



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.24.10

JUNE 16, 2023

## EFFECTIVE DATE

(06-16-2023)

## PURPOSE

- (1) This revises IRM 4.24.10, Excise Tax, Appeals Referral Procedures.

## MATERIAL CHANGES

- (1) Refer to the table below for a description of the material changes made.

Number	Subsection	Description of Change
1	IRM 4.24.10.1, Program Scope and Objectives	Updated the content to clarify the audience.
2	IRM 4.24.10.1.5, Terms	Removed a term that is no longer used in the content throughout this section (i.e., Fast Track Settlement).
3	IRM 4.24.10.1.6, Related Resources	Corrected reference to IRM 4.10.7.5.6.
4	IRM 4.24.10.2, Prerequisites for an Appeals Referral	Added clarification on the time required to be remaining on the SOL when the case is closed through Tech Services to Appeals. Added clarification that examiner must be aware of the 365 day requirement and plan accordingly when issuing examination reports to the taxpayer. Clarified that the SOL cannot be extended for paid claim assessments that fall under IRC 6206 and that Letter 6517 is used for unagreed paid claim assessments that fall under IRC 6206 and have less than 445 days remaining on the SOL.
5	IRM 4.24.10.4, Eligibility for Appeals	Moved content from Exhibit 4.24.10-4 row (I) to paragraph (4).
6	IRM 4.24.10.7, Case Routing Procedures for Unagreed Excise Tax Examination Cases to Appeals	Corrected procedures on how to complete Form 3198 and Form 4665 for cases routed to Appeals via Tech Services. Updated the procedures about obtaining the address for case routing to Tech Services.
7	IRM 4.24.10.8, Transferring an Excise Tax Examination Case to Appeals	Added instructions on how to complete the Form 4665 which is required to be prepared and included in a case file routed to Appeals via Tech Services.
8	IRM 4.24.10.9, Appeals Pre-conference Procedures	Clarified that requests for a preconference meeting can be made with Appeals using Form 4665.

Number	Subsection	Description of Change
9	IRM 4.24.10.12, Appeals Feedback Procedures for Excise Tax Examination Cases	Removed incorrect information about post settlement conference. Excise tax does not hold a post settlement conference.
10	IRM Exhibit 4.24.10-1, Acronyms	Removed acronyms that are not used in the content throughout this section (i.e., AQMS, ATE and FTS).
11	IRM Exhibit 4.24.10-2, Excise Tax - Letter Table According to Situational Facts and Circumstances	Updated to replace Letter 686 with Letter 686 (DO) and replace Letter 5153-A with Letter 6517. Updated to replace 240 days with 445 days. Clarified that when a case is closed to Appeals and a rebuttal is prepared Letter 5072 is used.
12	IRM Exhibit 4.24.10-3, Excise Tax - Letter Table with Letter Numbers and Descriptions	Updated to replace Letter 686 with Letter 686 (DO) and add Letter 6517.
13	IRM Exhibit 4.24.10-4, Steps and Procedures When a Taxpayer Requests an Appeals Conference	Updated table to incorporate IGM SB/SE 04-0922-0076, Extend and Update Guidance on Determining the Adequacy of an Appeal in an Excise Tax Exam Case, dated September 29, 2022. Moved content from row (l) to IRM 4.24.10.4 and removed (l) from table. Updated paragraph (k) with clarification on notating the Form 3198. Removed references to Letter 1025 and Letter 1025-B, both letters are not relevant to Excise Tax. Added reference to Letter 1025-E.

- (2) Editorial changes have been made throughout this IRM Section (section) to update electronic links and organizational name changes, correct grammar and punctuation errors, and remove excessive links to laws, forms, and letters.

### EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.24.10 dated April 19, 2022. This section incorporates Interim Guidance Memorandum (IGM) SB/SE 04-0922-0076, Extend and Update Guidance on Determining the Adequacy of an Appeal in an Excise Tax Exam Case, dated September 29, 2022.

### AUDIENCE

This section provides guidance to SB/SE Specialty Examination, Excise Tax Examination employees who refer Excise Tax Examination cases to the IRS Independent Office of Appeals.

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Small Business/Self Employed

4.24.10

Appeals Referral Procedures

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4.24.10.1  
(06-16-2023)  
**Program Scope and Objectives**

- (1) **General Overview** - This section provides specific information for Excise Tax Examination to refer Excise Tax Program cases to the IRS Independent Office of Appeals (Appeals). A taxpayer has the right to appeal an IRS decision in an independent forum that allows for a fair and impartial administrative appeal.
- (2) **Purpose** - This section explains the referral process for Excise Tax Program cases to Appeals.
- (3) **Audience** - The audience for this section includes the Director, Examination - Specialty Tax, Chief, Estate & Gift/Excise Tax Exam, Excise Tax Examination territory managers, group managers (managers), revenue agents (RAs), and fuel compliance agents (FCAs) (RAs and FCAs are collectively and hereinafter referred to as **examiners** throughout this section), who refer cases to Appeals.
- (4) **Policy Owner** - Director, Examination - Specialty Policy, is responsible for the administration, procedures and updates related to the referral of cases to Appeals.
- (5) **Program Owner** - Director, Examination - Specialty Tax, owns Excise Tax Examination.
- (6) **Primary Stakeholders** - Appeals, Counsel, Field and Specialty Exam Quality (FSEQ) and Excise Tax Examination are the primary stakeholders for this section.

4.24.10.1.1  
(08-06-2018)  
**Background**

- (1) For stronger compliance, it is essential that Excise Tax Program senior management officials, managers and examiners fully understand the appeals referral process.

4.24.10.1.2  
(05-22-2017)  
**Authority**

- (1) IRC 7803(a)(3), Execution of duties in accord with taxpayer rights, provides the taxpayer the right to appeal an IRS decision in an independent forum.

4.24.10.1.3  
(04-19-2022)  
**Responsibilities**

- (1) Director, Examination - Specialty Policy, is the executive responsible for Excise Tax Examination policy and procedures.
- (2) Director, Examination - Specialty Tax, is the executive responsible for examination operational compliance.
- (3) Chief, Estate & Gift/Excise Tax Exam, is responsible for ensuring that information about referring a case to Appeals is communicated to and properly implemented by managers and examiners.

4.24.10.1.4  
(04-19-2022)  
**Program Objectives and Review**

- (1) **Program Goals** - The guidance provided in this section describes the appeals referral process for cases. A comprehensive understanding of this process will enable senior management officials, Excise Tax Program managers and examiners to apply this guidance more effectively, thereby increasing compliance.
- (2) **Program Reports** - Guidance regarding the reporting of program objectives are included on, but not limited to, the Headquarters Examination Monthly Briefing, Program Manager Monthly Briefing, Examination Operational Review and Business Performance Reviews, which are provided by the Director, Examination - Specialty Policy.

- (3) **Program Effectiveness** - Program effectiveness is measured by the Examination Quality Review Staff, in FSEQ, which supports the SB/SE quality improvement program utilizing National Quality Review System to conduct independent case reviews from a statistically valid sample of examination case work. National, area and territory trend analyses on the quality attributes are used to establish baselines to assess program performance, identify opportunities to improve work processes, analyze causes for failure, assess the feasibility of possible solutions and measure the success of quality improvement efforts.
- (4) **Annual Review** - Program Manager, Excise Tax Policy, is responsible for reviewing the guidance in this section annually to ensure its accuracy and promote consistent tax administration.

4.24.10.1.5  
(06-16-2023)

**Terms/Definitions/  
Acronyms**

- (1) The table below contains terms and their definitions used throughout this section.

Term	Definition
30 Day Letter	Written communication issued to the taxpayer that reports the Excise Tax Examination findings.
Appeals Case Memorandum (ACM)	Report prepared by the Appeals Technical Employee (ATE) to adequately explain and support the basis on which a work unit is disposed.
Ex Parte Communications	Communication between any Appeals employee and employees of other IRS functions without the taxpayer/representative having an opportunity to participate in the communication. Communications include oral or written (manually or electronically generated). For additional information on ex parte communications, refer to IRM 4.2.7.2, Definitions.
Formal Written Protest	A document prepared for Appeals by the taxpayer and/or the taxpayer's representative that addresses disputed examination or claim for refund issues if the proposed increase in tax and penalties for any tax period is more than \$25,000. Publication 5 provides the required elements for a written protest to be "adequate."
Joint Committee Review	The Joint Committee oversees the preparation of the Joint Committee reports for all examined/surveyed cases for IRC 6405, Reports of refunds and credits, refunds of income, estate and gift taxes and certain excise taxes in excess of \$2 million (current statutorily prescribed amount), (\$5 million for C Corps) regardless of the business operating division.

Term	Definition
Small Case Request	A brief written statement prepared for Appeals by the taxpayer and/or the taxpayer’s representative that lists disputed examination or claim refund issues if the proposed increase in tax and penalties is \$25,000 or less for each tax period involved. The reasons supporting the taxpayer’s position are necessary. Publication 5 provides the required elements for a small case request to be “adequate.”

(2) Refer to Exhibit 4.24.10-1, Acronyms, for acronyms used throughout this section.

4.24.10.1.6  
(06-16-2023)  
**Related Resources**

- (1) Refer to IRM 4.2.7, Ex Parte Communication Procedures, for guidance concerning ex parte communications.
- (2) Refer to IRM 4.10.7.5.6, SB/SE Fast Track Settlement, for guidance concerning Fast Track Settlement.
- (3) Refer to IRM 4.10.8.12.9.3, Request for Appeals Conference, for guidance concerning the steps and procedures examiners must follow when a taxpayer requests an Appeals conference.
- (4) Refer to IRM 4.10.8.12.12, Time Reporting for 30 Day Letters for Revenue Agents, for guidance concerning the use of Activity Code 646 for certain 30 day letter activities, which include protest reviews and sending follow-up letters.
- (5) Refer to IRM 4.24.20.3.4, Unagreed Excise Reports, for guidance concerning preparing unagreed cases that do not meet the timeframe for Appeals eligibility, which requires at least 365 days remaining on the statute of limitations (SOL) period for assessing excise tax or where the taxpayer did not file a formal protest or sign an agreement and where proposed additions to tax will be assessed.
- (6) Refer to IRM 4.24.21.5.4, Closing Procedures for Unagreed Excise Examinations Not to be Forwarded to Appeals, for guidance concerning closing procedures for unagreed cases that do not meet the timeframe for Appeals eligibility that require at least 365 days on the SOL or where the taxpayer did not file a protest or sign an agreement and where the proposed additions to tax will be assessed.
- (7) Refer to IRM 8.26.4, Early Referral Procedures, for guidance concerning cases whereby the examiner and the taxpayer are unable to reach an agreement on one or more issues and the taxpayer should be encouraged to request early referral of these unagreed issues to Appeals.
- (8) Moreover, the Taxpayer Advocate Service (TAS) may be of assistance to taxpayers experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal procedures or who believe that an IRS system or procedure is not working as designed. Publication 1546, The Taxpayer Advocate Service is Your Voice at the IRS, provides contact and additional information. The program is designed to alleviate

taxpayer hardships that arise from systemic problems or the application of the Internal Revenue Code. For further guidance, refer to *Taxpayer Advocate - Contact Us*.

- (9) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. Refer to IRC 7803(a)(3) For additional guidance refer to the *TBOR Website*.

4.24.10.2  
(06-16-2023)  
**Prerequisites for an  
Appeals Referral**

- (1) Prior to forwarding and closing an Excise Tax Examination or claim to Appeals, the examiner must confirm the completeness of the case file. There must be sufficient documentation to establish that:

- The procedures for an administrative appeal have been explained to the taxpayer or the taxpayer's representative. Additionally, the option to pay any deficiency and file a claim for refund, if the taxpayer or the taxpayer's representative is not familiar with these procedures, have also been explained.
- Managerial involvement occurred. The case file must demonstrate that the manager was informed when the examiner believed a case would have unagreed issues (except for no show or no response cases). The manager's actions must be documented in the case file that include attempts to successfully resolve the dispute. Form 9984, Examining Officer's Activity Record or the Case Level Activities at the IMS Team Web Site, may be used for this purpose. Refer to IRM 1.4.40.4.11.5, Unagreed Closing Procedures.
- The Excise Tax Examination report is accurate. For examinations, refer to IRM 4.24.20, Excise Tax Report Writing Guide. For claims, refer to IRM 4.24.8, Examination Guidance for Excise Claims for Refund or Abatement. For preparation of workpapers that support accurate examination reports, refer to IRM 4.24.6, Technical Guidance and Information Processing for Excise Tax Examination Issues, and IRM 4.24.25, Issue Management System (IMS), Notebook and Workpapers.

- (2) Cases closing to Appeals for the first time require at least 365 days on the SOL when they are received in Appeals. In addition,

- a. There must be at least 210 days remaining on the SOL when a case is received in Excise Tax Examination, if Appeals returns the case for consideration of new information or new issues raised by the taxpayer.
- b. There must be at least 180 days remaining on the SOL when a case is received in Appeals, if Appeals previously released jurisdiction on the case and returned it to Excise Tax Examination for additional work.

**Note:** The group must allow a minimum of 30 days for shipping and processing a case through Technical Services (Tech Services). Therefore, a case must have a minimum of 395 days (or 210 days if the case was returned) remaining on the SOL when the case is closed through Tech Services.

- (3) For purposes of case processing, the examiner must be aware of the 365 day requirement and plan accordingly when issuing examination reports to the taxpayer where the taxpayer has not indicated probable agreement.

- a. If the case has 445 days or more remaining on the SOL, then the examiner must use the appropriate letter, Letter 950-E, 30-Day Letter – Straight Deficiency or Over-Assessment for Excise Tax Examination Cases, or Letter 569-X, Claim Disallowance Letter, to transmit the examination reports. The examiner must follow the procedures in IRM 4.24.20.3.4, Unagreed Excise Reports, or IRM 4.24.8.12, Unpaid Claims - Unagreed and Excepted Agreed Cases.
- b. If the case has less than 445 days remaining on the SOL, then the examiner must use Letter 5153-E, Examination Report Transmittal - Statute, to transmit the examination reports and notify the taxpayer additional time is needed on the SOL for Appeals to consider their case if it is unagreed. A statute extension must be secured for the taxpayer to engage in the Appeals process. The extension must allow sufficient time for preparing a rebuttal and 30 days for shipping and processing the case in Tech Services to ensure a minimum of 365 days remain on the SOL when the case is projected to be received in Appeals.

**Note:** The SOL cannot be extended for paid claim assessments that fall under IRC 6206. For unagreed paid claim assessments that fall under IRC 6206 and have less than 445 days remaining on the SOL, Letter 6517, Paid Fuel Claim Short Statute Assessment, is used to transmit examination reports. Refer to IRM 4.24.8.5.2, Unagreed Paid Claim Statute of Limitations Considerations.

- (4) If a valid Form 872-B, Consent to Extend the Time to Assess Miscellaneous Excise Taxes, is not received, then the case will be processed based on the proposed changes as an unagreed case not eligible for consideration by Appeals. Refer to IRM 4.24.21.5.4, Closing Procedures for Unagreed Excise Examinations Not to be Forwarded to Appeals.

4.24.10.3  
(02-15-2019)  
**Excise Tax - Letter Table with Letter Numbers and Descriptions**

- (1) Situational facts and circumstances, such as sufficient time being available on the SOL to allow Appeals to review a case, determine the appropriate letter to issue with the Excise Tax Examination report.
- (2) Refer to Exhibit 4.24.10-2, Excise Tax - Letter Table According to Situational Facts and Circumstances, to identify the appropriate letter(s) to issue to the taxpayer.
- (3) Refer to Exhibit 4.24.10-3, Excise Tax - Letter Table with Letter Numbers and Descriptions, for a list of the letter number and description (catalog name) for those letters itemized under Exhibit 4.24.10-2.

4.24.10.4  
(06-16-2023)  
**Eligibility for Appeals**

- (1) Generally, Appeals procedures for unagreed income tax cases are applicable to excise cases, except for the statutory notice provisions, which do not apply.
- (2) Unless specifically excluded from Appeals consideration, all excise cases are eligible to be forwarded to Appeals on the condition that the taxpayer submits an “adequate” protest (when a formal written protest is required) or a small case request that includes the information required under Publication 5, Your Appeal Rights and How to Prepare a Protest if You Disagree.

**Note:** Generally, if the taxpayer submits new information or evidence to Appeals or raises a new issue that Excise Tax Examination has not considered, then the

case will be returned. Refer to IRM 8.2.1.5, Returning a Case to Examination – ATE, and IRM 4.10.8.12.11, Cases Returned from Appeals.

- (3) The following is a list of cases that are excluded from Appeals consideration:
- Fewer than 365 days remain on the SOL when the case is received in Appeals.
  - Request/claim for abatement of unpaid tax that is not an audit reconsideration. Refer to IRM 4.10.8.8, Claims for Abatement, Audit Reconsiderations, and Supplemental Reports, (taxpayer has no judicial rights).
  - Taxpayer disagrees solely on moral, religious, political, constitutional, conscientious or similar grounds. Refer to IRM 8.1.1.3.1, No Appeals Conference or Concession on Certain Arguments.
  - Cases designated for litigation. Refer to Chief Counsel Directives Manual 33.3.6, Designating a Case for Litigation.
  - Cases where Appeals discovered potential fraud, malfeasance or a misrepresentation of a material fact. Refer to IRM 8.2.1.5.
- (4) The issuance of a notice of deficiency of a non-excise tax case does not preclude transfer on protested cases to Appeals for:
- Other taxable periods of the same taxpayer,
  - Other types of tax for the same taxable periods for the same taxpayer, or
  - An offer in compromise covering the same type of tax and the same taxable periods of the taxpayer.

4.24.10.5  
(04-19-2022)  
**Request for Appeals  
Conference - Protest  
Submitted**

- (1) When the taxpayer requests an Appeals conference, examiners must follow the applicable procedures in Exhibit 4.24.10-4, Steps and Procedures When a Taxpayer Requests an Appeals Conference.
- (2) Unless specifically excluded from Appeals consideration, all excise cases are eligible for an Appeals conference if the taxpayer submits an “adequate” written protest (when required) or a small case request.
- (3) To qualify as “adequate” the taxpayer’s written protest must comply with requirements identified in Publication 5, Your Appeal Rights and How to Prepare a Protest if you Disagree.
- (4) When a rebuttal is needed, the examiner will prepare a Form 886-A, Explanation of Items. The following areas must be addressed:
- Statements, facts and arguments that were not previously explained in the Excise Tax Examination report.
  - New arguments or facts raised by the taxpayer.
  - Factual differences between the Excise Tax Examination report and the protest.

**Note:** A copy of the rebuttal must be provided to the taxpayer at the time the case is sent to Appeals. Examiners must use Letter 5072, Examiner’s Rebuttal, to transmit the rebuttal to the taxpayer. Letter 5072 with the attached rebuttal must be included with the taxpayer’s protest in the case file as provided in IRM 4.10.9.9.3(1)(e), Forms and Other Documents Inside the Case Folder.

- (5) The protest should be returned to the taxpayer if it does not comply with the requirements as outlined under Publication 5 and additional time should be granted to perfect the protest. Use Letter 1025-E, Letter of Protest - Excise Tax, or Letter 1025-A, Letter of Protest (Claims), for this purpose.
- (6) If a rebuttal is not prepared, when closing the case to Appeals, then the examiner must prepare Letter 2280-X, Transfer to Appeals, to notify the taxpayer the case is being closed to Appeals. The letter must be signed by the manager and mailed to the taxpayer.

4.24.10.6  
(04-19-2022)  
**Review of Protest**

- (1) A taxpayer's protest generally will be reviewed at the group level as designated by management within seven calendar days of receipt to determine whether:
  - a. The protest is "adequate."
  - b. The case requires further development by the examiner.
  - c. The examiner's report should be modified.
- (2) To be considered "adequate," the taxpayer's formal protest or small case request must contain all information required under Publication 5 (with the exceptions noted in the table under Exhibit 4.24.10-4, Steps and Procedures When a Taxpayer Requests an Appeals Conference.)
- (3) A formal written protest is required for a proposed change to the total amount of tax and penalties for any tax period that is more than \$25,000 for an increase or decrease in tax and penalties or claimed refund. To meet the Publication 5 "adequacy" requirement, the formal written protest must include:
  - a. A statement that the taxpayer wants to appeal the changes proposed by the IRS.
  - b. The taxpayer's name, address and daytime telephone number.
  - c. List of all disputed issues, tax periods or years involved, proposed changes and reasons for the taxpayer's disagreement with each issue.
  - d. Facts supporting the taxpayer's position on each disputed issue.
  - e. Law or authority, if any, supporting the taxpayer's position on each disputed issue.
  - f. A declaration of truth under penalties of perjury. This may be done by adding the following signed declaration to the protest document: "Under penalties of perjury, I declare to the best of my knowledge and belief, that the information contained in this protest and accompanying documents is true, correct and complete."
- (4) If the taxpayer's representative submits the written protest for the taxpayer, then the representative must substitute a declaration stating:
  - a. That the protest and accompanying documents were submitted by the representative.
  - b. That to the best of their personal knowledge and belief, the information is true, correct and complete or, if not, there is no personal knowledge concerning the information stated in the protest and accompanying documents.
  - c. The taxpayer or the representative must sign the document under the penalties of perjury statement.
- (5) If the total amount of tax and penalties is \$25,000 or less, then the taxpayer may submit a small case request. To meet the Publication 5 "adequacy" requirement, the small case request should include:

- A brief written statement listing the disputed issues and why the taxpayer disagrees with the proposal for additional tax and penalties, or
  - A completed appeal request Form 13683, Statement of Disputed Issues, that was included with the letter the taxpayer received proposing the change, if applicable, or a completed Form 12203, Request for Appeals Review.
- (6) “Adequacy” of a protest is generally not determined based on substantive content, such as whether the protest contains sufficient factual or legal support. If a taxpayer submits a formal written protest that includes all the information required by Publication 5 addressing the issues raised in the 30 Day letter, the reasons for disagreement and factual information to support their position on the issues, then the case must be forwarded for Appeals consideration. This is regardless of whether the examiner or manager disagrees with the taxpayer’s facts and/or does not consider the taxpayer’s position sufficiently supported.
- (7) An incomplete protest, which is one that does not satisfy the requirements listed in Publication 5, must be returned to the taxpayer and additional time granted to perfect the document. If the protest contains information warranting further consideration, then the case should be returned to the examiner for further development. Cases returned for additional development should be considered priority work and given expedited consideration.
- (8) If the examiner or manager determines there is something in the protest that does not change the determination but requires further comment or explanation and is not confidential in nature, then a rebuttal can be prepared and included in the case file before being sent to Appeals. This rebuttal will serve to supplement the information contained within the examiner’s report and offer a constructive response to the taxpayer’s arguments that were presented in the protest. If a rebuttal is prepared, then the taxpayer must be provided a copy. Examiners must use Letter 5072, Examiner’s Rebuttal, for this purpose.
- (9) The manager is authorized to meet with the taxpayer to discuss any disputed issues in an attempt to resolve them, obtain taxpayer agreement and limit taxpayer burden.

4.24.10.7  
(06-16-2023)

**Case Routing  
Procedures for  
Unagreed Excise Tax  
Examination Cases to  
Appeals**

- (1) Appeals has specially trained Appeals Officers (AOs) who handle excise tax case referrals.
- Note:** Dyed diesel penalty cases may be assigned to non-excise cadre members.
- (2) All unagreed cases are routed to Appeals via Tech Services. Tech Services will forward cases to the Appeals Account and Processing Support (APS) Carding Team.
- Note:** For more information about the proper mailing address to route Appeals cases to Tech Services refer to the Excise Tax Knowledge Base Homepage, Excise Examination Shelf, Closing an Examination Book, and Type of Closure at the Unagreed Case Chapter.
- (3) Examiners must complete Form 3198, Special Handling Notice for Examination Case Processing, as follows:
- a. In the “Forward to Technical Services” section, the boxes “Unagreed to Appeals” and “Other” must be checked.

- b. In the space next to “Other,” insert “Forward to APS Carding Team (non-collection cases). Unagreed Excise case please assign to Appeals Officer trained in Excise” and insert the proper address for case routing.
  - c. In an unnamed section below the “Other” section, check the box for “Forward to Tech Services - Update to Status 21.” Enter the “Date Closed to Manager” and “Manager Name.”
- (4) After the physical case file is mailed to Tech Services, the examiner will close the case off IMS.

**Note:** The AO can view a case closed off IMS once it is assigned to them.

4.24.10.8  
(06-16-2023)

**Transferring an Excise  
Tax Examination Case to  
Appeals**

- (1) If the taxpayer requests a transfer of jurisdiction for an appeal and the written protest is “adequate,” then the case file will be routed to Appeals.
- (2) A case can be transferred to Appeals with a copy of the taxpayer’s return, if:
  - a. A transcript of account is attached to the copy of the excise return.
  - b. The case does not involve fraud, jeopardy assessment or Joint Committee Review.
- (3) Disposal Code 07 must be used for an unagreed case that is transferred to Appeals.
- (4) Form 4665, Report Transmittal, must be prepared and contain the following information:
  - a. The statement: “Unagreed Excise case, please assign to Appeals Officer trained in Excise.”
  - b. If the issues impact multiple taxpayers, then the statement, “This issue impacts multiple taxpayers and/or is an industry issue, as such consistency in treatment amongst taxpayers is needed. Cases should be coordinated through the Appeals Technical Guidance Coordinators – Excise Fuel or General Excise.” For a list of current technical guidance coordinators, refer to the Excise Tax Knowledge Base Homepage, Excise Examination Shelf, Closing an Examination Book, and Type of Closure at the Unagreed Case Chapter.
  - c. If the case has live statutes, particularly those that cannot be extended, then the statement: “Caution - Case contains live statutes related to paid fuel claims which cannot be extended. The last day to make an assessment under IRC 6206 is MM-DD-YYYY.”
  - d. Summary of the unagreed issues, if necessary.
  - e. If an Appeals preconference is requested, then the statement: “An Appeals preconference is requested due to a new or novel issue.”
  - f. Indicate whether the taxpayer was offered the opportunity to discuss the unagreed issues with a manager.

**Note:** Form 4665 is not issued to the taxpayer unless required. Refer to Rev. Proc. 2012-18, Section 2.03(4)(b) Transmittal, and IRM 4.24.21.4.6, Form 4665, Report Transmittal, for additional guidance.

- (5) Letter 2280-X, Transfer to Appeals, must be prepared, signed and dated by the manager. Letter 2280-X notifies the taxpayer of the case transfer to Appeals for consideration.

**Note:** If the examiner prepares a rebuttal, then Letter 5072, Examiner's Rebuttal, is used in place of Letter 2280-X.

- (6) If a taxpayer is a non-filer and the failure to pay penalty is asserted, then Form 13496, IRC Section 6020(b) Certification, for each tax period must be included in case file forwarded to Appeals. For further guidance, refer to IRM 4.24.9.6, IRC Section 6020(b) Certification Procedures for Non-Filed Excise Tax Returns.

**Note:** Form 13496 is associated with a substitute-for-return case file to establish that IRC 6020(b) criteria are met in order that the failure-to-pay penalty under IRC 6651(a)(2) will be sustained in court.

- (7) Requests from Appeals for additional information for further verification of facts in a protested case will be completed expeditiously.
- (8) Refer to IRM 4.10.8.15.6, Taxpayer's Appeal Rights, for guidance concerning appeal rights for inadequate taxpayer records cases.
- (9) Refer to IRM 8.7.10.3.1, Routing and Assignment of Cases from SB/SE to the Appeals Case Officer Cadre, for guidance on Appeals procedures for cases.
- (10) If Appeals cannot resolve the case to the taxpayer's satisfaction, then the taxpayer's only recourse will be paying the additional tax when assessed and filing a claim for refund within the applicable SOL. Upon disallowance of the claim or six months from the date the claim was filed, the taxpayer may then file suit in the U.S. District Court or the U.S. Court of Federal Claims to recover the excise tax paid.

4.24.10.9  
(06-16-2023)

**Appeals Pre-conference  
Procedures**

- (1) After giving the taxpayer or the taxpayer's representative an opportunity to participate, a preconference meeting may be held between the Appeals Officer (AO) and the examiner. This may be about a protested case addressing an unusual or complex issue. A determination regarding what is an unusual or complex issue will be left to the discretion of the AO and the examiner.
- (2) The purpose of a preconference meeting is to discuss the issue, the protest and the written rebuttal in a case containing a complex or unusual issue. A frank discussion of the issue will help to identify additional information that may be needed. The need for resources, specialists or expert witnesses, etc., can be discussed at this preconference meeting. Excise Tax Examination is encouraged to share its views on disputed issues, including the assessment of the facts and the law to recommended adjustments on a particular issue. However, the preconference meeting is not for securing a commitment from Appeals to defend a particular issue or settlement position, or otherwise negotiate the settlement posture of Appeals on a case.
- (3) A preconference meeting will take place prior to an Appeals/taxpayer conference.
- (4) If a preconference meeting is requested by an examiner and/or manager, then the request should accompany the case file when sent to Appeals. Requests can be made for a pre-conference with Appeals using Form 4665, Report Transmittal. The request must be signed by the manager and must be associated with the case file.

- (5) Review of taxpayer's formal protest and preparation of the rebuttal in non-docketed cases:
  - a. Before forwarding the case to Appeals, the examiner must review any new information, new issue or new argument raised by the taxpayer or the taxpayer's representative in the protest to determine Excise Tax Examination's position before preparing a written rebuttal. The rebuttal is not intended to restate positions taken in the Excise Tax Examination report, but to address any new information or new issues raised in the protest. A copy of the examiner's rebuttal will be provided to the taxpayer and/or the taxpayer's representative before sending the case to Appeals for consideration.
  - b. The protest rebuttal shall reference the request for a preconference meeting and refer to the separate request memorandum from the manager. This will alert the AO to look for the preconference meeting request memorandum.
  - c. Factual differences between the Excise Tax Examination report and the protest will be reconciled. Rebuttals will be secured from specialists, such as engineers, economists, appraisers, etc., who provided background data, assumptions, etc., used to formulate Excise Tax Examination's position. These reports will be included in the administrative file with the protest and provided to the taxpayer or representative before sending the case to Appeals for consideration.
  - d. Excise Tax Examination will seek technical advice on a novel or unique issue prior to Appeals' consideration.
  - e. Changes in the examiner's and the manager's position made during the review process will be reflected clearly in any revised report and will include any tax re-computations.

**Note:** The examiner should not wait until the taxpayer disagrees to secure technical advice or reports from specialists to prepare for the preconference meeting. Doing so might delay the taxpayer's appeal and limit the time the taxpayer has to respond. If the examiner has such information that addresses the taxpayer's arguments, then the information must be provided to the taxpayer with the 30 Day Letter, to assist the taxpayer in the decision of whether to retain an expert or professional to prepare a protest.

- (6) If a preconference meeting initiated by either party is accepted by the other party, then the acceptance need not be in writing, but the acceptance should be communicated expeditiously to the other party.
- (7) A request by either party shall address the unusual or complex factual or legal issue warranting the preconference.
- (8) Either the AO or examiner can decline the preconference meeting request. The declination must be in writing and signed and conveyed to the other party with copies to respective managers.
- (9) Despite these preconference meeting procedures, the AO remains responsible for complying with the SOL procedures outlined in IRM 8.21, Appeals Statute Responsibility.
- (10) Participation in a preconference meeting:
  - a. The AO will arrange the meeting.

- b. Appeals and Excise Tax Examination will each identify its participants in the meeting.
- c. The participants may include other specialists, as deemed necessary by Excise Tax Examination.
- d. The parties will determine the location and method of the preconference on a case-by-case basis.

4.24.10.10  
(04-19-2022)

**Excise Tax Examination  
Cases Returned from  
Appeals**

- (1) Appeals will return cases to Excise Tax Examination in the following situations (not all-inclusive):
- Missing protest.
  - Inadequate protest (does not meet the requirements described in Publication 5).
  - Less than 365 days remaining on the SOL.
  - Taxpayer provides new information or evidence.
  - Taxpayer raises new issues not considered by Excise Tax Examination.
  - Contrary to IRS practice, the case is a reopening of a previously closed case as set forth in *Rev. Proc. 2005-32*.
  - The case involves claims for abatement of excise tax or trust fund recovery penalty which are not deemed meritorious by IRS.
  - Appeals discovers potential fraud, malfeasance or misrepresentation of a material fact.

**Note:** Refer to IRM 8.2.1.5, Returning a Case to Examination - ATE.

4.24.10.10.1  
(04-19-2022)

**Excise Tax Examination  
Cases Returned from  
Appeals with New  
Information**

- (1) In some situations, the taxpayer may provide new information or new evidence related to a disputed issue that was not previously shared with the examiner. If the Appeals hearing officer believes the information merits additional analysis or investigative action by Excise Tax Examination, then Appeals will release jurisdiction and return the case to the examiner to evaluate and make an audit determination. Refer to IRM 4.10.8.12.11, Cases Returned from Appeals, for more detailed guidance.

4.24.10.10.2  
(04-19-2022)

**Statute of Limitations on  
Excise Tax Examination  
Cases Returned from  
Appeals**

- (1) If the taxpayer raises a relevant new issue and there will be less than 210 days remaining on the SOL when the originating function receives the case, then Appeals will not return the case unless the taxpayer provides a consent to extend the SOL. Refer to IRM 8.6.1.7.4, Taxpayer Raises New Issue, for more detailed guidance.
- (2) If Appeals previously released jurisdiction of the case and returned it to Excise Tax Examination for additional work, then there must be at least 180 days remaining on the SOL when the case is received in Appeals the second time. The group must allow a minimum of 30 days for shipping and processing a case through Tech Services. Therefore, 210 days must be remaining on the SOL when the case is closed from the group.

4.24.10.10.3  
(04-19-2022)

**Undeveloped Excise Tax  
Examination Cases**

- (1) Appeals will **not** return cases to Excise Tax Examination when they are not fully developed, **and** the taxpayer has not presented new information or evidence. Instead, Appeals will attempt to settle the case on factual hazards. Refer to IRM 4.2.1.8.1, Cases Not Fully Developed, for more detailed guidance.

4.24.10.11  
(05-22-2017)  
**Closing Agreement and Appeals to Tax Court**

- (1) IRM 8.13.1, Processing Closing Agreements in Appeals, contains guidance and instructions regarding closing agreements under IRC 7121, Closing agreements, for all types of taxes.
- (2) The United States Tax Court has no jurisdiction over cases involving the excise taxes reported on Form 720, Quarterly Federal Excise Tax Return, Form 2290, Heavy Highway Vehicle Use Tax Return, Form 730, Monthly Tax Return for Wagers, and Form 11-C, Occupational Tax and Registration Return for Wagering. After payment of at least a divisible portion of the excise tax, these cases may be litigated in either the United States District Court or the United States Court of Federal Claims by filing a suit for refund of the excise tax paid.

4.24.10.12  
(06-16-2023)  
**Appeals Feedback Procedures for Excise Tax Examination Cases**

- (1) IRM 8.7.10.4.2(3), Issue Management System (IMS), requires Appeals to work all Excise Tax Examination Field cases in IMS. If the case is not in IMS, then Appeals will ask the Appeals Team Manager to search the Account & Processing Support inventory in IMS for cases that are not currently in the Appeals IMS Case Inventory.

**Note:** Appeals will upload the Appeals Case Memorandum (ACM) and Form 5402, Appeals Transmittal and Case Memo, to IMS when they finish working the case.

- (2) The Subject Matter Experts (SMEs) in Excise Tax Policy may review the ACM. If there is a disagreement with how the case was resolved/disposed, then Excise Tax Policy should provide feedback to Appeals either informally or through the formal dissent procedures. Formal dissent procedures are found in IRM 8.6.4.2.10, Disagreements with Appeals Determinations. The formal dissent procedures are not intended to replace any informal procedures currently in use. It is expected that Excise Tax Examination, Excise Tax Policy and Appeals will continue to address and resolve disagreements over case resolutions at the lowest possible level. The formal dissent procedures are used when the informal process results in Excise Tax Examination or Excise Tax Policy continuing to have unresolved significant concerns about the Appeals disposition of an issue.

**Note:** Formal dissents will not generally be appropriate in an Appeals case where “hazards of litigation” were considered in the settlement of the case or in cases resolved by applying “judgment,” unless such judgment is clearly erroneous.

- (3) Dissents will be prepared by Excise Tax Policy and forwarded to the appropriate Appeals area director, through the Program Manager, Excise Tax Policy, within 90 days (extensions may be mutually agreed upon) of receipt by Excise Tax Examination of an ACM. Refer to IRM 8.6.4.2.10 for detailed dissent routing guidance.

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**Exhibit 4.24.10-1 (06-16-2023)**

**Acronyms**

The table below contains acronyms and their definitions used throughout this IRM.

Acronym	Definition
ACM	Appeals Case Memorandum
AO	Appeals Officer
FSEQ	Field and Specialty Exam Quality
SB/SE	Small Business/Self Employed
SOL	Statute of Limitations
SME	Subject Matter Expert
TBOR	Taxpayer Bill of Rights

**Exhibit 4.24.10-2 (06-16-2023)****Excise Tax - Letter Table According to Situational Facts and Circumstances**

<b>If</b>	<b>And</b>	<b>Send</b>
TP is eligible for Appeals	Statute $\geq$ 445 days	<ul style="list-style-type: none"> <li>• Letter 950-E - Deficiency</li> <li>• Letter 569-X - Claim</li> </ul>
TP is eligible for Appeals	Statute < 445 days	<ul style="list-style-type: none"> <li>• Letter 5153-E - Deficiency</li> <li>• Letter 6517 - Paid Fuel Claim Short Statute Assessment</li> </ul>
Previously Sent <ul style="list-style-type: none"> <li>• Letter 950-E</li> <li>• Letter 569-X</li> </ul>	TP indicated they are going to send in a protest but has not yet responded	<ul style="list-style-type: none"> <li>• Letter 923-E - Deficiency</li> <li>• Letter 923-C - Claim</li> </ul>
Previously Sent <ul style="list-style-type: none"> <li>• Letter 950-E and/or Letter 923-E or Letter 686 (DO)</li> <li>• Letter 569-X</li> </ul>	Inadequate protest received and/or Letter 907-X has been sent	<ul style="list-style-type: none"> <li>• Letter 1025-E - Deficiency</li> <li>• Letter 1025-A - Claim</li> </ul>
Previously Sent <ul style="list-style-type: none"> <li>• Letter 950-E</li> <li>• Letter 569-X</li> </ul>	TP sends in additional info	<ul style="list-style-type: none"> <li>• Letter 692-E - Deficiency</li> <li>• Letter 692-A - Claim</li> </ul>
Previously Sent <ul style="list-style-type: none"> <li>• Letter 950-E</li> <li>• Letter 569-X</li> </ul>	TP requests an extension to respond to 30 Day Letter	<ul style="list-style-type: none"> <li>• Letter 686 (DO)</li> </ul>
Case is closed to Appeals	Rebuttal prepared	<ul style="list-style-type: none"> <li>• Letter 5072</li> </ul>
Case is closed to Appeals	Rebuttal not prepared	<ul style="list-style-type: none"> <li>• Letter 2280-X</li> </ul>

**Exhibit 4.24.10-3 (06-16-2023)**

**Excise Tax - Letter Table with Letter Numbers and Descriptions**

<b>Letter</b>	<b>Description</b>
Letter 569-X	Claim Disallowance Letter
Letter 686 (DO)	Extension of Time for Certain Actions
Letter 692-A	Request for Consideration of Additional Findings (Claim)
Letter 692-E	Excise Tax - Request for Consideration of Additional Findings
Letter 907-X	Request to Extend Assessment Statute
Letter 923-C	Extending Time to File Protest (claim)
Letter 923-E	Extending Time to File Protest - Excise
Letter 950-E	30 Day Letter - Straight Deficiency or Overassessment for Excise Examination Cases
Letter 1025-A	Letter of Protest (Claims)
Letter 1025-E	Letter of Protest - Excise Tax
Letter 2280-X	Transfer to Appeals
Letter 5072	Examiner's Rebuttal
Letter 5153-E	Examination Report Transmittal - Statute
Letter 6517	Paid Fuel Claim Short Statute Assessment

**Exhibit 4.24.10-4 (06-16-2023)****Steps and Procedures When a Taxpayer Requests an Appeals Conference**

When the taxpayer requests an Appeals conference, examiners must follow the applicable procedures in the table below:

<b>If</b>	<b>Then</b>
<p>(a) The total amount of tax and penalties for any tax period is not more than \$25,000,</p> <p><b>Note:</b> In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund.</p>	<p>The taxpayer may make a small case request instead of filing a formal written protest. The taxpayer may complete Form 12203, Request for Appeals Review, or Form 13683, Statement of Disputed Issues.</p> <p><b>Note:</b> Publication 5 contains instructions on preparing formal written protests and small case requests in unagreed cases.</p>
<p>(b) The total amount of tax and penalties for any tax period is more than \$25,000,</p> <p><b>Note:</b> In computing the total amount, include a proposed increase or decrease in tax (including penalties) or claimed refund.</p>	<p>The taxpayer must submit a formal written protest.</p> <p><b>Note:</b> Publication 5 contains instructions about preparing formal written protests and small case requests in unagreed cases.</p>
<p>(c) The taxpayer submits a formal written protest or small case request,</p>	<p>The protest must be reviewed at the group level, as designated by management, within seven days of receipt to determine whether the protest complies with the requirements identified in Publication 5. The protest review should include consideration of any new facts, laws or arguments presented to determine if:</p> <ul style="list-style-type: none"> <li>• The case requires further development by the examiner.</li> <li>• The examiner's report should be modified.</li> <li>• The examiner should write a rebuttal to refute arguments in the protest.</li> </ul>

Exhibit 4.24.10-4 (Cont. 1) (06-16-2023)

Steps and Procedures When a Taxpayer Requests an Appeals Conference

If	Then
<p>(d) The formal written protest or small case request does not comply with the requirements as identified in Publication 5,</p>	<p>The protest should be returned to the taxpayer and additional time should be granted to perfect the protest.</p> <p>The examiner should use one of the following letters for this purpose:</p> <ul style="list-style-type: none"> <li>• Letter 1025-E, Letter of Protest - Excise Tax</li> <li>• Letter 1025-A, Letter of Protest (Claims).</li> </ul> <p><b>Note:</b> If the only item missing from the protest is a copy of the 30 Day letter, then the case can be closed using the copy in the file, therefore, there is no need to return the protest to the taxpayer for perfection.</p>
<p>(e) The formal written protest or small case request contains information warranting consideration,</p>	<p>The case may require additional development because of additional facts raised and/or new information, issues or legal arguments presented in the formal written protest or small case request. Cases requiring additional development are priority work and should be given expedited consideration. Refer to IRM 4.10.8.12.9.3.1, Timely Actions - Request for an Appeals Conference.</p> <p><b>Reminder:</b> Generally, Appeals does not return cases for further development unless the taxpayer provides new information or evidence to Appeals or raises a new issue Excise Tax Examination has not considered.</p>
<p>(f) The examiner or manager feels there is something in the formal written protest or small case request that does not change the determination, but requires further comment or explanation,</p>	<p>A rebuttal should be prepared and included in the case file before it is sent to Appeals. Refer to IRM 4.24.10.5 for additional guidance on preparing a rebuttal.</p>
<p>(g) The formal written protest or small case request is complete, and the examiner does not prepare a rebuttal,</p>	<p>The examiner must prepare Letter 2280-X, Transfer to Appeals, to notify the taxpayer the case is being closed to Appeals. The letter must be signed by the manager and mailed to the taxpayer.</p>
<p>(h) There is not sufficient time remaining on the SOL to send the case to Appeals and a consent was not previously solicited,</p>	<p>The examiner should follow the procedures in IRM 25.6.22, Extension of Assessment Statute of Limitations by Consent, to solicit a consent.</p>

**Exhibit 4.24.10-4 (Cont. 2) (06-16-2023)****Steps and Procedures When a Taxpayer Requests an Appeals Conference**

If	Then
(i) There is not sufficient time remaining on the SOL to send the case to Appeals and a consent was previously solicited,	The examiner should issue Letter 1025-E, or Letter 1025-A to remind the taxpayer a consent is needed to send the case to Appeals and give the taxpayer 10 days to respond.
(j) The taxpayer's representative submits the formal written protest or small case request for the taxpayer,	The representative must include a substitute for the taxpayer's declaration described in Publication 5. The declaration will state both: <ul style="list-style-type: none"> <li>• The representative prepared the protest and accompanying documents</li> <li>• Whether the representative knows personally that the facts contained in the protest and accompanying documents are true and correct</li> </ul>
(k) The taxpayer verbally requests a transfer of jurisdiction for the appeal and the formal written protest or small case request is complete,	The case file will be forwarded according to the "Case Routing Addresses and Instructions" shown at the <i>Independent Office of Appeals, Case Routing</i> web site. The receiving office will then forward the case file to the appropriate Appeals office. <b>Note:</b> The request should be noted on Form 3198 in the "Forward to Technical Services" section, under "Other."