



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.4.1

FEBRUARY 16, 2022

EFFECTIVE DATE

(02-16-2022)

PURPOSE

- (1) This transmits revised IRM 8.4.1, Appeals Docketed Cases, Procedures for Processing and Settling Docketed Cases.

MATERIAL CHANGES

- (1) Updated the text to reference the new formal title of Appeals as codified in IRC 7803(e)(1) by the Taxpayer First Act: the IRS Independent Office of Appeals. See IRM 8.4.1.1 (1), Program Scope and Objectives.
- (2) Added the Appeals mission statement as codified in IRC 7803(e)(3) by the Taxpayer First Act. See IRM 8.4.1.1.1 (2), Background.
- (3) Revised Taxpayer Bill of Rights-related content based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration). See IRM 8.4.1.1.1 (4), Background.
- (4) Revised the text of the Note following paragraph (1) of IRM 8.4.1.9.1 (1), Counsel (or Attorney) of Record in Docketed Cases, to reflect updated method for searching for the presence of a counsel of record on the Tax Court's new docket-management system, DAWSON.
- (5) Redrafted former IRM 8.4.1.16, Letters Used on Docketed Cases, to provide more detailed instructions on closing docketed cases. See IRM 8.4.1.16, Closing Docketed Cases.
- (6) Incorporated Appeals Interim Guidance Memorandum AP-08-0221-0005, Reissuance of Docketed EZ Close Expansion II, which is dated February 12, 2021. See IRM 8.4.1.16, Closing Docketed Cases, and IRM 8.4.1.16.1, Docketed EZ Close Procedures.
- (7) Made editorial changes throughout this IRM for clarity. Reviewed and revised text to incorporate plain language and correct grammatical errors, as well as to update website addresses, legal references, and IRM citations.

EFFECT ON OTHER DOCUMENTS

IRM 8.4.1 dated September 13, 2019, is superseded. This IRM incorporates Interim Guidance Memorandum AP-08-0221-0005, Reissuance of Docketed EZ Close Expansion II, which is dated February 12, 2021.

AUDIENCE

Appeals Employees

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8.4.1

Procedures for Processing and Settling Docketed Cases

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8.4.1.1
(02-16-2022)
Program Scope and Objectives

- (1) *Purpose:* This IRM describes the processes used by the IRS Independent Office of Appeals (Appeals) to work docketed cases. Specifically, IRM 8.4.1:
 - a. gives general information aimed at assisting Appeals Technical Employees (ATEs) who work docketed cases;
 - b. provides procedures for new receipts and closures of docketed cases by ATEs; and
 - c. recommends resources and authorities, including decision tools and other IRM sections, for considering docketed cases in Appeals.
- (2) *Audience:* The primary users of this IRM section are ATEs.
- (3) *Policy Owner:* Policy, Planning, Quality and Analysis is under the Director of Case and Operations Support.
- (4) *Program Owner:* Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization, and is under the Director of Policy, Planning, Quality and Analysis.
- (5) *Contact Information:* Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.4.1.1.1
(02-16-2022)
Background

- (1) This IRM provides guidance and information to assist ATEs in meeting the Appeals mission when working docketed cases.
- (2) As stated in IRC 7803(e)(3), Purposes and Duties of Office, the Appeals mission is to resolve federal tax controversies without litigation on a basis that is fair and impartial to both the government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the federal tax laws, and enhances public confidence in the integrity and efficiency of the IRS.
- (3) Appeals accomplishes its mission by considering protested and Tax Court-docketed cases, holding conferences, and negotiating settlements in a manner which ensures Appeals employees are familiar with and follow the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers.
- (4) The TBOR lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.4.1.1.2
(09-13-2019)
Authority

- (1) Rev. Proc. 2016-22, which supersedes Rev. Proc. 87-24, describes the Appeals process for cases docketed before the United States Tax Court.

8.4.1.1.3
(09-13-2019)
Responsibilities

- (1) The Policy analyst shown on the Product Catalog page as the originator is the assigned author of this IRM.

8.4.1.1.4
(09-13-2019)
Program Reports

- (1) Policy, Planning, Quality and Analysis (PPQA) provides trend and data analyses and detailed summary reports for Appeals.

8.4.1.1.5
(09-13-2019)
Terms and Acronyms

- (1) See IRM Exhibit 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8. Terms listed in this exhibit are not included in this section.
- (2) The following table lists commonly used acronyms and their definitions for relevant terms used in this IRM:

Term	Definition
CCDM	Chief Counsel Directives Manual
TLCATS	Tax Litigation Counsel Automated Tracking System

8.4.1.1.6
(09-13-2019)
Related Resources

- (1) This IRM is the primary source of guidance to Appeals on this program. The text of this IRM contains various references to assist employees who work docketed cases.

8.4.1.2
(09-13-2019)
Introduction to Docketed Cases

- (1) As indicated, Rev. Proc. 2016-22 describes the general procedures for handling docketed cases.
- (2) Appeals strives to resolve as many docketed cases as possible prior to trial.
- (3) This section covers the processing and settlement of docketed cases from the time the ATE receives the case until the time the case is closed to the ATM.
- (4) This section covers general procedures for docketed cases. More specific information may be found in IRM sections by type of docketed case.
- (5) There are some unique procedures that apply solely to campus docketed cases that are covered in IRM 8.4.2, Campus Appeals Docketed Cases.
- (6) References to Examination include the examiners in Wage and Investment (W&I), Small Business/Self-Employed (SB/SE), Large Business and International (LB&I), and Tax Exempt & Government Entities (TE/GE) groups.
- (7) Refer to IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria, for criteria to determine when it is necessary to refer a case to the Taxpayer Advocate Service (TAS), and guidelines for processing TAS cases from assignment to completion.

8.4.1.3
(09-13-2019)
Defining Docketed Cases

- (1) A **docketed case** is a tax case assigned a docket number in the U.S. Tax Court. These cases include, but are not limited to, petitions filed in response to:
 - a. Notices of Deficiency;
 - b. Final Adverse Determination Letters;
 - c. Notices of Final Partnership Adjustment (FPA), or Notices of Final Partnership Administrative Adjustment (FPAA);

- d. Notices of Determination Concerning Relief From Joint and Several Liability Under Section 6015, as well as cases in which the IRS failed to send any Notice of Determination with respect to a request for spousal relief submitted to the IRS at least six months ago;
 - e. Notices of Determination of Worker Classification;
 - f. Notices of Certification of Seriously Delinquent Federal Tax Debt to the Department of State (a.k.a. "Passport cases"); and
 - g. Notices of Determination Concerning Collection Action.
- (2) A **regular case** is any docketed case that has not been identified as an "S" case.
- (3) In eligible cases, taxpayers may elect to have their case conducted under the Court's simplified **small tax case** or "**S**" case procedures. Trials in "S" cases are conducted more informally, generally following less stringent procedural and evidentiary rules. An "S" case proceeding may result in a speedier disposition. However, a decision entered in an "S" case is not subject to review in any other court and cannot be treated as precedent for any other case. See IRC 7463 for details.
- (4) In a deficiency case, taxpayers may elect "S" case procedures when the total amount of the deficiency and any additions to tax or penalties (not including interest) in dispute is not more than \$50,000 for:
- a. Any one taxable year (income tax cases).
 - b. The tax imposed (estate tax cases).
 - c. Any one calendar year (gift tax cases).
 - d. Any one taxable period (or, if there is no taxable period, taxable event) (excise tax cases).
- Note:** The amount of deficiency in dispute includes additions to the tax, additional amounts and assessable penalties as outlined in IRC Chapter 68, to the extent the Tax Court has jurisdiction.
- (5) Cases that do not deal with deficiencies in dispute, but which may be conducted under "S" case procedures include:
- a. Innocent spouse cases in which the "amount of spousal relief sought" does not exceed \$50,000 for all years combined. The Tax Court holds that the "amount of spousal relief sought" includes accrued but un-assessed penalties and interest.
 - b. Collection Due Process cases in which the total unpaid tax (including interest and penalties) does not exceed \$50,000 for all years combined.
 - c. Worker classification cases in which the amount of employment taxes in dispute does not exceed \$50,000 for any calendar quarter.

8.4.1.3.1
(09-13-2019)
**Designations Identifying
Types of Docketed
Cases**

- (1) The Tax Court uses the following identification terms or letters after the docket number to designate different types of docketed cases:

Tax Court Designation	Tax Court Description
S	Small or "S" cases

Tax Court Designation	Tax Court Description
D	Disclosure Actions (IRC 6110) (with the prefix number next in order among all cases)
L	Collection Due Process Cases (IRC 6320 and IRC 6330)
ABATEMENT	Interest Abatement Actions (IRC 6404)
X	Exempt Organization Cases (IRC 7428)
EMPLOYMENT	Worker Classification Cases (IRC 7436)
R	Employee Plan Cases (IRC 7476)
B	Governmental Obligation Actions (Bonds) (IRC 7478)
P	Passport Cases (IRC 7345)
W	Whistleblower Actions (IRC 7623)

- (2) The Tax Court website case listings under the “Docket Search” tab reflect the designated Tax Court docket number, along with the identification terms or letters. You can search cases on the Tax Court website by docket number.
- (3) Counsel uses the Tax Litigation Counsel Automated Tracking System (TLCATS), a nationwide computerized case tracking system for docketed and non-docketed cases, which tracks the entire history of a case from opening through closing. TLCATS does not reflect the docket number identification terms or letters used by the Tax Court. Instead, TLCATS uses a separate letter coding system for docketed case type on TLCATS Case Screen 1.
- (4) TLCATS uses the following letters after the docket number to identify different types of docketed cases:

Counsel TLCATS Designation - Tax Court Cases	Counsel TLCATS Description
AI	Abatement of Interest
DU	Due Process Collection
W	Whistleblower
Counsel TLCATS Designation - Declaratory Judgment for Tax Court Cases	Counsel TLCATS Description
B	Bond Tax Status
D	Disclosure Information
R	Retirement Plans
T	Transfer of Property Out of U.S.

X	Exempt Organization
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8.4.1.4
(09-13-2019)
Jurisdiction of the Tax Court

- (1) The U.S. Tax Court is a federal court of record established by Congress under Article I of the Constitution of the United States. Congress created the Tax Court to provide a judicial forum in which affected persons could dispute tax deficiencies determined by the Commissioner of Internal Revenue prior to payment of the disputed amounts.
- (2) The jurisdiction of the Tax Court includes the authority to hear a variety of tax disputes. The Tax Court has jurisdiction to redetermine whether deficiencies determined by the Commissioner in notices of deficiency are correct. The Tax Court also has jurisdiction over other proceedings where Congress has given specific grants of jurisdiction. In all cases, the jurisdiction of the Court also depends on the timely filing of a petition by the taxpayer.
- (3) The following list describes various types of docketed cases *over which the Tax Court has jurisdiction*:

Type of Case	Description
Deficiency Proceedings	The Tax Court has jurisdiction to redetermine the deficiency determined by the Service. IRC sections 6211 through 6216 and IRM 8.7 cover many deficiency procedures. In a deficiency proceeding, the Court maintains jurisdiction only where the Commissioner has issued a notice of deficiency and the taxpayer has filed a timely petition; or in a transferee or fiduciary proceeding, the Court maintains jurisdiction only where the Commissioner has issued a notice of liability to the transferee or fiduciary and the transferee or fiduciary has filed a timely petition.

Type of Case	Description
Declaratory Judgment	<p>The Tax Court has jurisdiction over certain types of declaratory judgments. See <i>CCDM 35.1.1.20</i>, Declaratory Judgment and Other Proceedings, and the sections that follow for additional information on the following:</p> <ul style="list-style-type: none"> • Declaratory judgment relating to overshel-tered return (IRC 6234(c)) • Declaratory judgment relating to qualifica-tion of certain exempt organizations (IRC 7428) • Declaratory judgment relating to worker classification (IRC 7436) • Declaratory judgment relating to qualifica-tion of retirement plan (IRC 7476) • Declaratory judgment relating to gift valua-tion (IRC 7477) • Declaratory judgment relating to govern-ment obligations (IRC 7478) • Declaratory judgment relating to eligibility of an estate to make installment payments under IRC 6166 (IRC 7479)
Disclosure Actions	The Tax Court has jurisdiction over the review of disclosure actions (IRC 6110(f)(3) and IRM 11.3, Disclosure of Official Information).
Administrative and litigation costs	The Tax Court has jurisdiction over actions for ad-ministrative costs (IRC 7430(f)(2) and IRM 8.7.15, Administrative Cost and Qualified Offer Cases).
Readjustment and adjustment of partnership items	<p>The Tax Court has jurisdiction over the readjust-ment and adjustment of partnership items, including:</p> <ul style="list-style-type: none"> • Review of final partnership administrative adjustments (former IRC 6226) • Review where an administrative adjustment request is not allowed in full (former IRC 6228) • Review of partnership adjustments of a large partnership (former IRC 6247) • Review where an administrative adjustment request is not allowed in full for a large partnership (former IRC 6252).
Review of a partnership ad-justment	The Tax Court has jurisdiction over a petition for readjustment of a partnership-related item when an FPA has been issued (IRC 6234).
Interest Abatement	The Tax Court has jurisdiction over the review of the Service's denial of a request to abate interest, or "Interest abatement claims" (IRC 6404(h) and IRM 20.2.7, Abatement and Suspension of Debit Interest).

Type of Case	Description
Collection Due Process	The Tax Court has jurisdiction over the review of certain lien/levy actions, or “collection due process (CDP)” cases (IRC 6320; IRC 6330; and IRM 8.22, Collection Due Process).
Innocent Spouse	The Tax Court has jurisdiction over the review of relief from joint and several liability on a joint return, or “innocent spouse cases” (IRC 6015(e) and IRM 8.7.12.9.3, Docketed Innocent Spouse Cases).
Worker classification	The Tax Court has jurisdiction over the review of worker classification (IRC 7436).
Jeopardy Assessment	The Tax Court has jurisdiction to review the reasonableness and appropriateness of a jeopardy assessment where a taxpayer has already timely petitioned the Tax Court to redetermine a deficiency at the time the jeopardy assessment is made (IRC 7429(b)(2)(B); IRM 4.15.1.10.4.2, Judicial Reviews; and IRM 8.7.1, Guidelines for Cases with Special Issues).
Review of sale of seized property	The Tax Court has jurisdiction to review the Service’s determination to sell seized property pending a decision by the Tax Court in a deficiency proceeding (IRC 6863(b)(3)(C)).
Redetermination of interest	The Tax Court has jurisdiction over the redetermination of interest on deficiencies or overpayments determined by the Tax Court (IRC 7481(c)).
Enforcement of overpayment decision	The Tax Court has jurisdiction over enforcement of an overpayment decision by the Tax Court if not refunded by the Service within 120 days after the decision of the court has become final (IRC 6512(b)(2)).
Section 6166 Interest Modification	The Tax Court has jurisdiction to modify the final decision in an estate tax case to reflect interest paid pursuant to IRC 6166 (IRC 7481(d)).
Review of Certification of Seriously Delinquent Tax Debt to U.S. State Department	<p>The Tax Court has jurisdiction to determine whether the Service’s certification of a seriously delinquent federal tax debt was erroneous, or whether the Service has failed to reverse the certification (IRC 7345).</p> <p>Note: These so-called “Passport Cases” will not be referred to Appeals by Counsel. See Chief Counsel Notice CC-2018-005.</p>

Type of Case	Description
Whistleblower Actions	The Tax Court has jurisdiction to review the Service's determination of whistleblower awards (IRC 7623).

Note: For more information, see *CCDM 35.1.1*, Tax Court Jurisdiction and Proceedings. Questions concerning Tax Court jurisdiction should be directed through the Field Counsel assigned to the case to Associate Chief Counsel, Procedure and Administration.

8.4.1.4.1
(08-09-2011)

No-Deficiency and Overassessment Years in Docketed Case Work Units

- (1) No-deficiency and overassessment years are not subject to the Tax Court's jurisdiction.
- (2) Appeals may consider a work unit containing both docketed and non-docketed years.

8.4.1.5
(09-13-2019)

Appeals' Authority Over Docketed Cases

- (1) When Counsel refers a docketed case to Appeals for consideration, Appeals has exclusive authority to settle the case. This authority remains with Appeals unless procedures require the case be returned to Counsel.
- (2) Counsel may choose not to refer certain cases or issues to Appeals. See Rev. Proc. 2016-22, § 3.03. If Counsel determines that a referral to Appeals will not be made on a case or issue, Counsel will notify the petitioner that a referral to Appeals will not be made. In such a situation, Appeals foregoes settlement authority on the case or issue not referred by Counsel.

8.4.1.6
(02-16-2022)

Common Terms and Definitions in Docketed Cases

- (1) Some Tax Court terms and definitions are provided in *CCDM 35.1.2*, Tax Court Terms and Definitions. In addition, common definitions for docketed cases include:

Term	Definition
Acquiescence	Commissioner's acceptance of a decision reached by the trial court adverse to the position of the Government. These are published in the Internal Revenue Bulletin.
Action on Decision	Chief Counsel's recommendation, if any, of action to be taken on an adverse decision.
Cases on Remand	When a case is sent back to a lower court with orders about further action.

Term	Definition
Decision of the Tax Court	In a deficiency case, the decision of the Tax Court memorializes the Tax Court's determination of the correct amount of the deficiency, penalty, additions to tax or overpayment. A decision needs to dispose of any claims for award of attorney's fees under IRC 7430. The time to appeal a decision of the Tax Court is within 90 days after the decision is entered. A decision document closes a case. A decision is signed by a Judge and entered in the Court's record. The decision reflects the conclusions of the Court. A decision can be entered in a case after the parties have settled all issues or the Judge has issued an opinion or order deciding all issues in a case.
Defaulted Case	A case where a party fails to plead or otherwise proceed with the case as provided by the Tax Court Rules of Practice and Procedure and the Tax Court enters a decision against the defaulting party. A decision rendered upon a default operates as an adjudication on the merits.
Dismissed Case	A case where the Tax Court has entered an order of dismissal for lack of prosecution, lack of jurisdiction or other reason. A decision rendered in consequence of a dismissal, other than a dismissal for lack of jurisdiction, operates as an adjudication on the merits.
Legal File	A file maintained by Counsel containing all legal documents pertaining to a docketed case.
Nonacquiescence	Commissioner's non-acceptance of a decision reached by the Tax Court that is adverse to the position of the Government. These are published in the Internal Revenue Bulletin.
Original Consideration	Appeals' consideration of a docketed case not considered by Appeals in non-docketed status.
Petition	Taxpayer's request to the Tax Court for a redetermination of the deficiency. This is the pleading the taxpayer files with the Tax Court to initiate an action. A petition in a declaratory judgment proceeding is the pleading filed by the taxpayer or fiduciary.
Petitioner	A taxpayer or fiduciary who files a petition with the Tax Court.

Term	Definition
Proposed Schedule of Trial Sessions	Schedule prepared by the Tax Court for each trial term. This schedule is used primarily by the Tax Court to arrange courtroom facilities.
Reconsideration	An Appeals consideration of a docketed case previously considered by Appeals in either non-docketed or docketed status.
Respondent	In a Tax Court case, the respondent is the Commissioner of Internal Revenue.
Rule 155 Case	After trial, the Tax Court renders an opinion. If the opinion requires a recomputation of tax, the Court withholds entry of its decision to permit a computation as provided by Tax Court Rule 155. An Appeals TCS generally does the recomputation.
Session Settlement	Settlement effected by Counsel after the date a docketed case is set for trial or the opening date of the Pre-trial Hearing or Request Session.
Settlement Stipulation	Settlement document filed with the Tax Court. This document memorializes the settlement of: <ul style="list-style-type: none"> • a deficiency, • a penalty, • an addition to tax, • an overpayment, or • some other issue agreed to by the Government and petitioner in a docketed case. Claims for attorney's fees under IRC 7430 may also be included.
Stipulation of Facts	A formal legal document filed with the Tax Court setting forth those mutually agreed statements of fact which require no proof in Court.
Trial Calendar	The Tax Court's list of cases scheduled for trial at a certain time and place. The trial calendar is issued several months before the opening date of the trial session.
Trial Calendar Period	The period beginning with the issuance of the calendar and ending on the opening day of the session.
Trial Terms	The three time periods into which the Tax Court divides the fiscal year for trial sessions of the court. The three terms are: <ul style="list-style-type: none"> • Fall Term - 12 weeks beginning in September, • Winter Term - 9 weeks beginning in January, and • Spring Term - 9 weeks beginning in April.

Term	Definition
Trial Session	Actual time the Tax Court sits and hears cases during a term.

8.4.1.7
(09-13-2019)
**Docketed Case For
Assignment and
Consideration After
Answer Filed**

- (1) After filing an answer with the Tax Court, Counsel sends the administrative file (or dummy file) for consideration directly to the Appeals office and ATM identified in the Orange Cover Sheet previously placed on top of the administrative file by APS. Counsel generally puts a copy of the Designation of Place of Trial and answer in the administrative file for the ATE to use. But Counsel no longer places a copy of the petition in the administrative file. Instead, the petition will generally be uploaded into ACDS on the relevant Case Activity Records page as a case file attachment.

- (2) Upon receipt of the file from Counsel after answer, the case will be assigned to an ATE on ACDS.

Note: Upon assignment, the “FROMDATE” field on the case inventory screen is systemically completed with the assignment date. If APS receives an administrative file before the system completes the “FROMDATE” field, **DO NOT** manually enter a “FROMDATE”. Manually inputting a “FROMDATE” before the case is assigned removes the case from the “ANSWER” follow up report and leaves APS with no way to monitor the statute.

- (3) When the ATM and/or ATE receives the administrative file, they must identify any processing instructions or issues raised by Counsel, as well as conduct their own independent review, for actions needed on issues including: non-petitioning spouses, non-petitioned years, and premature assessments. If any of these issues are identified, the ATM or ATE must alert APS immediately of any corrections needed.

Caution: Counsel may note actions needed on a Form 1734, Transmittal Memorandum, or elsewhere in the administrative file. But the ATM and ATE should also review the file themselves to determine any preliminary issues that need to be addressed. The ATM and ATE should then take prompt action to address such preliminary issues.

Reminder: Docketed key cases that are subject to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) **must** be screened by the Appeals TEFRA Team. Upon receipt of such a case, the ATM and/or ATE must verify that this review by the Appeals TEFRA Team has been completed. For more information about this requirement, and for actions to take in the event that this screening was not completed before the ATM received the case, see IRM 8.19.1.1.1(2), Appeals TEFRA Team (ATT).

8.4.1.8
(09-13-2019)
**Preliminary Review of
Assigned Docketed
Case**

- (1) When an ATE receives a newly assigned docketed case, he/she completes the intake procedures fully described in IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE), generally within 45 days of receiving the case. To summarize IRM 8.2.1.4(1), the ATE's intake actions must include:
 - a. Completing the statute verification (including verifying the timeliness of the petition),
 - b. Validating all critical data fields in ACDS,
 - c. Determining whether the case is ready for Appeals' consideration, and
 - d. Making initial contact with the taxpayer or representative.

Reminder: IRM 8.2.1.4(1) generally establishes a 45-day deadline for ATEs to complete these intake procedures. While the ATM is authorized to be "reasonable" in extending this 45-day deadline for contacting taxpayers, the ATM is **not** authorized to extend the 45-day deadline for the ATE to complete the process of statute verification. See IRM 8.2.1.4.1, Exception to 45-Day Time Frame for Initial Case Actions.

Note: In conducting the preliminary review of an assigned docketed case, the ATE may find a Form 14121, No Change Certification, in the administrative file. These forms are generally prepared when a taxpayer sends supporting documentation to the originating function in response to the statutory notice of deficiency. At times, the originating function accepts the information and "no changes" the case. In those cases, the originating function prepares Form 14121 to certify that it has reviewed the documentation provided by the taxpayer and concluded that no changes are needed to the return as filed. While the Form 14121 will generally resolve the dispute, the ATE must remember that a decision document (and perhaps a Statement of Account) is still needed to officially resolve the Tax Court case.

- (2) All returns, Compliance documents, and Counsel documents (including a copy of the petition, answer, and designation of place of trial) should be available to the ATE, either in the administrative file or as case-file attachments in ACDS, and properly arranged.
- (3) When the ATE receives a dummy file for consideration, the paper file and the ACDS Case Activity Record should collectively contain all available return and Compliance information, as well as the petition, answer, and designation of place of trial from Counsel.

Note: If essential documents are missing from the dummy file, it may be necessary to request copies of documents from the taxpayer. The ATE should consult with the ATM to determine the appropriate action to take in such cases.

- (4) If the ATE determines that critical data fields in ACDS are incorrect, he/she must either: (i) input and promptly submit any necessary updates or corrections using the validation tracking system (VTS) in ACDS, or (ii) prepare and promptly submit an "ACDS Update Request Form" to APS if the data field that needs correction is not available for update via the VTS. If an ACDS Update Request Form is needed for an update or correction, the campus and field offices will use the following procedures to request assistance from APS:
 - a. Prepare the ACDS Update Request Form, completing the required fields as appropriate. This form can be found on either APGolf or APGolf 2.0 under the "ACDS Updates" category.

Note: APS will return requests that can be completed by the ATEs. If an ACDS Update Request must be used, then ATEs should use the most recent ACDS Update Form from APGolf or APGolf 2.0.

- b. Find the correct email address on Outlook and email the update request form via *encrypted email* to: *AP-COS-APS-(your Area, East or West)-(abbreviation for your APS servicing office) ACDS Update Request.

Caution: Do not email the ACDS Update Request Form directly to an APS employee, such as the Processing Team Manager.

- c. APS will process the ACDS Update Request Form within three business days of receipt. APS will email the requesting employee if clarification is needed to process the request.
- d. APS will return any requests for updates or corrections that are not submitted via the electronic form/mailbox. The electronic mailboxes allow APS management to monitor timeliness and accuracy of the updates.

8.4.1.8.1 (09-13-2019) **Preliminary Review for Timely Filing**

- (1) When the petition appears to be untimely, the ATE should immediately contact the Field Counsel attorney assigned the case to discuss the possibility of Counsel filing a motion to dismiss. The original administrative file should be obtained and reviewed prior to filing a motion to dismiss.
- (2) A dismissal for lack of jurisdiction may be based on circumstances which favor the taxpayer. For example, a deficiency notice may be determined to be invalid because it was not sent to the taxpayer's last known address.

Reminder: In reviewing cases with a non-petitioning spouse, the ATE should always be aware of the possibility that the non-petitioning spouse's notice of deficiency was not sent to his/her last known address. Questions about whether a taxpayer was notified at his/her last known address should be discussed with the ATE's ATM and the assigned Field Counsel attorney.

8.4.1.9 (10-01-2012) **Preparing For and Holding the Conference**

- (1) Follow procedures found in IRM 8.6.1, Conference and Issue Resolution, IRM 8.6.2, Appeals Case Memo Procedures, and IRM 8.6.3, Appeals Rulings, for information to help in preparing for and holding the conference with the taxpayer.

8.4.1.9.1 (02-16-2022) **Counsel (or Attorney) of Record in Docketed Cases**

- (1) In docketed Tax Court cases, suits for refund, and bankruptcy cases that are judicial tax proceedings, no power of attorney is required from a counsel of record (a.k.a. attorney of record). An attorney becomes the petitioner's counsel of record by filing a petition or refund suit, or by entering an appearance in the case. A counsel of record is authorized to act on behalf of the petitioner in the court proceedings, access the tax information of the person he/she represents and represent the taxpayer before the Internal Revenue Service. In a case docketed in the Tax Court, anyone other than the counsel of record must be eligible to practice before the IRS and, in order to be recognized, must present a Form 2848, Power of Attorney and Declaration of Representative, or other power of attorney plus a declaration.

Note: An ATE can determine if a petitioner currently has a counsel of record by reviewing the docket listing found on the Tax Court's website. The ATE

accesses the Tax Court's website at <https://dawson.ustaxcourt.gov>, enters the relevant docket number in the *Search by Docket Number* field, chooses *Search*, clicks on *Printable Docket Record*, and looks for a name in the *Counsel* column for the row corresponding with each petitioner's name.

- (2) See the following table for additional information on an attorney of record:

Scope of Practice Before IRS	Source of Eligibility to Practice	Required Evidence of Authority
Any IRS office	26 C.F.R. § 601.509. See also Publication 216, Conference and Practice Requirements.	Power of attorney not required

- (3) When a taxpayer is represented by a counsel of record, the ATE should communicate exclusively with the counsel of record. See IRM 8.6.1.4.4(5), Copies of Written Communications. See also 26 C.F.R. § 601.509.

8.4.1.9.2

(09-13-2019)

Request for Legal Advice

- (1) Appeals cannot request a Technical Advice Memorandum (TAM) or a Technical Expedited Advice Memorandum (TEAM) on any issue if the same issue is involved in a docketed case for any taxpayer for any taxable year. Instead, Appeals requests legal advice from Field Counsel.
- (2) TAMs and TEAMs are advice published by the Office of Associate Chief Counsel concerning the interpretation and proper application of the tax law, tax treaties, regulations, revenue rulings, notices or other precedents to a set of specific facts involving a specific taxpayer.
- (3) When requesting legal advice in a docketed case, send one information copy of the request for legal advice to the Field Counsel attorney/paralegal assigned to the docketed case and his/her supervisor.
- (4) The request must clearly indicate that it involves a docketed case. In docketed cases, do not advise the taxpayer (petitioner) that legal advice was requested.
- (5) See IRM 8.6.3, Appeals Rulings, for detailed information on requesting advice.

8.4.1.9.3

(09-13-2019)

New Issues in Docketed Cases

- (1) A new issue in a docketed case is any adjustment to or change to an item that affects the petitioner's tax liability that was not included in the notice of deficiency and is raised or discussed during consideration of the case.
- (2) Appeals will not raise a new issue in a docketed case. However, Appeals will consider new issues the Government raises in its pleadings, and may consider any new evidence developed by Compliance or Counsel to support the Government's position.

Note: The Government has the burden of proof on new issues the Government raises in its pleadings.

- (3) Whenever a petitioner raises an issue not previously examined or raised in the petition, the assigned ATE must prepare a brief memorandum to the assigned

Field Counsel attorney. Submit the completed memorandum to the ATM to be forwarded to Counsel. The memorandum must:

- a. Describe the new issue,
 - b. Assess whether Appeals believes the issue is amenable to settlement,
 - c. State whether additional factual development is necessary, and
 - d. Discuss any other observations and recommendations Appeals may have concerning the new issue.
- (4) Advise the petitioner that no settlement discussion will take place with respect to the new issue until the assigned Field Counsel attorney determines whether a formal amendment of the pleadings is needed to raise the new issue pursuant to Tax Court Rule 41(a).

Note: Chief Counsel favors formal amendments to the pleadings unless a substantial reason exists for permitting Appeals to consider a new issue raised by the petitioner without a formal amendment to the pleadings. When the new issue involves a Coordinated Industry Case (CIC), a Compliance Coordinated Issue (CCI), an Appeals Coordinated Issue (ACI), large dollar amounts, or is otherwise significant, the assigned Field Counsel attorney generally will ask the petitioner to formally amend the pleadings before Appeals considers the new issue.

- (5) Within ten (10) business days of receipt of the memorandum from Appeals, the assigned Field Counsel attorney will notify Appeals in writing as to whether Appeals may consider the new issue raised by the petitioner in the absence of a formal amendment to the pleadings.

Note: When the assigned Field Counsel attorney determines that Appeals may consider a new issue without a formal amendment to the pleadings, or when the petitioner raises a new issue in a formal amendment to the pleadings filed with the court, the ATE will retain jurisdiction and refer the new issue to Compliance for review and to make an initial determination. See IRM 8.4.4, Examination Assistance Requests, for more information about referring docketed cases to the Compliance function.

- (6) Where the taxpayer (or representative) offers to make payment of additional tax liability for slush fund or improper payment deductions, or reveals their existence to Appeals for the first time, the ATE will discontinue Appeals' consideration of the case and immediately contact the assigned Field Counsel attorney.

8.4.1.9.4 (09-13-2019) Assistance to Counsel/Appeals

- (1) There are a number of circumstances where Counsel and Appeals may request and provide assistance to each other in the working of docketed cases.
- (2) Appeals may request the assistance of Counsel in docketed cases in the same manner as prescribed in IRM 8.2.1.7.1, Assistance from Counsel in Pre-90-Day Cases.
- (3) Counsel may request assistance from Appeals during trial preparation of cases in which Appeals developed knowledge and expertise that is beneficial to

Counsel. If resources and workloads permit, Appeals assists Counsel as an advisor and, if appropriate, shares in some part of trial preparation.

8.4.1.10
(09-13-2019)
**“Last Chance” Letter
Assistance from
Counsel**

- (1) The “Last Chance” Letter is designed to encourage unresponsive petitioners to initiate settlement with Appeals as early as possible.
- (2) When requested by Appeals, the assigned Field Counsel attorney or paralegal in SB/SE Field Counsel or TEGE Division Counsel (TEGEDC) will issue a “Last Chance” Letter strongly encouraging petitioners to participate in the resolution of their docketed cases or prepare to go to trial.
- (3) When to use:
 - Ask Counsel to send the “Last Chance” Letter to petitioners who have not meaningfully responded to contacts to initiate settlement negotiations.
 - Include “no-response” situations.
 - Ask Counsel to send the letter any time it may help to get the petitioner to cooperate with Appeals.

- (4) The steps to request that Counsel issue a “Last Chance” Letter are:

- a. Ask Counsel to prepare and issue the letter by sending an encrypted email to the assigned Field Counsel attorney/paralegal, as well as a carbon copy to the assigned Field Counsel employee’s supervisor.

Note: The ATE can generally determine the assigned Field Counsel paralegal/attorney by checking the “Attorney” field on the Case Summary Card, or by performing a Docket Search on the Tax Court’s website (i.e., clicking on the *Printable Docket Record* button and reviewing the people listed as “Respondent Counsel”). The ATE can then use Outlook to determine the Field Counsel attorney’s supervisor.

- b. Include the name of the petitioner and the docket number in your request.
- c. Counsel prepares and issues the “Last Chance” Letter to the petitioner within 2 business days of receiving the ATE’s request. The letter instructs the petitioner to respond to the ATE by a certain date or within a certain number of days from the date of the letter.

Note: There is no standard “Last Chance” Letter format, so each Field Counsel attorney/paralegal will prepare the letter in accordance with local procedures.

- d. Once issued, Counsel attaches a copy of the dated letter to an encrypted email and sends it to the requesting ATE.
- e. Note the email request and Counsel response in the ACDS CARATS for the case and hold the case for the period indicated.

(5)	<table border="1"> <tr> <th>If...</th><th>Then...</th></tr> <tr> <td>The petitioner responds to the “Last Chance” Letter by the deadline given</td><td>The ATE initiates settlement negotiations</td></tr> </table>	If...	Then...	The petitioner responds to the “Last Chance” Letter by the deadline given	The ATE initiates settlement negotiations
If...	Then...				
The petitioner responds to the “Last Chance” Letter by the deadline given	The ATE initiates settlement negotiations				

If...	Then...
The petitioner does not respond to the "Last Chance" Letter by the deadline given	<p>The ATE attempts at least one more contact by telephone using updated information.</p> <ul style="list-style-type: none"> • If petitioner responds, initiate settlement negotiations. • If petitioner doesn't respond, process case in accordance with existing trial-preparation procedures.

Note: Continue all required notifications and requests to petitioners to participate in the Appeals process as currently defined in the "S" case or existing local contact procedures.

Note: This process will not reduce the time-frame commitment for providing cases to Counsel by the applicable deadline given in section 3 of Rev. Proc. 2016-22.

8.4.1.11 (08-09-2011) Settlement of Docketed Cases

- (1) The settlement approach and elements of evaluating issues are not affected by whether a case is non-docketed or docketed. An unacceptable settlement in non-docketed status does not become acceptable solely because it is reconsidered in docketed status; nor does an unacceptable settlement become more acceptable when a case is calendared for trial than prior to being calendared for trial.
- (2) This approach, of course, does not preclude recognition of changes in judicial interpretation of the law and changes in Service position. It is also recognized that in reconsideration of a case or in trial preparation, additional facts may arise which can affect evaluation of the case. See IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form, for additional guidance on settling cases.

8.4.1.11.1 (09-13-2019) Settlement of Related Cases

- (1) No settlement offer will be accepted by Appeals where there is a related case in Counsel unless both offices agree that the offer is acceptable.
- (2) Disagreements between Appeals and Counsel on whether a settlement offer should be accepted are resolved by the Counsel office to which the responsible Field Counsel attorney is assigned, with the advice and assistance of the ATE's Appeals Area Director and the Associate Chief Counsel responsible for the issue.
- (3) Counsel should review Appeals-proposed statutory notices of deficiency, claim disallowances, and final adverse letters for any case related to a docketed case before such notices or letters are issued to the taxpayer.

8.4.1.11.2
(09-13-2019)
**Stipulation/Decision
Preparation**

- (1) In most docketed cases settled by Appeals, an Appeals employee prepares the necessary settlement documents and has these documents executed by the taxpayer or counsel of record.
- (2) Appeals prepares simple settlement documents using the format approved by Counsel. Typically, the following simple stipulation decision documents are prepared by Appeals:
 - Deficiency in Income Tax (Simple Stipulation Decision)
 - Deficiency in Income Tax with Penalties and/or additions to tax
 - No Deficiency and No Overpayment
 - Multiple petitioners
 - Simple Innocent Spouse cases

Note: In all cases where Appeals prepares a decision document for the petitioner's or counsel of record's signature, Appeals must review source documents, such as the petition and any orders in the file, regarding the caption. In addition, Appeals must access www.ustaxcourt.gov to ensure the proper caption is used. If there is a discrepancy between the caption shown on source documents and the caption shown on the official Tax Court website, Appeals contacts Counsel to determine the correct caption to use. Also, as a general rule, the Counsel signature block is left blank unless local arrangements were made.

- (3) In complicated settlements, Appeals may ask Counsel to prepare the settlement documents. Complicated situations generally include, but are not limited to, the following:
 - Prepayment Credits,
 - Restricted Interest,
 - Tentative Carryback Allowance,
 - Jeopardy Assessments,
 - Prior Unpaid Assessments,
 - Excessive Claimed Withholding Tax,
 - Estimated Tax Payments,
 - Overpayment cases,
 - Transferee or Fiduciary Liability,
 - Worker-classification cases,
 - IRC 5000A Shared Responsibility Payment issues,
 - Complex Innocent Spouse cases, and
 - Section 531 cases.
- (4) For cases where Field Counsel is responsible for preparing the decision documents, Field Counsel will:
 - a. Prepare the settlement documents, and
 - b. Return the settlement documents to Field Appeals to secure signature from the taxpayer. See IRM 8.4.2.7.1, Stipulation/Decision Preparation, for guidance on Field Counsel preparation and mailing of decision documents for Campus Appeals.

Note: APS uses the ACDS action code PREPSTIP to reflect these cases.

- (5) During an in-person conference, the ATE will prepare settlement documents and seek the necessary signatures, if possible. If not, or when the conference

is conducted by any other method, the ATE will mail settlement documents to the petitioner or counsel of record as soon as possible after the conference.

- (6) Where unusual or complex circumstances exist, proposed settlements of regular docketed cases are reviewed by the ATM before the settlement documents are forwarded to the petitioner for signing.
- (7) Counsel reviews the format and accuracy of all settlement documents prepared by Appeals before filing with the Court.

8.4.1.12 (09-13-2019) **Settlement Computations on Docketed Cases**

- (1) Appeals is responsible for preparing the necessary computations for docketed cases settled either by Appeals or by Counsel. These computations are to be prepared by a TCS.
- (2) When the ATE reaches settlement with a petitioner or counsel of record and determines that settlement computations are needed, he/she will use the APGolf subsystem in ACDS to electronically prepare and submit Form 3608, Request for TCS Service, to request assignment to a TCS.
- (3) When the docketed case is settled as an agreed case, the TCS will follow the normal procedures for preparing settlement computations found in IRM 8.17.2, General Settlement and Rule 155 Computations.

8.4.1.12.1 (09-13-2019) **Tentative Allowances in Docketed Cases**

- (1) Taxpayers may report a net operating loss or credit carryback loss as a tentative allowance on Form 1045, Application for Tentative Refund, for individuals, or Form 1139, Corporation Application for Tentative Refund. This is called a tentative allowance or tentative carryback.
 - a. A tentative allowance is identified on an account module with transaction code (TC) 295. When this TC is present, either a Form 1045 (individuals) or a Form 1139 (corporations) was filed.
- (2) Compliance usually secures Form 1045/Form 1139 and places it in the case file along with the return. If the form is not in the case file, the ATE should take steps to secure a copy so an analysis can be made to determine what year the carryback originated and the amount of the carryback allowed.
- (3) Further discussion of tentative allowances (Form 1045/Form 1139) is found at IRM 8.17.4.14, Tentative Allowances and Other Carryback Claims in Notice of Deficiency Statement.

8.4.1.12.2 (09-13-2019) **Other Carryback Claims Allowed in Docketed Cases**

- (1) Taxpayers may claim a net operating loss or unused credit carryback on an amended return using Form 1040X, Amended U.S. Individual Income Tax Return, or Form 1120X, Amended U.S. Corporation Income Tax Return. This is called a claim for credit or refund:
 - a. A claim for credit or refund is identified on the account module by TC 291 or TC 299. When these transaction codes are present, the taxpayer filed either a Form 1040X (individual) or Form 1120X (corporation).
 - b. Generally, a TC 299 indicates the Form 1040X or Form 1120X was filed to carry back an unused loss or credit. A TC 291 may or may not be the result of the Form 1040X or Form 1120X being filed to carry back an unused loss or credit.

- (2) Compliance usually secures Form 1040X or 1120X and places it in the case file along with the return. If the form is not in the case file, the ATE should take steps to secure a copy so an analysis can be made to determine what year the carryback originated and the amount of the carryback allowed.
- (3) Further discussion of other carryback claims (Form 1040X or 1120X) is found at IRM 8.17.4.14, Tentative Allowances and Other Carryback Claims in Notice of Deficiency Statement.

8.4.1.12.3
(02-16-2022)
**Procedures for Separate
to Joint Returns:
Non-filers**

- (1) If a taxpayer-husband and taxpayer-wife file an original return prior to submission of a case to court for decision, they will be allowed joint rates if they have not previously filed separate returns.

Note: The preparation of a return by the Commissioner on behalf of the taxpayer under IRC 6020(b) and the issuance of a statutory notice of deficiency do not constitute a prior return of the taxpayer in determining whether a joint return election is allowable.

- (2) If the joint return is filed after submission of a case to court for decision, the joint rates will not be allowed.
- (3) *Submission of a case to court for decision* occurs when the case has been either fully stipulated or tried and submitted to the court for opinion and decision. See *CCDM 35.1.2*, Tax Court Terms and Definitions.

8.4.1.12.4
(03-18-2014)
**Statements of Account
for Docketed Cases**

- (1) A Form 3623, Statement of Account, may be required for a docketed case. See IRM 8.17.3, Preparing a Statement of Account, for details on when a statement of account is required and how to request one.

8.4.1.13
(10-26-2007)
**Determining if Refund is
Allowed on Docketed
Overpayment Cases -
Non-Filing Taxpayers**

- (1) IRC 6512 governs overpayments allowable by the Tax Court. For tax years ending before 8/6/97, IRC 6512(b)(3)(B) and IRC 6511 entitle a taxpayer who does not file a return to receive a refund of taxes paid within two years prior to the date of the mailing of the notice of deficiency.
- (2) For tax years ending before 8/6/1997, if a statutory notice is issued to a non-filing taxpayer more than two but less than three years after the due date of the return and the taxpayer petitions the Tax Court, any payments made more than two years prior to the date of the issuance of the notice of deficiency (such as withholding) are barred from being refunded.

Note: If the taxpayer did not petition the Tax Court, IRC 6511 governs the refund and whether it is allowable.

- (3) If the taxpayer files a return after the statutory notice is issued in the situation described in (2) above, the refund is still barred even if the return is filed within three years of the due date. See *Commissioner v. Lundy*, 516 U.S. 235 (1996).
- (4) To correct possible inequities, Congress modified IRC 6512(b)(3) in the Taxpayer Relief Act of 1997, PL 105-34, August 5, 1997:
 - a. For tax years ending after 8/5/97, if a statutory notice is issued to a non-filing taxpayer more than two years but less than three years after the

due date, and the taxpayer petitions the Tax Court, IRC 6512(b)(3)(B) now allows a refund of tax paid within the three-year period prior to the deficiency notice.

- (5) Carefully analyze the case file in all docketed cases involving overpayments where the taxpayer did not file a return, since it is possible the refund could be barred.

8.4.1.14
(10-01-2012)
Recovering Litigation Costs

- (1) An award of litigation costs, attorney's fees or court costs may be appropriate for docketed cases settled, whether by Appeals or Counsel, or decided by the Tax Court.
- (2) These cases require approval by Counsel and are forwarded to them for action.
- (3) These cases are not input on CASES.
- (4) See IRM 8.7.15, Administrative Cost and Qualified Offer Cases.

8.4.1.15
(09-13-2019)
Interim Assessments for Docketed Cases

- (1) An interim assessment is an assessment (other than a jeopardy assessment) of tax and penalty made after the issuance of the statutory notice.
- (2) Examples of interim assessments include:
 - a. Amounts paid by the taxpayer on the deficiency determined by the Service.
 - b. A taxpayer has not filed a return before the statutory notice of deficiency was issued, later files a return after the issuance of the notice of deficiency and the Campus assesses the tax shown in the delinquent return.
 - c. A taxpayer files an amended return that is assessed and then petitions Tax Court.

8.4.1.15.1
(09-13-2019)
Advance Payment Remittances on Docketed Cases

- (1) Procedures for advance payment remittances in docketed cases are the same as in non-docketed cases. Assessment may be made at any time upon a specific request from Counsel or from the taxpayer.
- (2) For details on processing advance payment remittances, see IRM 8.20.6, Interim Actions.
- (3) ATEs who process remittances should see IRM 8.7.17, Appeals Remittance Procedures, for more information.

8.4.1.16
(02-16-2022)
Closing Docketed Cases

- (1) Unless an agreement has been reached between Appeals and Counsel on a particular case, ATEs working docketed cases must follow the deadlines contained in section 3.07 of Rev. Proc. 2016-22 for returning cases to Counsel:
 - **For regular cases where the amount at issue for each year is \$50,000 or less, as well as for all S cases**, Counsel may recall the case after six months. If Counsel does not recall the case, Appeals must return the case so that it is *received by Counsel* no later than 30 calendar days before the date of the calendar call.
 - **For all other docketed cases**, Appeals must return the case to Counsel at the first to occur of: (i) the date Appeals concludes that the

case is not susceptible to settlement, or (ii) within ten calendar days after the case appears on a trial calendar.

Reminder: While the revenue procedure permits extensions of these deadlines when settlement appears “reasonably likely,” Counsel and Appeals must both agree to any extension. If an agreement to extend a deadline is reached with Counsel, the ATE should document that agreement in the Case Activity Record.

(2) If Appeals cannot reach agreement with a petitioner or counsel of record to resolve a docketed case, the ATE prepares the following documents, uploads them in ACDS, and forwards the case to the ATM so it can be routed to APS and Counsel for trial preparation:

- Form 5402, Appeals Transmittal and Case Memo
- Schedule of Adjustments
- Appeals Case Memorandum
- Letter 971, Letter Advising No Settlement Reached - Docketed Case
- Letter 937, Transmittal for Power of Attorney (if the petitioner is *pro se* but has an authorized power of attorney)

Note: For more information on cases released for trial preparation, see IRM 8.4.1.18, Docketed Case Not Settled by Appeals - Jurisdiction Released to Counsel.

(3) If Appeals reaches an agreement on a docketed case with a petitioner or counsel of record, the ATE determines if he or she can draft the necessary decision document or if Counsel’s assistance will be needed. (Note that a final decision on whether Counsel’s assistance is required in the preparation of a decision document may depend on the results of the settlement computations.) See IRM 8.4.1.11.2, Stipulation/Decision Preparation, for guidance on making this decision.

Reminder: The ATE must not consider a docketed case agreed unless he or she receives a definite verbal or written acceptance of the proposed settlement from the petitioner or counsel of record. No agreement is reached if the petitioner or counsel of record does not respond to the settlement offer or expresses indecision about it (e.g., “I need to think about it.”).

Example: If the petitioner does not respond to the ATE’s conference letter and/or Counsel’s “Last Chance” Letter to discuss the case, the case should be closed as unagreed for trial preparation.

Caution: Whether Appeals tells Counsel that a docketed case is agreed or closes a case via the Docketed EZ Close procedures discussed in IRM 8.4.1.16.1, Docketed EZ Close Procedures, the ATE is representing that an agreement with the petitioner or counsel of record has actually been reached. If there is no agreement reached, do not close the case using Docketed EZ Close procedures.

(4) If the ATE can draft the decision document without Counsel’s assistance, he or she prepares the decision document and follows the procedures outlined in IRM 8.4.1.16.1, Docketed EZ Close Procedures.

- (5) If the ATE needs Counsel's assistance to prepare the decision document, he or she contacts Counsel for assistance and provides the assigned Counsel employee with any information necessary to prepare the decision document. After the decision document is prepared, the assigned Counsel employee will provide it to the ATE. The ATE will then follow the procedures outlined in IRM 8.4.1.16.1, Docketed EZ Close Procedures.

8.4.1.16.1
(02-16-2022)
**Docketed EZ Close
Procedures**

- (1) Except as provided in paragraph (2), below, the ATE will follow the procedures in this section for all docketed cases in which the Appeals Office reaches a settlement with and mails decision documents to the petitioner or counsel of record.
- (2) Docketed EZ Close procedures will **not** be used for closing any type of case for which another IRM provides specific instructions for closing docketed cases, including the following cases:
- Key cases subject to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), which should be closed following the instructions in IRM 8.19.13, Docketed and Department of Justice Cases; and
 - Cases subject to the Bipartisan Budget Act of 2015 (BBA), which should be closed following the instructions in IRM 8.19.14.7.3.4, ATT AO Review and Docketed Case Closing by ATE.

Note: TEFRA investor cases should follow Docketed EZ Close procedures so long as the decision document includes language that evidences the petitioner's waiver of the restrictions contained in IRC 6213(a) prohibiting assessment and collection of all deficiencies, penalties, and additions to tax (plus statutory interest) until the decision of the court becomes final (waiver paragraph).

- (3) Additional information for ATEs and ATMs closing cases using the Docketed EZ Close procedures can be found in the link titled *Detailed Docketed EZ Close Procedures for ATEs and ATMs* in the *Resources (A-Z)* section of the *Docketed & "S" Docketed Cases* page on the Appeals website.
- (4) If the ATM approves the recommended settlement and decision documents are mailed to the petitioner or counsel of record by the Appeals office, it is Counsel's responsibility to follow-up with the petitioner or counsel of record, as needed, to secure signed decision documents.

8.4.1.17
(09-13-2019)
**Closing Agreements in
Docketed Cases**

- (1) See IRM 8.13.1, Processing Closing Agreements in Appeals, for procedures to secure and process closing agreements in docketed cases.
- (2) A closing agreement may be entered into at any time before the tax period comes within the jurisdiction of an appropriate court, and may thereafter be entered into in appropriate circumstances when authorized by the court (e.g., certain bankruptcy situations). A closing agreement **must not** determine the amount of tax liability (or deficiency or overpayment) for any taxable period under the jurisdiction of the United States Tax Court.

8.4.1.18
(09-13-2019)
**Docketed Case Not
Settled by Appeals -
Jurisdiction Released to
Counsel**

- (1) When Appeals concludes docketed case consideration without settlement, forward the case to Counsel. Ordinarily a settlement computation is not required in an unagreed docketed case; however, if the ATE raises a new issue or concedes an issue, one might be necessary.
- (2) The case will then appear on the ATE's inventory listing in Part 3 with suspense status "E/T".

8.4.1.19
(08-09-2011)
**United States Tax Court
Calendars for Trial
Sessions**

- (1) The Tax Court regularly issues calendars for trial sessions. The calendars list petitioners' names, case docket numbers, trial session date and location (city and state). A trial session's calendar also lists cases in which motions are calendared for hearing at a trial session.
- (2) The Tax Court posts all session schedules to its website, <http://www.ustaxcourt.gov>.
- (3) Tax Court judges sometimes issue orders requesting specific actions by the IRS that may impact Counsel/Appeals calendar time frames or document submissions. Appeals employees should pay particular attention to the requirements of any orders of this nature issued by a Tax Court judge.

8.4.1.19.1
(09-13-2019)
**Appeals Technical
Employees Attending
Trial**

- (1) ATEs may be present at Tax Court calendar trial sessions to consider cases amenable to settlement. Appeals' consideration is requested by Counsel or the Tax Court judge.
- (2) ATEs may, with the appropriate approval, in accordance with local procedures, attend trials for cases in which they were involved.
- (3) ATEs may also be permitted to attend trials for training purposes.

8.4.1.19.2
(10-01-2012)
**ACDS Tax Court
Calendar Program
(TAXCAL)**

- (1) The Tax Court Calendar program (TAXCAL) is a subsystem of ACDS developed and maintained by Appeals.
- (2) The ACDS Tax Court Calendar (TAXCAL) program provides Appeals offices with a method to identify and monitor Tax Court calendar cases and generate Tax Court calendar reports within ACDS.
- (3) As soon as a calendar is established, Counsel provides Appeals with an electronic file for each Tax Court Calendar to upload into TAXCAL. Fresno APS is responsible for uploading all Tax Court Calendars onto TAXCAL.
- (4) The ACDS Tax Court Calendar functionality is menu based and user-friendly. Based upon the permissions of the user, the program allows appropriate functionality.
- (5) The ACDS permissions levels for Tax Calendar are as follows:
 - a. (14000) Tax Calendar
 - b. (14100) Tax Calendar, User
 - c. (14200) Tax Calendar, Coordinator
 - d. (14300) Import Electronic Calendar - restricted permission
- (6) ACDS' web-based technology allows the program to match a docket number to any case on ACDS, in any Appeals office.

- (7) A calendared case input on a Tax Court calendar created in any Appeals office will appear on the appropriate group's or ATE's report.
- (8) The TAXCAL program provides the following functionality:
 - Ability to electronically import or manually create an ACDS Tax Court Calendar;
 - Matching calendar cases to ACDS cases and providing a status report for Counsel;
 - Notification to the assigned ATE when the case appears on a calendar;
 - Link on the TAXCAL record to email the calendar coordinator or assigned ATE; and
 - Ability to add comments to the TAXCAL record.
- (9) Tax Court Calendars are the responsibility of both the Field Appeals and the Campus Appeals offices.
- (10) A TAXCAL report listing all Dockets on the calendar in Docket Number order should be generated by the Field Appeals office and faxed to the Field Counsel responsible for the calendar within five business days of receipt of the calendar. This list shows the name of the ATE assigned to the case and if the case is unassigned or unmatched. The Field Appeals office is responsible for resolving unassigned or unmatched cases.
- (11) Appeals provides Field Counsel with periodic calendar status reports. The Appeals Office responsible for the calendar generates the report monthly. These calendar status reports are generated from TAXCAL and provide the following information:
 - Name of the docketed case;
 - TIN of the docketed case;
 - Docket number;
 - Name of the ATE assigned the case, if assigned;
 - Attorney/paralegal assigned to the case as shown on ACDS;
 - Closing code and date closed, if applicable; and
 - "Status" of the case
- (12) The report is forwarded to each Field Counsel responsible for the calendar. Field Counsel updates the list with the name of the attorney/paralegal assigned to the case within two workdays from the date of receipt of the list. Field Counsel delivers or faxes the list back to the Appeals office responsible for the calendar so that the ACDS database can be updated with the corrections. Subsequent lists contain those corrections.
- (13) The TAXCAL Users' Manual is posted on the Appeals website on the ACDS page.

8.4.1.20
(09-13-2019)
**Reconsideration Cases
(Closing Code 42) -
Jurisdiction Returned to
Appeals by Counsel**

- (1) Counsel and Appeals may agree jurisdiction will be returned to Appeals for settlement in a docketed case with strong likelihood of settlement for all or part of the case.
- (2) The reasons for returning the case to Appeals must be well defined, preferably in writing, before Appeals accepts the work unit from Counsel.

- (3) If a Campus Appeals office forwards a case to Field Counsel for “trial preparation” and, subsequently, the petitioner or counsel of record wishes to discuss “settlement”, presents new information or decides to settle based upon Appeals’ settlement offer, Field Counsel may return case jurisdiction to Campus Appeals when all agree there is a strong possibility of settlement and the case **is not on a Tax Court calendar**.
- (4) If the case **is on a Tax Court calendar**, Field Counsel may return the case to Field Appeals for reconsideration.
- (5) If Counsel returns the case to Appeals for reconsideration, Appeals will accept jurisdiction of the case and the following administrative actions should be taken:
 - a. APS will update the case from Part 3 to Part 2 on ACDS with input of Closing Code 42. This action will be initiated by the ATM or ATE immediately either: routing the case to APS with appropriate instructions, or preparing and electronically submitting an ACDS Update Request Form. See IRM 8.20.6.13(4), Docketed Reconsideration Cases (Closing Code 42) - Jurisdiction Returned to Appeals by Counsel, for more information.
 - b. If an AC/FR was previously input on the Case Activity Record (CAR), the ATM will input **RR to reflect the case is being returned to the assigned technical employee. This will change the prior AC/FR to MS. Or, if the case needs to be reassigned to a different technical employee, the ATM will reassign and input **RR on the CAR.
 - c. After reconsideration, the ATE will input AC/FR and submit the case to the ATM.
 - d. The ATM will input a revised ACAPDATE and submit to APS for closing.
- (6) In all cases Appeals:
 - a. is responsible for any “reconsideration” activities, and
 - b. conducts the settlement negotiations.

Note: APS must be alerted regarding any docketed case originally considered by Campus Appeals but returned by Field Counsel to a Field Appeals office for reconsideration/reinstatement. As explained in paragraph (5)a., above, the receiving ATM or ATE **must** immediately notify APS that the case has been returned from Counsel to Appeals for reconsideration. APS will ensure that the AIMS and ACDS databases correctly reflect the Appeals Office handling the reconsideration. APS will also ensure that ACDS is updated to Part 2 from Part 3, to properly reflect Appeals’ jurisdiction and maintain Appeals’ statute controls.

Note: APS must also be alerted regarding any docketed case returned by Field Counsel to an ATE for reconsideration/reinstatement. As explained in paragraph (5)a., above, the receiving ATM or ATE **must** immediately notify APS that the case has been returned from Counsel to Appeals for reconsideration. APS will update ACDS to Part 2 from Part 3, to properly reflect Appeals’ jurisdiction and to maintain Appeals’ statute controls.

- (7) When the case is in Counsel’s jurisdiction, it is in Part 3 on ACDS. When the case is returned to Appeals for reconsideration, APS inputs Closing Code 42 and a date closed equal to the date the case is received for reconsideration.

This changes the “Part” on the open ACDS record from 3 to 2. The closed ACDS record retains Part 3 and the closing information.

8.4.1.21
(08-09-2011)
Dismissed Cases

- (1) A distinction must be made between cases dismissed for lack of jurisdiction and cases dismissed for lack of prosecution.
- (2) A dismissal for lack of jurisdiction is not a determination on the merits, and the Order of Dismissal does not reflect a deficiency amount.
- (3) A dismissal for lack of prosecution is considered to be a final determination on the merits, and the Order of Dismissal includes a deficiency amount.

8.4.1.21.1
(09-13-2019)
Dismissed for Lack of Jurisdiction

- (1) The Tax Court may dismiss a case for lack of jurisdiction for a variety of reasons, such as:
 - a. The petition was not filed timely,
 - b. The petitioner did not pay the filing fee, or
 - c. A notice of deficiency or notice of determination was not issued.
- (2) Generally, a Tax Court dismissal for lack of jurisdiction does not favor the taxpayer; however, the dismissal can be based on circumstances that do favor the taxpayer. For example, a deficiency notice may be determined to be invalid because it was not sent to the taxpayer’s last known address. The Tax Court lacks jurisdiction over a case that is based upon an invalid notice.
 - a. These situations need to be handled on a case-by-case basis.
 - b. If the statute of limitations is still open, Appeals may request that the notice of deficiency be reissued to the correct address.
- (3) Each Appeals office designates an employee with responsibility for review of dismissed cases prior to assessment. In the following circumstances, the ATM considers assigning the case to an ATE and assessing an amount less than the amount shown on the notice of deficiency:
 - a. There is information in the file, not considered by the originating function, which, if considered, would have resulted in a reduction in the tax determined in the statutory notice of deficiency.
 - b. The taxpayer provided information not previously available and either Counsel or the Tax Court requested that consideration be given to assessing a reduced amount.
 - c. There is a clear misapplication of the law, which led to an excessive deficiency determination in the statutory notice.
- (4) Appeals will not, on its own initiative, contact taxpayers for the purpose of exploring adjustments to the amount of tax determined in the notice of deficiency prior to assessment unless circumstances favor the taxpayer (as described in paragraph (2), above).
- (5) As a general rule, unless unusual circumstances exist, if a taxpayer contacts Appeals and requests an adjustment after Appeals has made an assessment and closed the case, the taxpayer is advised to request an audit reconsideration with Compliance.

8.4.1.21.2
(08-09-2011)

Dismissed for Lack of Prosecution

- (1) Appeals gives no further consideration to cases that are dismissed by the Tax Court for lack of prosecution.

8.4.1.21.3
(08-09-2011)

Dismissed for Lack of Jurisdiction for Assessment of Less than the Notice of Deficiency Amount

- (1) Unless there is concern about an imminent statute of limitations, cases in which additional consideration results in a reduced deficiency are closed by simply assessing a reduced amount. If an imminent statute of limitations is involved, it may be necessary to assess the tax reflected in the notice of deficiency and then work the case as an informal claim for abatement.

IF	AND	THEN
Additional consideration of a case results in a reduced deficiency	There is no concern about an imminent statute of limitations	The case is closed by assessing a reduced amount
Additional consideration of a case results in a reduced deficiency	An imminent statute of limitations is involved	It may be necessary to assess the tax reflected in the notice of deficiency and then work the case as an informal claim for abatement

- (2) Charge time to the docketed work unit, and when consideration of the case is complete, close the case on ACDS with the appropriate closing code.

Closing Code	Description
08	Dismissed Compliance Area or Campus issued notice with Appeals time
11	Dismissed for Lack of Jurisdiction and Appeals issued notice
12	Dismissed for Lack of Prosecution and Appeals issued notice
21	Dismissed Compliance Area or Campus issued notice with no Appeals time

8.4.1.21.4
(08-09-2011)

Cases Where Dismissal Order is Vacated

- (1) There may be instances in which a taxpayer is successful in having an Order of Dismissal vacated.
- (2) In these circumstances, normal consideration by Appeals is appropriate.

8.4.1.22
(08-09-2011)

Docketed Cases with Unique Features

- (1) The following subsections briefly cover docketed cases that contain a unique feature. Some refer to other IRM sections, which cover the type of case in more detail.

Procedures for Processing and Settling Docketed Cases 8.4.1

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|---|---|
| <p>8.4.1.22.1
(08-09-2011)
Docketed Appeals Team Cases</p> | <ul style="list-style-type: none">(1) The supervisor of the assigned Field Counsel attorney will be invited to participate in preconferences on all docketed team cases.(2) For additional information on Appeals' procedures for working team cases, see IRM 8.7.11, Working Appeals Team Cases. |
| <p>8.4.1.22.2
(09-13-2019)
Docketed Personal Holding Company Tax Cases</p> | <ul style="list-style-type: none">(1) In cases where the liability in personal holding company tax has been established by a decision of the United States Tax Court, but deficiency dividends have not been paid and a Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust, has not been filed, the ATE will explain to the taxpayer the actions to be taken to assess the tax and how to secure the benefits of IRC 547. |
| <p>8.4.1.22.3
(08-09-2011)
Docketed Joint Committee Cases</p> | <ul style="list-style-type: none">(1) Appeals is not responsible for Joint Committee reports in docketed cases under Counsel's sole jurisdiction. Such reports are prepared and processed by Counsel. Appeals furnishes Counsel additional information with respect to issues on which Appeals obtained agreement. To the extent such information can only be furnished by Compliance, Appeals will so advise Counsel.(2) For information concerning agreed and unagreed docketed cases that require Joint Committee handling, see IRM 8.7.9, Joint Committee (JC) Cases. |
| <p>8.4.1.22.4
(10-01-2012)
Docketed Cases with Claims</p> | <ul style="list-style-type: none">(1) An abatement claim filed on a docketed case will not protect the petitioner unless the issue in the claim is included in the petition.(2) If an issue on a claim is not included in the petition, advise the petitioner to amend their pleadings to get the issue before the Tax Court.(3) Do not secure Form 2297, Waiver of Statutory Notification of Claim Disallowance, or issue a notice of claim disallowance on a claim for a year docketed before the Tax Court unless the issue raised in a claim pertains to a carryback which was not put in issue before the Tax Court. In that case, secure a Form 2297 or issue a notice of claim disallowance.(4) The ATE explains to the taxpayer what is to be done on the claim. He/she is not required to notify the taxpayer in writing of the disposition.(5) See IRM 8.7.7, Claim and Overassessment Cases. |
| <p>8.4.1.22.5
(08-09-2011)
Docketed TE/GE Cases</p> | <ul style="list-style-type: none">(1) Issues docketed under the declaratory judgment provisions of IRC 7476 or IRC 7428 are under Counsel's exclusive jurisdiction, regardless of whether TE/GE or an Appeals office issued the final adverse letter that is being petitioned.(2) Appeals does not accept cases after certified/registered adverse determination (application denied) letters are issued. Nor does Appeals accept cases that are docketed under Declaratory Judgment procedures, which are identified by the letter "X" for Exempt Organization (EO) cases and "R" for Employee Plan (EP) cases after the docket number. Such cases are under Counsel's jurisdiction.(3) See IRM 8.7.8, Tax Exempt and Government Entities (TE/GE) Cases, for additional information when a TE/GE case is docketed. |

8.4.1.23
(08-09-2011)
**Refund Suits and Cases
Settled by Department of
Justice**

- (1) For detailed information concerning the various types of refund suits and the different types of settlements by the Department of Justice, see IRM 8.7.1, Guidelines for Cases with Special Issues.

8.4.1.24
(09-13-2019)
**Procedures for
Complying with the
E-Discovery Rules to the
Federal Rules of Civil
Procedure (FRCP)**

- (1) Discovery refers to the pre-trial exchange of information by parties in litigation.
- (2) The Federal Rules of Civil Procedure (FRCP), as amended in December 2006 and again in 2015, clarify and establish uniform discovery processes and procedures to be used for electronically stored information (ESI).
- (3) The FRCP place an obligation on the IRS to preserve ESI when litigation in federal courts is initiated or can be reasonably anticipated. Failure to preserve and provide timely discovery material can seriously jeopardize the Government's case and potentially lead to sanctions.
- (4) The Tax Court adopted ESI procedures effective January 1, 2010. Counsel will follow the procedures outlined in Chief Counsel Notice CC-2016-005, which supersedes Chief Counsel Notice CC-2012-017, for all cases in the federal courts, including the Tax Court (with the exception of "S" cases). For more information regarding ESI, see *CCDM 34.7.1.1.4, Discovery Obligations to Preserve Evidence, Including Electronically Stored Information*.
- (5) Litigants are required to:
 - a. Identify relevant ESI that relates to a filed case.
 - b. Preserve ESI (including metadata).
 - c. Provide electronically stored data in its native format.
 - d. Respond to requests within mandated time frames.
- (6) E-Discovery requests may involve cases worked by a variety of business units, including Appeals.
- (7) Requests come from Counsel to a single Appeals PPQA point of contact (POC) that will provide guidance to affected Appeals employees. The POC will work with employees, Area Directors and Managers to ensure appropriate coordination with Information Technology and Counsel.
- (8) ESI includes but is not limited to:
 - All email & attachments
 - Word processing documents, spreadsheets, graphics & presentation documents
 - Images, text files, text messages
 - Other information stored on hard drives or removable media (e.g., desktops and portable thumb drives)
 - Metadata, databases
 - Instant messages, transaction logs, computer logs, audio and video files
 - Voicemail
 - Web pages
 - Backup and archived material