a Determination Letter**
- (1) The first revenue procedure issued each year contains specific information about requesting a determination letter. See *IRB*, Internal Revenue Bulletins online for the current year revenue procedures. Look under “Request for Determination Letter”. This section provides an overview of the information needed.

- (2) Certain information as follows is required in all requests for a determination letter:
  - a. Names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties;
  - b. The annual accounting period, and the overall method of accounting for maintaining the accounting books and the filing of federal income tax returns, of all interested parties;
  - c. A description of the business reasons for the transaction;
  - d. A detailed description of the transaction; and
  - e. Copies of all contracts, wills, deeds, agreements, instruments, other documents, and foreign laws.
- (3) All material facts and documents must be included in the taxpayer's request or in supplemental letters. These facts must be accompanied by an analysis of their bearing on the issue(s), specifying the provisions that apply.
- (4) The request must state whether, to the best of knowledge of both the taxpayer and the taxpayer's representative, the same issue is in an earlier return of the taxpayer.
- (5) The request must state whether the same or similar issue was previously ruled on or requested, or is currently pending.
- (6) The request must state whether it involves an interpretation of a substantive provision of an income or estate tax treaty.
- (7) The request must state if the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must be included.
- (8) The request should inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced by the taxpayer.
- (9) The request should identify any pending legislation that may affect the proposed transaction.
- (10) The request must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature is not permitted.
- (11) The request and any subsequent change submitted must be accompanied by a declaration signed under penalties of perjury signed by the taxpayer, not the taxpayer's representative. A stamped signature is not permitted.
- (12) A request for a determination must be accompanied by a statement indicating the deletions desired. Because the text of the determination letter is open to public inspection under IRC 6110, Public Inspection of Written Determinations, the Service makes deletions required by IRC 6110(c) from the text before it is available for inspection. If the deletions statement is not submitted with the request, the request will be closed within 21 days.
- (13) Generally, a request for a determination letter requires an original and one copy to be submitted.
- (14) SB/SE and W&I taxpayers send their determination letter requests to their local SB/SE office. Appendix D of the first revenue procedure issued each year contains the addresses for the appropriate SB/SE offices.

- (15) LB&I taxpayers send their requests for determination letters to the address listed in the first revenue procedure of the current year. See *IRB*, Internal Revenue Bulletins online for the current year revenue procedures. Look under “Request for Determination Letter”
- (16) User fees are required to be paid with determination letter requests. See Appendix A of the first revenue procedure issued each year for the required fee amount.

4.8.8.12.2.1.4  
(12-06-2013)

**Technical Services’  
Responsibilities**

- (1) TS employees who handle the determination letter requests need to ensure that a careful distinction is made between requests for determination letters and general information requests (defined in IRM 4.8.8.12.2.2, Information Letter, below). If it appears to be a request for general information, the assigned reviewer should treat it as such and should not apply the provisions for a determination letter as noted above.
- (2) Determination letters are signed by the TS group manager as delegated by *SB/SE 1-23-5*, Determination Letters Relating to Income, Estate & Gift, Excise and Employment Tax, formerly SB/SE Delegation Order 4.54 (Rev. 2).
- (3) The text of determination letters is open to public inspection under IRC 6110. The Service makes deletions from the text before it is made available for inspection. Accordingly, the reviewer must provide the taxpayer with Notice 438, Notice of Intention to Disclose, along with a copy of the determination letter with proposed deletions.

4.8.8.12.2.2  
(12-06-2013)

**Information Letter**

- (1) An “information letter” is a statement issued by an associate chief counsel office or director that calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts.
- (2) An information letter may be issued if the taxpayer’s inquiry indicates a need for general information or if the taxpayer’s request does not meet the requirements of the first revenue procedure issued each year and the Service concludes that general information will help the taxpayer.
- (3) An information letter is advisory only and has no binding effect on the Service.
- (4) Information letters that are issued by TS are not made available to the public. Information letters do not constitute written determinations as defined in IRC 6110 and are not subject to public inspection under IRC 6110.
- (5) Information letters are signed by the TS group manager as delegated by *SB/SE 1-23-54*, Authority to Sign Information Letters, formerly SB/SE Delegation Order 4.18 Rev. 1.

4.8.8.12.2.3  
(12-06-2013)

**Letter Ruling**

- (1) A “letter ruling”, also known as a “private letter ruling”, is a written determination issued to a taxpayer by an associate chief counsel office in response to the taxpayer’s written inquiry, filed before the filing of returns or reports that are required by the tax laws, about its status for tax purposes or the tax effects of its acts or transactions.
- (2) A letter ruling interprets the tax law and applies them to the taxpayer’s specific set of facts.

- (3) Once issued, a letter ruling may be revoked or modified for a number of reasons, as outlined in the first revenue procedure issued each year.
- (4) When completed, the associate chief counsel office will send a copy of the letter ruling, whether favorable or adverse, to the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return. The copies are generally sent to the assigned reviewer in TS.
- (5) Generally, the reviewer will determine if the subject taxpayer is currently under examination and, if so, whether the letter ruling would be pertinent to the examination. If the taxpayer is not currently under examination, the reviewer usually files the letter ruling for possible future reference.

4.8.8.12.3  
(12-06-2013)  
**Technical Coordination  
Report**

- (1) Under the Technical Coordination Report Program, tax abuses, inequities, and administrative problems in the interpretation and application of tax laws and regulations are reported to headquarters. It is essential that headquarters be made aware of the scope of tax arrangements that may have the effect of legally circumventing the statute or regulations. Since examiners in the field are often in the best position to identify these situations, the initial steps toward the correction or elimination of the problems frequently originate in the field.
- (2) The Technical Coordination Report Program was established as a vehicle for communicating these matters to headquarters. The program is administered by TS, who is responsible for establishing and maintaining an avenue of communication with headquarters on problem areas encountered, through the use of Technical Coordination Reports.

4.8.8.12.3.1  
(12-06-2013)  
**General Information**

- (1) Technical coordination reports need not be case related. They may result from news items, publications, or other matters encountered in day to day operations. The use of technical coordination reports, both case and non-case related, allows headquarters to utilize the knowledge and experience of field personnel in improving nationwide operating programs.
- (2) Technical coordination reports can include one or more of the following subject areas:
  - a. Problems or practices that indicate abuses, inequities, or difficulties in applying the administrative provisions of the code and that may be corrected by reexamination of rules for interpretation and application of tax law.
  - b. Suggestions for policy statements or interpretative materials on broad subjects if the guidance would assist in eliminating controversy or in promoting national uniformity.
  - c. Suggestions for improvements in tax laws, regulations, tax forms and or instructions for tax forms.
- (3) Technical coordination reports are classified into two categories:
  - a. Those containing significant items which merit the Commissioner's attention, and
  - b. Those which do not merit the Commissioner's attention.

4.8.8.12.3.2  
(12-06-2013)

**Technical Coordination Reports That Merit the Commissioner's Attention**

- (1) Generally, it should be assumed the Commissioner wants to review matters having one or more of the following characteristics:
  - a. A large number of taxpayers are affected.
  - b. A large amount of revenue or potential revenue is involved.
  - c. The matter relates to a key policy of the President, the Secretary of the Treasury, or the Congress.
  - d. The matter is causing or may cause a significant amount of adverse publicity or public controversy.
  - e. The matter is creating significant problems in the audit of returns, appeals, or litigation.
- (2) While the primary focus is on substantive problems, administrative problems can be submitted under this category if they are of a significant nature. Problems which might be alleviated by amendment of regulations rather than legislative enactment may also be included.

4.8.8.12.3.3  
(12-06-2013)

**Technical Coordination Reports That Do Not Merit the Commissioner's Attention**

- (1) The following situations should be reported to headquarters through technical coordination reports:
  - a. Tax Abuses: This area covers all cases in which an apparently lawful method or device has been used to escape all or a portion of the tax that would be due. Generally, tax avoidance devices resort to lawful management or manipulation of the form or timing of an income or loss producing transaction to take advantage of some relief provision of the law, or to avoid the tax consequences that would attach to the economic benefits realized.
  - b. Inequities: This area involves situations where the application of some particular provision of the law to the particular facts and circumstances results in a substantial disadvantage to a group of taxpayers.
  - c. Administrative Problems: This area covers situations where an administrative requirement of the law seems to impose an unnecessary burden on the Service.

4.8.8.12.3.4  
(12-01-2017)

**Procedures for Technical Coordination Reports**

- (1) A Technical Coordination Report is submitted in memorandum form to report both items that either warrant or do not warrant the Commissioner's attention. An original and two copies should be generated. This report should be submitted to Chief Counsel for their concurrence. Then it should be routed to the Commissioner through the Territory Manager, TS; Area Director; Director, Field Examination; and SB/SE Commissioner.
- (2) If the technical coordination report merits the Commissioner's attention, the report should be clearly marked COMMISSIONER'S ATTENTION at the top of the form.
- (3) Reports should be directed to the appropriate office (in headquarters).
- (4) The original and two copies of the report should be forwarded through channels to TS for review. The assigned reviewer is encouraged to add his or her comments or additional recommendations, even if he/she concurs with the originator. The reviewer must provide comments or an appropriate explanation if he or she does not concur with the originator's recommendation. The package is then processed to headquarters.

- (5) The assigned reviewer will maintain a complete copy of the report and any attachments for reference purposes.

4.8.8.13  
(02-11-2021)  
**Transferee Liability Cases**

- (1) IRC 6901, Transferred Assets, provides a procedure for enforcing a liability against a third party transferee.
  - a. Transferees. It provides a procedure by which the Commissioner can collect from a transferee the transferor’s income tax, estate tax or gift tax (whether based on the amount shown on the return or on a deficiency), along with penalties, and interest. This procedure also applies to employment and excise taxes where the transferee’s liability for such taxes arises out of a liquidation of a partnership or corporation, or a corporate reorganization under IRC 368 (a). Transferee liability is a secondary or derivative liability, and not a primary or direct liability.
  - b. Fiduciaries. IRC 6901 also provides a procedure for holding a fiduciary personally liable under 31 U.S.C., section 3713(b) (the “Insolvency Statute”) where the fiduciary with knowledge of an estate or a donor’s tax debt for income tax, estate tax or gift tax fails to recognize the priority of the government’s claim under 31 U.S.C. section 3713(a)(1)(A) (the “Federal Priority Statute”) against the assets of the estate or a donor and distributes those assets. Any general procedures below referring to a transferee also apply to a fiduciary.
  - c. Under these procedures an amount is, in general, assessed and collected in the same manner and subject to the same provisions the taxes with respect to which the liability was incurred. This means a transferee is entitled to an appeals hearing in the same manner in which the transferor would be with regard to the underlying tax or a transferee liability is subject to deficiency procedures if the underlying tax was subject to deficiency procedures. The period of limitations for the transferee assessment is based on an extension of the transferor’s period. If the period of limitations on the transferor, estate or donor expires before the asset is transferred, the transferee cannot be held liable for the transferor’s tax.
- (2) A transferee liability investigation is a joint investigation between collection and examination field employees. While collection officers are experts at locating current assets of the taxpayer or transferee, examination agents are experts at developing the case for the position that a transferee is liable for the transferor taxpayer’s liability.
- (3) A transferee’s liability may be established using state or federal law.
  - a. State Law. The primary means by which a transferee can become liable for the taxes of a transferor are as a Transferee at Law or as a Transferee in Equity.

**Note:**

1.	The elements of Transferee at Law are addressed in state statutes (e.g., Bulk Sales provisions under the UCC; merger or consolidation statutes) or under contract law pursuant to a transferee’s agreement with a transferor to assume the transferor’s tax liability.
----	--

2.	The elements of Transferee in Equity in a given state were found initially in a state's common law but today they are generally found in a state's fraudulent conveyances law which is generally based on the Uniform Fraudulent Conveyance Act (UFCA) (proposed in 1918) or the Uniform Fraudulent Transfer Act (UFTA) (proposed in 1984). While the usual remedy for a fraudulent conveyance may be set aside the transfer, the fraudulent action can be used to provide the substance for the IRC 6901 procedure. Fraudulent conveyances that may result in liability "in equity" may be affected through constructive fraud (e.g., transfer rendered the transferor insolvent or it was made without adequate consideration), or actual fraud.
3.	See IRM 4.11.52, Transferee Liability Cases, and IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third Party Liability, for a detailed discussion of the two types of fraudulent conveyances.

- b. Federal Law. (i) The liability of transferees of property included in the gross estate [liability for federal estate tax under IRC 6324(a)(2)] and that of donees of taxable gifts [liability for gift tax under IRC 6324(b)] may be asserted using the IRC 6901 procedures. (ii) The Federal Debt Collection Procedures Act of 1990 (FDCPA), 28 U.S.C. section 3001 et seq., allows a fraudulent conveyance to be set aside; also the fraudulent act can be used to provide the substance for the 6901 procedure. The elements of fraud under the FDCPA may be similar to, or the same as, a particular state's Transferee in Equity law, particularly one based on the Uniform Fraudulent Transfer Act; e.g., see subsection 5.17.14.2.3.2.2, Types of Fraud in a Fraudulent Transfer, referencing the FDCPA and the uniform acts (UFCA and UFTA). But in some situations the FDCPA can offer an advantage to the government in establishing a case.
- c. There may be other means to establish the liability of a transferee; e.g., a state may recognize the trust fund doctrine (in equity) under which the assets of a corporation become a trust fund for the benefit of creditors upon insolvency or dissolution.

- (4) Transferee cases come to TS from either examination field groups or from examination PSP. Cases from the field groups may have started as referrals from collection or may be related to cases initiated by examination. Cases from PSP are referrals from collection that do not need examination time (i.e., Collection has obtained an agreement from the transferee). Regardless how cases come to TS, they need to be established on AIMS as DUMMY records.

4.8.8.13.1  
(12-01-2017)  
**Scope of Review**

- (1) Upon receipt of a transferee case, review the statute of limitations for the transferee case to ensure it was computed correctly. Generally, the transferee statute is one year after the expiration of the period of limitation for assessment against the taxpayer (transferor). Refer to IRC 6901 and IRM 25.6, Statute of Limitations, for more discussion of the transferee's statute.
- (2) Prepare Form 895, Notice of Statute Expiration, for each transferee, as applicable, checking the "irregular assessment period" box and indicating the statute was determined by IRC 6901(c). Annotate in the remarks section the

transferee's statute of limitation date and the number of years that were added to the transferor's statute per IRC 6901(c) to compute the transferee's statute of limitation.

- (3) Under IRC 6902(a), Provisions of Special Application to Transferees, the government has the burden of proving all elements necessary to establish the transferee's liability. Reviewers must ensure all documentation is contained in the case file to support the government's burden of proof.

**Note:** A transferee may contest the underlying tax liability (unless that liability was addressed by the transferor and the matter is now closed; e.g., due to res judicata or a closing agreement). The transferor's liability is presumed correct and the transferee would have the burden of proof on this matter. The transferee is entitled to an appeals hearing in the same manner in which the transferor would be with regard to the underlying tax if the transferor did not have the benefit of this process.

- (4) Each type of transferee liability requires different elements to support the government's burden of proof. See IRM 5.17.14.
- (5) At a minimum, the case must include the following documents attached to, or referenced in, the Form 3031, Report of Investigation of Transferee Liability, report or equivalent memorandum:

- a. Transferee at Law Cases:

**Reminder:**

1.	Established by contract - a copy of the contract whereby the transferee assumed the tax liability of the transferor.
2.	Established by statute - a copy of the applicable state or federal statute.

- b. Transferee in Equity Cases:

**Reminder:**

1.	The elements that establish an equity case vary depending on law being applied; but in general the following documentation will be needed to establish an equity case: fraudulent transfer can be either
2.	Documentation showing what assets were transferred from the transferor to the transferee, the date the assets were transferred, the value of the assets as of the date of transfer and the amount of consideration paid, if any, by the transferee to the transferor.
3.	Documentation showing current legal title. A transferee is rarely a joint entity.

4.	Documentation showing the insolvency of the transferor at the date of the transfer or that the transferor was rendered insolvent by the transfer. Examples include a copy of the transferor's balance sheet, documents showing bankruptcy or documents showing dissolution.
5.	Documentation of the date the transferor's tax liability accrued.
6.	Documentation of the attempts that have been made to collect the tax from the transferor or that collection is not possible or would be futile.
7.	If the transferee in equity is based on actual fraud, documentation showing the intent of the transferor to hinder, delay or defeat the payment of tax must also be included.

c. For All Transferee Cases:

**Reminder:** Documentation supporting the underlying tax liability of the transferor is required. In addition to the original or copy of the transferor's tax return, the case will include a transcript of the transferor's account if the tax has been assessed or a revenue agent's report (RAR) or statutory notice of deficiency if the tax has not been assessed.

4.8.8.13.1.1  
(12-01-2017)  
**Interest on Transferee  
Liability Addressed by  
Examiner**

- (1) Once it is established that the value of the assets transferred exceeds the transferor's tax liability, plus interest, the courts have generally held the transferee liable for interest in the same manner as the transferor would have been. In a similar situation involving the transferee of a wholly owned corporation, the transferee is liable for interest from the date on which the corporate tax was due. Although the liability of the transferee arises under state law, the amount of the Service's claim should be determined under the Code as long as the value of the transferred assets exceeds the amount necessary to satisfy the transferor liability. See IRM 20.2.11.8.1, Transferee's Liability Not Limited to the Value of the Assets Transferred, IRM 20.2.11.8.2, Transferee's Liability Limited to the Value of the Assets Transferred, at (1)(a) regarding about a cap that arises after that transfer.
- (2) When the value of the net assets transferred is less than the transferor's tax liability, then the transferee's liability for the transferor's interest is not clearly established. The Tax Court stated that when the transferred assets are insufficient to pay the transferor's liability, interest is not allowed on the tax liability itself because transferee liability is limited to the amount transferred. See IRM 20.2.11.8.2 (1)(b). However, interest can be charged against the transferee for the use of the transferred assets, and since this involves the extent of the transferee liability, interest against the transferee is determined by state law. See IRM 4.10.13.3.5.1, Limited Liability Where the Value of the Assets Transferred is Less Than the Transferor's Liability.
- (3) Under this theory, the United States is in much the same position as a private creditor under state law and the transferee is liable for interest only from the date the transferee is aware of the debtor-creditor relationship. This is most likely the date the transferee received notice and demand for payment from the Service. This appears to be the prevailing view if constructive fraud is proven.

- (4) If actual fraud is proven, some states hold the transferee liable for interest from a prior date such as the date of the transfer. Contact area counsel for assistance regarding the applicable state law.
- 4.8.8.13.2**  
(12-06-2013)  
**Agreed Transferee Liability**
- (1) A transferee case is agreed if the transferee has signed Form 870-T, Waiver of Restrictions on Assessment and Collection of Transferee or Fiduciary Liability and Acceptance of Overassessment (for income tax cases), Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (for employment tax) or Form 890-T, Waiver of Restrictions on Assessment and Collection and Acceptance of Overassessment as to Transferee or Fiduciary Liability for Estate, Gift and Generation—Skipping Transfer Tax.
- (2) The reviewer will ensure that Form 870-T or Form 890-T contains the amount of the transferor's tax and penalties. In addition, the Form 870-T must contain the appropriate modified language. See IRM 4.8.9.17.5.5 , Transferee Waivers on Assessment and Collection.
- (3) The reviewer will complete Form 1296, Assessment Against Transferee or Fiduciary. See IRM 4.8.8.13.5, Completing Form 1296, below.
- (4) The reviewer will close the case to Centralized Case Processing (CCP) via e-fax with the following instructions written on Form 3198: "Agreed non-master file transferee assessment. Form 1296 enclosed."
- 4.8.8.13.3**  
(12-01-2017)  
**Unagreed Transferee Liability Case**
- (1) If the transferee defaults on the 30 day letter or if the transferee statute of limitations is imminent, the examiner will route the transferee case and related transferor case to TS.
- (2) Under IRC 6901 statutory notices of transferee liability are only required for transferee cases to the extent such notices would be required before assessment of the transferor's liability. Therefore, for certain employment tax cases and for certain excise tax cases, the unagreed liability may be assessed without first issuing a notice. Refer to IRM 4.8.10, Notice of Determination of Worker Classification, to identify those employment tax cases that require a notice of determination of worker classification for the transferor and thus, a notice of transferee liability.
- (3) However, the reviewer must still complete Form 1296. See IRM 4.8.8.13.5 below.
- 4.8.8.13.4**  
(12-01-2017)  
**Statutory Notice of Transferee Liability**
- (1) If the transferee defaults on the 30 day letter or if transferee statute of limitations is imminent, examiners will route the transferee case and related transferor (income tax) case to TS for issuance of the notice of transferee liability. Refer to IRM 4.8.9.17.5 for details concerning notices of transferee liability.
- (2) All notices of transferee liability require mandatory review by area counsel per IRM 4.8.9.9.2.1, Mandatory Area Counsel Review.
- (3) Each notice of liability will contain the following components:
- Letter 902-T, Notice of Liability, including the appropriate opening paragraph as detailed in IRM Exhibit 4.8.9-12, Transferee and Fiduciary Letter Opening Paragraphs.

- b. Form 870-T or Form 890-T, Waiver of Restrictions on Assessment and Collection and Acceptance of Overassessment—as to Transferee or Fiduciary Liability for Estate, Gift, and Generation-Skipping Transfer Tax, including the modified language found in IRM 4.8.9.17.5.4.
  - c. Transferee Notice of Liability Statement, which includes both a transferor's section and a transferee's section as outlined in IRM 4.8.9.17.5.4, Transferee Statements.
- (4) The reviewer will prepare Form 1296, consistent with the position in the notice of liability in anticipation the case will default from 90 day (150 day) suspense.
  - (5) Once approved by area counsel, the notice of liability will be issued in accordance with regular notice of deficiency procedures as outlined in IRM 4.8.9, Statutory Notices of Deficiency.
  - (6) If a notice of deficiency is issued to the transferor before the completion of the action against the transferee and the notice of deficiency defaults, the transferor return and examination administrative file will be returned to the examination function to be associated with the transferee case file after the transferor tax shown on the notice of deficiency has been assessed. The transferor's AIMS record should be closed to status 90 and the transferor return re-charged to the examination function responsible for the transferee liability case.
  - (7) If the transferor's notice of deficiency and transferee's notice of liability are issued concurrently and no petitions are filed within the 90 day (150 day) period, both the transferor's and the transferee's case files will be sent to CCP for assessment.
  - (8) If a transferor case is before the Tax Court and the transferee fails to file a petition for the notice of liability within the 90 day (150 day) period, the transferee file will be sent to CCP for assessment. The appeals office controlling the transferor's case will be notified of any payments made by the transferee.
  - (9) No statutory notice of transferee liability will be issued for some excise taxes or some employment taxes. IRC 6901 states the transferee liability will be assessed, paid, and collected in the same manner as the taxes to which the transferee liability is incurred. If no notice of deficiency is issued to a taxpayer for employment and excise taxes, no notice of liability will be issued to a transferee of employment taxes or excise taxes. See IRM 4.8.10, Notice of Determination of Worker Classification, to identify those employment tax cases that would require a notice of determination of worker classification for the transferor and thus, a notice of transferee liability for the transferee.

4.8.8.13.5  
(12-06-2013)  
**Completing Form 1296**

- (1) Form 1296 is the assessment document used by the non-master file unit to make the transferee liability assessment on non-master file. The form must clearly communicate all aspects of the transferee liability to CCP and to the non-master file unit, including limitations on the transferee's liability, other transferees and the interest computation date for the interest against the transferee.
- (2) A separate Form 1296 is prepared for each transferee for each kind of tax for each taxable period of the transferor.
- (3) In limited liability situations (i.e., when the value of the net assets received by the transferee is less than the unpaid liability of the transferor) and more than

one tax period is involved, the transferee's liability should not be allocated to the various tax periods. Instead, the liability should be shown as one amount on Form 1296 for the earliest tax period of the transferor, without identifying it with any particular year of the transferee.

- (4) In limited liability situations, the Form 1296 should also include instructions for computation of interest, including the interest start date and the interest rate.
- (5) See Exhibit 4.8.8-1, Sample Forms 1296 for Transferee Assessment, for examples of completed Form 1296.

4.8.8.14  
(12-06-2013)  
**Mitigation Cases—IRC  
Sections 1311-1314**

- (1) In general, IRC 1311, Correction of Error, through IRC 1314, Amount and Method of Adjustment, authorize correction of errors in years that otherwise are barred by the statute of limitations. These mitigation provisions apply only in seven specific circumstances described in IRC 1312, Circumstances of Adjustment. When an adjustment results in an increase in tax, an assessment can be made within one year from the date a determination has been made.
- (2) Generally, the mitigation provisions are intended to offset the benefit a party might otherwise obtain by maintaining a position in an open tax year that is inconsistent with the treatment of the same item in a closed year (e.g., a taxpayer receives a double deduction). The statutory rules however, are detailed and do not reach all such benefits. Each case in which it appears mitigation may apply will require careful research and possible area counsel involvement.
- (3) The mitigation rules **do not** apply to employment tax. See IRC 1314(d). However, IRC 6521, Mitigation of Effect of Limitation in Case of Related Taxes Under Different Chapters, provides a special mitigation rule with respect to the tax on self-employment income (SECA) and the tax under the Federal Insurance Contributions Act (FICA). It authorizes an offsetting adjustment if the following is present:
  - a. An amount is erroneously treated as self-employment income instead of wages and the correction of the error would require an assessment of FICA tax and a credit or refund of SECA tax, or
  - b. An amount is erroneously treated as wages instead of self-employment income and the correction of the error would require an assessment of SECA tax and a credit or refund of FICA tax, and
  - c. The period of limitations for one of the taxes to be corrected is open, but the correction of the other tax is prevented by law or a rule of law (other than IRC 7122 relating to compromises).
- (4) Reviewer responsibilities include the following:
  - a. Determine whether or not the mitigation provisions apply to the situation.
  - b. Determine whether or not Form 2259, Agreement as Determination Pursuant to Section 1313(a)(4) of the Internal Revenue Code, and the statement page have been completed properly.
  - c. Execute Form 2259 on behalf of the government in accordance with *SB/SE 4-5-1, Agreements Treated as Determinations under IRC Section 1313(a)(4)*.
  - d. Distribute Form 2259 and statement page as explained in the following notes:

**Note:** Original and/or executed copies associated with the appropriate tax return of each taxpayer involved.

**Note:** Copy of executed Form 2259 furnished to taxpayer.

- (5) See IRM 4.8.8.3, Closing Agreements, if a closing agreement is associated.

4.8.8.15  
(02-11-2021)  
**Imprest Fund Audits**

- (1) References available for review:
- IRM 9.11.1, Fiscal and Personnel Matters Handbook—Fiscal and Budgetary Matters.
  - Revised *Memorandum of Understanding Between Chief, Criminal Investigation and Commissioner, Small Business/Self-Employed Division* dated October 28, 2020, entitled Quarterly Imprest Fund Audits.
- (2) Historically, the examination function conducted audits of various imprest funds within the Service. Over the years, these funds have been centralized and have been subjected to a greater degree of control. This occurred as it became less necessary to make purchases using cash. Criminal Investigation (CI) still maintains an investigative imprest fund for confidential expenditures.
- (3) The imprest fund maintained by CI is a bank account used to fund investigative expenditures and pay confidential informants. There is a cashier and an alternate cashier assigned to maintain the fund. The cashiers are individuals who do not perform investigations for which they would be authorized reimbursement or payment from the fund. The cashier cannot be anyone authorized to grant approval for investigative expenditures. See IRM 9.11.1.4.5.5, Guidelines for the Investigative Imprest Fund Cashier.
- (4) Special Agents, Task Force Officers (TFOs), and other IRS personnel may either receive advances from the fund by submitting Form 8562, Request/Receipt For Advances From Investigative Imprest Fund/Or Non-Recoverable Funds, or submit claims for reimbursement by using Form 10411, Reimbursement Claim for Confidential Expenditures on Official Business. Advances for investigative expenditures must be approved in advance. Definitions of these expenses are included in IRM 9.11.1.4, Confidential Investigative Expenditures (Pre-Authorized).
- (5) Because many of the expenditures are confidential in nature, not all of the information required to be submitted to get an advance or a reimbursement is available to the individuals auditing the imprest fund.

4.8.8.15.1  
(02-11-2021)  
**Memorandum of Understanding Between CI and SB/SE**

- (1) In a *memorandum of understanding* (MOU) between Chief, CI and Commissioner, Small Business/Self-Employed (SB/SE) dated October 28, 2020, SB/SE agreed to the following:
- Two SB/SE employees with an auditing background will conduct the audit of the CI Imprest Fund.
  - No one individual auditor will conduct consecutive audits.
  - Field Examination will determine the rotation of auditors to ensure audits are performed timely and no one individual auditor conducts consecutive audits.
  - The Field Examination Areas which may include Technical Services are responsible for all quarterly CI Imprest Fund audits.

- (2) Based on the MOU, the audits of the CI imprest fund are:
  - Conducted on a quarterly basis, and each audit is to be completed before the end of the quarter.
  - Conducted at the CI imprest fund cashier’s office.
  - Conducted at irregular intervals and without prior notice to CI.
- (3) With the Director, Special Investigative Techniques approval, the audits may be performed remotely. Once Field Exam receive approval from the Director, Special Investigative Techniques, the Imprest Fund documents will be transferred via e-mail within a password encrypted Win-Zip file.

4.8.8.15.2  
(02-11-2021)  
**Forms**

- (1) The CI imprest fund cashier will provide the auditors with the following items:
  - a. CI Standard Form 1149, Statement of Designated Depository Account, and the bank statements for the quarter being audited. CI Standard Form 1149 is generated by CI systems and not found in the Product Catalog.
  - b. Form 1129, Cash Reimbursement Voucher and/or Accountability Report, with attached Form 10411, Reimbursement Claim for Confidential Expenditures on Official Business, for the quarter being audited.
  - c. Imprest fund checking account documentation, including the check register, uncashed checks, deposits in transit and unreimbursed sub-vouchers.
  - d. Form 2844, Reconciliation of Imprest Fund, for the quarter. The Form 2844 is generated by CI systems and not found in the Product Catalog.
  - e. The latest Optional Form 211 (OF 211), Request for Change or Establishment of Imprest Fund (NSN7540-00-082-2551).. The Optional Form 211 is generated by The Department of Treasury and not found in the Product Catalog.

**Note:** No original receipts or copies of receipts for the expenditures will be provided, due to the confidential nature of the expenditures involved.

4.8.8.15.3  
(02-11-2021)  
**Quarterly Audit**

- (1) The MOU provides that the quarterly audit of the imprest fund include the following steps and be accomplished by the two assigned auditors who will reconcile the Imprest Fund balance with bank statements; advances outstanding; and Form 1129, Reimbursement Vouchers/ Accountability report:
  - a. Review Optional Form 211 for changes as explain in the following example:

**Example:**

1.	Cashier’s name or location;
2.	Designation or revocation of cashier;
3.	Fund amount increases or deceases;
4.	Checking accounts (new account, transfer to different bank, or closure of account).

**Note:** No recommendation is to be made by the auditors regarding a change in fund levels.

- b. Review Form 1149.
- c. Reconcile the imprest fund balance with the bank statements, the outstanding advances, and Form 1129 using Exhibit 4.8.8-6, Imprest Audit Worksheet, and Exhibit 4.8.8-3, Imprest Audit Checklist.
- d. Prepare Form 2844.
- e. Sign and print their names on Form 2844.
- f. Provide a copy of Form 2844 to the SAC.
- g. Efax or E-mail the original Form 2844, the cover memo in Exhibit 4.8.8-4, Exhibit 4.8.8-2 and Exhibit 4.8.8-3 to:

**Note:** E-fax: IRS, Beckley Finance Center (BFC), Attn: Misc. Program Unit, Efax: 855-787-4385 or E-mail: *CFOBFC.Invoice@irs.gov*

4.8.8.15.4  
(02-11-2021)

#### Reconciling the Funds

- (1) If the auditors cannot reconcile the fund to the bank balance due to a bank error, the cashier will determine the cause of the error, correct it, and complete a new Form 2844, including an explanation and the resolution. The auditors will then complete the review.
- (2) If the auditors cannot reconcile the fund to the bank balance due to a computer or program error, the CI cashier will attempt to resolve the problem. The cashier may have to work with the National Operations Center (NOC) to attempt to resolve a computer error. When the problem is resolved, the cashier will provide a new Form 2844, including an explanation of the nature of the problem and the resolution to the auditors. The auditors will then complete the review.
- (3) If the account does not reconcile, and the problem cannot be resolved, the auditors will not sign Form 2844. The auditors will notify the Director, Special Investigative Techniques of the problem. The cashier is charged with resolving the problem.

4.8.8.16  
(12-06-2013)

#### Abusive Transactions (AT)

- (1) An abusive transaction (AT) is any plan, arrangement, or transaction designed, sold, or promoted by an individual promoter, or return preparer, for the purpose of circumventing tax laws or evading tax obligations and offered to a person or entity with U.S. tax obligations to obtain tax benefits not allowable by law. There are two types of AT cases:
  - Promoter
  - Participant
- (2) The majority of the case reviews by TS are for participant cases. More information on AT can be found in IRM 4.32, Abusive Transactions (AT).

4.8.8.16.1  
(02-11-2021)

#### Identifying AT Cases

- (1) There are numerous schemes that fall under Abusive Transactions. These schemes may involve the following:
  - Abusive Roth IRA and IRA Schemes
  - Additional Child Tax Credit with ITIN Dependents
  - Basket Options
  - Captive Insurance
  - Emerging Scheme Issues
  - Energy Efficient Building Deduction Section 179D
  - Leveraged Prepaid Options
  - Research and Experimental Credit IRC 41

- Trusts (Domestic, Foreign and Abusive)
- Abusive Offshore Schemes

(2) Cases identified as AT may become part of a project. National project codes are assigned to identify the key examination cases and their related parties to specific projects. A national four-digit tracking code links a participant/investor to a specific promotion. Project and tracking codes can be obtained from the Senior Program Analyst - Exam Quality and Technical Support "EQTS". See *SB/SE Contact an Expert Directory*.

4.8.8.16.2  
(12-01-2017)  
**Technical Services Case  
Reviews and Procedures**

- (1) Case reviews and procedures will vary depending on the type of AT scheme. See *Exam Quality and Technical Support Abusive Transactions Group* ("EQTS").
- (2) In general, reports for AT participant cases are prepared like regular cases. With the exception for trusts and FLPs (Family Limited Partnerships), RGS is used to generate reports. For trust cases, the reports are done manually with worksheets available on the AT website. For FLP cases, Estate and Gift Notebook will generate the reports.
- (3) A full range of penalties may apply to AT cases. See IRM 20.1.5, Penalty Handbook, Return Related Penalties.
- (4) In addition to a valid protest (as defined in Pub 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree) for unagreed cases going to Appeals, the examiner's report transmittal should clearly state the name of the promotion and whether the agent is aware of any national settlement initiatives. [Estate and Gift FLP cases do not utilize a report transmittal.] For unagreed cases not going to Appeals, the case may be subject to a mandatory review by area counsel before the issuance of the statutory notice of deficiency. Refer to IRM 4.8.9.9.2.1.
- (5) For agreed cases, the reviewer may need to perform additional procedures before closing the case. Depending on the AT scheme involved, forms, such as Form 906, Closing Agreement on Final Determination Covering Specific Matters, and Form 5346, may be in the case file, which will require additional procedures by the reviewer. Specific AT schemes should be researched on the AT website for applicable procedures.

4.8.8.16.3  
(02-11-2021)  
**Resources for AT Cases**

- (1) The Abusive Transaction Group in Exam Quality and Technical Support (EQTS) can provide case development assistance and support on promoter investigations involving specifically identified coordinated issues. Abusive Transactions Sr. Program Analyst can be found in the *Exam Quality and Technical Support/Abusive Transactions Group* site.
- (2) Information and procedures for specific AT schemes are located at the *Knowledge Management* website. At this website, there is other useful information, including technique guides, resource guides, training material, and procedures for related programs.
- (3) *Exam Quality and Technical Support/Abusive Transactions Group* has the responsibility to develop the strategic approach to work an Abusive Transaction issue. Its members are responsible for coordinating all issue actions and activi-

ties with other operating divisions and other divisions within SB/SE. The Abusive Transactions Group monitors all inventories throughout the life of the issue.

- (4) EQTS is generally the first point of contact for revenue agents and field compliance personnel with questions about a particular abusive transaction AT. EQTS assists to identify concerns with issue development and or case development including comments that relate to appropriate penalty development. EQTS will post technical positions, audit aids, resource guides, and media materials related to specific AT arrangements on the *Knowledge Management* website. EQTS can also be contacted to see if there is more current information than what is posted.

4.8.8.17  
(12-06-2013)  
**Appeals/Counsel Liaison**

- (1) The Appeals/Counsel liaison is responsible for the following:
  - a. Receiving cases returned to Examination from Appeals and
  - b. Assisting with and coordinating requests from Examination to area counsel for technical advice.

4.8.8.17.1  
(12-01-2017)  
**Cases Returned From Appeals**

- (1) When a case is returned to TS from Appeals, the reviewer must determine whether he or she agrees with the appeals officer's recommendations based upon a factual and technical review of the issues raised by Appeals.
- (2) Refer to IRM 4.8.5.4, Post Examination Case Processing Requirements, Cases Returned from Appeals, for a complete discussion of procedures for cases returned by Appeals.

**Note:** When discussing cases with appeals officers, keep in mind the provisions of Rev. Proc. 2012-18 regarding the prohibition on "ex parte" communications between Appeals officers and other IRS employees. The procedure was published to implement the directive in section 1001(a)(4) of the RRA of 1998 to ensure an independent appeals function within the Service, including the prohibition of ex parte communications between appeals officers and other Service employees to the extent that such communications appear to compromise the independence of the appeals officers.

4.8.8.17.2  
(12-06-2013)  
**Feedback From Appeals**

- (1) All feedback from Appeals (Form 5402, Appeals Transmittal and Case Memo or Appeals Case Memorandum, (ACM)) is forwarded by Appeals directly to each field area director for appropriate review and dissemination.

4.8.8.17.3  
(12-06-2013)  
**Advice From Area Counsel**

- (1) On occasion, a revenue agent will prepare a memorandum requesting technical assistance from area counsel. Advice can be requested on a variety of issues, such as the following:
  - Preparation of a Form 872, Consent to Extend the Time to Assess Tax, statute extension.
  - Interpretation of a specific Internal Revenue Code section.
  - Effect of contract(s) to specific issues.
- (2) Procedures for processing requests for area counsel advice are contained in IRM 4.8.8.12.1.2, Formal and Informal Technical Assistance, Advice From Area Counsel, above.

4.8.8.18  
(02-11-2021)  
**Third-Party Contacts**

- (1) The purpose of this section is to provide TS staff with the basic procedures to conduct reviews to determine whether Examination employees observed the advance general notice requirements of IRC 7602, Examination of Books and Witnesses.
- (2) References for third-party contacts are as follows:
  - a. IRC 7602(c)
  - b. Treas. Regs. 301.7602-2 (Effective 12/18/2002)
  - c. IRM 4.11.57, Third-Party Contacts
  - d. IRM 4.10.1.2.1.14, Notification of Potential Third-Party Contacts
  - e. IRM 25.27.1, Third-Party Contacts - Third-Party Contact Program
  - f. Refer to *Third-Party Contact* Knowledge Management site for Third Party procedures.
  - g. *Third-Party Contact Coordinators* (includes Examination coordinators)

4.8.8.18.1  
(02-11-2021)  
**Advance Notice Procedures**

- (1) Effective after August 15, 2019, Pub 1 no longer satisfies the advance notice requirement of IRC 7602(c)(1). Advance notice of potential third-party contacts is accomplished by issuance of one of several versions of Letter 3164, Third Party Notice. See IRM 25.27.1, Third-Party Contact Program, for complete procedures.
- (2) The general advance notice of third-party contact(s) rule in IRC 7602(c)(1) now requires that the IRS:
  - Intend, at the time such notice are issued, to contact third-parties (the notice must state this intent).
  - Specify in the notice the time period, not to exceed one year, within which IRS intends to make the third-party contact(s).
  - Generally send the notice at least 45 days before contact with a third party.

**Note:** For all third-party contacts intended to be made after August 15, 2019, or in which contacts with third-party will occur after August 15, 2019, a notice meeting the new requirements must be issued. An employee may not contact a third party until the 46th day following the date of the notice.

- (3) The notice must include the tax period(s) at issue. The notice may be reissued yearly, if necessary.

4.8.8.18.2  
(02-11-2021)  
**Basic Reviewer Responsibilities**

- (1) The reviewer will review Form 9984, Examining Officer's Activity Record, to ensure the examiner documented the case activity record per the requirements of IRC 7602(c)(1). In addition, the reviewer will review Form 9984 to ensure that the examiner documented whether any exceptions to the notice requirements of IRC 7602(c) apply or whether the contacts are not considered third-party contacts under IRC 7602(c) pursuant to Treas. Reg. 301.7602-2.
- (2) Unless an exceptions applies, IRC 7602(c) require the Service to:
  - a. Provide advance notice of the intent to make third-party contacts to the taxpayer,
  - b. Record each third-party contact made, and
  - c. Provide a list of third-party contacts to the taxpayer upon request.

- 4.8.8.18.3  
(02-11-2021)  
**Advance Notice to the Taxpayer**
- (1) The reviewer will review Form 9984 to ensure that the examiner has documented the following:
- The taxpayer was the primary source of information with respect to the taxpayer's return and attempts were made to obtain (or verify), to the greatest extent practicable, the required information from the taxpayer before seeking to obtain the information from third parties. Per IRM 4.10.3.3.1.4(2)(a), Third Party Interviews, information will be collected, to the greatest extent practicable, directly from the taxpayer.
  - The specific requests that were made of the taxpayer (generally, copies of information document requests (IDRs)) to obtain or verify the relevant information. The reviewer should also ensure that the case file considered as a whole supports the decision to obtain or verify the relevant information via a third-party contact.
  - The date, method and fact of providing Letter 3164 to the taxpayer(s) and the period covered by the notices.
  - Compliance with the separate notice requirements of IRM 4.10.1.2.2.1, Separate Notice Requirements, for joint return situations. Notification must be issued separately to each spouse.
  - The authorized representative, if any, was provided with a copy of the notice and any other correspondence in accord with the Service procedure of providing copies of correspondence to the taxpayer's representative (unless the taxpayer has indicated otherwise).
- 4.8.8.18.4  
(12-06-2013)  
**Record Each Third-Party Contact Made**
- (1) The reviewer will review Form 9984 to ensure the examiner completed the following:
- Documented third-party contacts on Form 12175, Third Party Contact Report Form, or Form 12180, Third Party Contact Authorization Form,
  - Included copies of the forms in the case file, and
  - Forwarded Form 12175 to the Third Party Contact Coordinator.
- 4.8.8.18.5  
(12-06-2013)  
**Provide a List of Third-Party Contacts to the Taxpayer Upon Request**
- (1) The reviewer will review Form 9984 to ensure that the examiner documented any requests from the taxpayer for a list of all third parties contacted, and the examiner contacted the third-party contact coordinator who is responsible for providing the list to the taxpayer with Letter 3173, Third Party Contacts.
- 4.8.8.18.6  
(12-06-2013)  
**Exceptions or Contacts Not Considered Third-Party Contacts**
- (1) The reviewer will review Form 9984 to ensure the examiner documented whether any exceptions to the notice requirements of IRC 7602(c) apply, or whether the contacts were not considered third-party contacts under IRC 7602(c).
- 4.8.8.19  
(12-01-2017)  
**Report of Foreign Bank and Financial Accounts (FBAR) Coordination**
- (1) The Report of Foreign Bank and Financial Accounts (FBAR) is required when a U.S. person has a financial interest in or signature authority over one or more foreign financial accounts with an aggregate value greater than \$10,000 at any time during a calendar year. If a report is required, certain records must also be kept. See LB&I *FBAR* website.
- (2) In May 2003, the Service was delegated civil enforcement authority for the FBAR.

- (3) TS does not provide direct processing support of FBAR cases. Instead, TS provides technical assistance when needed, answering questions from the field and referring examiners to the assigned local area counsel when additional technical support is needed.
- (4) The following resources/references are also available:
  - a. *LB&I FBAR* web page.
  - b. IRM 4.26.16, Report of Foreign Bank and Financial Accounts (FBAR), which contains FBAR law,
  - c. IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures, which contains FBAR procedures,
  - d. Listing of assigned SB/SE area *FBAR counsel attorneys* on the Chief Counsel web site at
  - e. Link to *Bank Secrecy Act*.

4.8.8.20  
(12-06-2013)  
**Qualified Offers**

- (1) IRC 7430, Awarding of Costs and Certain Fees, provides that a taxpayer shall be treated as the prevailing party if the taxpayer submits a qualified offer and the taxpayer's liability under the final court judgement is equal to or less than the liability of the taxpayer had the government accepted the qualified offer. The qualified offer rule permits the award of administrative or litigation costs under IRC 7430 even where the Service's position was substantially justified, so long as the other requirements of the section are met.
- (2) The term "qualified offer" means a written offer which contains the following:
  - a. Indicates it is a qualified offer for purposes of section IRC 7430(g), by either stating it is a qualified offer or a settlement offer under IRC 7430(g).
  - b. Is made by the taxpayer to the United States between the date the taxpayer is first notified of the right to administrative review (when the 30 day letter is issued or, if none is issued, when the 90 day letter is issued) and the date which is 30 days before the date the case is first set for trial;
  - c. Specifies the offered amount of the taxpayer's liability with respect to all adjustments at issue at the time the offer was made; and
  - d. Remains open until the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.
- (3) The taxpayer must deliver the offer to the office or personnel within the Service, IRS Independent Office of Appeals, Office of Chief Counsel or Department of Justice that has jurisdiction over the tax matter in the administrative or court proceeding. See Treas. Reg. 301.7430-7(c)(2).
- (4) Timely identification of a qualified offer is extremely important. A qualified offer may be sent by the taxpayer and associated with the case, or may be contained in the case file when the case is received in TS.
- (5) If a qualified offer is identified, the TS employee will immediately fax the qualified offer to Chief, Branch 5, Chief Counsel; Procedure and Administration, requesting a determination of whether the offer is a qualified offer under IRC 7430. Along with the offer document, include a copy of the 30 day letter or the 90 day letter and a copy of the court petition (if applicable). The subject line of the fax cover sheet should be "Is This a Qualified Offer?"

- (6) If Counsel determines that the offer is a qualified offer, Appeals has the discretion as to whether to accept or reject the offer, and the offer should be forwarded immediately to Appeals along with the memorandum in Exhibit 4.8.8-5, Qualified Offer Memo. If the offer was submitted within the previous 90 days, immediately send an E-mail to the IRS Independent Office of Appeals, Appeals Manager, Examination Policy & Analytic Team and Procedure Exam, TS, to alert Appeals of the open IRC 7430 qualified offer, and attach an expedite tag to the top of the case file.

4.8.8.21  
(02-11-2021)  
**Subject Matter Experts**

- (1) One of the benefits of the current TS management structure is it allows for uniformity and consistency nationwide in working all of the TS programs. Certain subject matter experts (SMEs) are designated for assigned core TS programs. The goal of the SME position is to facilitate and ensure uniformity and consistency of each program nationwide within TS, and to provide expert advice in the program subject matter.
- (2) Reviewers and managers in TS rely on the SMEs' expertise in their respective program areas. The SME is a focal point for discussing emerging issues, surfacing issues, concerns and trends observed in field cases, and recommending legislative tax law and procedural changes through management.
- (3) The SMEs serve as a reference point for other TS program coordinators and employees on their respective subject matter, and interact with their Chief Counsel, Examination Policy and other operating division's counterparts in working issues within their program areas of expertise.
- (4) The SME assignment is a collateral duty and should not take more than 20 percent of a SME's total time, unless otherwise approved.
- (5) When there is a vacancy for a SME on any of the core TS programs, it is the responsibility of the TS territory manager to solicit for a SME in their territory first. If there are no volunteers then the National SME coordinator will be notified to solicit nationwide.

4.8.8.21.1  
(02-11-2021)  
**Communication**

- (1) The SME serves as a focal point to coordinate and disseminate information to other TS employees nationwide on the assigned subject matter.
- (2) The SME will conduct periodic meetings, as needed, with the nationwide TS coordinators assigned to the subject matter. The meetings should consist of informational conference calls with the nationwide TS coordinators regarding issues, procedures, trends and concerns. Participation of the nationwide TS coordinators in the dialogue should be encouraged. Examples of items to address in the calls include proposed and or new IRM procedures, information found during research of tax services, internal documents and websites, and achieving program consistency.
- (3) The SME's TS territory manager will be the champion/lead for the SME's program. The SME will work in coordination with his or her group manager to work and elevate issues to the territory manager and in interpreting procedures and guidelines.
- (4) The SME will provide briefing/narrative assessments of his or her program area on an **as needed** basis when new issues/trends/problem areas/concerns arise that need to be elevated to the field Area Director, through his or her territory manager and immediate group manager.

- (5) When an issue or trend that impacts Technical Services nationwide it must be elevated to the field Area Director. The field Area Director must discuss the issue or trend with the other field Area Directors and their respective TS territory managers in order to come to a consensus on a solution.
- (6) The SME advises management on national standardization of TS work practices.
- (7) The SME works with the Field Examination SharePoint lead to develop and maintain the currency of his or her SharePoint page so it provides tools for reviewers to use in working cases in his or her program area.
- (8) The SME assists in miscellaneous TS initiatives and developing presentations, training and education for field examiners.
- (9) The SME submits articles on the assigned subject matter to the Technical Digest for publication.

4.8.8.21.2  
(12-06-2013)  
**Research and  
Identify/Elevate Issues**

- (1) The SME will periodically conduct research on the subject matter using electronic tax law research tools provided by the Service, interim guidance and other internal documents, and internal websites. Visit *ReferenceNet Legal and Tax Research Services* for access to various research resources.
- (2) The SME will elevate issues, concerns, casework trends, emerging issues, proposed legislative tax law changes, and procedural changes through the management chain and coordinate subsequent actions with the National SME coordinator, Examination Policy Analysts and Chief Counsel.

4.8.8.21.3  
(12-06-2013)  
**Periodic Review**

- (1) The SME will review IRM sections that relate to his or her subject matter at least annually. He or she will draft revisions and forward recommended changes to the territory manager through his or her immediate manager. The recommended revisions should be shared with the TS coordinators nationwide, and informally with Examination Policy and Chief Counsel counterparts (if necessary) before forwarding to the territory manager.
- (2) The SME will review Delegation Orders annually and recommend changes through the management chain and through their respective field Area Director's staff and assist in drafting the revisions, as necessary.
- (3) The SME will review forms, letters, documents, and systems for the assigned subject matter and recommend changes and updates to management and to their respective field Area Director's staff.
- (4) The SME will review and update TS training material products on the assigned subject matter as requested.
- (5) For consistency purposes any changes elevated to the field Area Director for consideration and acceptance must be discussed with the other field Area Directors with a TS territory to ensure that the changes are acceptable by the other field Area Directors and TS territory managers.

4.8.8.21.4  
(12-06-2013)  
**Coordination**

- (1) The SME will recommend changes to other operating division products through TS management on his or her assigned subject matter. See IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance, regarding mediums to submit IRM changes.

- (2) The SME will perform a review of formal requests from other operating divisions on their documents and provide feedback through Operations.
- (3) The SME will take a leadership role in the design and development of TS course material and CPE modules. Additionally, the SME will take a leadership role in instructing CPE sessions on his or her assigned subject matter as requested.

4.8.8.22  
(12-06-2013)  
**Rev. Proc. 92-29,  
Alternative Cost Method  
for Real Estate  
Developers**

- (1) Developers of real estate frequently undertake projects in which a residential or commercial development will not be completed and all homes or lots not sold until more than one year after initiation. If certain community-wide amenities are included in the price of the individual units, such as athletic centers, meeting rooms, hiking and biking trails, etc., the early sales may take place before all expenses of the amenities have been incurred.
- (2) The general economic performance rule under IRC 461, General Rule for Taxable Year of Deduction, prevents including these expenses on the developer's return at the time of the early sales. To remedy this situation, the Service issued Rev. Proc. 92-29, 1992-1 CB 748 as a means for the taxpayer to estimate the total cost of the future improvements to be made and allocate these costs to the individual lots or units.
- (3) Under the alternative cost method provided by Rev. Proc. 92-29, a developer may include in the basis of properties sold the allocable share of the estimated costs of common improvements without regard to whether the costs have been incurred under IRC 461(h).
- (4) Under the "alternative cost limitation" provided by Rev. Proc. 92-29, the total amount of common improvement costs that can be included in the basis of the properties sold for the year may not exceed the amount of common improvement costs actually incurred under IRC 461(h).
- (5) If the alternative cost limitation prevents a developer from including the entire allocable share of the estimated cost of common improvements in the basis of the properties sold for one year, the costs not included may be taken into account in a subsequent taxable year(s) to the extent additional common improvement costs have been incurred under IRC 461(h).

4.8.8.22.1  
(12-06-2013)  
**The Rev. Proc 92-29  
Process**

- (1) To use the alternative cost method provided in Rev. Proc. 92-29, the original request must be filed on or before the due date of the developer's original federal income tax return (determined with regard to extensions to file) for the taxable year in which the first benefitted property in the project is sold. See IRM 4.10.13.8, Real Estate Developers: Alternative Treatment of Common Improvements Under Rev. Proc. 92-29, for a discussion of where the original request should be filed. A copy of the request is attached to the developer's original tax return. There is no prescribed form for the election. However, certain information must be included in accordance with the revenue procedure.
- (2) Developer-taxpayers who make this election must extend the statute of limitations when needed. See IRM 4.8.8.22.2.4.
- (3) An annual statement is required to be filed for every year of the project. See IRM 4.10.13.8 for a discussion of where the original annual statement should be filed. A copy of the annual statement is attached to the developer's original

tax return. There is no prescribed form for the annual statement. However, certain information must be included in accordance with the revenue procedure.

- (4) A supplemental request is required to extend the common improvement construction period past the original estimated completion date. See IRM 4.10.13.8 for a discussion of where the original supplemental request should be filed. There is no prescribed form for the supplemental request. However, certain information must be included in accordance with the revenue procedure.

4.8.8.22.2  
(12-06-2013)  
**Rev. Proc. 92-29  
Coordinator's  
Responsibilities**

- (1) Program responsibility for the Rev. Proc. 92-29 program may be assigned to a TS revenue agent reviewer or the TS technical coordinator, depending on staffing and program volume. The program coordinator should read Rev. Proc. 92-29 in order to be familiar with its contents. Additionally, the program coordinator should periodically check for new revenue rulings, revenue procedures, letter rulings, IRMs, and any information which may be posted on the TS SharePoint site.
- (2) The Rev. Proc. 92-29 coordinator's responsibilities include, but are not limited to the following:
  - a. Reviewing requests, annual statements, and supplemental requests to ensure all required information is provided,
  - b. Determining if the project complies with the revenue procedure requirements for using the alternative cost method,
  - c. Verifying the correctness of the inventory cost allocations,
  - d. Securing a statute extension for all project years, if necessary,
  - e. Issuing approval or denial letters when necessary, and
  - f. Providing technical assistance to field examiners.
- (3) The authority to sign letters relating to taxpayer requests under Rev. Proc. 92-29, or its equivalent, is delegated to revenue agent reviewers in TS under *SB/SE 1-23-42*, Request to Use Estimated Costs of Future Improvements in Determining Gain or Loss on the Sale of Lots, formerly SB/SE Delegation Order 4.44, Rev. 1.

4.8.8.22.2.1  
(02-11-2021)  
**Rev. Proc. 92-29  
Request**

- (1) The review of a Rev. Proc. 92-29 request involves an administrative analysis of the real estate project to determine if the project qualifies for Rev. Proc. 92-29 treatment, a financial analysis of the accuracy of the common improvement cost components and the per unit expense allocations the taxpayer intends to claim in future years against sales income, and a determination of the need for a statute extension and the periods to be protected.
- (2) Past experience with a particular developer and or preparer should be considered in determining the scope of review for each request.
- (3) The coordinator should set up a project file folder for each request, which at a minimum will include the request, a Rev. Proc. 92-29 Request Check Sheet, see Exhibit 4.8.8-6, a Rev. Proc. 92-29 Project Status Sheet, Exhibit 4.8.8-7, IDRS prints, the request approval letter, and the coordinator's case activity record.
- (4) Workpapers or spreadsheets may be prepared to track the status of the project. Sample computational spreadsheets may be secured from the Rev. Proc. 92-29 Subject Matter Expert (SME) listed on the *TS SharePoint*.

- (5) Only one ERCS collateral control will be established for each real estate development project. The year of the request will be used as the tax year. If the taxpayer files more than one request for a tax year, then the month will be decreased (i.e. first request filed for 2013 would use 201311 as the tax year on ERCS, the second request filed for 2013 would use 201310 as the tax year on ERCS, etc.). Controls should not be opened using the taxpayer's actual tax year (i.e. calendar year taxpayer would be 201312) because if the taxpayer's return is selected for examination, there would be a control base conflict on ERCS.

**Example:** The taxpayer name for each ERCS collateral control will be "NAME Project Name" where "NAME" is the taxpayer's name control and the "Project Name" is the name of the construction project (i.e. Trout, LLC files a Rev. Proc. 92-29 Request for Eagle Dove - the taxpayer name on ERCS will be "TROU Eagle Dove").

**Example:** If the taxpayer files more than eleven requests each year, then only one ERCS collateral control will be established for each tax year. The taxpayer name for each year will include the name control, the tax year, and the number of requests (i.e. NAME 201812 Requests - 410 Projects). The coordinator will need to update the number of open projects through the years as projects are closed.

**Example:** The ERCS collateral control will be opened using the applicable MFT code (i.e. Form 1065 filed use MFT 06, Form 1120S filed use MFT 02, etc.).

- (6) The developer can allocate common improvement costs pursuant to a proper allocation method that it chooses; however, it cannot change the selected method during the course of the project.
- (7) The types of construction qualifying for Rev. Proc. 92-29 are restricted. If apartment buildings, commercial space, recreation facilities (i.e. clubhouse with swimming pool or golf course), etc. are included with those of the town homes, condos, and single family lots, the developer cannot retain ownership of and operate/rent the apartments, commercial spaces, recreation facilities, etc.
- (8) The Bipartisan Budget Act of 2015 (BBA) abolished TEFRA procedures. Effective for tax years beginning after 12/31/17, a taxpayer filing a Form 1065 falls under BBA unless the taxpayer elects out of BBA. Contact the Rev. Proc. 92-29 SME for guidance on statute extensions for BBA tax years.

4.8.8.22.2.2  
(12-06-2013)  
**Rev. Proc. 92-29 Annual  
Statement**

- (1) The developer-taxpayer is required to file annual statements to indicate the degree of completion of the project. These statements are required for the first taxable year following the taxable year for which the developer received permission to use the alternative cost method and for each succeeding taxable year in which the developer uses the alternative cost method including the information required by Rev. Proc. 92-29 section 8.02.
- (2) After construction is complete and all common improvement costs are known, the developer is required to file an annual statement that reconciles estimated costs to actual expenses and to determine what actual common improvement costs are actually placed in inventory. An annual statement that reconciles

estimated costs to actual expenses is also required if the development project ends prematurely because the incomplete development is sold to another developer.

- (3) In the instance of the sale of the entire development, if the responsibility/liability for construction of the remaining common improvements is transferred to the buyer, the seller is required to remove those estimated costs not incurred under IRC 461(h) from the budget and to reduce/correct the per unit cost allocations for past and future sales. The relieved estimated Rev. Proc. 92-29 costs that were included in the basis of lots/units sold in prior periods and claimed as cost of goods sold must be reported as either income or a reduction of expenses in the current year (the year the incomplete development is sold).
- (4) The annual statement should be filed in the Rev. Proc. 92-29 project file when received. If the developer fails to file an annual statement, the coordinator should contact the developer to request a copy of the annual statement. Before contacting the developer, a transcript for the current year should be reviewed to ensure the taxpayer did not file an extension.

4.8.8.22.2.3  
(12-06-2013)  
**Rev. Proc. 92-29**  
**Supplemental Request**

- (1) A developer submits a supplemental request to request permission to extend the common improvement construction phase and to continue to claim estimated costs rather than actual costs in cost of goods sold on the tax returns. Supplemental requests are high priority. The IRS must notify the applicant in writing of approval or disapproval within 45 days of receipt of the supplemental request, except in unusual circumstances. The developer must submit a new statute extension with the supplemental request.
- (2) The coordinator should review the supplemental request and the file carefully to ensure the project is in compliance with Rev. Proc. 92-29.
- (3) The supplemental request should be reviewed to determine the reason behind the delay in completion (i.e. has there been a down turn in the economy; did a tornado destroy all of the work to date; or is the taxpayer trying to defer a final reconciliation adjustment that is unfavorable to them).

4.8.8.22.2.4  
(02-11-2021)  
**Statute Protection**

- (1) The sample Rev. Proc. 92-29 Check Sheet at Exhibit 4.8.8-6 includes a section to determine whether statute protection is needed. Not all Rev. Proc. 92-29 requests require statute extensions.
- (2) For the tax year in which the first sale in the development occurs while construction is still in process, the developer claims as cost of goods sold basis a per-unit allocation of both actual and estimated common improvement costs. The first year of sales is the first year considered for statute protection. If the construction is scheduled to be completed with the final reconciliation due before the regular statute for the first year of sales expires, no statute extension is necessary. However, if the normal statute for the first year of sales will expire before the construction is completed and the final reconciliation is due, the statute for all sales years must be extended to one year after the due date of the income tax return containing the final reconciliation.
- (3) Extension of the statute is accomplished through the use of the following forms:

- a. Form 921, Consent to Extend the Time to Assess Income Tax, is used by developers who file a Form 1040, U.S. Individual Income Tax Return or a Form 1120, U.S. Corporation Income Tax Return.
  - b. Form 921-P, Consent Fixing Period of Limitation on Assessment of Income and Profits Tax, is used by developers who file TEFRA flow-through entity returns.
  - c. Form 921-I, Consent Fixing Period of Limitation on Assessment of Income and Profits Tax, is used by developers who file non-TEFRA flow-through entity returns.
  - d. Form 921-A, Consent Fixing Period of Limitation on Assessment of Income and Profits Tax, was used by developers who filed flow-through entity returns before the release of Form 921-I and Form 921-P. Since the creation of the new forms, Form 921-A is seldom used.
- (4) If the taxpayer is an S corporation, then the coordinator will secure the ownership information by using the Employee User Portal to print electronically filed returns or by contacting the taxpayer by telephone or in writing for returns filed on paper. IMFOLT prints will be pulled to ensure the Form 921-I were properly completed and that both the shareholders and their spouses signed the forms. If the submitted forms are incorrect, the coordinator will either mail corrected Form 921-Is to the taxpayer or ask the taxpayer to submit properly completed forms.

**Note:** The coordinator will verify the ownership information each year and will secure correct Form 921-Is, if needed (i.e. if one of the shareholders get married, corrected Form 921-I will be secured for the years the shareholder files or will file a joint return).

- (5) If the taxpayer is a partnership or a limited liability company filing a partnership return for a tax year beginning before January 1, 2018, then the coordinator will secure ownership information and determine if the entity is a non-TEFRA or TEFRA entity. If the entity is a non-TEFRA entity, then the coordinator will follow the steps discussed in IRM 4.8.8.22.2.4(4). If the entity is a TEFRA entity, the taxpayer is required to submit a Form 921-P. The coordinator will take the steps needed to ensure the Form 921-P is properly completed and signed by the tax matters partner. If the submitted forms are incorrect, the coordinator will either mail a corrected Form 921-P to the taxpayer or ask the taxpayer to submit properly completed forms.

**Note:** If the taxpayer is a partnership or a limited liability company filing a partnership return for a tax year beginning after December 31, 2017, then refer to IRM 4.8.8.22.2.1 (8).

- (6) Care should be taken to ensure that the proper statute extension form is used; the taxpayer's information is correct; the appropriate person(s) sign the form on behalf of the taxpayer; and the appropriate person signs the form on behalf of the Internal Revenue Service (IRS).
- (7) A copy(s) of the executed statute extension(s) will be mailed to the taxpayer with the request and the supplemental request approval letters. A copy of the signed approval letter and the original executed statute extension(s) will be maintained in the project file.

4.8.8.22.2.5  
(02-11-2021)  
**Other Miscellaneous  
Information**

- (1) If the coordinator requests information required by Rev. Proc. 92-29 (i.e. information missing from a request, a missing annual statement, a statute extension, a supplemental request, etc.) and the taxpayer does not provide it, a follow up letter should be sent to the taxpayer.
- (2) Asking the taxpayer to provide information which they are required by Rev. Proc. 92-29 to provide to the IRS does not constitute an examination of the taxpayer. Also, if a coordinator decides to prepare spreadsheets to track the progress of a particular real estate project, this does not constitute an examination of the taxpayer.
- (3) If the taxpayer is non-compliant in any way (i.e. does not provide required requested information, takes a deduction for more than they incurred, etc.), the taxpayer may be referred for examination. The coordinator may prepare a Form 5346, Examination Information Report, which includes all relevant information and forward it to their local Planning and Special Programs Office.
- (4) A Rev. Proc. 92-29 real estate development project file is considered to be closed once the taxpayer has incurred all of the estimated common improvement costs. The project file may then be moved to the coordinator's closed project shelf. ERCS collateral controls may be closed at this time.
- (5) A Rev. Proc. 92-29 real estate development project file may be destroyed upon expiration of the statute of the final year of the project. The coordinator must secure permission to destroy project files(s) by preparing a Form 11671 , Certificate of Records Disposal for Paper or Electronic Records. Upon completion, the coordinator will forward the Form 11671 to their manager for review and approval. The coordinator's manager will forward the approved Form 11671 to the applicable Record Specialist for approval. Record Specialists can be found at *Records and Information Management-Records Specialist*. The Records Specialist will grant the final approval for the project file(s) to be destroyed. Authority to dispose of the project files is found in Document 12990, Records Control Schedules, Schedule 28, Item 150 page 386.
- (6) The coordinator may maintain a spreadsheet file in order to keep track of their Rev. Proc. 92-29 project file inventory. This spreadsheet is not considered a separate system of records.

**This Page Intentionally Left Blank**

**Exhibit 4.8.8-1 (02-11-2021)**  
**Sample Form 1296 for Transferee Assessment**

The following tables show how to complete sections of Form 1296 on a sample of a Transferee in Equity Case.

<b>TRANSFEROR ASSESSMENT</b>	<b>TRANSFEEE OR FIDUCIARY ASSESSMENT</b>
TAXPAYER(Name and Address) Name, Transferor Address City, ST ZIP	NAME AND ADDRESS This Transferee, Transferee Address City, ST ZIP
TIN 31-14XXXX	EIN OR SSN 13-56XXXXXXN

Continuing completing this section of Form 1296 for a Transferee in Equity Case

<b>TAXABLE YEAR OR PERIOD 201412</b>	<b>CODE SECTION 6901</b>	<b>TAXABLE YEAR OR PERIOD 201412</b>	<b>CODE SECTION 6901</b>
TAX	\$ 14,000.02	TAX	\$5,000.00
PENALTY - IRC 6651	\$ 3,000.00	PENALTY - IRC 6651	\$0.00
PENALTY - IRC 6662	\$ 2,800.00	PENALTY - IRC 6662	\$0.00
INTEREST TO DATE: 03/30/14	\$19,000.86	INTEREST TO DATE: 03/30/14	
TOTAL	\$38,800.88	TOTAL	\$0.00
DISTRICT	111 Cir.	DISTRICT	111 Cir.

Fill out the rest of the Form 1296 sections as follows:

- Transferor - ASSESSMENT DATE: 9/26/16
- ACCOUNT NUMBER:
- Transferee - ASSESSMENT DATE:
- ACCOUNT NUMBER:
- Transferor - DATE OF DEFICIENCY LETTER: 7/15/16 Form 906 Closing Agreement Executed
- Transferee - DATE OF DEFICIENCY LETTER: 3/30/XX

In REMARKS section of Form 1296 may include the following statements:

- The transferee has full paid; PLEASE ASSOCIATE PAYMENT RECEIVED ON [enter date]; see attached copy of voucher Form 2444.
- The transferor transferred assets to [enter #] transferees. All transferees have been issued statutory notices of liability on 3/30/XX.
- The notice for the transferee named above has defaulted.
- The transferee named above has agreed to the assessment.
- Below is a summary of the transfers to each transferee related to the transferor named above.

The following is the last section of Form 1296 for this sample.

**Exhibit 4.8.8-1 (Cont. 1) (02-11-2021)****Sample Form 1296 for Transferee Assessment**

- Transferee: This Transferee, John Shark and Jill Shark.
- The three individual Identifying #: 00-XX1234N, XXX-XX-XXX1 and XXX-XX-XXX2 respectively.
- The three individual Amount of Transfer: \$5,000.00, \$50,000.00 and \$40,000.00 respectively.
- The three individual Status: Defaulted, Docketed Manhattan and Defaulted SNL respectively.
- Remark: Value of assets transferred to This Transferee is less than the transferor's tax liability, penalties plus interest. Accordingly, the transferee is limited in its liability to the Transferor's tax only.
- Remark: However, interest against the Transferee begins accruing at the applicable federal rate upon notice and demand for payment irrespective of the value of assets transferred.

**Exhibit 4.8.8-2 (02-11-2021)**  
**Imprest Audit Worksheet**

Below is a sample of CID Quarterly Imprest Fund Audit Reconciliation Worksheet As of: [Date].

<b>Section I</b>	<b>Amounts</b>
Amount of fund as of last verification date: [date]	\$0.00
Adjustments (increases/decreases) (Information is obtained from Section IV of the last OF 211).	\$0.00
Current Amount of Imprest Fund	\$0.00
<b>Section II</b>	<b>Amounts</b>
Cash on hand (will always be zero)	\$0.00
Uncashed checks on hand	\$0.00
Interim receipts (Attach current list of agents' advances.)	\$0.00
Unreimbursed subvouchers (Form 10411s that have not been submitted on an OF 1129.)	\$0.00
Reimbursement Vouchers (OF 1129) in transit (Funds have not been received for these vouchers)	\$0.00
Total (Cash with Cashier)	\$0.00
<b>Section III</b>	<b>Amounts</b>
Balance as of last bank statement	\$0.00
Add deposits made since last statement	\$0.00
Subtract outstanding checks (Checks issued since last statement)	\$0.00
Total (Cash in the bank)	\$0.00
The Imprest Fund is balanced if Section I = Section II + Section III	\$0.00

**Exhibit 4.8.8-3 (12-01-2017)**  
**Imprest Audit Checklist**

**Investigative Imprest Fund Verified Checklist**

<b>FUND STATUS</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Has the cashier personally balanced the fund in the presence of the two verifiers?	x	x	x
Has the actual composition of the fund been verified as follows:	x	x	x
a) Cash on Hand (will always be zero)	x	x	x
b) Uncashed advance or reimbursement checks	x	x	x
c) Interim receipts on hand	x	x	x
d) Unreimbursed subvouchers	x	x	x
e) Reimbursement vouchers in transit	x	x	x
f) Bank balance and outstanding checks	x	x	x
Has the status of the fund section been completed on the Form 2844, Reconciliation of Imprest Fund?	x	x	x
Is the fund accounted for and in balance? if no, see next question.	x	x	x
If the fund was not in balance, have the following actions been taken?	x	x	x
a) The official responsible for the office in which the Imprest Fund is located has been notified	x	x	x
b) Beckley Finance Center has been notified of the discrepancy.	x	x	x
c) The discrepancy has been documented in the "Remarks" section of the Form 2844	x	x	x
<b>SUBVOUCHER REVIEW</b>	N/A	N/A	N/A
Have the unreimbursed subvouchers have been examined to ensure they are completed according to the following:	x	x	x
a) Stamped "PAID"	x	x	x
b) Dated	x	x	x
c) Signed or initialed by the cashier	x	x	x
If any discrepancies were noted, have they been documented in the "Remarks" section of the Form 2844?	x	x	x
<b>CONFIRMATION (SF 1129)</b>	N/A	N/A	N/A
Have all the SF 1129s in transit been confirmed to verify that the amount shown on the cashier's copy of the SF 1129 agrees with the original in the Beckley Finance Center?	x	x	x
<b>CASH VERIFICATION</b>	N/A	N/A	N/A
Has the original verification form been signed by the cashier?	x	x	x

**Exhibit 4.8.8-3 (Cont. 1) (12-01-2017)**  
**Imprest Audit Checklist**

<b>FUND STATUS</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Has the original verification form been signed by both verifiers?	x	x	x
Has a copy of the verification form been given to the cashier?	x	x	x
Has the original verification form been forwarded to the Beckley Finance Center?	x	x	x

**Exhibit 4.8.8-4 (12-01-2017)**  
**Imprest Audit Cover Memorandum**

Date:

MEMORANDUM FOR (NAME)  
SPECIAL AGENT IN CHARGE, (CITY, ST)

FROM: (Name)  
SB/SE Technical Services Group Manager (SE:S:DCE:E:FE:XX:XX)

SUBJECT: Audit for (YYYY) Quarter of Criminal Investigation Imprest Fund

An audit of the Criminal Investigation (CI) imprest fund in accordance with the Memorandum of Understanding signed by CI and the Small Business/Self Employed operating division was conducted on (MM-DD-YYYY). The audit covered the (xxx) quarter of fiscal year (YYYY). A signed copy of the Audit along with documentation is attached.

If you have any questions, please feel free to contact (Name), Senior Reviewer at (telephone number) or (Name), Senior Reviewer at (telephone number).

Attachments

**Exhibit 4.8.8-5 (12-01-2017)**  
**Qualified Offer Memo**

Date:

MEMORANDUM FOR IRS INDEPENDENT OFFICE OF APPEALS, APPEALS MANAGER, EXAMINATION  
POLICY & ANALYTIC TEAM

FROM: Group Manager Name  
Technical Services Group Manager

SUBJECT: IRC 7430 Qualified Offer

Taxpayer and TIN:

Tax Period(s):

Date Offer Made:

Qualified Offer Period: (Mark as "Expedite" if within 90 days from when the offer was submitted.)

Amount of Liability:

This is alert you that a qualified offer under IRC 7430(g) was received for the YYYYMM, YYYYMM, and YYYYMM tax periods and is attached. Please follow the procedures under IRM 8.7.15.1.4, Pre-90-Day Cases with a Qualified Offer.

If you have any questions, please contact (reviewer name), Reviewer, at (contact number).

Attachment:

Qualified Offer

**Exhibit 4.8.8-6 (12-06-2013)****Check Sheet to Determine if Rev. Proc. 92-29 Procedures Were Followed for the Request**

Taxpayer Information	N/A
Taxpayer name:	NAME
Subdivision name:	NAME
Taxpayer EIN:	EIN NUMBER
Date Received:	MM-DD-YYYY

Question	Yes	No
1. "Request to Use Alternative Cost Method Provided by Rev. Proc. 92-29" at the top of the request?	x	x
2. The following is listed on the request: a. Taxpayer's Name b. Taxpayer's EIN c. Taxpayer's Address d. Taxpayer's Phone Number e. Service Center where the return was filed	x	x
3. Does the request indicate the location of the tracts involved (state, county, town and plat map number)?	x	x
4. If the request involves a subdivision, does it list the name of the subdivision?	x	x
5. If the request involves lots, does it indicate how many lots?	x	x
6. Did the appropriate individual sign the request under penalties of perjury? (For a regular corporation – an officer of the corporation. If the corporation is the member of a consolidated group, an officer of the common parent group must sign the declaration. If the taxpayer is a trust, the trustee must sign the declaration. If the taxpayer is a partnership, a general partner must sign it.)	x	x
7. The request includes a schedule listing the following: a. The cost or other basis of the entire tract or tracts of lands where the project covered by the request is situated and a description of how the cost or other basis was determined. b. An inventory list of the lots in each subdivision covered by this request. c. The portion of the cost or other basis of the track or tracts of land allocable to each lot and a description of the manner in which the cost or other basis was allocated to each lot. d. If the request does not involve lots, the portion of the cost or other basis of the tract or tracts of land allocable to each property and a description of the manner in which the cost or other basis was allocated to each property.	x	x

**Exhibit 4.8.8-6 (Cont. 1) (12-06-2013)**

**Check Sheet to Determine if Rev. Proc. 92-29 Procedures Were Followed for the Request**

Question	Yes	No
8. The request includes a schedule listing the following: a. A description of each common improvement that the developer is contractually obligated or required by law to provide for the entire tract or tracts of land where the project covered by this request is situated. b. The person or persons to whom the developer is contractually obligated or required by law to provide common improvements. c. A description of the document evidencing the contractual obligation or requirement of law and a description of the nature of the obligation contained in the document. d. The estimated costs of common improvements for each common improvement and the manner in which the estimate was made. e. The portion of the estimated cost of common improvements allocable to each lot and a description of the manner in which the estimated cost was allocated to each lot. f. To the extent that the request does not involve lots, the portion of the estimated cost of common improvements allocable to each property and a description of the manner in which the estimated cost was allocated to each property. g. The estimated date production will begin on each common improvement and an estimated date of completion of the common improvement.	x	x

Is a statute extension needed for this project under Rev. Proc. 92-29?	Response:
Project Name	Name of Project
1. The year taxpayer specifies it expects to complete the project:	20XX12
2. Due date or filing date for the above tax return:	MM-DD-YYYY
3. Add one year to the above. Date that statute extension is needed to:	MM-DD-YYYY
4. Year of request:	20XX12
5. Filing date of the return filed for the year of request:	MM-DD-YYYY
6. Statute of limitations of return for the year of request:	MM-DD-YYYY

Compare the dates show in items #3 and #6 above.

- If the date in #3 is earlier or the same as the date in #6, NO statute extension is needed.
- If the date in #3 is later than the date in #6, a statute extension IS needed.

**Exhibit 4.8.8-6 (Cont. 2) (12-06-2013)**

**Check Sheet to Determine if Rev. Proc. 92-29 Procedures Were Followed for the Request**

<b>Check Sheet completed by:</b>	<b>MM-DD-YYYY</b>
Date of Completion:	MM-DD-YYYY

**Exhibit 4.8.8-7 (12-06-2013)**

**Project Status Sheet—Revenue Procedure 92-29**

Taxpayer Information	N/A
Project Name:	NAME
Taxpayer Name:	NAME
Taxpayer EIN:	XXX-XX-XXXX or XX-XXXXXXXX
Return Type:	1040, 1120 or 1165
Total # of Lots:	NUMBER OF LOTS
Contact Person:	NAME
Phone Number:	XXX-XXX-XXXX

Year of Request	Original Return Due Date	Return Extension Date	Return Filed Date	Request Received Date	Additional Information Letter Date	Request Approved Date
20XX12	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY

Project Start Date	Estimated Completion Date	Completion Year Return Due Date	Consent Date (add one year)	Normal Statute Date (IRC 6501)	Appropriate Statute Extension Executed?
MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY

Periods Covered by Consent:

Year(s)	20XX12	20XX12	20XX12	20XX12	20XX12	20XX12
Statute Date	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY

Annual Statement Required:

Each Year After Project Start Year	Original Return Due Date	Return Extension Date	Statement Received Date	Additional Information Letter Date	Unsold Lots (EOY)
20XX12	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	#

Supplemental Request:

**Exhibit 4.8.8-7 (Cont. 1) (12-06-2013)**  
**Project Status Sheet—Revenue Procedure 92-29**

<b>New Estimated Completion Date</b>	<b>Old Statute Date</b>	<b>New Statute Date</b>	<b>Appropriate Statute Extension Executed?</b>	<b>Request Received Date</b>	<b>Approved or Disapproved Date (45 days)</b>
MM-DD-YYYY	MM-DD-YYYY	MM-DD-YYYY	Yes or No	MM-DD-YYYY	MM-DD-YYYY

Project Completion Date:	MM-DD-YYYY
--------------------------	------------