



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.31.2

APRIL 22, 2025

EFFECTIVE DATE

(04-22-2025)

PURPOSE

- (1) This transmits revised IRM 4.31.2, Pass-Through Entities, TEFRA Examinations - Field Office Procedures.

MATERIAL CHANGES

- (1) The chapter title of the IRM was changed from Pass-Through Entity Handbook to Pass-Through Entities.
- (2) IRM 4.31.2.1 - Program Scope and Objectives:
 - a. Paragraph (4) - Updated Policy Owner to reflect LB&I's new ownership of IRM 4.31.2.
 - b. Paragraph (5) - Updated Program Owner to reflect LB&I's new ownership of IRM 4.31.2.
 - c. Paragraph (8) - Clarified contact information.
- (3) IRM 4.31.2.1.3 - Roles and Responsibilities:
 - a. Paragraph (1) - Replaced Director, SB/SE Headquarters Examination, Field and Campus Policy to Director, PTE PA to correspond with LB&I's new ownership and responsibilities of IRM 4.31.2.
 - b. Paragraph (2) - Replaced Program Manager, SB/SE, Examination Field and Campus Policy, Campus Exam and Field Support to Deputy Director, PTE Field Support to correspond with LB&I's new ownership and responsibilities of IRM 4.31.2.
- (4) Throughout:
 - a. The IRC citations listed in the table below have been modified to include "of YYYY" after each citation, when applicable. This was added to the relevant citations because those subsections of the law have since been removed or changed.

Affected Citation References	IRC Year Version Added
IRC 6223(a)(1)	1982
IRC 6223(a)(2)	1982
IRC 6223(c)	1982
IRC 6223(c)(3)	1982
IRC 6223(d)	1982
IRC 6223(e)	1982
IRC 6223(e)(2)	1982
IRC 6223(e)(3)	1982
IRC 6223(f)	1982
IRC 6231(a)(1)(B)	2002

Affected Citation References	IRC Year Version Added
IRC 6231(a)(1)(B)(i)	2002
IRC 6231(a)(1)(B)(ii)	2002
IRC 6231(a)(2)(B)	2002
IRC 6231(a)(5)	2002
IRC 6231(a)(6)	2002
IRC 6231(a)(7)	2002
IRC 6231(a)(7)(B)	2002
IRC 6231(a)(9)	2002
IRC 6231(a)(10)	2002
IRC 6231(b)(1)(A)	2002
IRC 6231(b)(1)(D)	2002
IRC 6231(b)(2)(B)	2002
IRC 6231(b)(3)	2002
IRC 6231(e)(2)	2002
IRC 6231(g)	2002
IRC 6231(g)(1)	2002
IRC 6231(g)(2)	2002

- b. Hyperlinked all relevant citations and forms.
- c. Corrected citation references.
- d. Updated website links.
- e. Stylistic editorial, grammar, formatting and spelling changes.

EFFECT ON OTHER DOCUMENTS

IRM 4.31.2, Pass-Through Entities, TEFRA Examinations - Field Office Procedures, dated 04-10-2023 is superseded.

AUDIENCE

Small Business/Self-Employed (SB/SE) and Large Business & International (LB&I) Field and Technical Services personnel working TEFRA partnerships and/or their partners.

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Large Business and International Division

4.31.2

TEFRA Examinations - Field Office Procedures

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4.31.2.1
(04-22-2025)
Program Scope and Objectives

- (1) This IRM provides guidance on Field Exam procedures related to examinations of partnerships subject to provisions of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. This section is valid for partnership returns with tax years beginning before January 1, 2018.
- (2) **Purpose:** This IRM describes:
 - Determining if a partnership is TEFRA or not;
 - Field agent key case procedures;
 - Designation of a tax matters partner (TMP);
 - Statutes related to TEFRA partnerships and their investors;
 - Field agent investor case procedures; and
 - Technical Services TEFRA and Pass-Through Coordinator duties.
- (3) **Audience:** Small Business/Self-Employed (SB/SE) and Large Business & International (LB&I) Field Examination Revenue Agents (RAs) and Technical Service employees working pass-through entities and/or their investors linked on the Pass-through Control System (PCS).
- (4) **Policy Owner:** LB&I Policy under the Strategy, Policy and Governance (SPG) office in the Assistant Deputy Commissioner Compliance Integration (ADCCI) organization and Director, Pass-Through Entities (PTE) own the field examination policies. The SB/SE Director, Examination Field and Campus Policy, who reports to the Director, Examination Headquarters, owns the Technical Services policies in this IRM.
- (5) **Program Owner:** Director, Pass-Through Entities (PTE), except for IRM 4.31.2.7, which is owned by Field Examination General Processes (FEGP), which is under the SB/SE Director, Examination Field and Campus Policy.
- (6) **Primary Stakeholders:** SB/SE, LB&I, and Appeals.
- (7) **Program Goals:** Establish an electronic linkage between the partnership being examined and its underlying partners in order to generate notices required by statute, monitor and control statutes, and gather closing information.
- (8) **Contact Information:** To recommend changes or to make any other suggestions to this IRM section, contact the IRM author or see SPDER's IMD Contacts list by referencing guidelines provided in IRM 1.11.6.5 , Providing Feedback About an IRM Section - Outside of Clearance. A request or inquiry can also be made using the *LB&I Policy Gateway*.

4.31.2.1.1
(04-10-2023)
Background

- (1) TEFRA was passed in 1982 to allow examinations and statutes to be controlled at the partnership level. This eliminated the need to control each individual partner statute. It also unified the litigation process whereby the tax matters partner or a notice partner may commence such litigation at the partnership level by filing a petition rather than each individual partner. The Pass-Through Control System (PCS), formerly Partnership Control System, was created to establish an electronic linkage between the partnerships and their underlying partners. This helps ensure partners, no matter how complex the partnership structure, are issued notices and adjusted in a timely manner. PCS linkage allows the campus to work the partners so examiners can focus on partnership examinations. PCS also allows the campus to systemically generate notices, control statutes, and gather closing information.

- (2) Section 1101 of the Bipartisan Budget Act (BBA) of 2015 repealed TEFRA partnership and electing large partnership (ELP) provisions beginning with tax years beginning 1/1/2018. BBA has replaced TEFRA and ELP with an entirely new partnership audit regime. The new regime provides for determination, assessment and collection of underpayments at the partnership level unless certain elections are made by the partnership.
- (3) Generally, all partnerships with tax years beginning 1/1/2018 will be subject to the BBA centralized partnership audit regime. Certain eligible partnerships may make an election out of the BBA regime. However, the law allows eligible partnerships with tax years that begin 11/3/2015 to 12/31/2017 to elect into the BBA regime when they are initially notified of selection for examination (early election). Temporary regulations (301.9100-22T) providing the time, form and manner for making the election were published on August 5, 2016 as Treasury Decision (TD) 9780. The final regulation 26 CFR 301.9100-22, was published on August 9, 2018 as T.D. 9839.
- (4) This IRM is still in effect for all TEFRA partnerships and remains in effect for partnership years beginning before January 1, 2018.

4.31.2.1.2
(04-10-2023)
Authority

- (1) TEFRA policy was established in response to the partnership provisions of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 and remains in effect for partnership years beginning before January 1, 2018 and filed on or after September 3, 1982.

4.31.2.1.3
(04-22-2025)
Roles and Responsibilities

- (1) The Director, Pass-Through Entities (PTE) Practice Area (PA) is responsible for the policies and procedures in this IRM section.
- (2) The Deputy Director, Pass-Through Entities Field Support, has responsibility for oversight of territories, led by program managers, comprised of groups of employees who provide servicewide technical and procedural support for examinations of pass-through entities.
- (3) Field territory managers, field area directors, Director over Large Business and International (LB&I) Ogden and Director, Examination - Brookhaven, are responsible for ensuring that TEFRA policies and procedures are followed.
- (4) Field examination managers are responsible for:
 - a. Ensuring the training of field exam revenue agents in TEFRA procedures;
 - b. Acting on PCS reports in a timely manner to protect TEFRA statutes and assure an accurate PCS database.
- (5) The Technical Services Pass-Through Coordinator (TSPC) works with:
 - The campus TEFRA coordinator(s)
 - Field examination revenue agents
 - Other campus functional areas to ensure timely processing of TEFRA related returns
 - Appeals TEFRA/BBA team (ATT)

4.31.2.1.4
(05-10-2019)
Program Management and Review

- (1) **Program Reports:** Each year an exam plan is created for partnership examinations.

- (2) **Program Effectiveness:** The exam plan is monitored to ensure the partnership examination objectives are met. Open examinations are monitored to ensure a TEFRA determination is made and that the TMP Notice of Beginning of Administrative Proceeding (NBAP) date is entered on Examination Returns Control System (ERCS).

4.31.2.1.5
(05-10-2019)
Program Controls

- (1) Technical Services Pass-Through Coordinators (TSPC) monitor a report to ensure TEFRA returns are identified in a timely manner. The Audit Inventory Management System (AIMS) provides a report for TEFRA one year statute dates, AMS 4940, that the field monitors to ensure field-controlled partner cases are worked timely.

4.31.2.1.6
(04-10-2023)
**Terms/Definitions/
Acronyms**

- (1) There are several terms unique to TEFRA. Examples of these words:

Word	Definition
AAR	Administrative Adjustment Request (AAR) - Notification to the IRS of any subsequent change by a TMP or partner, to the treatment of a partnership item. The AAR is filed by checking the appropriate boxes on Form 1065-X, Amended Partnership Return, or by submitting Form 8082 (partnership level), Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR), along with a claim for refund or an amended return. AAR procedures are in IRM 4.31.4.
AC Statute	AC is the alpha code used when a TEFRA partnership statute will be controlled at the partner level. This keeps the partnership from showing as an expired statute on statute reports. It also helps identify when the statute is being controlled at the partner level.
Affected Item	Any item that requires adjustment as a result of an adjustment made to a partnership item. There are two types of affected items: computational and factual. Factual affected items are those that require a determination at the partner level.
AIMS	Audit Information Management System (AIMS) provides inventory and activity controls of active Examination cases. It uses linkage to Integrated Data Retrieval System (IDRS) to input status changes, adjustments, and case closing actions.
BBA	Bipartisan Budget Act (BBA) of 2015. The centralized partnership audit regime affects all partnerships filed with tax years beginning on or after January 1, 2018.
Campus TEFRA Coordinator	Campus TEFRA Coordinator acts as a liaison between the CPF and the field offices, Appeals, and Counsel for TEFRA cases. They also provide technical support for the CPF.

Word	Definition
CC	Command Code (CC). A five-character command code (CC) must be entered with every IDRS screen transmission. The CC will indicate what function is to be performed.
CCP	Centralized Case Processing - This function processes assessments and abatements and closes or transfers cases from the area to the campus or to files.
CPF (Formally CTF)	Campus Pass-through Function (CPF) - The CPF is the suspense unit for investor returns located in the Brookhaven and Ogden campuses. The two CPFs will be maintained to obtain and control, through the AIMS and PCS, any partner, shareholder or investor returns related to key cases within their jurisdiction. For details see Campus Pass-through Function (CPF) IRM 4.31.3 and IRM 4.31.6.
EIN	Employer Identification Number (EIN).
ELP	Electing Large Partnership (ELP). An electing large partnership is a unique class of partnership established by the Taxpayer Relief Act of 1997 (TRA '97) for federal income tax reporting and auditing purposes only. Section 1101 of the Bipartisan Budget Act of 2015 (BBA) as amended by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) and sections 201 through 207 of the Tax Technical Corrections Act of 2018 (TTCA) repealed the electing large partnership provisions.
FPAA	Notice of Final Partnership Administrative Adjustment (FPAA) - The statutory notice of adjustments (as distinguished from a statutory notice of deficiency) in a partnership proceeding that is subject to judicial review, if a petition is filed under IRC 6226, in the Tax Court, the Court of Federal Claims, or the District Court of the United States where the partnership's principal place of business is located. Only partnership adjustments are identified. An FPAA may also include penalties the applicability of which is determined at the partnership level. FPAAs should only be issued by the Technical Services Pass-Through Coordinator (TSPC) or the CPF, and not field agents.
IAT	Integrated Automation Technologies (IAT). IAT provides tools to IRS employees that simplify research, reduce keystrokes and increase the accuracy of regular work processes. When used with IRS systems, it eliminates repetitive typing and assists in making precise decisions.

Word	Definition
ILSC	Investor Level Statute Control (ILSC). These are pass-through entities (Form 1120-S and Form 1065) where the assessment periods are controlled at the investor level. Proceedings involve investors in S corporations and partnerships that elect out of BBA (tax years beginning 01/01/2018) or that are not subject to the TEFRA rules or elected to be TEFRA (tax year beginning prior to 01/01/2018 or after 08/05/1997) or BBA (tax year beginning on or after 11/02/2015 and prior to 01/01/2018). See also Non-TEFRA definition.
Investor	Partner, Shareholder, or Beneficiary - An investor return that reflects pass-through items from a pass-through entity return, which is controlled (via PCS and AIMS). Examples of investor returns include, but are not limited to, Form 1040, Form 1041, Form 1120, Form 1120-S and Form 1065.
IRC	Internal Revenue Code (IRC).
Key Case	An examined pass-through return established on PCS. For TEFRA this is a Form 1065, U.S. Return of Partnership Income, which passes partnership results on pass-through items to its partners on Schedules K-1.
LB&I	Large Business and International (LB&I). Generally serves corporations, S corporations, and partnerships with assets greater than \$10 million.
LCC	Large Corporate Compliance (LCC) Program replaced Coordinated Industry Cases (CIC). In May 2019 the Large Business and International Division (LB&I) replaced the CIC program that covers compliance oversight for LB&I's largest corporate taxpayers.
LIN	LB&I Imaging Network (LIN) is a system used by LB&I to store images of returns.
Linkage	The electronic relationship between a pass-through entity and its investors on PCS.
NBAP	Notice of Beginning of Administrative Proceeding (NBAP) - The required notice sent at the start of the examination of a TEFRA partnership to the TMP and all notice partners which officially begins the examination of the partnership under a TEFRA proceedings. IRC 6223(a)(1) of 1982.

Word	Definition
NMF	Non-Master File (NMF) is a system of accounting which provides for not only outstanding liabilities but for all types of return and tax adjustment processing that cannot be processed on Master File (MF).
Non-TEFRA	Term used for partnership tax years beginning prior to January 1, 2018, that meet the small partnership exception of IRC 6231 and do not request a TEFRA election. Sometimes referred to as ILSC. See ILSC definition.
Notice Partner	Every direct partner in a partnership under examination is a notice partner unless that partnership has more than 100 partners. When there are more than 100 partners, only partners with ownership of 1% or more than 1% and those partners with less than 1% that form a 5% notice group are notice partners. Those partners with less than 1%, and are not part of a notice group, are non-notice partners.
OYD	One-Year Date (OYD). This is a statute date applicable to TEFRA partnerships. Adjustments to the partner returns must be made within one year of a final partnership determination that finalizes the key case adjustments.
PCS	Pass-through Control System (PCS) (formerly, Partnership Control System) - Database used to establish an electronic linkage between a key case pass-through entity and its underlying investors. The database is used to manage inventory, systemically generate notices, and control statutes.
RA	Revenue Agent (RA).
Record	Information stored on the PCS database for a key case or an investor.
SB/SE	Small Business and Self-Employed (SB/SE). Generally serves taxpayers who file Form 1040, Schedules C, E, F or Form 2106, as well as small businesses with assets under \$10 million.
SNOD	Statutory Notice of Deficiency (SNOD). A notice of deficiency, also called a "statutory notice of deficiency" or "90 day letter," is a legal notice in which the Commissioner determines the taxpayer's tax deficiency.

Word	Definition
TIN	A taxpayer identification number (TIN) is a nine-digit identification number required on all documents. The TIN can be either a social security number (SSN) or an employer identification number (EIN).
TMP	Tax Matters Partner (TMP) - The TMP is the partner designated to represent the partnership in all TEFRA proceedings before the IRS and the courts.
TS	Technical Services (TS) is the field review staff.
TSPC	The Technical Services Pass-through Coordinator (TSPC) in Technical Services acts as a liaison between the Field Exam RAs and the CPFs for both TEFRA and linked ILSC cases. The Field Exam RA can locate their TSPC on the Partnership Knowledge Base, TEFRA Overview, Other Related Resources.
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982. (TEFRA)
Tier	A pass-through entity that is a partner of a pass-through entity. An S corporation would be a tier partner of a partnership.
60 Day Letter	Contains Letter 1827 or Letter 1829 sent to the TMP and notice partners proposing adjustments to partnership items, notifying them of their right to file a protest to Appeals, the schedule of adjustments, and an agreement Form 870-PT or a Form 870-LT. 60 day letters should only be issued by the TSPC or the CPF, and not field agents.

4.31.2.1.7
(04-10-2023)

Related Resources

- (1) The following IRM cross-references may be helpful:
 - a. IRM 4.31 , Pass-Through Entities
 - b. IRM 4.4, Audit Information Management System (AIMS) - Validity and Consistency
 - c. IRM 8.19, Appeals Pass-Through Entity Handbook
 - d. IRM 25.6.23, Statute of Limitations, Examination Process-Assessment Statute of Limitations Controls

4.31.2.2
(05-10-2019)
Beginning the Exam

- (1) This section explains the field TEFRA and ELP procedures necessary for working a TEFRA or ELP key case entity and the related partners for partnership tax years beginning on or before December 31, 2017. These procedures include how to identify a TEFRA entity, their TMP, and the TEFRA statute, as well as the notices required to be sent to TEFRA partnerships and partners. The duties of the TSPC are also outlined. The Internal Revenue Code (IRC)

references in this IRM are reflective of the TEFRA law, and not the BBA law passed in 2015 that used the same code sections (6221 through 6248).

4.31.2.2.1
(04-10-2023)

**Determine if a
Partnership is TEFRA or
Non-TEFRA**

- (1) Identification of returns as TEFRA is necessary to have a valid assessment of tax, because the TEFRA partnership rules and the deficiency procedures are mutually exclusive. If the IRS applies the wrong procedures, e.g., erroneously proceeds at the partnership level rather than at the partner level, or vice versa, barred deficiencies and/or refunds can result. See IRM 4.31.2.2.7, Making a Reasonable Determination of Whether the Partnership is Subject to the TEFRA Procedures, for an explanation of a reasonable determination of whether TEFRA or ILSC procedures apply. Throughout this IRM the term “non-TEFRA” refers to partnership determinations that are **not** TEFRA. Investor Level Statute Controls (ILSC) are the procedures used for partnership returns that meet the small partnership exception and do not elect TEFRA treatment for tax years prior to January 1, 2018 and after August 5, 1997. ILSC procedures are found in IRM 4.31.5.
- (2) TEFRA is applicable for partnership tax years beginning prior to January 1, 2018. Tax years beginning January 1, 2018 or later are subject to Bipartisan Budget Act (BBA) of 2015. See IRM 4.31.9, Centralized Partnership Audit Regime (BBA) Field Examination Procedures unless an election out of BBA is made under IRC 6221(b).
- (3) The examiner must determine, for each taxable year, whether TEFRA procedures apply. Comments on Form 4318, Examination Workpapers Index, or Form 5606, Workpapers Cover Sheet, are required from the examiner as to whether the return is TEFRA or ILSC, and the reasons supporting this conclusion. The TEFRA determination needs to be recorded on the Form 15260, Determination of Pass-through Audit Regime, must be completed to ensure the correct regime is used. The Form 13813, TEFRA Partnership Procedures Check Sheet, is required for all TEFRA examinations.

4.31.2.2.2
(04-10-2023)

**Identification of TEFRA
Partnerships**

- (1) IRC 6231(a)(1) provides that TEFRA rules apply to all partnerships required to file information returns under IRC 6031(a) whose tax years begin on or after 9-3-1982 and before 1-1-2018, except:
 - a. Partnerships meeting the small partnership exception; and
 - b. Partnerships electing out of partnership status pursuant to IRC 761(a). See IRM 4.31.2.3.17, Procedures for Certain Conversions Involving Partnerships.
- (2) The small partnership exception applies to partnerships consisting of 10 or fewer partners, each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner.
- (3) A foreign corporation generally will be considered a C corporation for purposes of making a TEFRA/non-TEFRA determination. This includes a partner who files a Form 1120-F. However, because the foreign corporation filing an Form 1120-F could file Form 8832, Entity Classification Election, electing to be treated as a disregarded entity (DE).

Note: The above definition applies to partnership tax years ending after August 5, 1997 and beginning prior to January 1, 2018.

- (4) The Form 15260, Determination of Pass-through Audit Regime, is used to make the proper TEFRA determination.
- (5) Therefore, if at any time during the tax year there are more than 10 partners or if any of the following entities or persons are partners, then the partnership is not a small partnership and is subject to TEFRA procedures:
 - Another partnership.
 - A Limited Liability Company (LLC) which files as a partnership or is treated as a single member LLC disregarded for federal tax purposes.
 - Any type of trust, even a grantor trust.
 - A nominee.
 - A nonresident alien individual.
 - An S corporation.

Note: If the Schedule K-1 has LLC in the name, further investigation should be done to see if the partner is a DE.

- (6) The Master File transcript, Command Code (CC) MFTRA and CFOL CC BMFOL "E" has a TEFRA indicator included that was to be utilized in determining if a partnership was covered by the TEFRA procedures. This TEFRA indicator is not accurate and should not be relied on in determining whether or not a partnership is TEFRA.

4.31.2.2.3
(04-20-2017)
**Election to be Covered
by the TEFRA
Procedures -
Partnership Tax Years
Beginning on or after
January 1, 2004.**

- (1) A partnership eligible to be excluded from the TEFRA proceedings under the small partnership exception rules may elect to be covered by the TEFRA procedures. See IRC 6231(a)(1)(B)(ii) of 2002.
- (2) The requirements for making the election to be covered by the TEFRA procedures are explained in 26 CFR 301.6231(a)(1)-1(b)(2). A Form 8893, Election of Partnership Level Tax Treatment, is available for taxpayers who wish to make this election. This form standardizes the statement required in the Regulations.
- (3) If a partnership makes the election to be covered by the TEFRA procedures, it is binding for the partnership taxable year to which the return relates and all subsequent partnership taxable years unless revoked with IRS consent. It is important to note that when a TEFRA election is revoked, all years the TEFRA election was in effect remain TEFRA.

Note: There is no definitive answer or guidance on whether or not a technical termination under IRC 708 terminates a TEFRA election under IRC 6231(a)(1)(B)(ii) of 2002. If the TEFRA key case entity under examination has made a TEFRA election, you should contact your local Area Counsel for advice. Generally, a TEFRA election may only be revoked with the consent of the Commissioner. Contact counsel should you encounter this situation.

- (4) For years 2004-2007 Form 1065, Schedule B, Question 4 was changed to inquire as to whether the partnership filed a TEFRA election or Form 8893 which is used to make the TEFRA election. For years 2008 through 2017, Form 1065, Schedule B, Question 5 inquires whether the partnership filed a TEFRA election or Form 8893. If the partnership answers yes to this question, the return is flagged Audit Code 4.

Note: Checking a box is not sufficient for the return to be treated as TEFRA. The agent needs to secure a copy of the election or Form 8893.

- (5) A partnership may revoke a previously filed election with IRS consent. Form 8894, Request to Revoke Partnership Level Tax Treatment Election, is to be used by a partnership requesting that its prior TEFRA election be revoked. The instructions on this form require the partnership to file the revocation at the Ogden campus.

4.31.2.2.4
(04-20-2017)
**Election to be Covered
by the TEFRA
Procedures -
Partnership Tax Years
Beginning Before
January 1, 2004.**

- (1) A partnership eligible to be excluded from the TEFRA proceedings under the small partnership exception rules may elect to be covered by the TEFRA procedures. See IRC 6231(a)(1)(B) of 2002.
- (2) If a partnership makes the election to be covered by the TEFRA procedures, it is binding for the partnership taxable year to which the return relates and all subsequent partnership taxable years unless revoked with IRS consent.
- (3) The election is filed with the partnership return for the year the election is made.
- (4) Currently there is no requirement that the partnership file a copy of the election to be covered by the TEFRA procedures with each subsequent year's partnership tax return. The examiner will inquire if an election was made in any prior year. If the partnership responds it has not made an election, it should be so noted in the examination workpapers.

Note: There is no definitive answer or guidance on whether or not a technical termination under IRC 708 terminates a TEFRA election under IRC 6231(a)(1)(B)(ii) of 2002. If the TEFRA key case entity under examination has made a TEFRA election, you should contact your local Area Counsel for advice. Generally, a TEFRA election may only be revoked with the consent of the Commissioner. Contact counsel should you encounter this situation.

- (5) If the partnership has filed an election to have the TEFRA procedures apply, secure a copy of the election to determine if the election meets the requirements of the regulations. If the election is correct, staple the copy to the back of the front page of the partnership return. If the election is not correct, consult with the TSPC to determine if the election is valid as filed or what further action should be taken.

Note: Provide a copy of the election with the linkage package that will be sent to the campus. If the election is not provided, there may be some confusion as to the partnership's TEFRA status.

- (6) The requirements for making the election to have the TEFRA procedures apply are as follows (See 26 CFR 301.6231(a)(1)-1(b)(2)):
 - a. The statement making the election should be attached to the partnership return for the first taxable year for which the election is to be effective.
 - b. The statement should include the name and the employer's identifying number (EIN) of the partnership.
 - c. The statement should say the partnership elects to be covered by IRC Sections 6221 through 6234 for the tax year ending 12/31/XX and all subsequent years. (If the partnership has a year-end other than 12/31 (a fiscal year-end), then that year end would be used instead of 12/31/XX).

- d. The statement shall be identified as an election under IRC 6231(a)(1)(B)(ii) of 2002, shall be signed by all persons who were partners of that partnership at any time during the partnership taxable year to which the return relates, and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing the partnership return.
- e. For any partnership taxable year for which the due date of the return (determined without regard to extensions) is before January 2, 2002, the partnership may file the statement described in (d) on or before the date which is one year before the date specified in IRC 6229(a) for the expiration of the period of limitations with respect to that partnership (determined with regard to extensions of that period under IRC 6229(b)).

4.31.2.2.5
(06-20-2013)

**Form 1065, Schedule B
TEFRA Checkbox**

- (1) For tax years 2004 - 2007, Schedule B, question (4) inquired as to the partnerships intent to file a TEFRA election and attach the Form 8893 to the return. For tax years after 2008 and prior to January 1, 2018, this inquiry appears in Schedule B, Question (5).
- (2) For tax years before 2004, there were no questions about an election. Schedule B, Question 4 asked if the partnership was subject to TEFRA. The TMP may think the partnership can elect to have the TEFRA procedures apply to the partnership by checking "yes" in response to the question on Schedule B and/or designating a TMP. However, this is not a valid election meeting the requirements of the regulations.
- (3) The examiner needs to check to see if the partnership made an election, or if the partnership is subject to TEFRA by statute.
- (4) Chief Counsel's position is that checking "yes" in response to question (4) on the Form 1065, Schedule B, for partnership tax years 2004 - 2007, and Question (5) on the Form 1065, Schedule B for partnership tax years 2008 through 2017, and/or designating a TMP in the space provided on the Form 1065, do not constitute an election to have the TEFRA procedures apply. The directions for completing the partnership return also state answering "yes" to this question does not constitute an election into TEFRA.

Note: However, if the partnership appears to qualify for the small partnership exception, this may be an indication the partnership has previously elected to have the TEFRA procedures apply. The examiner should determine if the partnership filed an election to have the TEFRA procedures apply. If so, then follow the procedural instructions in IRM 4.31.2.2.3, Election to be Covered by the TEFRA Procedures - Partnership Tax Years Beginning on or after January 1, 2004, above.

4.31.2.2.6
(10-01-2010)

**Determining and
Identifying the Number
of Partners**

- (1) If at any time during the taxable year the number of partners exceeds the small partnership exception, the partnership will be subject to the TEFRA provisions.
- (2) A partnership may have more than 10 partners during the year, and still meet the small partnership exception, because the partnership never had more than 10 partners at any point in time. Sales of partnership interests will cause more than 10 Schedules K-1 to be filed, but there may never be more than 10 partners at any point in time for the small partnership exception to apply.

- (3) The small partnership exception does not apply to a partnership for the taxable year if any partner in the partnership during the taxable year is a pass-through partner. See 26 CFR 301.6231(a)(1)-1(a)(2). A partnership consisting of three partners, two individuals and a partnership or S corporation, will not meet the small partnership exception.
 - a. A grantor trust is a pass-through partner even though the trust is not required to file a return.
 - b. A limited liability company (LLC) may be a pass-through entity. See IRM 4.31.2.3.22.1, LLCs that are disregarded entities, for information on determining if the LLC is a pass-through entity.
 - c. LLCs that are disregarded entities may be treated as pass-through entities when applying the small partnership exception. See Rev. Rul. 2004-88. Consult with the TSPC on any questions.
- (4) IRC 6231(a)(1)(B)(i) of 2002 provides that for the purposes of the small partnership exception “a husband and wife (and their estates) shall be treated as 1 partner”. This provision is unqualified and thus should apply to a husband and wife regardless of the manner in which they hold their interests or file their returns. A grantor trust is counted as a partner in its own right.
- (5) In general, an estate must file a return if the estate is not closed within one year. An estate may take several years to finalize and close. The estate will file a Form 1041, U.S. Income Tax Return for Estates and Trusts. IDRS research should be utilized to determine how long the estate has filed returns. To apply the small partnership exception, the examiner will have to determine if the estate is simply filing the returns while the estate is being closed out, or if a trust was established by the estate.

Note: It is recommended that an INOLE be requested to determine the nature of the entity filing the Form 1041. For example, XYZ Trust or Estate of Mr. X.

- (6) A partner must have a proprietary interest in profits or capital. Therefore, if a Schedule K-1 does not indicate an ownership interest, does not show a distribution of any partnership items, and does not show a capital account balance, the person in question may not be a partner for the taxable year involved. Consult Area Counsel about Federal law to determine if the partner is really a partner.

4.31.2.2.6.1
(04-20-2017)

**Master Limited
Partnerships (MLPs)**

- (1) Master Limited Partnerships (MLPs) are large, widely-held limited partnerships whose interests are not necessarily publicly traded.
- (2) In general, the TEFRA procedures apply to MLPs. The TEFRA audit procedures do not apply to an MLP that is treated as a corporation, under the publicly traded partnership rules. See IRC 7704.
- (3) MLPs pose a major compliance problem for the IRS since the interests are often held by several thousand partners who are considered partners for purposes of the TEFRA procedures even though they own a very small interest. IRS has encountered difficulties in determining and assessing tax liabilities and collecting deficiencies from partners in a cost effective manner since the IRS must control individual returns, make a computational adjustment, and issue a notice and demand for payment to each partner.

Note: If planning on auditing an MLP, contact the TSPC to discuss an audit strategy. Special provisions can be arranged to limit the number of partners that are linked. These arrangements need to be coordinated with the Headquarters Analyst and the key case campus.

- (4) With very large MLPs, the campus will only link the notice partners unless advised otherwise by the field. This will prevent the securing of returns on which any partnership adjustment will have little effect.
- (5) The campus may delay linkage beyond the notice partners until firm adjustments are identified.
- (6) Amendments to the code have been made allowing MLPs to elect to be treated as "Electing Large Partnerships", which will enable the IRS to assess final tax determinations against partners of MLPs in an efficient manner.

4.31.2.2.6.2
(04-10-2023)
**Electing Large
Partnerships (ELPs)**

- (1) In general,
 - a. An ELP is a unique class of partnership established by the Taxpayer Relief Act of 1997 (TRA '97) for federal income tax reporting and auditing purposes only. The ELP was eliminated with the Bipartisan Budget Act (BBA) of 2015.
 - b. TRA '97 added IRC Sections 771 through 777, 6241 through 6242, 6245 through 6248, 6251 through 6252, and 6255 on ELPs.
 - c. Designation as an ELP does not have an impact beyond the scope of federal taxation.
 - d. Currently, the only guidance regarding ELPs is the statutory language and the committee reports.
 - e. The ELP rules apply to tier returns as well as the key cases under examinations.
- (2) Definition of an ELP.
 - a. The definition of an ELP is in IRC 775.
 - b. To qualify to make an election to be treated as an ELP, the partnership must have had a minimum of 100 persons who were partners in the preceding partnership taxable year.
 - c. A partnership will cease to be an ELP for any partnership taxable year if in such taxable year fewer than 100 persons were partners in the partnership.
 - d. Some partners are not counted for certain service partnerships. Individuals performing substantial services (or who formerly performed substantial services) for the partnership are not counted for purposes of determining the number of partners. See IRC 775(b)
- (3) Election required to be treated as an ELP.
 - a. The partnership must elect to be treated as an ELP. Based on the instructions for filing a Form 1065, a partnership elects to be an ELP by filing Form 1065-B, U.S. Return of Income for Electing Large Partnerships.
 - b. If no election is made, but the Form 1065 treats the entity as an ELP, the treatment on the partnership return is binding on the partnership and its partners, but not the IRS.
 - c. Once the election is made, it can only be revoked with IRS consent.

- (4) Certain partnerships are excluded from electing to be covered by the ELP rules. They are:
 - a. Any partnership where the principal activity is the buying and selling of commodities (not described in IRC 1221(a)(1)), or options, futures, or forwards with respect to such commodities (commodity pools.)
 - b. Partnerships in which substantially all of the partners provide (or formerly provided) substantial services to the partnership.
- (5) Simplified pass-through to the partners.
 - a. Generally the pass-through of partnership items will be simplified, with the partnership reporting net figures to the partners in a simplified format.
 - b. Each partner will take into account separately the partner's distributive share of certain enumerated items. See IRC 772(a)
 - c. Taxable income of the partnership generally is computed in the same way.
 - d. Limitations on deductions, credits, or losses generally are applied at the partnership level.
 - e. The characterization of partnership items is determined as if realized directly by the partner under rules similar to those in IRC 702(b).
 - f. Partners will receive a simplified Schedule K-1 (similar to the Form W-2 currently received by wage earners).
- (6) Treatment of partnership items and adjustments.
 - a. The treatment of items at the partnership level is controlling, both at the time of the filing of the return as well as when adjustments are made.
 - b. Unlike the general TEFRA rules, with an ELP, there is no computational adjustment of partnership items made to the returns of the partners.
 - c. Adjustments pass-through to the partners in the year the adjustments are made.
 - d. ELPs are governed by the audit procedures contained in IRC 6240 through 6255.
 - e. The return of a partner in an ELP must be consistent with the return of the partnership, without exception (and regardless of disclosure). If a partner fails to file a consistent return, then any underpayment resulting from an inconsistency between the partnership's return and partner's return can be assessed as a math error adjustment. The disregard of the consistent filing requirement may subject the partner to penalties.
 - f. Adjustments to any partnership items are given effect in the year in which the adjustments are made, not the tax year to which the adjustments relate. As a result partnership adjustments pass-through to the partners who own an interest in the partnership in the year that the adjustment takes place. Any intervening, offsetting adjustment is taken into account when determining the final adjustment that is passed through to the partner.

Example: If a partnership claimed an expense of \$1,000 in year 1, and it was determined in year 4 that the item should have been amortized ratably over 10 years, the adjustment in year 4 would be \$700 (exclusive of any interest or penalties.) The adjustment would consist of the \$1,000 disallowed deduction in year 1 plus an offset of \$300 of additional amortization deductions for years one through three. The partners who own interests in the partnership in year 4 would be required to

include their share of a net adjustment of \$700 into income in year 4. The partnership would then be permitted to amortize the remaining \$700 of expenses in years 4 through 10.

- (7) Computing imputed underpayment.
 - a. If adjustments are made to any partnership items, an imputed underpayment is calculated by taking into account all partnership adjustments and multiplying the net increase in taxable income by the highest marginal tax rate in effect (corporate or individual).
 - b. Any adjustments to tax credits are also taken into account when computing the imputed underpayment.
- (8) Partnership may be liable for imputed underpayment.
 - a. A partnership may elect to pay the imputed underpayment rather than pass adjustments through to the partners.
 - b. If a partnership does not elect to pay the imputed underpayment and fails to pass adjustments through to the partners, the partnership will be liable for the imputed underpayment.
 - c. If a partnership adjustment results in a reduction of a tax credit and the credit in the year of the adjustment is not sufficient to offset the adjustment, the partnership must pay an imputed underpayment relating to the credit.
- (9) Partnership liable for interest and penalties.
 - a. If interest, penalties, or any other addition to tax applies, the partnership is liable for such amount, computed as if the partnership were a taxable individual.
 - b. Both the statutory language and the Conference Report expressly state that any payment relating to federal income taxes, interest, or penalties that is made by the partnership is non-deductible.
- (10) Partnership level adjustments.
 - a. Generally, the limitations period for making adjustments to ELPs (and for petitioning for a re-determination of such adjustments) are very similar to the TEFRA rules.
 - b. The partner with authority controls the procedures and there is no requirement for keeping other partners informed of the partnership proceedings.
 - c. The Secretary may issue a notice of partnership adjustment to a partnership by mailing such notice to the last known address of the partnership.
 - d. Adjustments must be made to partnership items within three years of the later of the date of filing of the partnership return or the due date for filing the partnership return. The mailing of a notice of partnership adjustment suspends the running of this period and extends the period for one additional year after proceedings are complete.
 - e. Within 90 days of the issuance of a notice of partnership adjustment, the partnership may file a petition for re-adjustment with the Tax Court, the United States District Court for the district in which the partnership's principal place of business is located, or the United States Court of Federal Claims. (Before filing a petition for re-adjustment with a district court or the Court of Federal Claims, the amount asserted in the notice of partnership adjustment must be deposited with the Secretary.)

- (11) If the partnership ceases to exist before an adjustment is to take effect, that adjustment will be passed through to the underlying partners.
- (12) Requests for administrative adjustment.
 - a. A partnership may request administrative adjustment of partnership items within three years of the later of the date of filing of the partnership return or the due date for filing the partnership return. The request for administrative adjustment also must be made prior to the mailing of a notice of partnership adjustment.
 - b. If an administrative adjustment is not allowed, the partnership may petition the Tax Court, the United States District Court for the district in which the partnership's principal place of business is located, or the United States Court of Federal Claims for adjustment. Such petition must be filed more than six months and less than two years after the request for administrative adjustment.
- (13) The partner with authority.
 - a. The partner with authority is given a broader ability to bind the partnership and partners for an ELP.
 - b. The partner with authority is the single point of contact for the IRS. For example, generally, only the partner with authority must be notified of partnership proceedings and there is no obligation for the partner with authority to keep partners apprised of any partnership proceeding.
 - c. The partnership must designate a partner with authority. If the partnership fails to designate a partner with authority, the Secretary may designate any partner to serve as the partner with authority.
 - d. The partner with authority has the sole authority to act on behalf of the partnership.
 - e. The partnership and all of the partners are bound by any actions that are taken by the partner with authority that fall within the scope of the ELP regulations.

4.31.2.2.6.3
(04-10-2023)
**Determining the Number
of Indirect Partners**

- (1) The agent should try to determine the number of indirect partners involved in their partnership. Those direct partnership partners may have other partnerships as partners (indirect partners), which can expand the ultimate number of partners greatly. A large number of indirect partners will dilute any partnership adjustment.
- (2) The agent should use yK1 data, if available, to determine the overall size of the partnership before making the determination of whether to proceed with the examination. Please consult with your technical advisor or TSPC with questions regarding yK1.

4.31.2.2.7
(04-10-2023)
**Making a Reasonable
Determination of
Whether the Partnership
is Subject to the TEFRA
Procedures**

- (1) IRC 6231(g) of 2002 was added by TRA 1997.
- (2) If, on the basis of a partnership return for a taxable year, the IRS reasonably determines that the TEFRA procedures apply to the partnership for the tax year under examination but the determination is erroneous, then the TEFRA procedures will be extended to the partnership (and its items) and to partners of the partnership for the taxable year under examination. See IRC 6231(g)(1) of 2002.

- (3) If, on the basis of a partnership return for a taxable year, the IRS reasonably determines that the TEFRA procedures do not apply to the partnership for the tax year under examination but the determination is erroneous, then the TEFRA procedures shall not apply to the partnership (and its items) for the taxable year under examination or to the partners of the partnership. See IRC 6231(g)(2) of 2002.

Note: If you encounter item (2) or (3) above, local Counsel should be consulted.

- (4) IRC 6231(g) of 2002 should generally be relied upon when statute limitations prevent changing the audit procedures (changing from TEFRA procedures to ILSC procedures, or vice versa). If the statute allows, then the examiner should switch audit procedures based upon the new determination.

4.31.2.2.8
(04-10-2023)

Key Cases Controlled as Both TEFRA and Non-TEFRA

- (1) There are occasions where both the TEFRA and non-TEFRA statute must be protected. These key cases are controlled as both TEFRA and non-TEFRA. This is done when it is unclear whether a key case is TEFRA or non-TEFRA to protect the government's interest.
- (2) When a key case is controlled as both TEFRA and non-TEFRA, both sets of procedures must be followed. See IRM 4.31.2.3.9.2.1, TEFRA Linkage, and IRM 4.31.5.12.3, Linking the Key Case and Investors on PCS. This ensures that both the TEFRA and ILSC functions in the campus are aware of the dual controls on these key cases.
- (3) For dual status cases, both the TEFRA and non-TEFRA statutes need to be protected. The non-TEFRA statute is controlled at the investor level, and should be extended using Form 872, Consent to Extend the Time to Assess Tax, if needed.
- (4) If both procedures must be followed coordination is necessary with the TSPC and campus TEFRA coordinator.

4.31.2.2.9
(04-20-2017)

Contact with Potentially Dangerous Taxpayers (PDT) or Caution Upon Contact (CAU) Taxpayers

- (1) If you need to contact a taxpayer designated as a potentially dangerous taxpayer (PDT) or caution upon contact (CAU), please refer to IRM 25.4, Employee Protection, for the most current guidance.

4.31.2.3
(06-01-2004)

Field Agent Key Case Procedures

- (1) The following subsections explain the key case procedures as they relate to the field.

4.31.2.3.1
(04-10-2023)

Initiating Timely Examination of Key Case Returns

- (1) The Letter 2205-D, Initial Contact to Schedule Appointment, must be mailed to the partnership as the initial contact with all partnership examinations. The initial contact letter is provided to all partnerships. For tax years beginning after November 2, 2015, the partnership has an opportunity to file an early election into BBA.
- (2) Before initiating a TEFRA key case examination, the time frames and procedures outlined in Exhibit 4.31.2-2, TEFRA Pass-Through Examination Time

Chart, and Exhibit 4.31.2-3, TEFRA Key Case Procedures, must be carefully reviewed. Unless sufficient time remains on the TEFRA key case statute of limitations, i.e., the IRC 6229(a) statute, the examination will not be started. At least one year is considered sufficient time.

- (3) If there are less than 12 months remaining on the TEFRA key case statute of limitations, approval is required from the area director (SB/SE) or the director of field operations (LB&I) to start an examination of the key case. Refer and use the *short statute memorandum* to secure approval.

Note: The issuance of an NBAP to the TMP of the partnership is the only way to initiate a TEFRA examination. The mailing of an appointment letter does not start a TEFRA examination. There must be at least 12 months remaining on the statute of limitations for the key case when the examination is started. If the date on the NBAP to the TMP is less than 12 months, a memorandum from the appropriate Division Executive (i.e., either the SB/SE area director or the LB&I director of field operations) authorizing the beginning of the examination with less than 12 months left on the statute of the key case is required.

- a. The memorandum of approval must identify the key case entity and contain the original signature (facsimile stamp is not acceptable) of the area director (SB/SE) or director of field operations (LB&I). The circumstances surrounding the late start of the examination will be stated. The explanation should state why it is beneficial to the government to initiate an examination (For example, compliance purposes or large, unusual or questionable deductions).
- b. The memorandum should be written to the area director (SB/SE) or director of field operations (LB&I) from the territory manager.
- c. Additional approval is not required to start the examination of a second-tier pass-through entity where the examination is limited to making adjustments stemming from the examination of the first-tier pass-through entity; however, approval would be required for the second-tier pass-through entity where another issue (i.e., a partnership item and/or affected item that requires a partnership level determination) is examined.

A TEFRA examination can be initiated with less than twelve (12) months remaining, if the following conditions are met:

- a. If area director (SB/SE) or director of field operations (LB&I) approval is obtained with less than 12 months remaining on the TEFRA key case statute of limitations, the key case examiner is required to maintain close coordination with the CPF to ensure all statutory requirements are met.
- b. If a case is opened and there is less than 7 months remaining on the TEFRA key case statute of limitations before a valid linkage package is sent to the campus, the case must be established and controlled in the field. The key case examiner is responsible for:

If less than 7 months remain on the partnership statute:

- Contacting and coordinating with their TSPC and the CPF;
- Coordination with the review function to ensure that there is timely issuance of all notices;
- Manual linkage on PCS using Form 6658, Notice of Special Investor Action;
- Protection of all statutes for the key case and the investors; and
- Match Schedules K-1 to all direct and indirect partner returns.

- (4) If the TEFRA procedures or the TEFRA linkage is not timely initiated (before there is less than seven months on the statute), as required above, then the examiner assumes all of the responsibilities of the CPF including administrative functions, issuances of all notices, the recognition of and the actions required within the proper time frames and the proper resolution of all of the related investor cases. In this event, the TSPC should be contacted immediately to determine appropriate action.
- (5) Once all the returns are secured by the field, the statute is extended, and all administrative work is current, the agent should consult with the campus regarding the subsequent transfer of the cases to campus control.
- (6) PCS linkage is mandatory for all TEFRA partnership examinations.
 - a. **In general**, requests for PCS linkage packages must be submitted by the examiner to the CPF within 120 days of the NBAP being issued at the partnership level.

Exception: Linkage packages can be submitted sooner than 120 days if potential adjustments have already been identified. (Refer to IRM 4.31.2.3.9.1, No-Change within 45 days). In these instances, potential adjustments must be clearly reflected on the PCS linkage request check sheet, or the package may be delayed or rejected.
 - b. In order to deviate from the mandatory linkage requirement, the agent's director of field operations or area director must get agreement from the Technical Services territory manager.
- (7) The campus may delay linkage beyond the notice partners until firm adjustments are identified.

4.31.2.3.1.1
(04-20-2017)
**TEFRA and Fast Track
Settlement Programs**

- (1) LB&I and SB/SE have separate Fast Track Settlement programs. It is important to note that LB&I TEFRA partnerships and LLCs can qualify for LB&I FTS; however, SB/SE TEFRA partnerships are excluded from the SB/SE Fast Track Settlement program.
- (2) The LB&I/Appeals Fast Track Settlement Program (FTS) provides an administrative procedure to resolve unagreed audit issues while the case is still open in the field. FTS uses the assistance of Appeals while LB&I field personnel retain jurisdiction of the case. FTS can save time and resources of both the taxpayer and the IRS. The LB&I team manager must consider using FTS on all unagreed issues.

- (3) For qualifying LB&I TEFRA key case examinations, it is important to note that the TMP and all notice partners that have not agreed to the proposed audit issues must request settlement under the LB&I FTS program. And all affected notice partners, including the TMP, must agree to the fast track settlement or the TEFRA key case remains unagreed.
- (4) Detailed information on Fast Track can be found on the LB&I/Appeals Fast Track Settlement Program (FTS) web page and IRM 4.51.4, LB&I Case Management- LB&I/Appeals Fast Track Settlement (FTS) Program.

4.31.2.3.2
(04-10-2023)

**Delinquent Return and
Substitute for Return
(SFR) Procedures**

- (1) Delinquent return procedures are used when the partnership files a return which is past the due date for filing including extensions to file. SFR procedures are used when the partnership fails to file a return when a return is due.

Note: IRM 4.4.9, Audit Information Management System (AIMS) - Validity and Consistency - Delinquent and Substitute for Return Processing, discusses 2 types of scenarios for delinquent returns: 1)IRM 4.4.9.4, Delinquent Return Secured - No TC 150 Posted, and 2) IRM 4.4.9.6 , Delinquent Return Received After SFR TC 150 Posted at MF.

- (2) For delinquent return and nonfiler cases, confirm the entity exists on Master File. If the entity exists and there is a filing requirement, ensure it is consistent with the return filed or due.

4.31.2.3.2.1
(04-20-2017)

**Delinquent Return
Procedures- Form 1065 /
Form 8804 / Form 1042
(No TC 150 SFR)**

- (1) All secured delinquent returns are to be reviewed for audit potential. This section provides additional TEFRA guidance to process a TEFRA delinquent return filed during the audit. Refer to IRM 4.4.9.4, Delinquent Return Secured - No TC 150 Posted, for general procedures.
 - a. Establish AIMS controls through ERCS using Push Code 020, Delinquent Return Secured by Exam. This should be done as soon as a return is secured or time is first applied, whichever is earlier. Refer to IRM 4.4.9.3, Establishing AIMS/ERCS Controls.
 - b. Verify if the return is signed by a general partner or member-manager.
 - c. If Form 8804, Annual Return for a Partnership Withholding Tax (Section 1446) or Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, is secured and accepted as filed, the agent should examine the related partnership and secure Form 870-LT, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts and Agreement for Affected Items, from the partnership. See IRM 4.31.2.3.19, Foreign Withholding Tax, for additional guidance.
 - d. Attach Form 13133, Expedite Processing Cycle, to the front of each original delinquent return being submitted. IRM 4.4.9.4, Delinquent Return Secured - No TC 150 Posted. Check the box for Delinquent Return. Statute IRC 6229 only applies to TEFRA partnerships. If the normal assessment statute expiration date (ASED) would have expired or is within 3 months of expiring, had the return been timely filed, place an **X** on the Form 13133 in the box to the left of the **W - Bypass Submissions Processing Statute Unit** for BMF. Refer to IRM 4.4.9, Audit Information Management System (AIMS) - Validity and Consistency - Delinquent and Substitute for Return Processing, for additional instructions.
 - e. If audit issues are proposed from the delinquent return, follow normal TEFRA procedures to close the case agreed or unagreed.

- f. If the delinquent Form 1065 is accepted as filed, close the case as no change for the issuance of a no change Final Partnership Administrative Adjustment (FPAA).
- g. Dual procedures are necessary when a delinquent Form 8804 or Form 1042 is filed and the case is unagreed. In this instance, it is necessary for the examiner to follow TEFRA procedures as well as regular examination procedures. In addition to following the TEFRA report writing procedures discussed, examination must also issue a 30-day letter or statutory notice of deficiency (SNOD). See IRM 4.31.2.3.19, Foreign Withholding Tax, for additional guidance.

Note: The TSPC will issue the appropriate closing letter after reviewing the case.

- h. The agent should also conduct a related return package audit verifying the partner(s) correctly reported the partnership income from the delinquent partnership return.

4.31.2.3.2.2
(04-10-2023)
**Substitute for Return
(SFR)**

- (1) A substitute for return is prepared when the return due date and extended due date have passed and all efforts have been exhausted to secure a return from the partnership. The following instructions provide guidance to establish a substitute for return under the following scenarios for Form 1065, Form 8804 and Form 1042. See IRM 4.4.9.5 , SFR.

- a. Refer to IRM 4.4.6, Audit Information Management System (AIMS) - Validity and Consistency - Conversion of Returns, for the conversion of a partnership to another type of entity.
- b. When a technical termination has occurred and short period returns should have been filed, refer to IRM 4.31.2.3.4, Technical Terminations.

Note: Counsel must be involved when situation a. or b. exists.

- c. When the partnership has foreign partners or transactions with foreign individuals/entities where withholding tax is required, refer to IRM 4.31.2.3.19, Foreign Withholding Tax.

4.31.2.3.2.2.1
(04-20-2017)
**Establishing a
Substitute for Return
(SFR)**

- (1) Ensure a return has not been filed for the years assigned by using IDRS CCs BMFOL (E and T) and INOLE (X and S) or TXMODA.
- (2) If no TC 150 is posted on the module, a substitute for return can be computer generated for Master File (MF). Establish the nonfiler account on ERCS as soon as it is known that an examination will take place or when examination time is first applied. IRM 4.4.9.5, SFR.

4.31.2.3.2.2.2
(04-20-2017)
**Partnership Established
on Master File**

- (1) The procedures when the partnership exists on MF are as follows:
 - a. Establish AIMS/ERCS controls using Form 5345-D, Examination Request - ERCS Users.
 - b. TEFRA Indicator – Yes (for Form 1065 SFR)

Note: A valid TEFRA versus non-TEFRA determination must be made and TEFRA indicator corrected, if different, when all the facts are available.

- c. Master File Tax Account Code (MFT)/Non-Master File Tax (NMFT) Account Code is used to establish the missing return:

Related Forms MFT or NMFT Codes
<ul style="list-style-type: none"> • MFT 08 - Form 1042/Form 8804 • MFT 06 - Form 1065 (calendar/fiscal year) • NMFT 35 - Form 1065 for a short period needs to be established when a technical termination has occurred. NMFT 35 is an NMFT for a Form 1065.

Note: MFT 35 only needs to be established at the end of TEFRA proceedings where the technical termination was determined following a final settlement. Refer to IRM 4.31.2.3.4 for technical termination.

- d. Statute Indicator - Enter the month and year with "EE" in the statute field as if the return was timely filed. (Example: The ASER for a nonfiled 201312 Form 1065 would be entered as 04/EE/2017).
- e. AIMS/ERCS controls will remain as a skeletal record and not become full record until the TC 150 posts.

4.31.2.3.2.2.3
(04-20-2017)

Partnership Does Not Exist on Master File

- (1) When the partnership does not exist on MF and does not have a taxpayer identification number:

- a. The return may need to be controlled on NMF. See IRM 4.4.9.3.2, AIMS Control When TP Does Not Have a Taxpayer Identification Number (TIN). A computer-generated SFR cannot be done on a temporary or invalid TIN.
- b. There will not be a TC 150 posting because the case is controlled on AIMS NMF.
- c. Initiate TEFRA procedures as explained in this chapter. PCS linkage must be initiated as soon as the partners are identified. If additional partners are identified after the PCS linkage is completed, contact the appropriate campus TEFRA Coordinator and discuss the need for additional linkages and notice requirements.

Note: The number of partners may be determined by reviewing the prior year return or yK1 transcript, the partnership agreement or state filing documents.

4.31.2.3.2.2.3.1
(04-20-2017)

Partnership Does Not File a Delinquent Return After SFR is Processed.

- (1) When the partnership does not file a delinquent return, conclude the partnership examination and close the case using normal procedures TEFRA closures paying special attention to the following:

- a. The amount(s) per return will be zero and corrected amount(s) will be determined from the examination results or other available information.
- b. An IRC 6020(b) substitute return is not a partnership return (IRC 6229(c)(4)). Ultimately the IRS would need to secure agreements or issue an FPAA notice to make any assessments.
- c. Consider the failure to file penalty when a partnership return must be filed under IRC 6031. See IRM 20.1.2, Penalty Handbook - Failure to File/Failure to Pay Penalties, for more information.
- d. The failure to pay penalty may apply for foreign withholding. See IRM 20.1.2 for more information regarding these penalties and 26 CFR 1.1461-3 for penalties applicable to IRC 1446.
- e. Since only the filing of a tax return starts the ASER, do not update the statute date. It should remain as "EE".

- f. Notate "SFR Case" in the comments section of Form 3198, Special Handling Notice for Examination Case Processing, and forward to Technical Services.

4.31.2.3.2.2.3.2

(04-20-2017)

**Taxpayer Filed Return
After SFR is Processed**

- (1) If the partnership filed a return with the campus after the TC 150 SFR is processed, the return will be input using a TC 976/977. This will generate an AIMS weekly update to alert the controlling office that a return was received. Secure a copy of the return and follow delinquent return procedures in IRM 4.4.9.6, Delinquent Return Received After SFR TC 150 Posted at MF.
- (2) If a partnership return is received by the field after a TC 150 SFR has posted, the amounts on the secured return must be incorporated into a report (RAR or any other type of examination report) and assessed as a TC 300. Do not forward the delinquent return to Submission Processing or Centralized Case Processing (CCP) for posting of a TC 150. Request the input of a TC 971 Action Code (AC) 282, using Form 3177, Notice of Action for Entry on Master File, using the return received date in the Trans Date field. This updates the ASER at MF to show that examination secured a delinquent return.
- (3) When working with a partner that has not filed a tax return and non-computational affected items exist, an affected item settlement agreement must be secured or a statutory notice of deficiency (SNOD) must be issued. All affected items and non-partnership items should be included in one SNOD if the TEFRA partnership examination has been completed. An affected item SNOD will be issued separately if a SNOD has already been issued for non-pass-through items.
- (4) If the SFR and a notice of deficiency will be issued before the TEFRA partnership proceeding is complete, the tax computations on the notice of deficiency may not include any tax attributable to adjustments to partnership items or affected items. Any partner-level determinations required to assess the tax attributable to adjustments to partnership items and affected items cannot be determined until the completion of the TEFRA partnership proceeding.
- (5) IRC 6230(a)(1) and 26 CFR 301.6231(a)(6)-1 authorize the assessment of tax deficiencies which are purely computational adjustments. However, if a taxpayer has not filed a tax return, there is no return information to which the partnership items can be computationally applied. Therefore, there would be no computational report until after the SFR is processed or the taxpayer has filed a return.
- (6) IRC 6230(a)(2)(A)(i) provides that the deficiency procedures must be followed to assess tax attributable to affected items which require additional partner-level determinations. For a partner who has not filed a return, a substitute for return (SFR) must be created under IRC 6020(b) for that partner and a statutory notice of deficiency must be issued.

4.31.2.3.3

(05-10-2019)

Risk Analysis/Build Out#

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#4.31.2.3.4
(04-20-2017)**Technical Terminations**

- (1) IRC 708(b)(1) provides that a partnership terminates if “within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits”. Analytically, two basic questions arise when applying IRC 708(b)(1):

- a. Does the transfer or disposition of a partnership interest constitute a sale or exchange?
- b. If so, does it result in 50 percent or more of the total interest in partnership capital and profits being sold or exchanged during a twelve-month period?

If a technical termination pursuant to IRC 708(b)(1) has occurred, the partnership is required to file two Forms 1065, U.S. Return of Partnership Income; however, the EIN and name are retained for both partnership returns. See 26 CFR 301.6109-1(d)(2)(iii) and Notice 2001-5, 2001-3 I.R.B. 327, 2001-1 C.B. 327.

- (2) A partnership meeting the definition of a small partnership may for any taxable year elect to have TEFRA apply. The election applies for the taxable year of election and all subsequent taxable years unless revoked with the consent of the Secretary. There is no definitive answer or guidance on whether or not a technical termination under IRC 708 terminates a TEFRA election under IRC 6231(a)(1)(B)(ii) of 2002. If the TEFRA key case entity under examination has made a TEFRA election, you should contact your local Area Counsel for advice.
- (3) Whether a technical termination is recognized by the partnership and the proper returns are filed or whether the issue is being proposed during your examination, properly processing the partnership returns is challenging. Below, in

no particular order, are four possible scenarios with instructions and procedures to assist you when a technical termination has taken place.

- a. AIMS, ERCS, and PCS cannot control partnerships with multiple short periods with the same EIN/TIN on separate MF modules. Generally, the first short period return filed posts as the TC 150 and the second short period return posts as the TC 976. Although both the final and initial returns are original returns and should have their own modules, MF cannot create 2 separate modules or post 2 TC 150 returns to the same module in the same month.
- b. Refer to IRM 4.31.2.3.4, Technical Terminations.

Caution: CI freeze present on MF - Contact your fraud technical advisor immediately for assistance before taking any further actions.

- (4) The examples assume the partnership is a calendar year taxpayer.

4.31.2.3.4.1

(04-20-2017)

Technical Termination Not Recognized by Partnership

- (1) Taxpayer, a TEFRA partnership, files one Form 1065 return and does not recognize that a technical termination occurred during their 12-month calendar or fiscal tax year. The examiner raises the technical termination issue and the case is either agreed or unagreed. The following examples illustrate a year-end and mid-year technical termination.

- a. The technical termination occurs on December 15, 2015. Two partnership returns should have been filed:

Example of Year End Termination

- First short period return: January 1, 2015 - December 15, 2015 (201512)
- Second short period return: December 16, 2015 - December 31, 2015 (201512)

- b. The technical termination occurs on June 30, 2015. Two partnership returns should have been filed:

Example of Mid-Year Termination

- First short period return: January 1, 2015 - June 30, 2015 (201506)
- Second short period return: July 1, 2015 - December 31, 2015 (201512)

When a 12-month TEFRA partnership return is filed, it does not matter if the technical termination occurs within a month (e.g., December 15, 2015) or the last day of a month (e.g., June 30, 2015). The procedures are basically the same; the only difference is in the report writing aspects.

Process	Procedures
Case Processing	<ul style="list-style-type: none"> • With only one 12-month return filed, there is no need to control the two short periods. • Continue to work with the 12-month TEFRA partnership return that was originally filed. • Agents do not need to send out Letter 1787-F, Notice of Beginning of Administrative Proceeding (NBAP), to the TMP for the unfiled second short period return even if the return would have been TEFRA. • Follow all AIMS MF, PCS, and TEFRA procedures for the 12-month partnership return that was filed. • It is important that all newly discovered partners are linked on PCS. • Any newly discovered partners from the second short period will need to be linked to the PCS system. • Notify the CPF by email and provide information on any new partners since the initial PCS linkage package did not include them. • In order to add newly discovered partners to PCS, prepare “dummy” K-1s and submit them with the PCS linkage request. The dummy K-1s should include the partnership’s EIN and entity information, as well as the partners’ TIN and entity information. Written in red, across the top of the K-1s, it should read “Dummy K-1 prepared by Exam for Notice Purposes Only”. • NBAP letters (Letter 1787-C) will need to be issued to the new partners by the CPF. For assistance, refer to <i>PCS e-linkage Contacts</i>. A bookmark for the contacts can be found at the top of the LB&I Operations Planning and Support web page under PCS e-Linkage Help File Contents.

Process	Procedures
Unagreed Cases	<p>In order to issue a report to itemize each short period's separate share of partnership distributive items, agents will need to prepare (at a minimum):</p> <ul style="list-style-type: none"> • One Form 4605-A, Examination Changes – Partnerships • One Form 886-Z, TEFRA Partners' Shares of Income • All necessary Form 886-A, Explanation of Adjustments • Since there is only one 12-month partnership return filed, when the partners do not remain the same for each short period, prepare a spreadsheet itemizing each short period's separate share of partnership distributive items and attach it to the appropriate Form 886-A. • One FPAA, Letter 1830-F, Notice of Final Partnership Administrative Adjustment, will be issued by the Technical Services TEFRA Coordinator. <p>Note: IRC 6223(f) of 1982 provides that only one FPAA may be mailed with respect to a partner for a taxable year of a partnership in the absence of a showing of fraud, malfeasance, or misrepresentation of material fact. With only one 12-month return filed, only one FPAA should be issued for the 12-month return. The FPAA will need to clearly explain the technical termination issue and the effect it has on each short period and the partners. Contact your TSPC and local counsel for assistance.</p> <ul style="list-style-type: none"> • These are the minimum reports, workpapers, etc. Agents may have additional reports and workpapers to prepare if other issues are present. For additional guidance, see IRM 4.31.2, Pass-Through Entity Handbook - TEFRA Examinations – Field Office Procedures. Specifically, see IRM 4.31.2.3.9.4, Completing the Key Case Examination.
Agreed Cases	<p>In order to issue a report to itemize each short period's separate share of partnership distributive items, agents will need to prepare (at a minimum):</p> <ul style="list-style-type: none"> • Form 4605-A • Form 886-Z • Form 886-A <p>Since there is only one partnership return filed, if the partners do not remain the same for each short period, you will need to prepare a spreadsheet that itemizes each short period's separate share of partnership distributive items and attach it to the appropriate Form 886-A, Explanation of Adjustments.</p>

Process	Procedures
Agreement Forms	<p>One TEFRA settlement agreement for each direct partner. Refer to the IRM 4.31.2.7.2.8, Agreed Cases, and Exhibit 4.31.2-4 , Partner Signatures for TEFRA Settlement Agreements Forms 870-PT/LT:</p> <ul style="list-style-type: none"> Form 870-PT, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts. Form 870-LT, Part I, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts and Agreement for Affected Items. <p>Note: A pass-through partner (i.e., a tier) cannot sign page 2 of Form 870-LT agreeing to affected items since a pass-through partner cannot bind its underlying investors. Only the ultimate taxpayers can agree to affected items. Form 906 agreements are not the usual TEFRA settlement agreement forms; however, they are used in special situations, e.g., when the TEFRA partnership or a tier settles for all of their partners, see IRM 4.31.2.3.12, Securing Agreements for Tax Assessments at the Partnership Level, for more details.</p> <ul style="list-style-type: none"> Form 906, Closing Agreement on Final Determination Covering Specific Matters <p>The settlement agreement package will need to clearly explain the technical termination issue and the effect it has to each short period and the partners. Contact the TSPC and local counsel for assistance.</p> <p>Note: These are the minimum reports, workpapers, etc. Agents may have additional reports and workpapers to prepare if other issues are present. See IRM 4.31.2.3.9.4 - Completing the Key Examination.</p>

4.31.2.3.4.2 (04-10-2023)

Technical Termination Recognized and Two Returns Filed in the Same Month

- (1) A technical termination occurs and the taxpayer recognizes the termination and files two Form 1065 partnership returns. The first short period Form 1065 is posted on MF with a Transaction Code (TC) 150 and the second short period Form 1065 is posted with a TC 976 in the same module and is treated as either a duplicate or amended return.
- (2) These procedures apply whether the termination occurred within a month or on the last day of a month. The following examples demonstrate various scenarios.
- (3) Examples 1 and 2 are for partnership returns filed on or before December 31, 2015, and examples 3 and 4 are for returns filed for tax periods beginning after December 31, 2015 under the new Form 1065 filing requirement regime. See P.L. 114-41, 2006(a)(1)(A) (2015).

Note: Important Form 1065 Filing Requirement Change: Partnership returns for tax years beginning after December 31, 2015 must now be filed on or before the 15th day of the third month following the close of the tax year. See IRC 6072(b). See P.L. 114-41, 2006(a)(1)(A) (2015).

(4) Example 1: The technical termination occurs December 15, 2014:

Within a Month	Tax Period	Transaction Code	AIMS Year End	Statute (Assuming returns are timely filed.)
1st short period filed	January 1, 2014 to December 15, 2014	TC 150	2014-12	April 15, 2018 <ul style="list-style-type: none"> In this example the short period ended on 12/15/2014, i.e., in the middle of December 2014. The partnership return would be due on 04/15/2015- which is on or before the 15th day of the fourth month following the end of the short period. The IRC 6229 statute of the first short period would be 04/15/2018.
2nd short period filed	December 16, 2014 to December 31, 2014	TC 976	2014-12	April 15, 2018 <ul style="list-style-type: none"> In this example the short period ended on 12/31/2014, i.e., at the end of December 2014. The partnership return would be due on 04/15/2015- which is on or before the 15th day of the fourth month following the end of the short period. The IRC 6229 statute of the second short period would be 04/15/2018.

In the above example, both short period returns are due on or before April 15, 2015. The IRC 6229 TEFRA assessment statutes would normally start with these due dates. For either termination type, the short period returns are due on or before the 15th day of the fourth month following the end of each short period.

Note: Assuming both short period returns were filed on their due dates, both short period's IRC 6229 TEFRA assessment statute would be the same, i.e., April 15, 2018, because the partnership terminated in the month of December 2014. The TEFRA assessment statute dates would differ for a termination that occurs in any other month. The next example illustrates this point.

(5) Example 2: The technical termination occurs June 30, 2014:

Last Day of a Month	Tax Period	Transaction Code	AIMS Year End	Statute (Assuming returns are timely filed.)
1st short period filed	January 1, 2014 to June 30, 2014	TC 150	2014-06	October 15, 2017 <ul style="list-style-type: none"> In this example the first short period ended on 06/30/2014. The partnership return would be due on 10/15/2014. The IRC 6229 statute of the first short period would be 10/15/2017.
2nd short period filed	July 1, 2014 to December 31, 2014	TC 976	2014-12	April 15, 2018 <ul style="list-style-type: none"> In this example the second short period ended on 12/31/2014. The partnership return would be due on 04/15/2015. The IRC 6229 statute of the second short period would be 04/15/2018.

- (6) Generally, MF is going to show a 12-month module and a single IRC 6229 TEFRA assessment statute. For partnerships having a technical termination in months other than December, this will result in an incorrect statute for the first short period return. You will need to correct the IRC 6229 statute. See IRM 4.31.2.5, Statutes, for statute correction procedures.
- (7) In Example 2, MF incorrectly shows one 12-month 2014 calendar year MF Tax Account (MFT) 06 partnership tax module and computes one IRC 6229 TEFRA assessment statute of April 15, 2018. Because the partnership properly filed two short period returns, this is not the correct IRC 6229 TEFRA assessment statute for the first short period ending on June 30, 2014.
- (8) The first short period return is due October 15, 2014. The second short period return is due April 15, 2015. The IRC 6229 TEFRA assessment statutes would normally start with each of these due dates. Assuming both returns were filed on or before their respective due dates, the first short period's IRC 6229 TEFRA assessment statute would be October 15, 2017 and the second short period's statute date would be April 15, 2018.
- (9) Example 3: The technical termination occurs December 15, 2016:

Within a Month	Tax Period	Transaction Code	AIMS Year End	Statute (Assuming returns are timely filed.)
1st short period filed	January 1, 2016 to December 15, 2016	TC 150	2016-12	March 15, 2020 <ul style="list-style-type: none"> In this example the short period ended on 12/15/2016, i.e., in the middle of December 2016. The partnership return would be due on 03/15/2017- which is on or before the 15th day of the third month following the end of the short period. The IRC 6229 statute of the first short period would be 03/15/2020.
2nd short period filed	December 16, 2016 to December 31, 2016	TC 976	2016-12	March 15, 2020 <ul style="list-style-type: none"> In this example the short period ended on 12/31/2016, i.e., at the end of December 2016. The partnership return would be due on 03/15/2017- which is on or before the 15th day of the third month following the end of the short period. The IRC 6229 statute of the second short period would be 03/15/2020.

(10) Example 4: The technical termination occurs June 30, 2016:

Last Day of a Month	Tax Period	Transaction Code	AIMS Year End	Statute (Assuming returns are timely filed.)
1st short period filed	January 1, 2016 to June 30, 2016	TC 150	2016-06	September 15, 2019 <ul style="list-style-type: none"> In this example the first short period ended on 06/30/2016. The partnership return would be due on 9/15/2016. The IRC 6229 statute of the first short period would be 9/15/2019.
2nd short period filed	July 1, 2016 to December 31, 2016	TC 976	2016-12	March 15, 2020 <ul style="list-style-type: none"> In this example the second short period ended on 12/31/2016. The partnership return would be due on 03/15/2017. The IRC 6229 statute of the second short period would be 03/15/2020.

(11) In Examples 3 and 4, the partnerships returns are all due under the new filing requirements of IRC 6072(b).

Note: Care must be taken to ensure you are working with the correct IRC 6229 TEFRA assessment statute dates. Generally, AIMS, ERCS, MF and PCS can only control one tax period under the same EIN and MFT. Multiple short period returns cannot be controlled on these systems. Generally, the first short period return filed posts as the TC 150 (Return Filed) and the second short period return posts as the TC 976 (Posted Duplicate Return). Although both short period returns are original returns and should have their own modules, MF usually cannot create two separate modules or post two TC 150 returns to the same module. The procedures below apply only to this situation.

Event	Procedures
Case Processing	<p>Transcripts will need to be requested in order to show how the returns filed were posted to the modules. Generally, the first short period return filed posts as the TC 150 and the second short period return posts as the TC 976.</p> <p>Request the MF Transcript: Request the following transcripts with an MFT 06:</p> <ul style="list-style-type: none"> • TXMODA Per IRM 4.10.9.12.2(1), Examination of Returns, Workpaper System and Case File Assembly- Forms on the Inside Left of the Case Folder. • BMFOLT <p>Since separate Form 1065 returns have been filed for each short period, the TEFRA/ Non-TEFRA determination must be made for each short period. You will have two separate key case files since two partnership returns have been filed.</p> <p>If one of the two short periods Form 1065 returns is not TEFRA:</p> <ul style="list-style-type: none"> • Follow normal TEFRA and PCS procedures for the TEFRA short period Form 1065. • Follow ILSC procedures for the non-TEFRA short period Form 1065. See IRM 4.31.5, Pass-Through Entity Handbook - ILSC Field Procedures. • Because Brookhaven CPF works all non-TEFRA partnerships, you will need to coordinate the linkages with both Ogden CPF and Brookhaven CPF; however, this must be coordinated through the geographically assigned TSPC.

Event	Procedures
TEFRA/Non-TEFRA Procedures	The proper TEFRA or non-TEFRA procedures will be followed depending on the return that is filed. Each short period filing will be worked using the law applicable to that filing. This may result in a different application being applied to short periods filed within the same year.

Event	Procedures
Case Processing Procedures: AIMS and ERCS Control	<ul style="list-style-type: none"> • In general, the partnership tax period controlled will be the first short period TEFRA return with a TC 150 posting. • The first short period return that is filed will post with the TC 150 posting and will be controlled on AIMS MF, and ERCS. Use MFT 06. • If one of the short period returns is not a TEFRA partnership, you will need to follow the ILSC procedures for that short period return if you open it for examination. Please see IRM 4.31.5, ILSC Field Procedures. • The AIMS and ERCS procedures that will be used for each short period depend on the TEFRA/Non TEFRA status for that short period. Any first short period is controlled on AIMS MF and any second short period is controlled AIMS NMF. • Assuming that the second short period post as a TC 976, and regardless of whether the 2nd short period return is TEFRA or non-TEFRA, it is controlled on AIMS NMF. • Establish the second short period Form 1065 on AIMS NMF. • To establish a NMF record, the examiner will complete Form 5345-D, Examination Request-ERCS Users. Check the box "Request AIMS Control Non-Master File". Enter "N" behind the EIN. Enter "35" in the MFT Box. <p>Note: PCS Linkages are highly recommended when examining a partnership with a technical termination that has a non-TEFRA partnership return for one of the short periods. See IRM 4.31.5.12.3.3, ILSC Linkage Package. PCS linkages are mandatory for all TEFRA partnerships. See IRM 4.31.2.3.9.2, Linking Key Case on PCS.</p>

Event	Procedures
Case Processing Procedures: PCS Linkages First Short Period	<ul style="list-style-type: none"> • If possible, when both short periods are being audited, they should be linked at the same time. • If you have not already linked the first short period on PCS, you will need to link the partners for the first short period. • To link the partners in the first short period, prepare and submit a linkage package as required in IRM 4.31.2.3.9.2.1, TEFRA Linkage. The package will include a Form 14090, TEFRA Linkage Request Check Sheet (LB&I) or Form 14091, TEFRA Linkage Request Check Sheet (SBSE). Add a statement to Part IV to "Link first short period return, Form 1065 via AIMS Master File". • Depending on when in the month the technical termination occurred determines if all of the direct partners will be controlled by the field. • If the technical termination occurred in the same month, you will need to control all of the direct partners. Obtain AIMS control for each direct partner prior to submitting the linkage request. • If the technical termination did not occur in the same month, you will not have to control all of the direct partners. Submit the linkage request per the guidance above. Due to the potential complexity of the reports, the examiner may be required to assist the campus in preparing the partners' final reports.

Event	Procedures
Case Processing Procedures: PCS Linkages Second Short Period	<ul style="list-style-type: none"> • Before you submit a PCS linkage package, ensure that the second short period is on AIMS NMF. • You need to make sure that the second short period is on AIMS NMF by requesting an AMDISA for the second short period. When doing so use MFT 35 and add an "N" behind the EIN. For example: XX-XXXXXXXN. • You need to link the partners for the second TEFRA short period following the AIMS NMF PCS procedures. Prepare and submit a linkage package as required in IRM 4.31.2.3.9.2.1, Pass-Through Entity Handbook - TEFRA Examinations - TEFRA Linkage. Follow the guidance for Form 14090, TEFRA Linkage Request Check Sheet (LB&I), or Form 14091, TEFRA Linkage Check Sheet (SBSE), to determine the items required for linkage. • Add a statement to Form 14090, Part IV, "Link via AIMS Non-Master File (AIMS NMF)".
Case Processing: TEFRA Procedures	<ul style="list-style-type: none"> • There are two short period returns filed (both TEFRA). Each short period is a separate tax period and TEFRA procedures apply to each short period. • Each short period will require the completion of Form 13813, Partnership Procedures Check Sheet.

Event	Procedures
Statutes	<ul style="list-style-type: none"> • Ensure that the IRC 6229 TEFRA assessment statute is correct for the first short period. • If the IRC 6229 TEFRA statute is not correct, prepare Form 5348, AIMS/ERCS Update (Examination Update). Secure managerial approval and submit to your secretary to input the AIMS/ERCS update. • Since MF can only support one statute, you must enter the earliest IRC 6229 TEFRA assessment statute of the short period return on MF. This will normally be the first short period's TEFRA statute. Note: You are responsible for controlling the statutes on the short period returns. • Each short period is a valid return and has its own IRC 6229 TEFRA assessment statute; therefore, you cannot use one consent to extend the statute for both Form 1065 returns. • If extending the IRC 6229 TEFRA assessment statute for either short period, use Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items. • You must ensure you have qualified each short period's TMP since the TMP for each short period may be different. Do not assume the TMP has remained the same for both short periods. • For non-TEFRA returns, statutes are controlled at the partner level, the statutes are IRC 6501 statutes and Form 872, Consent to Extend the Time to Assess Tax, should be used in order to extend the statute. Refer to IRM 4.31.5.11, Extension of Investor Statutes for ILSC Items. Note: You will need to follow ILSC statute procedures to secure an extension for a ILSC short period partner statute.

4.31.2.3.4.3
(04-10-2023)

**Technical Termination
Not Recognized and
Partnership Wants to
File an AAR**

- (1) The partnership files one Form 1065 return and did not recognize that a technical termination occurred. To correct the error, the taxpayer now wants to file an administrative adjustment request using Form 1065-X, Amended Return or Administrative Adjustment Request (AAR); or if filing electronically, a Form 1065 and Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

Event	Procedures
AAR	<p>If the taxpayer submits an AAR you must make a mandatory referral to the TSPC using the <i>Specialist Referral System (SRS)</i>. For more information on AARs see:</p> <ul style="list-style-type: none"> • IRM 4.31.4, Pass-Through Entity Handbook - Administrative Adjustment Request (AAR). • The AAR Amended Return & Job Aid Flow Chart. • The AAR Help File located on the Partnership Knowledge Base, AARs and Amended Returns.

4.31.2.3.4.4
(04-10-2023)

**Partnership Files Two
Short Period Returns
and Owes Taxes for
Foreign Withholding.**

- (1) Occasionally, the partnership may owe tax. This occurs when the partnership is a withholding agent (see IRC 1441 through IRC 1474 and the TEFRA Report Writing Procedures for IRC 1441 through IRC 1446 Withholding) or owes excise taxes. This scenario provides guidance on how you make the assessment.
- (2) If the assessment is in the first short period, the assessment will be made on MF. If the assessment is in the second short period, the assessment will be on AUTOMATED NMF. You will still need to control the second short period on AIMS NMF to make the partnership assessments.
- (3) For example, if the taxpayer files two short period returns
- the first short period is posted to MF with a TC 150 posting, and
 - the second short period is posted with a TC 976 posting and is treated as either a duplicate or amended return.

Event	Procedures
Case Processing Procedures	<ul style="list-style-type: none"> • You must control the second TEFRA short period on AIMS NMF. Follow the same procedures found in IRM 4.31.2.3.4.2, Technical Termination Recognized and Two Returns Filed in the Same Month. The procedures will be generally the same as those above. • An exception is if you have an assessment in second TEFRA short period. You will also have to assess the tax for the second short period using AUTOMATED NMF. • For these procedures to apply, you must be certain that you have an assessment against the partnership itself. • When there is an assessment to the partnership, you will need to make the assessment on AUTOMATED NMF. It is important to note that Automated NMF is not the same thing as AIMS NMF. See IRM 4.4.22, AIMS Processing – Non-Master File (NMF) Processing. • You can contact Centralized Case Processing (CCP) for assistance. CCP is geographically assigned. Your CCP contact can be found on the Knowledge Management, SBSE Campus Exam Procedures, Centralized Case Processing (CCP).

4.31.2.3.5
(04-10-2023)
**Mandatory Completion
of Check Sheets**

- (1) These check sheets were designed to assist the examiner in completing the required TEFRA procedures. Manager involvement is required and their signature is required on all the mandatory forms.

- (2) It is critical for the IRS to follow TEFRA rules and procedures during examinations, since procedural errors can affect the validity of assessments, infringe on taxpayer rights, and result in improper disclosures of tax information.
- (3) The following check sheets will be used when examining a partnership or a limited liability company filing as a partnership subject to the TEFRA procedures. The check sheets will serve as documentation to confirm the actions taken or decisions made in following the TEFRA procedures.
 - Form 13813, TEFRA Partnership Procedures Check Sheet: The completion of Form 13813 is mandatory for every partnership examined. The completed check sheet along with the TEFRA determination and Form 15260, Determination of Pass-Through Audit Regime, will be included in the audit file to document that the partnership is or is not subject to the TEFRA procedures. The examiner's manager is to review the Form 13813 and work papers to ensure that all appropriate TEFRA procedures have been completed. The manager's signature on the Form 13813 is mandatory and indicates that the TEFRA procedures have been reviewed and have been correctly completed.
 - Form 14090, TEFRA Linkage Check Sheet (LB&I) (for an LB&I key case), or Form 14091, TEFRA Linkage Check Sheet (SBSE) (for an SB/SE key case), provides guidance to the examiner in completing the information required for a complete TEFRA linkage package. This check sheet must be completed with attachments. The manager's signature on the Form 14090 or 14091 is mandatory and indicates that the linkage package has been reviewed, is accurate and complete.
 - Form 13828, Tax Matters Partner (TMP) Qualification Check Sheet: The completion of the Form 13828 is mandatory where the partnership has been identified as TEFRA. The position of TMP is created by statute for TEFRA partnerships; therefore, the check sheet is not applicable and should not be used for non-TEFRA entities or tax periods. The check sheet must be completed to determine whether the TMP is legally qualified to be the TMP or whether a new TMP must be designated. The manager's signature on the Form 13828 is mandatory and indicates that the TEFRA procedures have been reviewed and have been correctly completed.
 - Form 13827, Tax Matters Partner (TMP) Designation Check Sheet: This check sheet must only be completed when a new TMP is designated during the examination. Certain procedures are required when a TMP is designated and must be documented in the audit file. If the TMP is designated by the IRS, the manager must complete Part III and sign in Block 1. A new Form 13828 must be completed to ensure the designated TMP is qualified.
- (4) Each mandatory check sheet is required to be completed separately for each year in a multi-year audit.
- (5) SB/SE examiners will file these check sheets and other TEFRA work papers under a separate line item in Section 600 on the Form 4318, Examination Workpapers Index. LB&I examiners will file the TEFRA check sheets and work papers under SAIN number 724 on Form 4764, LB&I Examination Plan.

4.31.2.3.5.1
(04-10-2023)
**Mandatory Specialist
Referral**

- (1) A mandatory referral is required if the key case partnership involves the following:
 - a. Publicly traded partnership (PTP), a master limited partnership (MLP),
 - b. An electing large partnership (ELP),
 - c. A large partnership (more than 100 direct or indirect partners),
 - d. LLC related partnership,
 - e. Partnership or tier requesting to settle and pay tax at the entity level
 - f. Examiner wants to examine the partnership using the investor(s) IRC 6501 statute (AC Statute),
 - g. TMP is not a United States Person (includes natural persons and foreign entities),
 - h. AAR,
 - i. Joint Committee,
 - j. Dual statute procedures (using both TEFRA and non-TEFRA statutes), or
 - k. Examiner has received approval to deviate from mandatory linkage.
- (2) Referrals are made using the *Specialist Referral System (SRS)*.

4.31.2.3.6
(04-20-2017)
**Identification of the Tax
Matters Partner (TMP)**

- (1) The TMP is the person identified to represent the partnership during an examination.
- (2) The Form 13828, Tax Matters Partner (TMP) Qualification Check Sheet, should be completed as early as possible. The completion of the check sheet will ensure the person identified as TMP meets the qualifications prior to securing any statute consents or powers of attorney. If the person does not meet the qualifications, Form 13827, Tax Matters Partner (TMP) Designation Check Sheet, should be completed to designate a new TMP.

Note: Until a TMP is identified, the agent may work with any partner (general or limited) or partnership manager, either directly or through their designated POA, to secure any needed partnership information, books or records, including information necessary to identify a TMP or have one designated. In limited circumstances, an audit can even be completed without a TMP.

4.31.2.3.7
(04-20-2017)
**Issuing the Notice of the
Beginning of the
Administrative
Proceeding (NBAP)
Letter to the Tax Matters
Partner**

- (1) There must be one year remaining on the TEFRA key case statute of limitations before starting the examination.
- (2) The examiner will initiate a TEFRA examination on a partnership return by issuing a NBAP (Letter 1787-F) to the TMP. A separate NBAP should be sent for each year under examination. (See Form 13828, TMP Qualification Check Sheet, or the interactive tool on the TEFRA web site.)
- (3) The NBAP is required by statute to be mailed. (IRC 6223)
- (4) Examiners should issue NBAP letters as follows:
 - a. The TMP NBAP will be sent via certified mail. TMP NBAPs to foreign partnership addresses must be sent using registered mail.

Note: The letter date should match the mailing date.

 - b. The TMP NBAP letter will be addressed **TAX MATTERS PARTNER** c/o key case entity name and address listed on the Form 1065 , and the most current address, if different. If using the most current address, ensure our systems reflect that address. Document the case file that the

letter is being sent in accordance with 26 CFR 301.6223(c)-1(f). The TMP should not be specified by name. This protects the government in the event the designated TMP is subsequently determined to not qualify to be the TMP. The TMP NBAP is addressed:

How to address the TMP NBAP

- **The Tax Matters Partner**
- C/O Partnership Name
- Partnership Street Address (or PO Box) per Form 1065, or the most current address, if different.
- Partnership City, State, Zip per Form 1065, or the most current address, if different.

Note: It is important that the IRS return address information is added to the upper left side of the NBAP.

- c. The 120 day statutory notification period begins with the issuance of the NBAP to the last identified notice partner.
- d. While the information on the Form 1065 is the legal information base for addresses, the IRS is not precluded from using other information in its possession in administering TEFRA procedures. The IRS is not obligated to search its records but if it is known at the time of the issuance of the NBAP that the partnership address on the return is no longer valid, the TMP NBAP may be sent to the current address by certified mail. The agent needs to ensure that if using an address other than the one on the return, that the address is updated on our systems. The case file should be documented to show that the TMP NBAP was issued in accordance with 26 CFR 301.6223(c)-1(f).
- e. Further investigation for the proper address should be made whenever the examiner determines there is a reasonable basis to question any information on the return or whenever inconsistencies become apparent.
- f. If the TMP NBAP is mailed to an address other than the address shown on the Form 1065 and it is returned as undeliverable, an NBAP should be mailed by certified mail to the address reflected on the partnership return, which is the address required under IRC 6223(c) of 1982. However, as stated above, it is a best practice to send the TMP NBAP to the Form 1065 address and the most recent address, if different.

4.31.2.3.7.1
(04-20-2017)
**NBAP Date on
Examination Returns
Control System (ERCS)**

- (1) The TMP NBAP date represents the start of a TEFRA examination. The date the NBAP is issued to the TMP needs to be loaded onto ERCS as soon as the NBAP is issued, but no later than 5 business days after issuance. Once input on ERCS, the date will also be reflected on AIMS (page 2 of an AMDISA).
- (2) Prepare Form 5348, AIMS/ERCS Update (Examination Update), by completing the following:
 - a. RA's Name (as requestor), employee group code (EGC) and date, which are located on top of the form.
 - b. NBAP Letter Date. The agent will record the certified mailing date of the TMP NBAP.

Note: The agent must ensure the date on the letter is the same as the certified mailing date.

- (3) Submit completed Form 5348 to the group manager for approval.
- (4) Submit the completed and approved Form 5348 to the group secretary or other designated person for input on ERCS.

4.31.2.3.7.2
(06-20-2013)
ERCS TEFRA Indicator

- (1) ERCS must be updated with TEFRA/non-TEFRA determinations for all Form 1065 audits. The return cannot be updated beyond status 12 until the TEFRA indicator is entered. Technical Services monitors the ERCS and reviews the TEFRA Indicator field during their mandatory IVLs. It is reported out on the Related Returns Report issued to the field groups each month and points out potential errors (PE).
- (2) The TEFRA indicator should be entered on the system as soon as the TEFRA determination is made, but no later than 60 days after the case is updated to status 12, or no later than 5 days from the date the NBAP was issued to the partnership, whichever is earlier.
- (3) The TEFRA indicator is required on all partnership records with a master file transaction (MFT) code of 06 or a non-master File transaction (NMFT) code of 35. The field values are as follows:
 - a. Y (Yes) = Subject to TEFRA procedures;
 - b. N (No) = Not subject to TEFRA procedures; and
 - c. S (Survey) = Surveyed without determining if subject to TEFRA procedures.

Note: S can be used on status 12 returns because the revenue agent may charge time and survey after assignment without making a TEFRA determination.

- (4) The revenue agent should request that the manager and/or secretary set the TEFRA indicator through the "correct and display" screen on ERCS. The TEFRA indicator can be set or changed on this screen. See IRM 4.7 for further information.
- (5) Timely linkage of a TEFRA partnership is important in that it maximizes the time the campus has to secure and perfect the partner returns. This becomes even more important when the partnership has tiered partners. The revenue agent has 45 days from the beginning of the audit to withdraw the NBAP and close the case without further action.
- (6) If a key partnership return is linked on the PCS before the group has set the TEFRA indicator, AIMS will automatically populate it based upon the PICF Code as follows: If the PICF Code = "1" for "TEFRA", then the TEFRA indicator will be populated with a "Y". If the PICF Code = "2" for "Non-TEFRA", then the TEFRA indicator will be populated with an "N". Please note that this is intended to be a validity check so the TEFRA indicator will be changed if not consistent with the PICF Code. (This **does not replace** the IRM requirement to populate the TEFRA indicator within 5 days from the date the NBAP was issued to the partnership.)
- (7) Prepare Form 5348, AIMS/ERCS Update (Examination Update) by completing the following:
 - a. RA's name (as requestor), employee group code (EGC) and date, which are located on top of the form.

b. TEFRA code. Check "Y=TEFRA".

- (8) Submit the completed and approved Form 5348 to the group secretary or other designated person for input on ERCS.

4.31.2.3.7.3
(04-20-2017)

ERCS Monitoring Reports

- (1) There are monitoring reports built into ERCS that managers should monitor. See IRM 4.7.6.6.2, Partnership Report.
- (2) These include reports using the following criteria:
- a. The status code is between 12 and 19, the TEFRA indicator is not set, and the return has been in process 60 days or more.
 - b. The status code is between 12 and 19, the partnership investor control file (PICF) indicator is not 1, and the NBAP letter date is 60 or more days in the past.
 - c. The NBAP letter date is set and the TEFRA indicator is blank or N.
 - d. The status code is between 12 and 19, the NBAP letter date is not set, and the TEFRA indicator is not N or S.
- (3) Managers should monitor these reports each month to ensure returns in their groups are properly identified as TEFRA, and that linkage packages are submitted timely.

4.31.2.3.7.4
(06-20-2013)

45 Day Rule

- (1) The 45 day period begins with the mailing of the NBAP to the TMP. The 45 day period includes all days including weekends and holidays.
- (2) Per 26 CFR 301.6223(a)-2(a) , the TMP NBAP may be withdrawn and the TEFRA examination stopped. To withdraw the TMP NBAP, forward the case file to the TSPC. The TSPC will review the case, and if appropriate, they will mail a letter to the TMP stating that the NBAP is being withdrawn. If the NBAP is withdrawn within the 45 day period, neither the IRS nor the TMP is required to give the other partners notice.
- (3) A linkage package should not be submitted to the campus before the 45 day period has expired. The TMP NBAP cannot be withdrawn if a linkage package was submitted and the partners have already received notice. Premature linkage can also result in unnecessary work at the campus. Contact your TSPC if you have questions about the linkage process or the 45 day rule.
- (4) The TMP NBAP is required by statute to be mailed. See IRC 6223. This poses an administrative problem when trying to maximize the 45 day window.
- (5) It is best to send an Information Document Request prior to the initial appointment and send the TMP NBAP via certified mail to the TMP on the day of the appointment. This maximizes the use of the 45 day period.

4.31.2.3.8
(04-10-2023)

Power of Attorney (POA) for TEFRA Partnerships

- (1) During many examinations, a Form 2848, Power of Attorney and Declaration of Representative, may be provided by the taxpayer.
- (2) It is important to know that just because the TMP cannot be verified, identified, or designated in a timely manner, you don't need to delay the examination of the TEFRA key case.
- (3) The TMP, a general partner, a limited partner, a member manager and a non-managing member can execute a POA in a partnership proceeding.

- (4) A valid POA can be secured from any direct or indirect partner or member in order to exchange information.
- (5) An Office of Chief Counsel Generic Legal Advice Memorandum (GLAM) AM2015-004 was issued March 25, 2015, which explains this in detail. However, it is important to understand that this type of POA, i.e., one not executed by the TMP, may not be authorized to sign partnership level statute extensions.

4.31.2.3.8.1
(04-20-2017)

Partner or Member Other than the TMP Appoints a Power of Attorney

- (1) Any partner or member can provide or receive partnership information. Any partner or member can execute a Form 2848 designating a POA to provide and receive partnership information, i.e., the books and records of the partnership, etc. This includes limited partners and members of LLCs that are not general partners or member-managers and includes both direct and indirect partners and members.
- (2) This type of Form 2848 does not authorize the POA to represent the TMP and the POA does not have the powers of the TMP. This limits what the POA can do. For example, this type of POA cannot execute Form 872-P, Consent to Extend the Time to Assess Tax Attributes to Partnership Items, and Form 872-O, Special Consent to Extend the Time to Assess Tax Attributes to Partnership Items, partnership level statute extensions that extend the IRC 6229 TEFRA assessment statute for all direct and indirect partners.

Note: If the TMP of the key case is not readily identifiable, the examiner can still proceed with the audit of the key case by issuing Information Document Requests (IDRs), the TMP NBAP, exchanging information, and examining the books and records of the key case.

4.31.2.3.8.1.1
(04-20-2017)

Form 2848, Part I (Partner or Member Appoints)

- (1) Part I, Line 1, of Form 2848, Taxpayer Information should be completed to reflect the name and TIN of the partner or member executing the POA.
- (2) Jane Doe, a partner who is not the TMP, would complete Part 1, line 1, Taxpayer Information which would include her TIN.

Form 2848 (Rev. March 2012) Department of the Treasury Internal Revenue Service		Power of Attorney and Declaration of Representative ▶ Type or print. ▶ See the separate instructions.		OMB No. 1545-0150 For IRS Use Only Received by: _____ Name _____ Telephone _____ Function _____ Date ____/____/____
Part I Power of Attorney Caution: A separate Form 2848 should be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.				
1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.				
Taxpayer name and address Jane Doe 1111 Main Street Anywhere, USA 00001-1000		Taxpayer identification number(s) 999-99-9999 Daytime telephone number 000-111-2222		
hereby appoints the following representative(s) as attorney(s)-in-fact:				
2 Representative(s) must sign and date this form on page 2, Part II.				

Figure 4.31.2-1

- (3) If the partner is DEF, Inc., a C corporation that is not the TMP, they too would complete Part 1, Line 1. The taxpayer's name, address and EIN would be that of DEF, Inc.

The image shows Form 2848, 'Power of Attorney and Declaration of Representative'. The form is for the IRS (OMB No. 1545-0150). It is dated (Rev. March 2012) and issued by the Department of the Treasury, Internal Revenue Service. The form is titled 'Form 2848' and 'Power of Attorney and Declaration of Representative'. It includes a caution: 'A separate Form 2848 should be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.' The form is divided into two main sections: 'Part I Power of Attorney' and 'Part II Declaration of Representative'. Section 1, 'Taxpayer information', is completed with the following details: Taxpayer name and address: DEF Inc., 1111 Main Street, Anywhere, USA 00001-1000; Taxpayer identification number(s): 99-9999999; Daytime telephone number: 000-111-2222; Plan number (if applicable): (blank). The form also includes a section for the representative's information, which is partially visible at the bottom.

Figure 4.31.2-2

- (4) For this type of POA, i.e., one executed by a direct or indirect partner of the TEFRA key case, any other type of entity that is a partner, e.g., a trust, partnership, LLC, etc. would complete Part I of Form 2848 in the same way.

Note: In both examples the TIN is the TIN of the partner executing the Form 2848. In later examples where the TMP is executing the POA, the TIN will be the TIN of the TEFRA key case entity.

4.31.2.3.8.1.2
(04-20-2017)
Form 2848, Part 3
(Partner or Member Appoints)

- (1) Under Description of Matter “Income, Including TEFRA Partnership Items” must be entered. Under Tax Form numbers, enter “1065 and applicable tax form(s) XXXX”. Applicable tax forms would be 1040, 1120, etc., as appropriate. The applicable tax periods will be entered under Year(s) or Period(s).

The image shows Form 2848, Part 3, 'Acts authorized (you are required to complete this line 3)'. The form is divided into three columns: 'Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)', 'Tax Form Number (1040, 941, 720, etc.) (if applicable)', and 'Year(s) or Period(s) (if applicable) (see instructions)'. The table is completed with the following information: Description of Matter: Income, Including TEFRA Partnership Items; Tax Form Number: 1065 and Applicable Tax Forms* (*e.g. 1040, 1120, etc.); Year(s) or Period(s): Applicable Tax Years. The form also includes a section for 'Specific use not recorded on Centralized Authorization File (CAF)'.

Figure 4.31.2-3

- (2) Completing Part 3 with the language above meets the requirements of 26 CFR 301.6223(c)-1(e) showing the Form 2848 applies to both Income tax and TEFRA related matters. Note that the Tax Form Number field in Part 3 should reflect Form 1065 and any other applicable tax forms, e.g., Form 1040, 1120, etc.

4.31.2.3.8.1.3
(04-20-2017)

**Form 2848, Part 5
(Partner or Member
Appoints)**

- (1) Care should be taken to identify any restrictions to the POAs authority to act for the partners or members.
- (2) If there are to be any restrictions on the representative's authority, those restrictions should be clearly stated in Part 5 of Form 2848. As an example, a restriction could be that the partner does not want their representative signing statute extensions.

Figure 4.31.2-4

4.31.2.3.8.1.4
(04-20-2017)

**Form 2848, Part 7
(Partner or Member
Appoints)**

- (1) The partner or member listed in Part 1 will sign the form.

4.31.2.3.8.2
(04-20-2017)

**TMP of the TEFRA Key
Case Appoints the
Power of Attorney**

- (1) A TEFRA partnership Form 2848 executed by the key case entity's TMP is completed in a very different way from a Form 2848 for a partner or even a non-TEFRA taxpayer. This is because the TMP is not only authorizing the POA to work with the examiner during a TEFRA partnership examination, but may be delegating some of the TMP's powers to the representative. For example, the TMP may be authorizing the POA to execute partnership level statute extensions. If this is the case, it is essential to complete the Form 2848 correctly. Doing so prevents any ambiguity about the representative's authority. It is also vital to determine what powers of the TMP are being delegated to the POA or if there are any restrictions to the POA's authority to act for the TMP. It is always advised to seek counsel approval when a POA is signing a statute extension.
- (2) When dealing with TEFRA partnerships and designating a TMP's representative, failure to complete Form 2848 correctly can potentially lead to barred statutes.

4.31.2.3.8.2.1
(04-20-2017)

**Form 2848, Part 1 (TMP
Appoints)**

- (1) Part I, Line 1, of Form 2848, Taxpayer Information should be completed to reflect that it is the TMP of the TEFRA partnership executing the POA and the TMP's relationship with the TEFRA key case entity.
- (2) Joseph Smith, a general partner, is the TMP of XYZ Partnership. Part 1, Line 1 taxpayer name and address would be entered as "Joseph Smith as Tax Matters Partner for XYZ Partnership" with the partnership's address.
- (3) Joseph Smith, the TMP of XYZ Partnership, is executing the TEFRA POA. Also note that the TIN entered is the TIN of the TEFRA key case entity and not the TIN of the TMP.

Form 2848 (Rev. July 2014) Department of the Treasury Internal Revenue Service		Power of Attorney and Declaration of Representative Information about Form 2848 and its instructions is at www.irs.gov/form2848 .		OMB No. 1545-0150 For IRS Use Only Received by: Name _____ Telephone _____ Function _____ Date ____/____/____
Part I Power of Attorney Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.				
1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.				
Taxpayer name and address Joseph Smith as Tax Matters Partner for XYZ Partnership 1111 Main Street Anywhere, USA 00001-1000		Taxpayer identification number(s) TIN of TEFRA Entity Daytime telephone number _____ Plan number (if applicable) _____		
hereby appoints the following representative(s) as attorney(s)-in-fact:				
2 Representative(s) must sign and date this form on page 2, Part II. Name and address Name and address of authorized representative		CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>		
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>		Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>		
Name and address		CAF No. _____ PTIN _____		

Figure 4.31.2-5

- (4) When the TMP is an entity and not a natural person, other formats for completing Form 2848 Taxpayer Information exist. If the TEFRA POA is being executed and the TMP is ABC Corporation, Part I, Line 1 should be entered as "ABC Co. as Tax Matters Partner for XYZ Partnership" with the partnership address. Again, the TIN is that of the key case entity when the TMP appoints the POA.

Form 2848 (Rev. July 2014) Department of the Treasury Internal Revenue Service		Power of Attorney and Declaration of Representative Information about Form 2848 and its instructions is at www.irs.gov/form2848 .		OMB No. 1545-0150 For IRS Use Only Received by: Name _____ Telephone _____ Function _____ Date ____/____/____
Part I Power of Attorney Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.				
1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.				
Taxpayer name and address ABC Co. as Tax Matters Partner for XYZ Partnership 1111 Main Street Anywhere, USA 00001-1000		Taxpayer identification number(s) TIN of TEFRA Entity Daytime telephone number _____ Plan number (if applicable) _____		
hereby appoints the following representative(s) as attorney(s)-in-fact:				
2 Representative(s) must sign and date this form on page 2, Part II. Name and address Name and address of authorized representative		CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>		
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>		Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>		
Name and address		CAF No. _____ PTIN _____		

Figure 4.31.2-6

- (5) ABC Co. is executing the POA as TMP of XYZ Partnership. If the TMP is an LLC that is filing as a corporation, Part I would be completed in a similar manner.

- (6) When the TMP of the TEFRA partnership is a trust, a nominee, another partnership, or an LLC filing as a partnership or as a disregarded entity, it is recommended that you contact your geographically assigned TSPC or local Area Counsel for assistance.

4.31.2.3.8.2.2
(04-20-2017)

Form 2848, Part 3 (TMP Appoints)

- (1) Under Description of Matter, "TEFRA Partnership Proceedings" must be entered. Under Tax Form Number, enter 1065. Under Year(s) or Period(s) the applicable tax years will be entered.
- (2) Completing Part 3 with the language above meets the requirements of 26 CFR 301.6223(c)-1(e), i.e., that the POA applies to TEFRA matters. In addition to "TEFRA Partnership Proceedings" and "Form 1065", each tax period to which the POA applies should be reflected on the Form 2848 in Part 3.

(Note. IRS sends notices and communications to only two representatives.) Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
TEFRA Partnership Proceedings	Form 1065	(List Applicable Tax Years)

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF ☐

Figure 4.31.2-7

- (3) When securing TMP executed POAs, remember that TMP is a position designated separately for each tax period; therefore, the TMP for one tax period may not be the TMP for the next. If you are securing a Form 2848 for more than one tax period, you must ensure that the TMP has remained the same for those tax years or you must secure separate Form 2848 from the different TMPs for the tax years they are designated the TMP.
- (4) It is important to note that some acts performed by the TMP cannot be delegated to a POA. TMP powers that cannot be transferred to the POA include, but are not limited to, the filing of an AR on behalf of the partnership and signing a settlement agreement binding non-notice partners.
- (5) Delegating the TMP's authority to execute TEFRA partnership level statute extensions, e.g., Form 872-P and Form 872-O, to a representative is allowable; however, it is preferable and a best practice to have the TMP execute these types of statute extensions. If the TMP insists on having their POA execute this kind of consent, you should contact your local Area Counsel for assistance.

4.31.2.3.8.2.3
(04-20-2017)

Form 2848, Part 5 (TMP Appoints)

- (1) Though not required, under Part 5a of Form 2848, it is a best practice to list each act the TMP authorizes the POA to perform. These would be acts other than the normal authorization to work with the examiner and exchange confidential information. As an example, if the TMP wants the representative to sign TEFRA partnership level statute extensions, normally signed by the TMP, it is a best practice that this act be stated separately in Part 5. This eliminates any ambiguity.

check this box. See the instructions for **Line 4. Specific Use Not Recorded on CAF** ☐

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return; _____

☒ Other acts authorized: **Not required, it is a best practice to list specific acts authorized by the TMP.**

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11980J Form **2848** (Rev. 7-2014)

Figure 4.31.2-8

- (2) Pay attention to Part 5b to identify any restrictions to the POA's authority. If there are to be any restrictions on the representative's authority, those restrictions should be clearly stated in Part 5 of Form 2848. As an example, a restriction could be that the TMP does not want the representative signing TEFRA partnership level statute extensions.

Form 2848 (Rev. 7-2014) Page **2**

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.

List any specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

Care should be taken to identify any restrictions to the POA's authority to act for the TMP.

Figure 4.31.2-9

- (3) Additional documentation must be secured by the examiner in the event someone other than the TMP is executing a TEFRA partnership level statute extension. A special statement and required documentation should be attached to Form 2848 and must be attached to any TEFRA partnership level statute extension, i.e., Form 872-P and Form 872-O.
- (4) The special statement and documentation must include the following:
- Provide that it is an authorization for a person other than the TMP to extend the assessment period with respect to all partners.
 - Identify the partnership and the person being authorized by name, address, and taxpayer identification number.
 - Specify the partnership taxable year or years for which the authorization is effective.
 - Be signed by all persons who were general partners at any time during the tax year or years for which the authorization is effective.

These procedures are required and are applicable to partnership tax years beginning on or after October 4, 2001.

- (5) It is also important to read the partnership or LLC operating agreement to determine if the TMP's powers have been restricted in any way. For example, it is not uncommon to find that the partnership agreement precludes the TMP from unilaterally signing any consent to extend the IRC 6229 TEFRA partnership assessment statute without the approval of the other partners. Or in the case of a partnership with more than 100 direct partners, the operating agreement may restrict the TMP's power to bind non-notice partners in a settlement agreement.
- (6) Though the IRS relies on the TMP that was designated on that tax year's Form 1065 Schedule B and not what is included in a partnership agreement, it is a best practice to address any conflicts between the partnership return and partnership's operating agreement. So read the partnership or LLC agreement carefully. It is a good idea in the initial stages of the examination to ask questions to ensure there are no apparent restrictions on the TMP's powers.

4.31.2.3.8.2.4
(04-20-2017)
**Form 2848, Part 7 -
Signatory Line (TMP
Appoints)**

- (1) If the TMP is a natural person, that person will sign the document.
- (2) If the TMP is not a natural person, i.e., the TMP is an entity like a C corporation, an S corporation, a trust, a partnership, or an LLC, etc., an authorized official of the TMP under state law signs for the TMP. Do not confuse the TMP with the TMP's signing official. Remember, it is the entity that is the TMP and not its authorized signing official. The signature and title sections of Form 2848 should reflect that relationship.
- (3) In this situation, Part 7 of Form 2848 should include the signature of the TMP's signing official, the name of the signing official, his or her official title, and the name of the TMP entity. If you have to drill down a number of tiers to get to a signing official, the names of the tier entities should be reflected in the signatory's title.

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

► IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

Signature of the TMP, or if the TMP is an entity (i.e. not a natural person), the TMP's Signing Official		TMP's Title, or if an entity, the TMP Signing Official's Title	
Signature	Date	Title (if applicable)	
Name of the Signatory	<Name of the TMP> for <Name of the TEFRA Key Case Entity>		
Print Name	Print name of taxpayer from line 1 if other than individual		

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

I am duly authorized or disbarred from practice before the Internal Revenue Service.

Figure 4.31.2-10

- (4) To summarize, though the TMP may delegate many acts to an authorized representative, it is not recommended that the representative sign TEFRA statute extensions or settlements. If the TMP insists on delegating these acts to a representative, the examiner should immediately consult his or her TSPC or local Area Counsel for assistance.

- (5) In a situation where the TMP is ABC Corporation and its CEO, John Doe, the signing official for the TMP, would sign Part 7, the Title would be completed as CEO of ABC Corporation.

to revoke a prior power of attorney, check here
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
► IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

(Signature of John Doe) CEO of ABC Corporation
 Signature Date Title (if applicable)
 John Doe ABC Corporation as Tax Matters Partner for XYZ Partnership
 Print Name Print name of taxpayer from line 1 if other than individual

Part II Declaration of Representative
 Under penalties of perjury, by my signature below I declare that:

Figure 4.31.2-11

- (6) If the TMP of the TEFRA entity is a partnership, the signing official for the TMP is a general partner authorized to sign under state law for the pass-through partner. If the pass-through partner is an LLC, the signing official is a manager authorized to bind the LLC under state law. If the LLC that is TMP to the key case is itself a TEFRA entity, the LLC's manager may be its TMP or may be an outside manager that is not a member. This is because of the special rule when designating a TMP for a TEFRA LLC when the LLC uses an outside management and has only members.
- (7) If the pass-through partner LLC is itself a TEFRA entity, often times the TMP of the LLC is a member-manager that is authorized to bind the LLC under state law. However, under certain circumstances, the TMP may not have authority to bind the LLC under state law. This example illustrates a situation when the LLC's TMP is not an authorized signing official of the LLC:
- ABC Partnership, a TEFRA entity, is being examined.
 - DEF, LLC is the TMP for ABC Partnership.
 - DEF, LLC, which is also a TEFRA entity, is a manager-managed LLC and has no member-managers.
 - DEF, LLC uses an outside manager, John Sycamore.
 - Jane Cypress is designated TMP of DEF, LLC under the provisions of 26 CFR 301.6231(a)(7)-2(b)(3).
 - So DEF, LLC has both an outside manager and a TMP that is not a manager.
 - Since the TMP of the TEFRA key case is an entity and not a natural person, its signing official is executing the POA for the ABC Partnership audit.

So who signs the Form 2848, the LLC manager or its TMP? In this example, the manager of the DEF, LLC, John Sycamore; and not its TMP, Jane Cypress, would be the TMP's signing official when executing ABC Partnership's Form 2848 because Jane Cypress is not a manager under state law.

- (8) If the TMP is an entity, it is not always easy to identify the authorized signing official. In these situations, the examiner should ask for assistance from his or her TSPC and local Area Counsel.

- Important: A detailed TMP signature help file is available on Partnership Knowledge Base, TEFRA Part II - Examination, Power of Attorney for a TEFRA return.

4.31.2.3.8.3

(04-20-2017)

**Partnership is a
Withholding Agent for
Foreign Withholding**

- (1) If you are examining the TEFRA partnership for foreign withholding under IRC 1441 through IRC 1446 or IRC 1471 through IRC 1474 and are working with a POA, Form 2848 is completed in a unique way. When a TEFRA partnership is the withholding agent, foreign withholding is a partnership level item; however, since the partnership is the withholding agent, it becomes a partner in the partnership proceeding. This differs from normal TEFRA partnership proceedings where the partners, and not the partnership, are the parties to the partnership proceeding.
- (2) As a partner subject to the partnership proceeding, the partnership receives a partner level NBAP and is a party in the TEFRA partnership proceeding. If the partnership wishes to appoint a POA to represent the partnership for the foreign withholding issue in addition to TEFRA, the Form 2848 is completed with this in mind.

4.31.2.3.8.3.1

(04-20-2017)

**Form 2848, Part I
(Foreign Withholding)**

- (1) Part I of Form 2848 would include the name, address, and TIN of the partnership.

Form 2848
(Rev. July 2014)
Department of the Treasury
Internal Revenue Service

**Power of Attorney
and Declaration of Representative**

OMB No. 1545-0150
For IRS Use Only
Received by: _____
Name _____
Telephone _____
Function _____
Date ____/____/____

► Information about Form 2848 and its instructions is at www.irs.gov/form2848.

Part I Power of Attorney
Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address XYZ Partnership 1111 Main Street Anywhere, USA 00001-1000	Taxpayer identification number(s) (TIN of XYZ Partnership)
	Daytime telephone number _____ Plan number (if applicable) _____

hereby appoints the following representative(s) as attorney(s)-in-fact:

Figure 4.31.2-12

4.31.2.3.8.3.2

(04-20-2017)

**Form 2848, Part 3
(Foreign Withholding)**

- (1) Part 3 should show that the POA is being executed for matters dealing with TEFRA and foreign withholding. It should also list all applicable tax forms and tax years.
- (2) Under Description of Matter "TEFRA Partnership Proceeding, Foreign Withholding Tax" should be entered. Enter the appropriate forms under Tax Forms. For example Form 1065, Form 8804 and/or Form 1042. Year(s) or Period(s) should include all applicable years.

(Note: I send this to the IRS to authorize my representative(s) to perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
TEFRA Partnership Proceeding, Foreign Withholding Tax	1065, 8804, 1042*	Applicable Tax Years
(*List All Applicable Tax Forms)		

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF.

Figure 4.31.2-13

- 4.31.2.3.8.3.3
(04-20-2017)
**Form 2848, Part 5
(Foreign Withholding)**

(1) Part 5a should state that the Form 2848 is authorizing the POA to work with the IRS on income and withholding tax. The following statement should be added to 5a: “Including income and/or withholding tax required to be paid and/or withheld at source (under Chapter 3 or 4 of the Internal Revenue Code) due on Form 8804 or Form 1042”.

check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF.

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

☐ Authorize disclosure to third parties: ☐ Substitute or add representative(s): ☐ Sign a return:

Including income and/or withholding tax required to be paid and/or withheld at source (under Chapter 3 of the Internal Revenue Code) due on Form 8804 or Form 1042.

☐ Other acts authorized:

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11980J Form **2848** (Rev. 7-2014)

Figure 4.31.2-14

- 4.31.2.3.8.3.4
(04-20-2017)
**Form 2848, Part 7
(Foreign Withholding)**

(1) Since this Form 2848 is being executed for both TEFRA and withholding purposes, it should still be executed by the TEFRA partnership’s TMP. Refer to IRM 4.31.2.3.8.2.4, Form 2848, Part 7-Signatory Line (TMP Appoints), for an explanation of how the TMP is to sign.

(2) It is important to note that this section only addresses how a Form 2848 should be executed when a TEFRA entity is a withholding agent and issues exist under IRC 1441 through 1446 or IRC 1471 through IRC 1474.

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

Signature of the TMP, or if the TMP is an entity (i.e. not a natural person), the TMP's Signing Official	TMP's Title, or if an entity, the TMP Signing Official's Title
Signature	Date
Name of the Signatory	Title (if applicable)
Print Name	<Name of the TMP> for <Name of the TEFRA Key Case Entity>
	Print name of taxpayer from line 1 if other than individual

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

I am not a convicted felon, a person who has been convicted of a crime involving dishonesty or fraud, or a person who has been convicted of a crime involving the collection of taxes, and I am not a person who has been suspended or disbarred from practicing before the Internal Revenue Service.

Figure 4.31.2-15

4.31.2.3.9
(06-01-2004)
**Conducting and
Completing the Key
Case Examination**

- (1) The following subsections cover key case examination procedures.

4.31.2.3.9.1
(04-20-2017)
**No Change Within 45
Days**

- (1) The examiner has 45 calendar days from the date the NBAP was issued to the TMP to determine if the NBAP should be withdrawn.
- (2) Procedures for key cases No-Changed within 45 days:
- If the key case is no-changed within 45 days from the date the NBAP is issued to the TMP, a linkage package should not be submitted.
 - If the key case is no-changed within 45 days the case must be closed to the TSPC within one week to withdraw NBAP. The NBAP is treated as if it had never been mailed; however, any subsequent examination would be subject to re-opening procedures.
 - Form 4605-A. Completing the Form 4605-A validates the return is a no-change. The report shouldn't be issued, it is for the case file only.
 - Complete a Form 3198, Special Handling Notice for Examination Case Processing, by writing "TEFRA - No-Change within 45 days, Issue Letter 1864". Attach the Form 3198 to the front of the key case file.
 - Use Disposal Code 02 on Form 3198 and ERCS.

Note: Disposal Code 01 does not apply to TEFRA.

Note: The letter must be issued within the 45-day period or a short no change case closure must be initiated. That means writing a no-change revenue agents report (RAR).

4.31.2.3.9.2
(04-20-2017)
**Linking the Key Case on
the PCS**

- (1) If the key case examination is still in process 120 days after the date the NBAP was issued to the partnership, the examiner will initiate linking the key case on the PCS. The case will be linked at this time whether or not the examiner has determined if there will be adjustments proposed.
- (2) If the key case examination is completed and is a no-change **after** 120 days, contact the TSPC to determine if the key case should be established on the PCS.

4.31.2.3.9.2.1
(04-20-2017)
TEFRA Linkage

- (1) To initiate linkage, the agent must complete Form 14090, TEFRA Linkage Request Check Sheet (LB&I), or Form 14091, TEFRA Linkage Request Check Sheet (SBSE), and submit the linkage package to the CPF within 120 days of the NBAP being issued to the partnership, or as soon as adjustments are known, if earlier. If no changed within 120 days, then a linkage package is not required.

Exception: Linkage packages can be submitted sooner than 120 days if potential adjustments have already been identified. (Refer to IRM 4.31.2.3.9.1, No-Change Within 45 Days, that discusses the 45-day withdrawal period). In these instances, potential adjustments must be clearly reflected on the PCS linkage request check sheet, or the package may be delayed or rejected.

- (2) A separate package must be completed for each year.
- (3) If the partnership is being linked for withholding issues only. Check the appropriate box on the check sheet so the campus will only link the direct partners for notice purposes.
- (4) There needs to be at least 7 months on the partnership statute when submitting the linkage package.
- (5) If there are not 7 months remaining, see IRM 4.31.2.3.1, Initiating Timely Examination of the Key Case Returns, for the responsibilities the field assumes.
- (6) For LB&I key cases, the agent must also include the LB&I Imaging Network (LIN) link.
- (7) If the return is not imaged, the return can be scanned.
- (8) The check sheet and attachments should be sent via secure email at the same time. Attachments include:
 - a. Electronic version of the TMP NBAP.
 - b. A spreadsheet with a reconciliation of the Schedules K-1. All attempts should be made to secure any missing Schedules K-1. This can be an allocation schedule provided by the TMP so long as it includes all partners.
 - c. The agent must answer the question on the check sheet regarding foreign investors and trusts.
 - d. A copy of Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items, or other authority used to extend the partnership return (may be scanned or faxed).

Note: DFO/Area Director approval is still required to open a return with less than 12 months on the statute, but does not need to be included in the package. The approval memo must be included in the case file. A signed copy of the memo must be forwarded to the Technical Service TEFRA Program Manager.

- (9) The copying of tax returns and Schedules K-1 are no longer required at the field level when the return is imaged or scanned. The Taxpayer Relief Act of 1997 requires partnerships with more than 100 partners to file their Form 1065, Schedules K-1, and related schedules electronically.

Note: A return is modified e-File (MeF) or legacy e-File if there are more than 500 partners. The agent needs to provide an alert to the campus in the secure email that the return must be accessed using the Employee User Portal (EUP) or a TRPRT print.

- (10) Schedules K-1 filed electronically can be accessed via the EUP or via a TRPRT print. LB&I does not image Schedules K-1 on the LB&I Imaging Network (LIN) if the partnership has more than 500 partners. In that case, LB&I must use EUP or TRPRT.
- (11) An analysis of the entire partnership structure using yK1, if available, should be completed before submitting the linkage package. Partnership structures with many layers and thousands of partners dilute potential adjustments to the point it results in de minimis tax to the taxable partners.
- (12) A copy of the linkage package check sheet must be included in the audit file.
- (13) The group manager must review the package and electronically sign the Form 14090 or Form 14091 before submission to the CPF. Form 15034, PCS Limited Linkage Document, should also be signed if the agent is recommending that the campus not link all notice partners. Once signed, the agent can forward the package via secured email to the CPF. The email address is provided on the appropriate form.
- (14) The Technical Services PCS coordinator is no longer used. The package is sent directly to the CPF via secure email. Each email should contain data specific to one tax year. Multiple years should not be submitted in one email. The campus may reject packages that contain multiple years or are incomplete.
- (15) If the return is too big to email, the required documentation can be upload on a shared drive. Coordinate with the campus TEFRA Coordinator. All information should be sent electronically except for that which must be mailed.
- (16) Once the key case has been established on the PCS by the campus, the examiner will receive a mailing list of the notice partner NBAPs. A Form 15034, PCS Limited Linkage Document, may also be included. This form provides a list of any notice partners not linked along with an explanation of why they weren't linked by the campus. Typically, partners won't be linked if their estimated adjustment is deemed to be immaterial. The Form 15034 may be initiated by the examiner if the agent believes certain partners will have little or no adjustments, or if AC statute procedures are being used and the partners statute has already expired. The NBAP mailing list (notice partners linked on PCS) and the Form 15034 (notice partners not linked on PCS) should account for all notice partners in the partnership.
 - a. The mailing list and limited linkage form should be reviewed to determine that all notice investors are listed. The Campus Pass-Through Function will input the Schedule K-1 percentage for profits or loss. If percentages are not available on the Schedule K-1, then they will be left blank.
 - b. If a notice partner is not listed on the mailing list or limited linkage form, the examiner should contact the campus. If a mailing list is not received within 75 days, contact the campus.
 - c. After review and following up on any problems, associate the mailing list and limited linkage form with the key case file.

- d. The mailing list with the date the NBAPs were mailed to the identified notice partners serves as the starting date for the running of the 120 day period before an FPAA can be sent to a TEFRA entity.

Note: The notice partners listed on the mailing list may not match the number of investors linked on PCS. There are a variety of things that can keep an investor from being linked on PCS initially. The mailing list is the examiner's proof that the campus has issued an NBAP and will get the investors linked as soon as possible.

4.31.2.3.9.2.2
(06-20-2013)

**Transferring Work to the
Campus Using a Share
Drive**

- (1) Large files cannot be emailed. As a result, a shared drive was created to allow these large files to be transferred electronically.
- (2) Each file should contain data specific to a given year. Tax years should not be combined within a file. It takes the campus too much time to rebuild a proper package. The campus may reject packages that are not complete or submitted correctly.
- (3) In order to transfer files via the shared drive, a network pathway must be established.
- (4) To map to the drive:
 - a. Right click the My Network Places icon on the desktop
 - b. Left click Map Network Drive
 - c. A window will open with two fill-in boxes. One for Drive and one for Folder.
 - d. The Drive box displays the first available drive letter for the connection. You can click on the arrow and scroll down until you see the drive letter that you want to use or you can use the drive letter listed.
- f. Also, make sure to check the box Reconnect at Login. This will ensure your computer reconnects to the drive each time you log on.
- (5) Check to see if the mapping was successful. Right click on the Start button on the lower left hand corner of your computer. Left click on Explore. The newly mapped drive will appear in the list. You should see the specified drive, followed by EX TEFRA Elect Notice followed by the drive name.
- (6) Left click on that drive and there will be two folders. One folder entitled LB&I OSC Notices and the other entitled SB/SE BSC Notices.

Note: All non-TEFRA related documents need to be loaded in the SB/SE BSC Notices folder.

- (7) Once you have mapped the drive, you will then be able to double click to the folders that you have access to. You can also create a shortcut to put on your desktop.
- (8) A new folder needs to be created to send to the campus. To create a new folder in your case folder, left click on the appropriate folder. Left click on "File" in the top menu. Left click on "New" in the drop down menu, and then on "Folder". A new folder icon with highlighted name "New Folder" will appear in your data folder.

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- (9) With the name of the folder highlighted, left click on the folder and enter a name. If the name of the folder is no longer highlighted, then right click on the folder and left click on "Rename".
- (10) The folder should be named as follows:
 - XXXX-Type of Package-FL
 XXXX = Last four digits of the TIN
 Type of Package = NBAP
 FL = First and last name of sender
- (11) Save all taxpayer files to be sent to the campus in the file folder named above.
- (12) To add the folder to the shared drive, right click on the folder being sent. Bring the cursor to the WinZip option and left click on "Add to foldername.zip" in the submenu. This will create a WinZip folder.
- (13) Right click on the .zip folder and left click on cut. Left click on the short cut folder on your desktop for the campus, or go through the network drive (long way).
- (14) Left click to open the campus folder where the package will be attached.
- (15) Right click on paste to attach the folder. When you click paste, an error message will appear to alert you that encrypted data cannot be copied or moved. Click ignore all.
- (16) The folder will not be posted to the campus folder. No password is needed because special access is required for the shared drive.
- (17) Each TEFRA campus will have personnel assigned to review the shared folder who will copy and save the package externally and then delete it from the shared drive.

4.31.2.3.9.2.3
(06-20-2013)
Foreign Investors

- (1) An entity that is treated as a partnership for US tax purposes and has a foreign partner could be required to withhold tax under two separate withholding tax regimes. The withholding tax regime under IRC 1441 and IRC 1442 requires a domestic partnership to withhold tax on a foreign partner's allocable share of U.S. source fixed determinable annual periodical (FDAP) income. Additionally, IRC 1441 and IRC 1442 require withholding any time a partnership makes a payment of FDAP income to a nonresident alien or foreign corporation regardless of whether this person is a partner in the partnership making the payment. The withholding tax regime under IRC 1446 requires any partnership engaged in a trade or business within the U.S. to withhold tax on a foreign partner's allocable share of effectively connected taxable income (ECTI). A partnership may also be required to withhold under IRC 1471 through 1474 (FATCA) when it receives a withholdable payment allocable to a foreign partner or when it makes a withholdable payment to a foreign entity."
- (2) Partnerships should also be aware of possible withholding obligations under IRC 1443 (regarding effectively connected income allocable to Sec. 501(c) foreign tax exempt organizations) and IRC 1445 (regarding the disposition of U.S. real property interest by foreign partners). See 26 CFR 1.1446-3(c), for the rule that a domestic partnership that is subject to both IRC 1445 and IRC

1446 withholding on the gain from the disposition of a U.S. real property interest will be subject to the payment and reporting requirements of IRC 1446 only and not IRC 1445(e)(1).

- (3) Taxes withheld on a foreign partner's income under IRC 1441, IRC 1442, IRC 1446 and IRC 1471 through 1474 are considered partnership items. An examination of a TEFRA partnership with respect to these withholding tax sections is subject to the TEFRA partnership procedures. See IRC 6231(a)(3) and 26 CFR 301.6231(a)(3)-1(a)(1) and (b).
- (4) If a partnership is being worked **only** for foreign withholding issues, the linkage package must be clearly marked to let the campus know. If foreign withholding is the only issue, then the campus will only link the notice partners. No non-notice or indirect investors will be linked. Failing to notify the campus will result in the campus expending resources to unnecessarily link indirect investors.

Note: If the **ONLY** issue being addressed on the partnership is foreign withholding tax; alert the campus when submitting the package by writing in the body of the email for PCS linkage the following: **"The only issue being addressed on this partnership is the Foreign Withholding Tax; link only direct partners."**

Note: The team should be absolutely sure that there are no other partnership issues. Linkage of partners late in the process can lead to cycle time delays and blown statutes.

- (5) If the campus identifies foreign investors when establishing the linkages of the partners, they will establish a NMF linkage for notice purposes. The agent is responsible for adjustments related to foreign investors in tier investors also.
- (6) The campus will send a memo to the agent to notify them of the foreign partner when they mail out the mailing list showing the linkage of the notice partners. Foreign investors discovered in tiers should be forwarded to the key case examining agent as they are identified.
- (7) The agent must pursue the withholding of tax on nonresident aliens and foreign corporations pursuant to IRC 1441, IRC 1442 and IRC 1471 through IRC 1474 for nonresident aliens (NRAs) with withholding issues related to the key case adjustment. Any assessment to the foreign partner must be made at the key case level through NRA withholding. The campus cannot make any withholding assessments at the partner level. IRM 4.31.2.3.19, Foreign Withholding Tax.
- (8) Assistance should be requested from an international examiner.

4.31.2.3.9.2.4
(04-10-2023)

Field Control of Partners

- (1) The examiner is responsible for reviewing the partner returns related to partnership audits for large, unusual or questionable items. If it is determined that the partner return warrants further examination, then AIMS controls should be requested.
- (2) PCS linkage is mandatory for all TEFRA partnership examinations open in exam groups after 120 days. The examiner must submit PCS controls for the pass-through entity. **In general**, requests for PCS linkage must be submitted by the examiner to the CPF no sooner than 45 days and no later than 120 days after issuance of the TMP to the partnership.

Exception: Linkage packages can be submitted sooner than 45 days if potential adjustments have already been identified. (Refer to IRM 4.31.2.3.9.1, No-Change Within 45 Days). In these instances, potential adjustments must be clearly reflected on the PCS linkage request check sheet, or the package will be rejected.

- (3) If AIMS controls exist on any partner prior to linking the pass-through entity on PCS, then it is important that the partner returns remain in the group until linkage is fully established. The partner return can be closed after PCS linkage is established and also when the non-pass-through entity adjustments are resolved before the partnership examination is complete. A TSUMYP secured through AIMS will indicate if PCS linkage exists along with a listing of partners linked. Once linkage exists the case can be closed from the group.

Note: Returns that are Large Corporate Case (LCC) corporation, Joint Committee, or other corporate specialty cases (Form 1120 , U.S. Corporation Income Tax Return, with letters after the 1120 other than A, S, or X) must be held in the field.

- (4) **Do not** close the partner returns off AIMS if a key case linkage package is being submitted. This creates added work for the campus as they have to reopen those partner returns before a linkage can be established.
- (5) Once linkage is established, partner returns can be transferred to the campus through Technical Services and updated to Status 21. In addition to the normal case information, the Form 3198, Special Handling Notice for Examination Case Processing, should be completed as follows:
- On page one, in the Forward to Technical Services Box, check TEFRA Investor.
 - On the bottom of page one, check Forward to Technical Services.

4.31.2.3.9.2.5 (04-20-2017)

Linking Short Periods with Same Month End

- (1) When there are multiple returns filed within the same year, it creates short period returns. Generally, this isn't a problem as each return has a different month end and is controlled separately. Complications arise when the short periods occur within the same month.
- (2) The first return posted will have a TC 150 and any subsequent returns filed in that same month will post with TC 976. Although each return should have its own module, there is no way to distinguish between these returns on Master File.
- (3) Normal TEFRA procedures will apply, but special precautions need to be taken to ensure the campus recognizes returns filed within the same month. The following information must be included in the linkage package:
- The TEFRA Linkage Request Check Sheet, Form 14090 (LB&I) or Form 14091 (SB/SE) will contain a promoter number of 3004LM identifying the case as one with multiple short periods ending in the same month.
 - Copy of each short period return and associated Schedules K-1
 - Copy of TMP NBAP for each short period
 - Verification of field AIMS control for all partners.
 - Schedule K-1 reconciliation of income/loss for each short period.
 - A flow chart showing the relationship of each key case to all partners

- g. The email submitting the linkage package will include a statement of the request to link short year returns with periods ending in the same month. A similar statement will also be included in the updated Form 14090 or Form 14091, "Additional Information" section.

4.31.2.3.9.3
(04-10-2023)
**No-Change After
Expiration of the 45 Day
Withdrawal Period**

- (1) The examiner has several options when a return is no changed.
- (2) Procedures for key cases no-changed after 45 days:
 - a. If the key case is no changed after 45 days from the date the NBAP is issued to the TMP, and the key case is not linked, a linkage package should not be submitted.
 - b. If the key case is no changed after 45 days the case must be closed to the TSPC. The examiner should recommend the type of no change closure, either Letter 4839, Audit Termination, Letter 2621, No Adjustment to Pass Through Investor, or the Letter 2064, Notice of Final Partnership Administrative Adjustment. An audit may be terminated if the case is closed within 6 months of the NBAP being issued and no substantive audit work was completed. A no change FPAA (Letter 2064) is recommended if the taxpayer has raised adjustments in their favor with which we don't agree. Most commonly a no adjustment letter (Letter 2061) is used.
 - c. Complete a Form 4605-A, Examination Changes-Partnerships, Fiduciaries, S Corporations and Interest Charge Domestic International Sales Corporations. Completing the Form 4605-A validates the return is a no change. The report shouldn't be issued if the audit is being terminated, it is for the case file only.
 - d. Complete a Form 3198, Special Handling Notice for Examination Case Processing, by writing "TEFRA - No Change after 45 days, Issue (insert the appropriate letter number)". Attach the Form 3198 to the front of the key case file.
 - e. Use Disposal Code 02 on Form 3198 and ERCS.

Note: Disposal Code 01 does not apply to TEFRA.

4.31.2.3.9.4
(04-10-2023)
**Completing the Key
Case Examination**

- (1) Once the key case examination is completed, the examiner issues a Summary Report to the TMP. The summary report will include:
 - a. Form 4605-A, Examination Changes – Partnerships, Fiduciaries, Small Business Corp, and Domestic Inter. Sales Corp (Agreed and accepted agreed). The Form 4605-A should only include the items changed as a result of the examination.

Reminder: Separate reports must be prepared for multiple year tax changes. Partners vary from year to year. Separate reports eliminate disclosure issues and saves the campus time in editing the reports.
 - b. Some adjustments, such as reallocations of distributive shares, or changing the characterization of a partner from general partner to limited partner, cannot easily be shown on the Form 4605-A. Utilize the Form 886-A, Explanation of items, to describe this adjustment. Then reference the Form 886-A in the remarks section of the Form 4605-A as an attachment.

- c. Form 886-A. This form will provide a detailed explanation of each proposed adjustment for each examined year, including facts, law, argument and conclusion for each proposed adjustment to a partnership item and affected item whether agreed or unagreed.
- d. Form 886-A, Explanation of Adjustments - Affected Items Report. If affected items are being adjusted, a separate report will be written. See IRM 4.31.2.3.15, Affected Items Requiring Key Case and Investor Level Determinations, and IRM 4.31.2.3.16, Report Preparation for Affected Items, for a detailed explanation of what affected items are and how to prepare a report for affected items.

Note: Affected item reports specific to individual partners should not be provided to the TMP. Affected item reports that apply to all partners may be provided to the TMP. Affected item reports are provided separately and not included with summary reports. Instead, the form is placed inside the partnership case file on top with the Summary Report. The TSPC will forward the document to the CPF to be used for preparation of the partner(s) reports.

- e. A template to waive the closing conference may be provided to the TMP.
- f. Letter 1807, TEFRA Partnership Cover Letter for Summary Report, is used for partnership returns as a cover letter for the Summary Report.

Note: Large items, such as an engineer's report, should be provided to the TMP separately. The specialist's Form 886-A will not be included with the complete partnership audit Summary Report. For example, if the specialist's report is 100 pages long, we will only list the adjusted item(s) on the Form 4605-A. The Form 886-Z, TEFRA Partners' Shares of Income, (or equivalent spreadsheet) should be completed and with the case file if there are adjustments. The TSPC will send this to the campus Pass-Through function. Form 886-Z contains the percentages of ownership which are not on the Form 886-S. See IRM 4.10.8, Examination of Returns, Report Writing, for detailed instructions on completing these forms.

- (2) If the key case examination results in a No Change, the Summary Report will include the overall results in a single paragraph; however, the Summary Report must follow the format explained in (1) above.
- (3) If during the key case examination, the TMP or his authorized representative provides additional issues for consideration with the IRS, such as affirmative issues, and/or an administrative adjustment request (Form 1065-X, Amended Return or Administrative Adjustment Request (AAR) or Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR)), whether prior to or after issuance of the NBAP, the Summary Report will include a detailed explanation of these additional issues, including facts, law, argument and conclusions.
- (4) The TMP is required by statute to provide notice and non-notice partners with a copy of the Summary Report. See IRC 6223(a) and 26 CFR 301.6223(g)-1(b)(1)(ii). However, the IRS may furnish a copy to a partner upon request by such partner.
- (5) The first report issued to the TMP that contains sufficient information for the partner to calculate his or her portion of the partnership liability and the reason for the adjustments will act as notification for purposes of IRC 6404(g).

Generally, this will be determined by the TSPC (or in some instances the Campus Pass-Through Function) and will not be included on the summary report itself.

- (6) See IRM 4.31.2.3.14, Closing the Key Case, for more information.

4.31.2.3.9.4.1
(04-10-2023)
**Processing Short Period
Returns in Same Month**

- (1) Set up a case file for each short period. For purposes of case processing label the short period case file(s) not controlled as the MF TC 150, "Do Not Process".
- (2) Evaluate each short year separately. Prepare a complete revenue agent report (RAR) that includes Form 4605-A, Form 886-Z, and Form 886-A for each short period. All reports including agreements must reflect the appropriate period.
- (3) A technical termination does not invalidate a prior TEFRA election. A TEFRA election may only be revoked with the consent of the Commissioner. Contact counsel should you encounter this situation.
- (4) Close all short periods together to Technical Services. Follow all existing closing timelines and procedures in IRM 4.31.2.3.14, Closing the Key Case.
 - a. Address any questions regarding closing procedures to the TSPC.
 - b. If all cases are being closed using the same method (i.e., agreed), prepare a Form 4605-A consolidating the ordinary income/loss adjustments as well as adjustments for all duplicate filings of the partnership.
 - c. Each short period case file will have a RAR specific to its period.
 - d. The TC 150 case file will have multiple RARs, one for each short period and one showing the consolidated adjustments. Only the consolidated RAR will be processed as a TC 300, the other short period RARs provide documentation for the amounts adjusted on the consolidated RAR.
 - e. Label in red the TC 150 case file as "Original" and case files for subsequent postings as a "duplicate original".
 - f. Arrange the TC 150 case file on top followed by short year case files.
 - g. For paper cases attach on top of the bundle, one case closing sheet (Form 3198) and transmittal Form 3210 showing returns for all periods. If the case files are electronic there should be a Form 3198 for each return and Form 3210 showing both year ends. These forms should be annotated "Technical Termination multiple year endings in one month".
 - h. Prepare the Form 5344 to include the total of all adjustments from each short year.
 - i. If the case is unagreed and one of the short periods is not being considered, then secure a memo from counsel stating the determination.
 - j. Attach the memo to the Form 895 for the period not being considered. The Form 895 will show alpha "FF", reference the memo from counsel and be initialed by both the Field group manager and the TEFRA Technical Services manager.
 - k. If there are partners that are only in the short period not being considered, then contact the TSPC and the Campus TEFRA Coordinator to discuss closing the partner.

4.31.2.3.10
(04-10-2023)
Closing Conference

- (1) A closing conference will be offered whether the key case examination results in an agreed, unagreed, or no change case.

Note: A closing conference is not required if a key case is no changed within 45 days and the NBAP is withdrawn, or an audit termination.

- a. A closing conference will be scheduled no earlier than 30 days after the issuance of the Summary Report to the TMP unless waived in writing by the TMP. The IRS and the TMP will determine the time and place for all administrative proceedings. See 26 CFR 301.6224(a)-1 .

Note: For syndicated conservation easement (SCE) partnerships, when there is less than eight months remaining on the partnership statute of limitations, the revenue agent will **not** be required to offer and hold a closing conference with the taxpayer or representative prior to the issuance of the Notice of Final Partnership Administrative Adjustment (FPAA).

- b. Although the TMP may waive the closing conference, if any notice partner requests the closing conference, it will be held. 26 CFR 301.6224(b)-1 explains how a partner may waive his or her rights to a closing conference or any other rights granted in the unified audit procedures of a partnership proceeding. The TMP cannot waive the rights of any notice partner.
- c. The TMP is required by statute to provide information to notice partners and non-notice partners with respect to the closing conference with the examiner. See 26 CFR 301.6223(g)-1(b)(1)(i). The IRS is not required to notify each partner of the closing conference. The results of the proceeding apply to all partners even if the TMP does not provide the required information.
- d. The examiner will explain the proposed adjustments in the Summary Report to the TMP and the partners or their representatives who are at the closing conference.
- e. The number of partners planning to attend the closing conference must also be conveyed to the examiner.
- f. Only those representatives with a valid POA on file for the taxable year(s) under discussion are permitted to participate in the closing conference. See IRM 4.31.2.3.8, Power of Attorney (POA) for TEFRA Partnerships.
- g. The information presented at the closing conference may require additional examination work, and it may be necessary to hold a second conference. Another Letter 1807, TEFRA Partnership Cover Letter for Summary Report, must be issued if it is determined that a revised Summary Report must be issued.

4.31.2.3.10.1
(04-20-2017)
**Powers of Attorney
(POA) for Partners in
TEFRA Partnerships**

- (1) When working with taxpayers that are direct or indirect partners in TEFRA partnerships, the examiner will occasionally need to work with a POA at the partner level. This commonly occurs when a partner wants their POA to execute a TEFRA statute extension (e.g., Form 872 or Form 872-A) or sign off on a TEFRA settlement agreement (e.g., Form 870-PT or Form 870-LT).
- (2) In order for the POA to work with the examiner on TEFRA related matters, the partner level Form 2848 must still comply with the requirements of 26 CFR 301.6223(c)-1(e) and should state in some way that the POA is for purposes of subchapter C of chapter 63 of the Code.
- (3) Only those representatives with a valid POA on file for the taxable year(s) under discussion are permitted to participate in the closing conference.

- (4) The Summary Report transmittal letter (Letter 1807) explains that the POAs must be submitted to the examiner at least 10 days before the closing conference. The original POA should be expeditiously faxed to the CAF unit in the campus.
- (5) A new POA for a TEFRA investor does not need to specifically name the TEFRA partnership before the IRS can deal with the POA for the TEFRA partnership issues. However, it does need to meet specific requirements as explained in the following sections.
- (6) Note on the Form 3198, Special Handling Notice for Examination Case Processing, whether any POAs were secured for any partner in the key case. The TSPC will forward all original POAs to the CPF where the partner is linked. A copy will be kept with the key case file.

4.31.2.3.10.1.1
(04-20-2017)
Form 2848, Part 1
(TEFRA Partner POA)

- (1) For a partner level POA, Part I, Line 1 of Form 2848 should reflect the partner’s tax information. This includes the partner’s name, address, and TIN. If partner Jane Doe is executing this type of POA, Part I would include Jane’s name and address and Jane’s TIN.

Form **2848**
(Rev. March 2012)
Department of the Treasury
Internal Revenue Service

**Power of Attorney
and Declaration of Representative**

► Type or print. ► See the separate instructions.

Part I Power of Attorney
Caution: A separate Form 2848 should be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address
Jane Doe
1111 Main Street
Anywhere, USA 00001-1000

Taxpayer identification number(s)
999-99-9999

Daytime telephone number
000-111-2222

Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

OMB No. 1545-0150
For IRS Use Only
Received by:
Name _____
Telephone _____
Function _____
Date ____/____/____

Figure 4.31.2-16

4.31.2.3.10.1.2
(04-20-2017)
Form 2848, Part 3
(TEFRA Partner POA)

- (1) Under Description of Matter, “Income, Including TEFRA Partnership Items” should be entered. Under tax forms, the partner’s federal tax from number (1040, 1120, etc.) should be entered as well as Form 1065. Under Year(s) or Period(s) the applicable years should be listed.

(Note. IRS sends notices and communications to only two representatives.) Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income, Including TEFRA Partnership Items	Partner's Federal Tax Form (1040, 1120, etc.) and Form 1065	APPLICABLE TAX YEARS

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF ☐

Figure 4.31.2-17

- (2) The language in Figure 4.31.2-17 above meets the requirements of 26 CFR 301.6223(c)-1(e). This means the Form 2848 covers TEFRA as well as income tax. In the Jane Doe example, Part 3 Tax Form Number, would list both Form 1065 and Form 1040.
- (3) If the Form 2848 is not completed as above, it will be rejected by the CAF Unit in the campus.
- (4) If an existing POA does not have the proper language, a new POA, with the above statement included, should be secured.

4.31.2.3.10.1.3
(04-20-2017)

**Form 2848, Part 5
(TEFRA Partner POA)**

- (1) Though not required, under Part 5a of Form 2848, it is a best practice to list each act the taxpayer authorizes the POA to perform. These would be acts other than the normal authorization to work with the examiner and exchange confidential information.

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF ☐

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return; ☐

☒ Other acts authorized: **IT IS A BEST PRACTICE, BUT NOT REQUIRED, TO LIST SPECIFIC ACTS AUTHORIZED BY THE TAXPAYER.**

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11980J Form **2848** (Rev. 7-2014)

Figure 4.31.2-18

- (2) Care should be taken to identify any restrictions to the POA's authority to act for the taxpayer under Part 5b.

Form 2848 (Rev. 7-2014) Page **2**

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.

List any specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b):

CARE SHOULD BE TAKEN TO IDENTIFY ANY RESTRICTIONS TO THE POA'S AUTHORITY TO ACT FOR THE TAXPAYER.

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here ☐

Figure 4.31.2-19

4.31.2.3.10.1.4
(04-20-2017)

- (1) Form 2848 should reflect the partner's signature and printed name.

**Form 2848, Part 7
(TEFRA Partner POA)**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

► IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

(Signature of Jane Doe)

Signature _____ Date _____ Title (if applicable) _____

Jane Doe _____

Print Name _____ Print name of taxpayer from line 1 if other than individual _____

Figure 4.31.2-20

4.31.2.3.11
(04-20-2017)

**Securing Agreements
from the TMP and the
Partners**

- (1) Consider the impact of an agreement on all other partners in view of their right to consistent settlement.
- (2) The examiner may solicit agreements as part of the closing conference. Be sure to verify that there are no report writing errors. Once an agreement is executed, the IRS is bound to the adjustments shown on the Schedule of Adjustments.

Note: All TEFRA agreements must be countersigned on behalf of the Commissioner by a TSPC or other employee authorized under Delegation Order 4-19.

- (3) A TMP agreement will only be solicited when there are non-notice partners. When the TMP is a notice partner, an agreement will be solicited from the TMP in the TMP's capacity as a notice partner only.
- (4) The notice partners and/or their representatives (See IRM 4.31.2.3.10, Closing Conference, for proper completion of the POA form) who are at the closing conference should be offered an opportunity to enter into a settlement with the IRS by signing:
- Form 870-PT, Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts. This agreement form allows the partner to agree to adjustments

proposed to partnership items. Penalties are determined at the partnership level for partnership tax years ending after 8/5/1997. Use this agreement if proposing adjustments to partnership items and not to affected items.

- b. Form 870-LT, Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts and Agreement for Affected Items. This form permits the partner to agree to both partnership adjustments and affected items or only partnership adjustments. This form has two parts. Part I of the Form 870-LT is identical to the Form 870-PT. By signing this part of the form, the partner is agreeing to the partnership item adjustments (and penalties) as stated in the schedule of adjustments attached to the Form 870-LT. These penalties include negligence (IRC 6662(b)(1)), and substantial understatement of income tax (IRC 6662(b)(2)), and overvaluation (IRC 6662(b)(3)). Part II of the Form 870-LT allows the partner to agree to partner level determinations for affected items and the related penalties, additions to tax as well as to the assessment of the tax, penalties, and interest due without following the normal deficiency proceedings (30 day letter or statutory notice).

Note: Penalties determined at the partnership level must be directly assessed and are not subject to deficiency procedures, even when the underlying deficiency upon which they are based is subject to deficiency procedures.

- c. Brackets are placed around dollar amounts when an adjustment is in the taxpayer's favor, e.g., an increase in income is shown as a positive number and a reduction of income is in brackets, as opposed to an increase in expenses in brackets and a decrease reflected as a positive number.
 - d. Each notice partner (and spouse if they filed jointly), including the TMP in his or her capacity as a partner in the partnership, must individually sign a Form 870-PT or Form 870-LT. The TMP is only authorized to bind the non-notice partners if specific language is added. (See (4) below.) Verify that all agreements are signed properly and in the proper signing format including title of signing authority, as applicable. See Exhibit 4.31.2-4 for further detail on who must sign agreements.
 - e. If a pass-through partner enters into a partnership item settlement agreement with the IRS, that agreement binds all indirect partners holding an interest in that partnership through the pass-through partner except those indirect partners that have been identified in accordance with 26 CFR 301.6223(c)-1. Indirect partners identified at least 30 days prior to the date the agreement is entered into are entitled to their own settlement agreement and are not bound by a pass-through partner settlement agreement.
 - f. A pass-through partner (i.e., a tier) cannot sign Part 2 of Form 870-LT agreeing to affected items since a pass-through partner cannot bind its underlying investors. Only the ultimate taxpayers can agree to affected items.
- (5) According to IRC 6224(c)(3), a partner who is a non-notice partner, i.e., a partner who has a less than one percent interest in profits of a partnership with more than 100 partners (and not a member of a notice group), is bound by any settlement agreement that is entered into by the TMP, and in which the TMP agreement expressly states that such agreement will bind the other partners.

- a. The following statement must be inserted by the examiner or reviewer immediately preceding the signature line on the Form 870-PT for the TMP who executes an agreement intending to bind non-notice partners: "The undersigned Tax Matters Partner is signing this offer on behalf of himself (herself) (itself) and all other partners whom he (she) (it) has the authority to bind; under section IRC 6224(c)(3) ; a final agreement resulting from the signature of the Commissioner of Internal Revenue will be binding on all such other partners".
- b. The TMP cannot bind the non-notice partners for any affected items or the related penalties (except for penalties attributable to partnership items) when partner level factual development is required. Therefore, Form 870-PT, not Form 870-LT should be presented to the TMP. If the TMP erroneously signs Part II of the Form 870-LT, the error will not invalidate the agreement for partnership items and partnership level determination of penalties. However, in both cases the Campus Pass-Through Function must subsequently issue a 30 day letter or statutory notice to the non-notice partners for these items.
- c. The TMP may not bind a non-notice partner if the non-notice partner has affirmatively notified the IRS that the TMP is not authorized to act on his or her behalf pursuant to 26 CFR 301.6224(c)-1(c).
- d. Whenever a key case examiner secures a Form 870-PT or Form 870-LT at the closing conference, the case must be closed out of the group **within 15 days** of the closing conference.
- e. A pass-through partner cannot bind its underlying investors by signing Part II of a Form 870-LT. Each taxable partner must be issued a statutory notice of deficiency individually. A pass-through partner agreeing to Part I **does** bind all partners to partnership item adjustments and penalties determined at the partnership level.
- f. If agreements are not received at the closing conference, the field examiner will suspense the closing of the key case for no more than 30 days to allow the investors time to return their agreements. At that time, the key case will be closed. The appropriate statement must be added to the Form 3198 See IRM 4.31.2.3.14, Closing the Key Case.
- g. If agreements are signed prior to the issuance of the 60 day letter, then the IRC 6404(g) date will be the counter signature date.

(6) Actions taken should be documented in the work papers.

4.31.2.3.11.1
(04-20-2017)

Consistent Settlement

- (1) IRC 6224(c)(1) allows partners to enter into a settlement agreement to fix the correct treatment of partnership items with finality. IRC 6224(c)(2) gives other partners the right to request a settlement that is consistent with another partner's settlement.
- (2) The request for consistent settlement must be made by the later of:
 - a. 150 days after an FPAA was mailed to the TMP;
 - b. 60 days after the settlement agreement was accepted by the Commissioner; or
 - c. 45 days after an untimely FPAA is mailed to the partner.
- (3) The partner must request the consistent settlement in writing and identify the specific settlement for which he/she/it is requesting consistent settlement.

- (4) The consistent settlement will be processed on Form 870-PT and identified as "Consistent Settlement". "Consistent Settlement" should be written on the top of the agreement form.

Note: If the agreement is not identified as a consistent settlement another partner may claim the agreement starts a second 60-day period for requesting consistent settlement.

4.31.2.3.11.2
(04-10-2023)

Acceptance of Faxed Agreements

- (1) Agreements to assess additional tax (Form 4549 , or Form 4549-A, with Form 870) can be accepted by fax if taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the consent by fax.
- (2) Closing agreements Form 906, involving tax amounts can be accepted by fax if taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the consent by fax.

4.31.2.3.11.3
(04-20-2017)

Securing Partial TEFRA Agreements

- (1) The Taxpayer Relief Act of 1997, passed by Congress on July 31, 1997 and signed into law on August 5, 1997, changed portions of the TEFRA examination process. One notable change provides that partial agreements can be secured for any settlements entered into after August 5, 1997. Partial agreements may be made for any tax year.

Note: If a partial agreement is being considered, contact your TSPC immediately.

- (2) In the normal processing of an agreed TEFRA case, once the investor has signed a settlement agreement form, the partnership items convert to nonpartnership items. The conversion of items from partnership items to nonpartnership items starts the running of the one-year assessment statute date. The statute of limitations for assessment of the newly converted nonpartnership items will not expire before the date which is one year after the date on which the conversion occurs. By law, a partial agreement does not start the running of the one year assessment date.
- (3) Since partial agreement cases do not have "one-year" statute dates, report writing may be delayed due to processing of cases that have established "one-year" statute dates. However, the idea behind a partial agreement is to have that portion of the deficiency assessed as soon as possible. TEFRA partial agreements may be secured by agents in the field or by an appeals officer during the appeals process.

Note: It is very important to remember when securing partial agreements and forwarding them for processing, they MUST be readily identifiable as a TEFRA partial agreement. This is critical.

- (4) If the field negotiates a partial agreement with the TMP, partial agreements will be secured from all of the notice partners. If there are non-notice partners, the special language will be used on the Form 870-PT, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, signed by the TMP to bind all of the non-notice partners. The Form 870-PT for the partial settlement should not contain any non-computational affected items.

- (5) TEFRA partial agreements must have the annotation “Partial Agreement” (hand written, typed or stamped) on all pages of the Form 870-PT with the following statement added to the Schedule of Adjustments:

This partial agreement becomes effective upon execution by the Commissioner of Internal Revenue or his delegate. It does not settle all of the partnership items. The remaining unsettled partnership items as well as any unsettled penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item will remain subject to determination under the partnership-level administrative and judicial procedures. The period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into. To the extent this paragraph conflicts with any other paragraph in this agreement, this paragraph controls.

- (6) The statement above will also be entered on the schedule of adjustments page. The Form 886-Z, TEFRA Partners’ Shares of Income, (or equivalent) will also be identified and marked as a partial agreement. The Form 3198 used to transmit the package will also be identified and clearly marked, “TEFRA Partial Agreement” and “Special Processing Required” to reflect that the attached package is for a partial agreement.
- (7) The partial package will contain two Form 4605-A. One will reflect all the adjustments, and the other will reflect only those adjustments being agreed per the partial agreement.
- (8) The agent will monitor the receipt of the signed partial agreements and retain them until all are received. All signed partial agreements should be sent to the TSPC to be countersigned. The TSPC, per Delegation Order 4-19 (See IRM 1.2.2.5.16), will sign for the Commissioner and send all of the partial agreements to the key case CPF for processing.

4.31.2.3.11.4
(06-20-2013)
**Securing Agreements
Solely for Foreign
Withholding**

- (1) If agreements are for cases with the sole issue of IRC 1441 through 1446 and IRC 1471 through 1474 withholding maintain a copy of the unexecuted agreements. If an agreement is for other than a general partner, notate in the case file not to execute the agreements, and that they are to be used for closing purposes only.

4.31.2.3.12
(04-10-2023)
**Securing Agreements
for Tax Assessments at
the Partnership Level**

- (1) Some partnerships request to settle and pay tax deficiencies on behalf of their partners. When such a request is made, you should consult with your TSPC, local counsel and the CPF. A referral on the Specialist Referral System should be made if one has not already been submitted. It is important the TSPC be involved early in the process to ensure all reports are correctly prepared and local Area Counsel has been involved in the preparation of the Form 906. This will also ensure timely case closure from the exam group through Technical Services.
- (2) It is legally permissible to have the key case partnership or pass-through partners pay tax on the net adjustments passing through it at the highest marginal tax rather than passing the adjustments to the hundreds of direct and indirect partners. The partnership or pass-through partner must sign a Form 906, Closing Agreement On Final Determination Covering Specific Matters, and full pay the amount due. The agreement will provide that each partner’s share of the increased partnership income will increase that partner’s capital account and outside basis. The payments will be treated as proportionate dis-

tributions to all partners in the year the actual payment is made. The distributions will reduce the partner capital accounts and outside basis. A partner who was a partner in the year under audit and not a partner in the year the tax is paid is generally not affected. Economically, this will put both the partners and the IRS in the same position as if the Campus passed through all of the adjustments and the partners had paid the assessments individually.

- (3) Generally, these rules apply when there is a deficiency. However, all options should be explored if the partnership structure is very large.
- (4) Settlement by the key case partnership or a pass-through partner is not the norm. Local Area Counsel must be involved in the initial stages and local Area Counsel must be involved up-front in the drafting of the Form 906. The purpose of the settlement is efficiency and ease of processing. As a result, the field will be responsible for assisting with requests to settle TEFRA adjustments which are outside of the normal process.
- (5) The details of a partnership level settlement are explained in a Form 906, Closing Agreement on Final Determination Covering Specific Matters. A partnership level agreement can only be secured when the adjustments passing through to all underlying partners will result in a deficiency. If any partner is subject to a refund, then a partnership level agreement cannot be secured. All partners must be adjusted individually.
- (6) The highest effective tax rate should be used when calculating the amount of tax owed. The partnership must also pay all additions to tax including interest and penalties.
- (7) The Form 906 should be executed by the DFO for LB&I or Technical Services manager for SBSE before sending a copy to the CPF.
- (8) The payment made by the partnership is considered a distribution to the partners of record in the year paid, or the year when the payment became fixed and determinable. A partnership's payment of IRC 1446 tax on behalf of a foreign partner is treated as a deemed distribution of money to the partner on the earliest of: the day on which the partnership paid the tax; the last day of the partnership's taxable year for which the amount was paid; or the last day on which the partner owned an interest in the partnership during the taxable year for which the tax was paid. However, a deemed distribution of money under IRC 1446(d) resulting from a partnership's installment payment of IRC 1446 tax on behalf of a partner is treated as an advance or drawing of money under 26 CFR 1.731-1(a)(1)(ii) to the extent of the partner's distributive share of income for the partnership taxable year. The rule treating a deemed distribution as an advance or drawing of money under this paragraph (d)(2)(v) applies only for purposes of IRC 6655 (as applied through this section) or the date a foreign partner is deemed to have paid estimated tax by reason of such installment payment. See 26 CFR 1.1446-3(d)(2)(v).
- (9) The impact of the payment as a distribution to the partners should be included in the Form 906 settlement agreement.
- (10) The payment made by the partnership will impact the basis of all partners of record at year end. The partners' capital accounts and basis should be increased by the amount of income that should have been reported, and then reduce it by their share of the tax paid by their partnership. That share is

treated as a distribution in the year paid and will generate additional tax to the extent it exceeds the partner's outside basis or increases income (by reducing basis) on the sale of his partnership interest. Please see IRM 4.31.2.3.19, Foreign Withholding Tax, for specific rules for the partnership's payment of IRC 1446 tax.

4.31.2.3.12.1
(06-20-2013)
**Key Case Partnership
906 Agreement**

- (1) It is legally permissible to have the key case partnership or pass-through partners pay tax on the net adjustments passing through it at the highest marginal tax rather than passing the adjustments to the hundreds of direct and indirect partners. The partnership or pass-through partner must sign a Form 906, Closing Agreement On Final Determination Covering Specific Matters, and full pay the amount due. The agreement will provide that each partner's share of the increased partnership income will increase that partner's capital account and outside basis. The payments will be treated as proportionate distributions to all partners in the year the actual payment is made. The distributions will reduce the partner capital accounts and outside basis. A partner who was a partner in the year under audit and not a partner in the year the tax is paid is generally not affected. Economically, this will put both the partners and the IRS in the same position as if the campus passed through all of the adjustments and the partners had paid the assessments individually.
- (2) Form 4549-A and Form 4605-A will be prepared. The Form 4549-A is prepared to show the adjustments and calculations. The reports can be prepared manually if necessary. The reports will include:
 - a. Examination adjustment(s),
 - b. Tax at the highest marginal rate,
 - c. Penalties, if applicable, and
 - d. Interest which will be identified as the time value of money with regard to the agreed adjustment(s) and penalties. The payment will be grossed up to include both tax and interest due. Refer to *Interest Computation for Payoffs website*. Fax or email the request to CCP. The request will identify the interest computation date along with the total balance due. CCP has a 2-3 day turnaround. Be sure to include the return fax number or email address.
 - e. Form 4549-A will include the following statement on the top of the first page: "Do Not Process-Used for Computational Purposes Only".
- (3) Preparation of Form 906 will be coordinated with local TEFRA Counsel.
 - a. Prepare a Form 906 for the key case partnership TMP and a separate Form 906 for each notice partner.
 - b. Local Counsel will designate the signing official having authority to bind a notice partner which is a pass-through partner (Non-TEFRA partnership, TEFRA partnership or Limited Liability Company) when applicable.
- (4) Continue with (4) in IRM 4.31.2.3.12.2, Pass-Through Partner 906 Agreement, below.

4.31.2.3.12.2
(04-10-2023)
**Pass-Through Partner
906 Agreement**

- (1) Secure controls for the pass-through partner proposing to settle. The controls will need to be transferred from the CPF when linkage is in place and the partner is controlled by CPF.
 - a. The examiner will prepare CAMPUS AIMS DATABASE TRANSFER/LINK REQUEST, Exhibit 1.

- b. Forward the request to the TSPC. The TSPC will contact the appropriate Campus TEFRA Coordinator - TEFRA through email or fax. The Campus TEFRA Coordinator will request an "H" freeze be added to the pass-through partner return. The Campus TEFRA Coordinator will work with the campus staff to have the return transferred direct to the field. The partner return must be included in the partner case file before closure.
- (2) Prepare an examination report using Form 4549-A and Form 4605-A for the tier partner. The Form 4549-A is used to show the adjustments and calculations. The reports can be prepared manually if necessary. The report will include:
 - a. Examination adjustment(s),
 - b. Tax at the highest marginal rate,
 - c. Penalties, if applicable, and
 - d. Interest which will be identified as the time value of money with regard to the agreed adjustment(s) and penalties. The payment will be grossed up to include both tax and interest due. Refer to *Interest Computation for Payoffs website*. Fax or email the request to CCP. The request will identify the interest computation date along with the total balance due. CCP has a 2-3 day turnaround. Be sure to include the return fax number or email address.
 - e. Form 4549-A will include the following statement on the top of the first page: "Do Not Process-Used for Computational Purposes Only".
- (3) Preparation of a Form 906 for the tier partner will be coordinated with local TEFRA counsel.
 - a. When a pass-through partner is agreeing and full paying, Form 906 will include a statement indicating the agreement only applies to the pass-through partner and not the other partners in the partnership.
 - b. Local Counsel will designate the signing official having authority to bind the pass-through partner (non-TEFRA partnership, TEFRA partnership or Limited Liability Company) when applicable.
- (4) Local counsel will forward the final draft to Chief Counsel for final review.
- (5) Rev. Proc. 68-16 provides guidelines addressing the number of required copies for signatures. Forward the reports and required original copies, at a minimum 3 original copies, of the approved Form 906 to the taxpayer:
 - a. All of the direct partners with more than a one percent interest should sign a Form 906 when the key case is agreeing and paying the tax.
 - b. The tier will sign the Form 906 when agreeing and paying the tax.
- (6) When the signed Form 906 agreements are received from the taxpayer, review the agreements. If the taxpayer has returned all of the original closing agreements, make the appropriate copies for original signature. Review the Form 906 and ensure:
 - a. Changes have not been made to the settlement agreements.
 - b. The Form 906 agreements have been properly signed.
 - c. Date stamp the last page of each executed original Form 906 agreement. Do not date stamp in any signature area.
- (7) Submit the Form 906 agreements to Technical Services for counter signature.

- a. The TSPC will review and forward the signed documents to the TEFRA/Pass-Through group manager for signature.
 - b. The countersigned documents will be returned to the field group, if any returns are controlled by the group, through the TSPC.
- (8) The examiner will process the payment to the local Field Office Teller by submitting Form 3244-A, Payment Posting Voucher Examination. Record the amount under TC 640, Advance payment on deficiency. The TC 640 will freeze the refund.
- (9) The examiner is responsible for monitoring the posting of the payment. A TC 640 will post showing the full amount paid. A copy of the Form 3244-A and the check should be maintained in the case file. The examiner must include a copy of the transcripts with the TC 640 posting.
- (10) Prepare Letter 1595-E, Exam Executed Closing Agreement Transmittal Letter. After review of the case file the TSPC will return an original countersigned Form 906 with Letter 1595-E to the taxpayer.
- (11) Prepare Form 2424, Accounting Adjustment Voucher. The name, address, X-ref TIN, X-ref Tax Period and transaction date must all be complete, for Debit and Credit sections as applicable. The applicable transaction codes and amounts must also be entered for the appropriate sections. The explanation section must have the following statement, Transfer TEFRA payment to the Miscellaneous Revenues Account per Form 906 agreement. DLN and CDD# of payment as shown on TXMOD.
- (12) Prepare Form 8339, PCS Change, for the partnership/partner.

4.31.2.3.12.3
(06-20-2013)

Form 906 Case Closure

- (1) Processing a key case partnership Form 906 agreement as:
 - a. Unagreed: Follow regular TEFRA unagreed procedures when a pass-through partner has agreed and the remaining direct partners have not agreed to the adjustments.
 - b. Agreed: Follow regular TEFRA agreed procedures when the key case has signed a Form 906 agreeing to all of the adjustments and has paid the tax or when all of the partners have agreed to the adjustments by signing Form 906, Form 870-PT or page 1 of Form 870-LT agreements.
- (2) Processing a pass-through partner Form 906 agreement:
 - a. The audit for the pass-through adjustments from the key case is treated as fully agreed.
- (3) All of the required reports, the executed original 906(s), Letter 1595-E, Form 2424, Form 3198, Form 5344 (with TEFRA written at the top of the form) and Form 8339 will be included with the case file.
 - a. Form 3198, Page 1, Indicate the case is to be forwarded to Technical Services. Identify the case as a TEFRA Key Case or TEFRA Partner. Form 3198, page 2 under Instructions for CCP - Investor and/or Key Case Information include the statement, *Close TC-300 for \$0 with Hold Code 2 and transfer the TEFRA payment to the Miscellaneous Revenues Account, 6400-2320, per Form 906 Agreement.*

- b. Form 5344, item 12 will show TC 300 \$0. Under "Comments" (bottom right side) enter "Please transfer TC 640 to the Miscellaneous Revenues Account, 6400-2320".

Caution: It is important to note that the payment will be refunded to the taxpayer if the required language is not included on Form 2424, the Form 3198 and the Form 5344.

- (4) Close the case using the proper disposal code based on the type of case closure for mandatory review.

Reminder: The examiner will ensure the payment has properly posted before closing the case to Technical Services.

4.31.2.3.13
(04-10-2023)
Unagreed Key Case

- (1) After the closing conference, if the TMP or any notice partner did not agree, the examiner will prepare an unagreed revenue agent report (RAR) in the format prescribed in IRM 4.10.8, Examination of Returns, Report Writing. If penalties are proposed, the procedures in IRM 20.1, Penalty Handbook, will be followed. The report writing procedures for penalties are also in IRM 4.10.8.

Note: IRC 6751(b) requires that penalties be approved by a manager before they are assessed. Penalties determined at the partnership level be approved by management before they are applied. See IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments.

- (2) The unagreed RAR will incorporate the taxpayer's position. If agreed or no changed, the Summary Report may be substituted for the RAR. A Form 4665, Report Transmittal, must be used as the transmittal for all RARs.
- (3) Any alternative positions that should be considered in the event of an appeal, should be included on a Form 886-A. The alternative positions should not be included in the summary report or reflected on the Form 4605-A.
- (4) There must be 600 days (twenty months) on the key case partnership statute before closing an unagreed case to Technical Services for the issuance of a 60 day letter. If there are less than twenty months but at least eight months the case can be closed to Technical Services for issuance of an FPAA. If there are less than eight months see IRM 4.31.2.3.14.1, Imminent Statute Procedures.

4.31.2.3.14
(04-10-2023)
Closing the Key Case

- (1) The examiner will forward the key case file to Technical Services in status 21. A Form 3198, Special Handling Notice for Examination Case Processing, will be attached to the front of the key case and the appropriate statements added. Technical Services will prepare and mail out all closing letters to the TMP. Letter 1807 and a copy of the summary report should be included for all cases except no changes within 45 days.

Note: If a linked key case will result in a no change, the agent should notify the CPF through the appropriate email box. Include the name, EIN and tax year of the key case that is being closed as a no change. This will alert the campus to stop processing the underlying partners so they can shift their resources to other cases. If Technical Services returns the case for further

development, please remember to contact the campus and let them know that the case may no longer be a no change so they can continue processing the partner returns.

- a. TEFRA key cases are mandatory review. The “TEFRA or ILSC Key Case” block under “Forward to Technical Services” will be checked and the criteria in IRM 4.8.4, Mandatory Review, will be followed.
- b. If the TEFRA key case is no-changed, the “Other” block under the “Forward to Technical Services” section will be marked and one of the following applicable statements will be made:

No-Change Remark for Form 3198
<ul style="list-style-type: none"> • TEFRA No Change Determination Made Within 45 Calendar Days • TEFRA No Change after 45 Calendar Days

- c. If the TEFRA key case is unagreed, no partners signed Form 870-PT or Form 870-LT, the “Other” block under the “Forward to Tech Services” section will be marked, and the applicable statement “TEFRA Key Case File, Issue 60 Day Letter” or “TEFRA Key Case File, Issue 150-Day Letter (FPAA)” will be added.

Note: The examiner should recommend the FPAA when there are fewer than twenty months left on the statute and the taxpayer will not extend the statute.

- d. If the TEFRA key case is agreed and a Form 870-PT or Form 870-LT is included in the file, state in the “Other” block “Agreed TEFRA Key Case File, Unexecuted partner agreements Enclosed”. Verify that the signatures are correct. If the signature language is incomplete, the agreements will not be executed. Rejected agreements will be returned to the group.
- e. If the TEFRA key case is unagreed but one or more partners have signed a Form 870-PT or Form 870-LT, state in the Other block either:

Explanation for Form 3198, Other Box
<ul style="list-style-type: none"> • TEFRA Key Case File, 60 Day Letter, and unexecuted partner agreements enclosed, route to the Technical Services. • TEFRA Key Case File, Issue FPAA, and unexecuted partner agreements enclosed, route to the Technical Services.

- f. The TMP is required to notify the partners or shareholders and all notice group representatives with respect to any appeal, court action, or other matter listed in 26 CFR 301.6223(g)-1(b)(1). The requirement does not apply to those partners whose partnership items have become nonpartnership items, e.g., have executed Form 870-PT or Form 870-LT.
- g. The IRS must notify the TMP of the partners who have agreed. A list of the partners who executed the Form 870-PT or Form 870-LT will be sent to the TMP by the examiner if the examiner secured the agreements, or the Campus Pass-Through Function when they receive the agreements. Copies of the signed Form 870-PT or Form 870-LT will not be furnished to the TMP. See 26 CFR 301.6223(g)-1(b)(2) for other partners excepted from the notification requirements.

- h. Update the disposal code on the Form 3198 and ERCS to the following when closing the key case:

Disposal Codes for Form 3198

- No-change after 45 days - Disposal Code 02 - Use for TEFRA partnerships closed either before or after the 45 day period where the tax return and K-1s are all accepted as reported.
- Agreed - Disposal Code 03 applies to an agreed case that will result in partner adjustments and an agreement is obtained from all partners, or an agreement from the partnership which binds all partners.
- Appealed - Disposal Code 07 - Returns forwarded to Technical Services where the TMP or a notice partner has requested an appeal before issuance of the FPAA.
- Other - Use Disposal Code 08 when all of the partners did not sign a report and those partners who did not sign a report did not request an Appeals conference.

Note: Disposal Code 01 does not apply to TEFRA

- (2) Statutory notice language is provided by the examiner for every case along with the Form 4665, Report Transmittal, of the key case. It is the responsibility of the TSPC for the key case to further develop this language. Concurrence by the key case Area Counsel is mandatory.

4.31.2.3.14.1
(04-10-2023)
**Imminent Statute
Procedures**

- (1) Statute IRM 25.6.23.7.1, Minimum Time Remaining on ASER, set the minimum time frame for closing a TEFRA partnership to Technical Services as follows:

Time frame for closing to the TSPC

- Agreed and No Change - 12 months on the key case partnership statute
 - Unagreed - 8 months on the key case partnership statute
- Note:** On syndicated conservation easement (SCE) cases with between 6 and 8 months on the statute, the group manager should contact the Technical Services Legacy group manager regarding the case closing. Counsel should concur with the Form 886-A narrative and penalties prior to the contact. Any case with less than 6 months on the statute will remain with the revenue agent's group.

- (2) IRM 25.6.23.7.3, TEFRA Cases With Less Than 240 Days to ASER Expiration, requires the imminent statute procedures listed in IRM 25.6.23.7.2, Cases With Less Than 90 Days to ASER Expiration, to be followed for TEFRA partnerships. A TEFRA partnership with less than 240 days remaining on the IRC 6229 statute of limitations is considered imminent. These procedures include:
- a. Discussion between the group manager and his/her immediate manager concerning the circumstances surrounding the imminent statute.

- b. Documentation on the Activity Record of the discussion. For unagreed cases, the Form 4665, Report Transmittal, should also be documented to note the discussion.
- c. Contacting and advising the appropriate TEFRA manager in Technical Services of the imminent statute case. Both the field manager and the Technical Services TEFRA manager will determine whether the unagreed case will be closed to the TSPC or remain in the exam group.
- d. If agreement has been reached to close the case to the TSPC, then the group will hand carry or overnight mail the case. The group manager is to follow-up with the receiving unit's manager to ensure receipt of the case.
- e. A Final Partnership Administrative Adjustment (FPAA) is required in an unagreed case. The revenue agent will conduct all of the required short statute notice procedures:

Short Statute Notice Procedures
<ul style="list-style-type: none"> • Preparation of the FPAA with the assistance of the TSPC • Coordinate with counsel to review the FPAA before issuance • Preparation of Letter 1830-F, Notice of Final Partnership Administrative Adjustment, to the Tax Matters Partner • Preparation of the certified mailing list • Physical mailing of the required documents

The TSPC will provide direction and assistance to the RA; however, the RA is responsible for all required work.

4.31.2.3.14.2
(06-20-2013)

Fraud Cases

- (1) The examiner will prepare Form 3999-T, Statute Expiration Report (for TEFRA key cases), for key cases where CI allowed the key case IRC 6229 and IRC 6501 statute to expire. The Form 3999-T is needed even if the case is a no change.
- (2) For linked key cases with an expired IRC 6229 statute and at least one partner under investigation with an open IRC 6501 statute, the examiner will prepare a Form 3999, Statute Expiration Report, for all linked partners with expired statutes. In these situations, the examiner should use one Form 3999 for partners with expired IRC 6501 statutes. Use "see statement" in the entity area. Attach a statement listing the partners with expired statutes. Also attach CI's authorization allowing the statutes to expire.
- (3) For linked key cases with an open IRC 6229 statute with at least one partner remaining under CI investigation with an open IRC 6501, and where at least one partner's statute will expire with CI's authorization, the field will send a copy of CI's notification allowing statutes for partners not under investigation to expire to the TSPC for processing to the CPF.

4.31.2.3.14.3
(04-20-2017)

Audit Termination

- (1) Because TEFRA cases must be reviewed before TMP letters are issued, the 45-day time frame for withdrawing the NBAP can be difficult to meet. The audit termination procedures should not be used if extensive audit work was completed. As a rule, an audit termination letter must be issued within six months of starting the examination. If the audit termination letter cannot be issued within that time frame or substantive audit work was completed, then no

change procedures must be followed. See IRM 4.31.2.7.2.3, No-Change After 45 Days.

- a. In general, this procedure may be used if no adjustments are identified, the TMP did not raise any affirmative issues, and an AAR has not been filed by either the TMP or any partner. If the TMP disagrees or has not indicated agreement with terminating the audit, no change procedures must be followed.
- b. If there is less than one year remaining on the statute, a Letter 2621, No Adjustment to Pass Through Investor, or an FPAA should be issued.

Note: If partner NBAPs were not already issued prior to the audit termination, there is no need to issue NBAPs to the partners. A linkage package does not need to be sent to the campus if the examination is being terminated.

4.31.2.3.15
(04-10-2023)

**Affected Items Requiring
Key Case and Investor
Level Determinations**

- (1) An affected item is any item to the extent such item is affected by a partnership item under IRC 6231(a)(5) of 2002.
- (2) Court decisions have caused the IRS's position on some issues to evolve. Certain sub-determinations, i.e., entity and investor components, are required for passive loss, at-risk, and basis issues. Determinations at the key case level and the investor level are required. Generally, all entity and investor component determinations must be made by the key case examiner.
- (3) Often, the determination of which of the components of basis are partnership or affected items is unclear. In those complex situations, the TSPC or Area Counsel should be consulted when affected items involving entity components and investor components are an issue (or are issues) in the case.
- (4) The following is a discussion of the proper classification of partnership items, affected items, and nonpartnership items as well as the proper audit procedures necessary to make adjustments to a partner's return.
- (5) Certain affected items are computational adjustments, such as any percentage limitation based on adjusted gross income. If the changes to the partnership items change adjusted gross income, items such as medical itemized deductions will be adjusted. If a net operating loss of a partner was reduced, it would be a computational adjustment to change the net operating loss deduction in a carryback or carryforward year. Since they are computational, no factual development is required by the key case examiner.
- (6) Other affected items are subject to deficiency proceedings. Either a 30-day or 90-day letter will be issued to allow facts to be developed at the partner level. For example, whether or not a partnership has cancellation of debt income is a partnership item. Once that is determined, the partner's income will be adjusted for their share of the cancellation of debt income via a 30/90 day letter. This will allow the partner to raise any facts which would allow them to exclude this income under IRC 108, for example, because they are insolvent.
- (7) In cases where a TEFRA key case has pass-through partners that are also TEFRA entities, non-computational affected items may require a partnership proceeding at the TEFRA tier partnership. If the campus controls the tier partnership, AIMS controls must be requested from the campus. Consult with Counsel if there are non-computational affected items flowing from the key TEFRA partnership to the TEFRA tier partnership, when the TEFRA tier partnership is unagreed. An FPAA will need to be issued to the tier partner if facts

are required at the TEFRA tier partnership level to determine the amount or nature of a non-computational affected item. Care needs to be taken when an FPAA is used at the tier level for affected items. As a general rule only one FPAA may be issued to a TEFRA partnership as a key case. An FPAA must include any affected items that require additional determinations at the TEFRA tier partnership level, as well as, any adjustments that are sourced from that TEFRA tier partnership. Remember that the FPAA an investor receives is a copy of the key case partnership FPAA and is not a partnership FPAA in its own right. An investor may receive copies of many FPAA's if they are directly invested in multiple TEFRA partnerships that are being examined.

- (8) 26 CFR 301.6231(a)(5)-1 (b) and (c) provide that a partner's basis and at-risk amounts are considered affected items to the extent that they are not partnership items. While this may suggest that the overall issue of the correct amount of a partner's basis or at-risk can be a partnership item, case law has indicated that these overall determinations will always be affected item determinations.
- (9) For example, the amount of a partner's initial contribution to capital would be a fact developed at the partnership level, that would be the partnership item, but the utilization of that amount in the computation of basis and any disallowance of a loss at the partner level would be the affected item subject to deficiency procedures (30-day or 90-day letter).
- (10) In a TEFRA examination, most of the component items of overall basis, at-risk, and passive loss determinations are more appropriately determined at the partnership level. If any of these component items are changed during a TEFRA examination they must of course be included in the examiner's TEFRA entity Summary Report. However, if the overall change to a partner's basis, at-risk amount or passive loss limitation is proposed, all partnership level components of such determinations can be included in the TEFRA Summary Report even if they are not being adjusted. While inclusion of such unchanged components in the TEFRA entity Summary Report is not required, it may be a good idea to include them in order to foreclose any later arguments by the taxpayer that such components are incorrectly stated in the partnership return.
- (11) The adjustments for affected items will be computed after the conclusion of the partnership proceeding. The proceeding is concluded for each partner by:
 - The partner agreeing to adjustments proposed in the Summary Report;
 - The partner agreeing to an appeals settlement;
 - A final determination of the court; or
 - A defaulted FPAA.
- (12) The following outlines some of the partnership and partner level components that the revenue agent should look for during the examination of the partnership. In general the partnership components would be partnership items included in the partnership proceeding. The partner level components would be affected items and would be decided at the end of the partnership proceeding either through computational adjustments Letter 4735, Notice of Computational Adjustment, or by the issuance of a 30/90 day letter.

4.31.2.3.15.1
(06-01-2004)
Basis

- (1) Partnership components would be the amounts of:
 - a. The initial contribution to the partnership;
 - b. All subsequent contributions to the partnership;
 - c. Distributions from the partnership;

- d. The partner's share of non-taxable income, taxable income, losses and deductions; and
- e. The partner's share of partnership liabilities.

- (2) A partner level component, which may be necessary to determine basis, occurs when a partner buys his partnership interest from another partner (and it is not subject to an IRC 754 election). In such case, the purchase price of the partnership interest is a component of the partner's basis, but there is no requirement that the purchase price of the partnership interest be taken into account for the partnership's taxable year.

4.31.2.3.15.2
(06-01-2004)
At-Risk

- (1) The partnership level components for at-risk include:
- a. Whether a particular loan was recourse or non-recourse;
 - b. Whether the partner bears the ultimate economic risk of loss with respect to a particular partnership liability;
 - c. What was the amount of the note;
 - d. Whether a partner is a limited or general partner;
 - e. Whether a lender has an interest other than as a creditor; and
 - f. All the partnership level basis items listed above.
- (2) Partner level determinations for at-risk:
- a. Whether there are any third party side agreements (stop-loss agreements);
 - b. Whether the partner borrowed the money contributed to the partnership from another person.

4.31.2.3.15.3
(06-01-2004)
Passive Losses

- (1) The partnership components for passive activity losses include:
- a. Whether the partnership is engaged in a rental activity;
 - b. Whether the partnership is engaged in a trade or business for purposes of IRC 162;
 - c. Whether a partner is a limited partner; and
 - d. Whether income is portfolio income.
- (2) Partner level determinations include:
- a. Whether a partner materially participated in a non-rental activity; and
 - b. Whether such partner actively participated in a rental activity.
- (3) If determinations are made during the TEFRA unified proceeding regarding partnership components of passive losses, then those components must be addressed in the TEFRA entity Summary Report. Any limitation of the passive losses will be treated as an affected item. The partner's basis limitations and amounts for which the partner is at-risk should always be considered prior to the allowance of any passive losses.

4.31.2.3.15.4
(06-01-2004)
**Cancellation of Debt
Income (COD)**

- (1) The partnership components would include:
- a. Whether or not the partnership has COD income (for example on the foreclosure of real property with a related loan that is forgiven);
 - b. The amount of the COD income; and
 - c. The amount of the deemed distribution for the decrease in liabilities if the COD income is the result of a liability forgiven.

- (2) The partner components would include:
- Whether or not the partner qualifies to exclude the COD income from their income, e.g., IRC 108;
 - Whether or not the partner would have any tax attributes that could be offset under IRC 108.

4.31.2.3.16
(05-31-2005)

**Report Preparation for
Affected Items**

- (1) In General:
- Changes made to partnership components should be contained on Form 4605-A, Examination Changes - Partnerships, Fiduciaries, S Corporations, and interest Charge Domestic International Sales Corporations, Form 886-A, Explanation of Items, and Form 886-Z, TEFRA Partners' Shares of Income, or equivalent spreadsheet. For example, if distributions and contributions are changed from the information reported on Schedule M-1, the adjustment should be listed under other adjustments" on the Form 4605-A and the correct allocation of these items should be shown on the Form 886-Z (or equivalent spreadsheet). If the item is a reclassification of a general partner to a limited partner, some adjustments, such as reallocations of distributive shares, or changing the characterization of a partner from general partner to limited, cannot easily be shown on the Form 4605-A. Utilize the Form 886-A to describe this adjustment. Reference the Form 886-A in the remarks section of the Form 4605-A as an attachment.
 - Form 886-A should be prepared for any item, which has been changed or reclassified. Even when changes are not made to these items, they still constitute components of an overall partner level adjustment and may be included in the TEFRA Summary Report if an adjustment at the partner level is proposed to basis, at-risk, or passive loss limitations.
 - If any adjusted partnership components are not included in the TEFRA entity Summary Report and are then not included in the FPAA and the partner's case is argued in court, the issue may have to be conceded if the disallowance of a partner's loss relies on:

Disallowance of a partner's loss relies on:
<ul style="list-style-type: none"> • A change to a distribution; • A change to a contribution; • A reclassification of a general to a limited partner; or • Some other partnership level component.

- A change to a distribution;
- A change to a contribution;
- A reclassification of a general to a limited partner; or
- Some other partnership level component.

- If the overall partner level adjustment contained in the Affected Items Report consists only of computational changes to the partnership level components, such partner level adjustment may be made as a computational adjustment. If such overall partner level adjustment requires a partner level determination (i.e., that the partner did not materially participate for purposes of IRC 469), the deficiency procedures of subchapter B of chapter 63 will apply and an Affected Item 30 day letter or Affected Item 90 day letter will be required. If penalties are determined to apply at the partner level as related to the affected item, the application of the penalty must be clearly stated on the Form 886-A . Partner level penalties will need to be assessed on the affected Item 30-day letter or affected Item 90-day letter and not by computational adjustment.

4.31.2.3.16.1

(06-20-2013)

Basis and At-Risk

- (1) If certain components of basis and at-risk are adjusted at the partnership level, while other components are accepted and it can be determined that partners' losses will be limited, the following procedures shall apply:

- a. Prepare a TEFRA Key Case Summary Report (Letter 1807, Form 4605-A, Form 886-A and Form 886-Z or equivalent spreadsheet).

Preparing Basis and At-Risk Summary Report

- On Form 4605-A, list changes made to component parts under **Other Adjustments**. Components of basis and at-risk that are accepted as filed should also be listed under **Other Adjustments**. Include any other proposed adjustments on the Form 4605-A.
- On Form 886-A, explain the determination made regarding the partnership components of basis and at-risk. This is in addition to the Form 886-A for any other proposed adjustments.
- On Form 886-Z (or equivalent spreadsheet), list each partner's share of corrected partnership components of basis and at-risk in addition to any other proposed adjustments.

- b. Prepare an Affected Items Report for basis and at-risk showing the limitations on partner losses.

Preparing an Affected Items Report for Basis and At-Risk

- On Form 4605-A, add the following information in the **remarks** section. This statement should only be included in the remarks section of the Form 4605-A if there is an affected items report. "During the partnership unified proceeding, it was determined that components of the partners' basis and/or at-risk result in limitations on some of the losses which each partner may deduct in this year. Basis and/or at-risk limitations are considered affected items which are proposed to each partner upon the completion of the TEFRA unified proceedings."
- On Form 886-A, explain the facts, law and argument. Include a detailed explanation as to how basis and/or at-risk amounts were determined; provide background on the issue(s).
- On Form 886-Z (or equivalent spreadsheet), include each partner's corrected share of partnership level components, any partner level components and each partner's corrected basis and/or at-risk prior to allowance of any partnership losses.

- c. If the components of basis and at-risk are accepted at the partnership level, the agent may still determine that a partner's losses will be limited because of partner level determinations. In this case, the TEFRA reports should be prepared in the same manner as described in (1) above except that the reports will show no changes to the partnership components. If there are no other issues on the partnership return, the partner's return will only be adjusted if losses were deducted in excess of basis and/or at-risk.

4.31.2.3.16.2
(06-20-2013)
**Gain or Loss on
Disposition of a
Partnership Interest**

- (1) If at the partnership level, it is determined that partners were required to report gain or loss on the disposition of a partnership interest, the following procedures apply:

- a. Prepare TEFRA Entity Summary Report (Letter 1807, Form 4605-A, Form 886-A and Form 886-Z (or equivalent spreadsheet)).

Preparing Gain/Loss on Disposition Summary Report

- On Form 4605-A, list the items that were used to determine the gain or loss (i.e., distributions, relief of liabilities, partner's capital account). If changes were made to any items, list the adjustments.
- On Form 886-A, explain each partnership level component used to determine the gain/loss on the disposition of such interest.
- On Form 886-Z (or equivalent spreadsheet), list the partnership items adjustments that were used to determine the gain or loss on the disposition of the partnership interest for each partner that it applies to.

- b. Prepare an Affected Items Report for basis and at-risk showing each partner's corrected gain or loss on disposition of their partnership interest.

Preparing an Affected Items Report for Basis and At-Risk on Disposition

- On Form 4605-A, add the following information in the **remarks** section. This statement should only be included in the remarks section of the Form 4605-A if there is an affected items report. "During the partnership unified proceeding, determinations were made which resulted in the recognition of gain/loss by the partners on the disposition of their interest. This gain or loss is considered an affected item which will be proposed to each affected partner upon completion of the TEFRA unified proceedings".
- On Form 886-A, explain the facts, law and argument. Include a detailed explanation as to how the gain or loss was determined. Explain the disposition issue as well.
- On Form 886-Z (or equivalent spreadsheet), include each partner's share of all corrected components, as well as each partner's gain or loss on disposition of such interest.

- c. If the partner is itself a partnership independently subject to TEFRA procedures, then TEFRA procedures need to be followed at that level to assess the gain against the indirect partners.

4.31.2.3.16.3
(06-20-2013)
Passive Losses

- (1) If, at the partnership level, it is determined that the partnership was engaged in a rental real estate activity rather than a trade or business, the following procedures shall apply:

- a. Prepare TEFRA entity Summary Report (Letter 1807, Form 4605-A, Form 886-A and Form 886-Z (or equivalent spreadsheet)).

Preparing Passive Losses Summary Report

- On Form 4605-A, list Trade or Business vs. Rental Real Estate Activity under “other adjustments” with the following statement in the “remarks” section: “During the TEFRA unified proceeding, it was determined that the partnership had \$0 ordinary loss from a non-rental trade or business activity. The activity was determined to be a loss from a rental real estate activity. This classification may limit the loss which each partner may deduct in this year.”
- On Form 886-A, describe the basis for the determination.
- On Form 886-Z (or equivalent spreadsheet), include corrected item.

- b. Prepare an Affected Items Report for passive losses showing the limitations on partner losses.

Preparing an Affected Items Report for Passive Losses

- On Form 4605-A, add the following information in the **remarks** section. This statement should only be included in the remarks section of the Form 4605-A if there is an affected items report. “During the TEFRA unified proceeding, it was determined that the partnership is engaged in a rental real estate activity. This classification may limit the passive losses which each partner may deduct in this year. Adjustments due to passive loss limitations are affected items which will be proposed to each partner upon the completion of the TEFRA unified proceedings.”
- On Form 886-A, explain the facts, law and argument. Include a detailed explanation regarding the passive loss rules and how losses may be limited to the partners. Explain the reclassification of the activity (if applicable).
- On Form 886-Z (or equivalent spreadsheet), include all the adjusted items as well as the amount of gain or loss which is subject to passive activity limitations.

4.31.2.3.16.4
(06-20-2013)

**Cancellation of Debt
Income**

- (1) If, at the partnership level, it is determined that the partnership has cancellation of debt income, the following procedures shall apply:
- a. Prepare TEFRA Entity Summary Report (Letter 1807, Form 4605-A, Form 886-A, and Form 886-Z (or equivalent spreadsheet)).

Preparing a Cancellation of Debt Summary Report

- On Form 4605-A, list cancellation of debt income under *other adjustments*.
- On Form 886-A, describe the basis for the determination that the partnership had cancellation of debt income and how the amount of the income was computed. Explain the source and amount of the cancellation of debt income.
- On Form 886-Z (or equivalent spreadsheet), include cancellation of debt income.

b. Prepare an Affected Items Report for cancellation of debt income:

Preparing an Affected Item Report for Cancellation of Debt Income

- On Form 4605-A, add the following information in the **remarks** section. This statement should only be included in the remarks section of the Form 4605-A if there is an affected items report. "During the TEFRA unified proceeding, it was determined that the partnership has cancellation of debt income. Cancellation of debt income is a separately stated item of income passed through to you as a partner. The inclusion in or exclusion from taxable income of the cancellation of debt income is determined at the partner level. Adjustments due to cancellation of debt income are affected items which will be proposed to each partner upon the completion of the TEFRA unified proceedings."
- On Form 886-A, explain the facts, law and argument. Include a detailed explanation regarding the cancellation of debt income and its impact on the partners.
- On Form 886-Z (or equivalent spreadsheet), include the cancellation of debt income.

4.31.2.3.17
(03-04-2008)

**Procedures for Certain
Conversions Involving
Partnerships**

- (1) The following subsections pertain to certain conversions involving partnerships.

4.31.2.3.17.1
(03-04-2008)

**Unusual Conversions
Involving Partnership**

- (1) A non-TEFRA examination is started if a return is examined with an IRC 761(a) election issue. If during the non-TEFRA examination it is determined that the IRC 761(a) election is not valid and the partnership meets the TEFRA requirements, then a TEFRA examination is started and the procedures outlined in text IRM 4.31.2.3.7, Issuing the Notice of the Beginning of the Administrative Proceeding (NBAP) Letter 1787-F to the Tax Matters Partner, and IRM 4.31.2.3.9, Conducting and Completing the Key Case Examination, of this Handbook are followed.
- (2) A partnership, as defined in IRC 761(a), must file a tax return under IRC 6031(a). For Federal tax purposes, the term "partnership" not only includes

partnerships, as they are known in common law, but also syndicates, groups, pools, financial operations, or joint ventures.

- a. If the existence of a partnership is an issue, the examiner must thoroughly investigate the status of the "entity" before initiating TEFRA or ILSC procedures, because if it is later determined that a partnership does not exist, a barred deficiency on the investor return may result; or
- b. If an ILSC proceeding is pursued on a TEFRA entity, the TEFRA entity statute may expire and a TEFRA proceeding for the investors in the entity may not be available to be pursued.

Note: If either situation occurs, consult with the TSPC or Area Counsel. IRC 6231(g) of 2002 allows the IRS to rely on a reasonable determination in deciding the correct procedures to follow. For example, if a reasonable determination was made that TEFRA applied and it was later determined that the partnership was non-TEFRA, then IRC 6031(a) would extend the TEFRA provisions to the partnership based upon the reasonable determination.

- (3) If an examiner discovers that an entity should have filed, but did not file a partnership return, or an investor failed to properly report partnership items, then it needs to be determined whether:
 - a. The partners reported a TEFRA partnership item(s) on a Schedule C, E, or F;
 - b. A court subsequently determined in a TEFRA partnership level proceeding that a partnership was in existence. If so, then the IRS will make computational adjustments to the partners' individual returns to reflect the court's allowance or disallowance of partnership items.
 - c. A partner who improperly reported partnership items is nevertheless subject to the computational adjustments, because he or she is treated as a party to the judicial proceeding and is, therefore, bound by its determination.
- (4) A partner who failed to report an item of partnership loss (which is subsequently allowed in whole or in part) may be issued a refund as a computational adjustment under IRC 6230(d)(5) or file a claim for refund under IRC 6230(c)(2).

4.31.2.3.17.2
(03-04-2008)

**Conversion of TEFRA
Partnership to C
Corporation**

- (1) Under IRC 6233(a), (See 26 CFR 301.6233-1):
 - a. If a partnership return is filed; and
 - b. If it is subsequently determined that the entity is an association taxable as a corporation; then
 - c. The findings of the unified partnership proceeding will determine taxable income or loss of the C corporation, and will provide the basis for a computational adjustment reflecting the disallowance of any loss or credit claimed by a taxpayer. (See IRM 4.4, AIMS/Processing Handbook, on how to convert a Form 1065 to a Form 1120.)

4.31.2.3.17.3
(03-04-2008)

**TEFRA Key Entity
Return Filed but No
Entity Found to Exist**

- (1) If a partnership return is filed and the small partnership exception does not apply under IRC 6233, the TEFRA partnership procedures are mandatory even if no entity actually existed.

- (2) Under 26 CFR 301.6233-1(b), when a partnership return is filed any final partnership administrative adjustment determination resulting from a proceeding may also include a determination that there is no entity.

4.31.2.3.18
(06-20-2013)

**Foreign or Domestic
Partnership With TMP or
Books and Records
Located in a Foreign
Country**

- (1) If a partnership, whether domestic or foreign, that is required to file a return under IRC 6031:
- a. Fails to file a return; and
 - b. At any time after the close of that taxable year, either the TMP resides outside the United States or the books and records of the partnership are maintained outside the United States, then the IRS may:

**TMP Resides or Books and Records Maintained Outside the
United States**

- Mail a notice to the partner to advise him or her that the losses and credits arising from that partnership for that year will be disallowed to that partner, unless the partnership files a return within 60 days after the date on which the notice is mailed; and
- If a partnership return is not subsequently filed, mail a Letter 4735, Notice of Computational Adjustment, to that partner to reflect the disallowance of any loss (including a capital loss) or credit arising from that partnership for that year, without conducting a partnership level proceeding.

- (2) According to 26 CFR 301.6231(f)-1(d) , if the person to whom the notice was mailed establishes to the satisfaction of the IRS that the losses and credits arising from the partnership for the year are proper, and that the partner has made a good faith effort to have the partnership file the required return, then the IRS may allow the losses and credits, in whole or in part.

4.31.2.3.19
(06-20-2013)

Foreign Withholding Tax

- (1) An entity that is treated as a partnership for US tax purposes and has a foreign partner could be required to withhold tax under two separate withholding tax regimes (i.e., IRC 1441, IRC 1442 - Fixed Determinable Annual Periodical (FDAP) and IRC 1446 - Effectively Connected Taxable Income (ECTI). Beginning in tax year 2014, a partnership may also be required to withhold under FATCA (IRC 1471-1474) on withholdable payments that are allocable to foreign partners or are made to certain foreign entities.
- (2) The withholding tax regime under IRC 1441, IRC 1442 and IRC 1471-1474 requires:
- a. A domestic partnership to withhold tax on a foreign partner's allocable share of U.S. source fixed determinable annual periodical (FDAP) income or on a withholdable payment allocable to a foreign partner to end of sentence.
 - b. Additionally, IRC 1441, IRC 1442 and IRC 1471-1474 require withholding any time a partnership makes a payment of FDAP income to a nonresident alien or foreign corporation regardless of whether this person is a partner in the partnership making the payment, or if a partnership makes a withholdable payment to a foreign entity regardless of whether the entity is a partner in the partnership making the payment.

- (3) The withholding tax regime under IRC 1446 requires any partnership engaged in a trade or business within the U.S. to withhold tax on a foreign partner's allocable share of effectively connected taxable income (ECTI).
- (4) Partnerships should also be aware of possible withholding obligations under IRC 1443 (regarding effectively connected income allocable to Sec. 501(c) foreign tax exempt organizations) and IRC 1445 (regarding gain from the disposition of a US real property interest when a portion of the gain is allocable to a foreign partner). See 26 CFR 1.1446-3(c). The partnership may have a separate withholding obligation under IRC 1445 as a transferee of a U.S. real property interest.
- (5) Taxes withheld on a foreign partner's income under IRC 1441, IRC 1442, IRC 1446 and 1471-1474 are considered partnership items. An examination of a TEFRA partnership with respect to these withholding tax sections is subject to the TEFRA partnership procedures. See IRC 6231(a)(3) and 26 CFR 301.6231(a)(3)-1(a)(1)(v).
- (6) This section provides examination procedures and instructions for securing statute extensions for TEFRA partnerships that are required to withhold taxes with respect to IRC 1441-1446 and 1471-1474, case closing procedures and overall coordination of TEFRA key cases with withholding tax return cases. The relevant withholding tax return forms are Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 8804, Annual Return for Partnership Withholding Tax (IRC 1446).

4.31.2.3.19.1
(06-20-2013)

**TEFRA Partnerships -
Examination Procedures**

- (1) The examiner must determine and document if the partnership is/is not subject to TEFRA procedures. See IRM 4.31.2.2.2, Identification of TEFRA Partnership.
- (2) Revenue agents encountering the foreign withholding tax issue on a TEFRA partnership should complete a TEFRA referral on the Specialist Referral System (SRS) and also consult with a member of the Withholding and Foreign Payments Technical Advisor team. Resources and contact information can be found at the *Withholding Business Knowledge Base website*.

4.31.2.3.19.2
(06-20-2013)

**Statute of Limitations -
Foreign Withholding**

- (1) The following sections provide information on extending statutes when there is foreign withholding.

4.31.2.3.19.2.1
(06-20-2013)

**Statute Extensions for
1446 Withholding**

- (1) In the case of extending the statute for the IRC 1446 withholding tax, the partnership entity is considered the taxpayer. A statute extension for the IRC 1446 withholding tax should therefore be secured using Form 872, Consent to Extend the Time to Assess Tax. The statute extension should be signed by a general partner or managing member in the case of an LLC, or any person with authority under state law to bind the entity.
- (2) The statute of limitation on assessments related to the IRC 1446 withholding generally runs 3 years from the later of (1) the date the Form 8804 is filed or (2) April 15th if the Form 8804 is filed before April 15 of the calendar year succeeding the calendar year that the tax was incurred. See IRC 6501(a) and (b)(2). If no return is filed, the tax may be assessed at any time. See IRC 6501(c)(3) and IRC 6229(c)(3).

4.31.2.3.19.2.1.1
(06-20-2013)

**Form 872 - Foreign
Withholding**

- (1) Line 1 (Kind of tax) of the Form 872 should be modified to read as follows:
 - a. The amount of any federal "tax liability under IRC sections 1441-1474" due on any return(s) made by or for the above taxpayer(s) for the period(s) ended.
 - b. The wording in quotes should be included on the blank line on the Form 872, and the word "tax" after the blank line should be lined through.

4.31.2.3.19.2.1.2
(06-20-2013)

**Form 872-P - Foreign
Withholding**

- (1) In addition, to the extent the courts uphold the IRS's position that the partnership entity is considered a "partner" for purposes of the TEFRA partnership audit procedures and the withholding tax, a Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items, signed by the TMP of the partnership would extend the limitations period to assess against the partnership entity.
- (2) The Form 872-P should be modified as follows:
 - a. In the extension area after "may be assessed at any time on or before" add an asterisk at the end of the extension date (i.e., December 31, 20XX).
 - b. In the blank area on the first page of Form 872-P add:
 "** Including income and/or withholding tax required to be paid and/or withheld at source (under Chapter 3 or 4 of the Internal Revenue Code) due on Form 8804 or Form 1042 (two separate forms are needed if both are being examined)"
- (3) For a TEFRA partnership, where the withholding tax is being increased due to an increase in ECTI or for any other partnership item, it is recommended that the statute be extended using both Form 872 as well as Form 872-P.

4.31.2.3.19.2.2
(06-20-2013)

**Statute Extensions for
1441, 1442 and
1471-1474 Withholding**

- (1) Form 1042 and Form 8804 are income tax returns with unique statutes of limitations and are distinct from Form 1065. A separate Form 872 and Form 872-P should be secured for each of the distinct tax return forms. All three returns, however, must be coordinated if the partnership is subject to the TEFRA audit proceedings.
- (2) Additional guidance on Form 1042 and securing the statute of limitations on Form 872 can be found in IRM 4.23.14.9, Form 872, Consent to Extend the Time to Assess Tax, for Form 1042 .
- (3) For situations where Form 1065 is a fiscal year and Form 1042 is a calendar year:
 - a. A Form 1042 is a calendar year return regardless of the tax year of the TEFRA Form 1065.
 - b. Form 1042 returns filed on or before April 15 of the year following the year payments are made will be considered filed on April 15 for statute of limitation purposes. IRC 6501(b)(2) .
 - c. The amounts reflected on a Form 1065 as being withheld under IRC 1441, IRC 1442 and IRC 1471-1474 will not be reflected on a Form 1042 until several months later because of the difference in time between the two filing dates (Form 1042 – March 15th and Form 1065 April 15th).

4.31.2.3.19.2.3

(06-20-2013)

Expired Statutes

- (1) TEFRA partnership statute is expired and Form 8804 or Form 1042 is still open or not filed:
 - a. If the statute of limitations of a TEFRA Form 1065 has expired but the related corresponding withholding tax return(s) has not yet been filed, or its statute is still open, the withholding tax issue may still be addressed.
 - b. Agents must obtain approval from the Area Director (SB/SE) or Director of Field Operations (LB&I) and the Technical Services TEFRA Program Manager prior to opening a TEFRA partnership with an expired statute or a statute with less than 12 months.
 - c. A pro-forma sample memorandum can be used to obtain approval and is included on the TEFRA web site.
 - d. The TEFRA partnership statute will be updated to alpha code AC (TEFRA-entity statute protected at the partner level) using the month and year of the withholding return statute.
 - e. If the withholding return is not filed, then the TEFRA partnership statute will be updated to reflect the month and year of statute expiration as if the withholding return had been filed (i.e., 3 years from due date of the return). The agents must make a referral to a TSPC using the Specialist Referral System (SRS).
- (2) The TEFRA partnership is open and Form 8804 or Form 1042 statutes are expired.
 - a. If the statute of limitations is expired on the Form 1042 or Form 8804 but the TEFRA partnership statute is still open, the withholding tax issue can still be addressed.
 - b. The statute of limitations should be updated for these forms using the statute of limitations of the TEFRA partnership.
- (3) Special Circumstances
 - a. When the TEFRA partnership return IRC 6229 statute is expired and the withholding tax return has not been filed or the statute is still open, the issue can still be addressed.
 - b. In this instance, direct partners will be linked and notified.
 - c. An FPAA is necessary and can be issued to the TMP and the general partners but no other assessments can be made against the partners, unless the partner's IRC 6501 statute is open.
 - d. Assessment will occur against the MFT 08 (Form 8804) or MFT 12 (Form 1042) account.

4.31.2.3.19.3

(06-20-2013)

PCS Linkage Procedures

- (1) PCS Linkage procedures are mandatory and should be used when examining a TEFRA partnership for the foreign withholding issue. PCS linkage procedures can be found on the PCS Linkage, under Audit Procedures on Partnership Knowledge Base.
- (2) If the TEFRA partnership IRC 6229 statute is expired, the agent will provide an explanation as well as the approval memorandum that was secured from the DFO/Area Manager.
- (3) See IRM 4.31.2.3.9.2.1, Linking the Key Case on PCS, for more information.

4.31.2.3.19.4
(04-10-2023)
**Substitute for Return
(SFR) Procedures**

- (1) When examining a taxpayer that has not filed a Form 8804, Annual Return for Partnership Withholding Tax (IRC 1446). The following SFR procedures need to be followed;
 - a. To establish an SFR TC 150 on MF for a Form 8804 (MFT 08), the SFR procedures must be used.
 - b. To establish AIMS/ERCS controls, complete Form 5345-D , Examination Request-ERCS Users, using Push Code 021.
 - c. An SFR should be prepared and signed by an individual with authority under Delegation Order 5-2 (Rev. 2) (internal revenue agents). An SFR package must be prepared when the Form 8804 is not filed and a delinquent return cannot be secured from the taxpayer. IRM 4.4.9, Delinquent and Substitute for Return Processing, must be followed. See IRM 4.4.9.5.2, Generating an SFR.
 - d. SFR packages will include:

SFR packages include:

- Complete Form 5345-D, Examination Request ERCS Users.
- Prepare a dummy SFR for each tax period.
- Use a current year Form 8804 or the appropriate tax year. If using a current year form, cross out the year and write in red the SFR tax period in **MMYYYY** format. (A GS-9 Revenue Agent must sign the Form 8804, in the taxpayer signature area with their title.)
- Include the EIN of the entity liable for the withholding tax.
- Do not include an address.
- Write **Exam SFR** across the top margin of the return in RED.
- Attach Form 13133 to the front of the return for each return submitted, check **Substitute for Return Box**.
- Retain a copy of the SFR for the case file and send the SFR package as directed in IRM 4.4.9.5.2, Generating an SFR.

- e. Check IDRS for SFR TC 150 Posting. Ensure that the record is fully established on AIMS prior to closing.
- (2) Form 1042 SFR
 - a. IRM 4.4.9, Delinquent and Substitute for Return Processing, should be followed when processing a SFR for a Form 1042. A SFR for a Form 1042 can be systematically generated.

4.31.2.3.19.5
(06-20-2013)
**Delinquent Return
Procedures**

- (1) IRM 4.4.9, Delinquent and Substitute for Return Processing, provides procedures for establishing control on delinquent returns as well as providing guidance for closing a delinquent return.

Note: If a delinquent Form 8804 or Form 1042 is secured and accepted as filed and relates to withholding on a TEFRA partnership, the agent should examine the related partnership and secure Form 870-LT from the partnership. See Item 8, Report Writing procedures for further information.

4.31.2.3.19.6
(06-20-2013)
Securing Agreements

- (1) When other issues, including the withholding tax, are proposed on the TEFRA partnership return, the case is not considered fully agreed unless a Form 870-PT or Form 870-LT is secured from all partners for all other issues. In addition, a Form 870-LT must be secured for the withholding tax and penalty from a general partner/member manager.
- (2) Prior to securing agreements, the Revenue Agent should contact the TSPC assigned to the case to ensure agreements are properly prepared.

4.31.2.3.19.7
(06-20-2013)
Dual Procedures When Case is Unagreed

- (1) Dual procedures are necessary when Form 8804 or Form 1042 is filed (delinquent or timely) and the case is unagreed. In this instance, it is necessary for the examiner to follow TEFRA procedures as well as regular examination procedures. In addition to following the TEFRA report writing procedures discussed, examination must also:

- a. Issue a 30-Day Letter or SNOD

- (2) Reference Form 8804 or Form 1042 in the 30 day Letter or SNOD.

Note: If the statute is only open at the TEFRA partnership level or only open at the Form 8804/Form 1042 level, you should contact the withholding Technical Advisor as well as the TSPC for advice to determine whether the withholding issue should still be pursued. The Technical Advisor can assist you in determining whether the issue should be pursued and the TSPC can provide procedural guidance.

4.31.2.3.19.8
(06-20-2013)
Closing Withholding Case out of the Group

- (1) There are a variety of situations that may occur when closing these cases. Each is processed a little differently.
- (2) Both the withholding tax case and the TEFRA partnership return are closed to Technical Services Status 21.

4.31.2.3.19.8.1
(06-20-2013)
Withholding Tax is Agreed but Other Partnership Issues are NOT Agreed or Vice Versa

- (1) Partial assessment procedures apply. Contact your TSPC for further instructions.

4.31.2.3.19.8.2
(06-20-2013)
Withholding Tax and Other Partnership Issues are Unagreed

- (1) There will be two separate folders, one for the partnership issues and one for the withholding on foreign payments. A Form 3198 must be prepared for both case files.
- (2) For the TEFRA key case file (Form 1065) complete the Form 3198 by completing the following in the "Forward to Technical Services" section:
 - a. Check the "Other" box and write: "TEFRA Partnership Foreign Withholding Tax Case with other Partnership Issues"; and
 - b. Check the "TEFRA or ILSC Key Case" box and write: "Issue 60-day letter if more than twenty months remain on the statute OR Issue FPAA if less than twenty months remain on the statute".

- (3) For the withholding on foreign payments file complete the Form 3198 by completing the following in the "Forward to Technical Services" section:
 - a. If withholding forms have been filed, dual procedures apply. Check the "Unagreed for Statutory Notice or the Unagreed to Appeals" box (if valid protest received). Otherwise leave blank.
 - b. Check the "Other" box and write: "TEFRA Partnership Foreign Withholding Tax Case. See related Form 1065 file".
- (4) **Important.** When dual procedures apply and the examiner must issue a 30-day letter for the withholding taxes:
 - a. Assuming the statute is not imminent, the examiner should wait to close the TEFRA partnership until the 30-day letter period is expired or a protest has been received. Both files should be closed as one package and sent to Technical Services.
 - b. The Form 4665 for both the withholding file and partnership file should clearly explain the relationship between the two files.
 - c. The following language should also be inserted on the Form 4665 transmittal: "The TEFRA partnership foreign tax withholding issue is a TEFRA partnership item. However, when the withholding returns are filed, the IRS is following dual procedures which require the issuance of a 60-day letter/ FPAA at the TEFRA partnership level as well as 30-day letter/ Statutory Notice of Deficiency (SNOD) at the withholding tax return level".
 - d. The related return taxpayer identification number and tax years should be listed on the transmittal.

4.31.2.3.19.8.3
(06-20-2013)

**Withholding Tax and
Other Partnership Issues
are Agreed**

- (1) The examiner will process all agreed withholding assessments as partial assessments. The assessment for the withholding tax and related penalties will be assessed against the MFT 08 (Form 8804) or MFT 12 (Form 1042) account.
- (2) Examiners should refer to IRM 4.10.8.6, Partially Agreed Cases, and IRM 4.4.12.2, Examined Closings, Surveyed Claims, and Partial Assessments, for partial assessment procedures including the preparation of Form 5344.
- (3) Examiners should ensure that a TC 150 is posted and the record is fully established on AIMS prior to submitting the case for closure to Technical Services.
- (4) There will be two separate folders, one for the partnership issues and one for the withholding on foreign payments. A Form 3198 must be prepared for both case files.
- (5) For the TEFRA key case file (Form 1065) complete the Form 3198 by completing the following in the "Forward to Technical Services" section:
 - a. Check the "TEFRA or ILSC Key Case" box; and
 - b. Check the "Other" box and write: "TEFRA Partnership Foreign Withholding Tax Case with other Partnership Issues" and "Agreements secured and signed from all partners. With regards to the foreign withholding tax, Form 870-LT secured from the partnership in the name of the partnership".
- (6) For the withholding on foreign payments file complete the Form 3198 by completing the following in the "Forward to Technical Services" section:

- a. Check the "Other" box and write: "TEFRA Partnership Foreign Withholding Tax Case". "Withholding tax agreed and assessed against MFT XX". "See Form 870-LT, enclosed".

4.31.2.3.19.8.4

(06-20-2013)

**Withholding Tax is
Agreed and There are
NOT Other Partnership
Issues**

- (1) The examiner will process all agreed withholding assessments as partial assessments. The assessment for the withholding tax and related penalties will be assessed against the MFT 08 (Form 8804) or MFT 12 (Form 1042) account.
- (2) Examiners should refer to IRM 4.10.8.5, Partially Agreed Cases, and IRM 4.4.12.2, Examined Closings, Surveyed Claims, and Partial Assessments, for partial assessment procedures including the preparation of Form 5344.
- (3) Ensure that a TC 150 is posted and the record is fully established on AIMS prior to submitting the case for closure to Technical Services.
- (4) There will be two separate folders, one for the partnership issues and one for the withholding on foreign payments. A Form 3198 must be prepared for both case files.
- (5) For the TEFRA key case file (Form 1065) complete the Form 3198 by completing the following in the "Forward to Technical Services" section:
 - a. Check the "TEFRA or Non TEFRA Key Case" box; and
 - b. Check the "Other" box and write: "TEFRA Partnership Foreign Withholding Tax Case, Withholding Tax Agreed and assessed against MFT XX. There are NOT any other partnership issues, please remove H-Freeze and close to CCP agreed."
- (6) For the withholding on foreign payments file, complete the Form 3198 by completing the following in the "Forward to Technical Services" section:
 - a. If unagreed, check the "Unagreed for Statutory Notice or the Unagreed to Appeals" box (if valid protest received) (This is applicable only when the Form 8804 or Form 1042 are filed)
 - b. Check the "Other" box and write: "TEFRA Partnership Foreign Withholding Tax Case, withholding tax agreed and assessed against MFT XX. See Form 870-LT, enclosed"

Note: See IRM 4.31.2.3.10, Closing Conference, for further details regarding closing a TEFRA Key Case.

- (7) Form 3198 should address any unique statute concerns. For example, if the TEFRA partnership statute is expired and the withholding return statutes are open, indicate this on both the partnership and withholding files.

4.31.2.3.19.9

(06-20-2013)

**Closing Procedures for
a Case with Foreign
Withholding Issues**

- (1) Close case to Technical Services TEFRA in Status 21. If dual procedures are applicable, the TEFRA partnership file and the withholding tax file should remain together.
- (2) Technical Services will review the case, and if the case is correct the TSPC will execute agreements or issues closing letters to the TMP. Once the partnership level review is complete, the TSPC will submit a closing package to the Campus Pass-Through Function (CPF).

- (3) If a 60-day letter is issued and the issue(s) are protested, both the key case partnership file and related withholding tax file is sent to Appeals for consideration.
- (4) The reviewer should ensure that the file contains the following explanation when forwarding the case to Appeals or court: "The TEFRA partnership foreign tax withholding issue is a TEFRA partnership item. However, when the withholding returns are filed, the IRS is following dual procedures which require the issuance of a 60-day letter/ FPAA at the TEFRA partnership level as well as 30-day letter/statutory notice of deficiency at the withholding tax return level".

4.31.2.3.20
(03-04-2008)
**IRC Section 761(a)
Elections**

- (1) This election allows the electing entity to no longer follow the provisions of Subchapter K of the IRC.

4.31.2.3.20.1
(03-04-2008)
General

- (1) IRM 4.19.11, Examination Classification of Work, requires mandatory classification of all returns claiming the election under IRC 761(a). All returns, which are not accepted as filed with a valid election, are to be selected for examination.
- (2) Form 3198, Special Handling Notice, must be completed with the "Other" box checked and the following statement made in regard to all IRC 761(a) returns received from classification that are surveyed or closed with a valid election: "IRC section 761(a) Valid Election - Form 1065 filing requirement is no longer necessary. Form 2363, Master File Entity Change, required to delete Form 1065 filing requirement". The completed Form 3198, attached to the surveyed or closed return (with proper stamps and/or supervisory signatures), is forwarded to CCP for final processing.
- (3) If the case being worked is established as non-TEFRA due to an IRC 761(a) election and it is determined that the entity should still be filing as a partnership that does not meet the small partnership exception or they have previously elected TEFRA, the case can still be worked as originally established for tax years ending after 8-5-97. This is due to the TRA'97 change that allows a TEFRA/non-TEFRA determination based on a reasonable evaluation of the entity's tax return. In these situations, consult with the TSPC or Area Counsel for guidance.

4.31.2.3.20.2
(03-04-2008)
Area Office Procedures

- (1) Upon receipt of the IRC 761(a) returns selected for examination, Planning and Special Programs (PSP) will further screen these returns. Based on local knowledge, returns reflecting a valid IRC 761(a) election or known to have low examination potential, are surveyed before assignment.
- (2) Surveyed returns are processed prior to the subsequent year return's due date. This should curtail or eliminate delinquency notices issued on the subsequent year's return.
- (3) Returns selected for examination are put in process prior to the due date of the subsequent year return.
 - a. When time limitations prevent the starting or closing of these returns prior to the due date of the subsequent year return, the filing requirement is still intact thus causing the computer to generate a failure to file notice when the subsequent year return is not timely filed.

- b. The taxpayer should be informed that if such notice is received, the response should include a statement that the IRC 761(a) election was made on the prior year's return and the election was deemed valid during an examination, or the prior year's return is still under examination.
- (4) When it is determined that the election is valid, the examiner will prepare a written report per IRM 4.10.8, Examination of Returns - Report Writing, including Form 3198 as outlined in text IRM 4.31.2.3.9.2.4(5), Field Control of Partners.
- (5) When it is determined that the election is not valid, the examiner will notify the partnership: that the IRC 761(a) election is invalid; that the return is incomplete; and that a full return is required under IRC 6031.
 - a. If the partnership return is a TEFRA return, the examiner will initiate a TEFRA examination as outlined in text IRM 4.31.2.3.10, Closing Conference, and IRM 4.31.2.3.12, Securing Agreements for Tax Assessments at the Partnership Level, of this Handbook.
 - b. The examiner will prepare a written report per IRM 4.10.8, Examination of Returns - Report Writing, and process the return as an amended return, or follow the delinquency and/or substitute for return procedures as outlined in IRM 4.12.1, Nonfiled Returns.
 - c. Based on the facts and circumstances of each case, absent a showing of reasonable cause, the examiner should consider the IRC 6698 penalty.

4.31.2.3.21
(06-01-2004)
**Formation of a
Partnership**

- (1) The date on which the partnership taxable year commences is considered the date it is formed.
 - a. A partnership is formed, for federal income tax purposes, when the parties to a venture join together capital and services with the intent of presently conducting an enterprise or business for profit.
 - b. The solicitation of capital from prospective partners does not create a partnership.
- (2) The formation date of the partnership may be determined by:
 - a. Examining the partnership agreement;
 - b. Examining the prospectus; or
 - c. Ascertaining the effective date of the certificate of limited partnership.

Note: With regard to the partnership agreement, it may state that the partnership commences as of a date which is later than the date of the agreement; the later date may be the partnership formation date. Absent a formal partnership agreement, the formation date is the date business commenced, which is a factual determination. Business may actually have commenced prior to the date on which the partnership earned income or incurred any deductible expense. See 26 CFR 1.6031-1(a).

4.31.2.3.22
(03-04-2008)
**Pass-Through Entity
Defined**

- (1) A pass-through entity as defined by IRC 6231(a)(9) of 2002 and 26 CFR 301.6231(a)(1)-1(a)(2) includes, but is not limited to, the following:
 - a. A partnership, which has not elected to be classified as a corporation per 26 CFR 301.7701-3 (effective January 1, 1997);
 - b. An S corporation;

- c. A business entity which is not a trust or corporation may be treated as a partnership or corporation (if as a corporation, an S corporation election may be made);
- d. A joint venture;
- e. A similar type entity; REMICs (real estate mortgage investment conduit) and LLCs (limited liability company) are examples;
- f. An LLC, which has more than one member and has not elected to be classified as a corporation under 26 CFR 301.7701-3 (effective January 1, 1997);
- g. A disregarded entity (See Rev. Rul. 2004-88);
- h. A nominee; or
- i. Other similar person through whom other persons hold an interest in the partnership.

(2) A pass-through entity:

- a. May not file a tax return or even be required to file a return (i.e., a Schedule C or F syndication or promotion reported directly on each investor's Form 1040); and
- b. In general, has no tax liability for itself, but passes the tax consequences to its partners, shareholders, beneficiaries, or investors.

4.31.2.3.22.1
(06-20-2013)

**LLCs that are
Disregarded Entities**

- (1) An LLC that has only one member may be treated as a disregarded entity. The agent must determine whether the LLC is filing as a pass-through entity (Form 1065, Form 1120-S or Form 1041), an individual, a C corporation, or the estate of a deceased partner. Ask the taxpayer if they filed Form 8832, Entity Classification Election, to elect the form of entity they would file as. Research on IDRS may help determine the filing requirements of the LLC.
- (2) If a disregarded entity erroneously files a partnership return, the LLC will be considered a partnership for purposes of applying the small partnership exception. For example, if the one member of the LLC is another pass-through entity, such as a Form 1120-S, the partnership will be covered by the TEFRA procedures. One of the issues raised as part of the examination will be whether or not the LLC may file a partnership return.
- (3) If a disregarded entity is a partner in a partnership, the examiner should make sure the Schedule K-1 has the proper EIN of the entity listed on the form. It is not unusual for the TIN of the owner to be listed on the Schedule K-1. If this is the case, the EIN of the disregarded entity must be secured for proper linkage. If this information is not provided, the campus may contact the examiner and request that the correct EIN be secured.
- (4) If a key case partnership, that has not filed a Form 1065, is 100% owned by single member disregarded entity LLCs that are ultimately owned entirely by one taxpayer, then the key case partnership entity is itself a disregarded entity and not subject to TEFRA procedures. This is only true where the key case partnership return has not filed, and no Form 8832, Entity Classification Election, were filed by the key case or any of the underlying single member disregarded entity LLCs.
- (5) If a Schedule K-1 is issued with the name and TIN of the single member and does not list the name of the disregarded LLC, the single member may be linked directly to the key case. We can do this because IRC 6223(c) provides we should use the names and addresses as provided on the partnership return

unless that information is updated under the regulations. Although the single member was issued the Schedule K-1, the existence of the disregarded entity still will cause the key case partnership to fall under TEFRA.

4.31.2.3.22.2

(03-04-2008)

Entities Acting as Agents for Investors

- (1) Examiners may encounter situations where an entity such as a corporation is acting as an agent for investors. The agent-investor arrangement may be identified as a result of the examination of the agent-promoter or the examination of the investor. In either instance, the examiner will determine whether it should be controlled using the PCS or manual procedures.
- (2) If the agent-investor arrangement is identified as a result of the examination of the agent-promoter and there is an adjustment affecting the investors, or a determination is made to control the arrangement, the PCS procedures should be used to control the investor returns. A copy of the substitute Schedule K-1 or other similar document provided by the agent to the investors showing distributive shares of income, loss, etc. will be used in lieu of Schedule K-1.
- (3) If the agent-investor arrangement is identified as a result of the examination of an investor, nominee, etc. and it is determined that controlling the arrangement would be beneficial, the examiner of the investor's return will prepare and submit a collateral examination request to the agent's district. The procedures discussed in (2) above for controlling the investor's returns will be followed.
- (4) If it is determined, as a result of the examination of the agent, that a partnership return should have been filed, the return will be secured from a responsible party. The procedures in this IRM, including the use of the PCS, will then be followed.
- (5) When a promoter of a Schedule C or F type promotion is identified, obtain a dummy taxpayer identification number (TIN) for the specific shelter by using the procedures outlined in IRM 4.4, AIMS/Processing Handbook. Create the dummy entity on AIMS as an NMF entity. Input Form 8341, PCS Establish or Add with out Notice Generation, to control all investor returns that are identified. As additional investors are identified, use Form 8341 to control the additional investors. All existing instructions for PCS are then applicable including case closing instructions. Before the Form 8341 is input, the key district examiner must ensure that the NMF TIN, MFT Code, tax period, and PBC code shown on AIMS are consistent with the input information on the Form 8341.

4.31.2.4

(10-01-2010)

Designation of Tax Matters Partner (TMP)

- (1) The subsections below discuss one of the most important determinations in a TEFRA proceeding.
- (2) Designation of a TMP. Use Form 13828, Tax Matters Partner (TMP) Qualification Check Sheet.

Note: A Separate Determination Must Be Made For Each Tax Year

Determining the designation of the TMP
ENTITY_____
YEAR:_____

Determining the designation of the TMP

- The TMP is determined on a tax year-by-tax year basis.
- The TMP is usually designated on the partnership return for that taxable year.
- The designated TMP may be changed, if the new designation is provided in writing to the service center with which the partnership return was filed.
- Where the partners cannot or will not designate a TMP, the IRS may select a TMP pursuant to 26 CFR 301.6231(a)(7)-1(p).

(1) The TMP is usually designated on Form 1065, Schedule B.

(2) The TMP may also be designated in a statement filed by the partners.

(3) The IRS may select the TMP per IRC 6231(a)(7) of 2002; however, if the IRS selects the TMP, Letter 3205, Letter Regarding Notice of Change to Tax Matters Partner, must be sent to the selected partner, the partnership, and all partners eligible to receive notice. Selection of the TMP by the IRS is performed as a last resort.

(A) If there is no TMP or the TMP previously designated by the entity is no longer qualified, the agent should solicit the entity to designate a new qualified TMP.

(B) Per IRC 6231(a)(7)(B) of 2002, if the entity cannot or will not designate a TMP, the agent identifies the TMP using the largest profits interest rule. It is important to note that this is not considered a designation by the IRS and Letter 3205 need not be sent. Only if steps A & B fail, should the agent consider selecting the TMP.

(4) Any TMP designation made by the partners during the examination should be attached to the back of the front page of the partnership return.

5) If the IRS identifies the TMP using the largest profits interest rule or selects a TMP using 26 CFR 301.6231(a)(7)-1(p), the facts considered in making the selection should be noted on Form 13827, TMP Designation Check Sheet.

- (3) Generally, the TMP is designated by the partners of the partnership; however, if the partners do not designate a TMP, the IRS will determine one as provided by regulations. Use Form 13827 to make the designation. You must be aware of the following requirements when completing the form:

Note: Whenever there is a change in TMP, the CPF must be notified so PCS can be updated.

- To determine the TMP, you must answer the questions in sequence unless directed otherwise.
- One check sheet must be completed for each taxable year.
- This check sheet should be completed concurrently with the interview of the identified TMP.
- The IRS will not go beyond the representations of the TMP unless facts and circumstances dictate.

- The same standards as those used in accepting a POA or Consent will apply, and the same close scrutiny by the IRS as to their completeness and in meeting the specific requirements of the statute, as detailed below, must be met.

Note: For an LLC, only a member-manager is treated as a general partner. A member who is not a member-manager is treated as a partner other than a general partner. If there are no elected or designated member-managers, each member is treated as a member-manager.

- (4) Whenever the TMP is designated by the partnership, it is the examiner's responsibility to verify that the partner designated qualifies to be the TMP. This should be done at the beginning of the examination and any time a new designation is made by the partnership.

4.31.2.4.1
(04-20-2017)
General

- (1) The TMP is a position created as a result of the TEFRA statutes. The TMP is the general partner designated by a partnership (subject to TEFRA procedures) to represent the partners before the IRS in all tax matters for a specific taxable year. (See 26 CFR 301.6231(a)(7)-1)
 - a. If no general partner is so designated, either on the partnership return as filed, subsequent to the filing of the partnership return, or at the request of the IRS at the time the examination is started, then the general partner with the largest profits interest in the partnership at the close of the taxable year is the TMP.
 - b. In some cases, the IRS can select the TMP.
 - c. In either case, the TMP must have a profits or capital interest in the partnership. General partners or member managers with 0% profits or capital interest are not eligible to be TMP. In the event, the TMP does not have profit or capital interest the examiner should contact Area Counsel.

Note: Use Form 13827 to make the designation.

- (2) In addition to facilitating administrative proceedings, the TMP has the authority to:
 - a. Extend the statutory period for assessment of tax for all partners of the partnership. (See IRM 4.31.2.5.4, Persons Empowered to Sign a Consent.);
 - b. Choose the forum for judicial review of adjustments to partnership items; and
 - c. Enter into an agreement, in certain situations, that may be binding for certain partners who, under IRC 6223, are not entitled to a notice of administrative proceedings (non-notice partners). (See IRM 4.31.2.3.11, Securing Agreements from the TMP and the Partners.)

Caution: The determination of the TMP is one of the most complicated and important areas of TEFRA. Consult with the TSPC for assistance in determining the TMP.

4.31.2.4.1.1
(06-01-2004)
**“Tax Matters Partner” of
an Electing Large
Partnership (ELP)**

- (1) The TMP is a position created as a result of the TEFRA statutes. The TMP position does not exist for ELPs. For ELPs, the partner in charge is referred to as the “Partner with Authority”.
- (2) The partner with authority is given a broader ability to bind the partnership and partners of an ELP. The partner with authority is the single point of contact for the IRS. Generally, only the partner with authority must be notified of partnership proceedings and there is no obligation for the partner with authority to keep the other partners apprised of any partnership proceeding.
- (3) The partnership must designate a partner with authority. If the partnership fails to designate a partner with authority, the Secretary may designate any partner to serve as the partner with authority.
- (4) The partner with authority has the sole authority to act on behalf of the partnership. The partnership and all of the partners are bound by any actions that are taken by the partner with authority that fall within the scope of the ELP rules.

4.31.2.4.2
(03-04-2008)
**Persons Who May Be
Designated TMP**

- (1) According to 26 CFR 301.6231(a)(7)-1(b), the person (or entity) designated as the TMP by the partnership must be:
 - a. A general partner in the partnership at some time during the taxable year for which the designation is made; or
 - b. A general partner in the partnership at the time the designation is made. (See the table of questions in (2) below to determine what qualifies someone to be the TMP.)
- (2) **Qualification of TMP.** The designated TMP need not be an individual: the TMP may be an entity, i.e., an estate, trust (even a grantor trust), partnership, LLC, S corporation or C corporation. Use Form 13828, to make the determination of qualification. However, the TMP must meet all of the following requirements.

Note: A Separate Determination Must Be Made For Each Tax Year

1. In a partnership, the TMP must be a general partner.
2. In an LLC, the TMP must be both a member and a manager pursuant to 26 CFR 301.6231(a)(7)-2 unless there are no member managers. If there are no member managers, a member may be designated as the TMP.
3. The TMP cannot be in bankruptcy.
4. If the TMP is an entity, it must be a going concern, i.e., it cannot have dissolved or liquidated.
5. The TMP cannot have any of the following circumstances apply:
 - a. Be under an IRS criminal investigation and have been sent a notice of our intent to convert their partnership items to non-partnership items.
 - b. Have asked for a prompt assessment.
 - c. Have an indirect method used to determine income on the TMP’s return and having a notice of deficiency issued based on the indirect method.
 - d. Have been issued a termination or a jeopardy assessment.
- (3) The partnership must select a general partner as the TMP for a specified taxable period. If the partnership designates a TMP for the partnership who is not a general partner, that partner cannot be the TMP. Letter 2700, Designation

of Tax Matters Partner Request, and related Form 13827, Tax Matters Partner (TMP) Designation Check Sheet, are used to request that the partnership designate a new TMP.

- (4) Personal liability for partnership debts distinguishes a general partner from a limited partner.
 - a. Whether a partner with no profit, loss, or capital interest in the partnership may be considered a general partner, and thus, eligible to be designated as a TMP, may be governed by state law. (e.g., property interest and agency issues). Generally, status as a partner is governed by federal law.
 - b. Questions involving state law should be directed to Area Counsel.
- (5) If a partner, who is the TMP (designated by the partnership or selected by the IRS), sells his or her interest in the partnership and does not resign as TMP, the partner remains as the TMP for that taxable year if the partner meets all other requirements of the regulations.
 - a. If this tax year is subsequently examined, the partner who sold his or her interest may represent the partnership as the TMP.
 - b. Under the largest profits interest rule, the partner remains the TMP for the year even if the partner's interest is later sold. If the interest was sold before year end, the partner would not be eligible to be TMP.
- (6) If an entity is a general partner and is the designated TMP, the person representing the entity TMP is determined under state law. The examiner should determine if the appointed person has the authority to bind the entity TMP. For example, if the entity TMP is a C corporation, an officer of the C corporation can generally bind the corporation.
- (7) The partners can designate any United States general partner as the TMP. They cannot designate a non-United States person without the IRS's consent if any United States person is eligible. However, when the only general partner is not a United States person (as defined by IRC 7701(a)(30)), this general partner automatically becomes the TMP under the largest profits interest rule. See 26 CFR 301.6231(a)(7)-1(b)(2).
- (8) Generally, the LLC statutes in the various states allow an LLC to choose management by one or more managers (whether or not members) or by all of the members. The TMP of an LLC classified as a partnership must be a member-manager as defined in 26 CFR 301.6231(a)(7)-2(b)(3). Letter 2700-L, Designation of Tax Matters Partner Request-LLC, and related Form 13798-L, Limited Liability Tax Matters Partner Designation Form, are used to request that the LLC designate a new TMP.
- (9) If none of the managers of the LLC are members (i.e., owners), all of the members will be treated as if they are member-managers. The member-managers are treated as general partners, and the members of an LLC that are not member-managers are treated as partners other than general partners. Any member-manager may be designated as the TMP of the LLC if he/she otherwise meets the qualifications of 26 CFR 301.6231(a)(7)-1.
- (10) If the LLC chose one or more members as managers and the status of all of the selected members has terminated because 26 CFR 301.6231(a)(7)-1(l)(1)(i) through (v) applies, the IRS may designate a member as the TMP in accordance with 26 CFR 301.6231(a)(7)-1(p).

- (11) When an LLC is the TMP of a key case partnership, the LLC manager under state law acts as TMP, not the LLC's own TMP. Per Rev. Rul. 2004-88, if the pass-through partner "is a limited liability company, then a manager of the LLC, under state law, must sign, regardless of whether the LLC is subject to the TEFRA partnership procedures".

Note: It is important to note that the examiner must continue to drill down through each LLC to determine what natural person can sign on behalf of the final LLC manager. An officer does not automatically qualify as a manager. The manager, that is a natural person, under state law has to sign for each of the tiers since the tiers TMP has no authority. For example: For tax year A, partnership X has designated as its TMP Y LLC. The manager of Y LLC is Z LLC. The manager of Z LLC is C LLC. The operating agreement for C LLC states John Doe, Chief Financial Officer is the manager. In the example, John Doe will sign for all intervening tiers. The signature would appear as follows: Y LLC, Tax Matters Partner of X, by John Doe, CFO, C LLC, Manager of Z LLC, Manager of Y LLC.

4.31.2.4.3
(06-01-2004)
**Designation of TMP
When Partnership
Return Filed**

- (1) On a Form 1065, U.S. Return of Partnership Income, Schedule B, the partnership may designate the TMP.
- (2) The partnership is not bound by the largest profits interest rule that applies to the selection of a TMP after the return is filed.
- The examiner should ask whether partnership procedures for making a qualified designation were followed, and
 - Whether any events may have transpired to disqualify the TMP, such as, terminations, resignations, subsequent designations, or revocations.

4.31.2.4.4
(10-01-2010)
**Designation of TMP
After Partnership Return
is Filed**

- (1) If the partnership did not designate a TMP at the time the partnership return was filed:
- 26 CFR 301.6231(a)(7)-1(e) states that the partnership may designate a TMP after the partnership return is filed by filing a statement with the campus with which the partnership return was filed.
 - The statement will:

TMP designation statement includes the following:

- Certify the partnership and the designated TMP by name, address, and TIN;
- Specify the partnership taxable year to which the designation relates;
- Declare that it is a designation of a TMP for the taxable year specified; and
- Be signed by persons who were general partners at the close of the year and were shown on the tax return to hold more than 50 percent of the aggregate interest in the partnership profits held by all general partners at the end of the taxable year.

Note: All limited partnership interests held by general partners are included in determining the aggregate interest in partnership profits held by those general partners.

- (2) Letter 2700 and related Form 13798, are used to request that the partnership designate a new TMP. Similarly, Letter 2700-L and related Form 13798-L are used to request that the LLC designate a new TMP. The partnership should file a duplicate original copy of the designation form at the campus where it filed its returns in accordance with the Regulations. The agent should send a copy to the Campus TEFRA/Pass-Through Coordinator to ensure the campus is aware of the TMP change.
- (3) According to 26 CFR 301.6231(a)(7)-1(f) , a TMP may be designated after the return is filed by persons who hold more than 50 percent of the aggregate interest in the partnership profits held by all general partners at the end of the taxable year, if each general partner at the end of the taxable year is described in one or more of the following events:
 - a. Is deceased, or, if the general partner is an entity, was liquidated or dissolved;
 - b. Was determined by a court to be incapable of handling his or her affairs;
 - c. Had his/her partnership items converted to nonpartnership items, under conditions outlined in IRC 6231(b); or
 - d. Is no longer a partner in the partnership.

Note: Under these circumstances, the TMP designated by the partnership must be a general partner at the time of the designation. See IRM 4.31.2.4.4, Designation of TMP After Partnership Return is Filed.

- (4) Limited partners may only select a general partner as the TMP. For example, a new general partner may join the partnership in a subsequent tax year. The limited partners could select the new general partner as the TMP for the years under examination but could not select a limited partner. Furthermore, if a general partner's partnership items converted to nonpartnership items other than under special enforcement regulations of IRC 6231(c), the partner remains eligible to be designated as TMP.
- (5) The regulations require that the designation be filed directly with the campus where the partnership return was filed, even if an NBAP was issued, not with the revenue agent.
 - a. The agent should request a copy of the designation either from the campus or the entity.
 - b. The copy of the designation secured by the agent will be attached to the back of the first page of the partnership return.

Note: Whenever a new TMP is designated, the CPF must be notified of the changes so PCS can be updated.

4.31.2.4.5
(06-01-2004)
**Designation of
Successor TMP**

- (1) If a properly designated TMP for a partnership taxable year certifies that another partner was selected as the TMP for that taxable year, the successor partner is considered the designated TMP for that year. The certification is filed with the campus where the partnership return was filed. See 26 CFR 301.6231(a)(7)-1(d).
- (2) The regulations require that the designation be filed directly with the campus where the partnership return was filed, not through the revenue agent, even if an NBAP was issued.

- a. The agent should request a copy of the designation from either the campus or the entity.
- b. The copy of the designation secured by the agent will be attached to the back of the first page of the partnership return.

4.31.2.4.6
(06-01-2004)
**Designation of Alternate
TMP**

- (1) If an individual (not an entity) is designated as the TMP at the time the return is filed, after the return is filed, or as a successor TMP, then an alternate TMP may also be designated when the statement is filed.
- (2) The person designated as the alternate TMP will become the TMP at the time the designation is terminated by death or the adjudicated incompetency of the TMP.

4.31.2.4.7
(06-01-2004)
**Prior Designations
Superseded**

- (1) If a person is certified as a successor TMP or is designated as the TMP under the procedures for general partners with a majority of interests, the certification or designation supersedes all prior designations for that year.
- (2) The above certification or designation for that year also supersedes a prior designation as the alternate TMP. See 26 CFR 301.6231(a)(7)-1(h).

4.31.2.4.8
(03-04-2008)
**Resignation of
Designated TMP**

- (1) A person designated as the TMP may resign at any time by filing a signed written statement with the campus where the partnership return was filed. The examiner should request a copy from the campus or the entity. See 26 CFR 301.6231(a)(7)-1(i).
- (2) If a TMP resigns but had previously signed a consent to extend the statute of limitations for the partnership, that extension remains valid (if co-executed by the IRS before the resignation) even after termination of the designation. See 26 CFR 301.6231(a)(7)-1(e)(2).

4.31.2.4.9
(06-01-2004)
**Revocation of
Designation of TMP**

- (1) The partnership may revoke the designation of a TMP at any time after the filing of a partnership return by filing a statement with the campus where the return was filed. The examiner should request a copy from the campus or the entity.
- (2) The statement must be signed by the same persons who are permitted to designate a TMP. See 26 CFR 301.6231(a)(7)-1(e) or (f).

4.31.2.4.10
(03-04-2008)
**When Designation,
Resignation, or
Revocation Becomes
Effective**

- (1) The designation of a TMP remains in effect until:
 - a. The death of the designated TMP;
 - b. An adjudication by a court of competent jurisdiction that the individual designated as the TMP is no longer capable of managing the person or estate;
 - c. The liquidation or dissolution of the TMP, if the TMP is an entity;
 - d. The partnership items of the TMP become nonpartnership items under IRC 6231(c), relating to special enforcement areas;
 - e. The day on which the resignation of the TMP becomes effective;
 - f. The day on which a subsequent designation as a successor TMP, a designation by general partners with a majority of interests, or a designation by partners with a majority of interests under certain circumstances becomes effective; or
 - g. The day on which a revocation of the designation becomes effective.

- (2) The termination of the designation of a partner as the TMP does not affect the validity of any action taken before the day on which the designation is terminated. For example, if that TMP had previously consented to an extension of the period for assessments under IRC 6229(b)(1)(B), that extension remains valid (if co-executed by the IRS before the resignation) even after termination of the designation.
- (3) The designation of the TMP is not terminated by the TMP signing an agreement with respect to the partnership items, and the TMP may continue to represent the partnership until the proceedings are complete.
- (4) Special enforcement activities under IRC 6231(c) that terminate a designation include, but are not limited to:
 - a. Being notified of an investigation by Criminal Investigation and being notified in writing that the partnership items are being treated as nonpartnership items as a result of the criminal investigation (See 26 CFR 301.6231(c)-5);
 - b. Being assessed income tax under IRC 6851 (relating to termination assessments), or IRC 6861 (relating to jeopardy assessments).
 - c. A request for prompt assessment under IRC 6501(d);
 - d. Being named a debtor in a bankruptcy proceeding (see discussion in *Computer Programs Lambda, Ltd. v. Commissioner*, 89 TC 198 (1987));
 - e. Having a receiver appointed in a receivership hearing; or
 - f. Mailing of a deficiency notice based upon an indirect method of proof of income.
- (5) If the TMP's individual return is examined and unreported income is identified, by using an indirect method of proof, and a notice of deficiency is mailed to the TMP, as of the date the notice is mailed, the TMP's designation is terminated. Thus, whenever an examiner is performing an examination on a partner return that is linked to a TEFRA key case and the above situation arises, the examiner should contact the key case examiner to coordinate the closing of the case. See 26 CFR 301.6231(c)-6.)
- (6) If the IRS determines that the TMP should be removed because of special enforcement activities, there are circumstances where it may not be possible to disclose the reason for such removal to the partners, as this may be an unauthorized disclosure of the TMP's return information; for instance, removal as a result of a criminal investigation. In these circumstances, it should be sufficient for the IRS to indicate to the partners that the TMP has been removed pursuant to IRC 6231(c) and the regulations thereunder.
- (7) If the TMP, who is an individual, is under joint investigation, this does not remove the partnership from the TEFRA proceedings.
 - a. A new TMP may be designated by the partnership or the IRS.
 - b. If there are no remaining partners, general or limited, or the TMP refuses to execute the necessary notices and/or documents to continue the proceedings, the IRS may issue the FPAA or take other appropriate legal action.

Note: If a claim is filed in a bankruptcy proceeding by a TMP that is a pass-through entity, the items convert under 26 CFR 301.6231(c)-7 and its status as TMP terminates under 26 CFR 301.6231(a)(7)-1(i). But its indirect partners stay in the TEFRA proceeding under *Third Dividend Dardanos v. Commissioner*, 88 F.3d 821 (9th Cir.

1996). In other words, the bankruptcy of the agent through whom you hold your partnership interest takes your agent out of the proceeding, but does not take you, an “indirect partner” out.

4.31.2.4.11
(06-20-2013)
**No Designation of TMP
by the Partnership**

- (1) IRC 6231(a)(7)(B) of 2002 provides that if there is no general partner who has been designated as the TMP, or prior designations have been terminated, and the partnership has not made a subsequent designation, the TMP is the general partner having the largest profits interest in the partnership at the close of the taxable year involved. If there are two or more general partners with equal profits interests, the TMP whose name appears first alphabetically is selected:
 - a. In computing the largest profits interest, all limited partnership interests held by a general partner will be included in determining the general partner's profits interest in the partnership (26 CFR 301.6231(a)(7)-1(m)(2));
 - b. The IRS will determine the general partner with the largest profits interest based on the year-end profits interests reported on the Schedules K-1 filed with the partnership income tax return for the taxable year for which the selection is made (See IRC 6223(c)(1)).
 - c. Each general partner whose selection as TMP would immediately terminate because of the occurrence of one or more of the events enumerated in 26 CFR 301.6231(a)(7)-1(e)(1) through (4), is treated as having a zero profits interest for that taxable year for purposes of applying the largest profits interest rules. See 26 CFR 301.6231(a)(7)-1(m)(3).
 - d. The regulations do not require the IRS to notify the partner who would be the TMP under the largest profits interest rule or any other partner who is the TMP when the largest profits interest rule is used. However, it may be in the best interests of the IRS to do so for good customer relations.
- (2) If a partner who has no profit, loss or capital interest in the partnership is considered a general partner under state law, the partner would only be the TMP if all other general partners had either resigned, had their designations revoked by the partnership, or their designations were terminated by means of 26 CFR 301.6231(a)(7)-1(l).

Note: A partner residing outside the US, its possessions or territories is not eligible to be selected as TMP under the largest profits interest rule.

4.31.2.4.12
(06-20-2013)
Selection of TMP by IRS

- (1) A partnership may designate a person as the TMP for a taxable year only if that person was a general partner in the partnership at some time during the taxable year for which the designation is made, or is a general partner in the partnership as of the time the partnership makes the designation.
- (2) If the partnership fails to designate a TMP or a prior designation has been terminated; the partnership has failed to make a subsequent designation; and the IRS determines that it is impracticable to apply the largest profits interest rule, then the IRS may select as the TMP for the taxable year any person who was a partner (whether general or limited) at some time during the taxable year.

Note: The CPF must be notified any time there is a change in the TMP, because the CPF is required to send the TMP copies of executed agreements. Notification should be sent encrypted to the CPF using the group email box. The

notification should include the key case name, the name of the new and old TMP, effective date and copies of the Form 13828, "TMP Qualification" and Form 13827, TMP Designation Check Sheet.

- a. The agent will first determine if there is another general partner who is eligible. If there is another eligible partner, the agent must notify the partnership in writing that the partnership must select a TMP within 30 days or the IRS will select the TMP. The agent will notify the partnership using Letter 3205, Letter Regarding Notice of Change in Tax Matters Partner.
 - b. If there is no other eligible (consider *Barbados #7 Ltd. v. Commissioner*, 92 T.C. 804 (1989)) general partner, the IRS may select a person who was a limited partner at the end of the taxable year under examination as the TMP. The IRS must notify, within 30 days, the partner selected, the partnership, and all other notice partners of the selection, effective as of the date specified in the notice.
 - c. If there are no general or limited partners available for selection, the IRS may issue the FPAA (to the TMP at the partnership address on the return) to timely conclude the examination. See 26 CFR 301.6223(a)-1(a)(1).
- (3) Examiners will identify a TMP as early as possible in an examination. Since the TMP executes statute extensions with the IRS and, under certain circumstances, enters into agreements that may be binding on other partners in the partnership, it is essential that the TMP be correctly identified.
- a. If the TMP is not designated as prescribed by the regulations, either by the partnership or by the IRS, the designation may be invalid. The designation must be perfected before proceeding with the examination.
 - b. If the examiner finds that the partnership has attempted to designate a TMP pursuant to the regulations but has not met all of the requirements, consult Area Counsel.
 - c. The examiner will document on Form 4318, Examination Workpapers Index, or supplemental work papers the criteria used to identify the TMP and any designation or selection made. It is the examiner's responsibility to determine if the designated TMP qualifies, based on the regulations, to be the TMP. Any written designation, other than that appearing on the return, will be stapled behind the first page of the partnership return.
- Note:** It is the intent of the IRS to have the partnership designate its own TMP, whenever practical.
- (4) Delegation Order 4-19 (as revised) delegates authority to select a TMP for a TEFRA partnership to the Appeals Team Managers, Appeals Team Case Leaders (as to their respective cases), LB&I team managers, and SB/SE group managers when it is impracticable to apply the largest profits interest rule.

4.31.2.4.12.1
(06-20-2013)

Notification Requirement

- (1) Before the group manager (SB/SE) or team manager (LB&I) selects a general partner as TMP as outlined in this IRM (See IRM 4.31.2.4.12, Selection of TMP by IRS), the following notification requirements must be followed:
 - a. Upon approval by the group manager (SB/SE) or team manager (LB&I), the agent will notify the partnership or LLC by mail using Letter 2700 or Letter 2700-L that after 30 days from the date of such notice, the IRS will determine that it is impracticable to apply the largest profits interest rule and will select the TMP unless the partnership or LLC makes a designa-

tion. This delay in making the determination will permit the partnership or LLC to designate a TMP under the regulations, thereby avoiding a selection by the IRS. The agent will notify the partnership of the IRS's selection of a new TMP by mail using Letter 2701 or Letter 2701-L.

- b. If the group manager (SB/SE) or team manager (LB&I) selects a TMP, the agent will notify the applicable partner and all other notice partners of the selection, effective as of the date specified in the notice. Under IRC 6231(a)(7), of 2002 within 30 days of selecting a TMP, the agent will notify all partners required to receive notice under IRC 6223(a) of the name and address of the person selected to be the TMP using Letter 3205.
 - c. During the 30 day period and prior to a TMP designation by the partnership, the agent will communicate with the partnership by sending all correspondence or notices to "Tax Matters Partner", in care of the partnership, at the partnership's address.
- (2) Any subsequent designation of a TMP by the partnership after the 30 day period will become effective as provided under 26 CFR 301.6231(a)(7)-1(k)(2).

4.31.2.4.13
(10-01-2010)
**Largest Profits Interest
Rule Impractical**

- (1) For a partnership, the largest profits interest rule is deemed impracticable if on the date that the rule is applied, the general partner with the largest profits interest is not apparent from the Schedules K-1 and is not otherwise readily determinable.
 - a. In the event this occurs, the group manager (SB/SE) or team manager (LB&I) will select the TMP. See IRM 4.31.2.4.12.1, Notification Requirement.
- (2) The largest profits interest rule is also impracticable if each general partner is deemed to have a zero profits interest because of the occurrence of one or more of the events described in 26 CFR 301.6231(a)(7)-1(l)(1)(i) through (iv). In the event this occurs, the group manager (SB/SE) or team manager (LB&I) will select a limited partner as the TMP. However, a limited partner will only be selected as the TMP if that partner was a partner in the partnership at the close of the taxable year under examination.

Note: The partnership cannot designate a limited partner to serve as TMP in lieu of a limited partner selected by the IRS. As a general guideline, if the group manager (SB/SE) or team manager (LB&I) determines that more than one limited partner meets the criteria to perform the duties of the TMP, all things being equal, strong consideration should be given to the limited partner with the largest profits interest.

- a. The group manager (SB/SE) or team manager (LB&I) will notify the partner selected and the partnership of the selection, effective as of the date specified in the notice.
- b. In selecting a limited partner as the TMP, the group manager (SB/SE) or team manager (LB&I) may consider the following criteria:

Considerations when selecting a TMP

- The views of all partners having a majority of interests in the partnership regarding the selection,
- The general knowledge of the limited partner in tax matters and the administrative operation of the partnership,
- The limited partner's access to the books and records of the partnership
- The profits interest held by the limited partner,
- Whether the limited partner is a member of the partnership at the time the TMP selection is made, and
- Whether the limited partner is a United States person.

- c. Lack of cooperation with the IRS by a general partner with the largest profits interest is not a basis for finding that the partner cannot perform the functions of a TMP. If the partner cannot perform the function of the TMP, the group manager (SB/SE) or team manager (LB&I) will treat each general partner who fits the criteria as having a zero profits interest for the taxable year, and select a TMP from the remaining persons who were general partners at any time during the taxable year.

Caution: It is impracticable to apply the largest profits interest rule if, on the date the rule is applied, the general partner with the largest profits interest is disqualified by reason of residing outside the United States, its possessions, or territories (26 CFR 301.6231(a)(7)-1(o)(3)(iii)). Under 26 CFR 301.6231(a)(7)-1(p)(3)(i), a partner with the largest profits interest who is disqualified is considered to have no profits interest in the partnership for purposes of selecting the TMP for the taxable year. This rule applies whether the general partner with the largest profits interest is a domestic or foreign partner. For example, a foreign partner who resides within the U.S., its possessions, or territories **at the time of applying the largest profits interest rule** is not disqualified under this rule. A domestic partner who resides outside the U.S., its possessions, or territories at the time of applying the largest profits interest rule is disqualified.

Note: Also, See IRM 4.31.2.4.12.1, Notification Requirement, for the notification requirements.

- (3) The largest profits interest rule is impracticable if the general partner with the largest profits interest has been:

Largest Profits Interest Rules is Impracticable if:

- Notified of suspension from practice before the IRS,
- Incarcerated,
- Residing outside the United States, its possessions, or territories,
- Not able to be located, or
- Not able to perform the functions of a TMP for any reason.

- a. If all such general partners are either treated as having a zero profits interest for the taxable year under 26 CFR 301.6231(a)(7)-1(m)(3) or described in (c) above, the group manager (SB/SE) or team manager (LB&I) will select a limited partner as the TMP under the procedures

described in this Handbook. See IRM 4.31.2.4.12, Selection of TMP by IRS.

4.31.2.4.14
(10-01-2010)

**General Audit Tips for
the Examiners and the
TMP Aspects of the
Proceeding**

- (1) It is the examiner's responsibility to:
 - a. Determine, at the beginning of the examination, that the designated TMP qualifies to be the TMP;
 - b. Note the steps taken to verify the designated TMP qualifies to be the TMP, as well as all steps taken in the TMP designation process;
 - c. Determine that any subsequent designation made meets the requirements of the regulations;
 - d. Take the necessary steps to perfect any subsequent designation that does not meet the requirements of the regulations or have a new designation completed; and
 - e. Consult with the TSPC for help in the above.
- (2) The examiner's work papers must reflect all determinations made in identifying the proper TMP.
- (3) If a TMP is a partnership or a limited liability company, the IRS must determine who has authority under State law to sign for the TMP entity. See IRM 4.31.2.5.4(2), Persons Empowered to Sign a Consent.
- (4) Consider, for example, Partnership X. For tax year A, Partnership X has designated as its TMP Y LLC. Z Corporation is Y LLC's sole member-manager and, under state law, has authority to bind Y LLC. John is Z's chief financial officer and, under state law, has authority to bind Z Corporation. John should sign the consent to extend the limitations period for tax year A for Partnership X as follows: Y LLC, Tax Matters Partner of X, by Z Corporation, Manager of Y LLC, by John, CFO.
- (5) When the partner is a C corporation, S corporation, or LLC, the examiner should determine the signing official who can bind that entity under state law.
- (6) A trustee should sign on behalf of a trust. If the trustee is an entity, it is necessary to determine what kind of entity the trustee is and who could bind it. A Form 56, Notice Concerning Fiduciary Relationship, and the trust documents should be reviewed to verify the correct trustee is signing.
- (7) When an LLC is the TMP, the examiner should review the operating agreement in light of the applicable state law to determine the signing official. In general, LLCs may be member-managed or manager-managed. In these situations, the signing official may be a manager that is not a member of the LLC. If the LLC is manager-managed, the manager is the binding official and must sign on the LLC's behalf. A manager under state law must sign for the TMP regardless of whether the TMP is itself a TEFRA entity. The TMP of an entity only has certain powers with respect to the partners of that entity but has no power to bind the TEFRA entity itself unless the TMP is a manager under state law.

Note: The examiner should consult his/her TSPC when these situations arise. It is important to determine not only the correct individual to sign, but also how to style the language to describe the relationship from that individual up to the partnership or LLC that is being examined.

- (8) To apply 26 CFR 301.6231(a)(7)-2 (Designation or selection of tax matters partner for a limited liability company) when examining an LLC filing as a part-

nership, the examiner must review the operating agreement to determine who the managers and members are for the LLC. Once it is determined who the member-managers are, as defined in 26 CFR 301.6231(a)(7)-2(b)(3), the regulation is then applied to determine if the designated TMP qualifies. The work papers must document how the managers and members were determined. A best practice would be to retain a copy of the operating agreement in the audit file.

- (9) When reviewing the partnership agreement or LLC operating agreement, the agent needs to look for any restrictions to the powers of the TMP. The partnership agreement or LLC operating agreement may restrict the TMP's ability to sign consents. The work papers must document any restriction to the TMP's ability to sign consents. A best practice would be to retain a copy of the operating agreement in the audit file. Consult with your TSPC if a restriction exists.
- (10) When a grantor trust is the partner in a partnership or LLC, the beneficiary cannot be designated the TMP. The trust itself must be designated. A fiduciary must be designated as the responsible party by using Form 56.
- (11) Currently, a single member LLC that is a disregarded entity will be considered to be the partner in a partnership or LLC. The disregarded entity may be designated as the TMP. See Rev. Rul. 2004-88 .

4.31.2.5 (04-10-2023) **Statutes**

- (1) Statute control is usually the number one priority in all programs. In TEFRA, the TMP provisions have a slightly higher priority because the unified statute remains at the partnership level. Only TMP has the authority to extend the statute on behalf of all partners.
- (2) If the designated TMP is not qualified, a statute extension signed by that TMP may not be valid. It is extremely important that the examiner has made a correct determination of the identity of the TMP. It is also recommended that the agent redetermine the eligibility of the TMP at the time of signing as the TMP may have become ineligible due to bankruptcy or other events described in the TMP section of this IRM. (IRM 4.31.2.4, Designation of Tax Matters Partner (TMP))
- (3) For tax year 2017, IRC 965 may extend the TEFRA partnership statute to six years. Collaboration will be required with Pass-Through Entities specialists if any aspects of the IRC 965 inclusion flows through to a taxpayer from a partnership (domestic or foreign) due to adjustments to the items flowing from the TEFRA partnership. Additional resources for partnerships and S corporations impacted by IRC 965 can be found on the IRC 965 Campaign SharePoint site under Resources/Shared Documents: *LBI-CBA Campaign 014 - Home*.

4.31.2.5.1 (05-31-2005) **TEFRA Statute of Limitations**

- (1) IRC 6229(a) sets forth a minimum period of limitations for assessing tax attributable to partnership items (or affected items) for all partners. The general rule states that the statute of limitations for these items will not expire before the date that is three years after the later of:
 - a. The date on which the partnership return for such taxable year was filed; or
 - b. The last day for filing such return for such year (determined without regard to extensions).

- (2) The Tax Reform Act of 1986 amended IRC 6229 by adding IRC 6229(g) to clarify that the period of limitations for assessment with respect to partnership or affected items also applies to penalties and additions to tax imposed by IRC 6662. For tax years ending after August 5, 1997, penalties are determined at the partnership level and assessed in the same manner as partnership items (even though they remain affected items).

Caution: The procedures in a) through d) below only apply to tax years ending on or before August 5, 1997, the day of enactment of the Taxpayer Relief Act of 1997.

- a. Partner level penalties are treated as affected items, which are subject to the IRC 6229(a) statute of limitations governing partnership items.
- b. Under IRC 6230(a)(2), deficiency procedures must be followed before any penalties can be assessed.

Note: For tax years ending after August 5, 1997, penalties determined at the partnership level are not subject to deficiency procedures (IRC 6230(a)(2)(A)(i)) and must be assessed within the one year period, even if the underlying deficiency is subject to deficiency procedures.

- c. A statutory notice of deficiency must be issued with respect to the penalties within one year after the expiration of the time for commencing a judicial proceeding regarding the FPAA, or if a judicial proceeding is commenced, the decision of the court becomes final.
- d. IRC 6229(g) was made retroactive to September 3, 1982.

- (3) The IRC 6229(a) statute of limitations is the earliest date on which the partnership or affected item assessment period expires with respect to the partners' returns. IRC 6501 will not shorten this period with respect to partnership or affected items, but may extend the time period for assessing individual partners.

- a. Under IRC 6229(b), the IRC 6229(a) statute of limitations may be extended for partnership or affected items at the partnership level by executing a Form 872-O, Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items, or a Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items. (See IRM 4.31.2.5.2, Extension of Statute at the Partnership Level.)
- b. Therefore, a partner in three different partnerships could have three different IRC 6229(a) statute dates in addition to the normal IRC 6501 statute date.

- (4) If partnership and/or affected items are converted to nonpartnership items (See IRM 4.31.2.5.7, Items Becoming Nonpartnership Items), the one-year statute (the one-year assessment date) of IRC 6229(f) applies. The IRC 6229(f) statute is used for all TEFRA issues. This includes affected items that require statutory notice procedures.

- (5) PCS Report 4-4 lists TEFRA key case records and investor records with a pending one-year statute date. The report is broken down for distribution to area groups and functions. (See text of IRM 4.29.4.4.3, TEFRA One-Year Assessment Statute Date Listing, Report 4-4.) This report should be reviewed by the group manager.

- (6) Other subsections of IRC 6229 come into play depending on the particular circumstances involved:

- a. The issuance of an FPAA (See IRM 4.31.2.7.2.5, Final Partnership Administrative Adjustment Cases);
 - b. The failure to issue the NBAP to a partner entitled to such notice;
 - c. Fraud or failure to file a return (See IRM 4.31.2.5.8, TEFRA Return with a False or Fraudulent Item, or IRM 4.31.2.5.10, Failure to File a TEFRA Return); and
 - d. An unidentified partner as described in IRC 6223(e) of 1982.
- (7) The statute for an AAR is not discussed here. See IRM 4.31.4.2.2, TEFRA AAR Statutes, for a discussion of statute dates for an AAR and for the procedures and correct forms to extend the statutes for petitioning or processing of refunds.

4.31.2.5.2
(04-20-2017)
**Extension of Statute at
the Partnership Level**

- (1) The IRC 6229(a) statute of limitations may be extended with respect to all partners by a consent executed at the entity level. The TMP or an authorized person (authorized in writing by all general partners and meeting the requirements provided in 26 CFR 301.6229(b)-1) may extend the period of limitations for the assessment of partnership and affected items for all partners by signing a consent before the expiration of the statutory period. It is preferred that the TMP or authorized person sign rather than have their POA sign.

Note: See Exhibit 4.31.2-5, Formats for TMP Signatures When Signing Extensions, for signature formats on signing extensions.

- (2) The statute of limitations also may be extended with respect to any partner by an agreement entered into with the partner (IRC 6229(b)(1) and IRC 6229(b)(3)). An unrestricted consent entered into by an investor extends the statute of limitations for assessment of any additional tax attributable to all partnership items or affected items for that investor only.
- (3) It is strongly recommended that the TMP or authorized person (26 CFR 301.6229(b)-1) sign all statute extensions. If someone other than the TMP or authorized person is signing the extension, for example the POA, it is advised to contact your Area Counsel.
- (4) The partnership agreement or LLC operating agreement must be reviewed to determine if there are any restrictions on the powers of the TMP. For example, the partnership agreement or LLC operating agreement may restrict the TMP's ability to sign consents. Consult with your TSPC if a restriction exists.
- (5) It is unclear as to what TMP duties are assignable to a POA. Work with your TSPC if the POA wishes to assume some duties of the TMP.
- (6) The examiner charged with the partnership return is responsible for the IRC 6229(a) statute for all partners. All regular statute extension request procedures must be followed when soliciting Form 872-O, Form 872-P, Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax, including requests for restricted consents. If the examiner receives a return letter with a signed consent that places conditions on the extension, the examiner should include these terms in a revised Form 872, if they are approved by counsel, and re-mail to the taxpayer for signature. (See IRM 25.6, Statute of Limitations, for examples of approved language.)

Note: Using the standard language included in IRM 25.6.22.8.12, Basic Restrictive Statement, in affect removes the TEFRA language. A statement must be added that the applicable TEFRA paragraphs are still valid. Without that language, the TEFRA issues may be lost.

- (7) The case file must be documented that managerial approval has been obtained to solicit a consent to extend the statute of limitations. The consent should be solicited from the taxpayer a minimum of one year prior to the statute expiration date to allow for processing.
- (8) The Restructuring and Reform Act of 1998 (RRA '98) section 3461(b), imposed provisions that must be followed in soliciting a consent to extend the statute of limitations. The provision requires the IRS to provide the taxpayer(s) or their authorized representatives with an explanation of their rights to decline to extend the assessment statute of limitations, or to request that any extension be limited to a specific period of time or to specific examination issues. In order to meet the provisions of RRA '98, the IRM has established the following procedures whenever an extension to the statute of limitations is solicited:
 - a. Letter 907, Request to Extend Assessment Statute, and Publication 1035, Extending the Tax Assessment Period, must be provided to both the taxpayer and authorized representative. A copy of Letter 907 must be attached to the Form 872 or Form 872-A in the file and the fact of its mailing documented in the case activity record.
 - b. Examiners should ensure that the proper extension form is transmitted to the taxpayer and representative.
 - c. Upon receipt of the executed copy from the taxpayer or authorized representative, the consent should be date stamped received and forwarded to the manager for execution. All requests for restricted consents must be considered. If the examiner receives a return letter with a signed consent that places conditions on the extension, the examiner should include these terms in a revised consent, if they are acceptable to the IRS, and re-mail to the taxpayer for signature. A copy of the executed consent must be returned to the taxpayer and/or authorized representative with the original attached to the tax return. The examiner should ensure that both the AIMS and ERCS databases are properly updated to reflect the new statute of limitations date.
- (9) If the taxpayer or authorized representative does not wish to execute a consent, they should be notified that the case will be evaluated to determine whether an FPAA will need to be issued.
- (10) Further guidance on the control of statutes can be found at IRM 25.6, Statute of Limitations Handbook.
- (11) TEFRA partnership level consent and consent termination forms are as follows:
 - a. Form 872-P is a closed-end consent for TEFRA partnership returns. (It is preferred to the Form 872-O.).
 - b. Form 872-O is an open-end consent for TEFRA partnership returns. (Soliciting this form is not recommended as the Form 872-N, described in paragraph (12)(b) below will terminate the agreement leaving only 90 days to complete the examination.);
 - c. Form 872-N, Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items, is used to terminate a Form 872-O.

- d. Form 872-O or Form 872-P Attachment (Allows room for restricted language). The Form 872-O and Form 872-P should have the statement "Restricted Consent, See Attached Statement" typed on page 1.
- (12) The key case examiner is ultimately responsible for the IRC 6229(a) statute as it pertains to the TEFRA key case and its related partners while the key case is in his or her possession. Although the CPFs maintain control of the investor files, they are only responsible for the assessment of tax and penalties once the IRC 6229(d) or (f) one-year assessment periods begin running and for the investor statutes that are extended under IRC 6501 for returns that may be in their possession.
- a. Execution of a Form 872-P or Form 872-O by the TMP or authorized person extends the IRC 6229(a) statute with respect to partnership and affected items for all partners.
- Note:** For tax years beginning on or after June 28, 2002, TEFRA entity-level consents to extend the IRC 6229 period for a consolidated group where a subsidiary is the TMP, the TMP must sign. The TMP's parent does not need to co-sign the consent. For tax years beginning before June 28, 2002, both the subsidiary TMP and the parent must sign.
- b. An open-ended consent on a Form 872-O can be terminated by execution of a Form 872-N. The 90-day period begins when the Form 872-N is delivered to the office shown on the Form 872-O or Form 872-U, Change of Address to Submit Notice of Termination of Special Consent to Extend the Time to Assess Tax; therefore, the Form 872-N must be date stamped when received by that office. If the Form 872-N is received by other than the key case office, it should be forwarded to the key case examiner immediately. The examiner should date stamp the Form 872-N and forward a copy to the CPF for association with its administrative file.
- (13) The key case examiner is responsible for updating AIMS when an extension is secured for the key case. A copy of that extension should be forwarded to the appropriate campus email box.

Note: Appeals sends a copy to both campuses.

4.31.2.5.2.1
(06-20-2013)
**Barred Key Case
Partnership Statutes**

- (1) If the key case return statute of limitations expires, the key case area is responsible for following barred deficiency report procedures as outlined in IRM 25.6.1.13, Barred Assessments/Barred Statute Cases, for the key case return. The key case area must notify the key case CPF so that the investor CPFs may be notified.
- (2) A barred statute package including a Form 3999-T, Statute Expiration Report (for TEFRA key cases), will be prepared by the key case area for the key case CPF. The package will include a copy of Pattern Letter P-430 for the CPF key case administrative file. (See (5) below for the P-430 requirements below.) A pro-forma Pattern Letter P-431 will also be included in the barred statute package. (See (6) below for the P-431 requirements below.)
- (3) The examiner will prepare Form 3999-T for:
 - a. All cases where the key case IRC 6229 statute has expired;

- b. Key cases with an expired IRC 6229 statute and at least one partner with an open IRC 6501 statute;
 - c. Key cases where CI has allowed the statute to expire.
- (4) The Form 3999-T will include the following:
- a. Identify facts;
 - b. Identify partners with expired statutes;
 - c. Identify lost adjustments/ tax loss for those partners;
 - d. Attach the CI approval memo.
- (5) The pro-forma Pattern Letter P-430 is as follows:
- [Use appropriate salutation];
 - We have discontinued our examination of your [tax year] federal income tax return, because the statutory period in which we could legally have scheduled any refund or assessed any deficiency for the tax returns of your partners relating to the partnership items, as provided by IRC 6229(a) of the Internal Revenue Code, has expired.
 - Sincerely yours,
 - [Signature]
 - [Title]
- (6) The pro-forma Pattern Letter P-431 is as follows:
- [Use appropriate salutation];
 - We have discontinued our examination of the [tax year] federal income tax return of [name of partnership], because the statutory period in which we could legally have scheduled any refund or assessed any deficiency on your returns relating to partnership items, as provided by IRC 6229(a) of the Internal Revenue Code, has expired.
 - Sincerely yours,
 - [Signature]
 - [Title]
- (7) The complete barred statute package will be closed to Technical Services for processing.

4.31.2.5.3
(04-20-2017)

**Extension of Investor
Statute for TEFRA and
Non-TEFRA Items**

- (1) The IRS may extend the IRC 6229(a) statute by agreement under IRC 6229(b)(1)(B) for the assessment of partnership and affected items for all partners and/or extend the statute for the assessment of partnership and affected items for an individual partner.
- (2) Extending the TEFRA statute at the individual partner's level is not the usual approach and, except for LCC cases, should only be used in mitigating circumstances, e.g., the TMP is not readily determinable. Individual partners cannot execute Form 872-P or Form 872-O consents, since they are designed for use by the TMP to extend the statute at the partnership level. If the investors statute is being extended beyond the one year assessment statute date period, the OYD needs to be updated to match the extended statute date.
- (3) An extension under IRC 6229(b)(1)(A) for a partner can be included in an extension of the IRC 6501 statute under IRC 6501(c)(4), using Form 872 or Form 872-A. Use of Form 872 or Form 872-A at the partner level to extend the partnership statute is not encouraged (except in LCC audits) because of the administrative issues this creates. However, if a consent to extend the partner-

ship statute is secured at the partner level, the consent must retain the TEFRA paragraphs to expressly provide that it extends the period to assess tax attributable to partnership items.

- a. For all cases where the taxpayer is a direct or indirect investor in pass-through entities that file (or should file) a Form 1065, current Form 872 and Form 872-A should be used with TEFRA paragraphs intact. As an example, a large corporate taxpayer may be invested in hundreds of partnerships or LLCs subject to TEFRA procedures. In this situation, it may not be known which of these pass-through entities are subject to TEFRA. If a significant TEFRA partnership adjustment is picked up during an examination of a taxpayer/investor, the period of assessment will be held open by the executed Form 872 or Form 872-A. It is very important to note that a TEFRA partnership proceeding is still required to make this adjustment even though the taxpayer who has executed the Form 872 or Form 872-A consent may be the only partner adjusted as a result of the TEFRA partnership proceeding unless other partners or the TMP have also extended the period for assessing partnership items.
 - b. In the case of consolidated corporate returns where the **subsidiary is a partner** in a TEFRA partnership, consent to extend the statute using current Form 872 or Form 872-A must be in the name of the parent and the subsidiary. **The parent of the consolidated group and the subsidiary partner(s) will sign** the partner-level Form 872 or Form 872-A pursuant to the consolidated return rules under 26 CFR 1.1502-77. In situations where the parent wishes to restrict the Form 872 or Form 872-A or have the subsidiary, who is the actual partner under state law, be the sole signatory on the waiver, the examiner should contact local Area Counsel before executing the waiver. If any other subsidiary is known to be a partner in another TEFRA partnership, it is best practice to secure a separate signature from that subsidiary. This can be done on an attachment to the Form 872 or Form 872-A using Form 13924, Attachment for Consolidated Group Signatures (for use with Form 872 revised 10-2009) or Form 13923, Attachment for Consolidated Group Signatures (for use with Form 872-A revised 10-2009).
 - c. In the case of consolidated corporate returns where the **parent is partner**, the consent should be in the name of the parent and subsidiaries and **signed by the parent**. In situations where the parent wishes to restrict the Form 872 or Form 872-A, the examiner should contact local Area Counsel before executing the waiver. If any other subsidiary is known to be a partner in another TEFRA partnership, it is best practice to secure a separate signature from that subsidiary. This can be done on an attachment to the Form 872 or Form 872-A using Form 13924 or Form 13923.
- Note:** It may not be practical to know if all subsidiary partners are part of another TEFRA partnership. In that case, ensure the parent signs the waiver.
- d. Any time the statute is extended at the partner level, a copy of the extension must be sent to the controlling campus. See IRM 4.31.2.5.3.1, TEFRA Statutes Secured at the Partner Level (AC Statute Procedures).
 - e. In those cases where it is appropriate to solicit a partner level extension but the partner refuses to sign the consent, the examiner should document the refusal in the case file.

Reminder: Versions of Form 872 or Form 872-A prior to 10-2009, which extends the IRC 6501 statute, could be used to extend the IRC 6229(b)(1)(A) statute; however, the Form 872 or Form 872-A had to be modified to include the following paragraph to include TEFRA partnerships: "Without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items (see IRC 6231(a)(3)), affected items (see IRC 6231(a)(5) of 2002), computational adjustments (see IRC 6231(a)(6) of 2002), and partnership items converted to nonpartnership items (see IRC 6231(b)). This agreement extends the period for filing a petition for adjustment under IRC 6228(b), but only if a timely request for administrative adjustment is filed under IRC 6227. For partnership items that have converted to nonpartnership items, this agreement extends the period for filing a suit for refund or credit under IRC 6532, but only if a timely claim for refund is filed for such items. In accordance with paragraph (1) above, an assessment attributable to a partnership shall not terminate this agreement for other partnerships or for items not attributable to a partnership. Similarly, an assessment not attributable to a partnership shall not terminate this agreement for items attributable to a partnership".

Note: If a Form 872-A was used instead of a Form 872, the following additional language had to be used: *The issuance of a notice of deficiency will not terminate this agreement under paragraphs (1) and/or (2) for the items described by this paragraph.*

- (4) Partnership and affected items that are converted to nonpartnership items are no longer subject to the period for assessment under IRC 6229(a). They must be assessed within the one year period provided for converted partnership items (nonpartnership items) under IRC 6229(f). Consents secured under the instructions in (3) also extend this one year period.
- (5) There may be situations where an unrestricted extension of the IRC 6501 statute using a Form 872-A was used to provide a longer period for assessment than under IRC 6229(f).
- (6) An extension using **earlier versions** of Form 872-A terminates upon the issuance of any notice of deficiency. To prevent the termination of a Form 872-A with respect to converted partnership and affected items (nonpartnership items), a Form 872-A, paragraph 1, may have been modified as indicated above in the note, see IRM 4.31.2.5.3(3)(a), Extension of Investor Statute for TEFRA and non-TEFRA Items.
- (7) However, Form 872-A is subject to termination by the execution of a Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, by the partner or the IRS. If the situation arises where a Form 872-A was used to extend the statute for affected items, request advice from Area Counsel.
- (8) The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) provided that the IRC 6229(f) statute may be extended by agreement between the taxpayer and the IRS. The Taxpayer Relief Act of 1997 provides that partial agreements may be secured, because the one-year date (IRC 6229(f)) that controls all assessments is the one-year date applicable to the last item to be resolved.

4.31.2.5.3.1
(04-10-2023)

**TEFRA Statutes Secured
at the Partner Level (AC
Statute Procedures)**

- (1) Generally, the TEFRA statute is secured at the partnership level with a Form 872-P or Form 872-O. However, there are some occasions where it is not possible to secure an extension at the partnership level. When this happens, it may be necessary to secure the TEFRA statute at the partner level before the TEFRA partnership statute expires.
- (2) When the partnership statute is allowed to expire, IRC 6229 will no longer be used to control the partners' statutes. The IRC 6501 date for the partner will become the controlling statute for that partner. Subsequent agreements, FPAA defaults, or court decisions will still create a one-year assessment period per IRC 6229. The issuance of the FPAA suspends the section 6501 period (for the petition period and one year after). The issuance of the FPAA suspends the section 6501 period for the petition period (and if a petition is filed, until the decision of the court becomes final) and for one year thereafter. See *Rhone-Poulenc Surfactants and Specialties, L.P. v. Commissioner*, 114 T.C. 533, 551-56 (2000).
- (3) It is recommended that the TEFRA proceedings be finalized prior to the expiration of the key case statute whenever possible. It is recommended that an FPAA be issued, if possible, to avoid the need to control individual partner level statutes. It may be necessary to quickly issue an NBAP, FPAA and untimely notice letter in some cases.
- (4) If the partnership statute under IRC 6229 will expire within 12 months, Examination must show that a significant compliance issue(s) exists on the return before the TEFRA examination can be opened or continued. If the case is already open, and approval is not granted to use the procedures, then the case must be no changed or an FPAA issued.
- (5) If considering an AC Statute, see Form 14717, TEFRA AC Statute Work Sheet, for guidance on AC statute procedures. If AC statute procedures are pursued the Form 14717 must be completed.
- (6) Prior to opening or continuing such an examination, approval must be secured from the area director (AD), for SB/SE matters, or the director of field operations (DFO), for LB&I matters.
- (7) If you issue an FPAA for a closed TEFRA partnership taxable year in order to adjust affected items in a partner's open year, you must contact Counsel. Language needs to be added in the FPAA to address the statute of limitations issue.

4.31.2.5.3.1.1
(04-20-2017)

**Coordination with
Technical Services**

- (1) When it is not possible to secure statute extensions at the TEFRA partnership level, or it is not feasible to issue a FPAA report, the examiners must immediately make a TEFRA referral using the *Specialist Referral System* (SRS).
- (2) Make this referral prior to allowing the partnership statute to expire with an open IRC 6501 statute or opening a partnership examination utilizing an open partner statute.
- (3) Once the referral is accepted, a meeting must be held with the field examiner, field group manager, Technical Services TEFRA program manager, the assigned TEFRA analyst and the TEFRA group manager.
- (4) During the preliminary call, the field examiner will provide the following information:

- a. The partnership name;
 - b. EIN;
 - c. Applicable tax years; and
 - d. the yK1 link analysis tool report that identifies all partners with open IRC 6501 statutes and their ownership percentages.
 - e. Amount of adjustment and risk analysis of the potential tax impact to the partners.
 - f. TEFRA procedures completed to date, if any
- (5) Once everyone agrees on the process and acknowledges in writing the responsibilities they are undertaking, executive approval will be secured.

4.31.2.5.3.1.2
(04-20-2017)

AC Approval Process

- (1) When requesting the authority to start or continue an examination from an AD or DFO that will require the TEFRA statute to be controlled at the partner level, the request should be made as soon as possible. Approval will be made promptly and communicated to the requesting employee in writing. If approval is not granted, and assuming a timely request was made, a reason for the disapproval will be provided for educational purposes to assist in the processing of similar TEFRA cases in the future.
- (2) It is expected that the examiner will protect 100% of all partner statutes with respect to adjustments passing from the TEFRA entity. If this is not possible, provide an explanation as to why certain partners' statutes were allowed to expire on the TEFRA partnership using Form 15034, PCS Limited Linkage Document, and Form 895. The Form 15034 should be included with the linkage package, or sent to them separately if the partners are already linked.
- (3) AD or DFO approval must be secured prior to 180 days before expiration of the partnership's IRC 6229 statute. In those rare instances where the IRC 6229 statute has already expired and it is deemed necessary to pursue an examination, approval must be received prior to initiation of an examination.

4.31.2.5.3.1.3
(04-10-2023)

Examiners Responsibilities When Using an AC Statute

- (1) Complete Form 14717, TEFRA AC Statute Work Sheet.
- (2) The examiner must reach agreement with all internal parties concerning necessary actions. This includes a timeline and a statute extension requested date. The examiner must establish the existence of a significant compliance issue in order to gain approval as mentioned above.
- (3) If concluding the TEFRA proceeding is not an option, and after approval is granted, the TEFRA statutes must be protected at the partner level by securing a Form 872 from (Rev. 10-2009 or subsequent, which includes TEFRA-related wording) each partner.
- (4) Solicit statute extensions for all partners, with the same extension date to allow ample processing time – dependent on the type of closure.
- a. **Agreed – At least 12 months** must remain on the IRC 6501 partner(s) statute at the time the case is closed from the group to Technical Services.
 - b. **Unagreed** – for partners protesting to Appeals there **must be 32 months** remaining on the statute(s) when the case is closed from the group to Technical Services.

- (5) If any partner does not wish to extend the statute as explained (3) above, the examiner will close the case to TS for the issuance of an FPAA and the case will not go to Appeals. The examiner must follow imminent statute procedures when there are **less than 240 days** remaining on the IRC 6229 or IRC 6501 statute(s) at the time the case is closed from the group to TS.
- (6) The partnership statute cannot be updated with alpha statute code AC until there are **180 days or fewer** on the numeric statute date of the TEFRA partnership return. DFO or AD **approval must be secured prior to using alpha statute code AC**. A copy of the approved memo must be sent to the TS PM. The approval memo template must be used to obtain approval. The template can be found on the TEFRA web site.
 - a. DFO or AD approval must be secured before the partnership's IRC 6229 statute is **within 180 days** of expiration. In those rare instances where the IRC 6229 statute has already expired and it is deemed necessary to pursue an examination, approval must be received prior to initiation of an examination.
 - b. Once approval has been secured, and **180 days or fewer** remain on the partnership statute, the update to alpha code AC should be requested.
 - c. The pass-through tier statute should also be updated to alpha code AC if the regular statute date is **within 180 days** of expiration or has expired, unless the tier itself is also under exam for non-TEFRA items.
 - d. The month and year segments will keep the date of the normal three year, or extended, statute date. Only the day segment of the statute date will be updated to AC. For example, if the regular three-year expiration date is 03/15/2014, then the updated statute should show as 03/AC/2014.
- (7) Protect 100% of all partner statutes with respect to adjustments passing from the TEFRA entity. If this is not possible, provide an explanation as to why certain partners' statutes were allowed to expire on the TEFRA partnership Form 895, Notice of Statute Expiration.
- (8) Ensure that when alpha statute code AC is used at the key case and tier level, none of the underlying partners have an HH alpha statute code. All taxable partners must have a numeric statute date.
- (9) The examiner will also be responsible for controlling all pass-through partners (tiers) and all direct and indirect partners that have open IRC 6501 statutes. All partner tax years that are affected by carryover, the exam field group will also control carryback, and net operating loss (NOL) adjustments. (Freeze code 6 must be added to the carryover/carryback and NOL years.) The TSPC and examiner will contact the CPF requesting all direct and indirect partners be transferred to the field exam group if already controlled by the CPF. The examiner will be responsible for any barred statutes that result from failing to request the returns and notifying the campus that the key case statute is no longer protecting the partner statutes.
- (10) The CPF must be notified when the partnership IRC 6229 statute is allowed to expire and only partners with open IRC 6501 statutes will continue to be examined. The examiner will prepare a memorandum to the CPF identifying the direct and indirect partners that **will not** continue to be examined due to expired IRC 6501 statutes. This allows the CPF to close these direct and indirect partners. Form 8339, Partnership Control System (PCS) – PCS Change, and copies of executed statute extensions must be sent to CPF elec-

tronically using the designated mailbox found on Form 14090, TEFRA Linkage Request Check Sheet (LB&I), or Form 14091, TEFRA Linkage Request Check Sheet (SBSE).

- (11) The partnership must have complete PCS linkage of all direct and indirect partners with open IRC 6501 statutes. All direct and indirect partners not already established on AIMS must be established on AIMS in the field prior to submitting the linkage package. PCS linkage is mandatory, and must be completed within 5 days of receiving DFO or AD approval to continue or initiate the audit. The examiner will provide a memorandum with the PCS linkage package to the CPF indicating which direct and indirect partners must be linked in addition to identifying their IRC 6501 statutes. Once linked CPF will provide notice support.
- (12) If the case has the potential of closing unagreed, the examiner will notify the TSPC. The TSPC will notify Appeals via email or telephone when there are 10 or more taxable partners in a case group before allowing the taxpayers to file a protest or transferring the case to Appeals.
- (13) The examiner will work with the assigned TSPC to ensure the TEFRA summary report (Form 4605-A, Examination Changes – Partnerships, Fiduciaries, S-Corporations, and Interest Charge Domestic International Sales Corporations (Unagreed and Excepted Agreed), Form 886-A, Explanation of Items, and 886-Z, TEFRA Partners' Shares of Income (or equivalent spreadsheet)) and Form 870-PT, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, are valid before providing the report to the TMP. The Form 870-LT, Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts and Agreement for Affected Items, will not be used in this process. This will eliminate the need for the TSPC to return the partnership case back to the field examiner to correct the summary report and/or agreement forms. The case file must have a notation that the partnership closing conference was held or a properly executed copy of the closing conference waiver is included in the case file.
- (14) Ensure copies of consents to extend statutes as well as Integrated Data Retrieval System (IDRS) command code TSUMY prints verifying partner linkage to the TEFRA entity are included in the case file prior to closing the TEFRA partnership return to Technical Services.
- (15) Form 8339 and a copy of the appropriate executed statute extension must be sent to the appropriate CPF at the email box found on Form 14090 or Form 14091 so the one year date can be updated. The extension must include the TEFRA language, and that language must not be removed from the form if the statute extension is restricted.

Note: It should be noted that using the standard language included in IRM 25.6.22.8.12, Basic Restrictive Statement, in affect removes the TEFRA language. A statement must be added that the applicable TEFRA paragraphs are still valid. Without that language, the TEFRA issues may be lost.

- (16) If such an examination is unagreed, SB/SE Technical Services will provide priority handing of the case to Appeals.

4.31.2.5.3.1.4

(04-20-2017)

Agreed Case Closure

- (1) If an agreement is secured, the case should be processed according to normal TEFRA closing procedures. This means the agent will prepare reports for all the partners subject to a tax change. Once the reports are completed the exam field group will transfer the case group, (i.e., the partnership key case and all direct and indirect partners with open IRC 6501 statutes) to Technical Services. Carry over/carryback years are also included. Pass-through partners (tiers) will also be closed to Technical Services.

4.31.2.5.3.1.5

(04-20-2017)

Unagreed Case Closure

- (1) If the field exam group utilizing an AC alpha statute code controls the partnership case and the TMP or a partner is requesting an appeal, the following actions must be taken:
 - a. All open IRC 6501 partner statutes must have a minimum of 32 months remaining on the statute when closing from the group and all of the statutes must be extended to the same date, i.e., no "rolling statutes" will be allowed.
 - b. The TMP or partner must provide a formal protest for an appeal and include the taxpayer's position for each unagreed issue. The examiner will review the taxpayer's position and provide a rebuttal or indicate no further action is required by the field.
 - c. The exam field group will transfer the case group (i.e., the partnership key case and all direct and indirect partners with open IRC 6501 statutes) to TS. Carryover/carryback years are also included. Pass-through partners (tiers) will also be closed to Technical Services.
 - d. All pass-through partners (tiers), partner carryover/carryback and NOL years, will be closed to CPF by Technical Services in unagreed cases.
- (2) Technical Services will issue FPAAs if:
 - a. The case is unagreed and the partnership and partners have not requested an appeal; or
 - b. The direct and indirect partners with open IRC 6501 statutes refuse to extend their IRC 6501 statutes to the required **32-month** minimum statute with all statutes expiring on the same date.

4.31.2.5.3.1.6

(04-10-2023)

Sending the Case to Appeals

- (1) The TSPC will provide priority handling of these cases in processing returns to Appeals. Where employees are required to take actions timely, but no specific timeframe is identified (e.g., timely notice by Appeals employees when agreements have been secured), timeliness will be determined by what is reasonable under the circumstances taking into account mitigating factors.
- (2) Appeals will accept jurisdiction of the TEFRA partnership, direct and indirect partners (case group) when the direct and indirect IRC 6501 statutes are extended to the same date and 24 months remain on all statutes when received in Appeals. Therefore, TSPC must ensure there is, at a minimum 24 months + 14 business days remaining on the statute prior to forwarding the case to Appeals. The case must arrive in Appeals as a complete package. TSPC will forward the case to Appeals, if paper use the following address:

#

- (3) The Appeals officer may notify both the exam field group and the TSPC when the statute expiration date has changed in addition to updating the Appeals Centralized Database System (ACDS).

4.31.2.5.3.1.7
(04-10-2023)
Appeals Closure

- (1) When agreements are reached, Appeals will send a complete closing package and the agreements to the CPF for processing. Appeals will also send the related direct and indirect partners that agreed. Appeals will alert the CPF that the returns, closing package and related agreements are being sent. Copies of the agreements should be scanned and emailed to the CPF along with the closing package in case something is lost in the mail.
- (2) If agreement cannot be reached in Appeals, an FPAA must be issued. If more than 12 months remain on the statute controlling the case, Appeals will work with counsel to prepare FPAA language for all unagreed issues. Appeals will send the case to the TSPC for issuance of the FPAA.

Note: At least 12 months must remain on the statute controlling the case when received by the TSPC.

- (3) If less than 12 months remain on the controlling IRC 6501 statutes, the appeals officer becomes responsible for issuing all FPAAs and all follow-up procedures on all related IRC 6501 cases.
- (4) Appeals will notify the exam field group, TSPC and CPF when the case is unagreed and either being returned to the TSPC or the FPAA is going to be issued by Appeals.

Note: If the partnership key case is involved in listed transactions the case will be returned to TSPC to have the FPAA issued. See Announcement 2006-100.

4.31.2.5.3.2
(04-20-2017)
Restricted Partner Level Consent

- (1) The use of standard restrictive language in IRM 25.6.22.8.12, Basic Restrictive Statement, cancels the TEFRA language included in Form 872 and Form 872-A unless an exception is included in the restrictive paragraph.
- (2) For example, if the restriction limits the extension to items from a non-TEFRA partnership, that restriction eliminates the TEFRA language by default. Separate language must be added to include a reference that the TEFRA language remains in effect.

4.31.2.5.3.3
(06-20-2013)

**Investor Level Barred
TEFRA/Non-TEFRA
Statutes**

- (1) When the investor IRC 6501 statute has expired prepare and process the Form 3999, Statute Expiration Report, using the following procedures.
- (2) The examiner will prepare Form 3999 for:
 - a. All cases where the partner IRC 6501 statute has expired;
 - b. The agent did not secure a proper Form 872 for the partner or
 - c. The agent did not secure the proper Form 872-P at the partnership level;
 - d. CI has allowed the partner's statute to expire.
- (3) Content of Form 3999
 - a. Identify facts;
 - b. Identify partnerships with expired statutes;
 - c. Identify lost adjustments/ tax loss for this partner;
 - d. Attach the CI approval memo.
- (4) Forward a copy of the Form 3999 to the TSPC within 5 business days when the proper official has signed the forms.

4.31.2.5.4
(06-20-2013)

**Persons Empowered to
Sign a Consent**

- (1) The TMP may sign an agreement to extend the statute of limitations for assessment for partnership and affected items for all partners. See Exhibit 4.31.2-5, Formats for TMP Signatures when Signing Extensions.
- (2) When the TMP is not a natural person (individual), it is important that the examiner correctly analyze the entity TMP to determine the correct individual that can legally sign for the entity. If the designated TMP is also a partnership or an LLC filing as a partnership, the examiner must determine who is the general partner(s) or member manager(s). If that pass-through partner is itself a TEFRA partnership, the TMP of that pass-through partner is not necessarily the person authorized under state law to sign the consent. Care should be taken to ensure the correct person is signing the consent. The authorized person will most likely be a general partner or a manager if an LLC.
- (3) When the partner is not a pass-through entity or an individual, the examiner should determine who can bind that entity. For example, for a C corporation it would be an officer; for an S corporation, it would be an officer; for a trust, it would be the trustee. The examiner should be consulting with his/her TSPC and/or Area Counsel when this situation arises. It is important to determine not only the correct individual to sign at the bottom tier, but also how to style the language to describe the relationship from the bottom tier up to the partnership or LLC that is being examined.
- (4) For consolidated tax years beginning before June 28, 2002, if a subsidiary in a consolidated filing group is the TMP of a partnership, both the signature of the parent (signing on behalf of the subsidiary TMP) and the signature of the subsidiary TMP are recommended on any statute extension by the TMP on behalf of the partners of the partnership. The signature blocks would appear as follows:
 - [Name of common Parent corporation] by [name of authorized representative of Parent corporation, title], as common parent of the [name of Parent corporation] and Subsidiaries consolidated group, on behalf of [name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership].

- [Name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership] by [name of authorized representative, title].
- (5) For consolidated tax years beginning on or after June 28, 2002, if a subsidiary in a consolidated filing group is the tax matters partner of a partnership, the signature of the subsidiary TMP is required on any statute extension signed by the TMP on behalf of the partners of the partnership. See 26 CFR 1.1502-77(a)(3)(v). The signature block would appear as follows:
- [Name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership] by [name of authorized representative, title].
- (6) In addition, 26 CFR 301.6229(b)-1 provides that a partnership may authorize any other person to extend the period described in IRC 6229(a), with respect to all partners, by filing a statement with the campus where the partnership return is filed (or with the examiner who will forward a copy to the key case campus).

Note: The agent should always review the partnership and/or operating agreements to ensure that “no” restrictions exist.

- a. The examiner will attach the original authorization to the back of the first page of the return and will note in red on the top of the copy, “Campus Copy”.
- b. The examiner will ensure that the authorization:

Ensure the authorization:

- Provides that it is an authorization for a person other than the TMP to extend the assessment period with respect to all partners;
- Identifies the partnership and the person being authorized by name, address, and TIN;
- Specifies the partnership’s taxable year(s) for which the authorization is effective; and
- Is signed by all persons who were general partners at any time during the year(s) for which the authorization is effective.

- (7) If a POA substantially complies with the criteria outlined in IRC 6229(b)(1)(B) and 26 CFR 301.6229(b)-1, consents executed by the POA would be valid. As a general rule, a POA designated on Form 2848, Power of Attorney and Declaration of Representative, may not meet these criteria and the extension signed by the POA may not be valid. If this situation exists, request advice from Area Counsel.

4.31.2.5.5
(04-20-2017)

**Acceptance of Faxed
Statute Extensions**

- (1) Consents to extend the statute of limitations for assessing tax (Form 872, Form 872-P, and other consent forms) can be accepted by fax if taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the extension by fax.
- (2) Faxed documents must be legible and not condensed.

4.31.2.5.6
(04-10-2023)

**Suspension of Statute
With Issuance of FPAA**

- (1) The IRC 6229(a) statutory period, i.e., the original 3 year period, is suspended once the FPAA is issued for 150 days plus one year. See IRC 6229(d).
 - a. The statutory period is suspended for the 150 day period during which an action may be brought under IRC 6226. The 150 day period for bringing suit consists of 90 days for the TMP to file a petition in court plus another 60 days for the notice partners or notice group to file a petition in court. (The 90th and 60th days are subject to the Saturday, Sunday, and legal holiday rule.) The IRS cannot make an assessment against any of the partners during this 150-day suspension period unless their partnership items were previously converted to nonpartnership items. (See IRM 4.31.2.5.7, Items Becoming Nonpartnership Items.)
 - b. The one year statutory period in which assessments can be made begins to run on the 151st day.
 - c. If during this 150-day period the TMP or a notice partner files a petition for judicial review, the statutory period for assessment is suspended until the court decision becomes final. (See IRC 7481). After the decision is final, the IRS has one year to assess the tax. The decision becomes final:

The decision becomes final:

- For Tax Court cases, 90 days after the decision is entered if an appeal is not filed by either party during that time.
- For District Court, Court of Federal Claims, 60 days after the decision is entered if an appeal is not filed by either party during that time.
- The decision becomes final for U.S. Court of Appeals 90 days after entry of decision unless an appeal is filed by either party during that time.
- The decision becomes final for U.S. Supreme Court 25 days after entry of decision unless a motion for reconsideration is filed by either party during that time.

- (2) If the FPAA is mailed to the TMP prior to the expiration of the IRC 6229(a) statute (but the FPAAs are mailed to the partners after the expiration of the statute), the statute for the investors is suspended from the date the FPAA was mailed to the TMP. The FPAAs must be mailed to the notice partners within 60 days after the FPAA is mailed to the TMP. See IRC 6229(d)(2).

4.31.2.5.7
(10-01-2010)

**Items Becoming
Nonpartnership Items**

- (1) When partnership items or affected items are converted to nonpartnership items, the statute of limitations with respect to these items is governed by IRC 6229(f) instead of IRC 6229(a). Under IRC 6229(f), the statute of limitations does not expire before one year after the date the items become nonpartnership items. The Technical Corrections Act of 1988 provides that the IRC 6229(f) statute may be extended by agreement entered into between the Secretary and a partner. An extension pursuant to IRC 6229(f) cannot be entered into at the partnership level but a partner can extend the statute using a Form 872-F, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership that have Converted Under IRC 6231(b) of the Internal Revenue Code, current Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax. A partner

can only extend the separate one-year period under IRC 6229(d) created by a decision being entered in any court or due to an FPAA defaulting by executing a current Form 872 or Form 872-A.

- (2) The entry of a court decision is not a conversion event. Under IRC 6231(b), items become nonpartnership items as of the date:
 - a. A notice is mailed to the partner advising treatment of such items as nonpartnership items, but only if this notice is sent before the NBAP;
 - b. The partner files suit under IRC 6228(b) after the IRS fails to allow an AAR;
 - c. A settlement agreement is entered into with the partner. (See IRM 4.31.2.5.7.1, Conversion to Nonpartnership Items by Execution of Agreements, Form 870-PT and Form 870-LT.);
 - d. An untimely notice letter (Letter 3857, Untimely Notice - TEFRA Proceedings Ongoing, or Letter 3858, Untimely Notice - TEFRA Proceedings Complete) is sent under IRC 6223(d) of 1982 and the partner's partnership items convert to nonpartnership items under IRC 6223(e) of 1982;
 - e. Certain special enforcement events occur under IRC 6231(c). See IRM 4.31.2.5.7.3, Conversion to Nonpartnership Items by Reason of Special Enforcement Areas.
- (3) Under IRC 6229(f), if an agreement with respect to partnership items was accepted on behalf of the IRS, the statutory period for assessing partnership items and affected items (related penalties, etc.) would be extended to one year from the acceptance of the agreement by the IRS. For tax years ending after August 5, 1997, penalties are assessed in the same manner as partnership items.

Note: For tax years ending before August 6, 1997, in determining the applicable limitations period for assessment of penalties where partnership items have been settled, the statute date is computed taking any applicable IRC 6229(f) extensions into account.

4.31.2.5.7.1
(04-20-2017)
**Conversion to
Nonpartnership Items by
Execution of
Agreements, Forms
870-PT and 870-LT**

- (1) When a settlement agreement is executed, the IRC 6229(f) one-year period is one year from the date the Form 870-PT/ Form 870-LT settlement agreement is signed and accepted on behalf of the IRS. For example, if the agreement is signed and accepted on behalf of the IRS on 5-18-02, the one-year statute date starts running 5-19-02 and the last day for assessment will not expire before 5-18-03. This example is based on advice from Chief Counsel.
- (2) If an examiner secures Form 870-PT, Agreement for Partnership Items & Partnership Level Determinations as to the Penalties, Additions to Tax, and Additional Amounts, or Form 870-LT, Agreement for Partnership Items & Partnership Level Determinations as to the Penalties, Additions to Tax, and Additional Amounts and Agreement for Affected Items, from TEFRA partners at the closing conference, the settlement agreements will be associated with the key case when closed to the Technical Services. The TSPC will execute the agreements.
- (3) The executed agreement forms will be forwarded to the campus, who is responsible for entering the one-year assessment date on PCS.
 - a. The executed agreements are necessary to notify the campus that the IRC 6229(f) one-year period for assessment has begun.

- b. All pertinent documents should be forwarded to the CPF by the reviewer. See IRM 4.31.2.7, TSPC Duties.

4.31.2.5.7.2
(06-20-2013)

**Conversion to
Nonpartnership Items by
Execution of Form 906
Closing Agreement**

- (1) A Form 906, Closing Agreement on Final Determination Covering Specific Matters, is a settlement agreement referred to in IRC 6224(c). The execution of the closing agreement converts partnership items to nonpartnership items for the tax years covered by the Form 906.
- (2) In other words, the partner is removed from the TEFRA proceedings with respect to partnership years covered by the Form 906 and for the agreed partnership items in any future years, the tax consequences of which must be determined with reference to the Form 906 (e.g., basis computations or treatment of future income).
- (3) The statute of limitations for the assessment of tax is the IRC 6229(f) one-year period from the date of execution of the Form 906 by the IRS.
 - a. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) removed the requirement to issue a statutory notice of deficiency prior to the assessment of the tax for all years covered by a Form 906; therefore, any settled returns can be assessed without the issuance of a statutory notice except for affected items requiring partner level determinations unless the Form 906 waives such deficiency procedures. The IRS may need to issue a statutory notice of deficiency prior to the assessment of the tax for years covered by the agreement and filed after the Form 906 was executed if the deficiency results from the taxpayer's failure to report partnership items consistently with the treatment agreed to in a specific matters closing agreement (Form 906) entered into when a previous year was under examination and the adjustment is not purely a computational matter.
 - b. Thus, if the Form 906 is secured for a partner for a pre-TEFRA year and deductions are claimed in a subsequent TEFRA year that are not allowable under the closing agreement, a statutory notice will be issued. These items are now considered nonpartnership items for the years filed after the Form 906 was executed. A computational adjustment will be made for all years in which the assessment is a purely computational matter.
 - c. If there are items on a subsequent year return that are not covered by the closing agreement but may be affected by the treatment of those covered items, the adjustments mandated by the closing agreement should be treated as nonpartnership items. Any additional adjustments that are required would either be partnership item or affected item adjustments.
 - d. If a TMP signs a closing agreement (See section 6.07(7) of Rev. Proc. 68-16, 1968-1, C.B. 770) that states it will be binding on non-notice partners pursuant to IRC 6224(c)(3), the closing agreement is binding on the non-notice partners who have not previously filed a statement stating that the TMP does not have authority to bind them. This notice from the non-notice partners must be received by the IRS at least 30 days before the closing agreement (26 CFR 301.6224(c)-1(a)(2)). Each notice partner must individually sign a Form 906 in order to be covered.
- (4) A Form 906 should not be executed for a partner by Examination or Appeals in those instances where a related key case examination is ongoing for a subsequent year until contact is made with the key case examiner.

- a. If a TEFRA key case examination has been started on a subsequent year, the examining agent with control of the partner return will coordinate his or her actions with the agent conducting the partnership proceeding.
 - b. This is imperative because under IRC 6224(c)(2), any partner can request a consistent agreement. The settlement reached on the Form 906 may result in a settlement which other partners in the TEFRA years may wish to accept.
- (5) If a Form 906 is executed, the examiner should ensure that all appropriate non-TEFRA years are adjusted based on the information on the Form 906 or, if the return is in a TEFRA status, the examiner will forward a copy of the Form 906 to their TSPC who will forward a copy to the CPF.
- (6) When the Form 906 is transmitted to the TSPC, a Form 3210, Document Transmittal, is used, and it is clearly stamped "TEFRA" and "1 year assessment date". The Form 3210 must also note the name, tax year, and EIN of the key case and if any penalties apply.
 - a. The examiner forwards a completed Form 8339 (PCS Change) and a copy of the Form 906 to the TSPC for review. The TSPC will forward the package to the CPF. The one-year assessment date should be entered on the PCS by the campus PCS coordinator for all affected years.
 - b. A copy of the Form 906 with a completed Form 5346, Examination Information Report, (see IRM 4.4.23, AIMS/Processing Handbook - Openings), is forwarded to the campus Classification function for information purposes when the subsequent year's returns are not filed or do not appear on AIMS.
- (7) The Area or CPF should ensure that prompt follow-up action is taken on the taxpayer's subsequent year returns to ensure compliance and consistency.

4.31.2.5.7.3 (06-20-2013)

Conversion to Nonpartnership Items by Reason of Special Enforcement Areas

- (1) When a partner files for bankruptcy, his/her partnership items convert to nonpartnership items. The conversion applies with respect to any partnership taxable year ending on or before the last day of the latest taxable year of the partner with respect to which the United States could file a claim for income tax due in the bankruptcy proceeding. See 26 CFR 301.6231(c)-7(a) and IRM 4.31.7 - TEFRA Bankruptcy.
- (2) The filing of a bankruptcy petition naming a partner as debtor does not adversely affect the partnership proceeding because, pursuant to 26 CFR 301.6231(c)-7(a), the partnership items of such partner are treated as nonpartnership items as of the date the bankruptcy petition is filed. Consequently, the debtor is no longer a party to the partnership proceeding and the proceeding may continue as if the partner's bankruptcy had not occurred.
- (3) The IRC 6229(f) one-year assessment period begins to run on the date the petition naming the partner as a debtor in bankruptcy is filed. In general, the Centralized Insolvency Operations is responsible for ascertaining the filing date of bankruptcy cases and recording it in the Automated Insolvency System (AIS).
 - a. Examiners should promptly notify Collection upon learning that a taxpayer under examination is involved in a bankruptcy proceeding for

- which there is no bankruptcy freeze on the MF (TC 520 CC 85, account frozen from refunding and offsetting) and Examination was not previously notified of the filing.
- b. Collection (Bankruptcy Section) notifies Examination, of all bankruptcy proceedings by sending a computerized listing of new bankruptcy cases. Areas that use the court notice option send copies of the notice, a copy of the bankruptcy log, or other means instead. Procedures outlined in IRM 4.27, Bankruptcy, should then be followed.
 - c. The examiner should contact their TSPC to have the one-year assessment date input on PCS to ensure that the tax is assessed within the one-year period. The user special message field should be updated as follows: "BNKRPT-OYDMMDDYYYY". The final assessment of tax will be performed in the Area.
- (4) The bankruptcy of a TEFRA partnership should have no effect upon the partnership proceeding. Since the tax liability determination is for the partners rather than the tax liability of the partnership, the proceeding will not result in the assessment or collection of tax, or creation or perfection of a tax lien against the partnership, in contravention of the automatic stay provided in section 362 of the Bankruptcy Code. Likewise, the bankruptcy of a TEFRA partnership should not have any impact upon the initiation of a Tax Court proceeding by a TMP or by a "notice partner", if appropriate.
 - (5) In the situations described in paragraphs (1) through (4) above, the IRS may issue, under section 362(b)(9) of the Bankruptcy Code, the appropriate statutory notice to the debtor without violating the automatic stay.
 - (6) Partnership items, arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner with respect to which the United States could file a claim for income tax due in the receivership proceeding, are treated as nonpartnership items as of the date a receiver is appointed in any receivership proceeding before any court of the United States, or of any State, or the District of Columbia.
 - (7) Partnership items of a partner, arising in any partnership taxable year ending with or within any taxable year of the partner with respect to which a request for a prompt assessment of tax under IRC 6501(d) is filed, are treated as nonpartnership items as of the date the request is filed. Thus, the IRC 6229(f) one-year assessment period would begin to run as well as the IRC 6501(d) statutory period for assessment. (See IRM 4.19.12.10.1.1.1, Prompt Assessments, regarding prompt assessment requests under IRC 6501(d).)
 - (8) Partnership items of a partner, arising in any partnership taxable year ending with or within any taxable year of the partner for whom a deficiency notice based upon an indirect method of proof of income is mailed to the partner, are treated as nonpartnership items as of the date on which that deficiency notice is mailed to the partner. The adjustments from the TEFRA partnership(s) should be included in the notice of deficiency.
 - (9) Partnership items of a partner, arising in any partnership taxable year ending with or within any taxable year of the partner for whom an assessment of income tax under IRC 6851 (termination assessment) or IRC 6861 (jeopardy assessment) is made, are treated as nonpartnership items as of the moment before such assessment is made. (See IRM 4.15, Examining Processing, Jeopardy/Terminations Assessments Handbook.)

- (10) Partnership items may convert to nonpartnership items with respect to a partner under criminal investigation for violation of the internal revenue laws. See 26 CFR 301.6231(c)-5. If this situation arises, contact your TSPC for assistance. A partner may be subject to a criminal investigation without the IRS converting their partnership items to nonpartnership items.

4.31.2.5.7.4
(03-04-2008)

**Election to Treat
Partnership Items as
Nonpartnership Items**

- (1) The IRS may elect to treat a partnership item as a nonpartnership item in the following two situations:
- The partner has reported the item on a return inconsistently with its treatment by the partnership, has properly notified the IRS of the inconsistency, and has not subsequently requested that the return be conformed to the partnership return. IRC 6231(b)(2)(A).
 - Subsequent to the filing of the original return, the partner has filed an AAR, that would result in the treatment of the item being inconsistent with its treatment by the partnership. IRC 6231(b)(1)(A) of 2002 and IRC 6231(b)(2)(B).
- (2) In either case, the IRS must notify the partner of its election to convert the items to nonpartnership items prior to the beginning of any partnership administrative proceeding with respect to such items. IRC 6231(b)(3) of 2002.
- (3) TEFRA returns must disclose all reportable transactions under IRC 6501(c)(10). If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in IRC 6707A(c)(2)) that is required under IRC 6011 to be included with such return or statement, the time for assessment will not expire before one year after the earlier of:
- The date the required information is furnished, or
 - The date a material advisor meets requirements of IRC 6112 with respect to a request under IRC 6112(b) relating to the transaction and taxpayer.
- (4) The partner may elect to have the item treated as a nonpartnership item if the IRS fails to make timely notification of:
- The commencement of a partnership administrative proceeding, or
 - The FPAA, as required by IRC 6231(b)(1)(D) of 2002, and IRC 6231(e)(2) of 2002.

4.31.2.5.8
(06-01-2004)

**TEFRA Return with a
False or Fraudulent Item**

- (1) Under IRC 6229(c)(1), if any partner, with the intent to evade tax, signs or participates directly or indirectly in the preparation of a partnership return that includes a false or fraudulent item:
- In the case of partners so signing or participating in the preparation of the return, the statute of limitations is unlimited. For consideration of the impact of the conversion on the period under IRC 6229(c)(1), (otherwise applicable to partners participating in fraud) contact Area Counsel.
 - In the case of all other partners, even though they did not sign or participate in the purported fraud, the IRC 6229(a) statute is extended from three to six years.

- 4.31.2.5.9
(04-20-2017)
Omission of Income by a TEFRA Entity
- (1) If any partnership omits from gross income an amount in excess of 25 percent of the amount of gross income stated on its return (IRC 6501(e)(1)(A)), the IRC 6229(a) statute is extended from three to six years for all partners. (IRC 6229(c)(2)) IRC 6501(e)(1)(B) defines the gross income for purposes of IRC 6501(e)(1)(A). Gross income includes income from the sale of goods or services and an understatement of gross income by reason of an overstatement of unrecovered cost or basis in an omission from gross income.
 - (2) Under 26 CFR 301.6231(c)-6, a partner's partnership items, with respect to a partner whose taxable income is determined by use of an indirect method of proof of income, convert to nonpartnership items on the date a deficiency notice, based upon an indirect method of proof of income, is mailed to the partner. The notice must include any adjustments from the partnership(s).
 - a. The period for assessment of tax under IRC 6229(f) applies.
 - b. The one-year assessment period starts (but is immediately suspended by the notice of deficiency) since the partnership items converted to nonpartnership items.
- 4.31.2.5.10
(04-20-2017)
Failure to File a TEFRA Return
- (1) In the case of a failure to file a return by a partnership for any taxable year, any tax attributable to a partnership item or attributable to an affected item arising in the year may be assessed at any time. (IRC 6229(c)(3))
 - (2) If a partnership return is not filed but Schedules K-1 are issued to the partners, TEFRA procedures will be followed, if it is determined that a partnership exists.
 - (3) IRM 20.1.2.4, Failure to File a Partnership Return—IRC 6698, explains the application of the failure to file penalty.
- 4.31.2.5.11
(05-31-2005)
TEFRA Substitute for Return
- (1) A substitute for return filed by the IRS (See IRM 4.4.9, Delinquent and Substitute for Return Processing.) is treated as if no partnership return has been filed so the period for assessment is open indefinitely.
- 4.31.2.5.12
(06-01-2004)
Extension of Statute of Tiered Returns
- (1) A situation may arise where TEFRA partnership proceedings are instituted, and it is subsequently determined that the partnership is the second (or lower) tier partnership of another TEFRA partnership. The second (or lower) tier partnership is a pass-through partner, and the second (or lower) tier partnership's partners are indirect partners of the first tier. See IRC 6231(a)(9) of 2002 and IRC 6231(a)(10) of 2002.
 - (2) As such, the partners are governed by the first tier proceeding (IRC 6231(a)(2)(B) of 2002), and adjustments may be made to the second (and lower) tier indirect partners' returns through the first tier TEFRA partnership proceeding. Absent partnership adjustments to the second (or lower) tier return which are independent of the first tier partnership proceeding, a separate statute extension for the second (or lower) tier partnership is unnecessary. See IRC 6231(a)(2)(B) of 2002.
 - (3) IRC 6229(a)(1)(B) authorizes the TMP to execute a statute extension for all partners, and a statute extension executed by the first tier TMP will protect the statute with respect to the second tiers (and lower) indirect partners.

4.31.2.5.13
(06-20-2013)
**Extension of Statute
with Regard to TEFRA
Related Carryback/
Carryover Year Returns**

- (1) If a partnership item impacts an NOL or credit carryback or carryover, the NOL or credit carryback or carryover is treated as an affected item. As an affected item, the NOL or credit carryback is subject to the partnership's statute of limitations under IRC 6229(a) for the taxable year generating the loss or credit. This applies to a capital loss carryback as well.

4.31.2.6
(03-04-2008)
**Field Agent Investor
Case Procedures**

- (1) There are two ways an examiner may be involved with a TEFRA linked investor. They are:
 - a. As the examiner of an investor in a key case in which the examiner is examining; or
 - b. As the examiner of an investor in a key case being examined by someone else.

4.31.2.6.1
(06-20-2013)
Initial Investor Actions

- (1) Form 5546, Examination Return Charge-out Sheet, with the literals "FLOW THROUGH NOTIFICATION" and with the investor Schedule K-1 attached, will be received from the key case CPF by the examining agent, via Form 3210, Document Transmittal.
- (2) The agent in control of a key case investor must review the investor's return for non-TEFRA issues and Schedule K-1 inconsistencies.
- (3) If it is determined that no non-TEFRA issues exist, the investor's return should be forwarded to the key case campus for suspense as long as the return is not an LB&I LCC, or other corporate specialty case. If the return is one of the latter, then the case must be suspended in the field.
- (4) If a Schedule K-1 discrepancy is identified, the return should be checked for a statement of inconsistency. If no such statement was filed, the taxpayer will be contacted to explain the discrepant item(s). When contacting a taxpayer, their identity must be verified. See IRM 21.1.3.2.3, Required Taxpayer Authentication, for authentication language and IRM 21.1.3.9, Mailing and Faxing Tax Account Information, for fax language guidelines.
- (5) When the taxpayer responds, the following action will be taken after a review by the agent:
 - a. If the taxpayer provides an allowable explanation for all discrepant item(s), no other action related to the discrepant item(s) is necessary. For example, the income per the Schedule K-1 may be greater than that reported on the return. If the taxpayer responds and explains that the difference was caused by a passive loss carry over, then no Schedule K-1 discrepancy issue would exist.
 - b. If discrepant item(s) create a decrease in tax, the refund will not be processed until the TEFRA proceedings are completed. The decrease in tax will not be processed immediately to provide the maximum interest offset to the taxpayer. If the taxpayer wants the decrease in tax processed, the taxpayer should make the request in writing. As part of the request, the taxpayer should acknowledge that it is understood that any future assessment as a result of the TEFRA examination may result in more interest than would be charged had the refund not been currently allowed.
 - c. If the taxpayer filed a statement identifying the inconsistency with the return in accordance with IRC 6222(b), the issues raised must be consid-

ered as part of the examination of the key case. The statement identifying the inconsistencies should be on Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR). If the Form 8082 is not utilized, and such statement must contain the same information as if the Form 8082 had been used. If there are any questions about the validity of the statement, contact the TSPC to determine if the statement may be considered to meet the criteria of IRC 6222(b). The agent examining the key case should be contacted and provided the necessary information from the investor return to consider the issues raised by the investor.

- d. If discrepant item(s) create an increase in tax and are not identified on the investor's Form 8082, the tax will immediately be assessed, via a computational adjustment (Letter 4735, Notice of Computational Adjustment). 26 CFR 301.6222(a)-2(c)(2) allows the IRS to adjust the taxpayer's return via a computational adjustment in order to bring the taxpayer's return in line with Schedule K-1.
- e. Computational adjustments are made directly to the taxpayer's return with no agreement necessary. The taxpayer is given an opportunity to review the audit report prior to assessment or any tax due. The investor may only raise issues with the computation of the additional tax due not the substantive issues of the key case examination.

4.31.2.6.1.1
(06-20-2013)

Field Suspense of SB/SE Investors

- (1) TEFRA related partner returns that are Joint Committee, or corporate specialty cases (Form 1120 with letters after the 1120 other than A, S, or X) are forwarded to the field office by the CPF.
- (2) The field will also hold all partner returns where the TEFRA statute is controlled at the partner level. See IRM 4.31.2.5.3.1, AC Statute procedures.
- (3) These cases will be suspended in the field group.

4.31.2.6.1.2
(04-20-2017)

Field Suspense of LB&I Investors

- (1) TEFRA related partner returns that are LCC corporation, Joint Committee, or corporate specialty cases (Form 1120 with letters after the 1120 other than A, S, or X) in Status 14 will remain there until closed.
- (2) Generally, previously examined and adjusted returns should remain in the group for incorporation of the TEFRA adjustments. The complexity of adjustments often makes it difficult for the CPF to make the subsequent TEFRA adjustments. This takes a significant amount of resources that the campus doesn't have. In addition, the case files can be very large and storage is an issue for the campus.
- (3) The CPF may forward some cases that are not LCC to the field if joint committee, or if other related years are LCC. For example, an adjustment is made to an earlier non-LCC year that impacts an NOL. There are later years impacted by that NOL that are LCC. The campus will forward those returns to the field to be worked since the earlier year adjustments will impact those later LCC years.
- (4) The field will also hold all partner returns where the TEFRA statute is controlled at the partner level. See IRM 4.31.2.5.3.1, AC Statute procedures.

4.31.2.6.1.2.1
(04-20-2017)

**LB&I Support for
Complex Adjustments**

- (1) LB&I will provide Tax Computation Special (TCS) support to the campus when assistance is needed for complex adjustments or with corporate specialty cases in the campus control.

4.31.2.6.2
(06-01-2004)

**TEFRA Issues are
Resolved Prior to
Non-TEFRA Issues**

- (1) When the TEFRA key case issues are resolved, the Examination or Appeals will be notified by the campus.

4.31.2.6.2.1
(06-20-2013)

SB/SE Investors

- (1) If the TEFRA partnership examination is completed prior to Examination or Appeals completing action on the non-TEFRA issues, the investor CPF will make a partial assessment based on the copy of the return. The partial TEFRA assessment will be made via a computational adjustment and should be sent to the taxpayer with Letter 4735, Notice of Computational Adjustment. Computational adjustments include penalties determined at the partnership level. The RAR should include the following statement when such penalties apply:
“During the TEFRA unified proceedings, it was determined that the addition to tax under IRC (penalty code section) will be asserted on any partner-level liability resulting from the partnership-level proceedings. Partner level defenses to such penalties can only be asserted through refund actions following assessment and payment. See the attached Form 886-A, Explanation of Items”.
- (2) If the CPF does not have a copy of the investor return at the time the assessment must be made, a copy will be requested from the examining agent or appeals officer. If the examiner or appeals officer would rather make the TEFRA related adjustments, the examiner or appeals officer should notify the CPF at that time.
- (3) A copy of the examination report, any other work papers relating to the pass-through adjustment, and Form 5344, Examination Closing Record, (with TEFRA written on the top of the form) will be forwarded to the function working the non-TEFRA issues via Form 3210.
- (4) The examiner or appeals officer must use the examination report for the TEFRA related adjustments as the starting point when computing the non-TEFRA tax deficiency or overassessment resulting from the non-TEFRA adjustments.
- (5) If the field is making both TEFRA and non-TEFRA adjustments at the same time, the TEFRA adjustments must be applied on a separate report. Taxpayers are not afforded appeal rights with TEFRA adjustments. The field will prepare the Form 8339, PCS Change, and the TSPC will sign and forward with the case to CCP. Once the TEFRA adjustment has been processed the non-TEFRA adjustment can be processed. A copy of the Form 8339 must be sent to the campus to ensure that the campus knows the assessment was made and does not re-link the investor. The campus uses the signed Form 8339 as verification that the TEFRA assessments were made in full in order to ensure the statute is protected.

Note: It is important to note that the TEFRA and non-TEFRA adjustments must be made on separate reports.

- (6) A Form 8339 must be included as part of any partial or full closing package being sent to CCP. If SB/SE, is full closing a PCS linked investor, the package must be routed through Technical Services. A PCS linkage can be identified by reviewing an AMDISA or ERCS print by looking for a PICF Code of 4, 5 or 6.

4.31.2.6.2.2
(06-20-2013)
LB&I Investors

- (1) A PCS investor linkage can be identified by reviewing an AMDISA or ERCS print by looking for a PICF Code of 4, 5 or 6.
- (2) The field will work any pass-through TEFRA adjustments for TEFRA LB&I partners open or suspended in the field. Due to the complexity of the returns, all investor's cases being examined for non-TEFRA issues will also be examined for the TEFRA issues. The TEFRA assessment will be made via a computational adjustment and should be sent to the taxpayer with Letter 4735, Notice of Computational Adjustment, along with the RAR. Computational adjustments include penalties determined at the partnership level. The RAR should include the following statement when such penalties apply: "During the TEFRA unified proceedings, it was determined that the addition to tax under IRC (penalty code section) will be asserted on any partner-level liability resulting from the partnership-level proceedings. Partner level defenses to such penalties can only be asserted through refund actions following assessment and payment. See the attached Form 886-A, Explanation of Items". TEFRA adjustments must be applied on a separate report. Taxpayers are not afforded appeal rights with TEFRA adjustments and should not be combined with non-TEFRA adjustments.
- (3) For returns controlled in Appeals, they will prepare pass-through adjustments for corporate returns with an activity code of 219 or above, LCC corporate, and corporate specialty returns, which are any corporate return filed with a Form 1120 followed by a letter (for example, Form 1120-L life insurance company) except Form 1120-A, Form 1120-S or Form 1120-X. Appeals will also prepare pass-through adjustments for Joint Committee returns. Non-corporate returns, and corporate returns with activity codes below 219, with pass-through adjustments, will have to be computed by the campus and forwarded to Appeals. Appeals should not be sent the returns of TEFRA investors with the TEFRA key case, if the pass-through TEFRA adjustments are the only issue. The TEFRA investors should be suspended in the field or the campus pending a final determination on the key case. See IRM 8.19.6, Partner Cases.
- (4) The CPF will contact examination Team Managers or Appeals before a package is sent to the field to determine if the partner is still in their control. The case may have already been physically transferred to another area. If the case cannot be located, contact the TSPC to assist with locating the case so the package can be associated.
- (5) When the TEFRA adjustments are known, a package of information on the pass-through adjustment will be sent to the examining agent or appeals officer. The package will indicate what the one-year date is for the pass-through adjustments.
- (6) The package from the CPF will include:
 - a. Copy of an agreement form, defaulted FPAA, or Court Decision, if any;
 - b. Form 886-Z (or equivalent spreadsheet);
 - c. Copy of Schedule K-1;

d. Form 4605-A.

- (7) The tax from the TEFRA pass-through adjustments must be assessed prior to the expiration of the one-year date. It is strongly recommended that the TEFRA adjustment be made during this OYD period as a partial assessment as explained in IRM 4.31.2.6.2.3, Partial Assessments/Partial Closures. When assessments are delayed, it is not uncommon for the TEFRA closing package to be lost. Securing another closing package can be difficult if the campus has already closed the other partner returns.
- (8) Although not recommended, if the one-year assessment statute date for the partner is extended, complete Form 8339. Parts A and C of the Form 8339 need to be completed. Part B does not have to be completed when only updating the statute to a new date. Form 8344 can also be used if inputting the one-year date on more than one investor in the same key case. Send the completed form to the campus PCS coordinator to be processed. See IRM 4.31.2.5.3, Extension of Investor Statute for TEFRA and non-TEFRA Items, for an explanation of extending the time for making the assessments.
- (9) Once the package is emailed to the field, the field will assume the responsibility for having any assessment made prior to the expiration of the one-year assessment date.
- (10) The agent needs to make a TEFRA assessment per IRM 4.31.2.2.9.2.4, Field Control of Partners, to ensure that the campus knows the assessment was made and does not re-link the investor. The campus needs verification that the TEFRA assessments were made in full in order to ensure the statute is protected.
- (11) A Form 8339 must be included as part of any partial or full closing package being sent to CCP. If LB&I, is full closing a PCS linked investor, the package must be routed through Technical Services. Technical Services will review the package and sign off on the Form 3198.

4.31.2.6.2.3
(06-20-2013)

**Partial Assessments/
Partial Closures**

- (1) This section includes instructions on how to process partial assessments or closures when the TEFRA adjustments are being made by the field.
- (2) SB/SE, LB&I and CCP have all issued memos regarding the processing of partial assessments or closures.
- (3) Partial assessments or closures should be faxed to the CCP Field Office Resource Team (FORT) Manager. The package should include:
 - Fax cover sheet with the return fax number;
 - Revenue Agent Report (RAR) (Form 4549 or Form 4549-A);

Note: TEFRA and non-TEFRA adjustments need to be included in separate reports.

 - Any schedules containing tax and/or penalty computations. (It is not necessary to include the revenue agent's "Explanation of Adjustments");
 - Form 5344 (with TEFRA written on the top of the form);
 - Form 3198, with the "PARTIAL ASSESSMENT" box checked.
- (4) CCP will fax back a Form 5344 stamped "request completed" as confirmation. In the event of a quick assessment, CCP may fax Form 2859, Request for Quick or Prompt Assessment, instead.

Note: When the field receives a closing package, the best practice is for those TEFRA related computational adjustments to be made immediately. A partial assessment is required when a TEFRA partnership proceeding concludes on a field controlled case. Holding the package is not recommended. TEFRA adjustments should not be included with the non computational adjustment. Waiting to include the TEFRA adjustments until the conclusion of the partner audit can result in delays in closing due to the releasing of TEFRA controls. Including the TEFRA and normal audit adjustments together also creates delays. TEFRA assessments should be made separately as those adjustments are not subject to deficiency procedures.

- (5) Once confirmation is received that the assessments have been made, contact your TSPC to have the linkage updated. If the adjustments result in no deficiency or refund, the linkage still needs to be updated. A copy of the RAR and completed Form 8339 should be forwarded to the TSPC.
- (6) The TSPC will coordinate with the CPF to have the linkage updated.
- (7) The TSPC needs to send a copy of the RAR, reflecting the TEFRA assessment, to the appropriate CPF for their records. This will ensure that the campus knows the assessment was made and does not re-link the investor. The campus needs verification that the TEFRA assessments were made in full in order to ensure the statute is protected.

4.31.2.6.2.4
(10-01-2010)

**Tier Partner Requesting
Partnership Level
Settlement**

- (1) A tier partner may request to pay that tax due at the partnership level. This can only be agreed to using a Form 906, Closing Agreement. Also, all underlying partners must be subject to an assessment. IRM 4.31.2.3.12, Securing Agreements for Tax Assessments at the Partnership Level, covers key case partnership level settlement agreements.
- (2) The field must coordinate such requests with local counsel.
- (3) If the tier is controlled in the CPF, the campus will send the tier return to the field to accommodate the partnership's request. The CPF does not have the counsel support needed to create Form 906 language.
- (4) If all tier partners are not subject to a deficiency, then a partnership level agreement cannot be secured.
- (5) The highest marginal tax rate should be used when calculating the amount the tier partnership will pay. The tier partnership must also pay all additions to tax including penalties and interest.

4.31.2.6.2.5
(09-22-2006)

**Completion of Form
8339**

- (1) In general, IRM 4.29.2, Partnership Control System (PCS) - Maintaining the PCS Database, includes instructions for completing the Form 8339 and other related PCS forms.

4.31.2.6.3
(06-20-2013)

**Closing a Non-TEFRA
Investor with an Open
TEFRA Linkage**

- (1) If the non-TEFRA issues are resolved before the TEFRA issues, the non-TEFRA issues will be closed using normal closing procedures; however, any assessments or refunds are processed as a partial. When the examiner is ready to close the non-TEFRA examination, the examiner should check a current transcript to be sure that the TEFRA issues were not already assessed.

The examiner should also verify that the investor is still linked by checking a TSUMYI print. The TSUMYI print will show what key cases the investor is linked to, if any.

- (2) If the investor is no longer linked, consult with the TSPC to determine if the investor should be re-linked to the key case.
- (3) A refund processed as a partial closure will not generate the refund. The refund is frozen to provide the maximum interest offset to the taxpayer should the TEFRA examination result in an assessment. The refund can be released by submitting Form 3870, Request for Adjustment, and/or a written statement from the taxpayer. The taxpayer should state that they are aware of the pending TEFRA examination and understand that releasing this refund may result in additional interest accruals. Any non-TEFRA assessments should be made prior to suspending the case for any reason.
- (4) If the non-TEFRA issues are agreed, then:
 - a. The examiner secures an agreement in the format prescribed in IRM 4.10.8, Examination of Returns, Report Writing.
 - b. The examiner forwards the investor case file through Technical Services for a partial assessment on the non-TEFRA issues, with the exception of, LCC corporate, and corporate specialty cases.
 - c. After the partial assessment, CCP forwards the case to the CPF with control of the partner return for suspense until resolution of the TEFRA issues.

Note: For all such cases, Form 3198 (Special Handling Notice) is prepared as appropriate and attached to the front of the investor case file. The "PARTIAL AGREEMENT" and "OTHER" blocks will be checked with the following statement added: "TEFRA linked investor with unresolved TEFRA pass-through issues – forward case file to CPF after assessment of the non-TEFRA issues and issuance of Letter 987". Cases selected for Technical Services follow normal review procedures before forwarding to CCP for assessment.

- d. If the partner is a corporate LB&I, LCC corporate or corporate specialty case, any deficiency or refund due to the investor for the agreed non-TEFRA adjustments will be assessed or refunded prior to suspending the investor case awaiting the results of the TEFRA issues. A partial assessment package will be prepared and sent to the CCP Fort Unit. The package will include the audit report, Form 5344, and the first four pages of the investor tax return which will be in a folder. Form 3198 will be put on the front of the folder; complete the taxpayer identifying information at the top and check the "Partial Assessment" and "Other" blocks. Under other include the following statement: "After processing the partial assessment (or refund) enclosed, return all documents to exam group [employee group code], Stop XXXX" or other appropriate information such that the partial assessment documents will be returned to the group for association with the investor case file.

Note: The field will also hold all investor returns where the TEFRA statute is controlled at the partner level. When the only issues remaining are the unresolved TEFRA issue(s), the group should update the AIMS status code to 14 and the statute date to an "HH" alpha code.

(5) If the non-TEFRA issues are unagreed, then:

- a. The examiner prepares a report in the format prescribed in IRM 4.10.8, Examination of Returns, Report Writing.
- b. The investor case file is forwarded following ILSC closing procedures.
- c. If a protest is filed on the non-TEFRA issues before the TEFRA issues are resolved, any tax from resolved TEFRA linkages should be computed and assessed before the investor case is sent to Appeals, especially for settlement agreements for partnership tax years ending after August 5, 1997 as interest is suspended under IRC 6601(c) 30 days after the settlement agreement is signed on behalf of the IRS
- d. If the examiner determines that the tax from resolved TEFRA linkages will not be assessed before sending the case to Appeals, the statute should be extended such that there are at least 365 days remaining on the statute. Appeals will not accept an investor case with less than 365 days left on the statute. IRM 8.21.2.4, Cases Not Accepted by Appeals.
- e. The case is forwarded from Technical Services to Appeals.
- f. Appeals forwards the case to the CPF with control of the investor return for suspense if the TEFRA issues remain unresolved after Appeals consideration. See IRM 4.31.3.5.9.2 , Field Suspense of LB&I Partners, for instructions regarding to processing of corporate LB&I, LCC corporate, Joint Committee and/or other corporate specialty cases.

Note: For all unagreed non-TEFRA issue cases Form 3198 is prepared as appropriate and attached to the front of the investor case file. The "OTHER" block is checked with the following statement added: "NOTE TO APPEALS: If unresolved TEFRA issues remain after non-TEFRA issues are resolved in Appeals, forward the case to the CPF". If the investor is a LB&I, LCC corporate, or other corporate specialty case, the statement to be added is: "NOTE TO APPEALS: If unresolved TEFRA issues remain after non-TEFRA issues are resolved in Appeals, forward case to the appropriate Technical Services Unit, which will forward the case to the Group for suspense". Processing instructions are outlined in IRM 4.4, AIMS/Processing Handbook.

(6) If the non-TEFRA issues are no changed, then:

- a. The examiner prepares a report in the format prescribed in IRM 4.10.8, Examination of Returns, Report Writing.
- b. The examiner forwards the partner case file through Technical Services to the partner CPF for suspense until resolution of the TEFRA issues.
- c. If the case is an LB&I, LCC corporate, or corporate specialty, the no change letter for non-TEFRA cases will be issued and the case suspended by the LB&I group in Status 14 until the TEFRA pass-through examination is resolved.

Note: For all SB/SE linked investors, Form 3198 is prepared as appropriate and attached to the front of the investor case file. The "OTHER" block is checked with the following statement added: **"TEFRA linked investor with unresolved TEFRA pass-through issues – forward the case file to the CPF after issuance of a no-change letter for non-pass-through issues"**.

(7) If the investor case is suspended in the field awaiting a Joint Committee resolution:

- a. Any agreed deficiencies relating to non-TEFRA issues or resolved TEFRA linkages will be assessed prior to placing a Joint Committee case

in suspense, and the case will be forwarded to the Joint Committee key area for a procedural and technical review under the general provisions of IRM 4.36, Joint Committee Procedures.

- b. Upon completion of the review and resolution of any questions raised by the Joint Committee Refund Counsel, the case will be returned to the group (without the preparation of a Joint Committee report) and suspended in Status 14 until notification is received from the CPF that the remaining TEFRA issues are resolved or they can use the accelerated closing procedures explained below in IRM 4.31.2.6.3.3, Accelerated TEFRA Partner Closing Procedure.
- c. When notified, any deficiencies will be assessed following area partial assessment procedures.
- d. Upon the field's receipt of the Form 5344 and an examination report, the examining area office will forward the completed Joint Committee case to the key area Technical Services for final processing and preparation of the Joint Committee report.

4.31.2.6.3.1
(03-04-2008)

**Special Procedures for
Oversheltered Returns
(IRC Section 6234)**

- (1) Special computations exist for oversheltered returns related to a partnership return with a taxable year ending after August 5, 1997.
- (2) An oversheltered return is an income tax return which will have no tax due after applying the proposed adjustments.
- (3) A Letter 4151, Notice of Adjustment, may be sent to the taxpayer if:
 - a. the taxpayer files an oversheltered return,
 - b. adjustments are proposed (for other than partnership items) for the taxable year, and
 - c. the adjustments being proposed do not create a deficiency, but would create a deficiency if there were no net partnership losses.
- (4) A notice of adjustment must be sent to the taxpayer via certified or registered mail.
- (5) The law allows the taxpayer to petition the Tax Court even though no deficiency exists.
- (6) If the taxpayer does not petition the Court, or the court upholds the adjustments, the adjustments will be taken into account in determining the amount of any computational adjustment in connection with a subsequent partnership proceeding.

4.31.2.6.3.2
(06-20-2013)

**Special Computation for
Non-Oversheltered
Returns (Munro
Decision)**

- (1) Non-oversheltered returns (and oversheltered returns related to partnership returns with tax years ending before August 6, 1997) are returns that will have a tax deficiency after the proposed adjustments (for other than partnership items).
- (2) For non-oversheltered returns, Munro computations will continue to be used. See CCDM 35.2.1.1.17, TEFRA: Munro Stipulation for Deficiency Cases, and IRM 8.19.6.9.3.1, Munro Computations.
 - a. When adjusting a taxpayers return for non-TEFRA pass-through issues and the Form 4549 results in a reduced deficiency because of large TEFRA partnership losses, the examiner will prepare a report without consideration of any TEFRA partnership income or losses.

- b. Prepare a report starting with the original return, or as amended, and remove all TEFRA issues from open TEFRA proceedings. This will establish adjusted “per return” figures without taking the TEFRA losses into consideration. Label this report as: “Information Only – Do Not Process”. Using this report as the starting point, prepare a report making the non-TEFRA pass-through adjustment.
 - c. The result is that the taxpayer may be assessed at a higher tax rate by removing the TEFRA losses. If the taxpayer is already filing at the highest tax rate, there is no reason to prepare this computation.
- (3) When there is an open TEFRA proceeding, the following paragraph should be used on the statutory notice of deficiency:
- a. In computing the deficiency attributable to the adjustments in this notice, which adjustments are neither partnership items nor affected items, as defined by IRC 6231, all TEFRA partnership items subject to an open TEFRA proceeding, whether income, loss, deduction or credits have been ignored exclusively for the purpose of computing the deficiency which is attributable to the adjustments set forth herein. All TEFRA partnership items subject to an open TEFRA proceeding have been ignored in this notice of deficiency for computational purposes only and this notice is not a substitute for any FPAA which may be issued in regard to the TEFRA partnerships. This computation is being made pursuant to the Tax Court decision in *Munro v. Commissioner*, 92 T.C. 71 (1989).
- (4) The following sample paragraph should be included in the explanation of items:
- a. The following TEFRA partnerships are subject to partnership level proceedings pursuant to the partnership audit and litigation procedures of IRC section 6221 through 6234 with respect to the taxable year(s) and accordingly, all partnership items, whether income, loss, deductions or credits, have been disregarded for purposes of computing a deficiency attributable to the adjustments in this notice:

Partnership	Adjustments
ABC Partnership	\$(30,000.00)
XYZ Partnership	\$(7,000.00)
HIJ Partnership	\$(27,700.00)
Total	\$(64,7000.00)

- (5) A Munro computation may result in an inflated deficiency due to a change in tax bracket until treatment of the TEFRA items is finally determined.

4.31.2.6.3.3
(03-04-2008)
**Accelerated TEFRA
Partner Closing
Procedure**

- (1) Circumstances arise when the non-TEFRA examination of a TEFRA partner is completed, but the TEFRA linkage prevents the case from closing. In some cases, primarily LB&I LCC taxpayers, the non-TEFRA adjustments are substantial compared to the potential TEFRA adjustments. Generally, the partner case is partially closed and suspended in the group until the TEFRA examination is completed. However in some cases, the partner may be closed early

before the examination of the key case is complete. When requesting and working with an accelerated closure, the examiner should consult their TSPC.

- (2) In order to resolve the partner's share of the TEFRA examination before the TEFRA key case partnership proceeding is complete, there must be coordination with the key case agent. Failing to consult with the key case agent could jeopardize their examination if the TEFRA adjustments are settled prematurely.
- (3) As part of the accelerated closing process, a settlement agreement (Form 870-PT or Form 906) must be secured from the TEFRA partner. The agreement removes the partner from the TEFRA proceedings for all years covered by the agreement. The key case agent must provide the examiner working the partner with the key case adjustments to be used in the agreement. IRC 6224(c)(2) requires that all partners be treated consistently; therefore, a settlement to one partner is a settlement to all. This is why it is critical that the key case examiner be involved with any settlement issued to an investor before completion of the key case examination. Any accelerated settlement proposal for an investor will be approved by the key case examiner and their Territory Manager/Director of Field Operations, and agreed to by the Territory Manager/Director of Field Operations that has control over the investor.

Note: TM/DFO approval is not needed if a summary report has already been provided to the TMP of the key case. The key case examiner may provide the examiner of the partner return a copy of the key case RAR.

- (4) The key case examiner will provide the terms for settlement agreement. To avoid the risk of consistent settlement problems, it is recommended that the partner wanting an accelerated settlement understands they must concede 100% of all potential adjustments.
- (5) It is also very important to ensure the partner understand that by executing a settlement agreement that the agreement is a final determination on the tax affect of the partnership and affected items and they may not later file an AAR nor may they request to go to Appeals or court on the settled issues.
- (6) A copy of the executed settlement agreement must be sent to the appropriate CPF controlling the key case linkage. The campus keeps track of all investor linkages to ensure they are properly assessed. If the investor is closed and the campus does not have any substantiation to support the investor being de-linked and closed, the campus will reopen and relink the investor to the key case assuming the case was closed improperly. All linked investor cases must be closed through a TSPC to ensure all procedures are properly followed.

4.31.2.6.4
(05-31-2005)
Schedule K-1 True-Up

- (1) The Schedule K-1 true-up issue occurs during the examination of an unlinked TEFRA partner's return. The partner filed their return using estimates for the partnership pass-through items because they had not received their Schedule K-1 prior to filing.
- (2) During the examination, the partner will disclose that their return is not consistent with the Schedule K-1 filed by a related pass-through entity. The agent should verify whether the pass-through entity in question is a TEFRA entity.

- (3) If the disclosed Schedule K-1 discrepancy results in either an increase or decrease to tax to the partner, and the pass-through entity is a non-TEFRA entity, the agent should make any necessary adjustments as part of the non-TEFRA examination of the partner. IRC 6501 controls the assessment statute.

Note: Consult with your local Area Counsel when this situation exists.

- (4) If the pass-through entity is a TEFRA entity and the disclosed Schedule K-1 discrepancy would result in additional tax to the partner, the tax must be assessed before the IRC 6229 statute has expired on the pass-through entity.
- (5) If the pass-through entity is a TEFRA entity and the disclosed Schedule K-1 discrepancy would result in a refund, the IRS may issue the refund or wait for the partner to file a timely AAR. To be timely, the AAR must be filed before the expiration of the IRC 6229 statute (including extensions) or no refund can be allowed. The AAR should be filed using the Form 8082. If no Form 8082 is utilized, but the information required by that form is included on the claim filed, consult with your TSPC to determine if the information provided is adequate to consider it an AAR for TEFRA purposes.

4.31.2.6.5
(10-01-2010)
**Special Processing for
Tax Changes over \$10
Million**

- (1) IRM 4.38.1.9.7.4, Over \$10 Million Deficiency, should be followed when adjustments result in a balance due (this includes interest and penalties) over \$10 million.
- (2) Each year stands alone when determining the \$10 million threshold.
- (3) For each tax period, where the balance due (this includes interest and penalties) is \$10 million or more, a copy of the Form 4318, Examination Workpapers Index, or Form 4700, Examination Workpapers, is to be sent to the Office of Unpaid Assessment Analysis. This information will be sent by Centralized Case Processing after the case has been closed.

4.31.2.6.6
(06-20-2013)
Erroneous Refunds

- (1) When an erroneous refund (where the partners statute has expired) is identified, the identifying area needs to complete the Form 12356, Erroneous Refund Worksheet, and send it to the appropriate Accounting Function.
- (2) The form should be sent to the coordinator or their manager per IRM Exhibit 3.17.80-4, Erroneous Refund Coordinators.

4.31.2.7
(05-31-2005)
**Technical Services
Pass-Through
Coordinator (TSPC)
Duties**

- (1) The following subsections explain the duties of the TSPC.

4.31.2.7.1
(04-20-2017)
General Responsibilities

- (1) The TSPC responsibilities include but aren't limited to the following:
 - a. Main contact for LB&I and SB/SE field agents and their managers to explain and clarify the TEFRA unified audit procedures.
 - b. Give advice on the preparation and signing of statute extensions.
 - c. Responding to TEFRA Specialist Referrals:

Specialist Referrals Response

- The return is an ELP or any complex partnership having greater than 100 direct or indirect partners (i.e., partners of direct pass-through partners)
- The examiner wishes to deviate from the mandatory PCS linkage.
- It is not possible to conclude the TEFRA proceeding or secure timely statute extensions at the TEFRA key case-level and the field agent wants to examine the partnership using the investor IRC 6501 statute.
- Form 8082, Administrative Adjustment Request (AAR), an amended return or a claim has been filed by any partner or TMP filing on behalf of the entire TEFRA partnership.
- The return is a LCC related Partnership.
- The IRS wants to rely on the partner IRC 6501 statute(s) because the partnership IRC 6229 statute has expired or will expire within 180 days (AC statute).

d. Be the liaison with the campus pass-through function or PTE on:

Coordination with the CPF Includes:

- PCS linkage and any related linkage problems)
- Review the Form 8339, PCS Change, for LCC TEFRA investors (See IRM 4.29.2, Maintaining the TEFRA Database)
- Referral of investor cases from the CPF to the field for report write-up due to complex issues

- e. Coordinate with Area Counsel on key case technical questions involving TEFRA code sections.
- f. Coordinate with the Campus PCS Coordinator on processing of Form 8339, and other PCS related issues.
- g. Participating in the initial meeting with the taxpayers in more complex TEFRA cases to assist with the determination of the tax matters partner, statute of limitations, etc. They also participate in closing conferences and conduct on going case reviews to provide guidance when needed.
- h. Monitor field controlled investor statutes using the PCS 4-4 extract provided by the CPF PCS Coordinator.
- i. Distributing the Report PCS 4-4, that are received from the CPF, to the appropriate field group.
- j. Determining the correct IRC 6404(g) notification date to be included on the Form 14434, TEFRA Notice Package Check Sheet, or in the case of 60 day letters a statement that CPF will determine the date.
- k. Ensure the Form 14434 includes the partnership adjustment amount. This amount should be the same as that entered on the Form 5344, line 34 - Adjustment Amount.
- l. Reviewing all TEFRA partnership (key) cases regardless of the audit outcome. Their review includes but is not limited to the following:

Partnership Review Includes

- Whether the partnership is TEFRA/non-TEFRA
- Validity of the TMP and POA
- Validity of statute of limitations and any extension(s) secured
- Application of expired IRC 6229 **AC** statute procedures
- Whether all TEFRA statutory and procedural guidelines have been followed

- m. Review closing packages for completeness. Make sure items reconcile. Make sure items being adjusted are explained and will make sense to the campus employees making the adjustments.

Note: The campus employees making the IMF adjustments are GS-8 Tax Examiners. The adjustments need to be explained so that it is clear as to how the adjustments need to be applied.

- n. Write the statutory notice language for the FPAA in unagreed TEFRA cases requiring issuance of the notice and coordinate with Area Counsel for mandatory review.
- o. Preparing and issuing the following letters to the tax matters partner following the case review:

TEFRA Letters

- Letter 1831, Request for Administrative Adjustment
 - Letter 1864, Notice of Beginning of Administrative Proceedings (NBAP) Withdrawal Letter
 - Letter 2621, No Adjustments Letter
 - Letter 3857, Untimely Notice Letter (TEFRA Proceedings Ongoing)
 - Letter 4839, Audit Termination
 - Letter 2064, No Change Notice of Final Partnership Administrative Adjustment (FPAA)
 - Letter 1830-F, Notice of Final Partnership Administrative Adjustment (FPAA).
- The coordinator will also prepare and issue the following letters to the tax matters partner when statute constraints exist in order to meet Appeals timelines;
- Letter 1827-F, TEFRA Partnership 60 Day Letter
 - Letter 1829-F, TEFRA Partnership 60 Day Letter including affected item adjustments

- p. Processing agreed key cases by countersigning all settlement agreements (all direct partners and the TMP binding non-notice partners must sign agreements).
- q. Preparing and submitting a package to the CPF identifying the status of the key case. Note: the CPF issues all partner letters/notices unless the key case is not linked. The coordinator issues the partner notices when the case is not linked.
- r. Issuing Form 3990, Reviewer's Report, to the field agent addressing not only TEFRA procedures/guidelines, but also, technical issues.
- s. Completing the reviewer check sheet used to identify areas of concern.
- t. Conducting presentations to both LB&I and SB/SE field agents and tax computation specialists.

- u. Reviewing and processing PCS linked partner returns closing to CCP and transferring to the CPF (if applicable). This includes processing assessments/refunds, and addressing PCS linkage for exam years and carryover and carryback years.
 - v. Reviewing and processing linked ILSC (1065 and 1120-S) key cases and investors.
 - w. Prepare and submit the ILSC closing packages.
- (2) Assist the field Revenue Agent/Group Manager when the imminent procedures are not followed, and/or when the case is not linked on PCS, as required.
- (3) Work with the other Area Coordinators whose specialty impact the TEFRA case, as applicable.

4.31.2.7.2
(04-20-2017)

**Key Case Closure
Procedures**

- (1) Upon receipt of a closed TEFRA key case, the TSPC should review the following areas of the case file:
- a. Determine whether the case is TEFRA;
 - b. Determine if Chief Counsel *Notice 2009-11*. Notice 2009-011 applies when it isn't clear whether adjustments are computational or affected items. Counsel should be involved when such situations occur. When this occurs, the adjustments are processed using both procedures. If 2009-011 applies, then that must be stated clearly on the closing package. The campus will establish a 7 month assessment date on PCS to ensure the case is worked timely;
 - c. Tax Matters Partner - Determine if the examiner verified that the TMP is valid and all the notice procedures were correctly followed, as required. The case file should include an explanation if there is an unusual situation;
 - d. Determine if the TMP NBAP was properly issued to the last known address or partnership return address by certified mail;
 - e. Verify the linkage procedures were followed;
 - f. Power of Attorney (POA) - Determine if the Form 2848 is completed correctly.
 - If the POA is not completed correctly, take the necessary steps to get it perfected. If it cannot be perfected, include the POA's copy of any letter issued with the letter sent to the TMP;
 - g. Statute Extensions - Review any consents to determine they have been prepared and signed correctly. This is important when there is a subsidiary as the TMP, entity TMPs or a tiered situation. If there are any errors, and the normal statute is still open, a new consent can be secured. If the normal statute is gone, consult with Area Counsel on the validity of the consent and if it can be defended;
 - h. If there is an unusual case closure or other unusual situation, which is not covered in these procedures, consult with the Campus TEFRA/Pass-Through Coordinator on how to proceed;
- Note:** Any packages that require mailing should be placed in an "Open by Addressee Only" envelope before mailing. This will help ensure that the package gets to the proper unit intact.
- i. Packages adjusting multiple years must have a separate schedule of adjustments and Form 886-A for each year. This is important because partners vary from year to year. Separate schedules eliminate disclosure risks, and saves the campus time.

4.31.2.7.2.1
(04-10-2023)
No-Change within 45 Days

- (1) Procedures for a No-Change in 45 days or less:
- a. Issue Letter 1864, No-Change Letter, to the designated TMP at the key case address using certified mail.
 - b. If the TMP has a different address than the key case, send a copy of the Letter 1864 to the TMP at their address using certified mail.
 - c. If there is a properly completed POA, send a copy of the Letter 1864 to the POA using the cover Letter 937, Transmittal for Power of Attorney, using regular mail.
 - d. If it is unclear if the TMP qualifies to be the TMP, issue Letter 1864 to "Tax Matters Partner" (i.e., generic TMP) at the key case address using certified mail.
 - e. Close the key case with Disposal Code 02.

Note: The "no change with adjustment" disposal code 01 is not applicable for TEFRA key cases.

4.31.2.7.2.2
(04-20-2017)
Terminating the Audit After the 45-Day Period

- (1) Procedures for terminating and audit after 45 days using Letter 4839, Audit Termination. The procedure is meant to be used when the examiner just misses the deadline for withdrawing the TMP NBAP. See IRM 4.31.2.3.9.1, No-Change within 45 Days. Because TEFRA cases must be reviewed before TMP letters are issued, the 45 day time frame for withdrawing the NBAP can be difficult to meet. The audit termination procedures should not be used if extensive audit work was completed. As a rule, an audit termination letter must be issued within six months of starting the examination. If the audit termination letter cannot be issued within that time frame, then no change procedures must be followed. See IRM 4.31.2.3.9.1, No-Change after 45 Days.

Note: More than one year must remain on the key case statute before this procedure is used. Shorter time frames place an undue burden on the campus. If there is less than a year, then a no change FPAA should be used.

- a. In general, use this procedure if no adjustments are identified, the TMP did not raise any affirmative issues, and an AAR has not been filed by either the TMP or any partner. If the TMP disagrees or has not indicated agreement, See IRM 4.31.2.7.2.4, 60- Day Cases, for procedures on the issuance of a 60-Day letter or an FPAA.
- b. If there is less than one year remaining on the statute, a Letter 2621, No Adjustment to Pass through Investor, or a Letter 2064 , Notice of Final Partnership Administrative Adjustment, should be issued.

Note: If an NBAP was issued and not withdrawn, but no books and records were reviewed, the IRS can terminate the examination within 6 months of beginning the exam using Letter 4839. See Treas. Reg. 301.6223(a)-2(a).

Note: If partner NBAPs were not already issued prior to the audit termination, there is no need to issue NBAPs to the partners.

- c. Letter 4839 states that the audit is being terminated. It also requires the TMP notify all partners of the audit termination within 30 days. Letter 4839 must be issued by the TSPC.
- d. If no partners are linked, CPF notification is not necessary.
- e. For any partner linked on PCS, a copy of Letter 4839 will be sent in the closing package to the appropriate campus.
- f. The TSPC will issue Letter 4839 to the TMP at the key case address, or most current address, by certified mail. If using a more current address,

ensure our systems reflect that address. Document the case file that the letter is being sent in accordance with 26 CFR 301.6223(a)-1(b).

- g. Prepare Letter 4839 (Audit Termination Letter) for the TMP of the TEFRA key case; mail the letter to **Tax Matters Partner** at the key case address.
- h. If there is a POA, send a copy of the Letter 4839 to the POA using the cover Letter 937 and send regular mail.
- i. Forward a copy of the dated Letter 4839 to the key case Campus Pass-Through Function using the shared drive as explained at IRM 4.31.2.3.9.2.2, Transferring Work to the Campus Using a Share Drive.
- j. Monitor the key case AIMS record for the "H" freeze to be removed and the input of the one-year assessment date for the partners on TSUMY.
- k. Close the key case with a Disposal Code 02 when the certified mail receipt is returned Letter 4839), the "H" freeze removed, and the one-year assessment date is input.

Note: The Disposal Code 01 is not applicable for TEFRA key cases.

4.31.2.7.2.2.1 (04-10-2023)

Closing Key Cases with Zero Percent or Immaterial Partners

- (1) Some partnerships include Schedules K-1 for partners with no ownership percentage. Sometimes settlements are secured from those partnerships with an ownership percentage and only the zero percent partners remain in the TEFRA proceeding.
- (2) On occasion the partnership adjustments will change after the partners were linked. This may result in partners being linked that now have immaterial adjustments.
- (3) When these situations occur, the campus still needs a closing package to ensure those zero percent and immaterial partners are closed out.
- (4) If the field examiner is unable to secure an agreement from a partner that would not have an adjustment, they may request the TSPC issue Letter 6235 , Pass-Through Investor No Adjustment, to that taxpayer so the case can be closed agreed. If a Letter 6235 is issued a copy will be included in the notice package being sent to the CPF.
- (5) The TSPC will forward the package to the CPF using Form 14434, and checking the "Fully Agreed" box. The "Other/Comments" box should state the number of Letters 6235 included in the package.

4.31.2.7.2.3 (04-10-2023)

No-Change after 45 Days

- (1) Procedures for no-changing an audit after 45 days using Letter 2621, No Adjustment to Pass-Through Investor:
 - a. Use this procedure if a case would normally qualify to have the NBAP withdrawn, or the audit terminated, except that the time for issuing those letters has passed, or extensive audit work was completed. If there is no indication in the case file regarding the TMP's position, consult with the examiner. If there are fewer than 60 days remaining on the statute, a Letter 2064 , No-Change FPAA should be issued.

Note: If partner NBAPs were not already issued prior to the no-change determination, there is no need for the campus to issue NBAPs to partners.

Note: More than one year should remain on the key case statute before this procedure is used. Shorter time frames place an undue burden on the campus.

- b. If the TMP raised any affirmative issues, an AAR was filed by either the TMP or any partner, or the TMP disagrees or has not indicated agreement, See IRM 4.31.2.7.2.4, 60- Day Cases, for procedures on the issuance of a 60-day letter or an FPAA.
- c. Letter 2621 states that no adjustments are being proposed, and that an FPAA will not be issued. It also requires the TMP notify all partners of the audit determination within 30 days.
- d. If no partners are linked, no CPF notification is necessary.
- e. For any partner linked on PCS, a copy of Letter 2621 will be sent in the closing package to the appropriate campus.
- f. Prepare a Letter 2621, for the "Tax Matters Partner" (i.e., generic TMP) mail the letter to the key case address, or more current address. If using a more current address, ensure our systems reflect that address. Document the case file that the letter is being sent in accordance with 26 CFR 301.6223(a)-1(b) .
- g. If the address of the TMP is different from the key case address, mail a copy of the Letter 2621 to the TMP at their address by regular mail.
- h. If there is a POA, send a copy of the Letter 2621 to the POA using the cover Letter 937 and send regular mail.
- i. If it is unclear if the TMP qualifies to be the TMP, issue Letter 2621 to "Tax Matters Partner" (i.e., generic TMP) at the key case address.
- j. Forward a copy of the dated Letter 2621 and a copy of Form 4605-A to the key case campus pass-through function using the shared drive as explained at IRM 4.31.2.3.9.2.2, Transferring Work to the Campus Using a Share Drive.

Note: Appeals does not use Form 4605-A or Form 886-Z. Appeals will include Form 5402 with a copy of the Letter 2621.

- k. Monitor the key case AIMS record for the "H" freeze to be removed and the input of the one-year assessment date for the partners on TSUMY.
- l. Close the key case with a Disposal Code 02, the "H" freeze removed, and the one-year assessment date is input.

Note: The Disposal Code 01 is not applicable for TEFRA key cases.

4.31.2.7.2.4
(04-20-2017)
60-Day Cases

- (1) The procedures for issuing a 60-day letter (either a Letter 1827-F, TEFRA Partnership 60-Day Letter, in conjunction with a Form 870-PT, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, or a Letter 1829-F, TEFRA Partnership 60-Day Letter for Penalties and Adjustments, in conjunction with a Form 870-LT, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts and Agreement for Affected Items) are as follows:
 - a. When the TEFRA key case examination is completed, the case is forwarded to the Technical Services for preparation of the 60-day letter package.
 - b. The 60-day procedures must be followed on a key case if at least one partner did not execute a Form 870-PT or Form 870-LT, and there are at least 20 months remaining on the TEFRA key case partnership IRC 6229 statute at the time the case is received in Technical Services.
 - c. If the key case is not a no change or agreed, consider if an FPAA should be issued instead of a 60-day letter. The advantage of issuing an FPAA

now, is that no further letters would have to be issued if the partners have not all agreed when the FPAA defaults.

- d. If the examiner received agreements for all but a few partners, consider soliciting agreements from the remaining partners instead of issuing a 60-day letter or an FPAA. Verify the mailing address for the partner(s) using CC INOLES.
- e. Technical Services will prepare a 60-day letter for the TMP with a copy of the 60-day letter and Letter 937 for the TMP's POA, if applicable. If you are aware that the address on the partnership return is no longer valid, the 60-day letter should also be sent to the most current address. Ensure that the most current address is updated on our systems if CC INOLE shows a different address. Please document the case file to reflect that address was changed in accordance with 26 CFR 301.6223(c)-1 and the 60-day letter was addressed in accordance with 26 CFR 301.6223(a)-1(b). If the 60-day letter sent to the most current address is returned as undeliverable, send a copy to the partnership address. A 60-day letter should be addressed and sent to the "Tax Matters Partner" at the partnership address, and be signed on behalf of the Technical Services territory manager.
- f. Use Letter 1827-F and Form 870-PT if there are no affected items subject to deficiency procedures. Complete a Form 870-PT with the key case name and addressed to the attention of the TMP, using the key case EIN as the taxpayer identifying number, including the schedule of adjustments showing only the pass-through items adjusted in the examination.
- g. Use Letter 1829-F and Form 870-LT when there are affected items requiring deficiency procedures. Complete a Form 870-LT with the key case name and addressed to the attention of the TMP, using the key case EIN as the taxpayer identifying number, including the schedule of adjustments showing only the pass-through items adjusted in the examination, including affected items. The TMP **cannot** bind any partner for affected items requiring partner level determinations or defenses and does not need to agree to affected items for the partnership. Part II of the Form 870-LT allows the partner to agree to affected items, penalties, additions to tax, and additional amounts, if any, that would otherwise be subject to deficiency proceedings.
- h. If there are affected item issues for basis, at-risk, passive losses, cancellation of debt income, etc., consider including items on the Form 870-LT schedule of adjustments even when they are not adjusted. The acceptance as filed of this type of item may be important in an affected item proceeding for a partner.
- i. If partner 60-day letters are issued locally (Letter 1827-C or Letter 1829-C), forward the copy of the letter(s) to the CPF.
- j. After updating the key case to status code 29, the package will be forwarded to the key case CPF using the shared drive as explained at IRM 4.31.2.3.9.2.2, Transferring Work to the Campus Using a Share Drive.
- k. Verify that the partners are linked on the PCS. If any partners are not linked, notify the campus pass-through function so they can be linked before the letters are issued.

(2) The 60-day package must contain the following:

- a. Copy of the undated Letter 1827-F (60-day letter) when there are no affected items requiring partner level determinations, for each TMP address;

- b. Copy of the undated Letter 1829-F (60-day letter) when there are affected items requiring partner level determinations, for each TMP address;
- c. If Letter 1827-F is sent, include a Form 870-PT. Prepare a separate Form 870-PT for each different TMP address;
- d. If Letter 1829-F is sent, include Form 870-LT. Prepare a separate Form 870-LT for each different TMP address;
- e. A complete copy of the revenue agent's report including the Form 4605-A, Form 886-A, and Form 886-Z (or equivalent spreadsheet) showing the corrected distributive shares of all pass-through items;
- f. If there is a POA, a copy of the Letter 937 addressed to the POA;
- g. A Form 886-Z (or equivalent spreadsheet) with correct distributive shares completed for each pass-through item adjusted. The CPF wants the Form 886-Z (or equivalent spreadsheet) because it shows the percentages of profit/loss from the Schedules K-1. If percentages are not available on the Schedules K-1, then they will be left blank;
- h. Note on the Form 14434, TEFRA Notice Package Check Sheet, if penalties and/or affected items are applicable; and
- i. Annotate as a 60-day letter package, clearly reflecting the key case name, tax years(s), EIN, statute date, RAR, Form 886-Z (or equivalent spreadsheet), number of TMP letter(s), POA letter(s), partnership adjustment amount, affected items report, and penalties. submit on the shared drive as explained at IRM 4.31.2.3.9.2.2, Transferring Work to the Campus Using a Share Drive.

Note: If the TSPC issues the TMP letters, then they must notate the IRC 6404(g) date on Form 14434, Tax Equity and Fiscal Responsibility Act (TEFRA) Notice Package Check Sheet.

- j. The amount to enter as the partnership adjustment amount will vary. As a rule, all adjustments should be combined to arrive at one net adjustment. Adjustments to credits will be divided by 30% (credit amount / 30% = credit adjustment amount). This will allow credits and ordinary income/expense adjustments to be combined without skewing the results due to the credits.
- (3) At a minimum, the Form 14434 must be emailed to the appropriate campus even it is uploaded to the shared drive. This will provide the campus with a contact should there be a problem opening the file.

4.31.2.7.2.5
(04-10-2023)
**Final Partnership
Administrative
Adjustment Cases**

- (1) Procedures for Issuing an FPAA (See IRM 4.31.2.7.2.1, No-Change Within 45 Days, for when to use Letter 2621 instead of the Letter 1830-F).
- a. Issue an FPAA for:

Time frames for FPAA
<ul style="list-style-type: none"> • Any key case with a short statute (less than 20 months on the statute); or • A key case where a 60-day letter was issued, no protest was received, and not all of the partners have agreed; or • A No Change after 45 days;

- b. Prepare one original FPAA addressed to the TMP by name and send to the partnership address; one original FPAA addressed to the TMP by title only (i.e., Tax Matters Partner) and send to the partnership address per

the original return; prepare one original FPAA for every other known TMP address, including any addresses per IDRS CC INOLES;

Note: If there is more than one year being addressed, a separate FPAA package must be prepared for each tax year.

- c. Prepare an explanation of all adjustments (statutory notice language). This must include a statement regarding the affirmative issues raised by the TMP or the AAR filed by the TMP or a partner in addition to any other issues. If this is a no change FPAA, include a statement that the TMP must protest the FPAA to raise the affirmative issues or AAR issues. If there are non-notice partners, type the following on the Form 870-PT for the TMP directly above the signature line:

"The undersigned Tax Matters Partner is signing this offer on behalf of himself (herself or itself) and all other partners whom he (she or it) has the authority to bind; a final agreement resulting from the co-signature of the Commissioner of Internal Revenue will be binding on all such other partners." (There must be more than 100 partners for this to apply.)

- d. Area Counsel must approve all FPAAs before issuance. SB/SE key case administrative files will be forwarded to SB/SE Area Counsel and LB&I key case administrative files will be forwarded to LB&I Area Counsel.
- e. If fewer than 120 days have passed after issuance of the NBAP to the last partner, the IRS will be considered to have not given timely notice. Since the partner is entitled to elect out of the TEFRA proceedings under IRC 6223(e)(2) of 1982 or IRC 6223(e)(3) of 1982, an "Untimely Notice Letter" (Letter 3857, if TEFRA proceedings are ongoing; Letter 3858, if TEFRA proceedings are complete) is sent with the FPAA informing the partner of his/her right to make an election and the time period for exercising that right. Upon issuance of the FPAA to the TMP, the statute of limitations is held open for a minimum of 150 days plus one year from the date of the FPAA. See IRC 6229(d).
- f. Verify that the partners are linked on the PCS. If any partners are not linked, notify the Campus Pass-Through Function so they can be linked before the FPAAs are issued.
- g. The TSPC will issue the FPAA to the TMP. The FPAA must be issued to each notice partner no later than the 60th day after the day the FPAA was issued to the TMP. TSPC will immediately notify the Campus TEFRA Coordinator that the FPAA was issued to the TMP. The TSPC will transmit a dated copy of the TMP FPAA with the other items required for an FPAA package to the CPF within five days of the date the FPAA was issued to the TMP.

Note: The TSPC will notate the IRC 6404(g) date on the notice package check sheet if 60-day letters were not sent previously.

- h. If partner FPAAs are issued locally (Letter 1830-C), forward the copy of the FPAA and the original certified mailing documents (if signed and returned) to the CPF. Certified mailing documents will consist of:

Certified Mailing Documents
<ul style="list-style-type: none"> The Certified Mail Receipt (PS Form 3800) and the related green card (PS Form 3811, Domestic Return Receipt), if received.

Note: If partner resides outside the U.S., the FPAA must be sent by registered mail.

(2) If the package is not submitted to the campus timely and untimely notice procedures must be used, the notices will be sent with the TSPC's name and phone number as the contact. The TSPC will be responsible for monitoring and addressing questions related to the untimely notices. The campus shouldn't be responsible if the package wasn't submitted timely.

(3) The key case FPAA package should contain the following:

- a. Form 14434, TEFRA Notice Package Check Sheet, (Appeals uses Form 14298, but the same procedures apply);

Note: If there is more than one year being addressed, a separate FPAA package must be prepared for each tax year.

- b. A Letter 1830-F signed on behalf of the Technical Services territory manager for each TMP address;

Note: If you are aware that the address on the partnership return is no longer valid, the FPAA should also be sent to the most current address. Ensure that the most current address is updated on our systems if CC INOLE shows a different address. Please document the case file to reflect that the address was changed in accordance with 26 CFR 301.6223(c)-1 and the FPAA was addressed in accordance with 26 CFR 301.6223(a)-1(b). If the FPAA sent to the most current address is returned as undeliverable, send a copy to the partnership address.

- c. A Form 870-PT addressed to the TMP, including a schedule of adjustments that shows the corrected amount for each adjusted item. The Form 870-LT is not used with an FPAA. Affected Items cannot be petitioned through a partnership proceeding;
- d. An explanation of all adjustments on Form 886-A (statutory notice language);
- e. One copy of each dated FPAA, both named and generic, mailed to the TMP;
- f. A Form 886-Z (or equivalent spreadsheet) with corrected amount for each adjusted item for each partner with correct percentages. If percentages are not available on the Schedules K-1, then they will be left blank. The schedule of adjustments and the Form 4605-A must be reviewed to ensure the figures match. The Form 886-Z (or equivalent spreadsheet) must then be matched to the Schedules K-1. Any special allocations or reallocations must be noted on the check sheet. All partners must be included on the 886-Z without regard to any linkage strategy;

Note: A Form 886-Z is not used for a no-change FPAA.

- g. A complete copy of the RAR including Form 4605-A, the explanation of adjustments, and the appropriate distribution schedule. This will be sent even if a 60-day letter was issued;

Note: Appeals does not use Form 4605-A or Form 886-Z.

- h. A supplemental report for affected items, if applicable;

Note: Remember, any affected item adjustments need to be explained in detail. Campus employees must be provided specific information necessary to make the affected item adjustments.

- i. A Form 14434, TEFRA Notice Package Check Sheet, noted as an FPAA package and listing all the items (RAR, Form 886-Z (or equivalent spread-sheet), TMP letter(s), POA letter(s), partnership adjustment amount, affected items report, and penalties) included in the package and clearly reflecting the key case name, tax years(s), EIN, and statute date. Submit on the shared drive as explained at IRM 4.31.2.3.9.2.2, Transferring Work to the Campus Using a Share Drive.
- j. Provide the partnership adjustment amount if one was not submitted with a 60-day Letter Package. The amount to enter as the adjustment amount will vary. As a rule, all adjustments should be combined to arrive at one net adjustment. Adjustments to credits will be divided by 30% (credit amount / 30% = credit adjustment amount). This will allow credits and ordinary income/expense adjustments to be combined without skewing the results due to the credits.

Note: At a minimum, the Form 14434 must be emailed to the appropriate campus even it is uploaded to the shared drive. This will provide the campus with a contact should there be a problem opening the file.

- (4) The CPF will review the package for completeness. If there are minor errors, the CPF will contact the TSPC, otherwise the package will be returned to the TSPC to be perfected. The CPF will note what additional information is needed or other errors that need to be corrected.
- (5) The key case file remains with the TSPC until the FPAA is either petitioned or defaulted.
- (6) The key case is suspended for 165 days from the date on the FPAA issued to the TMP. If no notification has been received that a petition has been filed, contact Area Counsel. Counsel should be able to verify whether or not the court's records have received a petition for the key case. The key case should be updated and sent to Appeals within 15 days of being notified of the petitioner's filing.

4.31.2.7.2.5.1
(04-10-2023)
No-Change FPAA

- (1) FPAA for a No-Change after 45 days: Use this procedure if the TMP disagrees with the no-change, there are filing inconsistencies at the partner level, or the no-change is on a case in Appeals. If there is no indication in the case file regarding the TMP's agreement or disagreement or of a partner's agreement or disagreement if the partner filed the AAR, consult with the examiner. In general, use this procedure if the TMP raised any affirmative issues or the TMP or any partner has filed an AAR, the IRS is not allowing any of the affirmative adjustments, and/or disallowing the AAR in full. Issuing the FPAA allows the TMP or any partner to raise these issues by petitioning the court of their choice and prevents either from petitioning the AAR.
- (2) If Letter 2064, Notice of Final Partnership Administrative Adjustment, is used, the FPAAs will be prepared and issued by the TSPC for the named TMP. Letter 2064 is specifically a no-change FPAA and does not include the Form 870-PT.

Note: Appeals does not use Letter 2064.

- (3) The Letter 2064 will also be issued to the "Tax Matters Partner" (generic FPAA) at the address on the Form 1065. The letter is sent by certified mail.

Note: If you are aware that the address on the partnership return is no longer valid, the FPAA may be sent to the most current address. Ensure that the most current address is updated on our systems if CC INOLE shows a different address. Please document the case file to reflect the address was changed in accordance with 26 CFR 301.6223(c)-1 and that the FPAA was addressed in accordance with 26 CFR 301.6223(a)-1(b). If the FPAA sent to the most current address is returned as undeliverable, send a copy to the partnership address.

- (4) Verify that 120 days have elapsed since the issuance of the last NBAP to any partner. The 120 day date can be determined by looking at a TSINQP print for the key case.

4.31.2.7.2.6
(04-20-2017)
Defaulted FPAA

- (1) When no petition is filed in response to the FPAA:
- a. The TSPC defaults the FPAA and forwards the default package to the CPF.
 - b. The one year assessment date is 150 days plus one year, minus one day, from the date the TMP FPAA was dated. The CPF uses one day less than the full year to be conservative in making sure assessments are made timely.
 - c. The TSPC will forward a default package to the key case CPF to initiate the closure of the partner cases. The default package will include the following:

Default Package Includes:

- A Form 14434, TEFRA Notice Package Check Sheet, marked **Default Package** clearly showing the key case name, EIN, tax period, and the one-year assessment statute date. Submit using the shared drive as explained at IRM 4.31.2.3.9.2.2, Transferring Work to the Campus Using a Share Drive;
Note: At a minimum, the Form 14434 must be emailed to the appropriate campus even it is uploaded to the shared drive. This will provide the campus with a contact should there be a problem opening the file.
- A Form 886-Z (or equivalent spreadsheet) stamped **Default** on all pages, showing the corrected amounts for each adjusted item of the key case entity return, with correct percentages for each partner;
Note: A Form 886-Z is not needed with no changes.
- A completed Form 4605-A, Form 886-A, Explanation of Items, and Form 886-Z (or equivalent spreadsheet) showing the corrected distributive shares of adjusted -through items. Even though this information may be the same as that sent previously, the information should be sent again to avoid confusion;
Note: Appeals does not use Form 4605-A or Form 886-Z on no changes.
- Note on the Form 14434, TEFRA Notice Package Check Sheet, whether penalties are applicable, and whether there are affected items and include the affected items report. If adjustments are complicated or difficult to apply, consult with the Campus TEFRA coordinator on how to handle the package.

- d. The key case is closed when the “H” freeze has been removed from the key case AIMS database. The “H” freeze will be removed by the CPF after they verify the one-year assessment date has been entered in the PCS for all the direct partners. Use Disposal Code 10 for a defaulted FPAA and close the key case.

4.31.2.7.2.7
(10-01-2010)
Petitioned FPAA

- (1) A key case may be petitioned to the Tax Court, a district court for the district in which the partnership’s principal place of business is located, or the Court of Federal Claims.
- (2) The venue and the rules of the particular court chosen determine the procedures that must be followed.
- (3) When a petition is filed in response to the FPAA:
 - a. The case should be closed through Technical Services to Appeals using Disposal Code 11 within 15 days of being notified of the petition’s filing. See IRM 8.19.12, Final Partnership Administrative Adjustment.
 - b. The key case should be sent to Appeals with a Form 3210, along with current AMDISA and TSUMY prints. Appeals will return the originators copy of the Form 3210 signed and date stamped.
 - c. The key case file should be flagged with a Form 3198, Special Handling Notice, identifying it as a “TEFRA Key Case File”. All TEFRA key cases need to be clearly identified as such.

- d. All docketed cases should also include a copy of the FPAA, copy of the certified mailing list, and the petition(s).
- e. If available, include a copy of the docket sheet.
- f. The CPF should also be notified when a key case petition is filed. An email to the appropriate campus TEFRA coordinator with the name, EIN and tax year is sufficient.

4.31.2.7.2.7.1
(06-01-2004)
**Petitioned Tax Court
Cases**

- (1) The docket list and the taxpayers' correspondence should be monitored by the Technical Services to determine whether the TMP has filed a petition with the Tax Court.
- (2) When the TSPC receives notice that a petition was filed, either by a partner or by the TMP, the key case file will be prepared for closure to Appeals within 15 days.
- (3) The campus PCS coordinator will ensure the docket number is input on the PCS using CC TSCHG, item number 28.

4.31.2.7.2.7.2
(04-20-2017)
**Petitioned District Court
and Court of Federal
Claims Cases**

- (1) Under TEFRA proceedings, partners may file a petition directly with either a district court for the district in which the partnership's principal place of business is located or the U.S. Court of Federal Claims, gaining direct access to that court. However, if either of these courts is chosen, each partner filing a petition must make a deposit equal to the amount his/her tax liability would be increased if the adjustment(s) in the FPAA were fully sustained.
 - a. The amount deposited is treated as a tax payment only for the purpose of computing interest.
 - b. If jurisdiction to either court is dismissed because of the priority of a Tax Court action, the partner may request a refund of the deposit.
 - c. If a 5-percent group files a petition, each member of the group must make the required deposit.
 - d. The deposit must be made on or before the date the petition is filed.
 - e. The deposit requirement is satisfied if there was a good faith attempt to deposit the correct amount and any shortfall is timely paid.
 - f. The deposit amount need only include the tax. The interest and penalties do not need to be included in deposited amount.
 - g. The deposit will be processed as a cash bond, but meets the requirements of IRC 6226(e)(1) of 1997.
- (2) The petitioner may bring or mail in a deposit to any function within the IRS. It does not matter if the deposit is sent to the field, the campus or Appeals. The check should include the TIN, tax period and a notification that it is a bond to go to district court. The petitioner may submit a letter with this information but such a letter is not required.
- (3) If an action is brought in district court or the U.S. Court of Federal Claims, only the petitioning partner is required to make a deposit. The IRS will assess and collect the tax deficiency against all partners (petitioning and non-petitioning) who have an interest in the proceeding (partnership items haven't converted to nonpartnership items), including penalties and interest. The deposit may be applied to the assessment of the petitioning partner. No partial assessments stemming from the petition may be made prior to the close of the 150th day after the day the FPAA was mailed to the TMP.

- (4) When Technical Services is notified of a petition filed with a district court, or the U.S. Court of Federal Claims, the key case is treated and processed as if the FPAA had defaulted within 15 days.
- (5) After the CPF is notified and the “H” freeze released, the key case will be closed on AIMS and updated to status code 90 to enable the partner assessments to be billed and collected. These procedures are similar to the refund litigation procedures applicable to refund claims. The AIMS database is closed because the case is forwarded to the Department of Justice, which handles the final closure.
- (6) Partial assessments are made for all partners, by the area controlling them on AIMS, based on the corrected amounts for adjusted items shown on the FPAA for the key case entity. Partners are not closed, and linkages are maintained until litigation is complete.
- (7) The TSPC will forward the case to Counsel, and Counsel will coordinate the transferring to the Department of Justice. Counsel will write an explanatory memo to the Department of Justice stating the IRS’s position and requesting its assistance with the case.
- (8) The TSPC will prepare a key case closing package for the CPF. The closing package will include:
 - a. A Form 14434, TEFRA Notice Package Check Sheet, with a notation that the closing package is a district court or Court of Federal Claims closing package and clearly indicates the partnership name, tax year, EIN, and a “one-year” assessment statute date. The form must also specifically state that the partner cases are to be processed as partial assessments and must remain open pending the final outcome of the litigation.

Note: It is recommended that a one-year date be input that is not more than 60-days from the date the closing packages are prepared to force the investor cases to appear on the PCS Report 4-4. The key case does not really have a OYD at this time, but the venue in which the partners has chosen to litigate the partnership issues, requires the investors to be assessed and the petitioning partner to make a deposit.

 - b. A Form 886-Z (or equivalent spreadsheet) with the corrected amount for each partner of each adjusted item of the key case return. This Form 886-Z (or equivalent spreadsheet) is the same one that was included in the FPAA package.
 - c. A complete copy of the revenue agent’s or Appeals report including the Form 4605-A, the explanation of adjustments and any other attachment that may be included in the report. For tax years ending before August 5, 1997, proposed penalties determined at the partnership level and/or affected items must not be assessed at this time. **For tax years ending after August 5, 1997, penalties determined at the partnership level must also be assessed at this time, but not any affected items.** Penalties determined at the partnership level must be assessed even if they are computed based on deficiencies subject to affected item deficiency procedures.

Note: At a minimum, the Form 14434 must be emailed to the appropriate campus even it is uploaded to the shared drive. This will provide the campus with a contact should there be a problem opening the file.

- (9) See IRM 4.31.4.9, Petitioned AARs, for the procedures for petitioned AARs.
- (10) The Campus PCS Coordinator will ensure the docket number is input on the PCS using CC TSCHG, item number 28.

4.31.2.7.2.8
(04-10-2023)
Agreed Cases

- (1) Agreements received for TEFRA key cases:
 - a. These procedures should be used to process agreements received from the field with a closed case, even if not all of the partners have agreed at the time the case is closed. The TEFRA key case examiner may receive signed Form 870-PT or Form 870-LT from partners in the key case after the closing conference. The agreements will be forwarded to Technical Services to be countersigned and processed for the partners.
 - b. The key case is considered to be fully agreed if all material partners have signed Form 870-PT or Form 870-LT

Note: It is still possible to consider a case agreed if you are not able to obtain a Form 870-PT or Form 870-LT for partners whose profit/loss percentage would not require a partner report to be written. Letter 6235, Pass-Through Investor No Adjustment, must be issued to these partners.

- c. Review the agreements to determine if the correct parties signed the agreement, no alterations have been made to the adjustment pages, and to be sure the Form 870-PT/ Form 870-LT was completed correctly. See Exhibit 4.31.2-4. For an individual partner filing a joint return, both spouses must sign. For a C corporation, an officer that can bind the corporation must sign. For a trust, the trustee of the trust must sign. See the instructions for signing included with the Form 870-PT/ Form 870-LT for a complete explanation of who is required to sign.
- d. If agreements are for cases with the sole issue of IRC 1441 through 1446 withholding, our current procedures are to execute only agreements for general partners. If the agreement is for other than a general partner, do not execute the agreements. Maintain a copy of the unexecuted agreements in the case file, and submit a scan of it on the shared drive to the appropriate CPF. Indicate on the notice package check sheet that the unexecuted agreement is for foreign withholding issues only and for their files. Additional instructions for foreign withholding cases can be found on the Partnership Knowledge Base.
- e. If agreements are invalid or there is a report writing error, complete a Form 3990, Reviewers Report, have your manager sign it, and reject the case to the field to secure valid agreements or correct the report.
- f. If agreements are valid, they must be countersigned in the appropriate signature block. If multiple agreements are expected, it is a best practice to wait a few weeks for all agreements to come in. Agreements related to the same key case should all be executed on the same day. This creates the same OYD for all related partners. It helps campus processing when there are fewer unique OYDs within a key case. Once the agreements are countersigned, a copy must be forwarded to the campus for processing.

Caution: When waiting for multiple agreements, the oldest agreement should not be held longer than 60 days before it is executed.

- g. Upon receipt of the executed agreements, the campus will issue Letter 2513, Tax Matters Partner Settlement Letter, and a list of the partners

who settled, with their settlement date, to the TMP. The letter and list are used to notify the TMP which partners have agreed so the TMP can meet its legal obligation under 26 CFR 301.6223(g)-1(b)(1)(iv). The campus will also issue Letter 1908, Transmittal Letter Agreed Form 870-PT, to send a copy of the countersigned agreement back to the partner for their records.

- h. The agreed package sent to the CPF should include the following:

Agreed Package Includes:

- A Form 14434, TEFRA Notice Package Check Sheet;
- A copy of the Form 4605-A and Form 886-A;
- A completed Form 886-Z (or equivalent spreadsheet) showing the corrected amount for adjusted items of income, loss, or deduction of the key case entity return that will be used for computation of the assessment or overassessment on the partner returns;
- A copy of the executed agreement Form 870-PT/Form 870-LT including the schedule of adjustments; and
- Penalty information, if applicable. Note on the check sheet if penalties apply.

- i. The Form 870-PT or Form 870-LT will be executed on behalf of the Commissioner. The one-year assessment statute date will be input on PCS within 10 days of receipt of the agreement package from the TSPC.
- j. If a fully agreed key case, the key case can be closed once the "H" freeze is removed, and the one-year assessment date(s) is input.

4.31.2.7.2.8.1
(04-20-2017)

Partial Agreements

- (1) The TSPC will sign the partial agreements on behalf of the Commissioner and not the CPF. Prior to signing for the Commissioner, the TSPC will ensure both the notation "Partial Agreement" and the statement above are on all of the forms and attachments as required.
- (2) When the partial agreements are submitted to the CPF unit for processing, a 60-day package will be included that includes all agreed and unagreed items. The CPF will send the entire 60-day package to all of the partners, whether partially agreed or not, because all adjustments must be included in the schedule of adjustments.
- (3) When the TSPC submits the 60-day package for processing and the field has solicited partial agreements, the CPF cannot and will not process the package until all partners have signed and agreed to the partial report unless the TSPC specifically instructs the CPF to do so. Advance coordination with the CPF in this situation is required. An undue burden is placed on the CPF if not all of the partial reports have been signed and agreed. PCS will not generate a 60-day letter with a "one-year" date still remaining on the partner. The CPF will request the 60-day letters prior to inputting the "one-year" date for the partial agreements. If a 60-day package is not included with the partial agreements, the partial agreement package will be returned to the TSPC.
- (4) The 60-day package the TSPC prepares and submits to the CPF will address all issues, i.e., both agreed and unagreed. The schedule of adjustments page will include all of the issues. The package will include all of the items listed in subsection IRM 4.31.3.6.1, 60-Day Letter, of this IRM. All partners must agree to a partial agreement before those agreements will be executed.

4.31.2.7.2.9
(04-20-2017)
H Freeze Release

- (1) All returns with an "H" freeze are closed to the TSPC. The TSPC will work with the campus to ensure the campus has all the information they need and secure the "H" freeze release.
- (2) The campus will release the "H" freeze once a OYD is entered on all key case partners.
- (3) On closing packages that impact all partners (i.e., court decisions, defaults, etc.) the "H" freeze will be released in 5 days.

4.31.2.7.2.10
(04-20-2017)
Freeze Code 6

- (1) AIMS freeze code "6" will identify cases needed by Ogden or Brookhaven campuses for TEFRA / ILSC related issues that are not linked through the PCS. The freeze code 6 will be input on returns controlled by the field offices and Appeals that are needed for carry over or carry back issues relating to the linked loss year return. The loss year will contain a PICF code on their AIMS record. An AIMS freeze code 6 will not be entered on PCS controlled cases. The freeze code 6 should be entered by a campus PCS coordinator only. Each campus will independently track the input and release of a freeze code "6".
- (2) Returns with an open PICF code or an AIMS freeze code "6" will need to be closed to the TSPC and the AIMS updated to Status 21 when their field non pass-through issue is closed. They should not be released directly to the Central Case Processing teams and not updated to status 51. An error message will be received when a case has an open PICF code or AIMS freeze code 6, if trying to update to status 51 from status 12 to 19.
- (3) The TSPC will review the case and notate Form 3198 indicating where the Case Processing team needs to send the return and update the appropriate PBC. The freeze code 6 will allow the transferring of the PBC. The case will be updated to PBC 398 for Ogden or PBC 295 for Brookhaven.
- (4) Freeze code 6 is allowed to be input on cases being updated and controlled in Appeals PBC's (6XX).
- (5) Brookhaven and Ogden campus PCS Coordinators will release the freeze when the return is received and controlled in their EGC's.

4.31.2.7.2.11
(06-20-2013)
**Technical Services
Pass-Through
Coordinator (TSPC)
Case Closure with
Expired IRC 6229**

- (1) Confirm the Form 3999-T and/or Form 3999 is in the case file when the IRC 6229 key case statute has expired and or IRC 6501 partner statute has expired.
- (2) Issue a letter to the key case with an expired IRC 6229 statute that resulted in no criminal or civil related partnership item or penalty adjustments to any partner with a barred IRC 6501 statute and was not under investigation or not having a conversion letter. A discussion should be held with a TEFRA technical advisor and/or counsel to determine the appropriate letter.

Note: This process does not include cases falling under the "AC" statute.

4.31.2.7.2.12
(04-10-2023)
**Closing a Case Agreed
Using Form 906 at the
Key Partnership Level**

- (1) Form 906, Closing Agreements on Final Determination Covering Specific Matters, may be for the key partnership or for a pass-through partner. The general review and report processes are similar. This section outlines the entire process with the focus on the key partnership. See IRM 4.31.2.7.2.13, Closing a Pass-through Partner using Form 906.

4.31.2.7.2.12.1
(04-10-2023)

**Review of Form 906 and
Related Reports**

- (2) A Form 906 agreement at the partnership level requires signatures from all direct notice partners. If **ALL** of the direct partners are not included in the Form 906 and will not sign the agreement, the group must notify and obtain written approval from counsel. This includes seeking approval if a partner has 0% interest.
- (1) Form 906 agreements must be reviewed by Procedure and Administration Chief Counsel (P&A Chief Counsel) and TEFRA Chief Counsel **after** Local Counsel has prepared and approved the preliminary Form 906 before securing signatures.
 - a. An email from P&A Chief Counsel is an acceptable form of approval.
 - b. Review the Form 906 to ensure all Counsel recommended changes have been made.
 - (2) Review the signature section of the Form 906 to ensure all of the signatures are valid with correct title, spouse signing, if applicable, etc.
 - (3) Verify the following forms have been submitted with the Form 906. (Note: separate forms may be submitted if the TMP, partner(s) or POA is different amongst the years)
 - a. Form 4605-A.
 - b. Form 4549-A with tax calculation agreement.
 - (4) Review Form 906, Form 4605-A, and the Form 4549-A.
 - a. Ensure the Form 906, Form 4605-A and the Form 4549-A list all of the audited issues including penalties, if applicable, and items included in the Remarks section of the Form 4605-A.
 - b. Ensure the per return, per exam and adjusted dollar amounts reconcile amongst the forms.
 - c. Ensure the sum of the items equal the "total" on all reports (re-add amounts). (For example, if several items are listed in a table with a total- make sure the total/sum is correct).
 - (5) Review the Form 4549-A:
 - a. The form should have a statement on top indicating "Do Not Process- Used for Computational Purposes Only".
 - b. Ensure the Form 4549-A includes tax, penalties, if applicable, and interest.
 - c. Ensure the tax and interest calculations are attached to the Form 4549-A.
 - d. Ensure the tax is calculated at the highest marginal rate for the specific adjustment and the individual partners. For example, The adjustment for qualified dividend income would be limited to the maximum 15% rate instead of the 35% highest marginal tax rate.

Note: A tax-exempt entity does not pay tax so their interest should not be included in the tax calculation

 - e. Ensure penalties, if applicable, are calculated correctly: for example, do the penalties apply to all issues or only certain adjustments.
 - f. The interest will be based on the amount of the payment estimated to account for tax and penalties that would be assessed on partners.

- g. Offset- one year has adjustments in the government's interest and subsequent year adjustments in the taxpayer's favor. Ensure the amounts netted are correct and included in the final report.
- Note:** Everything may be included on the Form 4549-A under one tax year instead of multiple years.
- h. If adjustments are carried over to the last filed year or a future filed year, a Form 4549-A will not be necessary as no payments are being made.
- (6) Form 906 payment of tax - The partnership (or pass-through partner) must pay the full amount before or at the time of signing.
- a. Trace a payment to the tax module to verify it posted correctly using CC TXMODA.
- (7) Verify the Form 906 agreement has the following statements or similar statements:
- a. The amount paid by the taxpayer pursuant to this agreement is not refundable, or subject to refund, credit or offset, under any circumstances and may be retained by the U.S. Department of Treasury regardless of whether any deficiencies in income tax, penalties, and any interest thereon, are assessed by the Commissioner.
 - b. The payment made by the taxpayer pursuant to this agreement is not deductible or otherwise amortizable or recoverable for Federal tax purposes by the taxpayer or by the investors in any taxable year whether they are assessed or not.
 - c. The parties waive all restrictions, including the restrictions provided in IRC 6225(a) and IRC 6213(a), on and defenses to assessment and collection of any deficiency in income tax and interest due as a result of the adjustments shown in the determination clauses (1) through (?) above.
 - d. The payment from the partnership is treated as a cash distribution to its partners on its Form 1065, U.S. Return of Partnership Income, for the partnership year ended MM/DD/YY, and the partners' basis and capital accounts are reduced/increased according to their pro rata share of the partnership.
 - e. The capital accounts and outside basis of the partnership's partners increased by their allocable shares of the partnership's increased income resulting from the adjustments shown in the determination clauses (1) through (xxx).
- (8) Verify the Form 906 document is not date stamped over the signature/dates or in the group manager signature date field.
- (9) Verify the title for the IRS signing official is correct on the signature line. The title should state: "Group Manager, Technical Services TEFRA" or be left blank.

4.31.2.7.2.12.2
(04-10-2023)
**Sending the Form 906
for Signature**

- (1) The TSPC should receive three copies of the Form 906 from the taxpayer with the original signatures:
- One copy with original signatures of the taxpayer and the Technical Services TEFRA Group Manager. This copy is attached to the back of partnership return;
 - The second copy will be returned to the taxpayer;

- The third copy will be retained by Technical Services Legacy Office in Denver.
- (2) The TSPC will scan and email a copy to the Technical Services senior technical program analyst for a second level review. The following should be included with the Form 906 to the technical advisor:
 - a. Form 4549-A and related schedules for tax, penalties and interest;
 - b. Form 4605-A;
 - c. yK1 and TSUMYP print;
 - d. IDRS print with a "TC 640" posting circled as verification of payment, if applicable;
 - e. Counsel's written approval of the Form 906; and
 - f. A completed copy of TSPC "906 Closing Agreement Check List".
 - (3) The senior technical services program analyst will send the TSPC and Technical Services TEFRA group manager approval to counter sign the Form 906.
 - (4) The Technical Services TEFRA group manager will countersign the Form 906 and return signed copy to the TSPC.

4.31.2.7.2.12.3
(04-10-2023)

**Closing after the Form
906 is Countersigned**

- (1) The TSPC should ensure all copies of the Form 906 have been countersigned.
- (2) Prepare and mail Letter 1595-E, Executed Closing Agreement Transmittal Letter, with an original countersigned copy of the Form 906.
- (3) Write the following statement on the top of each partnership return impacted by the Form 906, "Agreement under IRC 7121 Internal Revenue Code of 1986. Years affected are (list years under exam). Copy of closing agreement attached to tax year ending XXX (list the year)".
- (4) Attach a countersigned Form 906 to the latest tax year.
- (5) Use Form 3177, Notice of Action for Entry on Master File, to establish the "Form 906 Indicator" on the Master File. A Form 3177 must be completed for each tax period. Complete the forms:
 - a. Initiator (TC name), Date, Taxpayer Name, & EIN/SSN;
 - b. Enter "971" in the blank box of the TRC Section; and
 - c. On the same line in the Other (specify) Section (to the right of the 971) enter: "Action Code 256 & Agreement Date". (Agreement date is the date the TS group manager executes Form 906);
 - d. Also, **on this same line**, enter the MFT Code and Tax Period in the appropriate column.
- (6) Fax the Form 3177 to the appropriate CCP unit:
 - SBSE cases - Memphis
 - LB&I cases - Ogden
- (7) Retain a copy of the Form 3177 with the case file.
- (8) Review the case file to ensure:
 - a. Form 2424, Account Adjustment Voucher, is prepared correctly. The "Explanation" section should have the following information written –

“Transfer TEFRA payment to the Miscellaneous Revenues Account per the Form 906 agreement”. Form 2424 should be attached to the inside left of the case file.

- b. Form 3198, Special Handling Notice for Examination Case Processing, page 2, is prepared correctly. Under Instructions for CCP, states: “Investor and/or Key Case Information include the statement, “Close TC-300 for \$0 with Hold Code 2 and transfer the TEFRA payment to the Miscellaneous Revenues Account, 6400-2320, per the Form 906 agreement.”
- c. Form 5344, Examination Closing Record, Item 12, will show TC 300 \$0. Under “Comments” (bottom right side) enter: “Please transfer TC 640 to the Miscellaneous Revenues Account, 6400-2320”.

Caution: It is important to note that the payment will be refunded to the taxpayer if the required language is not included on Form 2424, the Form 3198 and the Form 5344.

- d. Form 8339, PCS Change, is prepared correctly. The TSPC will sign the form as the authorizing official. The TSPC will forward to the CPF PCS Coordinator to have the PCS changes input.
 - e. A transcript showing the “TC 640”. Attach the transcript to the reviewer check sheet prepared for TEFRA case reviews.
 - f. Form 906 and Letter 1595-E, Executed Closing Agreement Transmittal Letter, was mailed to the taxpayer and a copy of each is in the case file.
- (9) Submit a closing package on Form 14434, (TEFRA) Notice Package Check Sheet, to the CPF, with a copy of:
- a. Form 4605-A and Form 4549-A, if applicable;
 - b. Form 906 agreement (countersigned);
 - c. Form 2424;
 - d. Form 3198 with page 2 instructions;
 - e. Form 8339;
 - f. Letter 1595-E;
 - g. Letter 4839, if one was sent to the TMP for the 0% partners; and
 - h. IDRS print with a “TC 640” posting circled as verification of payment.
- (10) Key Case - Monitor IDRS for “H” freeze release if the key case has signed the Form 906.
- (11) Close the case file to CCP for processing-transfer of the credit and case closure.

4.31.2.7.2.13
(04-10-2023)

**Closing a Pass-through
Partner Using Form 906**

- (1) A Form 906 agreement for a pass-through partner at a tier level requires the signature of the signing official having authority to bind the pass-through partner.
- (2) Ensure all the required partners, whether entities or individuals have been listed in the body of the agreement and the signature area by securing a yK1 or CC TSUMYP to validate the direct partners.
- (3) Ensure the total tax, penalties and interest listed on Form 4549-A are included on Form 906.
- (4) The Form 906 will include the statement, “Prior to or simultaneously with the execution of this Agreement, the Partnership (or partner) made a lump sum

payment of \$XXXXX, which is in settlement of the tax, penalties (if applicable) and interest that otherwise would be assessed against and collected from the partners of the partnership”.

- (5) The amounts listed of the Form 906 may be shown as:
- Total;
 - Lump sum payment;
 - Tax, penalties, and interest.
- (6) If a “pass-through partner” wants to pay, the Form 906 agreement will include a statement indicating “the agreement only applies to the direct and indirect partners of the flow-through partner and not the other partners in the key case partnership.”

Note: Unagreed procedures will still apply to the key case when there are additional direct partners that have not signed Form 870-PT, Form 870-LT, page 1 or Form 906 agreements.

- (7) When the pass-through partner is settling:
- a. Write the following statement on the top of each partnership return, “Agreement under IRC section 7121 Internal Revenue Code of 1986. Years affected are (list years under exam). Copy of closing agreement attached to tax year ending XXX (list the year)”.
 - b. Attach a countersigned Form 906 to the latest partner tax year.
 - c. Attach a “copy” of the countersigned Form 906 to the latest “key case partnership” tax year.
- (8) Submit a closing package on Form 14434, (TEFRA) Notice Package Check Sheet, to the CPF with an explanation that the pass-through partner signed a Form 906, include the following in the package::
- a. Form 4605-A and Form 4549-A, if applicable;
 - b. Form 906 agreement (countersigned);
 - c. Form 2424;
 - d. Form 3198 with page 2 instructions;
 - e. Form 8339;
 - f. Letter 1595-E;
 - g. IDRS print with a “TC 640” posting circled as verification of payment.
- (9) Close the case file to CCP for processing-transfer of the credit and case closure.

Exhibit 4.31.2-1 (04-10-2023)**TEFRA Partnership Criteria Flow Chart**

This flow chart is a decision chart to determine the next action to take to determine if the Partnership is TEFRA or Non-TEFRA for tax years beginning before January 1, 2018. Use the Form 15260 for tax years beginning on or after January 1, 2018.

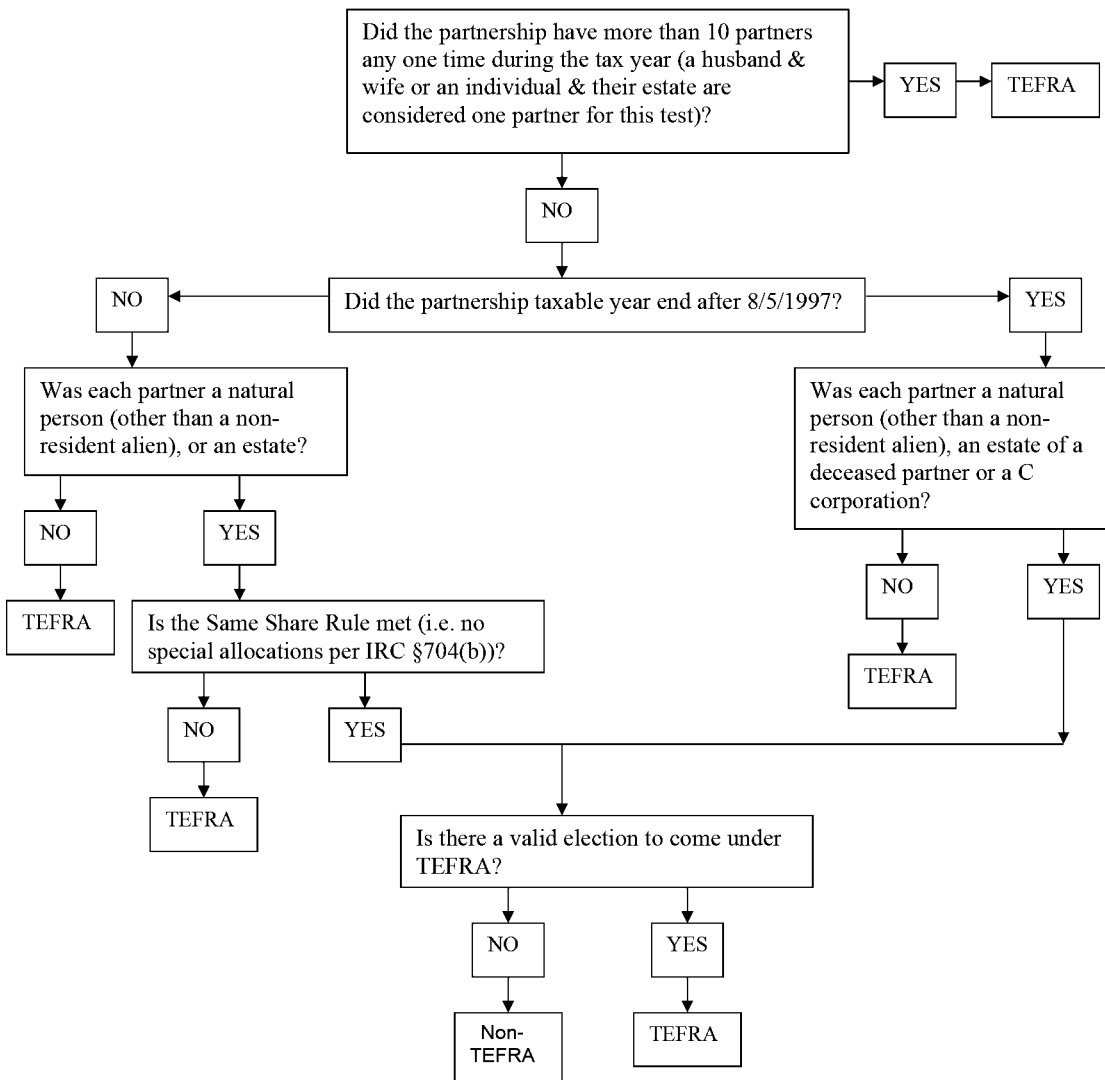
Note: A separate Determination must be made for each tax year.

Exhibit 4.31.2-1 (Cont. 1) (04-10-2023)

TEFRA Partnership Criteria Flow Chart

TEFRA Partnership Criteria Flowchart

IRM Exhibit 4.31.2-1

NOTE: A Separate Determination Must Be Made For Each Tax Year

Rev 4-2017

Exhibit 4.31.2-2 (05-10-2019)**TEFRA Pass-Through Examination Time Chart**

This exhibit outlines a step list of the actions, responsibilities, IRM, Time Frame in days, cumulative time elapsed, and correspondence for Form 1065.

No.	Action	Responsibility	IRM	Time Frame (Days)	Cumulative Time Elapsed	Form
1	Review time frames and procedures for initiating an examination Issue	R/A	IRM 4.31	-	-	-
2	Initial Contact Letter – Partnership Returns	R/A	IRM 4.31	45	45	Letter 2205-D
3	Issue NBAP to TMP and start examination	R/A	IRM 4.31	-	-	Letter 1787-F
4	Submit Form 14090 or Form 14091 with K-1's electronically to the CPF	R/A	IRM 4.31	120	165	-
5	Issue NBAP to all Notice Partners	CPF	IRM 4.29	-	-	Letter 1787-C
6	Review Mailing list from the CPF	R/A	IRM 4.31	-	-	-
7	Complete Examination	R/A	IRM 4.31	-	-	-
8	Issue Summary Report to TMP	R/A	IRM 4.31	60	225	Letter 1807
9	Conduct Closing Conference	R/A	IRM 4.31	30	255	-
10	Prepare RAR, if needed	R/A	IRM 4.10	30	285	-
11	Computational and preliminary review	TSPC	IRM 4.8	20	305	-
12	Technical Review	TSPC	IRM 4.8	15	320	-
13	Prepare 60 Day Letter with Form 870-PT / Form 870-LT, and RAR. Send to CPF	TSPC	IRM 4.8	15	335	See * Below
14	Issue 60 Day Letter and Form 870-PT / Form 870-LT to:	-	-	-	-	-
	a) TMP (with RAR)	CPF	IRM 4.31	-	-	See * Below

Exhibit 4.31.2-2 (Cont. 1) (05-10-2019)**TEFRA Pass-Through Examination Time Chart**

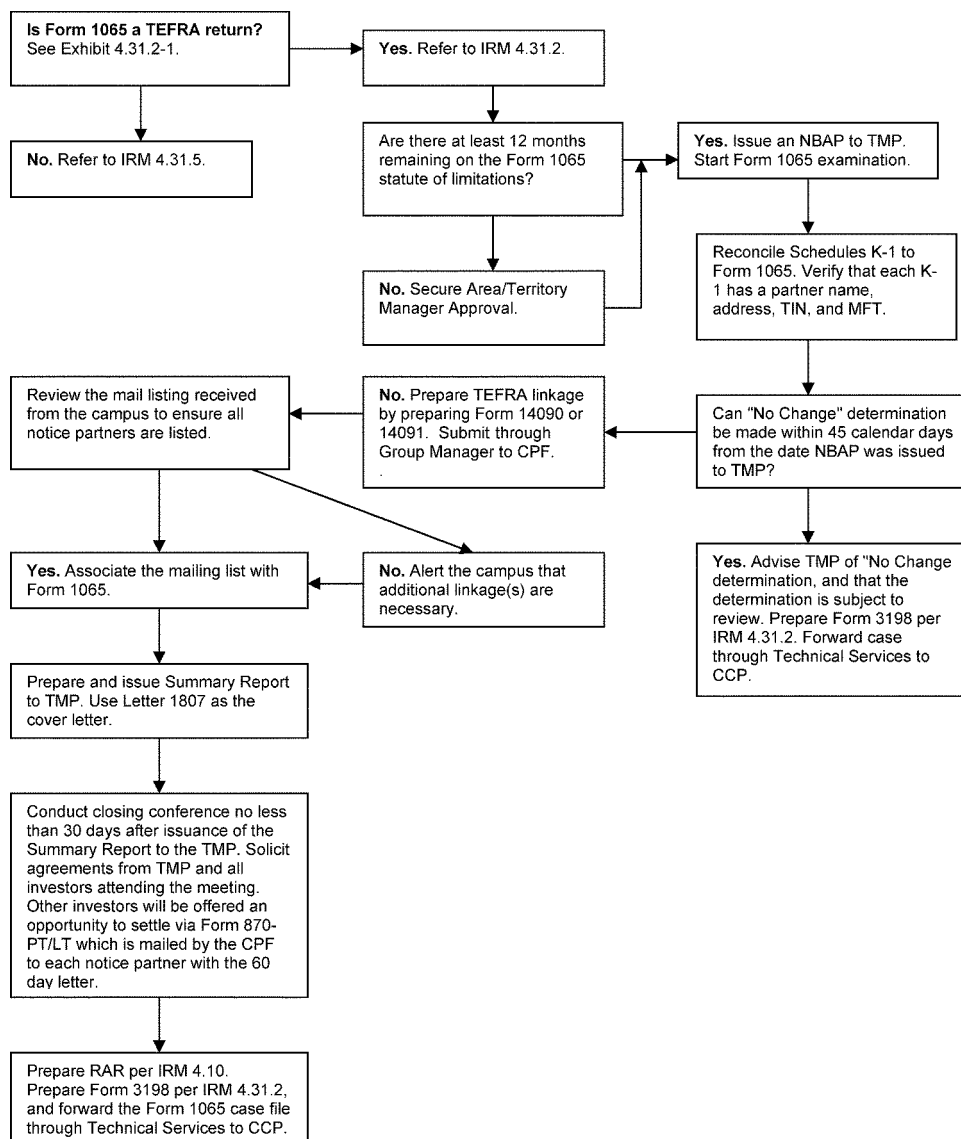
No.	Action	Responsibility	IRM	Time Frame (Days)	Cumulative Time Elapsed	Form
	b) All notice partners (without RAR)	CPF	IRM 4.29	30	365	See * Below
15	If valid protest, forward to Appeals (180 days must remain on key case statute)	TSPC	IRM 4.8	60	425	-
16	If no protest, prepare FPAA and issue to	TSPC	IRM 4.8	30	455	Letter 1830-F
17	Secure Area Counsel approval for FPAA	TSPC	IRM 4.8	60	515	-
18	Forward FPAA with Form 870-PT to CPF	TSPC	IRM 4.8	10	525	-
19	Issue FPAA with Form 870-PT to all notice partners	CPF	IRM 4.29	60	585	Letter 1830-C

Note:

IRC Actions
IRC 6223(a)(1) of 1982 controls Actions 2 and 3
IRC 6223 (a)(2) of 1982 controls Actions 17 and 18.
* Letter 1827-F or Letter 1827-C with Form 870-PT
* Letter 1829-F or Letter 1829-C with Form 870-LT

Exhibit 4.31.2-3 (05-10-2019)
TEFRA Key Case Procedures

This flow chart is helpful to determine if the Form 1065 is a TEFRA return.



Rev.7-2018

Exhibit 4.31.2-4 (04-20-2017)**Partner Signatures for TEFRA Settlement Agreements - Forms 870-PT/LT**

It is important the examiner verify that signatures obtained on TEFRA documents are valid and the title of the signatory is included with the signature.

Note: If a direct partner is a pass-through entity then only the first signature page of the Form 870-LT may be signed on behalf of the pass-through partner.

Joint Return of Husband and Wife - should be signed by both spouses (see the form Instructions). Only the signing spouse will be bound when a joint return has been filed. One spouse may sign as agent for the other if acting under a power of attorney, which, if not previously filed, must accompany this.

Minor Child - Either parent can sign on behalf of the minor child by signing the child's name followed by "by (your signature), parent of the minor child".

Trust - trustee of the trust; (Form 56, Notice Concerning Fiduciary Relationship, will need to be secured from the person/fiduciary acting on behalf of an estate or trust). A Roth Individual Retirement Account (IRA) is a trust taxable for unrelated business income.

Corporation - Corporate name followed by the signature and title of the officer authorized to sign.

Single member LLC partner - Rev. Rul. 2004-88 provides that a LLC which is a disregarded entity for federal tax purposes but a general partner under state law may be designated the TMP of a TEFRA partnership. If the single member LLC is a general partner and is authorized to bind the partnership under state law, it may be designated the TMP partner of the TEFRA partnership.

Limited Liability Company - a manager under state law must sign for an LLC regardless of whether the LLC is manager-managed or member-managed.

TEFRA Partnership as a partner in another TEFRA partnership - The general partner signs Form 870-PT and Form 870-LT, page one. The general partner does not have authority to sign the Form 870-LT, page 2 for its own partners. The general partner who signs must have the power to bind the TEFRA partnership/partner under state law. See Example 1

Partner is a subsidiary corporation in a consolidated group - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning on or after June 28, 2002, then a currently authorized officer of the subsidiary corporation should sign the agreement and should do so in the name of the subsidiary corporation. See 26 CFR 1.1502-77. The signature and title of a current officer of the subsidiary corporation, who is authorized to bind the corporation, should be displayed in the signature block.

The agreement should also be signed by a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for the relevant consolidated return year(s). The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should also be displayed in the signature block.

Partner is the common parent corporation of a consolidated group - a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for such consolidated return year(s) should sign the agreement in the name of the common parent corporation. See 26 CFR 1.1502-77(a).

TEFRA partnership no longer exists - under *Chef's Choice v. Commissioner*, 95 T.C. 388 (1990), the partners or the IRS can still designate a TMP.

Documents signed by pass-through entity partners must have the entity-partner's name typed/written followed by the name and title of the authorized individual of that entity-partner.

Exhibit 4.31.2-4 (Cont. 1) (04-20-2017)**Partner Signatures for TEFRA Settlement Agreements - Forms 870-PT/LT**

Example 1 - DEF Partnership was examined and the partner XYZ Partnership wants to agree to the proposed adjustments. John Cole is a general partner but not the TMP of XYZ Partnership. John Cole has authority to bind XYZ partnership under state law. The Form 870-PT will list XYZ Partnership as the partner and John Cole as the signing official.

XYZ Partnership, by John Cole, general partner

Example 2 - DEF Partnership was examined and the partner XYZ Partnership wants to agree to the proposed adjustments. ABC Corp is the general partner and not the TMP of XYZ Partnership. Joe Smith is the CFO of ABC Corp. I Corp. is the parent of ABC Corp. and Tom Doe is the CFO of I Corp. The signature should read as follows:

ABC Corp., general partner of XYZ Partnership, by Joe Smith, CFO

It is immaterial who the TMP is when the partner is a TEFRA partnership or TEFRA LLC filing a partnership return. If the TMP were to sign an agreement they are signing as a general partner, not the TMP.

TEFRA Partner	Partner Entity	Who Signs F870 PT/LT	Format	Document to Verify
Individual	Form 1040	If jointly filed- both spouses must sign	Self-explanatory (individual or both spouses, based on filing)	Check INOLES to confirm the filing requirement for the audit year(s)
Trust	May have filing requirement	Trustee must sign if signing on behalf of the trust and all beneficiaries. Individual beneficiaries may sign to bind themselves.	"John Doe, Trustee for DEF Trust (EIN:xxx), partner of MNO Partnership"	Form 56 should be secured only if the trustee is signing and will be binding others than themselves.
LLC	Disregarded entity	Sole owner	John Doe, (TIN), sole owner	Check filing requirement or operating agreement
LLC *	Has its own filing requirement	Manager under state law can sign. (LLC may be member-managed or manager-managed)	John Doe, Manager Important: The signatures should include all the middle-tiers, if applicable, to show the chain of authority to bind the LLC, under state law, as a partner.	Review LLC operating agreement, if manager is not a natural person then continue to review the agreements until a natural person can be found.
Partnership *	TEFRA	General partner authorized to bind the partnership under state law.	ABC Corporation, general partner of XYZ Partnership, by John Doe, CFO.	Review the partnership agreement to determine the general partner.

Exhibit 4.31.2-4 (Cont. 2) (04-20-2017)**Partner Signatures for TEFRA Settlement Agreements - Forms 870-PT/LT**

TEFRA Partner	Partner Entity	Who Signs F870 PT/LT	Format	Document to Verify
Partnership *	Non-TEFRA	General partner authorized to bind the partnership under state law.	John Doe, general partner of PQR Partnership	Review the partnership agreement to determine the general partner.
S Corporation *	S Corporation	Corporate officer empowered under state law to sign and bind the corp.	John Doe, CFO, ABC Corporation	Review the article of incorporation to confirm- current president, vice president, treasurer, assistance treasurer, chief financial officer, chief compliance officer, etc. See Rev Ruling 83-41 and Rev. Rul. 84-165.
Corporation (C Corp)	Sub corp. in a consolidated group (after June 28, 2002)	Currently authorized officer of subsidiary in the name of the subsidiary corporation, and also Currently authorized officer of parent in the name of the parent corporation with parent TIN	John Doe, CFO, ABC Corporation (1st line) Dave Doe, CFO, XYZ Corporation, parent of ABC Corporation, TIN (2nd line)	Review the article of incorporation to confirm, there may be different official signing on behalf of the sub and the parent.
Common Parent	Corporation	Currently authorized officer of common parent corporation of the consolidated group in the name of the common parent corporation with parent TIN	“John Doe, Vice President, ABC Company (EIN), as the common parent and agent for ABC Company and Subsidiaries, including XYZ Company (EIN), partner of MNO Partnership”	

Exhibit 4.31.2-4 (Cont. 3) (04-20-2017)**Partner Signatures for TEFRA Settlement Agreements - Forms 870-PT/LT**

TEFRA Partner	Partner Entity	Who Signs F870 PT/LT	Format	Document to Verify
Non-Notice Partners	TMP of TEFRA partnership under audit can bind the non-notice partners.	Non-notice partners will be bound by an agreement signed by the TMP that expressly states that it covers those partners unless: 1. the non-notice partners have filed a statement denying the TMP this authority, or 2. The non-notice partners have formed a 5-percent notice group. IRC 6224(c)(3)	“John Doe, Tax Matters Partner of MNO Partnership” “The undersigned tax matters partner is executing this agreement on behalf of himself and all other partners whom he has the authority to bind under IRC 6224(c)(3); the settlement agreement resulting from the co-execution of this agreement, on behalf of the Commissioner of Internal Revenue, will be binding on all such other partners”.	Confirm that no partner has filed a statement denying the TMP authority to bind. Refer to IRC 6224(c)(3) for 5-percent notice group exclusion.

Note: A partner who is also the TMP signs the agreement to accept their tax obligation resulting from the pass-through and not binding the partnership, therefore, you should not accept a signature ending with TMP of the TEFRA entity under audit (ABC Corporation is the TMP of TEFRA under audit): Incorrect format: John Doe, CFO, ABC Corporation, TMP of XYZ, LLC; Correct format: Joe Smith, CFO, ABC Corporation

* = Form 870-LT: An indirect partner is bound by an agreement signed by his pass-through partner (unless a statement is filed under IRC 6223(c)(3) of 1982 identifying the indirect partners); however, the pass-through partner (Form 1065, Form 1120S, Trust, etc.) cannot bind the indirect partners for the affected item, therefore, signature of a pass-through entity on the 2nd page on Form 870-LT will have no effect and it should be either left blank or signatures should be secured from the actual taxpayer where the affected item will be computed and assessed.

Any questions - mergers, acquisitions, name changes, entity changes, receivership situation or signing formats - call counsel or TSPC.

Exhibit 4.31.2-5 (06-20-2013)**Formats for TMP Signatures When Signing Extensions**

The version of the formats for TMP signatures when signing extensions provide examples for subsidiary corporation TMP (example 1) and for Partnership TMP with a Trust as it's TMP (example 2).

In example 1, the ABC Corp is the TMP of XYZ Partnership. Joe Smith is the CFO of ABC Corp. DEF Corp is the parent of ABC Corp, and Jon Doe is the CFO of DEF Corp. The signature should read as follows:
Recommended- ABC Corp, Tax Matters Partner of XYZ Partnership by Joe Smith, CFO. Acceptable, with Counsel review- DEF Corp, on behalf of ABC Corp subsidiary and DEF Consolidated Group, by Jon Doe, CFO.

In example 2, P/S B is the TMP for P/S A. Ocean Trust is the TMP for P/S B. Mr. Sandy is the Trustee for Ocean Trust. The Signature should read as follows: Ocean Trust, as Tax Matters Partner of Partnership B, As Tax Matters Partner of Partnership A, By Mr. Sandy, Trustee.