



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.46.5

NOVEMBER 28, 2023

EFFECTIVE DATE

(11-28-2023)

PURPOSE

- (1) This transmits revised IRM 4.46.5, LB&I Examination Process, Resolving the Examination.

SCOPE

- (1) Examinations vary in scope, size, and complexity; therefore, portions of this IRM may be more applicable to some cases than others.

MATERIAL CHANGES

- (1) Significant changes to the IRM are listed in the table below:

IRM Reference	Description of Change
4.46.5.4.2.4.4	Added information about uploading documents to IMS for paperless case files.
4.46.5.6	Modified procedures for adding IDRS indicator code for cases with closing agreements.
4.46.5.6.2	Added note for BBA cases with closing agreements to refer to IRM 4.31.9.10, Report Writing, and complete Form 15262, Bipartisan Budget Act (BBA) Partnership Procedures Check Sheet, parts 2 and 3.
4.46.5.7.1	Removed reference to obsolete letter. Added IRM references for TEFRA, ILSC and BBA examinations.
4.46.5.11	Inserted paragraph (4) adding requirement for High Income Initiative cases with project code 0795 to complete IMS feedback form.
4.46.5.11.2.2	Updated to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1222-0025, Updated Approval for Deviation for Electronic (Paperless) Case Closing to Technical Services. Added reminder about digital signatures. Updated mailing of closing letters when closing case to CCP. Added clarification that each employee and respective manager are responsible for reviewing documents uploaded in IMS for paperless case closures.

IRM Reference	Description of Change
4.46.5.11.2.3	Updated to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1122-0022, Removal of Exception to Paperless for LB&I Cases Closing to Ogden CCP. Moved sending the closing letter to Step 2.
4.46.5.11.2.4	Updated to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1122-0022, Removal of Exception to Paperless for LB&I Cases Closing to Ogden CCP. Moved Exception to Paperless Case Closing Procedures table contents from Exhibit 4.46.5-2 to this section.
4.46.5.11.2.5	Added new subsection to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1222-0025, Updated Approval for Deviation for Electronic (Paperless) Case Closing to Technical Services.
4.46.5.11.2.6	Updated to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1222-0025, Updated Approval for Deviation for Electronic (Paperless) Case Closing to Technical Services.
4.46.5.12	Changed pre-conference Appeals requests should be made on rebuttal to protest or separate document shared with the taxpayer if rebuttal is not prepared. Added reference to IRM 8.1.10, Ex Parte Communications to paragraph (3).
4.46.5.12.3	Added new subsection to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1121-0019, Requesting Participation in Appeals Conferences for Appeals Team Leader Cases.
4.46.5.12.3	Updated to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1222-0025, Updated Approval for Deviation for Electronic (Paperless) Case Closing to Technical Services.
4.46.5.13.1	Added paragraph (4) to update record handling procedures for cases returned from Appeals.

IRM Reference	Description of Change
4.46.5.13.2	Updated to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1222-0025, Updated Approval for Deviation for Electronic (Paperless) Case Closing to Technical Services.
Exhibit 4.46.5-2	Moved Exception to Paperless Case Closing Procedures to IRM 4.46.5.11.2.4. Added Table 2 to incorporate applicable content from Interim Guidance Memorandum LB&I-04-1222-0025, Updated Approval for Deviation for Electronic (Paperless) Case Closing to Technical Services.

- (2) Editorial corrections made throughout.
- (3) Updated hyperlinks and citations.

EFFECT ON OTHER DOCUMENTS

Incorporated the following Interim Guidance Memoranda:
LB&I-04-1121-0019, Requesting Participation in Appeals Conferences for Appeals Team Leader Cases, issued 11/8/21
LB&I-04-1122-0022, Removal of Exception to Paperless for LB&I Cases Closing to Ogden CCP, issued 11/16/22
LB&I-04-1222-0025, Updated Approval for Deviation for Electronic (Paperless) Case Closing to Technical Services, issued 12/7/22

IRM 4.46.5 dated May 22, 2022 is superseded.

AUDIENCE

All LB&I personnel

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4.46.5

Resolving the Examination

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4.46.5.1
(09-16-2021)
Program Scope and Objectives

- (1) The overall goal of the resolution phase of the examination process is to resolve all tax issues at the earliest appropriate point in the examination and at the lowest management level.
- (2) **Purpose:** This IRM section defines the resolution phase within the LB&I Examination Process (LEP), including roles and responsibilities, collaboration and communication.
- (3) **Audience:** All LB&I personnel
- (4) **Policy Owner:** Assistant Deputy Commissioner Compliance Integration (ADCCI)
- (5) **Program Owner:** The LB&I Policy Office within ADCCI.
- (6) **Primary Stakeholders:** LB&I executives, senior managers, front-line managers, examiners, program analysts and paraprofessional staff.

4.46.5.1.1
(12-13-2018)
Background

- (1) The implementation of the LB&I Examination Process as described in Pub 5125, LB&I Examination Process, changed the way LB&I conducts examinations. Examinations are divided into three phases: planning, execution and resolution. The resolution phase is discussed in this IRM.
- (2) This IRM revision is based on internal and external feedback.

4.46.5.1.2
(12-13-2018)
Authority

- (1) See IRM 4.46.1.1.2, Authority.
- (2) In addition to the authorities cited in IRM 4.46.1.1.2, the following IRC sections relate to dispute resolution:
 - IRC 7121, Closing agreements
 - IRC 7123, Appeals dispute resolution procedures
- (3) Rev. Proc. 2003-40 formally established the Fast Track Settlement program.

4.46.5.1.3
(12-13-2018)
Responsibilities

- (1) See IRM 4.46.1.1.3, Roles and Responsibilities.

4.46.5.1.4
(12-13-2018)
Program Management and Review

- (1) See IRM 4.46.1.1.4, Program Management and Review.

4.46.5.1.5
(12-13-2018)
Terms/Definitions/ Acronyms

- (1) Refer to IRM Exhibit 4.46.1-1, Glossary of LB&I Terms, in IRM 4.46.1, General Information and Definitions.

4.46.5.1.6
(09-16-2021)
Related Resources

- (1) The LB&I intranet sites <https://irsgov.sharepoint.com/sites/LBI/> and <https://irsgov.sharepoint.com/sites/ETD-KMT-KB051> are resources for learning more about the concepts and procedures in this section. You can review information by selecting topics in the LB&I Exam Procedures KB or type in key words in the “Search the Virtual Library” search box at the top of the page.

(2) Also see:

- a. IRM 4.10 series, Examination of Returns
- b. IRM 4.51.4, LB&I Case Management, LB&I/Appeals Fast Track Settlement (FTS) Program
- c. IRM 1.2.1, Servicewide Policies and Authorities, Servicewide Policy Statements

4.46.5.2
(12-13-2018)
Issue Resolution

- (1) The goal of the resolution phase is for the IRS and the taxpayer to reach an agreement on the tax treatment of each issue examined at the earliest appropriate point in the examination in a quality manner. The taxpayer and LB&I will benefit in terms of resource utilization and tax certainty when the parties have open and meaningful discussions of issues throughout the examination process. Early and frequent issue team discussions and presentation of all relevant facts are crucial for a complete understanding of the taxpayer's and the government's tax positions and their relative strengths and weaknesses.
- (2) The issue manager, in collaboration with the case manager, will lead the issue team in resolving issues utilizing appropriate issue resolution tools. Expedient issue resolution necessitates open communication, cooperation and collaboration among the issue team members and with the taxpayer. Issue exit strategies will be considered for recurring and carryover issues to provide certainty for the government and the taxpayer.
- (3) As each issue is developed, the taxpayer should be given an opportunity to agree or disagree with the findings. For an issue to be resolved, there must be an open discussion between the issue team and the taxpayer in these three areas: factual development, applicable tax law(s) and interpretation of the tax law(s).

4.46.5.2.1
(09-16-2021)
Factual Development

- (1) During the examination, the issue team will:
 - a. Identify all relevant facts relating to the issue.
 - b. Present the facts in a clear and effective manner.
 - c. Distinguish between facts and opinions. The facts do not include opinion, personal preferences, inferences, biases or prejudices.
 - d. Document the evidence relied upon to reach the factual conclusion of a given transaction in a clear and understandable manner.
- (2) It is the taxpayer's responsibility to ensure all relevant facts have been identified and presented to support the tax position taken on the return. It is imperative that the issue team discuss the facts gathered with the taxpayer to understand the taxpayer's position.
- (3) IRS Independent Office of Appeals (Appeals) usually must return the case to exam if new information is presented during the Appeals process. See IRM 8.7.11.6.3, Returning a Case to LB&I.
- (4) An acknowledgment of the facts (AOF) must be documented in the case file for all potential unagreed issue(s). Any disputed facts must be noted. The issue team should work collaboratively with the taxpayer to develop and reach a common understanding of the relevant facts. To ensure the effective application of the law, the facts and circumstances should be clear and accepted by both parties. (See IRM 4.46.4.11, Written Acknowledgement of the Facts (AOF), for the process of obtaining the acknowledgment of facts).

Reminder: The written AOF is not required for listed transactions and transactions of interest. .

4.46.5.2.2
(12-13-2018)
Application of the Law

- (1) The issue team will:
 - a. Apply the law to the facts and circumstances in a fair and impartial manner.
 - b. Conduct open and transparent discussions with the taxpayer to reach an understanding of each other's position when identifying the appropriate laws.
 - c. Consider the various legal authorities and other guidance to determine the merits of the issue.
 - d. Refer to IRM 4.10.7.2, Researching Tax Law, which provides common research resources.
 - e. Consider collaboration with subject matter experts or Division Counsel for assistance.

4.46.5.2.3
(12-13-2018)
Interpretation of the Law

- (1) The issue team must:
 - a. Apply judgment and experience in weighing the merits of the taxpayer's and the government's tax position, based on the applicable laws, when resolving issues.
 - b. Discuss the interpretation of the law, based on the facts and circumstances presented, to reach an understanding of the taxpayer's and government's position.
- (2) Refer to IRM 4.10.7, Examination of Returns, Issue Resolution.

4.46.5.3
(09-16-2021)
Resolution vs. Settlement

- (1) **Resolution:** LB&I managers have the broad authority to resolve issues based upon the application of the tax law to the facts and circumstances. Other issue resolution tools, as outlined in IRM 4.46.5.4, Issue Resolution Tools, should be used to resolve issues when appropriate.
- (2) **Settlement:** Appeals has the authority to settle cases based upon hazards of litigation. For example, in the event of litigation, there may be uncertainty as to how a court would interpret and apply the law or weigh the facts. Appeals utilizes techniques such as "mutual concession" and "split issue" settlements. Exam is not authorized to use these settlement techniques.

Note: In limited circumstances, Appeals settlement techniques may be applied at the examination level. See IRM 1.2.2.5.20 Delegation Order 4-24 (Rev. 1), Settlement Offers and Closing Agreements in LB&I Cases Where Appeals Has Effectuated a Settlement and IRM 1.2.2.5.21, Delegation Order 4-25 (Rev. 2), Settlement Offers, Closing Agreements, and Settlement Agreements under Section 6224(c) in Cases with Technical Advisor (TA) Program Issues and Appeals Technical Guidance Program (Compliance Coordinated and Appeals Coordinated) Issues.

- (3) **Federal Rule of Evidence 408 (Rule 408):** Rule 408 is a rule of evidence that might be invoked during litigation. In litigation, under Rule 408, a court might exclude information and documents regarding settlement discussions from evidence. During an examination, the cases are not in litigation. Rule 408 is not applicable during an examination. The policies behind the Rule 408 are

“the evidence [of compromise] is irrelevant, since the offer may be motivated by a desire for peace rather than from any concession of weakness of position[;]” and the “promotion of the public policy favoring the compromise and settlement of disputes.” Fed. Rule of Evid. 408, Advisory Committee Notes to the 1972 Proposed Rules.

- a. LB&I Examination is not a settlement function and it does not settle cases. The exam team makes its determination on the basis of all available facts. See IRM 4.10.7.3, Evaluating Evidence. At all stages of the examination, the exam team seeks to understand the taxpayer’s tax position through, for example, issue discussions and consideration of taxpayer arguments. See IRM 4.46.4.11.1, Hold Issue Discussions; IRM 4.46.4.13.2, Issue the NOPA; and IRM 4.46.4.13.3, Taxpayer’s Written Response to Unagreed Issues.
- b. Statements provided during an examination are considered part of the IRS’s administrative record regardless of whether the document is marked “Rule 408”/“For Settlement Purposes Only” or variations thereof. Any statements provided during an audit will be included in the administrative file, may be considered in making the exam team’s determination and in preparing the examiner’s Form 886-A, Explanation of Items, and are potential evidence.
- c. If a taxpayer provides advance notice that it plans to provide materials marked “Rule 408”/“For Settlement Purposes Only” or variations thereof, the IRS should inform the taxpayer (preferably in writing) that the IRS’s examination division is not a settlement function. The markings are inappropriate.
- d. If a taxpayer places Rule 408-type markings on responses to Information Document Requests (IDRs), the exam team may treat such documents as failing to comply with the IDRs.
- e. LB&I Examination has not been delegated authority to resolve matters in the context of a Rule 408 settlement negotiation. LB&I Examination may not enter into an agreement or memorandum of understanding (or any other form of agreement) that states information, documents, or other information is “protected” by Rule 408.

4.46.5.4
(12-13-2018)
Issue Resolution Tools

- (1) Consideration and utilization of issue resolution tools can start at the earliest appropriate point and continue until the case is closed from examination’s jurisdiction. Using appropriate issue resolution tools can potentially reduce examination time, save resources and lessen the burden on both parties. LB&I encourages the use of issue resolution strategies.

4.46.5.4.1
(03-09-2016)
**Taxpayer-Specific
Pre-Filing Resolution
Tools**

- (1) Taxpayer-specific pre-filing resolution tools include: Pre-Filing Agreements (PFA), Advance Pricing Agreements (APA), Compliance Assurance Process (CAP) and Private Letter Rulings.

4.46.5.4.1.1
(12-13-2018)
Pre-Filing Agreements

- (1) Pre-Filing Agreements (PFAs) permit a taxpayer to request the examination of specific issues relating to a tax return before the return is timely filed. The purpose is to resolve issues involving factual questions applying well-settled principles of law. A PFA can often resolve such issues more effectively and efficiently. A PFA also provides the taxpayer with a greater level of certainty regarding the examined issue at an earlier point in time than a post-filing ex-

amination. The PFA request is subject to a user fee. For more information see IRM 4.30.1, Pre-Filing Agreement Program, and Rev. Proc. 2016-30 or its successor.

4.46.5.4.1.2
(12-13-2018)
**Advance Pricing
Agreements (APA)**

- (1) Advance Pricing Agreements (APAs) provide a process for determining the proper treatment of transfer pricing issues prior to the filing of returns. In some circumstances, the transfer pricing methodology agreed to in the APA process may also be used to resolve issues present on filed returns currently under examination. For more information see Rev. Proc. 2015-41 or its successor and IRM 4.60.3, Tax Treaty Related Matters. See [https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/](https://irs.gov/sharepoint.com/sites/ETD-KMT-KB051/) for guidance regarding the period of limitations for assessment of tax and case procedures for APA cases.

4.46.5.4.1.3
(12-13-2018)
**Compliance Assurance
Process (CAP)**

- (1) Compliance Assurance Process (CAP) is a method of identifying and resolving tax issues through open, cooperative and transparent interaction between the IRS and LB&I taxpayers prior to the filing of a return. Through the CAP program, the taxpayer should achieve tax certainty sooner and with less administrative burden than through conventional examinations. CAP is a voluntary program for taxpayers. Taxpayers must apply and be accepted into CAP. For more information see IRM 4.51.8, Compliance Assurance Process (CAP) Examinations.

4.46.5.4.1.4
(09-16-2021)
**Private Letter Rulings
and Determination
Letters**

- (1) A private letter ruling is a written determination issued to a taxpayer by an Associate Chief Counsel office in response to a taxpayer's written inquiry submitted prior to the filing of returns or reports that are required by the tax laws, about its status for tax purposes or the tax effects of its acts or transactions. A written ruling is subject to a user fee. The identical issue cannot be on an earlier return that is under examination, in Appeals or in litigation.
- (2) A determination letter is a written determination issued by a Director that applies the principles and precedents previously announced by the IRS to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in a statute, a tax treaty, the regulations, a conclusion in a revenue ruling, or an opinion or court decision that represents the position of the IRS. A determination letter cannot be used to address any unclear issue or facts and LB&I has rejected determination letter requests for that reason.
- (3) For more information see IRM 4.2.3.2, Taxpayer's Request for Determination Letters or Rev. Proc. 2023-1 or the first revenue procedure of the current year for up-to-date guidance.

4.46.5.4.2
(12-13-2018)
**Taxpayer-Specific
Post-Filing Issue
Resolution Tools**

- (1) Taxpayer-specific issue resolution tools include: Technical Advice Memorandums, Delegation Orders, Accelerated Issue Resolution, Early Referral to Appeals and Fast Track Settlement. Once a case is under Appeals' jurisdiction the Rapid Appeals Process is available. The examination team will participate when invited.

4.46.5.4.2.1
(12-13-2018)

**Technical Advice
Memorandums**

- (1) Technical Advice Memorandums (TAMs) are written statements issued by National Office Chief Counsel on technical or procedural questions on the proper application of tax law, treaties, regulations, etc. on a specific set of facts. TAMs are requested by and issued to IRS field offices. Taxpayers under examination may request that the examiner refer an issue to Chief Counsel for technical advice, but the examiner is not obligated to make the referral. See Rev. Proc. 2023-2 or the second revenue procedure of the current year.
- (2) Taxpayers will be afforded an opportunity to participate in the technical advice process. Taxpayer participation is preferred but not required in order to process a TAM.

4.46.5.4.2.2
(09-16-2021)

Delegation Orders

- (1) Case managers will look to applicable delegation orders for potential issue resolution tools. See Delegation Order 4-24 (Rev. 1) in IRM 1.2.2.5.20 and Delegation Order 4-25 (Rev. 2) in IRM 1.2.2.5.21.
- (2) Division Counsel will be included in all aspects of resolution discussions that involve the use of delegation orders.

4.46.5.4.2.3
(09-16-2021)

**Settlement Offers and
Closing Agreements
Where Appeals has
Effectuated a Settlement**

- (1) LB&I managers have the authority to accept settlement offers on any issue in a Large Business and International (LB&I) case under their jurisdiction where a settlement (including a hazards settlement) has been effected by Appeals in a previous, subsequent or the same tax period (the settled period) with respect to the same issue of the same taxpayer, or of another taxpayer who was directly involved in the transaction or taxable event.
- (2) No settlement will be made unless all the following factors are present in the tax year currently under Examination jurisdiction:
 - a. The facts surrounding a transaction or taxable event in the tax period under examination are substantially the same as the facts in the settled period;
 - b. The legal authority relating to such issue must have remained unchanged;
 - c. The underlying issue must have been settled by Appeals independently of other issues (e.g. no trading of issues) in the settled tax period; and
 - d. The issue must have been settled in Appeals with respect to the same taxpayer (including consolidated and unconsolidated subsidiaries) or another taxpayer who was directly involved in the transaction or taxable event in the settled period.
- (3) The above criteria apply to taxpayers "directly involved" in the transaction. Illustrations of a taxpayer "directly involved" in the transaction are as follows:
 - a. Taxpayers A and B are directly involved in the same transaction or taxable event in tax period 20xx where A and B would logically receive similar tax treatment. Taxpayer A's treatment of the transaction is adjusted by Examination and settled in Appeals. The adjustment involves the same legal issue with respect to Taxpayer B. Examination may resolve Taxpayer B's case in a manner consistent with the Appeals settlement of Taxpayer A.
 - b. Taxpayers A and B are directly involved in the same transaction or taxable event in tax period 20xx where A and B would logically receive similar tax treatment. Taxpayer A's treatment of the transaction is adjusted by Examination and settled by Appeals. In addition, Taxpayer A

or B (or both) is directly involved in a separate but similar transaction or taxable event in the same, prior, or subsequent tax period involving the same legal issue as above. Such issue for Taxpayers A or B only may also be settled in a consistent manner provided it involves substantially the same facts.

- (4) Refer to IRM 1.2.2.5.20, Delegation Order 4-24 (Rev. 1), Settlement Offers and Closing Agreements in LB&I Cases Where Appeals Has Effectuated a Settlement.

4.46.5.4.2.4
(12-13-2018)
**Accelerated Issue
Resolution (AIR)**

- (1) Accelerated Issue Resolution (AIR) is an examination process to apply the resolution of the same or similar issues arising from an examination of certain LB&I taxpayers from one or more tax periods to other tax periods.
- (2) Issue teams must refer to Rev. Proc. 94-67 and Rev. Proc. 68-16 when considering the use of AIR procedures.
 - a. AIR does not include settlement authority for managers.
 - b. AIR does not alter in any way the authority case managers have to resolve issues.
 - c. Counsel assistance is mandatory when using AIR.
 - d. An AIR agreement is generally limited in scope to issues on filed returns arising from an audit of specific taxpayers under the jurisdiction of the Director of Field Operations. Certain issues are excluded or require additional approvals. See Rev. Proc. 94-67, SECTION 3, SCOPE OF AN AIR AGREEMENT.

Note: For non-filed years, a taxpayer must request a Pre-Filing Agreement (PFA).

4.46.5.4.2.4.1
(12-13-2018)
Executing an Agreement

- (1) The AIR process uses either a Closing Agreement, Form 906, or standard partial and/or full agreed deficiency procedures. See IRM 8.13.1, Closing Agreements, or Quick/Prompt and Partial Assessments, at Closing Agreements Knowledge Base for procedures located here: <https://irs.gov/sharepoint.com/sites/ETD-KMT-KB051/>
- (2) Delegation Order 8-3 (formerly DO-97, Rev. 34), Closing Agreements Concerning Internal Revenue Tax Liability, delegates authority for closing agreements concerning internal revenue tax liability in cases under examination jurisdiction (but excludes cases docketed before the United States Tax Court). See IRM 1.2.2.9.3.
- (3) A closing agreement can cover the entire tax liability for a year(s), or be limited to a specific tax item.

4.46.5.4.2.4.2
(12-13-2018)
Case Control

- (1) Although the AIR process does not constitute a formal examination of the taxpayer's books and records, examiners will follow normal procedures for the control of tax periods on the Audit Information Management System (AIMS).
- (2) The AIR process will be limited in examinations where it is not practical to include subsequently filed tax return years as part of the current examination cycle.
- (3) If the AIR process includes subsequently-filed years, the case manager will:

- a. Establish sufficient controls to ensure that needed follow-up actions are taken with respect to all the terms of closing agreements affecting or relating to tax liability for later unexamined (or future) periods or related entities.
 - b. Consider using Information Report procedures.
 - c. Take whatever action is needed to facilitate follow-up.
- (4) AIR does not affect Policy Statement 4-5 for subsequent years included in the AIR agreement but not examined. (See Policy Statement 4-5 at IRM 1.2.1.5.3, Restrictions on Examiners' and Specialists' Consecutive Survey or Examination Responsibilities.)

4.46.5.4.2.4.3
(12-13-2018)
Payments

- (1) When closing agreements are executed the examiner will attempt to secure and process payments for both examined and non-examined years.
- (2) Submit payments and Form 3244-A, Payment Posting Voucher, with Form 3210, Document Transmittal, to the designated Submission Processing Center. See <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/> for instructions for remittance processing for LB&I cases.
- (3) Record the amount under TC 640, Advance Payment on Deficiency. The TC 640 will freeze the refund.
- (4) The examiner is responsible for monitoring the posting of the TC 640 payment to verify the full amount was paid.

4.46.5.4.2.4.4
(11-28-2023)
Returns and Files

- (1) An executed original of the closing agreement will be mailed to the taxpayer (or to the representative) with Letter 1595-E, Exam Executed Closing Agreement Transmittal Letter.
- (2) Examiners are to place a copy of the following documents in the administrative case file, or upload electronically in IMS for paperless cases:
 - a. Letter 1595-E, inside the case folder on the top right side
 - b. Form 3244-A and a copy of the check on front of the return or BRTVUE
 - c. Form 906, back of return or BRTVUE (face in)
 - d. Transcripts with the TC 640 posting (if applicable), back of return or BRTVUE (face out)

4.46.5.4.2.5
(12-13-2018)
Early Referral to Appeals

- (1) Early Referral to Appeals is a process to resolve cases more expeditiously through LB&I and Appeals working simultaneously. Appeals can consider a fully developed unagreed issue while exam is developing other issues. This process is optional and may be requested by the taxpayer. An early referral may be requested on one or more unagreed issues.
- (2) Rev. Proc. 99-28, 1999-2 C.B. 109, sets forth the procedures to request early referral. More information can be found at IRM 8.26.4, Early Referral Procedures, or on the Appeals web site at <https://portal.ds.irsnet.gov/sites/ap/Pages/COS/PPQA/Exam/Early-Referral.aspx>.

4.46.5.4.2.6
(12-13-2018)
**Fast Track Settlement
(FTS)**

- (1) **FTS must be considered for all unagreed issues.** The program is not right for every situation, but when properly applied, it can save significant time and administrative burden for the IRS and the taxpayer. Issues must be fully developed prior to consideration of FTS. IRM 4.51.4.3(2) states “fully developed” will generally be indicated by:
 - a. The issuance of a Notice of Proposed Adjustment (Form 5701) to the taxpayer, clearly setting out the government’s determination and the legal and factual basis upon which it is made, and
 - b. A written response from the taxpayer clearly stating its position and the basis for disagreement.
- (2) FTS is a collaborative effort where the taxpayer, the LB&I issue team and Appeals agree to participate and work toward a mutual resolution based upon an agreed set of facts.

Note: All examiners must provide Pub 4539, Fast Track Settlement brochure to the taxpayer at the opening interview and discuss the program with the taxpayer.

- (3) FTS is designed to utilize the mediation skills and designated settlement authority of Appeals to resolve issues while the case is still within examination’s jurisdiction.
- (4) Appeals acts as a facilitator to arrive at and execute a resolution/settlement that is mutually agreed upon by both the taxpayer and the LB&I issue team. When a resolution cannot be reached through mediation, Appeals may propose a resolution, but such proposal cannot be imposed on either party.
- (5) The rules regarding ex parte communications do not apply to communications arising in the FTS process, because Appeals personnel are not acting in their traditional settlement role. Information disclosed by the taxpayer to LB&I during the FTS session can be used by LB&I to complete the examination report.
- (6) Documentation that fast track settlement was considered will be recorded in the case file.
- (7) Rev. Proc. 2003-40, 2003-1 C.B. 1044, sets forth the procedures for requesting FTS. More information can be found in IRM 8.26.1, Fast Track Settlement for Large Business and International (LB&I) Taxpayers, IRM 4.51.4, LB&I/ Appeals Fast Track Settlement Program (FTS), and on the Appeals web site at <https://portal.ds.irsnet.gov/sites/ap/Pages/COS/PPQA/Exam/Fasttrack.aspx>.

4.46.5.4.2.7
(12-13-2018)
Rapid Appeals Process

- (1) For information about the rapid appeals process refer to IRM 8.26.11, Alternative Dispute Resolution (ADR) Program, Rapid Appeals Process (RAP).

4.46.5.4.3
(03-09-2016)
**Generic Issue
Resolution Tools**

- (1) Generic issue resolution tools include: Industry Issue Resolution (IIR), LB&I Administrative Guidance and LB&I Published Guidance Recommendations.

- 4.46.5.4.3.1
(12-13-2018)
Industry Issue Resolution (IIR)
- (1) Industry Issue Resolution (IIR) is a process that involves frequently disputed/ burdensome business tax issues common to a significant number of taxpayers. The focus is on resolving issues arising in future years. The process will likely result in the issuance of published guidance in the form of a revenue procedure or revenue ruling. A request for guidance can be submitted at any time. For more information see IRM 7.40.1, Industry Issue Resolution (IIR) Program.
- 4.46.5.4.3.2
(12-13-2018)
LB&I Administrative Guidance
- (1) LB&I administrative guidance provides operational instructions for planning and conducting examinations in areas of unsettled law. See IRM 4.51.2, LB&I Administrative Guidance, for more information.
- 4.46.5.4.3.3
(12-13-2018)
LB&I Published Guidance Recommendations
- (1) LB&I Published Guidance Recommendations focus on both resolving issues arising in future years and under current examination. Issue recommendations are submitted through LB&I Counsel for inclusion in the Priority Guidance Plan (PGP). The PGP sets forth guidance that the IRS intends to issue from July 1 through June 30 of the following year. See <https://www.irs.gov/privacy-disclosure/priority-guidance-plan> for more information.
- 4.46.5.5
(09-16-2021)
Management Involvement in the Issue Resolution Process
- (1) The issue manager is responsible for resolving the issue at the earliest point using an appropriate resolution tool.
- (2) The issue manager will collaborate with the case manager when resolving the issue with the taxpayer and keep the issue team apprised of the status of the issue resolution.
- (3) Any differences among managers regarding the resolution of the issue will be elevated to their respective managers.
- (4) The issue manager must verify an acknowledgment of facts (AOF) IDR is issued prior to issuance of a Form 5701, Notice of Proposed Adjustment (NOPA) for all potential unagreed issues.
- (5) The issue manager must review the taxpayer's response to the AOF and assess the strengths and weaknesses of each side's position to ascertain if the issue can be resolved at the examination level. The case file must document the issue manager's review of the AOF.
- (6) The issue manager must review, approve and sign the NOPA before issuance to the taxpayer. The case file must document all meaningful efforts by both the issue manager and the case manager to resolve issues.
- (7) The NOPA will be shared and discussed with the taxpayer upon issuance. A management conference will be held as needed.
- (8) The issue manager will engage in a collaborative discussion with the taxpayer when a timely response to the NOPAs has not been received.
- (9) The taxpayer has the option to agree or disagree with the NOPA presented. If agreement is reached, request the taxpayer to approve and sign the Form 5701.

Note: The status and taxpayer's position must be updated in IMS.

- (10) If taxpayer does not agree with the NOPA as presented, the issue manager will:
 - a. Determine which aspects of the issue may be agreed and which aspects are unagreed.
 - b. Determine the strengths and weaknesses of each side's tax positions.
 - c. Use issue resolution tools to assist in the resolution of the unagreed issue.
 - d. Consider Fast Track as an issue resolution tool.
 - e. Begin unagreed procedures, if an agreement cannot be reached.
 - f. Support the Appeals pre-conference process where appropriate.
- (11) The issue manager is responsible for timely review and approval of the LB&I issue team's rebuttal to the taxpayer's protest to ensure that all arguments raised in the protest are fully addressed.

4.46.5.6
(11-28-2023)
Closing Agreements

- (1) Treas. Reg. 301.7121-1(a) provides that a closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of an agreement.
- (2) IRM 8.13.1, Closing Agreements, provides instructions and prescribes procedures for IRS personnel handling closing agreements entered under IRC 7121.
- (3) IRM 8.13.1 contains a number of examples of closing agreements. The LB&I issue team should be able to effectively prepare a customized closing agreement based on the particular fact pattern unique to the issue(s) being resolved. Division Counsel will review the closing agreement and ensure its legal sufficiency prior to entering into the closing agreement.
- (4) The Director, Treaty and Transfer Pricing Operations must provide concurrence on cases where U.S. competent authority assistance has been requested, or is intended to be requested, under Rev. Proc. 2015-40 or its successor, and on closing agreements that provide relief under Rev. Proc. 99-32 or its successor for issues involving allocations of income under IRC 482.
- (5) The IDRS indicator code should be input for cases with closing agreements. Prepare Form 3177, Notice of Action for Entry on Master File. Input TC 971 to the left "Other" on form (under TRC column) and input AC 256, agreement date and issue covered by closing agreement to the right of "Other" on form for each tax period covered by the closing agreement. When closing the case, check the Form 3177 box on Form 3198, Special Handling Notice for Examination Case Processing, and email Forms 3177 and 3198 to **CCP Ogden* for paper closures. For electronic closures, refer to Exhibit 4.46.5-2 for type of closure and include Form 3198 and Form 3177 in documents uploaded to Form 15292 and email to **SBSE Ogden CCP Paperless Examine Cases Only*

4.46.5.6.1
(09-16-2021)
**Closing Agreement -
Joint Committee
Aspects**

- (1) The examination issue team, with Division Counsel's assistance, is responsible for preparing the closing agreement. However, closing agreements involving any Joint Committee jurisdictional years must not be signed by or on behalf of the IRS until the examination team is notified by the Joint Committee Specialist that the Joint Committee on Taxation's (JCT) views have been received and considered. IRM 4.36.3.6.4.1, Closing Agreements, provides guidance for re-

questing Joint Committee review of closing agreements. These procedures should also be referred to where issues are resolved early in the examination process, such as through Fast Track Settlement or Early Referral to Appeals.

- (2) Closing agreements on Joint Committee cases, including those based on Competent Authority determinations, must not be executed on behalf of the Government until reviewed and cleared by the JCT. See IRM 4.36.3.6.4.2, Competent Authority.
- (3) If a resolution is reached on an issue near the completion of the LB&I examination, the closing agreement must be submitted with the revenue agent's report (RAR) to Joint Committee Review for preparation of the Joint Committee Report.
- (4) If a resolution is reached on an issue near the beginning of the LB&I examination, there could be substantial delay in executing the closing agreement if the closing agreement is not reviewed by JCT until the examination is completed. In this situation:
 - a. The examination team may request an advanced review of the closing agreement by the JCT prior to case closing.
 - b. Assuming JCT raises no objection, the closing agreement may then be executed by or on behalf of the IRS. See IRM 4.36.3.6.4.1(2) for further guidance in situations where an issue is resolved early in the examination; such as, through Fast Track Settlement or Early Referral to Appeals.

4.46.5.6.2
(11-28-2023)
**Closing Agreements -
TEFRA/Bipartisan
Budget Act (BBA)
Partnership
Considerations**

- (1) Due to the complexities in attempting to resolve TEFRA/BBA partnership issues and the technical administrative procedural requirements involved, closing agreements for partnership issues subject to TEFRA/BBA audit rules must be thoroughly vetted through senior management and Division Counsel.

Note: Prior to closing all BBA cases, refer to IRM 4.31.9.10, Report Writing, and complete Form 15262 Bipartisan Budget Act (BBA) Partnership Procedures Check Sheet, Parts 2 and 3.

4.46.5.7
(09-16-2021)
**Completing the
Examination**

- (1) In the issue-based approach teams and/or members within a team may complete their role at different points in the issue/case timeline. Upon the completion of any examiner's assignment, that team member will:
 - a. Discuss the issue with the issue manager and case manager to obtain concurrence of issue completion.
 - b. Discuss any pending proposed issues with the issue team depending upon the communications agreement and instructions to issue team members established during planning.
 - c. Complete their portion of the examination report and upload all documents and workpapers in IMS for virtual case closures.

4.46.5.7.1
(11-28-2023)
**Types of Examination
Reports Based on
Agreement**

- (1) Refer to IRM 4.10.8, Report Writing, for guidelines for the preparation of audit reports and IRM 4.46.6, Workpapers and Reports Resources, for LB&I workpaper and report guidelines. See also Types of Reports Overview in Exam Procedures Knowledge Base at: <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/>. The following are the different types of reports that are issued to close a case from Examination:

- a. **No-change report** - See IRM 4.46.6.4.1, No-Change Examination (Disposal Code 02) Procedures.
- b. **No-change Report with Adjustments Impacting Other Tax Year(s) Filed** - Report is issued if the adjustment results in no-change to the current year's tax, yet they affect other tax years that are not under examination.
- c. **Agreed Report** - This report is issued when the taxpayer agrees with all the issues. Letter 4121-L, LB&I Expected Agreed Examination Report Transmittal, will be issued with the agreed report for 1120 and 1040 examinations. Letter 921, Report Transmittal for ILSC Partnership, Fiduciary and S Corporation is used for agreed reports for ILSC partnership and S Corporation examinations. Refer to f) for links for ILSC, TEFRA and BBA examinations.
- d. **Unagreed Report** - The report contains unagreed issues the taxpayer has taken exception to in the issue team's findings. Prepare unagreed report and if sufficient time remains on the statute issue Letter 950-Z, 30-day letter - Straight Deficiency. When fewer than 240 days remain on the statute of limitations, the examiner should issue an agreed examination report and prepare Letter 5153, Examination Report Transmittal, to transmit the report and notify the taxpayer additional time is needed on the statute of limitations for Appeals to consider their case if it is unagreed. Allow taxpayer 10 days to respond to Letter 5153. Examiners sign Letter 5153, which is not a 30-day letter. If a consent is solicited and not received to enable the issuance of a 30-day letter, a statutory notice of deficiency may need to be issued. See IRM 4.10.8.12, Unagreed Case Procedures.
- e. **Partially-Agreed Report** - This report is issued when the taxpayer agrees to some, but not all issues. In this instance, the exam team will prepare two reports, one for the agreed portion and the other will reflect the unagreed issues. The partial agreement must be processed prior to the issuance of the 30-day letter. See IRM 4.10.8.6, Partially Agreed Cases.
- f. Refer to IRM 4.31.2, TEFRA Examinations - Field Office Procedures, and IRM 4.31.5, Investor Level Statute Control (ILSC) Examinations - Field Office Procedures, for procedures in working a TEFRA or an ILSC key case and related investors. See IRM 4.31.9, Centralized Partnership Audit Regime (BBA) Field Examination Procedures, for procedures when working BBA cases.

4.46.5.7.2
(09-16-2021)

**Key Points to Consider
and Verify in Preparing
an Unagreed Issue
Report**

(1) **Report Clarity and Logic - review to ensure the following:**

- a. The report is clear, concise and presented in a logical order.
- b. The issue statement is straightforward and easy to read.
- c. All relevant factual information is clearly documented in the examiner's report.
- d. The facts and law sections contain no analysis.
- e. The analysis section provides arguments which are thorough and understandable and assert a logical conclusion based upon the facts and law.
- f. Attach schedules, exhibits, specialist or outside expert reports, and other supplemental information that are essential for Appeals' determination.
- g. See <https://www.plainlanguage.gov/guidelines/> for more information about using plain language.

(2) **Report Elements - review to ensure the following:**

- a. The unagreed report provides the issue statement, adjustment table, facts (including AOF response), law, taxpayer's position, government's argument and conclusion.
- b. The report clearly presents the issue(s), the proposed adjustment amount(s) and the reasons for the adjustment(s).
- c. The Form 886-A includes a statement in the beginning of the Facts section indicating the taxpayer's response to the AOF IDR is appropriately addressed and documented. When there are disputed facts, the NOPA should clearly distinguish the government's and the taxpayer's factual positions. See IRM 4.46.4.11.4(2).
- d. The IRS's position is adequately substantiated based on the tax law.
- e. The pertinent legal arguments and current legal citations are included.
- f. For issues containing alternative positions see IRM 4.10.8.12.5.1, Reports for Cases with Alternative Positions.
- g. The report addresses the taxpayer's position objectively.
- h. Rebuttal of the taxpayer's position should be included in the IRS's position section of the report. The report rebuts the taxpayer's position(s) within the IRS's position section.

Caution: Appeals may return the case to LB&I if new information is presented to Appeals. See IRM 8.7.11.6.3. The process of securing the AOF from the taxpayer must be documented in the case file. See IRM 4.46.4.11 for documentation for AOF.

- (3) **Statute of Limitations:** Before a 30-day letter is issued there must be sufficient time remaining on the statute to allow the taxpayer to respond, the protest to be addressed and sufficient processing time to ensure that the statute will have at least 365 days remaining when the case is received in Appeals. See IRM 25.6.23.7.1, Minimum Time Remaining on ASER.

Caution: Because of the extra processing time needed for TEFRA procedures, Technical Services requires at least 600 days on the assessment statute for unagreed TEFRA key entity cases going to Appeals. The 600 days includes the 365-day Appeals requirement. See Form 13813, TEFRA Partnership Procedures Check Sheet and IRM 4.31.2.3.13 , Unagreed Key Case.

Caution: Technical Services requires at least 18 months on the assessment statute for unagreed BBA cases going to Appeals. The 18 month time frame includes the 365-day Appeals requirement. See IRM 4.31.9.8.4, Statute of Limitations (SOL) on Making Adjustments and Form 15271, Bipartisan Budget Act (BBA) Partnership Adjustment Statute Extension Check Sheet, for more information.

- (4) The case manager has responsibility for the preparation and delivery of the 30-day letter to the taxpayer. See IRM 4.10.8.12.1, 30-Day Letters, for guidance on the required form letters. The 30-day letters will be expeditiously prepared and mailed in accordance with existing procedures. The case will be included in the 30-day letter suspense files at the group level and updated timely to status 13 on ERCS after the mailing of the 30-day letter to the taxpayer.
- (5) The case manager will monitor cases in status 13 to ensure timely closure of cases to Appeals. Large Corporate Compliance (LCC) cases often have complex issues with a lengthy protest that must be fully addressed. LCC cases

should close to Appeals within 240 days of the issuance of the 30-day letter. For all other workstreams, the case should be closed to Appeals within 120 days from the issuance of the 30-day letter.

- (6) The taxpayer may request an extension of time in which to file a protest. Before an extension is granted, the examination team must determine if a statute extension should be solicited to ensure adequate time to address the protest and still meet the remaining time on the statute requirements set by Appeals. The case manager, in collaboration with the issue manager(s), may approve the request based on the facts and circumstances in each case. Letter 686 may be used for this purpose.
- (7) **Taxpayer's Protest:** See IRM 4.10.8.12.9, Response to 30-Day Letter, for the procedures to follow in reviewing a taxpayer's response to the 30-day letter.
- (8) **Rebuttal to the Taxpayer's Protest** – review to ensure the following:
 - a. The issue team prepares a timely rebuttal on the unagreed issue.
 - b. The rebuttal addresses/resolves factual differences between the protest and audit report.
 - c. The rebuttal addresses any new arguments or legal positions presented by the taxpayer.
 - d. The rebuttal contains the same clarity and logic as stated in paragraph (1) above.
- (9) **TEFRA/BBA:**
 - a. If the unagreed case is TEFRA, see IRM 25.6.23.7.1, Minimum Time Remaining on ASER.
 - b. If the case is a key TEFRA/BBA case, ensure the PCS linkage requirements for investors have been completed. See IRM 4.31.2.3.9.2, Linking the Key Case on the PCS for TEFRA cases and IRM 4.31.9.6.4, BBA Linkage Procedures.
- (10) **Other Issues:**
 - a. Ensure claims and other affirmative issues are addressed. See IRM 4.10.8.8, Claims for Abatement, Audit Reconsiderations, and Supplemental Reports.
 - b. If the case falls under the jurisdiction of the Joint Committee, ensure the requirements for "minimum refund" have been properly considered. See IRM 4.36.3.7.1, Cases with Unagreed Issues - Minimum Refund.

4.46.5.7.3
(12-13-2018)

30-Day Letter Follow-up

- (1) If resolution of the issue(s) is reached and the case is now agreed, payment will be solicited and the case will be processed as agreed.
- (2) If the issue(s) on the case remain unagreed, the taxpayer will submit a timely protest letter. The following actions will be completed timely by the examination team when a protest is received from the taxpayer:
 - a. Thoroughly review the taxpayer's protest and address each of the arguments presented in the protest. Also, address all new facts and legal references the taxpayer puts forth.
 - b. The adequacy of the protest and its compatibility with the examiner's report must be considered. All discrepancies and factual differences should be reconciled and resolved before the case is transmitted to

Appeals. Appeals may return the case or consult LB&I Examination on an issue. See IRM 8.7.11.6.3, Returning a Case to LB&I, for explanation of those situations.

- c. Additional facts may arise during the protest process and/or new information, issues or legal arguments may be presented. If the information received after issuance of the 30-day letter changes the proposed tax, new Forms 5701 and 886-A should be issued and the team coordinator will issue a revised report with assistance from the TCS.
 - d. Where new information received in the protest delays the case closing, the issue manager and the case manager will discuss the ECD and statute considerations with the taxpayer.
- (3) The LB&I issue team(s) will prepare a timely rebuttal to the protest. The rebuttal is not intended to restate positions taken in the RAR. The protest may include new information not previously introduced. The new information will be appropriately considered to ensure complete development prior to Appeals consideration. Division Counsel and subject matter experts are available to assist in analyzing and responding to new information or issues raised in the protest. The rebuttal must fully address all the taxpayer's arguments and positions.
 - (4) The LB&I issue team(s) will share the rebuttal with the taxpayer prior to forwarding the case to Technical Services. Such information could help in resolving the case. A copy of the rebuttal will also be included in the administrative file with the protest.
 - (5) In closing the case to Appeals, the examination team must note in the Form 4665, Report Transmittal, that the Form 886-A and the rebuttal fully address the taxpayer's arguments and includes the examination team's response to each argument. The examination team must also indicate in the Form 4665 where the AOF documentation is located in the case file. Keep in mind that a copy of the Transmittal Letter must be shared with the taxpayer if it includes statements or comments intended to influence Appeals' decision-making process. See Rev. Proc. 2012-18 Section 2.03(4).
 - (6) If a protest is not received, a Statutory Notice of Deficiency (90-day letter) will be timely issued. Refer to IRM 4.10.8.12.10, No Response to 30-Day Letter. See IRM 4.46.5.11.2.5, General Procedures for Paperless Case Closing to Technical Services, for procedures to close cases to Technical Services electronically.

4.46.5.7.4 (05-02-2022)

Forwarding for Appeals Action

- (1) The case manager will simultaneously forward the entire group of related entities in the case to Appeals. Also see paragraph (4) of IRM 4.31.5.12.2.4, When to Link the ILSC Key Case on PCS.
- (2) The Appeals office serving the taxpayer is responsible for consolidating all cases in the group. Appeals may request the following from the examination team:
 - a. Background information
 - b. The part of the examination plan which contains a brief history of the taxpayer
 - c. Information on how workpapers are organized
 - d. A concise synopsis of the overall case

- (3) Refer to IRM 4.46.5.11.2.5 and IRM 4.46.5.11.2.5 for electronic closing procedures to Appeals through Technical Services.
- 4.46.5.7.5
(12-13-2018)
Appeals Acceptance Procedures
- (1) The team coordinator and case manager must be aware of circumstances in which Appeals will not accept a case from LB&I. Refer to IRM 8.2.1.5, Returning a Case to Examination - ATE, for list of possible circumstances.
- 4.46.5.8
(09-16-2021)
Special Procedures for Cases with 965 Transition Tax
- (1) IRC 965 requires certain U.S. persons to pay a transition tax on the untaxed foreign earnings of specified foreign corporations. The IRC 965 transition tax generally impacts tax years 2017 and 2018. To ensure the proper processing of cases with 965 transition tax features, examiners must follow the procedures below when closing a case with 965 features.
- 4.46.5.8.1
(09-16-2021)
IRC 965 Cases - Form 4549 and Form 4549-A
- (1) Examiner must request a current transcript, BMFOLT, BMFOLM (for 965(h) elections), IMFOLT, IMFOLM, INTSTD, TXMODA to reconcile return.
- (2) Exam adjustments that deny/conclude that a taxpayer's elections, such as 965(h) or 965(i), are invalid will cause those tax balances to become currently due and must be addressed in a NOPA and noted on the RAR in order to ensure CCP can identify the change.
- (3) Application of Payments for Exam Deficiencies - Special Treatment of IRC 965(h) Balances - When closing an exam, the examiner must review how payments/balances in the module were applied to the portion of income tax related to IRC 965 and to the portion unrelated to IRC 965. The status of the payments on the module will determine how a deficiency payment should be solicited, how the payment will be applied and the updated transaction codes to be included with case closing.
- (4) Refer to Job Aid <https://irs.gov.sharepoint.com/:w:/r/sites/ETD-KMT-KB008/> for further details and examples.
- 4.46.5.8.2
(09-16-2021)
Payments Made During an Exam with IRC 965 Features
- (1) If an exam results in a change to the deferral amount under IRC 965(h), the examiner must prepare a separate NOPA to show the total adjustment to the IRC 965(h) net tax liability and the impact on future installments (sometimes referred to as the deferral amount). Examiner must manually compute them and attach to the NOPA.
- (2) Audit adjustments changing the deferral amount under IRC 965(h) require a re-computation of the IRC 965(h) installment amounts. The revised deferral amount under IRC 965(h) will generally be spread over the 8-year installment period and underpayments of past due installments are due currently, along with any changes to the non-IRC 965 tax at the time of the RAR. If a deficiency or additional liability is due to negligence, intentional disregard of rules and regulations, or fraud with intent to evade tax, the proration rule described above will not apply, and payment of the deficiency or additional liability (as well as any applicable interest and penalties) will be required upon notice and demand by the IRS or, in the case of an additional liability reported on a return increasing the amount of the deferral amount under IRC 965(h) after payment of the first installment or on an amended return, with the filing of the return. See Treas Regs 1.965-7(b)(1)(ii)(C).

4.46.5.8.3
(09-16-2021)

**Deficiency Payment
Procedures for Cases
with IRC 965
Adjustments**

- (3) Use the 965 Deferral Adjustment Calculator Job Aid to compute the revised 965(h) installments and future installments (deferral amounts). The job aid is located here: [https://irs.gov.sharepoint.com/x/r/sites/ETD-KMT-KB008/](https://irs.gov/sharepoint.com/x/r/sites/ETD-KMT-KB008/)

- (1) Instruct taxpayers to make two separate payments:

- a. one for the IRC 965 tax (which is identified as a TC 670 with a Designated Payment Code (DPC) "64"), and
- b. one for the remaining non-IRC 965 tax.

Note: All payments will be posted to the tax year of the IRC 965(a) inclusion (2017 or 2018) until the entire income tax liability for the year is satisfied. IRM 21.5.13, IRC 965 Transition Tax Procedures - Accounts Management.

- (2) When closing an agreed examination to CCP, audit adjustments must be posted to the module prior to application of payments to ensure that the taxpayer's audit payments for non-IRC 965 tax are applied to the audit balance and not treated as an excess payment used to pay future installments of the deferral amounts under IRC 965(h).

- (3) On Form 4549, Report of Income Tax Examination Changes, Page 2 Other Information should include:

- a. Statement of exam findings of IRC 965 elections, including changes to IRC 965(h) installment amounts, IRC 965(i) net tax liability, and whether the taxpayer has entered into a transfer and/or consent agreement
- b. Reference to any Notice of Proposed Adjustment issued regarding IRC 965 net tax liability, and elections provided for in IRC 965(h) and IRC 965(i) as both elections impact current year exam deficiency billings and tax module transaction codes.

- (4) The Form 4549 will report the changes to total tax, which include:

- a. The total IRC 965 net tax amount is included in the Total Tax as corrected on Form 4549/4549-A, Line 11.

Note: Remember: IRC 965(i) net tax liability is not assessed until a triggering event, not the tax year it is reported.

- b. Exam adjustments with respect to the IRC 965 tax liability subject to a 965(h) election will require a change to the transaction codes on the tax module to adjust the deferral balance (Master file transaction code TC 766 [\$future installment amounts] CRN 263) will be shown on Form 4549 Line 15, Adjustments to Prepayment Credits – Increase (Decrease).

4.46.5.8.4
(09-16-2021)

**IRC 965 Cases - Case
Closing Forms
Procedures**

- (1) **Form 3198** - Special Handling Notice for Examination Case Processing Procedures:

- a. Page 1, Special Features, Other Instructions – examiner must write in "Section 965(x) Handling". Be specific which 965 election such as 965(h), 965(i) or no election.
- b. Attach the Deferral Calculator to Form 3870, Request for Adjustment, to document the Transaction Code updates, specifically:
 - TC 971 \$ 0 AC 114, memo 00965tax00 = As Corrected 965 Tax (Adj will be for corrected tax)

- TC 766 CRN 263 Amount = the dollar value to correct the change in deferred amount (If IRC 965(h) election in place only)
- (2) **Form 3870** – Request for Adjustment:
- a. In order; to have CCP process corrections to the informational entries on the module and the calculation of interest on the exam changes to IRC 965 amounts, the examiner must attach Form 3870 to the closing forms.
 - b. Form 3870 must be signed by the group manager to be processed by CCP.
 - c. Form 3870 should reflect:
 - The corrected total IRC 965 tax (if changed on audit) and the correct transaction code. TC 971 AC 114 \$(total corrected IRC 965 tax).
 - If the taxpayer has a valid IRC 965 (h) election in place, please note the corrected future IRC 965(h) installments and update TC 766 CRN 263 (the amount will reflect the changed IRC 965(h) net tax liability to be paid over remaining installments).
 - The examiner must attach the Deferral Calculator worksheet to calculate adjusted IRC 965(h) installments and the TC 766 CRN 263 “faux credit” representing the future installments as corrected by exam.
- (3) **Form 5344** - Examination Closing Records Procedures, include the following:
- Trans. Code: 300 Amount: Increase to total tax
 - Trans. Code: 301 Amount: Decrease to total tax
- Note:** Because the IRC 965(i) net tax liability is assessed in the year of a future triggering event, no exam TC 300/301 is required; instead, the examiner will update the informational transaction code TC 971 \$0 AC 165.
- (4) Case closing documents needed by CCP to close cases with IRC 965 transition tax include:
- a. TXMODA, dated within 30 days
 - b. Form 3198
 - c. Form 5344
 - d. Form 3870
 - e. Form 4549-A, RAR
- (5) To close the case to Ogden CCP, send an encrypted email with a subject line of **“Section 965 Tax - Agreed” or “Section 965 Tax - No Change” or “Section 965 Tax - No Change with Adjustments”**. Include the TIN, MFT, and tax years. Follow the procedures below based on closing method:
- For paperless case closures to Ogden CCP, send Form 15292, Case Closing Cover Sheet, with appropriate closing documents attached to Form 15292, via an encrypted email to: **SBSE Ogden CCP Paperless Examine Cases Only*. Refer to IRM 4.46.5.11.2.1, Paperless Case Closures.
 - For cases meeting the exception to paperless case closures per IRM 4.46.5.11.2.4, Exception to Paperless Case Closing to CCP, email appropriate case closing documents to **CCP Ogden*.

4.46.5.9
(03-09-2016)
Review of Case

- (1) The case manager is responsible for timely reviewing the primary case and all effectively controlled entities that are included in the examination.
- (2) Issue managers are required to perform a timely review of the technical/mathematical accuracy and issue development/documentation for their assigned issues.
- (3) Managers of specialty groups such as Employment Tax, Excise Tax or TEGE will be responsible for the technical/mathematical accuracy and issue development/documentation of any separate specialty reports issued.
- (4) Joint Committee refund cases must be processed as outlined in the Joint Committee Procedures (See IRM 4.36).

4.46.5.9.1
(09-16-2021)
Quality Case Reviews

- (1) LB&I Quality Measurement System (LQMS) case reviews are completed by Quality Review and Analysis (QRA) reviewers. Cases for review are randomly selected according to a statistically valid sample that is determined on an annual basis.
- (2) The integrity, independence and objectivity of the reviewer must be preserved. Reviewers must not vary from regular procedures by orally confirming a quality standard.
- (3) A case-specific advisory memorandum (Feedback Memo) will be issued to all examiners and specialists whose work product has been reviewed. Case quality scores will not be included. An advisory memorandum will be distributed electronically to examiners or specialists and their manager. Examiners or specialists who have questions concerning the contents of a memorandum may submit inquiries electronically to the address the advisory memorandum transmitted and a reply will be provided by QRA. If there is a serious disagreement with the results of the review between the reviewer or review team and examiner or examination team, the examiner or exam team will have the right to elevate the disagreed issues.
- (4) LQMS results are not to be used to evaluate the performance of an individual employee or team. Upon receipt of the advisory memorandum, the manager will discuss, as appropriate, its contents with the employee. Unless employees provide their manager with a written or email request that a copy of the memorandum be retained in his/her Employee Performance File, all copies of the memorandum will be disposed of by the manager no later than (45) days after the issuance date.
- (5) The case manager is responsible for reviewing the case for compliance with LB&I auditing standards prior to closing the case.
- (6) See LB&I's Quality Review and Analysis Knowledge Base page at [https://irs.gov.sharepoint.com/sites/ETD-KMT-KB115/](https://irs.gov/sharepoint.com/sites/ETD-KMT-KB115/) for more information and job aids.

4.46.5.10
(03-09-2016)
Exit Strategies

- (1) During the resolution phase, examiners are encouraged to engage in discussions with the taxpayer to resolve tax controversy, so that LB&I and the taxpayer have tax certainty. Recommendations should address the future tax treatment of issues. This can result in significant resource savings as it relates to carryover and recurring issues. The following subsections describe factors to consider in developing ways to resolve tax controversy.

4.46.5.10.1
(12-13-2018)
**Closing Agreements -
Process**

- (1) A Form 906, Closing Agreement on Final Determination Covering Specific Matters, must be signed and filed in triplicate. All copies must have the original signatures. DFO approval signature is required for a closing agreement.
- (2) Upon approval of the closing agreement, the original copies are processed in the following manner:
 - a. One original copy will be sent to the taxpayer. This action must be recorded (e.g. keep a copy of the Form 4665, Report Transmittal in the files, notate the activity record, etc.).
 - b. Attach one original copy to the last examined return in the file covering a year to which the agreement pertains (with the top of the form affixed such that one can see the printed "Form 906" notation). Write in red on the top margin on all of the other returns "SUBJECT TO FORM 906 CLOSING AGREEMENT ATTACHED TO 20XX RETURN".
 - c. One original copy will be sent to the DFO having jurisdiction over the taxpayer. The DFO will maintain a folder for closing agreements.

4.46.5.10.2
(12-13-2018)
Recurring Issues

- (1) A recurring issue is an issue that has been raised in the current cycle and continues into subsequent filed returns and/or returns that have not yet been filed. For optimizing resource utilization, the issue team should plan on how that issue could be addressed in any filed returns and when possible reach agreement that the taxpayer will report the issue properly going forward.
- (2) To minimize burden to the taxpayer and LB&I, discussions to resolve recurring issues are encouraged. The following will be addressed for all recurring issues:
 - a. Identify and discuss all agreed recurring issues.
 - b. Develop a strategy that could result in agreement with the taxpayer to eliminate the recurring issue(s).
 - c. If the recurring issue is due to inadequate records, the taxpayer will be advised in writing relative to the areas where the accounting procedures or practices are inadequate or need to be changed. The inadequate records notice will be issued by the case manager and should be directed to the principal corporate officer responsible for taxes. See IRM 4.10.3.19, Inadequate Records Notices: Overview.
 - d. Consider appropriate penalties when the examination of returns filed after the receipt of the inadequate records notice indicate the taxpayer failed to correct the procedures or practices.
- (3) For complex tax computations that are recurring in nature, a reasonable estimate of the future period amounts may be used for the RAR with the understanding that exact amounts will be computed and used in all subsequently filed tax returns when possible.

Example: The IRS and taxpayer should agree to a methodology to approach the examination of an issue so that significant resources will be saved in achieving voluntary compliance for filed and unfiled tax periods.

- (4) Accounting method issues may be delayed until a subsequent examination cycle, when time does not permit the completion of the issue in the current examination cycle. In addition, accounting method issues that require an extensive amount of factual development may be developed over two examination cycles. The taxpayer should be provided written notification that the issue is under consideration, but is being delayed until a subsequent examina-

tion cycle. The taxpayer and the examination team will discuss which facts would be necessary to determine a proper amount. The taxpayer should start to gather these facts and have them available when the IDR is issued in the subsequent examination cycle.

- (5) The IRS and the taxpayer should review reports from prior cycles noting areas of agreement. If the facts and circumstances haven't changed significantly, similar agreements may be reached in the current cycle. If this is done, the IRS and the taxpayer could substantially reduce the amount of examination time required to resolve these issues. They should also look at areas of prior disagreement (including previous Appeals decisions) to see if they can jointly arrive at a solution that will satisfy both parties.

4.46.5.10.2.1
(12-13-2018)
**Carryover Adjustments
Schedule**

- (1) Form 6095, Carryover and Recurring Adjustments Schedule, or other suitable schedule, that fit the needs of the case will be prepared by the team coordinator at the conclusion of the examination. A copy of the schedule will be placed in the planning file for follow-up by the succeeding team.
- (2) The team coordinator will provide a copy of Form 6095 to the taxpayer along with the schedule of required adjustments and corresponding workpapers. The taxpayer can compute carryover adjustments for subsequent years by using Form 6095. These adjustments might involve depreciation computations on items capitalized in prior years or certain accruals.
- (3) The examination team will reach an agreement with the taxpayer as to how to process carryover adjustments for filed and unfiled returns and document the agreement in the case file.
- (4) The subsequent team will review the completed schedule along with the RAR. This will provide the subsequent team members with the confidence that all carryover/rollover adjustments have been identified.

4.46.5.11
(11-28-2023)
Closing a Case

- (1) LB&I examinations can often contain multiple entities and multiple years; one tax period of one entity is designated as the key case. Grouping those related components as one case will be done whenever possible, to preserve the one-case concept.
- (2) Issue teams complete their assignments at various stages of the examination cycle. Several tasks must be performed including the preparation of their portion of the NOPA before their assignments are completed.
- (3) All cases related to the key case must be closed through the primary examination group. An exception applies for employment tax, excise tax and withholding tax cases, which generally close out of their respective specialty groups. The case manager enters all closing data in IMS.
- (4) The HII Feedback Form must be completed for all High Income Initiative (HII) cases (project code 0795). The HII Feedback Form link is located on the IMS case tree and must be completed prior to closing the case off IMS.
- (5) The taxpayer must submit a timely protest to the 30-day letter to address unagreed issues in order to exercise their appeal rights. After the protest is received and a timely rebuttal is written, the case is transferred to Appeals through Technical Services for paper case files. See IRM 4.46.5.11.2.5 , General Procedures for Paperless Case Closing to Technical Services and

IRM 4.46.5.11.2.6 , General Procedures for Paperless Case Closing to Appeals, for guidance on paperless closures to Appeals. The ex parte rules must be observed during all conferences with Appeals. See Rev. Proc. 2012-18.

4.46.5.11.1
(12-13-2018)
Partial Closing

- (1) The return of a related entity may be closed out in advance of the primary case. This is generally done at the request of the taxpayer or when agreement forms are received and must be processed.
- (2) Care should be exercised to provide reasonable assurance that the partial closing is in the best interest of the IRS. The examination report must indicate that the entity is part of a LB&I case and must document the reason(s) for the separate closing.
- (3) Time spent must be closed out using Form 5344, Examination Closing Record, in IMS. The case manager must keep copies of all closing documents to capture the results subsequent to closing.

4.46.5.11.2
(12-13-2018)
Closing Actions

- (1) All returns associated with the LB&I examination should be closed in coordination with the primary examination team. This could include both examined and surveyed returns. When the taxpayer's copy of a return is inspected but not examined, appropriate comments will be made in the examination plan, planning file and in the transmittal letter to the examination report.
- (2) Employment tax returns are generally controlled by the employment tax specialist and closed by the employment tax team member assigned to the case.
- (3) Excise tax returns are generally controlled by the excise tax specialist and closed by the excise tax issue team member assigned to the case, except for excise tax on Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, controlled by Tax Exempt and Government Entities (TE/GE).
- (4) Tax exempt and pension returns are generally controlled and closed by the TE/GE issue team assigned to the case.
- (5) Other types of returns may be controlled by other specialists and closed separately from the income tax files.

4.46.5.11.2.1
(05-02-2022)
Paperless Case Closures

- (1) LB&I examinations closing to Centralized Case Processing (CCP) Ogden and Foreign Payments Practice (FPP) examinations closing to CCP Cincinnati must close electronically. Managers and examiners need to pay careful attention to the procedures to ensure compliance and proper data retention of electronic administrative and issue documents. LB&I examinations closing to Ogden CCP include LB&I exam areas with primary business code (PBC) 320 through 328. LB&I examinations closing to Cincinnati CCP include Foreign Payments Practice team cases in WEIIC that have a PBC of 330. Cases closing to CCP include:
 - a. No change and no change with adjustments cases
 - b. Agreed cases
 - c. Partially agreed assessment
 - d. Joint Committee cases
 - e. Agreed claim for refund and surveyed claims
 - f. Tax shelter promoter penalty cases
 - g. Return preparer penalty cases

- h. Paperless surveys
- i. Paper surveys

4.46.5.11.2.2
(11-28-2023)

**General Information for
all Paperless Case
Closures**

- (1) Digital Signatures: IRS employees may use digital signatures to sign closing documents sent to taxpayers. IRM 4.10.1.4.4, Digital Signatures, allows IRS employees to use digital signatures to sign documents sent to taxpayers, including closing documents. IRM 4.10.1.4.4 allows the use of digital signatures on Form 872, Consent to Extend the Time to Assess Tax. The use of digital signatures for closing and administrative documents allow examiners to retain documents in electronic format necessary for electronic case closing.

Reminder: All digital signatures must display the signer's name and date signed, at a minimum. Under certain circumstances, an image of the signer's handwritten signature is also required in the digital signature. An image of the IRS employee's handwritten signature is required for Form 872. Refer to IRM 4.10.1.4.4, Digital Signatures.

- (2) Closing Letters: CCP will not mail case closing letters to taxpayers. Examiners must send the case closing letters to the taxpayer when the case is closed to CCP by the exam team. Examiners can provide case closing letters to taxpayers by mail, Efax or other approved digital methods. A copy of the dated closing letter containing the manager's signature must be uploaded in IMS.
- (3) Electronic Data Retention: IMS is considered an official record keeping system with the same confidence as a paper case file. It is important that **all** required case file documents are uploaded and verified in IMS. **Each examiner and case/issue manager assigned to the case must review their (or their employee's) documents and workpapers uploaded in IMS for accuracy and completeness** in the same manner a paper case file is reviewed and assembled. Each case/issue manager must review and verify their employee's electronic workpapers comply with the mandatory standard naming convention. Refer to IRM 4.46.6, Workpapers and Reports Resources, for guidance on lead sheets, naming convention and required workpapers. See IRM Exhibit 4.46.6-4 for guidance on uploading documents in IMS.
- (4) IMS: Closing the case completely off IMS is generally done for LCC cases when the last return in the case reaches ERCS status 80 or higher. IC cases are closed off IMS when the last return in the case reaches ERCS status 20 or higher.
- (5) Exam Group Responsibilities: The exam group remains responsible for returns while they are in transit (status codes 21, 41 and 51) per IRM 4.7.5.7.3(14), Transfers and Closings. The exam group must follow up on any unacknowledged return after 21 calendar days for status codes 21 and 41, and 30 days for status code 51. When Form 3210 is acknowledged or when AIMS and ERCS are updated to another status code within these functions, the responsibility shifts to the receiving functions. CCP will acknowledge receipt of documents via ERCS.
- (6) Electronic Indicator in ERCS: Electronic cases have an indicator "E" in the electronic_case_ind field in ERCS. When updating the case status 21 or 51 in ERCS, the ERCS user will be asked: "Is this an electronic case file?" **The ERCS user must answer "Y" to this question for electronic closings to CCP and Technical Services.**

Note: Cases that are not 100% paperless must enter “N” to this question. It is important that **ONLY** the cases closing completely electronically to CCP or Technical Services will close with a “Y” response in ERCS.

4.46.5.11.2.3

(11-28-2023)

**General Procedures for
Paperless Case Closing
to CCP (LB&I Exam
Areas 320-328, 330 (FPP
only))**

- (1) **Cases Involving Potential Fraud:** After uploading to IMS, the exam team should keep the following paper records for any matter involving potential criminal fraud until the examiner determines that the case has no criminal fraud potential:
- a. Records which contain color (such as blue ink, color letterhead).
 - b. Records in which the taxpayer used white-out or any other alterations or markings that would render the scanned document not identical to the original document.

Keep these paper records with the case file until either:

- a. Criminal Investigation accepts the referral and exam transfers the record for inclusion in their investigative file; or,
 - b. Exam Team/Manager/FTA/CI determine that the case has no criminal fraud potential.
- (2) **Step 1: Upload Documents to IMS:** Do NOT print, assemble or send the paper case file to CCP. All required forms and documents that are required in a paper case file per IRM 4.10.9, Workpaper System and Case File Assembly, and IRM 4.46.6, Workpapers and Reports Resources, must be uploaded to IMS. See IRM Exhibit 4.46.6-4 for instructions on uploading documents in IMS. Managers must review and verify their employee's required IMS case workpapers and documents for completeness and ensure the required documents are uploaded into IMS prior to case closing. Each case/issue manager must review and verify their employee's electronic workpapers comply with the mandatory standard naming convention. Verify all documents in IMS can open and are readable after upload. Documentation of this review is required in the examiner's activity record or by completing Form 15292. See exceptions noted in a) and b) below for Global High Wealth (GHW) and Pathway hire RGS program cases.
- a. **Exception for Global High Wealth:** Examiners following the procedures for Global High Wealth (GHW) program cases per IRM 4.52.1 are not required to upload documents in IMS that are stored on the GHW shared drive. See IRM 4.52.1.8, Field Case Closings, for paperless procedures for GHW.
 - b. **Exception for Pathway Hires:** Most Pathway hires use stand-alone RGS (not on CEAS) for the first two years of the four-year training program. For the Pathways program cases using stand-alone RGS, examiners will upload the NForwardX1.zip file to SAIN 007, Report Preparation, in IMS. The NForwardX1.zip file must contain all forms and documents that are required in a paper case file (as noted in Step 1). The manager must review the NForwardX1.zip file to ensure all documents load properly in RGS. The Memo to File must be completed with the taxpayer information and uploaded to SAIN 090 along with all other required closing documents (see Step 2). See the Memo to File at this link: <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB011/>

Note: Step 1 applies to all managers and examiners working on the case. The case and/or issue manager of each employee on a case with workpapers or other documents to upload must review and ensure the documents are uploaded timely and accurately so the case can close.

- (3) **Step 2: Close Case Electronically to CCP:** Case closing documents are inserted in Form 15292, Case Closing Form. Only Form 15292 is emailed to CCP, except for partial assessments, which do not require Form 15292. **Follow the instructions in Exhibit 4.46.5-2 Table 1**, based on case closure type which has a list of forms to attach to Form 15292. Click on “Add File(s)” on Form 15292 to add required case closing documents. All required case closing documents must be uploaded in IMS to **SAIN 090, Case Closing Documents**. Each case/issue manager and each examiner must verify all necessary documents were uploaded in IMS. The team coordinator and case manager will check the Examiner/Manager certification box on Form 15292.

Note: IRM 4.10.9.9, Case File Assembly for Closing, provides guidance for forms and documents needed for case file assembly and closing. The forms and documents listed are not required for every case, however **there may be additional forms and documents other than those emailed to CCP that need to be uploaded in IMS**. Review IRM 4.10.9.9 and ensure all applicable case closing forms and documents are properly uploaded in IMS.

Once all required documents are uploaded in IMS and Form 15292 is complete, the case can close electronically to CCP. Completed Form 15292 (with required closing documents attached to Form 15292) must be emailed to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati* (FPP cases only). Update the ERCS status to 51, except for partial assessments and Joint Committee cases. When updating ERCS status to 51, the ERCS user will be prompted if the file is an electronic case file. For electronic case files, **Answer “Y”** to the question “Is this an electronic case file (Y/N)?” Ensure AIMS reflects status 51 before proceeding. AIMS status generally updates the day after the ERCS updates. The examiner can now issue the appropriate closing letter signed by the case manager.

- (4) **Step 3: Upload Form 15292 and Close Case in IMS:** Upload Form 15292 and any revised forms from CCP (i.e. 5344) into IMS SAIN 090. Once the case reaches status 80 or higher for LCC cases and status 20 or higher for IC cases, the examiner can close the case in IMS. Once the case is closed in IMS, any remaining paper files can be shredded.

Note: Form 15292 and other revised forms can be uploaded to IMS for closed cases (IC cases closed in status 20 or higher) from the IMS Team Website. Time spent on post-closing activities (uploading revised forms from CCP to IMS SAIN 090) should be charged to activity code 610, General - Indirect.

Reminder: All pertinent files must be uploaded and retained in IMS. There is no need to retain paper files, per Document 12990, Records Control Schedule 26, Item 47A, because they are duplicative of the IMS files (note exceptions for cases involving potential fraud in (1) and GHW and Pathways cases in Step 1 a) and b)).

4.46.5.11.2.4

(11-28-2023)

**Exception to Paperless
Case Closing to CCP**

(1) Effective January 1, 2023, this section and related exhibit are only applicable to cases started prior to May 1, 2020 and maintained in IMS. All other cases closing to CCP must follow the paperless procedures per IRM 4.46.5.11.2.3. Examiners with cases opened prior to May 1, 2020, who are unable to scan and upload all workpapers and documents in IMS for paperless case closing, can follow these procedures to close an LB&I examination case to CCP. Examiners closing a case with a Return Requested Indicator on the AMDISA must also follow these procedures to close a paper case file to CCP. Refer to [https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/](https://irs.gov/sharepoint.com/sites/ETD-KMT-KB051/) for more information on locating the indicator on the AMDISA.

(2) **Step 1: Assemble the paper case file.** Examiners closing paper case files must assemble a full paper file including all required documentation. Cases with part of the documents in IMS and part in paper should print the digital documents when assembling the paper case file. See case file assembly procedures in IRM 4.10.9.9, Case File Assembly for Closing.

Note: Certain LCC case workpapers may be retained locally. Workpapers must be retired to the Federal Records Center (FRC) no earlier than 4 years after the date of closing (AIMS Status 90). See Schedule 23 of Document 12990, Records Control Schedules, for additional guidance.

(3) **Step 2: Email case closing documents to CCP.** Update the case status in ERCS to status 51, except for partial assessment and Joint Committee cases. On ERCS, answer “N” to the question “Is this an electronic closure?”. **Follow the instructions in the table below**, based on case closure type which has a list of documents to email to CCP. Send appropriate closing documents via an encrypted email to *CCP Ogden or *SBSE CCP Cincinnati for Foreign Payments Practice (FPP) cases in PBC 330 indicating the case type in the subject line (agreed, no change, partial assessment etc.). The examiner can now issue the appropriate closing letter.

Note: IRM 4.10.9.9, Case File Assembly for Closing, provides guidance for forms and documents needed for case file assembly and closing. The forms and documents listed are not required for every case, however **there may be additional forms and documents other than those emailed to CCP that need to be closed with the paper case file**. Review IRM 4.10.9.9 and ensure all applicable case closing forms and documents are included in the paper case file.

(4) **Step 3: Ship the case file to Files.** The examiner will monitor the case to verify the TC 421 has posted and the case reached status 90 on AIMS. When the case reaches status 90 on AIMS, the paper case file must be shipped to Files. The examiner will complete Form 9856, Attachment Alert, using the Document Location Number (DLN) from the TC 421. Form 9856 must be included in the paper case file (for each tax year examined), near the top of the file (just under Form 3210). Any other correspondence or documents from CCP must also be included in the paper case file (updated Form 5344, for example). The examiner must bundle each year of a multiple-year examination separately. Use rubber bands or staples to bundle the case file and remove any unnecessary paper clips, staples or other fasteners. A copy of the first 2 pages of the agreed examination report reflecting the taxpayer’s signature and/or proof of payment must be included in each year of a multiple-year examination. Examiners must mail the completed paper case file, bundled by year, to one of the following locations:

For LB&I Exam Areas 320-328 ship to Ogden Files:	For LB&I Exam Area 330 (FPP cases only) ship to Kansas City Files:
Internal Revenue Service Ogden Submission Processing Center M/S 6722, Files Central Control Team 1973 N Rulon White Blvd Ogden, UT 84404	Internal Revenue Service Kansas City Processing Center 333 West Pershing Road M/S 6700; Attn: CCU Kansas City, MO 64108-4302

Note: Time spent on post-closing activities (mailing the paper case file) should be charged to activity code 610, General - Indirect.

Case Type	Procedures for Exception to Paperless Closing to CCP
Agreed/No Change/No Change with Adjustments Cases	<p>On ERCS, answer “N” to Electronic Closure. Documentation to attach to email to CCP:</p> <ol style="list-style-type: none"> TXMODA - dated within 30 days Form 3198 - Check box on “Agreed and unpaid over \$100,000” under Expedite Processing page 1 of form 3198 Form 5344 RAR, Form 4549-A - signed RAR for Agreed and No Change with Adjustments Form 2285 - if applicable - also note in subject line “Restricted Interest Case” For returns with a 97x indicator on AIMS, include a copy of the first 4 pages of the amended return, along with any pertinent schedules <p>Once AIMS reflects status 51, managers should email the documents listed above to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) via an encrypted email</p> <ol style="list-style-type: none"> Email subject line: “Agreed Case”, “No Change”, “No Change with adjustments” or “Agreed Case - unpaid and over \$100,000” (agreed and unpaid over \$100,000 are priority cases) <p>Note: CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS.</p> <p>After emailing documents, go to Step 3 above.</p>

Case Type	Procedures for Exception to Paperless Closing to CCP
Agreed/No Change/No Change with Adjustments Cases with 965 Transition Tax	<p>On ERCS, answer “N” to Electronic Closure. Refer to IRM 4.46.5.8.4 for instructions on closing cases with 965 transition tax. Documentation to email to CCP:</p> <ul style="list-style-type: none"> a. TXMODA - dated within 30 days b. Form 3198 - note “Agreed and unpaid over \$100,000” if applicable on page 2 of form 3198 c. Form 5344 d. Form 3870 e. RAR, Form 4549-A - signed RAR for Agreed and No Change with Adjustments f. Form 2285 - if applicable - also note in subject line “Restricted Interest Case” g. For returns with a 97x indicator on AIMS, include a copy of the first 4 pages of the amended return, along with any pertinent schedules <p>Once AIMS reflects status 51, managers should email the documents listed above to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) via an encrypted email</p> <ul style="list-style-type: none"> a. Email subject line: “Section 965 Tax - Agreed”, “Section 965 Tax - No Change”, “Section 965 Tax - No Change with adjustments” or “Agreed Case - unpaid and over \$100,000” (agreed and unpaid over \$100,000 are priority cases) <p>Note: CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS.</p> <p>After emailing documents, go to Step 3 above.</p>

Case Type	Procedures for Exception to Paperless Closing to CCP
Partial Assessments	<p>On ERCS, answer “N” to Electronic Closure. CCP can make a partial assessment for partially agreed cases. Status code remains in status 12 (do not update to status 51). For agreed partial assessments, LB&I manager should send an encrypted email and the following to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only):</p> <ol style="list-style-type: none"> Email subject line: “Partial Assessment Request”(keep sensitive information out of the subject line of the email). TXMODA - dated within 30 days Form 3198 - Check the box under Special Features, Partial Assessment Requested. Form 5344 RAR, Form 4549-A Form 2285 -if applicable -also note in subject line of email “Restricted Interest Case”. <p>Note: CCP will email a copy of Form 5344 to the examiner after the partial assessment was input, which will reflect the date of input.</p>

Case Type	Procedures for Exception to Paperless Closing to CCP
Joint Committee Cases	<p>a. Prior to emailing documents, check AIMS freeze codes and resolve prior to closure to Ogden CCP.</p> <p>b. The examiner will follow the electronic Joint Committee referral outlined in IRM 4.36.3.8, Submission of Case to JCR Program (except for IIC), Joint Committee Electronic Referral Material must be retained in IMS.</p> <p>c. Upon receipt of JCT release letter and Letter 1574, update ERCS to status 51, answering “N” to Electronic Closure and remove ARC 27.</p> <p>d. Upload all JCT closing documents into IMS.</p> <p>e. Documents to email to CCP:</p> <ol style="list-style-type: none"> 1. TXMODA - dated within 30 days 2. Form 3198 -note in Other Instructions under Special Features, “JC Case Cleared” 3. Form 5344 4. RAR, Form 4549-A 5. Copy of JCT release letter and Letter 1574 6. Joint Committee Report - the taxpayer does not get a copy of the report 7. Form 2285 (if applicable) and note in subject line of email “Restricted Interest Case” 8. If you have a paper original return, note that in the email <p>Once AIMS reflects status 51, the documents listed above should be forwarded via encrypted email to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) with an email subject line of “JC Case”.</p> <p>Note: CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS.</p> <p>After emailing CCP, go to Step 3 above.</p>

Case Type	Procedures for Exception to Paperless Closing to CCP
Agreed Claim for Refund/Surveyed Claim (DC34)	<p>On ERCS, answer “N” to Electronic Closure. Documents to attach to email to CCP:</p> <ol style="list-style-type: none"> TXMODA - dated within 30 days Form 3198 Form 5344 RAR, Form 4549-A (not required for surveys) Form 2285 (if applicable) and note in subject line of email “Restricted Interest Case” For surveyed claims (DC 34), include a copy of the first 4 pages of the amended return, along with any pertinent schedules If you have an original paper return, note that in the email <p>Once AIMS reflects status 51, manager should forward the documents listed above with an email subject line of “Claim for Refund” via an encrypted email to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only)</p> <p>Note: CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS.</p> <p>After emailing CCP, go to Step 3 above.</p>

Case Type	Procedures for Exception to Paperless Closing to CCP
Civil Penalty Cases	<p>On ERCS, answer “N” to Electronic Closure. Documentation to email to CCP:</p> <ol style="list-style-type: none"> Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b. In the remarks section indicate the originating alpha MFT (for example PR, PQ) Form 3198 - Under Special Features: <ul style="list-style-type: none"> Check the box “Civil Penalties (Form 8278)” Indicate type of closure in Other Instructions <ol style="list-style-type: none"> Full Closure (update ERCS to status 51) - no other penalties to be assessed or Partial Closure (ERCS remains in status 12) - additional penalties such as continuation penalty or multiple type of penalty forthcoming <ul style="list-style-type: none"> Use DC 02 for No Change Use DC 12 for Agreed Partial closures must remain in ERCS status 12. Full closures must be updated to ERCS status 51. Managers should email the documents listed above to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) via an en-encrypted email with an email subject line of “Agreed Civil Penalty”. <p>Note: CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS.</p> <ul style="list-style-type: none"> After emailing CCP, go to Step 3 above.

Case Type	Procedures for Exception to Paperless Closing to CCP
Tax Shelter Promoter Penalty Cases	<p>Agreed Cases: On ERCS, answer “N” to Electronic Closures. Prepare Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b. Documents to email to CCP:</p> <ul style="list-style-type: none"> a. Form 906, Closing Agreement, properly executed by DFO b. Form 3198 - check the box Civil Penalties under Special Features section <p>Once ERCS reflects status 51, manager should email the documents listed above via encrypted email to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) with an email subject line of “Agreed Tax Shelter Promoter penalty case”.</p> <p>Unagreed Cases: On ERCS, answer “N” to Electronic Closures. Documents to email to CCP:</p> <ul style="list-style-type: none"> a. Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b b. Form 3198 - check the box Civil Penalties under Special Features section <p>Once ERCS reflects status 51, manager should email the documents listed above via encrypted email to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) with an email subject line of “Unagreed Tax Shelter Promoter penalty case”.</p> <p>Note: CCP will electronically acknowledge receipt of documents via 3210 in ERCS</p> <p>After emailing CCP, go to Step 3 above.</p> <p>Note: Examiners should coordinate closures with the LB&I Tax Shelter Promoter Program Specialist Team. If the respective promoter case closing letter cannot be issued via regular mail, the examiner may transmit documents via email using SecureZip.</p>

Case Type	Procedures for Exception to Paperless Closing to CCP
Return Preparer Penalty Cases	<p>Agreed Cases: On ERCS, answer “N” to Electronic Closure. Documents to email to CCP:</p> <ul style="list-style-type: none"> a. Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b b. Form 5816, Report of Tax Return Preparer Penalty c. Form 3198 - check the box Civil Penalties under Special Features section d. Once AIMS reflects status 51, manager should email the documents listed above to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) with the email subject line of “Agreed Return Preparer Penalty Case”. <p>Unagreed Cases: On ERCS, answer “N” to Electronic Closure. Documents to email to CCP:</p> <ul style="list-style-type: none"> a. Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b b. Form 5816, Report of Tax Return Preparer Penalty c. Form 3198 - check the box Civil Penalties under Special Features section d. Once AIMS reflects status 51, manager should email the documents listed above to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) with the email subject line of “Unagreed Return Preparer Penalty Case”. <p>Note: CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS.</p> <p>After emailing CCP, go to Step 3 above.</p>
Paperless Surveys	<p>Follow the procedures outlined in IRM 4.46.3.2.2.1 , Paperless Survey - Non-Examined Closures Using a Paperless Process.</p> <p>Note: Documents for paperless surveys for FPP cases are emailed to <i>*SBSE CCP Exam Cincinnati</i>.</p>

Case Type	Procedures for Exception to Paperless Closing to CCP
Paper Surveys	<p>Paper survey procedures apply to survey of returns with documentation and non-examined disposal codes (DC) of 31, 32, 42 and 45. Examiners must prepare the required documents (outlined below) and the team manager must verify for accuracy. AIMS must reflect status 51. Team manager must send encrypted email to <i>*CCP Ogden</i> or <i>*SBSE CCP Cincinnati</i> (FPP cases only) with the following documents and email subject line:</p> <ol style="list-style-type: none"> Email subject line: "Paper Survey" Form 4251, Return Charge Out. This form is used for LB&I Imagining Network (LIN) non-examined closings. Note disposal code on the form. Form 5351, Examination Non-Examined Closings, completed as directed in IRM 4.4.21.5.1.3. Note the disposal code in the lower left of each block. Form 3198 - Note type of survey under Other Instructions in Special Features section If DC 31 or 32 are used, the survey reason code (SRC) must also be noted after the DC (see IRM 4.46.3.2.2 for SRC values and definition). If SRC "E" (Other) is used then Form 14235, LB&I Survey Form, or Form 1900, Income Tax Survey After Assignment, is also required. <p>Note: CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS. Once the case closure is in AIMS status 90 and the TC 421 is posted to the TXMODA, CCP will email the examiner a Form 9856, Attachment Alert. The examiner will mail the Form 9856 and the remaining paper case closing file to: Ogden Submission Processing Center; M/S 6722, Files Processing Center; 1917 Rulon White Blvd; Ogden, UT 84404</p>

4.46.5.11.2.5
(11-28-2023)

**General Procedures for
Paperless Case Closing
to Technical Services**

- (1) Certain cases requiring mandatory review by Technical Services can close electronically to Technical Services including the following:
- a. Unagreed cases routed to Appeals
 - b. Unagreed cases for issuance of Statutory Notice of Deficiency (SNOD)
 - c. Most unagreed Penalty Cases
 - d. Disallowed Claims (Letter 905, Final Partial Claim Disallowance, and Letter 906, Final Full Claim Disallowance)
 - e. Unagreed LB&I Pathways Hire Program Cases

Note: Most unagreed penalty cases can close electronically to CCP or Technical Services. Refer to specific penalty program for guidance on electronic closing procedures.

- (2) The following types of closures **cannot** close electronically to Technical Services:

- a. FBAR cases

Note: Refer to Interim Guidance SBSE-04-0823-0046, Rescind IGM SBSE-04-1222-0018, Updated Deviation for FBAR Compliance Activity, to Modify Procedures for CTR Operations' Building Closure, for FBAR case processing procedures.

- b. Case designated for litigation

Note: If the taxpayer indicates they will file a petition to Tax Court while the case is in exam, the examiner should not close the case paperless to Technical Services unless there is a current paperless pilot for petitioned (or docketed) cases (i.e. virtual shared server) in place.

- c. Unagreed TEFRA cases
- d. Unagreed Investor Level Statute Control (ILSC) PCS linked cases
- e. All BBA cases
- f. Fraud cases where the fraud indicators are only evident on hard copy documents (for example: altered documents)

Note: There may be temporary or pilot procedures to close these cases to paperless to Technical Services. Refer to current interim guidance.

- (3) Refer to IRM 4.46.5.11.2.2 for general information for all paperless case closures.

- (4) **Step 1: Upload Documents to IMS:** Do not print, assemble or send the paper case file to Technical Services. All required forms and documents that would otherwise be required in a paper case file per IRM 4.10.9.4 and IRM 4.46.6 must be uploaded to IMS. Refer to IRM Exhibit 4.46.6-4 for guidance on uploading documents to IMS for virtual case closing. Each Manager must review and verify their employees' required IMS case workpapers and documents for accuracy and completeness and ensure all required documents are uploaded to IMS prior to case closing. Each case/issue manager must review and verify their employee's electronic workpapers comply with the mandatory standard naming convention. Documentation of this review is required in the examiner's activity record. For unagreed cases routed to Appeals, refer to IRM 4.46.5.11.2.6 for a list (not all inclusive) of documents that must be saved in SAIN 021.

- (5) **Step 2: Close Case Electronically to Technical Services and off IMS:** Case closing documents are uploaded into SAIN 090. Follow the instructions in Exhibit 4.46.5-2, **Table 2**, for specific instructions. Documents uploaded into SAIN 090 include:

- Form 3198
- Form 5344
- Appeals Electronic Case Receipt Check Sheet (if applicable)

Case closing documents must be uploaded into IMS SAIN 090, Case Closing Documents. Managers and examiners must verify all necessary documents were uploaded in IMS.

Note: IRM 4.10.9.9, Case File Assembly for Closing, provides guidance for forms and documents needed for case file assembly and closing. The forms and documents listed are not required for every case, however, there may be additional forms and documents that need to be uploaded in IMS. Review IRM 4.10.9.9 to ensure all applicable case closing forms and documents are properly uploaded in IMS. Verify all documents can be opened and are readable after upload.

Once all required documents are uploaded in IMS, the case can close electronically to Technical Services and closed off IMS. Ensure that any partial assessments have been emailed to *CCP Ogden and have posted. Update the ERCS status to 21. When updating ERCS to status 21, the ERCS user will be prompted if the file is an electronic case file. Answer "Y" to the question, "Is this an electronic case file (Y/N)?". Ensure AIMS reflects status 21 before proceeding. AIMS status generally updates the day after the ERCS status updates. Form 3210 is generated via ERCS when the case is updated to status 21. Technical Services will acknowledge receipt of the electronic case file via ERCS.

Note: Once the case reaches status 21, the examiner must close the case off IMS. Once the case reaches status 90, any remaining paper files can be shredded.

- (6) **Step 3: Prepare Revised Tax Computation if Needed (Completed by Tax Computation Specialist):** Tax computations for Form 1120 are prepared using BNA Corporate Tax Analyzer and the tax computation PDF file is uploaded into IMS Case Documents. If the tax computation for a Form 1120 needs to be re-computed, Technical Services will contact the team coordinator. The team coordinator will contact the assigned Tax Computation Specialist (TCS) to prepare a revised tax computation. Case controls will remain with Technical Services. The assigned TCS will prepare the revised tax computation and save the revised tax computation to IMS Case Documents via the IMS Team Website (TWS). Once the TCS has prepared the revised tax computation, the TCS should inform the revenue agent assigned to the case. The assigned revenue agent must prepare a revised Form 5344 and save the revised Form 5344 into Case Documents (via IMS TWS) to associate with the revised tax computation. The revenue agent or team manager will notify Technical Services directly that the revised tax computation and Form 5344 were uploaded to IMS Case Documents.

If a case closed paperless to Technical Services is subsequently petitioned for Tax Court, the case will be returned to exam to submit a full paper case file to

Technical Services unless there is a current paperless pilot (i.e. using a virtual server) for petitioned (or docketed) cases. Refer to current interim guidance.

- (7) **Step 4: Upload Completed Form 15292 (Completed by Technical Services for Cases Closing to CCP Only):** When Technical Services has completed the electronic case closing, Technical Services will complete Form 15292 and upload into SAIN 090 via the IMS TWS, indicating the case is closed.

Reminder: All pertinent files must already be uploaded and retained in IMS.

There is no need to retain paper files because they are duplicative of the IMS files.

4.46.5.11.2.6

(11-28-2023)

General Procedures for Paperless Case Closing to Appeals through Technical Services

- (1) Certain unagreed cases in IMS can close electronically from LB&I exam to Appeals through Technical Services. The following cases **cannot** follow these procedures to close to Appeals:

- TEFRA cases
- BBA cases
- Investor Level Statute Control (ILSC) Cases

Note: There may be temporary or pilot procedures to close these cases to paperless to Technical Services. Refer to current interim guidance.

- (2) IMS cases meeting the following criteria can be electronically transmitted from LB&I to Technical Services for closure to Appeals:

- Cases with at least one unagreed issue for all years under examination. Agreed issues should be closed using a partially agreed report to the extent possible (see IRM 4.10.8.6, Partially Agreed Cases).
- Statute has at least 395 days remaining on the statute.
- Verification from LB&I managers that all related cases are transmitted at the same time.
- All issue-related documents are uploaded in SAIN 021 (Prior Appeals Report) in IMS (see list of documents in paragraph (3) below). Documents saved to SAIN 021 should follow the Mandatory Naming Convention (see IRM 4.46.6.2(3)), Workpaper Organization and Consideration.
- Forms 3198 and 5344, along with the Appeals Electronic Case Receipt Check Sheet, are uploaded to SAIN 090, Case Closing Documents.

- (3) **Documents uploaded into SAIN 021 should include:**

List of Documents	
Form 4665, Report Transmittal, must include the following:	
a.	Any other years, related cases, or related taxpayers being worked by Exam by Name, Year, MFT, and EIN
b.	ECD date for each such case noted
c.	An affirmative statement that a JC report has or has not been submitted. If so, the JC approval letter should be included
d.	If the case has international issues, note on the top of Form 4665, "Case should be referred to International Appeals, Area 11"

List of Documents
PDFs of Form 1120 (first 6 pages) as filed, Form 1120X if filed (full documents); Form 1139 if filed (full documents)
Original filed tax returns or LIN link (Form 4251), and if applicable, amended tax returns.
The 30-day RAR, Form 4549-A or 4605-A which was issued to the taxpayer via 30-day (or similar) letter
The 30-day (or similar) letter for each RAR issued to the taxpayer
Current AMDISA (dated within 30 days)
All related cases
Form 5701s for unagreed issues
Form 886-As for unagreed issues, including all attachments and exhibits
Workpapers for unagreed issues
Acknowledgement of Facts
Valid protest (as outlined in Publication 5) including all exhibits referenced in the protest
Rebuttal
All correspondence between parties related to unagreed issue(s)
IDR responses for unagreed issues
Form 872 (if applicable) – current and all prior Forms 872
Form 895 or Form 15042 (if applicable)
Form 2848 (if applicable)
Appraisals
Economists Reports
Joint Committee Reports.
Engineer Reports
International Specialist Reports
MITRE Reports (Research Credit)
Secure Email Messaging Systems (SEMS) Agreement
Penalties with Manager Approval (if applicable)
Executed Closing Agreement or Partial Agreement or Assessment (if applicable)

Note: **Only** relevant documents noted above must be uploaded into **SAIN 021** in IMS. Follow the Mandatory Standard Naming Convention per IRM 4.46.6.2(3) for documents uploaded in SAIN 021. Do not include documents

and workpapers for agreed issues in SAIN 021. See IRM Exhibit 4.46.6-4 for instructions on uploading documents into IMS.

(4) The following documents are uploaded into SAIN 090:

- Form 3198
- Form 5344
- *Appeals Electronic Case Receipt Check Sheet* (use most current version)

Note: If the case has international issues, note in the field on the Appeals Electronic Case Receipt Check Sheet, Most Significant Issue and Dollar Amount: "Case should be referred to International Appeals, Area 11".

(5) Refer to IRM 4.46.5.11.2.2, General Procedures for all Paperless Case Closures.

(6) **LB&I Manager Verification of Unagreed Case:** For cases meeting the criteria noted in paragraph (1), LB&I managers must verify the following information **prior** to closing the case to Technical Services:

- Verify statute of limitations is identified correctly and at least 395 days remain on statute.
- Review Form 5344 and verify form is correctly completed (See IRM 4.4.12, Examined Closings, Surveyed Claims, and Partial Assessments). Note: Item 03 and Item 04 of Form 5344 should be reviewed for accuracy when the tax deficiency is related to a C corporation and exceeds \$100,000 to ensure the interest computations for Large Corporate Underpayments (LCU) can be completed. See Form 5344 common errors and a link to Form 5344 Paperless Closure Job Aid located here: <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/>
- Verify taxpayer or representative provided a valid protest. Pub 5 provides these specific items taxpayers need to include for a valid protest:

List of Items in Protest
1. Your name and address, and a daytime telephone number.
2. A statement that you want to appeal the IRS findings to the Appeals Office.
3. List of all disputed issues, tax periods or years involved, proposed changes and reasons you disagree with each issue.
4. Facts supporting your position on each disputed issue.
5. Law or authority, if any, supporting your position on each disputed issue.
6. You must sign the written protest, stating that it is true, under the penalties of perjury as follows: "Under penalties of perjury, I declare to the best of my knowledge and belief, the information contained in this protest and accompanying documents is true, correct and complete."

- Each case/issue manager must review and verify their employee's electronic workpapers comply with the mandatory standard naming convention. Verify all relevant documents are uploaded into **SAIN 021** in IMS (see list of documents in (3) above). Failure to do so and to verify the documents can be opened may result in your case being rejected by Appeals. It is important that this is done correctly.

(7) **LB&I Manager Actions After Verification of Unagreed Case**

- The case manager or revenue agent must complete the Appeals Electronic Case Receipt Check Sheet for each case and related case submitted. For example, one for the primary case and one for each related case to be transferred and upload to SAIN 090. The check sheet is located here: https://organization.ds.irsnet.gov/sites/APPEALS-PQCS/SiteAssets/ECR/AP_ECR_Check-Sheet.pdf
- Update disagreed cases to Appeals on ERCS to status 21 when closing to Technical Services. The exam group must select the correct Technical Services Code for routing to the correct Technical Services group. Answer "Y" to the question "Is this an electronic case file" in ERCS.
- The crucial step for the LB&I manager (or examiner) is to **close the case off IMS**. Any electronic documents needed for the paper file must either be saved or printed directly from the IMS Team Website. If the case is not closed off IMS, Technical Services CANNOT transfer the case to Appeals. Failure to do this step properly may result in your case being returned from Technical Services.
- **All examination work must stop once the case is transferred to Technical Services.**
- Technical Services will update the case to status 81.
- Once AIMS is updated to status 81, Technical Services will open a new request and upload Form 3198 and the Appeals Electronic Case Receipt Check Sheet (found in SAIN 090) for each case and related case submitted to the Appeals SharePoint site.
- If any relevant documents are not in IMS, the case is at risk of being returned to the exam team.

Note: The exam group remains responsible for return(s) and statutes while the return(s) are in transit status (i.e. status 21). The exam team must follow-up on any unacknowledged returns after 21 calendar days in status code 21. Technical Services is responsible for the return(s) and statutes while the return(s) are in transit to Appeals (status 81) until Appeals has acknowledged receipt of the return(s).

- Refer to IRM 1.15.3, Records and Information Management, Disposing of Records, and IRM 10.5.1, Privacy Policy (Disposition and Destruction section) for guidance on proper disposal of records/documents that contain SBU data (including PII or tax information).

Reminder: ALL pertinent files must be uploaded and retained in IMS. There should be no need to retain paper files because they are duplicative of the IMS files.

- Any agreed issues should be closed using a partially agreed report prior to closing the disagreed issues to Appeals per IRM 4.10.8.6, Partially Agreed Cases.

4.46.5.11.2.7
(05-02-2022)

**Disposition of Files and
Workpapers**

- (1) If a case is going to Appeals, workpaper files are forwarded to Appeals for their use in resolving the unagreed issue(s). LB&I case examination workpapers will be forwarded with the closed case file. Team managers will ensure appropriate reports, schedules, workpapers and other administrative data that may be needed for future examinations are uploaded to IMS so they are available to subsequent examination teams.
- (2) In certain cases, LB&I maintains workpapers locally; however, workpapers must be retired to the Federal Records Center (FRC) no earlier than 4 years after the date of closing (AIMS Status 90). See Schedule 23 of Document 12990, Records Control Schedules, for additional guidance. Copies of original workpapers related to carryover/recurring issues may be retained as needed to promote effective tax administration.

Note: IMS is an approved electronic recordkeeping system equivalent to paper case files stored at the Federal Records Center. If the paperless closing method was followed, no paper file is required to be shipped to records.

- (3) IRM 1.15.4, Retiring and Requesting Records, provides detailed procedures for the retirement of IRS records, including packing records, making cartons, shipping records and instructions for the completion of various forms. IRM 1.15.4.10 contains instructions on how to retrieve records from the FRC.
- (4) If files need to be shipped to another location, the case manager will control the documents by using Form 3210, Document Transmittal. Form 3210 must always accompany taxpayer sensitive records shipped to other offices (for example, Appeals, Counsel, LB&I Quality Review and Analysis, etc.).
- (5) Mandatory IMS workpapers, any electronic data received in response to IDRs, and Form 5701s are required to be maintained (uploaded) into IMS work papers for all issue(s).

4.46.5.12
(11-28-2023)

**Conference with
Appeals**

- (1) LB&I employees may meet with Appeals before the Appeals process begins and after it is concluded.
- (2) Requests can be made for a pre-conference with Appeals in the rebuttal to the taxpayer's protest. If a rebuttal is not prepared, an Appeals pre-conference request can be made in a separate document that is shared with the taxpayer.
- (3) Changes brought about by RRA 98 Sec. 1001 give the taxpayer the opportunity to participate in most taxpayer-related communications between LB&I and Appeals. See Rev. Proc. 2012-18, Sections 2.01(3), 2.02(4) and IRM 8.1.10, Ex Parte Communications.

4.46.5.12.1
(12-13-2018)

**Procedures for
Pre-Conference with
Appeals Regarding LB&I
Cases**

- (1) RRA 98 Sec. 1001(a)(4) established that ex parte communications between Appeals Officers and other IRS employees are prohibited to the extent that such communications appear to compromise the independence of Appeals. See IRM 8.1.10.4.1, Permissible Communications. The following pertains to the ex parte rules:
 - a. Ex parte communications are communications that take place in the absence of the taxpayer or the taxpayer's representative. This prohibition is not limited to oral communications but applies to any form of communication, oral or written (manually or computer generated).
 - b. The taxpayer may waive the ex parte restrictions.

- c. The issue manager, in collaboration with the case manager, may request a pre-conference meeting with Appeals. Appeals will notify the taxpayer/representative and give them the opportunity to attend.
- d. The purpose of the pre-conference is to discuss the issues, protest and the LB&I issue team's rebuttal to the protest.
- e. It is expected that the meeting will serve to establish lines of communication that will be maintained throughout consideration of the case between Appeals and LB&I.
- f. LB&I participants will prepare and present their positions on disputed issues.

4.46.5.12.2
(12-13-2018)
**Participation in
Pre-Conference**

- (1) LB&I will determine the appropriate pre-conference participants.
- (2) The Appeals team will usually consist of the appeals team case leader (ATCL) or team leader and the Appeals Officer assigned to the case. Appeals specialists or other personnel may also attend where appropriate.

4.46.5.12.3
(11-28-2023)
**Requesting Participation
in Appeals Conferences
for Appeals Team Leader
Cases**

- (1) LB&I believes that participation in certain Appeals conference discussions aid the ATCL in understanding the dispute and the merits of both parties' positions, thereby fostering effective tax administration. In addition, LB&I recognizes the importance to tax administration of an independent administrative forum by which taxpayers may resolve issues with the IRS and Appeals' role as that forum. Having a complete understanding of the law and application of the particular facts to the law, which in complex cases can be aided by a joint discussion, assists Appeals' mission to resolve controversies on a basis which is fair and impartial to both the Government and the taxpayer.
- (2) Although our participation in these conferences is not guaranteed, LB&I employees should continue to request to be invited where LB&I participation would help improve understanding of factual and legal differences in the case. Appeals will continue to operate under long-standing Appeals' policy that permits, but does not require, the ATCL to invite LB&I to the non-settlement portion of the Appeals conference. ATCLs will use their discretion whether to invite LB&I and will solicit the views of the taxpayer to help inform that discretion. If LB&I participation is denied, and upon LB&I's request, Appeals will explain why they concluded Compliance participation is not necessary. Also, as in the past, settlement discussions should be held only between Appeals and the taxpayer, without LB&I presence, and ex parte communication rules must be followed. Employees should consider the following factors before making a request to attend an Appeals conference:

List of Factors
The case is factually complex.
History has shown lack of meeting of the minds regarding the underlying facts or legal positions.
The taxpayer's characterization of LB&I's position in the formal written protest is not accurately stated and participation by both the taxpayer and LB&I at the Appeals conference will assist Appeals in both bridging the lack of understanding and better understanding the case.

List of Factors
The taxpayer has presented multiple legal arguments or authorities that it relies on to support its position.
The case involves outside experts or expert opinions.
The case involves an issue of importance to tax administration, such as a case of first impression; one involving the interpretation of a new statute or regulation when there are no reported opinions or when published guidance is pending or where precedent is otherwise absent or conflicting; one affecting large numbers of taxpayers or an industry; or one falling within an operating division's major strategic goal.
The case involves an issue in which the Government seeks to distinguish a position set forth in published guidance.
The case involves an issue coordinated under strategic compliance/coordination initiative such as LB&I campaigns.
A tax shelter case involving a "Listed Transaction" or substantially similar transaction within the meaning of Treas. Reg. 1.6001-4(b)(2), or a "Transaction of Interest" under Treas. Reg. 1.6011-4(b)(6).

Note: There may be factors not appearing on the list that may render a case suitable for requesting participation in an Appeals conference. In these instances, examiners should exercise their professional judgment in reaching that conclusion.

- (3) LB&I examiners should ensure that such requests are clearly indicated in rebuttals to the taxpayer's formal written protest or in a separate document shared with the taxpayer if a rebuttal is not prepared.

4.46.5.12.4
(03-09-2016)

Other Communications with Appeals

- (1) It is important that LB&I and Appeals maintain an open dialogue. The ex parte rules under Rev. Proc. 2012-18 must be followed. The restrictions on raising a new issue or reopening a closed case do not apply to new issues raised by the taxpayer. See Policy Statements 8-2 and 8-3 in IRM 1.2.1, Servicewide Policies and Authorities. However, Appeals will release jurisdiction and return the case to LB&I when a taxpayer presents new information that was not previously reviewed by the examination team. See IRM 8.7.11.6.3, Returning a Case to LB&I. New taxpayer arguments (excluding new information) or information provided by the taxpayer in response to an inquiry from Appeals to clarify or corroborate information contained or referenced in the RAR, protest or rebuttal will be referred to LB&I for review and comment within a specific time frame that is at least 45 days. Every effort should be made to handle these requests expeditiously and on a priority basis.
- (2) The LB&I issue team may have to make additional contacts with the taxpayer to perform a complete review of any new information provided by the taxpayer. The taxpayer will be notified when Appeals sends the new information to the examination team for consideration. Remember that all communications, oral and written, must be shared with the taxpayer, unless the communications fall within one of the exceptions to the ex parte rules; for example, comments

involving ministerial, administrative, or procedural matters. See Rev. Proc. 2012-18 Section 2.03(2). The issue team's evaluation of the information will also be shared with the taxpayer.

4.46.5.12.5
(03-09-2016)
**Applications to
Docketed Cases**

- (1) The examination team is not expected to review and comment on the taxpayer's petition before receipt of the case by Appeals. However, Appeals will provide the examination team with a copy of the petition for review and comment in docketed cases.
- (2) LB&I will provide a review of the petition to the extent it has knowledge of the facts and issues in dispute.
- (3) A key part of the meeting will be planning the timetables and resources needed to respond to new information that may be presented by the taxpayer. Recognition will be given to time frames established by the rules of the Tax Court in establishing priorities for the examination of new information and response to the taxpayer's positions.

4.46.5.13
(12-13-2018)
**Appeals Case Return
Procedures**

- (1) Under IRM 8.7.11.6.3, Returning a Case to LB&I, Appeals will return the case to LB&I jurisdiction if:
 - a. The taxpayer provides Appeals with information that LB&I previously requested during the examination, or
 - b. If the taxpayer, on its own initiative, provides Appeals with information that was not previously shared with LB&I during the examination.
- (2) Statute requirements:
 - a. A minimum of 365 days must remain on the statute of limitations when the unagreed case is received in Appeals.
 - b. When Appeals releases jurisdiction of cases to LB&I for consideration of new information or a new issue, there must be at least 210 days remaining on the statute when LB&I receives the case.
 - c. LB&I must ensure there are at least 180 days remaining on the statute when Appeals receives the case from LB&I after consideration of new information or a new issue.

4.46.5.13.1
(11-28-2023)
**LB&I Process on Cases
Returned From Appeals**

- (1) When Appeals releases jurisdiction of cases to LB&I, Appeals will update the case in IMS. The update will generate an e-mail to the case manager and team coordinator informing them that the case is being returned to the group. The Appeals Officer will complete Form 5402, Appeals Transmittal and Case Memo, and state that the taxpayer has provided Appeals with new information and the case is being returned to LB&I. The actual hardcopy case will be returned through Technical Services.
- (2) Appeals will notify the taxpayer that the case will be returned to LB&I.
- (3) As a reminder, Appeals may have secured a partial agreement for some issues prior to releasing jurisdiction to LB&I via Technical Services. Examiners will secure transcripts to see whether changes have been made to "tax as previously adjusted."
- (4) Electronically closed cases: If the taxpayer provides paper records to the Appeals Officer (AO) that were not uploaded to the Appeals Centralized Database System (ACDS), the Appeals record-keeping system, the AO will

include a note in the Remarks section of Form 5402 instructing the LB&I examiner to contact the AO by encrypted email with the shipping address so that the paper records can be forwarded directly to the LB&I examiner. Upon receipt of these paper records, the LB&I examiner will review and digitize the relevant documents, and upload the documents to the IMS TWS. For more information on digitization of records, refer to IRM 1.15.6.15.1, Digitizing Temporary Records and the Disclosure and Privacy Managing Federal Records Knowledge base at: <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB003/>.

4.46.5.13.2
(11-28-2023)

**LB&I Case Resolution
and Closing Procedures
Following Appeals Case
Return**

- (1) If there are changes to the proposed tax and the taxpayer still does not agree, the examination team will take the following actions:
 - a. If appropriate, solicit a new AOF. See IRM 4.46.4.11, Written Acknowledgement of Facts (AOF).
 - b. Attempt to come to an agreement on the facts and document facts that remain in dispute.
 - c. Follow IRM 4.10.8.13, Corrected Reports.
 - d. Prepare a revised 4549-A.
 - e. Prepare an update to the NOPA. Both the government's and taxpayer's positions with respect to the new information should be addressed.
 - f. A new 30-Day Letter will be issued if there is an increase to tax, subject to the provisions of IRM 4.10.8.12, Unagreed Case Procedures.
 - g. A new 30-Day Letter will not be issued if there is a decrease to tax.
 - h. Review the protest for adequacy and prepare an update to the rebuttal as necessary.
 - i. The examination team should highlight any pertinent changes to the RAR and the efforts made to reach an agreement in its report transmittal to Appeals.
 - j. Close the case through Technical Services to Appeals as usual.
- (2) If there is **no change** to the previous determination and the taxpayer still does not agree:
 - a. If appropriate, solicit a new AOF. See IRM 4.46.4.11, Written Acknowledgement of Facts (AOF).
 - b. Attempt to come to an agreement on the facts and document facts that remain in dispute.
 - c. Prepare an update to the NOPA. Both the government's and taxpayer's positions with respect to the new information should be addressed.
 - d. A new RAR or 30-day Letter is not issued.
 - e. Timely review the protest for adequacy and timely prepare an update to rebuttal as necessary.
 - f. The examination team will highlight efforts to reach an agreement in its report transmittal to Appeals.
 - g. Close the case through Technical Services to Appeals. Refer to IRM 4.46.5.11.2.5 and IRM 4.46.5.11.2.6 for electronic closures to Appeals.
- (3) If the taxpayer now agrees, obtain the taxpayer's signature on the RAR (revised for changes to government's position, if necessary) and close the case to CCP as usual.

4.46.5.14
(12-13-2018)
**Appeals Request for
LB&I Review and
Comment**

- (1) Under IRM 8.7.11.6.3, Returning a Case to LB&I, Appeals will retain the jurisdiction of the case and provide LB&I with an opportunity to review and comment on the new information if:
 - a. The taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in the RAR, protest or rebuttal, or
 - b. The taxpayer makes a new argument and this new argument does not include new information.
- (2) The Appeals Team Manager will send the information package along with all supporting information to LB&I. At least 45 days will be allowed for LB&I to comment and prepare a written review (subject to ex parte requirements). Appeals may grant an extension of time if mutually agreed.

4.46.5.15
(12-13-2018)
**Post-Settlement
Conference**

- (1) The purpose of the post-closing conference with Appeals is to discuss the settlement reached and its subsequent impact on the taxpayer. The conference is intended to supply the examination team with information that may be helpful in subsequent examinations of the taxpayer and to assist in identifying those issues that may be resolved by the application of issue resolution tools.

Note: The discussion between Appeals and LB&I is limited to closed years only. Matters pertaining to open years should not be discussed.

- (2) A post-closing conference will be held on all cases after the final disposition by Appeals unless an exception is agreed by LB&I and Appeals. Division Counsel will be invited to attend this conference for all docketed cases. Division Counsel may attend these meetings in non-docketed cases at the request of either LB&I or Appeals. However, the conference can be waived if both Appeals and LB&I agree it is not necessary.
- (3) This conference is neither intended to be a critique of the settlement nor is it intended to replace LB&I's dissent procedures. It is solely intended to communicate the resolution of the case to the examination team. For more detailed information, see IRM 8.7.11.13, Post Settlement Conference.

4.46.5.15.1
(12-13-2018)
**Direct Examination Time
for Conference
Procedures**

- (1) The team members will use Activity Code 598, Pre/Post- Appeals Conferences, to charge time for these meetings.

4.46.5.16
(12-13-2018)
**Dissent Procedures for
Disagreements with
Appeals Determinations**

- (1) This section provides formal procedures for LB&I to voice their concerns about an Appeals settled case. These procedures are not intended to replace any informal procedures currently in use at the local level. Local management in LB&I and Appeals should continue to address and resolve disagreements over case resolutions at the lowest possible level. These formal procedures are to be used when the informal process results in LB&I still having unresolved significant concerns about the Appeals disposition of an issue(s). See IRM 4.2.1.8.3, Disagreements With Appeals Determinations, and IRM 8.6.4, Conference and Settlement Practices, Reaching Settlement and Securing an Appeals Agreement Form, Disagreements to Appeals Determinations.

4.46.5.17
(03-09-2016)
**Assessment of Issue
Team Member's
Performance**

- (1) At the conclusion of each LB&I case, the case manager or the issue manager will consider whether written feedback regarding the issue team members' work should be submitted to the employee's manager.

4.46.5.17.1
(12-13-2018)
**Performance
Assessment**

- (1) A case or issue manager should provide feedback on any team member that is part of their issue team, even if the team member is not their employee. The issue manager or the case manager's assessment is not intended to substitute for the overall performance assessment. It is one of the factors that can be considered in the total evaluation prepared by the employee's manager.
- (2) Written feedback should reflect not only how well the team member performed, but what he or she contributed to the examination.
- (3) Case and/or issue managers may ask for feedback from team coordinators about the work performed by issue team members.

4.46.5.18
(12-13-2018)
**Post-Examination
Management Critique**

- (1) A critique of the completed cycle should be performed to gather recommendations or suggestions for improving case efficiency, communication and collaboration.
- (2) The case manager may perform a critique of the completed cycle through a collaborative meeting or through multiple meetings. The critique should be held during the final stages of the examination or within thirty days after the case is closed from the field. Critiques should be held even when there are overlapping examinations.

4.46.5.18.1
(12-13-2018)
**Post-Examination
Critique Objectives**

- (1) In a post-examination critique, LB&I will seek opportunities to improve the quality and efficiency of the examination process. This can be accomplished by:
 - a. Discussing issue exit strategies
 - b. Assessing the effectiveness of the examination
 - c. Developing recommendations for improving subsequent examinations
 - d. Evaluating how the issue-based process and collaboration worked, and what opportunities exist for improving tax administration with this taxpayer
 - e. Evaluating opportunities to improve the effectiveness of the issue-based process and the contribution of each participant
 - f. Evaluating the effectiveness of the computer programs used during the examination

4.46.5.18.2
(12-13-2018)
**Critique with the
Examination Team**

- (1) Depending on the type of examination plan used, the critique details should be addressed in the communication section.
- (2) The transfer of knowledge can be facilitated if each issue team member maintains summaries of topics and related background material to be used in preparation for the post-examination critique. Contemporaneous updating of this information throughout the examination should be helpful in improving the efficiency and effectiveness such as:
 - a. Recommendations for issue development

Example: Certain probes, accounts or audit procedures can be eliminated or expanded

- b. Identification of special computer programs that should be employed and any additional records that will be needed
 - c. Recommendations regarding time requirements
 - d. Identification of potential issues based on information obtained during the current examination
 - e. Suggestions of adjustments to the scope or depth of the examination
 - f. Identification of resources such as specialists, subject matter experts, Counsel, and outside experts that may be needed in the development of issues in subsequent cycles
- (3) If a new cycle is to be opened on the same taxpayer, combining the post-examination critique meeting with the next cycle's opening conference may be a useful technique. The similarities in the objectives of the two meetings make the critique an important source of information for the next cycle's issue team members. Where applicable, consideration should be given to combining the two meetings or portions of the meetings, whether or not the same case manager is assigned to the subsequent examination.

4.46.5.18.3
(12-13-2018)
Scope of Critique

- (1) The case manager, issue manager(s) and issue team members should keep in mind that the primary objective for conducting the critique is to evaluate opportunities to improve future examinations. The recent examination must be thoroughly evaluated with emphasis on how subsequent examinations, if warranted, can be improved. Some of the more important topics to be discussed during the critique are listed below:
- a. Assessment as to whether the examination results were commensurate with the time spent.
 - b. Determination as to whether the examination procedures were effective and efficient. This appraisal should be sufficiently detailed to provide the case manager and/or issue manager(s) of the subsequent examination a basis for adopting new examination techniques and planning new specialized computer programs.
 - c. Assessment as to whether the examination plan effectively monitored and controlled the examination; provided adequate guidelines to issue team members; facilitated a more orderly examination; and, adequately served as a vehicle for coordination.
 - d. Assessment of issue team member interactions. This discussion should be approached from the standpoint of identifying corrective actions that the next case manager and issue manager(s) can take in solving or avoiding problem areas.
 - e. Assessment of the adequacy of the team's compliance with the IDR management process.
 - f. Assessment of the effectiveness of the assistance or support participation. If there was no assistance or support, consideration should be given to whether the examination team should provide for support participation. This discussion should involve: 1) analysis of time vs. results; 2) the need for improved communication, cooperation or commitment; and 3) expected or resulting benefits of support group participation.
 - g. Estimation of the time needed to complete the next examination. This subject is best left until the end of the current cycle since some of the discussions and resulting recommendations will involve expenditures of

more or less time than spent on the completed examination. The case manager and issue managers will need this estimate for advance planning and program planning purposes.

- h. Assessment as to whether all agreed and disagreed issues were adequately documented.
- i. Determination as to whether workpapers were adequately prepared during issue development and whether the issues in the RAR were adequately explained.
- j. Assessment as to whether the issues were timely resolved during the audit using appropriate expertise.

- (2) Potential offset issues should be considered, critiqued and documented by examiners in the event that claims are subsequently filed by the taxpayer.

4.46.5.18.4
(12-13-2018)
**Post-Examination
Critique with the
Taxpayer**

- (1) A joint critique of the exam process may provide a valuable opportunity to improve future case processes, collaboration and cooperation with the taxpayer.
- (2) The post examination critique with the taxpayer can be held separately from the critique with the examination team.
- (3) A list of items to discuss during the critique with the taxpayer is contained in Exhibit 4.46.5-1, Sample Agenda for Post-Examination Critique. Items to be discussed in the critique should be given to the taxpayer at the opening conference. The taxpayer should be encouraged to maintain critique notes during the examination.
- (4) The taxpayer should be advised that the case will be part of an examination survey conducted by an outside contractor for LB&I. All responses are confidential and intended to assist LB&I in improving customer satisfaction.

4.46.5.18.5
(09-16-2021)
**Documentation and
Disposal of
Post-Examination
Critique**

- (1) A written electronic report is required for each case and will be prepared by the case manager after the post-examination critique. The report will, at a minimum, include:
 - a. The subjects discussed
 - b. The conclusions reached
 - c. Recommendations and instructions to the next team
 - d. Identification of agreed recurring issues (these must be discussed with the taxpayer)
 - e. Taxpayer's recommendations and comments
 - f. Identification of the critique meeting participants
- (2) The case manager will retain the critique report in the planning files for use by the subsequent case manager unless other specific guidance on the disposition of critiques has been issued.

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Exhibit 4.46.5-1 (12-13-2018)**Sample Agenda for Post-Examination Critique**

Agenda Topics	
1	Information Document Request (IDR) Form 4564: a. Prioritization b. Clarity c. Timeliness -- issuance and responses d. Appropriate scope
2	Notice of Proposed Adjustment -- Form 5701: a. Clarity b. Discussion and resolution of issues c. Timeliness -- issuance and responses d. Agreement on facts e. Accelerated issue resolution
3	Progress Meetings: a. Frequency b. Content - address problems and concerns
4	Issue Team: a. Scheduling b. Discussion of issues c. Subject Matter Expert
5	Assistance or support examinations: a. Timeliness b. Scope and depth c. Taxpayer support
6	Data processing: a. Effectiveness of techniques b. Access/resources
7	Accommodations: a. Space and equipment b. On-Site visitations
8	One-stop Service
9	Issue Team Assignment: a. Rotation of personnel b. Team expansion/contraction c. Diversion of personnel
10	Scheduling/responsibility: a. Peak period coordination b. Rollover computations c. Interviews of corporate officials d. Cycle size-projected

Exhibit 4.46.5-2 (11-28-2023)**Electronic Case Closing Procedures by Closure Type****Table 1: Electronic Closures to CCP****Agreed/No Change/No Change with Adjustments:**

On ERCS, **answer “Y”** to Electronic Closure. Prepare a separate Form 15292 for each entity.

Documents attached to Form 15292:

- a. TXMODA - dated within 30 days
- b. Form 3198 - note “Agreed and unpaid over \$100,000” if applicable on page 2 of form 3198
- c. Form 5344
- d. RAR, Form 4549-A - signed RAR for Agreed and No Change with Adjustments
- e. Form 2285 - if applicable - also note in subject line “Restricted Interest Case”
- f. For returns with a 97x indicator on AIMS, include a copy of the first 4 pages of the amended return, along with any pertinent schedules
 - Once AIMS reflects status 51, managers should email only Form 15292 with the documents listed above to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati* (FPP cases only) via an **encrypted email**.
 - Email subject line: “Agreed Case”, “No Change”, “No Change with adjustments” or “Agreed Case - unpaid and over \$100,000” (agreed and unpaid over \$100,000 are priority cases).
 - CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS. Form 3210 does not need to be uploaded to IMS.
 - After emailing Form 15292, go to Step 3 in IRM 4.46.5.11.2.3

Agreed/No Change/No Change with Adjustments Cases with 965 Transition Tax

On ERCS, **answer “Y”** to Electronic Closure. Prepare a separate Form 15292 for each entity. Refer to IRM 4.46.5.8.4 for instructions on closing cases with 965 transition tax. Documentation to attach to Form 15292:

- a. TXMODA- dated within 30 days
- b. Form 3198 - note “Agreed and unpaid over \$100,000” if applicable on page 2 of Form 3198
- c. Form 5344
- d. Form 3870
- e. RAR, Form 4549-A - signed RAR for Agreed and No Change with Adjustments
- f. Form 2285 - if applicable - also note in subject line “Restricted Interest Case”
- g. For returns with a 97x indicator on AIMS, include a copy of the first 4 pages of the amended return, along with any pertinent schedules
 - Once AIMS reflects status 51, managers should email only Form 15292 with the documents listed above to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati* (FPP cases only) via an **encrypted email**:
- a. Email subject line: “Section 965 Tax - Agreed”, “Section 965 Tax - No Change”, “Section 965 Tax - No Change with adjustments” or “Agreed Case - unpaid and over \$100,000” (agreed and unpaid over \$100,000 are priority cases)
 - CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS. Form 3210 does not need to be uploaded to IMS.
 - After emailing Form 15292, go to Step 3 in IRM 4.46.5.11.2.3.

Exhibit 4.46.5-2 (Cont. 1) (11-28-2023)

Electronic Case Closing Procedures by Closure Type

Table 1: Electronic Closures to CCP

Partial Assessments

On ERCS, **answer “N”** to Electronic Closure. CCP can make a partial assessment for partially agreed cases (Form 15292 not required). Status code remains in status 12 (do not update to status 51). For agreed partial assessments, LB&I manager should send **an encrypted email** and the following to **CCP Ogden* or **SBSE CCP Cincinnati* (FPP cases only)

- a. Email subject line: “Partial Assessment Request”(keep sensitive information out of the subject line of the email).
- b. TXMODA - dated within 30 days
- c. Form 3198 - Check the box under Special Features, Partial Assessment Requested.
- d. Form 5344
- e. RAR, Form 4549-A
- f. Form 2285 -if applicable -also note in subject line of email “Restricted Interest Case”.

Note: CCP will email a copy of Form 5344 to the examiner after the partial assessment was input, which will reflect the date of input.

Joint Committee Cases

- a. Prior to emailing documents, check AIMS freeze codes and resolve prior to closure to Ogden CCP.
- b. The examiner will follow the electronic Joint Committee referral outlined in IRM 4.36.3.8, Submission of Case to JCR Program (except for IIC), Joint Committee Electronic Referral Material must be retained in IMS.
- c. Upon receipt of JCT release letter and Letter 1574, update ERCS to remove ARC 27 and update to status 51, **answering “Y” to Electronic Closure** .
- d. Upload all JCT closing documents into IMS.
- e. Prepare a separate Form 15292 for each entity. Documents to attach to Form 15292:
 - a. TXMODA - dated within 30 days
 - b. Form 3198 -note in Other Instructions under Special Features, “JC Case Cleared”
 - c. Form 5344
 - d. RAR, Form 4549-A
 - e. Copy of JCT release letter and Letter 1574
 - f. Joint Committee Report - the taxpayer does not get a copy of the report
 - g. Form 2285 (if applicable) and note in subject line of email “Restricted Interest Case”
- Once AIMS reflects status 51, only Form 15292 with the documents listed above inserted into Form 15292 should be forwarded via **encrypted email** to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati* (FPP cases only) with an email subject line of “**JC Case**”
- CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS. Form 3210 does not need to be uploaded to IMS.
- After emailing Form 15292, go to Step 3 in IRM 4.46.5.11.2.3

Exhibit 4.46.5-2 (Cont. 2) (11-28-2023)**Electronic Case Closing Procedures by Closure Type****Table 1: Electronic Closures to CCP****Agreed Claim for Refund/Surveyed Claim (DC34)**

On ERCS, **answer “Y”** to Electronic Closure. Prepare a separate Form 15292 for each entity.

Documents to attach to Form 15292:

- a. TXMODA - dated within 30 days
- b. Form 3198
- c. Form 5344
- d. RAR, Form 4549-A (not required for surveys)
- e. Form 2285 (if applicable) and note in subject line of email “Restricted Interest Case”
- f. For surveyed claims (DC 34), include a copy of the first 4 pages of the amended return, along with any pertinent schedules
 - Once AIMS reflects status 51, manager should forward only Form 15292 with the documents listed above inserted into Form 15292 with an email subject line of “Claim for Refund” via an encrypted email to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati (FPP cases only)*.
 - CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS. Form 3210 does not need to be uploaded to IMS.
 - After emailing Form 15292, go to Step 3 in IRM 4.46.5.11.2.3

Civil Penalty Cases

On ERCS, **answer “Y”** to Electronic Closure. Prepare a separate Form 15292 for each entity. Documentation to attach to Form 15292:

- a. Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b. In the remarks section indicate the originating alpha MFT (for example PR, PQ)
- b. Form 3198 - Under Special Features:
 - Check the box “Civil Penalties (Form 8278)”
 - Indicate type of closure in Other Instructions
 - a. Full Closure (update ERCS to status 51) - no other penalties to be assessed or
 - b. Partial Closure (ERCS remains in status 12) - additional penalties such as continuation penalty or multiple type of penalty forthcoming
 - Use DC 02 for No Change
 - Use DC 12 for Agreed
 - Partial closures must remain in ERCS status 12. Full closures must be updated to ERCS status 51. Managers should email only Form 15292 with the documents listed above to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati (FPP cases only)* via an **encrypted email** with an email subject line of “Agreed Civil Penalty”.
 - CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS. Form 3210 does not need to be uploaded to IMS.
 - After emailing Form 15292, go to Step 3 in IRM 4.46.5.11.2.3.

Exhibit 4.46.5-2 (Cont. 3) (11-28-2023)

Electronic Case Closing Procedures by Closure Type

Table 1: Electronic Closures to CCP

Tax Shelter Promoter Penalty Cases**Agreed Cases:**

- On ERCS, **answer “Y”** to Electronic Closures. Prepare Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b. Prepare a separate Form 15292 for each entity. Documents to attach to Form 15292:
 - a. Form 906, Closing Agreement, properly executed by DFO
 - b. Form 3198 - check the box Civil Penalties under Special Features section
- Once ERCS reflects status 51, manager should email only Form 15292 with the documents listed above inserted into Form 15292 via encrypted email to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati* (FPP cases only) with an email subject line of “Agreed Tax Shelter Promoter penalty case”.

Unagreed Cases:

- On ERCS, **answer “Y”** to Electronic Closures. Prepare Form 15292. Documents to attach to Form 15292:
 - a. Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b
 - b. Form 3198 - check the box Civil Penalties under Special Features section
 - Once ERCS reflects status 51, manager should email only Form 15292 with the documents listed above inserted into Form 15292 via encrypted email to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati* (FPP cases only) with an email subject line of “Unagreed Tax Shelter Promoter penalty case”.

Note: CCP will electronically acknowledge receipt of documents via 3210 in ERCS. Form 3210 does not need to be uploaded to IMS.

- After emailing Form 15292, go to Step 3 in IRM 4.46.5.11.2.3

Note: Examiners should coordinate closures with the LB&I Tax Shelter Promoter Program Specialist Team. If the respective promoter case closing letter cannot be issued via regular mail, the examiner may transmit documents via email using SecureZip.

Exhibit 4.46.5-2 (Cont. 4) (11-28-2023)**Electronic Case Closing Procedures by Closure Type****Table 1: Electronic Closures to CCP****Return Preparer Penalty Cases****Agreed Cases:**

- On ERCS, **answer “Y”** to Electronic Closure. Prepare a separate Form 15292 for each entity. Documents to attach to Form 15292:
 - a. Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b
 - b. Form 5816, Report of Tax Return Preparer Penalty
 - c. Form 3198 - check the box Civil Penalties under Special Features section
 - d. Once AIMS reflects status 51. manager should email only Form 15292 with the documents listed above inserted into Form 15292 to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati* (FPP cases only) with the email subject line of “Agreed Return Preparer Penalty Case”.

Unagreed Cases:

- On ERCS, **answer “Y”** to Electronic Closure. Prepare Form 15292. Documents to attach to Form 15292:
 - a. Form 8278, Penalty Assessment Form, with appropriate signatures in items 10a and 11a and dated in items 10b and 11b
 - b. Form 5816, Report of Tax Return Preparer Penalty
 - c. Form 3198 - check the box Civil Penalties under Special Features section
 - d. Once AIMS reflects status 51. manager should email only Form 15292 with the documents listed above inserted into Form 15292 to **SBSE Ogden CCP Paperless Examine Cases Only* or **SBSE CCP Cincinnati* (FPP cases only) with the email subject line of “Unagreed Return Preparer Penalty Case”.
- CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS. Form 3210 does not need to be uploaded to IMS.
- After emailing Form 15292, go to Step 3 in IRM 4.46.5.11.2.3.

Paperless Surveys

Follow the procedures outlined in IRM 4.46.3.2.2.1, Paperless Survey - Non-Examined Closures Using a Paperless Process.

Note: Documents for paperless surveys for FPP cases are emailed to **SBSE CCP Exam Cincinnati*.

Exhibit 4.46.5-2 (Cont. 5) (11-28-2023)**Electronic Case Closing Procedures by Closure Type****Table 1: Electronic Closures to CCP****Paper Surveys**

Paper survey procedures apply to survey of returns with documentation and non-examined disposal codes (DC) of 31, 32, 42 and 45. Examiners must prepare the required documents (outlined below) and the team manager must verify for accuracy. AIMS must reflect status 51. Team manager must send encrypted email to **CCP Ogden* or **SBSE CCP Cincinnati* (FPP cases only) with the following documents and email subject line:

- a. Email subject line: "Paper Survey"
- b. Form 4251, Return Charge Out. This form is used for LB&I Imaging Network (LIN) non-examined closings. Note disposal code on the form.
- c. Form 5351, Examination Non-Examined Closings, completed as directed in IRM 4.4.21.5.1.3. Note the disposal code in the lower left of each block.
- d. Form 3198 - Note type of survey under Other Instructions in Special Features section
- e. If DC 31 or 32 are used, the survey reason code (SRC) must also be noted after the DC (see IRM 4.46.3.2.2 for SRC values and definition. If SRC "E" (Other) is used then Form 14235, LB&I Survey Form, or Form 1900, Income Tax Survey After Assignment, is also required.

Note: CCP will electronically acknowledge receipt of documents via Form 3210 in ERCS. Once the case closure is in AIMS status 90 and the TC 421 is posted to the TXMODA, CCP will email the examiner a Form 9856, Attachment Alert. The examiner will mail the Form 9856 and the remaining paper case closing file to: Ogden Submission Processing Center; M/S 6729, Files Processing Center; 1917 Rulon White Blvd; Ogden, UT 84404

Table 2: Electronic Closures to Technical Services (including Appeals Cases)**Unagreed Case to Appeals**

Refer to IRM 4.46.5.11.2.6 for Appeals paperless procedures, including documents that must be uploaded to SAIN 021.

Upload the following documents to SAIN 090, Case Closing Documents:

- a. Form 3198
- b. Form 5344
- c. Appeals Electronic Case Receipt Check Sheet (if applicable)

Update ERCS to status 21 and **answer "Y"** to Electronic Closure. Technical Services will acknowledge receipt of documents via Form 3210 in ERCS. Once the case is updated to status 21, the case must be closed in IMS.

Exhibit 4.46.5-2 (Cont. 6) (11-28-2023)**Electronic Case Closing Procedures by Closure Type****Table 2: Electronic Closures to Technical Services (including Appeals Cases)****Unagreed Cases For Issuance of Statutory Notice of Deficiency**

Refer to IRM 4.46.5.11.2.5 for Technical Services paperless procedures. Cases include:

- Individuals (Form 1040)
- C Corporations (Form 1120)
- Non ILSC returns (S-Corporation, non-TEFRA partnerships and BBA elect-out partnerships, not PCS linked)

Upload the following documents to SAIN 090, Case Closing Documents:

- a. TXMODA (dated with 30 days)
- b. Form 3198 - note "Unagreed for Statutory Notice"
- c. Form 5344
- d. 30-day RAR, Form 4549-A or Form 4605-A
- e. Forms 5701 and 886-A
- f. Form 2285 - if applicable

Update ERCS to status 21 and **answer "Y"** to Electronic Closure. Technical Services will acknowledge receipt of documents via Form 3210 in ERCS. Once the case is updated to status 21, the case must be closed in IMS.

If a case is subsequently petitioned for Tax Court, the case will be returned to the examiner to prepare a full paper case file, unless there is current paperless pilot for petitioned (or docketed) cases in place (i.e. shared virtual server).

Unagreed Penalty Cases

Refer to IRM 4.46.5.11.2.5 for Technical Services paperless procedures.

Upload the following documents to SAIN 090, Case Closing Documents:

- a. TXMODA (dated with 30 days)
- b. Form 3198 (check the box for "Civil Penalties" under Special Features section)
- c. Form 5344 (if applicable)
- d. Form 895 (if applicable with all applicable statute approval documents)
- e. Form 8278, Penalty Assessment Form (with appropriate signatures in Items 10a and 11a and dated in Items 10b and 11b)
- f. Forms 5701 and 886-A

Update ERCS to status 21 and **answer "Y"** to Electronic Closure. Technical Services will acknowledge receipt of documents via Form 3210 in ERCS. Once the case is updated to status 21, the case must be closed in IMS.

Exhibit 4.46.5-2 (Cont. 7) (11-28-2023)**Electronic Case Closing Procedures by Closure Type****Table 2: Electronic Closures to Technical Services (including Appeals Cases)****Disallowed Claims (Letters 905 and 906)**

Refer to IRM 4.46.5.11.2.5 for Technical Services paperless procedures.

Upload the following documents to SAIN 090, Case Closing Documents:

- a. TXMODA (dated with 30 days)
- b. Form 3198 - note "Statutory Notice of Claim Disallowance"
- c. Form 895 (if applicable and with all applicable statute approval documents)
- d. Form 5344
- e. 30-day RAR, Form 4549A, Form 2297, Form 3363
- f. Letter 905 or Letter 906
- g. Forms 5701 and 886-A
- h. Form 2285 (if applicable) and also note in email subject line "Restricted Interest Case"

Update ERCS to status 21 and **answer "Y"** to Electronic Closure. Technical Services will acknowledge receipt of documents via Form 3210 in ERCS. Once the case is updated to status 21, the case must be closed in IMS.

