MANUAL TRANSMITTAL

8.7.8

Department of the Treasury
Internal Revenue Service

DECEMBER 4, 2023

EFFECTIVE DATE

(12-04-2023)

PURPOSE

(1) This transmits revised IRM 8.7.8, Technical and Procedural Guidelines, Appeals Tax Exempt and Government Entities (TE/GE) Cases.

MATERIAL CHANGES

(1) Updated the text to reflect the new formal title of Appeals: the IRS Independent Office of Appeals. See IRM 8.7.8.1 (1), Program Scope and Objectives.

(2) Incorporated Interim Guidance Memorandum AP-08-1221-0025, New Issues, New Information, and New Theories or Alternative Legal Arguments Received on Tax-Exempt/Government Entities-Sourced Cases. See IRM 8.7.8.5, New Issues, New Information, and New Theories or Alternative Legal Arguments - General Guidelines, and its subsections.

(3) Updated Taxpayer Bill of Rights (TBOR) 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 8.7.8.1.1 (4), Background.

(4) Made editorial changes, including grammar, spelling, and minor clarifications, throughout this IRM.

(5) Updated links and references throughout the text as needed.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.7.8 dated March 23, 2018. This IRM incorporates Interim Guidance Memorandum AP-08-1221-0025, New Issues, New Information, and New Theories or Alternative Legal Arguments Received on Tax-Exempt/Government Entities-Sourced Cases.

AUDIENCE

IRS Independent Office of Appeals

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8.7.8
Tax Exempt and Government Entities (TE/GE) Cases

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8.7.8.1
(03-23-2018)
Program Scope and Objectives

(1) This IRM section provides information and guidance for working cases received by the IRS Independent Office of Appeals (Appeals) from the Tax Exempt and Government Entities (TE/GE) Division.

(2) **Purpose**: The purpose of this IRM section is to provide guidance to Appeals Technical Employees (ATEs) working cases from TE/GE.

(3) **Audience**: The primary users of the IRM section are ATEs considering appeals of TE/GE cases.

(4) **Policy Owner**: Policy, Planning, Quality and Analysis is under the Director of Case and Operations Support.

(5) **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.

(6) **Primary Stakeholders**: Appeals Account Processing and Support (APS), the Office of Chief Counsel (Counsel), and TE/GE are the primary stakeholders for this IRM section.

8.7.8.1.1
(03-23-2018)
Background

(1) This IRM section provides information and guidance for working:

a. Employee Plans (EP) cases;
b. Exempt Organizations (EO) cases; and
c. Government Entities (GE) cases, which include Tax Exempt Bonds (TEB), Indian Tribal Governments (ITG), and Federal, State and Local / Employment Tax Area, EO Examination (FSL/ET).

(2) TE/GE cases are submitted to Appeals via APS, with paper administrative files being shipped to them at the address found on the Appeals Case Routing page under the heading of **To Appeals From External Sources.**

(3) Appeals generally does not accept cases after a final adverse determination letter is issued. Appeals also does not normally accept docketed cases under Declaratory Judgment procedures, which are identified by the letter “X” for EO cases and “R” for EP cases after the docket number. These cases are under Tax Exempt Government Entities Division Counsel’s (TEGEDC) jurisdiction. Only in rare and limited circumstances will an exception be made.

(4) The Taxpayer Bill of Rights, Pub. 1, applies to Appeals employees’ interactions with taxpayers. 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*.

8.7.8.1.2
(03-23-2018)
Authority

(1) Technical guidelines in TE/GE cases are found in the following IRM sections:

a. IRM 4.71, Employee Plans Examination of Returns, for EP cases.
b. IRM 4.75, Exempt Organizations Examination Procedures, for EO cases.
c. IRM 4.82, Tax Exempt Bonds Examination Guidelines, for TEB cases.
d. IRM 4.88, Indian Tribal Governments Examination Issues and Procedures, for ITG cases.

e. IRM 4.75.7, Exempt Organizations and Federal State Local / Employment Tax Case Assignment Guide, for FSL/ET cases.

8.7.8.1.3
(03-23-2018)
Responsibilities

(1) The Director, Case and Operations Support, is the executive responsible for Appeals TE/GE tax policy.

(2) The Director, Policy, Planning, Quality and Analysis, is the responsible program owner of this IRM section.

(3) The TE/GE Appeals Examination Policy Program Analyst is responsible for the oversight of this IRM section.

8.7.8.1.4
(03-23-2018)
Terms/Definitions/ Acronyms

(1) The table provides commonly used acronyms and their definition.

Acronym	**Definition**
ACDS	Appeals Centralized Database System
APS	Account and Processing Support
ATE	Appeals Technical Employee
ATM	Appeals Team Manager
DOL	Department of Labor
EO	Exempt Organizations
EP	Employee Plans
FSL/ET	Federal, State, and Local / Employment Tax
GE	Government Entities
ITG	Indian Tribal Governments
NMF	Non-Master File
PBGC	Pension Benefit Guaranty Corporation
SB/SE	Small Business/Self-Employed
SND	Statutory Notice of Deficiency
TAM	Technical Advice Memorandum
TEB	Tax Exempt Bonds
TE/GE	Tax Exempt and Government Entities
TEGEDC	TEGE Division Area Counsel

8.7.8.2
(03-23-2018)
Employee Plans (EP) Cases in Appeals

(1) The Director of EP is responsible for the examination of employee plan returns (EP Examinations) and is also responsible for reviewing plan and trust applications for qualified status and exemption from Federal income tax (EP Rulings and Agreements).

(2) Pursuant to IRM 1.2.2.9.1 , Delegation Order 8-1 (formerly DO-60, (Rev. 7)), Appeals Functions, Settlement of Cases Docketed in the United States Tax Court, IRM 1.2.2.9.8, Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev. 15), Authority of Appeals in Protested and Tax Court Cases, and IRM 1.2.2.8.1), Delegation Order 7-1 (Rev. 1) (formerly DO 7-1a), Issuance of Determination Letters relating to Employee Plans, Appeals has jurisdiction to review adverse actions by the EP Division with the exception of the following:

a. An adverse action resulting from a Technical Advice Memorandum (TAM) issued with respect to a plan's qualification status. These do not have appeal rights.
b. Any case once a certified/registered final adverse determination letter is issued.
c. Cases docketed under the declaratory judgment provisions of IRC 7476, which are identified by the letter "R" after the docket number. These cases are under TEGEDC Area Counsel's exclusive jurisdiction regardless of whether TE/GE or Appeals issued the final adverse determination letter. Consequently, Appeals will not accept these cases. However, in limited and rare circumstances, Appeals management in conjunction with TEGEDC Area Counsel may agree to accept jurisdiction of a docketed declaratory judgment case.

(3) EP cases normally consist of 3 types:

EP Case Types
1) Determinations with respect to plan and trust applications for qualified status and exemption from federal income tax. ***Note:*** If an applicant files an appeal to a proposed adverse determination letter, the request for determination letter may be withdrawn at any time prior to forwarding the proposed adverse action to Appeals. It cannot be withdrawn at the Appeals level. See Rev. Proc. 2023-4 (updated annually) and 26 CFR 601.201(o)(3)(xiii).
2) Revocations of qualified status and/or exemption from federal income tax.
3) Examinations of employee plan returns. Issues in exams may include: • Unrelated business income tax • Chapter 43 excise taxes See IRM 4.71, Employee Plans Examination of Returns, for EP technical guidelines.

8.7.8.2.1
(03-23-2018)
Receipt of New EP Cases in Appeals

(1) EP cases from the field are routed to Appeals via the APS unit's address described in IRM 8.7.8.1.1(2).

(2) APS will establish (i.e., card-in) the new EP case on the Appeals Centralized Database System (ACDS) and forward the case to the Appeals Team Manager (ATM). See IRM 8.20.5.36, Tax Exempt/Government Entities (TE/GE) Cases, for APS carding-in of EP cases.

(3) The ATM who receives the EP case from APS will determine if the case is ready for consideration by Appeals by reviewing the following:

- Whether the ACDS data is correct.
- Whether the statute of limitations is correct and had at least 365 days left when received by Appeals (or at least 180 days remained on the statute of limitations when the case was received by Appeals when the originating function returns a case that was previously returned to them for consideration of new information or a new issue).
- Whether the protest is adequate.
- Whether the case is otherwise suitable for Appeals' consideration.

(4) If the case is ready for consideration by Appeals, the ATM assigns the case to an AO with specialized knowledge or experience in employee plan issues.

8.7.8.2.2
(03-23-2018)
Preliminary Review of EP Case by Appeals Officer

(1) Upon receipt of the EP case by the ATE, follow intake procedures as follows:

- IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE). There should be at least 365 days on the statute of limitations and 180 days for cases returned from the originating function.
- IRM 8.2.1.5, Returning a Case to Examination – ATE. Grounds for returning a case to Examination.
- IRM 8.2.1.6, Preliminary Review of a Case – ATE. Close unnecessary returns, identify coordinated issues, and referrals.
- IRM 8.20.6.3, Account and ACDS Updates, Changes, or Corrections Required as an Interim Action.

(2) Within 45 days from receipt of the EP case, the ATE will verify the statute on the case and issue an initial contact letter (e.g., Letter 5157, Non-Docketed Acknowledgement & Conference). Telephone contact may also be made.

(3) See Exhibit 8.7.8-1, Most Common EP Returns and Forms, for the most common EP returns and forms.

(4) The ATE should review the administrative file to ensure that the following required information is included, as applicable. Note that the requirement for an original return does not apply in EP determination or termination cases:

a. Letter from the Director, EP Examinations (the "30-day" or "90-day" letter) providing adequate development of primary and alternative issue(s) including facts, law and argument (Form 886-A, Explanation of Items).
b. Mandatory written comment (i.e., rebuttal) regarding the taxpayer's protest.
c. On all potential declaratory judgment cases per IRC 7476, the administrative record and index are prepared in accordance with IRM 4.71.3.6.4, Administrative Record. Appeals will update the administrative record and the index if a final adverse determination letter is issued. The administra-

tive record and index are prepared by EP Division, updated by Appeals, and finalized by IRS TEGEDC Area Counsel.

d. Where needed, an explanation concerning the statute of limitations on each tax and information return forwarded to Appeals. For example, when the six-year statute of limitations period under IRC 6501(e) is imposed for failure to adequately disclose a prohibited transaction, the Form 5500, Annual Return/Report of Employee Benefit Plan, is included in the file. Without Form 5500, it is not possible to determine whether the three (3) year or the six (6) year statute applies.

(5) As part of the preliminary review, the ATE determines whether or not the case includes a mandatory technical advice issue.

(6) When required by the IRS/Department of Labor (DOL) Agreement (plan disqualification or tax proposed under IRC 4971 or IRC 4975), the ATE prepares a DOL notification letter within 15 workdays of receipt of the case. See Exhibit 8.7.8-2, Notification Letter to Department of Labor of an Employee Benefit Plan in Appeals, and IRM 8.7.8.2.3, Coordination with Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC), for further information.

8.7.8.2.3
(03-23-2018)
Coordination with Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC)

(1) Some EP matters require coordination with the Department of Labor (DOL) or the Pension Benefit Guaranty Corporation (PBGC). Before discussing Appeals' decision with the taxpayer or signing a closing agreement, the ATE should determine whether coordination with DOL or PBGC is required. 26 CFR 301.6103(l)(2)-3 provides rules for disclosure of information to DOL and PBGC.

(2) The ATE should coordinate with DOL or PBGC on any case where the case file indicates the other agency also has a case involving the same plan or the same taxpayer.

(3) The following details the IRS/DOL Coordination Agreement regarding appeals of such cases. The IRS/DOL Coordination Agreement can be located at *Relationship with IRS | U.S. Department of Labor (dol.gov)*.

a. Upon receipt of an appeal of an employee benefit plan examination case, the ATE sends the DOL notification letter to the appropriate DOL Employee Benefits Security Administration (EBSA) office. For a listing of EBSA offices by state, use the following DOL website link: *Regional Offices | U.S. Department of Labor (dol.gov)*.

b. DOL has 60 calendar days from the date of the Appeals notification to determine whether any action pending in DOL requires further coordination of the case by Appeals. If DOL indicates an action is pending, Appeals suspends final disposition of the case until appropriate coordination activities are completed.

c. Prior to the earlier of the date the Appeals office receives a response from DOL or 60 days after the date of the Appeals notification letter to DOL, Appeals will not take final action to settle the case, issue a notice of deficiency with respect to taxpayers under IRC 4971 or IRC 4975 that are not in jeopardy, or proceed with action to revoke the favorable determination or qualification letter of any plan.

d. If the Appeals office, the Appeals Area Director, and DOL are unable to reach an agreement regarding disposition of the case, the ATE will forward the matter to the IRS Headquarters Office, Chief Appeals, to coordinate the final resolution with the Assistant Administrator for Enforcement, EBSA.

(4) If coordination with the PBGC is required, the ATE will contact:

General Counsel, Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, D.C. 20005-4026

Note: Contact can also be made by visiting their website at: *www.pbgc.gov*.

8.7.8.2.4
(03-23-2018)
IRS Counsel's Review and Concurrence

(1) Cases involving qualified or continuing qualified status are subject to the declaratory judgment provisions of IRC 7476. Therefore, TEGEDC Area Counsel's review and concurrence is necessary prior to issuance of the final adverse determination, revocation, or non-qualification letter.

(2) TEGEDC Area Counsel will review the final letter, Appeals Case Memorandum (ACM), case file, and the administrative record required on cases subject to IRC 7476. The administrative record should be in accordance with IRM 4.71.3.6.4, Administrative Record.

(3) TEGEDC Area Counsel will try to complete its review in 45 calendar days or less. If they recommend an adverse letter should not be issued in whole or in part, and if the ATM and TEGEDC Area Counsel cannot resolve any disagreements over the letter's content, it will be resolved with advice and assistance of the Appeals Area Director.

(4) On cases that are sent to IRS Counsel for review, the ATE will input in ACDS the action code *AC* with sub-action code *DC* (Counsel Review).

8.7.8.2.5
(03-23-2018)
Technical Advice on EP Cases

(1) Technical advice is required on the following EP cases:

a. Proposed revocation letters on collectively bargained plans.
b. Plans where the IRS proposes a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of IRC 401(a) and are subject to Part 4, Subtitle B of Title I of ERISA, Public Law No. 93-406, 1974-3 C.B. 1, 43.
c. Amendments to defined contribution plans pursuant to Rev. Proc. 2018-4, 20018-3 C.B. 490, in connection with a waiver of the minimum funding standards and a request for a determination letter.

Note: A case is normally returned to the TE/GE Area office if a technical advice should have been requested but was not.

(2) Appeals does not accept cases from the field where an adverse action resulting from a Technical Advice Memorandum (TAM) issued with respect to a plan's qualification and status because it does not have appeal rights. See IRM 8.7.8.3, Exempt Organization (EO) cases in Appeals, and 26 CFR 601.106(a)(1)(v) .

(3) If a case, already under the jurisdiction of Appeals, was issued a TAM regarding plan qualification and status prior to the case coming to Appeals and the Appeals proposed disposition is contrary to the TAM, the ATE will submit a proposed disposition of the issue contrary to the TAM as a request for a new TAM. See 26 CFR 601.106(a)(1)(v) and Rev. Proc. 2023-2 (updated annually).

(4) On cases from the field with TAMs regarding issues other than plan qualification and status, Appeals will follow conclusions that are favorable to the

taxpayer and for TAMs that are unfavorable to the taxpayer, Appeals may settle the issues. If a full concession of an issue is recommended by Appeals and is contrary to the TAM's position, without offsetting consideration, the ATE will submit a proposed disposition of the issue contrary to the TAM as a request for a new TAM. However, if the facts upon which the TAM is based are different, a new TAM will not be required. See Rev. Proc. 2023-2 (updated annually).

(5) ATEs may request a TAM where a lack of uniformity exists or the issue is unusual or complex. Appeals will follow the TAM issued to Appeals.

(6) A taxpayer may also request that a case under Appeals' jurisdiction be referred for a TAM. The request may be denied, however, if Appeals determines that TAM is not warranted.

(7) Requests for discretionary relief under IRC 7805(b) from the retroactive effect of an adverse action are not mandatory TAMs.

(8) For guidance on TAMs, see IRM 8.6.3.2, Request for a Technical Advice Memorandum (TAM), and Rev. Proc. 2023-2 (updated annually).

8.7.8.2.6
(03-23-2018)
Closing Agreements in EP Cases

(1) Settlement of plan qualification issues may be resolved with a closing agreement. See IRM 8.13.1, Processing Closing Agreements in Appeals.

(2) Certain non-tax payments for EP agreements (see IRM 3.17.46.6.5.1, Sanction Payments) are processed on Non-Master File (NMF). For these payments, Form 3244-A, Payment Posting Voucher - Examination, should contain the following items:

a. Form = 906
b. MFT = 28
c. Tax Year = YYYYMM of payment receipt
d. Remarks = Closing Agreement with a one-time payment. Payment received in full and no part of payment constitutes penalties or interest. Payment is not to be refunded to taxpayer unless closing agreement is NOT accepted. Process under IRM 3.17.46.6, Various NMF Assessments.
e. Submit Form 3244-A package to:
Cincinnati IRS Campus – Ann NMF Payments
Team 401 – Unit 21– Stop 31
201 West River Center Blvd.
Covington, KY 41011

(3) See also Exhibit 8.7.8-7, Appeals TE/GE Payment Processing.

8.7.8.2.7
(03-23-2018)
Closing Letters in EP Cases

(1) All letters pertaining to the qualified status of employee plans (whether favorable or unfavorable) are signed by the ATM per Delegation Order No. 7-1 (as revised).

(2) Determination Cases Settled

a. On a proposed adverse action (denial) in an employee plan determination case that is settled or conceded (reversed) by Appeals, closing Letter 913, Agreed Cases - Closing, will be issued.
b. The ATE will insert the following paragraph in the closing Letter 913: "The Employee Plans Rulings and Agreements Office's proposed adverse

determination letter dated [enter date] is rescinded. Your case will be returned to the Employee Plans Determination Quality Assurance Office for issuance of a favorable determination letter."

c. If a closing agreement was used to settle the issue, the ATE should select/include the paragraph, "Enclosed is a copy of the accepted Closing Agreement for your records."

d. The ATE may add any additional paragraphs as needed.

(3) Revocation or Non-qualification Examination Cases Settled

a. On a proposed revocation/non-qualification in an employee plan examination that is settled or conceded (reversed) by Appeals, closing Letter 913, Agreed Cases - Closing, will be issued.

b. The ATE will insert the following paragraph in the closing Letter 913: "The Employee Plans Examinations Office's proposed [revocation letter or non-qualification letter] dated [enter date] is rescinded."

c. If a closing agreement was used to settle the issue, the ATE should select/include the paragraph:
"Enclosed is a copy of the accepted Closing Agreement for your records."

d. The ATE may add any additional paragraphs as needed.

(4) Unagreed Tax Cases

a. On tax deficiency cases where a settlement cannot be reached, the ATE will issue a statutory notice of deficiency (SND) by certified or registered mail.

b. The ATE will make a request for a Tax Computation Specialist (TCS) to prepare the SND per IRM 8.17.4, Notices of Deficiency.

c. Letter 894(CG) is used for income tax deficiencies resulting from taxes due on unrelated business income. This letter is prepared by the TCS.

d. Letter 901(CG) is used for Chapter 43 excise taxes. This letter is prepared by the TCS.

e. Letter 1363, Appeals Partial Disallowance of Refund Claim - Certified, is used for partial claim disallowances for income and excise taxes. This letter is prepared by the ATE.

f. Letter 1364, Appeals Full Disallowance of Refund Claim - Certified, is used for full claim disallowances for income and excise taxes. This letter is prepared by the ATE.

(5) Agreed Tax Cases

a. On agreed tax cases, follow the general guidelines of IRM 8.2.1, Agreed Pre-90-Day Income Tax Cases.

b. Letter 913, Agreed Cases - Closing, is used for no-change income tax (Form 990-T, Exempt Organization Business Income Tax Return) or excise tax (Form 5330, Return of Excise Taxes Related to Employee Benefit Plans) cases. The ATE prepares this letter.

c. Letter 913, Agreed Cases - Closing, Letter 1363, Appeals Partial Disallowance of Refund Claim - Certified, or Letter 1364, Appeals Full Disallowance of Refund Claim - Certified, are used for refund claims of income tax (Form 990-T) or excise tax (Form 5330) as appropriate. The ATE prepares these letters.

(6) Unagreed Qualification Cases (Determinations or Examinations)

a. Cases involving qualified or continuing qualified status are subject to the declaratory judgment provisions of IRC 7476. Therefore, TEGEDC Area Counsel's review and concurrence is necessary prior to issuance of the final adverse determination, revocation, or non-qualification letter.
b. Letter 1757, 90-Day Final Non-Qualification / Revocation, is the final revocation letter for examination cases with a preexisting determination letter.
c. Letter 1724, Final Adverse - No Appeal Requested, is the final Adverse Determination letter for determination cases.
d. The ATE should consult with TEGEDC Area Counsel for appropriate language and format of the letter. See IRM 7.11.11, Proposed Adverse Cases.

8.7.8.2.8
(03-23-2018)
Closing an EP Case

(1) Unless otherwise indicated in this section, when closing an EP case the ATE will follow ordinary closing procedures in IRM 8.2.1.10, Closing the Case to APS.

(2) On EP settlement cases (tax deficiency or qualification related), revocations, adverse determinations, or tax deficiency cases, once an ACAP is entered on ACDS, the ATM will forward an advance electronic copy of the Form 5402 and ACM to the manager of EP Mandatory Review (examinations) or Manager, QAS (determinations).

(3) Final adverse letters pursuant to IRC 7476 will be issued by APS and suspended until the earliest of the following events:

a. Agreement to the notice of deficiency is received,
b. A petition is filed with the appropriate court, or
c. 120 days have elapsed from the date the notice of deficiency or letter was issued.

(4) On defaulted cases, APS takes appropriate action to close the case and indicates on Form 5402, Appeals Transmittal and Case Memo, the "Defaulted" date.

(5) Close all other cases when the determination or other letter is issued notifying the taxpayer of Appeals' decision or an agreement to a tax change is received, whichever applies.

(6) Place a copy of Form 5402, Appeals Transmittal and Case Memo, and the Appeals notification or determination letter to the employer or sponsor in the permanent application file before closing the case from Appeals.

(7) Update the case with a petition filed with a court and transfer it to TEGEDC Area Counsel. All cases subject to declaratory judgment proceedings must include an administrative record and index. The administrative record and index are prepared by EP Division, updated by Appeals, and finalized by TEGEDC Area Counsel.

(8) Final closings from Counsel will be sent to the appropriate APS location for processing based on the Direct Shipment Table for processing. Follow processing procedures and any special instructions (such as on Form 1734, Transmittal Memorandum, or memo) for docketed cases. See IRM 8.20.7, Closing Procedures.

8.7.8.3
(03-23-2018)
Exempt Organization (EO) cases in Appeals

(1) The Director of EO, is responsible for the examination of tax exempt organization returns (EO Examinations) and is also responsible for reviewing applications for recognition of exemption from Federal income tax (EO Rulings and Agreements).

(2) Pursuant to IRM 1.2.2.9.1 , Delegation Order 8-1 (formerly DO-60, (Rev. 7)), Appeals Functions, Settlement of Cases Docketed in the United States Tax Court, IRM 1.2.2.9.8 , Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev. 15), Authority of Appeals in Protested and Tax Court Cases, and IRM 1.2.2.8.2 , Delegation Order 7-2 (Rev. 2), Authority to Issue Exempt Organization Determination Letters, Appeals has jurisdiction to review adverse actions by EO Division with the exception of the following:

a. An adverse action resulting from a Technical Advice Memorandum (TAM) issued with respect to an organization's tax exempt status or foundation classification which does not have appeal rights.
b. Any case once a certified/registered final adverse determination letter is issued.
c. Cases docketed under the declaratory judgment provisions of IRC 7428, which are identified by the letter "X" after the docket number. These cases are under TEGEDC Area Counsel's exclusive jurisdiction, regardless of whether TE/GE or Appeals issued the final adverse determination letter. Consequently, Appeals will generally not accept these cases. However, in limited and rare circumstances, Appeals management in conjunction with TEGEDC Area Counsel may agree to accept jurisdiction of a docketed declaratory judgment case.

(3) EO cases normally consist of 4 types:

EO Case Types
1) Determinations with respect to applications requesting tax exempt status.
2) Private Foundation issues
3) Revocations of the tax exempt status of organizations.
4) Examinations of returns of tax exempt organizations. Issues in exams may include: • Unrelated business income tax. • Employment taxes. • Wagering excise taxes. • Chapter 41 and 42 excise taxes. • Discrepancy Adjustments.

8.7.8.3.1
(03-23-2018)
Receipt of New EO Cases in Appeals

(1) EO cases from the field are routed to Appeals via the APS unit's address indicated in IRM 8.7.8.1.1(2).

(2) APS will establish (i.e., card-in) the new EO case on ACDS and forward the case to the ATM. See IRM 8.20.5.36.2, EO Determination Case Carding, and IRM 8.20.5.36.3, EO Revocation Case Carding, for APS carding-in of EO cases.

(3) The ATM who receives the EO case from APS will determine if the case is ready for consideration by Appeals by reviewing the following:

- Whether the ACDS data is correct.
- Whether the statute of limitations is correct and had at least 365 days left when received by Appeals (or at least 180 days remained on the statute of limitations when the case was received by Appeals when the originating function returns a case that was previously returned to them for consideration of new information or a new issue).
- Whether the protest is adequate.
- Whether the case is otherwise suitable for Appeals' consideration.

(4) If the case is ready for consideration by Appeals, the ATM assigns the case to an AO with specialized knowledge or experience in tax exempt organization issues.

8.7.8.3.2
(03-23-2018)
Preliminary Review of EO Case by Appeals Officer

(1) Upon receipt of the EO case by the ATE, follow intake procedures as follows:

- IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE). There should be at least 365 days on the statute of limitations and 180 days for cases returned from the originating function.
- IRM 8.2.1.5, Returning a Case to Examination – ATE. Grounds for returning a case to Examination.
- IRM 8.2.1.6, Preliminary Review of a Case – ATE. Close unnecessary returns, identify coordinated issues, and referrals.
- IRM 8.20.6.3, Account and ACDS Updates, Changes, or Corrections Required as an Interim Action.

(2) Within 45 days from receipt of the EO case, the ATE will verify the statute on the case and issue an initial contact letter (e.g., Letter 5157, Non-Docketed Acknowledgement & Conference). Telephone contact may also be made.

(3) See Exhibit 8.7.8-3, EO Returns and Forms, for due dates of EO Forms and returns.

(4) The ATE should review the administrative file to ensure that the following required items are included:

a. TE/GE's report describing the issues, facts, law, and arguments.
b. Adequate protest from the taxpayer.
c. Government's rebuttal to the protest.
d. On IRC 7428 declaratory judgment cases (denials, revocations and private foundation issues), an administrative record and index are prepared in accordance with IRM 4.75.32, Declaratory Judgment Cases and The Administrative Record. Appeals updates the administrative record and index with Appeals' administrative record if a final adverse determination letter is issued.
e. If a six-year statute of limitations under IRC 6501(e) is imposed for failure to adequately disclose information, a memo from TEGEDC Area Counsel must be in the file.

(5) The ATE will validate the case on ACDS. If ACDS needs correction or updating, the ATE can make most updates or corrections using the Validation Tracking System (VTS). When an update to ACDS is needed that cannot be made through VTS, refer to IRM 8.20.6, Account and Processing Support (APS), Interim Actions, and IRM 8.10.3.4.3, ACDS Update Request Forms.

8.7.8.3.3
(03-23-2018)
EO Determination Cases

(1) An applicant's request for a determination letter may be withdrawn prior to the issuance of a proposed adverse determination letter. Therefore, an application for tax exempt status may not be withdrawn at the Appeals level. See Rev. Proc. 2023-5 (updated annually) and 26 CFR 601.201(n)(5)-(6).

(2) Determinations cases consist of the following types:

- Denial of a request for tax exempt status under IRC 501(c), IRC 501(d), or IRC 521
- Private Foundation classification for IRC 501(c)(3) organizations
- Retroactive reinstatement or foundation classification per IRC 6033(j)(3)

(3) Appeals of EO determination cases are covered under 26 CFR 601.201(n)(5) and Section 7 of Rev. Proc. 2023-5 (updated annually).

8.7.8.3.3.1
(03-23-2018)
Denial of a request for Tax Exempt Status

(1) Final adverse determinations with respect to an organization's request for tax exempt status as an organization described under IRC 501(c) and IRC 501(d) are subject to declaratory judgment provisions under IRC 7428. An administrative record is required.

(2) If Appeals sustains the denial of a request for tax exempt status and the taxpayer has not agreed via a closing agreement, prepare a final adverse determination letter and documents as follows (see Exhibit 8.7.8-4, 501(c) Final Adverse Determination Check Sheet):

a. Letter 1371, Final Adverse Determination of Tax Exempt Status 501(c)(3) - Unagreed
b. Redacted Letter 1371, Final Adverse Determination of Tax Exempt Status 501(c)(3) - Unagreed
c. Original Proposed Adverse Letter (30-day letter)
d. Redacted Proposed Adverse Letter (30-day letter)
e. Original Revenue Agent Report (Form 886-A, Explanation of Items)
f. Redacted Revenue Agent Report (Form 886-A, Explanation of Items)
g. Letter 437, Notice of Intention to Disclose - Rulings

(3) If Appeals sustains the denial of a request for tax exempt status and the taxpayer agrees by executing a closing agreement, prepare a final adverse determination letter and documents as follows (see Exhibit 8.7.8-4, 501(c) Final Adverse Determination Check Sheet):

a. Form 906, Closing Agreement on Final Determination Covering Specific Matters
b. Letter 1371-A, Final Adverse Determination for 501(c)(3) - Agreed
c. Redacted Letter 1371-A, Final Adverse Determination for 501(c)(3) - Agreed
d. Original Proposed Adverse Letter (30-day letter)
e. Redacted Proposed Adverse Letter (30-day letter)
f. Original Revenue Agent Report (Form 886-A, Explanation of Items)
g. Redacted Revenue Agent Report (Form 886-A, Explanation of Items)
h. Letter 437, Notice of Intention to Disclose - Rulings

(4) IRS TEGEDC Area Counsel's review and concurrence of the final adverse determination letter must be obtained.

(5) The case file from EO Determinations will have redacted versions of the proposed adverse letter and Form 886-A. In addition, EO Determinations will email these documents to the ATM.

(6) Cases that come from EO Determinations will have their recommendation of the private foundation classification of the IRC 501(c)(3) organization. If tax exempt status is to be recognized but the taxpayer does not agree with the private foundation classification recommendation and an agreement cannot be reached in on this issue, a final adverse determination letter may need to be issued or the case may be returned as a premature referral if the issue is not developed.

(7) If Appeals concedes the denial of a request for tax exempt status, Appeals will issue the following letter:

a. Letter 947, 501(c)(3) Exemption with Definitive Ruling of Public Charity Status, for IRC 501(c)(3) organizations
b. Letter 948, Determination Letter Recognizing Exemption Under IRC 501(a), other than IRC 501(c)(3), for all other 501(c) organizations

8.7.8.3.4
(03-23-2018)
Private Foundation Classification Cases

(1) Any final adverse determination with respect to private foundation classification issues for an IRC 501(c)(3) organization is subject to declaratory judgment provisions under IRC 7428. An administrative record is required.

(2) If Appeals sustains the proposed change and the taxpayer has not agreed via a closing agreement, prepare a final adverse determination letter and documents for distribution by APS as follows (see Exhibit 8.7.8-5, PF Final Adverse Determination Check Sheet):

a. Letter 1372, Final Adverse Determination of Private Foundation Status - Unagreed
b. Redacted Letter 1372, Final Adverse Determination of Private Foundation Status - Unagreed
c. Original Proposed Adverse Letter (30-day letter)
d. Redacted Proposed Adverse Letter (30-day letter)
e. Original Revenue Agent Report (Form 886-A, Explanation of Items)
f. Redacted Revenue Agent Report (Form 886-A, Explanation of Items)
g. Letter 437, Notice of Intention to Disclose - Rulings
h. Form 5060 (Exams only)

(3) If Appeals sustains the proposed change and the taxpayer has agreed via a closing agreement, issue a final adverse determination letter and documents as follows (see Exhibit 8.7.8-5, PF Final Adverse Determination Check Sheet):

a. Form 906, Closing Agreement on Final Determination Covering Specific Matters
b. Letter 1372-A, Final Adverse Determination of Private Foundation Status - Agreed
c. Redacted Letter 1372-A, Final Adverse Determination of Private Foundation Status - Agreed
d. Original Proposed Adverse Letter (30-day letter)
e. Redacted Proposed Adverse Letter (30-day letter)
f. Original Revenue Agent Report (Form 886-A, Explanation of Items)
g. Redacted Revenue Agent Report (Form 886-A, Explanation of Items)
h. Letter 437, Notice of Intention to Disclose - Rulings
i. Form 5060 (Exams only)

(4) TEGEDC Area Counsel's review and concurrence of the final adverse determination letter must be obtained.

(5) On exam cases, make a request to EO Mandatory Review for the redacted versions of the proposed adverse letter and Form 886-A when it is known an adverse action will be recommended.

(6) If Appeals concedes the proposed change to private foundation classification, issue Letter 1368, Letter-Definitive Determination that an Organization is not a Private Foundation.

8.7.8.3.5
(03-23-2018)
Revocation Cases

(1) Revocation cases consist of revoking an organization's determination letter recognizing the tax exempt status of the organization.

(2) If the revocation is sustained by Appeals, the organization is considered a taxable entity and should file a Form 1120, U.S. Corporation Income Tax Return, or Form 1041, U.S. Income Tax Return for Estates and Trusts, for any open tax years. However, the organization may file a petition with the Tax Court to contest the revocation per IRC 7428 after the final adverse determination letter is issued.

(3) Appeals of revocation cases are covered under 26 CFR 601.201(n)(6) and Section 12 of Rev. Proc. 2023-5 (updated annually).

8.7.8.3.5.1
(03-23-2018)
Revocation of Tax Exempt Status

(1) Final adverse determinations with respect to the revocation of an organization's tax exempt status as an organization described under IRC 501(c) and IRC 501(d) are subject to declaratory judgment provisions under IRC 7428. An administrative record is required.

(2) If Appeals sustains the revocation of the tax exempt status and the taxpayer has not agreed via a closing agreement, prepare a final adverse determination letter and documents as follows (see Exhibit 8.7.8-4, 501(c) Final Adverse Determination Check Sheet) :

a. Letter 1371, Final Adverse Determination of Tax Exempt Status 501(c)(3) - Unagreed
b. Redacted Letter 1371, Final Adverse Determination of Tax Exempt Status 501(c)(3) - Unagreed
c. Original Proposed Adverse Letter (30-day letter)
d. Redacted Proposed Adverse Letter (30-day letter)
e. Original Revenue Agent Report (Form 886-A, Explanation of Items)
f. Redacted Revenue Agent Report (Form 886-A, Explanation of Items)
g. Letter 437, Notice of Intention to Disclose - Rulings
h. Form 4194, Revocation of Tax Exempt Status

(3) If Appeals sustains the revocation of the tax exempt status and the taxpayer agrees by executing a closing agreement, prepare a final adverse determination letter and documents as follows (see Exhibit 8.7.8-4, 501(c) Final Adverse Determination Check Sheet):

a. Form 906, Closing Agreement on Final Determination Covering Specific Matters
b. Letter 1371-A, Final Adverse Determination for 501(c)(3) - Agreed
c. Redacted Letter 1371-A, Final Adverse Determination for 501(c)(3) - Agreed

d. Original Proposed Adverse Letter (30-day letter)
e. Redacted Proposed Adverse Letter (30-day letter)
f. Original Revenue Agent Report (Form 886-A, Explanation of Items)
g. Redacted Revenue Agent Report (Form 886-A, Explanation of Items)
h. Letter 437, Notice of Intention to Disclose - Rulings
i. Form 4194, Revocation of Tax Exempt Status.

(4) TEGEDC Area Counsel's review and concurrence of the final adverse determination letter must be obtained.

(5) Request from EO Review the redacted versions of the proposed adverse letter and Form 886-A, Explanation of Items, when it is known an adverse action will be recommended.

(6) State Notification may be required for revocations. See IRM 8.7.8.3.14, Disclosures to State Agencies Under IRC 6103(d) and 6104(c).

(7) If Appeals concedes the revocation of tax exempt status, Appeals will issue Letter 1370, Notification By Appeals on various EO Matters.

8.7.8.3.6
(03-23-2018)
EO Examination Cases

(1) EO examination cases, other than revocation, may consist of unrelated business income tax, Chapter 41 and 42 excise taxes, employment taxes, wagering excise taxes, and discrepancy adjustments on an individual's Form 1040, U.S. Individual Income Tax Return.

(2) Appeals of EO examinations are covered under 26 CFR 601.106.

8.7.8.3.6.1
(03-23-2018)
Unrelated Business Income Tax

(1) EO examination cases with sustained unrelated business income tax due will generally require the following documents showing the amount of income tax due:

- Form 5278, Statement - Income Tax Changes
- Form 5403, Appeals Closing Record

The ATE will make a request for a Tax Computation Specialist (TCS) to prepare these documents by using Appeals Generator of Letters and Forms (APGolf) to generate Form 3608, Request for TCS Service. See IRM 8.2.1.8, Requesting Work from Tax Computation Specialist.

(2) On agreed unrelated business income tax cases, Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, or Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, will be used for an agreement in Appeals. Letter 913, Agreed Cases - Closing, may be used as a closing letter.

(3) On unagreed unrelated business income tax cases, a Statutory Notice of Deficiency will be issued.

8.7.8.3.6.2
(03-23-2018)
Excise Taxes

(1) EO excise tax cases normally consists of the following:

- Chapter 41 excise taxes on IRC 501(c)(3) public charities
- Chapter 42 excise taxes on IRC 501(c)(3) private foundations
- IRC 4958 excise taxes (Chapter 42) on excess benefit transactions
- Chapter 35 excise taxes on wagering (IRC 4401 and IRC 4411)

(2) Chapter 42 excise taxes are reported on Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the IRC, (MFT 50 for an organization); or 4720-A (MFT 66 for an individual), except for IRC 4940 excise taxes, which are reported on Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation.

(3) Form 2504-AD, Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment (Excise or Employment Tax), may be used for private foundation excise tax agreements in Appeals.

(4) IRC 4958 excise taxes on excess benefit transactions applies to IRC 501(c)(3) public charities and 501(c)(4) organizations.

- Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, may be used for excess benefit transactions agreements in Appeals. Correction of the excess benefit transactions amount can be noted on the Form 870-AD if correction is made and a payment of the 1st tier tax is paid.
- If a taxpayer can pay the first tier tax but cannot correct the excess benefit transactions, Appeals may issue a statutory notice of deficiency for the 2nd tier tax.

(5) All statutory notices of deficiency on excess benefit transactions per IRC 4958 require review and concurrence by TEGEDC Area Counsel.

(6) IRC 4958 statute of limitations (i.e., Form 4720 and Form 4720-A) are determined as follows:

a. The period of limitations on a disqualified person or organization manager begins on the date the applicable tax exempt organization files Form 990, Return of Organization Exempt From Income Tax, for the tax period during which the excess benefit occurred or on the date the Form 990 is due, whichever is later.
b. The statute of limitations expires 3 years from the date in a) above. If the applicable tax exempt organization did not report the excess benefit transactions on Form 990 in a manner sufficient to apprise the IRS of the nature of the transaction, the statute expires 6 years from the date identified in a) above. (It is recommended that a memo from TEGEDC Area Counsel concurring with the 6-year statute be in the case files.)
c. The statute of limitations is running on the disqualified person's or organization manager's tax year(s). Therefore, the statute of limitations on the person's tax year must be protected (i.e., normally, their calendar tax year).
d. When an applicable tax exempt organization and the disqualified person have different tax years, follow a 3-step process to determine the statute expiration date:

Step	Action
1.	Identify the "Occurrence Date(s)" of the excess benefit transaction(s)
2.	Identify the "EO Taxable Year" of the Occurrence Date(s)
3.	Identify the statute date for the Form 990 filed for that EO taxable year

Example: Edward Elephant, an officer of an applicable tax exempt organization, buys himself a car using the organization's funds on July 1, 2013 (the Occurrence Date). Elephant is a calendar year taxpayer and the organization is on a fiscal year ending June 30 tax year. The excess benefit transaction occurred during the organization's fiscal year end June 30, 2014 (the EO taxable year). The organization filed Form 990, Return of Organization Exempt From Income Tax, on November 15, 2014, for the June 30, 2014 fiscal year end.

Therefore, the statute of limitations on the excess benefit transaction expires on November 15, 2017, 3 years from the date the Form 990 was filed. Any consent to extend the statute of limitations on the person's Form 4720/ Form 4720-A for the tax period December 31, 2013, must be executed by November 15, 2017.

e. Excess benefit transactions involving a series of contractual payments under a single arrangement will be treated as one excess benefit transaction for each year the series continues. The Occurrence Date for each excess benefit transaction in the series will be the earlier of: 1) the last payment in the series within the disqualified person's tax year, or 2) the last day of the disqualified person's tax year.

Example: On January 1, 2013, an applicable tax exempt organization leases a car for Jennifer Moose, a disqualified person. The lease continues through December 31, 2013, and Moose is not required to account for the use of the car (i.e., mileage log). The organization is on a fiscal year ending June 30 tax year and Moose is on a calendar tax year. The monthly lease payments are a series of payments under a single arrangement and are deemed to be paid to Moose on the last day of Moose's tax year (i.e., Occurrence Date of December 31, 2013). The occurrence date falls in the organization's fiscal year ending June 30, 2014 (EO's Taxable Year).

Therefore, if the organization files a timely Form 990 on November 15, 2014, the Form 872, Consent to Extend the Time to Assess Tax, to extend the statute of limitations on Moose's excise taxes for the period ended December 31, 2013, must be executed by November 15, 2017.

8.7.8.3.7
(03-23-2018)
IRS TEGEDC Area Counsel's Review and Concurrence

(1) All final adverse determination letters on issues subject to declaratory judgment procedures under IRC 7428 (i.e., tax exempt status, IRC 170(c)(2) status, and private foundation classification) require review by IRS TEGEDC Area Counsel. See IRM 8.17.4.31, Counsel Review of Notices.

If...	Then...
The taxpayer agrees with the final adverse determination via a closing agreement	The ATE will prepare the following documents and email them to the ATM to request TEGEDC Area Counsel's review: • Closing Agreement Form 906, Closing Agreement on Final Determination Covering Specific Matters • Final Adverse Determination Letter • ACM • Form 5402, Appeals Transmittal and Case Memo The ATM will email the documents to TEGEDC Area Counsel requesting a review of the closing agreement and the final adverse determination letter.
The taxpayer does not agree with the final adverse determination	The ATE will prepare the following documents and email them to the ATM to request TEGEDC Area Counsel's review: • Final Adverse Determination Letter • ACM • Form 5402, Appeals Transmittal and Case Memo The ATM will email the documents to TEGEDC Area Counsel requesting a review of the final adverse determination letter. TEGEDC Area Counsel will require that the case file and administrative record be sent for their review. Their review may take up to 45 days.

(2) Statutory notices of deficiency on excess benefit transaction (IRC 4958) cases also require review by TEGEDC Area Counsel. The ATE will prepare the following documents and email them to the ATM to request TEGEDC Area Counsel's review:

- Letter 894, Notice of Deficiency
- Form 4089, Notice of Deficiency – Waiver
- Form 886-A, Explanation of Items
- Supporting schedules
- Form 5402, Appeals Transmittal and Case Memo
- ACM

The ATM will email the documents to TEGEDC Area Counsel requesting a review of the statutory notice of deficiency package. TEGEDC Area Counsel will require that the case file be sent for their review. Their review may take up to 45 days.

(3) If TE/GE does not concur with the proposed action, a meeting may be requested with TEGEDC Area Counsel to discuss the reasons for non-concurrence.

(4) On cases that are sent to TEGEDC Area Counsel for review, input in ACDS the action code *AC* with sub-action code *DC* (Counsel Review).

8.7.8.3.8
(03-23-2018)
Technical Advice on EO Cases

(1) Appeals does not accept cases from the field where an adverse action resulted from a Technical Advice Memorandum (TAM) issued with respect to an organization's tax exempt status or foundation classification, because it does not does not have appeal rights. See 26 CFR 601.106(a)(1)(v).

(2) If a case, already under the jurisdiction of Appeals, was issued a TAM regarding tax exempt status or foundation classification prior to the case coming to Appeals and the Appeals proposed disposition is contrary to the TAM, the ATE will submit a proposed disposition of the issue contrary to the TAM as a request for a new TAM. See 26 CFR 601.106(a)(1)(v) and Rev. Proc. 2023-5 (updated annually).

(3) On cases from the field with TAM's regarding issues other than tax exempt status or foundation classification, Appeals will follow conclusions that are favorable to the taxpayer and for TAMs that are unfavorable to the taxpayer, Appeals may settle the issues. If a full concession of an issue is recommended by Appeals and is contrary to the TAM's position, without offsetting consideration, the ATE will submit a proposed disposition of the issue contrary to the TAM as a request for a new TAM. However, if the facts upon which the TAM is based are different, a new TAM will not be required. See Rev. Proc. 2023-5 (updated annually).

(4) ATEs may request a TAM where a lack of uniformity exists or the issue is unusual or complex. Appeals will follow the TAM issued to Appeals.

(5) A taxpayer may also request that a case under Appeals' jurisdiction be referred for a TAM. The request may be denied, however, if Appeals determines that a TAM is not warranted.

(6) Per Rev. Proc 2023-5, taxpayer requests for relief from retroactive revocation of tax exemption or modification of a determination letter made under IRC 7805 require assistance by the Office of Division Counsel (TEGEDC). The ATM will email the request to TEGEDC. An attorney will be assigned to the case and may request additional documents. TEGEDC Area Counsel's final decision, via internal memo to Appeals TE/GE, may take up to 60 days to complete including holding a conference with the taxpayer if the decision is adverse to the taxpayer. TEGEDC Area Counsel's decision may or may not be followed by Appeals TE/GE depending on the facts and circumstances. On cases that are sent to TEGEDC Area Counsel for review, input in ACDS the action code *AC* with sub-action code *DC* (Counsel Review).

(7) For guidance on TAMs, see IRM 8.6.3.3, Procedures if Appeals Conclusion is Contrary to Service Position, and Rev. Proc. 2023-2 (updated annually).

8.7.8.3.9
(03-23-2018)
Closing Agreements in EO Cases

(1) In adverse actions such as denials of tax exempt status, modifications of private foundation classification, or revocations of tax exempt status there is no special agreement form. In agreed cases, a closing agreement, Form 906, Closing Agreement on Final Determination Covering Specific Matters, may be used.

(2) In agreed adverse action cases, the taxpayer agrees to waive its declaratory judgment rights under IRC 7428 and the case may be closed without waiting for the 90-day statutory period to expire. (During the 90-day period a taxpayer would normally have the opportunity to file a petition with the court to contest the adverse action.)

(3) Closing agreements may be used in other situations as needed, such as to memorialize the settlement of case. For example, a closing agreement may be used on a conceded revocation with a sanction payment.

(4) The following actions related to closing agreements should be performed. See also IRM 8.13.1, Processing Closing Agreements in Appeals:

Step	Action
1.	Obtain initial ATM concurrence of resolution via a closing agreement.
2.	Coordinate and agree on the language in the closing agreement with the closing agreement coordinator, ATM, and the taxpayer.
3.	If the agreement covers an agreed denial, revocation, or private foundation issue, coordinate and agree on the language with IRS Counsel in addition to the above parties.
4.	Send 3 copies of the final closing agreement to taxpayer for execution. When received back by the IRS, date stamp the back of each page of the agreements.
5.	If payment is received from the taxpayer with the executed closing agreement, process the payment. See Exhibit 8.7.8-7, Appeals TE/GE Payment Processing.
6.	Send the following documents, via email, to the closing agreement coordinator for their approval: • Completed Form 4222, Closing Agreement Checklist, signed by ATE (PDF format) • Signature/AO approval page signed by ATE (PDF format) • Original closing agreement. Scanned copy is acceptable.

Step	Action
7.	After approval by closing agreement coordinator, ATE will send closing agreement package to ATM for final signature on closing agreement. Documents in the package shall include: • Form 5402, Appeals Transmittal and Case Memo • ACM • All original signed closing agreements • Fully executed Signature/AO approval page • Fully executed Form 4222, Closing Agreement Checklist • Closing Letter • Copy of check and Form 3244-A, Payment Posting Voucher - Examination, if applicable • Other agreements, if applicable (e.g., Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment; Form 2504-AD, Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment (Excise or Employment Tax))
8.	The original closing agreements in the case file will be distributed as follows: • One original to the taxpayer • One original maintained in the case file (attached to return) • One original sent by APS to Attn: Closing Agreement Suspense at: Oklahoma City Appeals 55 N. Robinson Street, Ste. 939 Oklahoma City, OK 73102
9.	Copies of the closing agreement may also be distributed as follows: • Power of Attorney (i.e., taxpayer's authorized representative) • EO Mandatory Review
10.	If a closing agreement involves a Non-Master File (MFT 28) payment, a copy of the fully executed closing agreement and Form 3244-A, Payment Posting Voucher - Examination, should be mailed to the following address: IRS Service Center, Receipt & Control Operations Deposit Department, Team 401 201 W. River Center Blvd., Stop 31 Covington, KY 41011

8.7.8.3.10
(03-23-2018)
Closing an EO Case

(1) The ATE should follow ordinary closing procedures in IRM 8.2.1.10, Closing the Case to APS.

(2) Enter the following required CARATS codes for a closed case with a closing code below 20:

- CR-NR (Case Received/New Receipt)
- CF (Conference plus applicable sub-action code)

- DM (Determination made)
- AC-FR (Submitted to ATM/Fully Resolved)

(3) The ATE will prepare the following:

- Form 5402, Appeals Transmittal and Case Memo
- ACM
- Closing Letter or Final Adverse Determination Letter
- Schedule of Adjustments or similar (e.g., Form 5278, Statement - Income Tax Changes, or other TCS computations)
- Agreement forms (e.g., Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, or Form 906, Closing Agreement on Final Determination Covering Specific Matters)
- Other forms as needed (see also Exhibit 8.7.8-3, EO Returns and Forms, and Exhibit 8.7.8-4, 501(c) Final Adverse Determination Check Sheet.
- Statutory notice of deficiency (SND), if applicable

(4) The ATE will email the items in IRM 8.7.8.3.10 (3), above, to the ATM for review and approval. Include the WUNO in the email subject line.

(5) Upon approval by the ATM, the Form 5402, Appeals Transmittal and Case Memo, and other documents will be electronically signed by the ATM and returned to the ATE via email with shipping instructions. The ATM will also enter an ACAP on ACDS.

(6) There should be no more than 7 days between the AC-FR date and the ACAP date.

(7) The EO case file may include an envelope containing (one or more) Forms 2363-A, Request for IDRS Input for BMF/EO Entity Change, and/or a Form 1120, U.S. Corporation Income Tax Return, conversion package for processing if the issue is sustained by Appeals (e.g., revocation cases). The ATE should ensure these items are sent to EO Mandatory Review for processing by completing a mailing package and envelope with these items.

8.7.8.3.11
(03-23-2018)
EO Feedback Loop

(1) After the ATM approves an EO case for closing, the following documents are forwarded to EO Mandatory Review via email with the following subject line, “Advance Notice of Appeals Case Closing”:

- Form 5402, Appeals Transmittal and Case Memo
- ACM
- Closing Letter or Final Adverse Determination Letter
- Closing Agreement, if applicable

8.7.8.3.12
(03-23-2018)
Disclosure in EO Cases

(1) IRC 6103 provides the general rules regarding the confidentiality of all tax returns and tax return information. IRC 6103(a) prohibits officers and employees of the United States from disclosing returns or return information, whether obtained in the performance of duty or otherwise.

(2) There are two major statutory exceptions that govern the public disclosure of tax exempt organizations’ tax information. One exception arises under IRC 6104 and the other arises under IRC 6110.

(3) IRC 6104 makes available for public inspection tax information relating to certain exempt organizations. IRC 6104(a)(1)(A) requires the IRS to disclose the application filed by the organization including supporting materials, and IRS determinations **granting** those exemptions. IRC 6104 contains no provisions for redacting identifying information except for trade secrets, patents, and processes of the organization, or which would adversely affect the national defense.

(4) IRC 6110 applies in all adverse determinations resulting in a revocation/denial of tax exempt status or an adverse change in private foundation classification. IRC 6110 provides that the text of any written determination and any background file document relating to such written determination shall be open to public inspection. The IRS must delete certain identifying information (e.g., names, addresses, and other identifying details of the person to whom the written determination pertains).

Note: IRC 6110 does not apply if an application for exempt status is approved but the organization was determined to be a private foundation. In this circumstance, the determination is not "adverse" because exempt status was recognized (i.e., a favorable ruling as to exempt status). Redaction will not be required; however, disclosure will still be required per IRC 6104.

In these situations, EO Determinations will not provide Letter 1079, Exemption Determination with Adverse Issue, (i.e., an approval letter for exempt status for a 501(c)(3) organization) to Appeals for redaction because it is fully disclosable per IRC 6104.

(5) See Rev. Proc. 2023-5 (updated annually) and *Tax Analysts v. Internal Revenue Service*, 350 F.3d 100 (D.C. Cir. 2003).

8.7.8.3.13
(03-23-2018)
Redacting a Document

(1) In determination cases, EO Determinations will email to the ATM the proposed adverse letter in original form and redacted form. Once the determination case is assigned to an ATE, the ATM will send these items via email to the ATE. The case file may also contain hard copies of these documents.

(2) In examination cases, EO Mandatory Review will redact the proposed adverse letter including the Revenue Agent's Report (RAR or Form 886-A, Explanation of Items). A request to EO Mandatory Review will be made when it is anticipated that a final adverse determination will be made (when the case is with Counsel for concurrence or review).

(3) Under IRC 6110, the ATE must redact all Appeals-generated documents. The ATE should redact names, addresses, and other identifying details of the person to whom the written determination pertains, and of any person identified in the written determination (other than a person making a third party communication), and any information that would permit any person generally knowledgeable with respect to the appropriate community to identify the taxpayer.

(4) Examples of taxpayer information that may be redacted include:

- Court docket numbers
- Policy numbers
- Outside consultants
- Product lines

- References to another case involving the same taxpayer
- Beneficiaries
- Patents and trademarks
- Dollar figures (don't redact the "$" symbol)
- Dates including tax years
- Taxpayer location
- References to state law
- Names of local IRS employees
- Trade secrets
- Privileged or confidential information
- Personal information

8.7.8.3.14
(03-23-2018)
Disclosures to State Agencies under IRC 6103(d) and IRC 6104(c)

(1) IRC 6103(d) permits the disclosure of returns and return information with certain taxes imposed to any state agency, body or commission charged under the laws of the state with the responsibility for the administration of state tax law. Such disclosure may be made only in response to a written request by the head of the agency, body or commission, and only for the purpose of, and to the extent necessary for, the administration of such tax laws.

(2) IRC 6104(c), as amended by the Pension Protection Act of 2006 (PPA), expanded the scope of information provided to state agencies regarding 501(c)(3) organizations. Prior to the PPA, the IRS provided notifications of final revocations for organizations exempt under IRC 501(c)(3) to all state tax or charity agencies. Subsequent to the PPA, state agencies must now meet certain requirements to receive information on proposed and final revocations of IRC 501(c)(3) organizations and proposed and final Chapter 41 and 42 taxes. Appeals will not need to be concerned with the proposed actions as far as notification is concerned.

- States that are approved to receive such information can be found in Exhibit 8.7.8-6, Disclosures to State Agencies under IRC 6103(d) and IRC 6104(c).
- On cases involving sustained revocations of 501(c)(3) organizations, Appeals will send a copy of the Final Adverse Determination Letter to the EO Fed/State Liaison.
- On cases involving tax deficiencies under Chapter 41 or Chapter 42 of the Code, the case file should include a package or envelope containing a copy of the Form 4883, Exempt Organizations Excise Tax Audit Changes, and Form 886-A, Revenue Agents Report. If the case is sustained by Appeals, the package or envelope containing the items will be forwarded to the EO Fed/State Liaison.

8.7.8.4
(03-23-2018)
Government Entities (GE)

(1) GE Division has three distinct customer bases and the three offices that serve them are:

1. Federal, State and Local Governments;
2. Indian Tribal Governments; and
3. Tax Exempt Bonds

These GE offices are responsible for compliance activities with tax law related to income tax withholding, employment tax payments and tax subsidized debt securities.

8.7.8.4.1
(03-23-2018)
Federal, State and Local / Employment Tax Area, EO Examination (FSL/ET) cases in Appeals

(1) FSL/ET is responsible for compliance and education activities with respect to governmental entities and their subordinate entities. FSL/ET taxpayers generally include:

- Federal agencies
- State agencies
- Local governments
- Quasi-governmental entities

(2) FSL/ET compliance activities are generally focused on: (i) employment taxes (e.g., Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return; Form 941, Employer's Quarterly Federal Tax Return; and Form 945, Annual Return of Withheld Federal Income Tax); (ii) Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; and (iii) information return reporting (Forms 1099; Form W-2, Wage and Tax Statement; and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding).

(3) Form 941, Employer's Quarterly Federal Tax Return, employment tax cases generally involve additional wage adjustments (e.g., fringe benefits) and/or worker classification issues.

a. Cases involving additional wage adjustments will follow Appeals procedures contained in IRM 8.7.16, Appeals Employment Tax Procedures.
b. Cases involving worker classification issues are differentiated by whether the taxpayer has an agreement with the Social Security Administration (SSA) pursuant to Section 218 of the Social Security Act. See 42 U.S.C. Section 418. A Section 218 Agreement provides coverage (Social Security and Medicare Hospital Insurance) for a group of state or local government employees. If a Section 218 Agreement includes a worker's position, any employee holding that position is covered under the Section 218 Agreement. SSA will make that determination.
c. If a taxpayer has a Section 218 Agreement, the FSL/ET examiner will submit a request to SSA verifying that the reclassified workers are covered under the Section 218 Agreement. See IRM 4.75.21.11, Contacting SSA Regional Offices on Section 218 Coverage Issues.
d. If reclassified workers are covered by a Section 218 Agreement, relief under Section 530 of the Revenue Act of 1978 (IRC 3401) is not available for failure to withhold FICA taxes. However, relief under Section 530 is available for failure to withhold income taxes regardless of whether the reclassified workers are covered under a Section 218 Agreement because the IRS has jurisdiction over the determination of whether reclassified workers are employees for purposes of federal income tax withholding.
e. If reclassified workers are not covered by a Section 218 Agreement, the case will follow Appeals procedures in IRM 8.7.16, Appeals Employment Tax Procedures.
f. The Classification Settlement Program (CSP) is available to FSL/ET taxpayers who meet CSP requirements and are not covered under a Section 218 Agreement. See IRM 4.23.6, Classification Settlement Program (CSP), for procedural guidance on CSP.

(4) Cases involving civil penalties under IRC 6721 and IRC 6722 (failures to file correct information returns and furnish correct payee statements) usually stem from Form 1099 and/or Form W-2 filing requirements. When both penalties are asserted, each penalty should have its own separate work unit.

a. IRC 6722 penalty cases on ACDS should have a case TYPE as "OTHPEN".
b. Upon receipt of an IRC 6721 and/or IRC 6722 penalty case, the ATE should verify that the penalties have been assessed. If not assessed, the ATE should prepare Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, for each period the penalty has not yet been assessed and submit the Form(s) to APS to immediately assess the penalty. In Box 9 of the Form 8278, the ATE will insert the words "To Be" between "Amount" and "Assessed" so that the form reads "Amount To Be Assessed".

(5) Unless otherwise indicated in this IRM section, all other FSL/ET cases will follow Appeals procedures as indicated below:

a. Form 941 or Form 945 penalties (IRC 6651 and IRC 6656) – Follow IRM 8.11.4, Penalty Appeals (PENAP).
b. Other Penalties – Follow IRM 8.11 , Penalties Worked in Appeals, and IRM 20.1.7, Information Return Penalties.
c. Non-docketed Employment Tax Cases – Follow IRM 8.7.16, Appeals Employment Tax Procedures.
d. Docketed Employment Tax Cases – Follow IRM 8.7.16, Appeals Employment Tax Procedures, and IRM 8.4, Appeals Docketed Cases.
e. Form 941 or Form 945 Claims — Follow IRM 8.7.7, Claim and Overassessment Cases.
f. Form 1042 Cases – Follow IRM 8.17.4.28.6, Tax Required to be Withheld at Source (Form 1042).

(6) See IRM 4.75.7, Exempt Organizations and Federal State Local /Employment Tax Case Assignment Guide.

8.7.8.4.2
(03-23-2018)
Indian Tribal Governments (ITG) Cases in Appeals

(1) Indian Tribal Governments (ITG) coordinates all aspects of tax administration as they impact Indian tribal governments and their related entities. This includes indirect assistance, direct assistance, compliance checks and examinations of returns. ITG is responsible for providing federal tax compliance assistance only at the tribal level. Issues involving individual tribal members are worked by the Wage and Investment or Small Business/Self Employed Divisions.

(2) Tribal Council officials should be treated as officials of another government. The ATE should take the time to learn their official titles (e.g., Chairman, President, Counsel, or Representative).

(3) The Tribal Chairman (Governor), Tribal Counsel, or CFO may generally receive copies of notices and communications without submitting a Form 2848, Power of Attorney and Declaration of Representative, as long as they are employees of the Indian tribal government.

(4) Compliance activities on ITG cases generally focus on employment taxes (e.g., Form 941, Employer's Quarterly Federal Tax Return; Form 944, Employer's ANNUAL Federal Tax Return; Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return; Form 943, Employer's Annual Tax Return for Agricultural Employees; and Form 945, Annual Return of Withheld Federal Income Tax); Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; excise taxes; income taxes; and information

returns (e.g., Form W-2, Wage and Tax Statement; Form W-2 G, Certain Gambling Winnings; Forms 1099; and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding).

(5) Form 941 employment tax cases generally involve additional wage adjustments (e.g., fringe benefits) and/or worker classification issues.

a. Cases involving additional wage adjustments will follow Appeals' procedures contained in IRM 8.7.16, Appeals Employment Tax Procedures.
b. Cases involving worker classification issues will follow Appeals' procedures contained in IRM 8.7.16, Appeals Employment Tax Procedures.
c. Relief under Section 530 of the Revenue Act of 1978 (IRC 3401) and the Classification Settlement Program (CSP) are available to all ITG taxpayers. See IRM 4.23.6 , Classification Settlement Program (CSP), for procedural guidance on CSP.

(6) Unless otherwise indicated in this IRM section, all other ITG cases will follow Appeals' procedures as indicated below:

a. Form 941 or Form 945 penalties (IRC 6651 and IRC 6656) – Follow IRM 8.11.4, Penalty Appeals (PENAP).
b. Other Penalties – Follow IRM 8.11, Penalties Worked in Appeals, and IRM 20.1.7, Information Return Penalties.
c. Non-docketed Employment Tax Cases – Follow IRM 8.7.16, Appeals Employment Tax Procedures.
d. Docketed Employment Tax Cases – Follow IRM 8.7.16, Appeals Employment Tax Procedures, and IRM 8.4, Appeals Docketed Cases.
e. Form 941 or Form 945 Claims – Follow IRM 8.7.7, Claim and Overassessment Cases.
f. Form 1042 Cases – Follow IRM 8.17.4.28.6, Tax Required to be Withheld at Source (Form 1042).

(7) See IRM 4.88, Indian Tribal Governments (ITG) Examination Issues and Procedures, for technical guidelines.

8.7.8.4.3
(03-23-2018)
Tax Exempt Bond (TEB) Cases in Appeals

(1) The TEB program is responsible for oversight, compliance and education related to arrangements that involve debt instruments or obligations of states, their political subdivisions and other entities entitled to issue tax exempt debt instruments under IRC 103 and certain tax credit bonds. These instruments may include:

a. Tax Exempt Bonds
b. Tax Credit Bonds
c. Direct Pay Bonds

(2) There are two types of Tax Exempt bonds under IRC 103:

a. Governmental Bonds – All of the bond proceeds used by the issuer for its own purposes.
b. Qualified Private Activity Bonds – Bond proceeds loaned to a for-profit or nonprofit entity to fund the borrower's project.

IRC 103 permits state and local governments to issue bonds, the interest on which is excluded from the gross income of the bondholder. In order to qualify for this benefit, the bonds must comply with the provisions of IRC 103, related sections of the Code, and the accompanying regulations.

(3) For Tax Credit Bonds, the interest is in the form of a tax credit rather than an interest payment to the bondholder. It is possible that a tax credit bond could continue to be a qualified bond while a controversy exists over the amount of the credit available.

(4) Direct Pay Bonds issued under IRC 6431 are a type of tax credit bond but the issuer receives a payment from the IRS to cover a certain percentage of the interest paid by the issuer of the bonds. The interest paid on Direct Pay Bonds is taxable to the recipient.

(5) TEB cases in Appeals may involve the following issues:

a. Qualification of private activity bond.
b. Arbitrage transactions.
c. Violations of IRC 146, IRC 147, or IRC 149.
d. Revocation of the IRC 501(c)(3) status of an organization that is the borrower of tax exempt bond proceeds.
e. Penalty waivers for late filing of Form 8038 series.
f. Computation of rebate.
g. Disallowance of a claim for recovery of a rebate.
h. Qualification of a qualified tax credit bond.
i. Claims regarding credits allowable under IRC 6431.

Note: All of the above, except for items f, g, h, and i, above, will result in a determination that the interest on the bonds is taxable.

(6) IRC 7478 provides for Tax Court review of an adverse ruling from the IRS on a prospective issuance of a governmental obligation under IRC 103. Cases docketed under the declaratory judgment provisions of IRC 7478 are under Counsel's exclusive jurisdiction regardless of whether TEB or Appeals issued the final adverse letter. Consequently, Appeals does not accept those cases.

8.7.8.4.3.1
(03-23-2018)
Parties in a TEB Case

(1) A tax exempt bond can only be issued by a qualified issuer. The term "issuer" includes any state, any political subdivision of a state, and any corporation described in IRC 150(d). It also includes any "on-behalf-of" issuer described in Rev. Rul. 63-20,1963-1 C.B. 24, and any constituted authority described in Rev. Rul. 57-187, 1957-1 C.B. 65, if the on-behalf-of issuer or constituted authority has been designated by a state or political subdivision to issue the prospective obligations. The term "issuer" does not include a conduit borrower of the proceeds of the prospective obligations.

(2) The proceeds of the bond issue can be used for the issuer's own purposes or can be loaned to another party, which is referred to as the "conduit borrower". The actual owner of the bond (the party which receives the interest payments) is the "bondholder", also called the "beneficial owner of the bonds". There are several other parties to the transaction, such as the underwriter, financial advisor, bond counsel, and trustee who will not normally be involved in the examination process.

(3) During Appeals' consideration, the ATE may work with an employee of the issuer (e.g., the finance director or an in-house attorney), the issuer's authorized representative named on Form 2848, Power of Attorney and Declaration of Representative, an employee of the conduit borrower, and/or the conduit borrower's authorized representative named on Form 2848. Frequently, if a conduit borrower is involved, the issuer will delegate the handling of the exami-

nation and related appeal entirely to the conduit borrower and/or the borrower's authorized representative. If this happens, it is imperative that the issuer be kept abreast of the status and progress of the case while in Appeals. See IRM 8.7.8.4.3.9, Disclosure Concerns in TEB Cases.

8.7.8.4.3.2
(03-23-2018)
Taxpayers in a TEB Case

(1) In order to expeditiously conduct an examination (including any related administrative appeal) of a tax exempt bond issue, the issuer is treated as the taxpayer on behalf of the unidentified bondholders. While bondholders may ultimately be liable for federal taxes upon the completion of the examination and administrative appeal, disputes regarding the tax status of a bond issue are generally resolved at the issuer level by working directly with the bond issuer and/or conduit borrower to the transaction.

(2) The bond examination is not an examination of the bond issuer, but of the municipal financing arrangement, and the issuer's records are only reviewed to the extent they are relevant to the examination of the transaction.

(3) A bondholder is treated as the taxpayer when a preliminary determination has been made to pursue a specific bondholder for assessment and collection of federal taxes. Thus, bondholders should be treated as taxpayers when all three of the following events occur:

a. The bondholders are specifically identified by name;
b. The examination of the issuer has already identified any specific issues that would affect the individual bondholder's liability; and
c. A preliminary determination has been made to pursue those issues further.

Note: If TEB determines that the interest on the bonds is taxable and proposes a tax liability on any identified bondholder's tax return, it is possible that a bondholder's unagreed tax liability could accompany the Form 8038 file to Appeals.

(4) If the examination of the bond issue uncovers a problem with the bond, the conduit borrower may have a liability, independent from the bondholders, pursuant to the provisions of IRC 150(b). Accordingly, in these situations, the conduit borrower is treated as a taxpayer in addition to the issuer. Any proposed adjustments to the conduit borrower's income tax return will be part of a separate case file.

8.7.8.4.3.3
(03-23-2018)
Issuer's Appeal Rights

(1) Rev. Proc. 2006-40, 2018-2 C.B. 694, describes administrative appeals of Proposed Adverse Determinations of Tax-Exempt Status of Bond Issues. These appeal procedures apply to both proposed adverse determinations of the tax-exempt status of the interest on the bonds as well as to denials of arbitrage rebate claims (also called "denials of requests for recovery of rebate").

(2) The issuer's appeal request must be submitted in writing to TEB within 30 days of the date of the Proposed Adverse Determination of Arbitrage Rebate Claim Denial. For details of the required contents of the protest, see Rev. Proc. 2006-40.

(3) If an issuer does not file a protest within 30 days of the date of the Proposed Adverse Determination, the Proposed Adverse Determination becomes final

and the issuer has no right to an administrative appeal. Appeals does not accept cases after a Proposed Adverse Determination becomes final.

Note: TEB does not issue a final adverse determination.

8.7.8.4.3.4
(03-23-2018)
Receipt of new TEB Cases in Appeals

(1) TEB cases from the field are routed to Appeals via the APS unit's address described in IRM 8.7.8.1.1(2).

(2) APS will establish (i.e., card-in) the new TEB case on ACDS and forward the case to the ATM.

(3) The ATM who receives the TEB case from APS will determine if the case is ready for consideration by Appeals by reviewing the following:

- Whether the ACDS data is correct.
- Whether the statute of limitations is correct and had at least 365 days left when received by Appeals (or at least 180 days remained on the statute of limitations when the case was received by Appeals when the originating function returns a case that was previously returned to them for consideration of new information or a new issue).
- Whether the protest is adequate.
- Whether the case is otherwise suitable for Appeals' consideration.

(4) If the case is ready for consideration by Appeals, the ATM assigns the case to an AO with specialized knowledge or experience with TEB organization issues.

8.7.8.4.3.5
(03-23-2018)
Preliminary Review of TEB Case by ATE

(1) Upon receipt of the TEB case by the ATE, follow intake procedures as follows:

- IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE).
- IRM 8.2.1.5, Returning a Case to Examination – ATE.
- IRM 8.2.1.6, Preliminary Review of a Case – ATE.
- IRM 8.20.6.3, ACDS Updates, Changes, or Corrections Required as an Interim Action.

(2) Within 45 day from receipt of the EO case, the ATE will verify the statute on the case and issue an initial contact letter (e.g., Letter 5157, Non-Docketed Acknowledgement & Conference). Telephone contact may be substituted for the initial contact letter.

(3) The ATE should review the administrative file to verify the following:

a. ACDS data is correct.
b. If there is a Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, in the file, verify the statute of limitations with at least 365 days left.
c. The Preliminary Adverse Determination Letter clearly explains the government's position.
d. An adequate protest is in the file.
e. Review the file on the Electronic Municipal Market Access (EMMA) website to ascertain the status of the bonds. If the bonds are no longer outstanding, the case takes priority over other cases in the ATE's inventory due to the bondholder's statute of limitations that may expire.

f. On qualification issues, confirm there is an electronic version of the tax exposure computation (past and future). If not, request it from the Revenue Agent. The ATE needs this to update the tax exposure computation during negotiations.

(4) The ATE will validate the case on ACDS. If ACDS needs correction or updating, the ATE will submit an update request to the appropriate APS mailbox. See IRM 8.20.6.3, ACDS Updates, Changes, or Corrections Required as an Interim Action.

8.7.8.4.3.6
(03-23-2018)
Determining the Statute Date on Form 8038-CP

(1) The only Form 8038 series return that has a live statute is Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds. The statute of limitations expires three years from the return due date (mailbox rule applies) or from the return received date, whichever is later. See IRM 21.7.7.7.2.6.1, Form 8038-CP Due Date Chart. See also Notice 2009-26.

(2) Several Forms 8038-CP may accompany one Form 8038, Form 8038-B, or Form 8038-TC.

(3) The ATE should check the back of Form 8038-CP to determine whether a Form 872-A, Special Consent to Extend the Time to Assess Tax, has been used to extend the statute of limitations. If no Form 872-A is attached, the statute of limitations expires 3 years from the postmark date of the original return and mailing envelope.

(4) If the postmark date is unavailable, the ATE should use an IDRS transcript to locate the return received date. The ATE should then assume that the filing date was 7 days prior to the return received date shown on IDRS. The statute of limitations expires 3 years from the assumed filing date.

8.7.8.4.3.7
(03-23-2018)
Closing Agreements in TEB Cases

(1) There is no special agreement form for TEB cases. When an agreement is reached, all settled TEB cases (except for Form 8038-R, Request for Recovery of Overpayment Under Arbitrage Rebate Provisions, and Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds) are settled via closing agreements (i.e., Form 906, Closing Agreement on Final Determination Covering Specific Matters).

(2) Unless otherwise indicated in this section, the ATE will follow ordinary Appeals procedures outlined in IRM 8.13.1, Processing Closing Agreements in Appeals, when securing closing agreements in TEB cases.

(3) If a conduit borrower is involved in the transaction, both the issuer and the conduit borrower are generally parties to the closing agreement.

(4) All actions required to be taken by the issuer in accordance with the closing agreement must be taken prior to execution of the agreement.

(5) The ATE drafts the closing agreement with the assistance of the ATM and IRS Counsel, if necessary. The taxpayer should also be involved in drafting the language of the closing agreement. The closing agreement should dispose of all potential issues, such as treatment of the conduit borrower's depreciation allowance, consideration of IRC 150(b) adjustments, deductibility of the closing agreement payment, terms of redemption, treatment of interest upon execution of the closing agreement, and the possibility of a news release.

(6) Once the ATE and ATM agree on a draft of the closing agreement, the agreement is forwarded to a reviewer familiar with TEB issues along with Form 4222, Closing Agreement Checklist. See IRM 8.13.1.6.2, Procedure.

(7) When the closing agreement reviewer returns Form 4222, Closing Agreement Checklist, to the ATE, the closing agreement can be forward to the taxpayer for execution along with a cover letter that contains instructions and an expected due date for its return.

Note: Generally, the ATE will ask the taxpayer to sign three original copies of the closing agreement, one of which is returned to the taxpayer when the case is closed. If more than one taxpayer is to receive an original copy of the closing agreement once the case is closed, the ATE should proportionally secure more original closing agreements.

(8) The taxpayer **must** return **full** payment along with the executed closing agreement before it is forwarded to the closing agreement reviewer and ATM for final approval. Amounts paid with the closing agreement can be based on the following:

a. Taxpayer exposure: taxpayer exposure is equal to the interest accrued during any year multiplied by 29.00% (assumed tax rate of bondholders) plus interest at the underpayment rate. Taxpayer exposure for future years should be computed on a present value basis using the bond yield as the discount rate.
b. IRC 150(b): based on adjustments to conduit borrower's tax liability.
c. Arbitrage earned.

(9) When the closing agreement is forwarded to ATM for final approval, it should be accompanied by: Form 5402, Appeals Transmittal and Case Memo; the ACM; and the closing letter(s).

(10) A copy of the fully executed closing agreement should be attached to each covered return.

8.7.8.4.3.8
(03-23-2018)
Closing TEB Cases

(1) The following subsections outline procedures to prepare and submit the TEB case for closing.

8.7.8.4.3.8.1
(03-23-2018)
Closing Procedures for Recovery of Rebate Payments

(1) If it is determined that the issuer will receive a refund (partial or full), the ATE completes Form 3753, Manual Refund Posting Voucher, in triplicate copy.

(2) The ATE will secure Form 2297, Waiver of Statutory Notification of Claim Disallowance, and/or Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit, as appropriate. See IRM 8.7.7, Claim and Overassessment Cases.

(3) The ATE will always forward Form 5402, Form 3753, the ACM, and any closing letters to the ATM for approval **prior to closing the case**.

8.7.8.4.3.8.2
(03-23-2018)
Closing Procedures for Qualification Issues

(1) Cases involving qualification issues can either be conceded in full, sustained with agreement, or sustained without agreement.

(2) If the case is conceded in full, the ATE will:

a. Prepare Form 5402, Appeals Transmittal and Case Memo, following established guidelines
b. Finalize ACM
c. Prepare closing letter in accordance with Rev. Proc. 2006-40, 2018-2 C.B. 694
d. Forward Form 5402, ACM, and closing letter(s) to the ATM for approval prior to closing the case

(3) If the case is sustained with a closing agreement, the ATE can close the case after the closing agreement is fully executed. Form 5402, Appeals Transmittal and Case Memo, should contain a note to APS to assess the closing agreement amount.

(4) If the case is sustained without a closing agreement, the ATE will:

a. Prepare a closing letter
b. Finalize ACM
c. Explain to the issuer/borrower that no further appeal rights are available. The issuer has no right to judicial review. Rather, the issuer must wait until a bondholder is taxed. The bondholder will then be able to seek judicial review.
d. Prepare Form 5402, Appeals Transmittal and Case Memo. In the *Remarks* section, the ATE will note that the entire case file should be returned to TEB at the following address:
Internal Revenue Service
TEB CPM
1122 Town and Country Commons
Town & Country, MO 63017-8200

8.7.8.4.3.9
(03-23-2018)
Disclosure Concerns in TEB Cases

(1) Municipal financing arrangements present unique disclosure issues. Frequently, if a conduit borrower is involved, the issuer will delegate the handling of the examination and related appeal entirely to the conduit borrower and/or the borrower's authorized representative.

(2) Since some of the conduit borrower's tax records may be used as supporting documentation, the potential for a disclosure violation arises. However, IRC 6103(h)(4)(C) provides that return information may be disclosed in federal administrative proceedings if such information directly affects the resolution of an issue and relates to a transaction between the taxpayer and a person who is a party to the proceedings (the conduit borrower).

(3) Although IRC 6103(h)(4)(C) permits these types of disclosures, the case file will usually contain a Form 8821, Tax Information Authorization, signed by both parties allowing each other to inspect and review tax information.

(4) In cases where a conduit borrow takes over negotiations, it is imperative that the issuer be kept abreast of the status and progress of the case while in Appeals. See IRM 8.7.8.4.3.1, Parties in a TEB Case.

8.7.8.5
(12-04-2023)
New Issues, New Information, and New Theories or Alternative Legal Arguments - General Guidelines

(1) ATEs working TE/GE-sourced cases are not investigators or examining officers and may not act as such.

(2) ATEs will conduct a preliminary review of a case as soon as possible to determine whether the case must be returned to TE/GE. While taxpayers may present new information or evidence to Appeals, the presentation of new factual information generally will require that the case be returned to TE/GE. See IRM 8.7.8.5.4, Non-Docketed TE/GE Case Routing Criteria, for a general summary of returning a case.

8.7.8.5.1
(12-04-2023)
Taxpayer Raises New Issue

(1) ATEs generally follow the procedures provided in the following IRMs when a taxpayer raises a new issue in a non-docketed case:

- IRM 8.6.1.7, New Issues and Reopening Closed Issues;
- IRM 8.6.1.7.1, Defining a New Issue;
- IRM 8.6.1.7.2, General Guidelines;
- IRM 8.6.1.7.3, Burden of Proof when Government Raises New Issues; and
- IRM 8.6.1.7.4, Taxpayer Raises New Issue.

(2) For non-docketed cases, ATEs will continue to follow the procedures in (1), above, except that the procedures given in IRM 8.7.8.5.5, Jurisdiction Released, below, will be followed to return a case to TE/GE.

(3) ATEs will continue to follow the procedures provided in the following IRMs when a taxpayer raises a new issue in a docketed case:

- IRM 8.4.1.9.3, New Issues in Docketed Cases; and
- IRM 8.4.4, Examination Assistance Requests.

8.7.8.5.2
(12-04-2023)
Taxpayer Provides New Information

(1) ATEs will continue to follow the procedures provided in IRM 8.6.1.7.5, Taxpayer Provides New Information, when a taxpayer provides new information in a non-docketed case, with the following two exceptions:

a. If a taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in the examination report, protest, or rebuttal, Appeals will provide TE/GE with an opportunity to review and comment on the information. To return the information package to TE/GE, the ATE will follow the procedures in IRM 8.7.8.5.3 (1), Taxpayer Provides New Theory or Alternative Legal Argument, below. Appeals will allow at least 45 days for written review and comment (subject to ex parte requirements), and grant an extension of time, if mutually agreed.
b. If the ATE determines that jurisdiction should be released, the ATE will follow the procedures in IRM 8.7.8.5.5, Jurisdiction Released, below.

(2) ATEs will continue to follow the procedures provided in IRM 8.4.4, Examination Assistance Requests, when a taxpayer provides new information in a docketed case.

8.7.8.5.3
(12-04-2023)
Taxpayer Provides New Theory or Alternative Legal Argument

(1) ATEs will continue to follow the procedures provided in IRM 8.6.1.7.6, Taxpayer Raises New Theory or Alternative Legal Argument, when a taxpayer raises a new theory or alternative legal argument in a non-docketed case, but will use the following step-action table for routing an information package to TE/GE:

Step	Action
1.	Return the information package to the original TE/GE group.
2.	Prepare an INTERIM customized Form 5402 using ACDS APGolf. Include the following information: 1. JURISDICTION RETAINED 2. Reason for sending information (i.e., Taxpayer is raising a new theory or alternative legal argument.) 3. IRS Examination Group address **Note**: If Form 5402 requires a closing code, use **Closing Code 00 — Not Applicable**. Do not close the case on ACDS. This is not a closing action.
3.	Update the following in CARATS: • **Action:SU** • **Subaction: PI** • **Suspense Action Reason Code: E/DD**— Inactive, waiting for info/action by DD • **Feature Code: EA**— Examination Assistance Case **Note**: If there are other issues that you can continue working, there is no need to put the case in suspense.
4.	Prepare Letter 5209 to the taxpayer. Sign it, but do not date or mail it. Letter 5209 advises taxpayers that you are sending their new theory or argument to the original exam group to assign to an examiner for review and comment and retaining jurisdiction of their case. **If the case has a paper administrative file**: Include a copy of Letter 5209 for the file and representative, if any, and envelope(s) for mailing. **If the case has an electronic administrative file**: Upload the signed Letter 5209 to ACDS for printing and mailing.
5.	Submit the information package to the ATM for approval. If approved, the ATM or ATE will mail the letter(s) in the file (paper administrative file) or print and mail the letter(s) in ACDS (electronic administrative file). The ATM or ATE will then forward the information package to the original TE/GE group.

(2) For docketed cases in which the taxpayer raises a new theory or alternative legal argument that the ATE believes warrants review and comment by TE/GE before the ATE can fully evaluate the hazards of litigation, the ATE will follow the instructions in IRM 8.4.4.3.1, New Information Received in Appeals, and treat the new theory or alternative legal argument as new information for purposes of determining if the case meets the criteria for making an Examination Assistance Request to TE/GE.

8.7.8.5.4
(12-04-2023)
Non-Docketed TE/GE Case Routing Criteria

(1) The following table summarizes the routing of non-docketed cases when the taxpayer advances a new theory or alternative legal argument, raises a new issue, or provides new information or evidence that at the discretion of the ATE requires additional analysis or investigative action. Note, however, that a short statute may prevent a case from being returned to TE/GE.

TYPE OF INFORMATION RECEIVED	ACTION TO BE TAKEN
(1) Taxpayer raises a relevant new issue.	Appeals will release jurisdiction of the case to TE/GE.
(2) Taxpayer provides Appeals with information that TE/GE previously requested during the examination.	Appeals will release jurisdiction of the case to TE/GE.
(3) Taxpayer, on its own initiative, provides Appeals with new information not previously shared with TE/GE during the examination.	Appeals will release jurisdiction of the case to TE/GE.
(4) Taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in TE/GE's report, the taxpayer's protest, or TE/GE's rebuttal.	Appeals will provide TE/GE with an opportunity to review and comment on the information within a specified time frame. Appeals will retain jurisdiction of the case.
(5) Taxpayer advances a new theory or alternative legal argument.	Appeals will provide TE/GE with an opportunity to review and comment on the information within a specified time frame. Appeals will retain jurisdiction of the case.

8.7.8.5.5
(12-04-2023)
Jurisdiction Released

(1) For non-docketed cases that are being returned to TE/GE with jurisdiction released by Appeals, the ATE will follow these procedures:

Step	Action
1.	Determine where to send the case: a. If the case has a paper administrative file, refer to the link entitled "Points of Contact for Returning Paper Administrative Files to TE/GE" on the *Appeals TE/GE website* and contact the appropriate point of contact for instruction on where to return the file to TE/GE. b. If the case has an electronic administrative file, transmit the case to TE/GE via the Reporting Compliance Case Management System (RCCMS).

Step	Action
2.	Prepare a customized Form 5402 using ACDS APGolf. a. Include the following information: JURISDICTION RELEASED [Reason for releasing jurisdiction (e.g., taxpayer provided new information, taxpayer raised a new issue, etc.)] Return case [to TE/GE's mailing address or via RCCMS]. b. Use **Closing Code 20**.
3.	Prepare Letter 5209 to the taxpayer. Sign it, but do not date or mail it. Letter 5209 advises taxpayers that you are returning the case to the originating function and the reason (e.g., because they raised a new issue, submitted new information, etc.), and releasing jurisdiction of their case. **If the case has a paper administrative file**: Include a copy of Letter 5209 for the file and representative, if any, and envelope(s) for mailing. **If the case has an electronic administrative file**: Upload the signed Letter 5209 to ACDS for printing and mailing.
4.	Submit the case to the ATM for approval and processing. The ATM approves the case closure and closes the case on the ATM Case closing screen. **If the case has a paper administrative file**: The ATM sends the case to APS. APS closes the case on ACDS, mails Letter(s) 5209, and returns the entire administrative file to the originating function using Form 3210, Document Transmittal. **If the case has an electronic administrative file**: The ATM mails Letter 5209 and transmits the case electronically to APS. APS then closes the case on ACDS and returns the electronic administrative file to the originating function via RCCMS.

Reminder: In order for a case with a new issue or new information to be returned to TE/GE, there must generally be at least 210 days remaining on the statute of limitations when TE/GE receives the case. See IRM 8.6.1.7.4(3), Taxpayer Raises New Issue, and IRM 8.6.1.7.5(4), Taxpayer Provides New Information. In addition, there must be at least 180 days remaining on the statute of limitations when a case is received in Appeals when the originating function returns a case that was previously returned to them for consideration of new information or a new issue. See IRM 8.2.1.4(1), Receipt of New Assignment by an Appeals Technical Employee (ATE).

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Exhibit 8.7.8-1 (03-23-2018)
Most Common EP Returns and Forms

IRC 6501(a) provides the general rule that the assessment period expires within three years after the return is due or filed, whichever is later.

Caution: This is a general rule - certain returns and taxes have different statutes. See IRM 4.71.9.5 Determining the Statute of Limitations Expiration Date.

The due dates for the Form 5500 series and Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, can be extended by use of Form 5558, Application for Extension of Time to File Certain Employee Plan Returns. However, the extension of the due date will not change the statute requirements of 3 years from the due date of the return or the date of filing, whichever is later.

Common EP Returns

Return	Due Date
Form 5330, Return of Excise Taxes Related to Employee Benefit Plans	Multipurpose form with various due dates See IRM 4.71.9.5.2, Statute of Limitations for Form 5330.
Form 5500, Annual Return/Report of Employee Benefit Plan	On the last day of the 7th month following the close of the plan year. See IRM 4.71.9.5.1, Statute of Limitations for Forms 5500/1041.
Form 5500-EZ, Annual Return of A One-Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan	On the last day of the 7th month following the close of the plan year. See IRM 4.71.9.5.1, Statute of Limitations for Forms 5500/1041.
Form 990-T, Exempt Organization Business Income Tax Return	On or before the 15th day of the 4th month following the close of the taxable year of the domestic trust. See IRM 4.71.9.5.3, Statute of Limitations for Form 990-T.
Form 1041, U.S. Income Tax Return for Estates and Trusts	As a general rule, for 5500s converted to 1041s, the statute begins with the filing of the related 5500 series. Special rules apply when extending the statute of limitation on 5500 series/1041s. See IRM 4.71.9.5.1, Statute of Limitations for Forms 5500/1041.

Common EP Forms

Form	Title
Form 4461	Application for Approval of Standardized or Non-standardized Pre-Approved Defined Contribution Plans
Form 5300	Application for Determination for Employee Benefit Plan
Form 5307	Application for Determination for Adopters of Modified Volume Submitter Plans
Form 5310	Application for Determination Upon Termination

Exhibit 8.7.8-2 (03-23-2018)
Notification Letter to Department of Labor of an Employee Benefit Plan in Appeals

Header

Left Header Items	**Right Header Items**
Department of the Treasury **Internal Revenue Service** **Independent Office of Appeals** [Appeals Office address]	**Date:**
Director, [insert region] Regional Office EBSA, US Department of Labor [Address]	**Person to contact:** **Name:** **Employee ID number:** **Telephone:** **Fax:** **Hours:**
	Employee/Sponsor:
	Address:
	Plan Name:
	EIN:
	Tax Period(s) Ended:
[Salutation]	

Body

Body
Pursuant to section A of Part III of the "Procedures for Coordination of Examination and Litigation Activities," which is attached to the agreement between the Internal Revenue Service and Department of Labor for the coordination of examination and litigation activities involving employee benefit plans, [insert area name] area, TE/GE Division: [Write-in] Please review your records to ascertain if there is any Department of Labor involvement in the above-referenced case and respond within 30 calendar days.

Signature and title

Signature and title
Sincerely yours, [Signature] [Name] [Title]

Exhibit 8.7.8-3 (03-23-2018)
EO Returns and Forms

Applications from EO Determinations:

Form	MFT	Return Due Date	Statute of Limitations	ACDS TYPE Code
Form 1023	00	None	None	EOD
Form 1024	00	None	None	EOD
Form 1028	00	None	None	EOD
Letter of Request	00	None	None	EOD

EO Returns from EO Examinations:

Form	MFT	Return Due Date	Statute of Limitations	ACDS TYPE Code
Form 990	67	15th day of the 5th month following the end of the tax year	3 years after due date or when return was actually filed, whichever is later	• EOR (if revocation) • EOE (if not)
Form 990-PF	44	15th day of the 5th month following the end of the tax year	3 years after due date or when return was actually filed, whichever is later	• EOR (if revocation) • EOE (if not)
Form 990-T	34	15th day of the 5th month following the end of the tax year	3 years after due date or when return was actually filed, whichever is later	EOE
Form 4720	50	15th day of the 5th month following the end of the filer's tax year	3 years after due date or when return was actually filed, whichever is later. If not filed, statute begins with the filing of related F990 or 990PF. 6-year statute may apply if disclosure requirements are not met.	EX

Exhibit 8.7.8-3 (Cont. 1) (03-23-2018)
EO Returns and Forms

Form	MFT	Return Due Date	Statute of Limitations	ACDS TYPE Code
Form 4720-A	66 (NMF)	15th day of the 5th month following the end of the disqualified person's tax year	3 years after due date or when return was actually filed, whichever is later. If not filed, statute begins with the filing of related F990 or 990PF. 6-year statute may apply if disclosure requirements are not met.	EX
Form 1041	05	15th day of the 4th month following the end of the tax year. (Filed by Non-Exempt Charitable Trusts)	3 years after due date or when return was actually filed, whichever is later	EOE
Form 5527	57	April 15th (Filed by Charitable Remainder Trusts)	3 years after due date or when return was actually filed, whichever is later	EOE
Form 1120-H	02	15th day of the 3rd month following the end of the tax year. (Filed by homeowner's associations)	3 years after due date or when return was actually filed, whichever is later	EOE
Form 1120-POL	02	2 ½ months after end of tax year if taxable income > $100 (Filed by Certain Political Organizations)	3 years after due date or when return was actually filed, whichever is later	EOE

Employment Tax Returns from EO Examinations

Form	MFT	Return Due Date	Statute of Limitations	ACDS TYPE Code
Form 940	10	January 31 following the end of the tax year	3 years after due date or actual filing, whichever is later.	EOE

Exhibit 8.7.8-3 (Cont. 2) (03-23-2018)
EO Returns and Forms

Form	MFT	Return Due Date	Statute of Limitations	ACDS TYPE Code
Form 941	01			EOE
Form 943	11			EOE
Form 944	14			EOE
Form 945	16			EOE

Wagering Tax Returns from EO Examinations

Form	MFT	Return Due Date	Statute of Limitations	ACDS TYPE Code
Form 11-C	63	Before wagers are accepted, after that, a renewal return by July 1 for each year wagers are accepted		EX
Form 730	64	File for each month by the last day of the month following the month for which taxable wagers were reported		EX

Exhibit 8.7.8-4 (03-23-2018)
501(c) Final Adverse Determination Check Sheet

501(c) Final Adverse Determination Check Sheet

Taxpayer

- ☐ Final Adverse Determination Letter (FADL #1371 or 1371-A)
- ☐ Closing agreement (Form 906), if applicable
- ☐ Envelopes or labels

Taxpayer (for Redactions)

- ☐ Letter 437
- ☐ FADL (#1371 or 1371-A)
- ☐ FADL - Redacted
- ☐ Proposed Adverse or 30-Day Letter with Form 886-A
- ☐ Redacted Proposed Adverse or 30-Day Letter with Form 886-A
- ☐ Envelopes or labels

Representative

- ☐ Letter 937
- ☐ FADL (#1371 or 1371-A)
- ☐ Copy of closing agreement (Form 906), if applicable
- ☐ Envelopes or labels

Representative (for Redactions)

- ☐ Letter 937
- ☐ Letter 437
- ☐ FADL (#1371 or 1371-A)
- ☐ FADL - Redacted
- ☐ Proposed Adverse or 30-Day Letter with Form 886-A
- ☐ Redacted Proposed Adverse or 30-Day Letter with Form 886-A
- ☐ Envelopes or labels

EO Mandatory Review or Determinations Quality Assurance

- ☐ Form 5402
- ☐ FADL (#1371 or 1371-A)
- ☐ ACM
- ☐ Copy of closing agreement (Form 906), if applicable
- ☐ Form 990 Conversion Package. If no package found, note this on Form 5402 (**for EXAMS**).
- ☐ Envelopes or labels

EO Mandatory Review
1100 Commerce Street
MS-4920DAL
Dallas, TX 75242-1027 (**for EXAMS**)

or

IRS TEGE:EOD, Determinations Quality Assurance
550 Main St, Room 7008
Cincinnati, OH 45202-3222 (**for DETERMINATIONS**)

Case File

- ☐ FADL (#1371 or 1371-A)
- ☐ FADL - Redacted
- ☐ Closing agreement (Form 906), if applicable
- ☐ Letter 437
- ☐ Proposed Adverse or 30-Day Letter with Form 886-A
- ☐ Redacted Proposed Adverse or 30-Day Letter
- ☐ Form 4194 (**for C3 EXAMS ONLY**)
- ☐ Form 5402
  (Agreed cases, notate: "Do not hold for 90 days")
  (For Determinations, notate: "APS Please return case file to EO Determinations Quality Assurance in Cincinnati")
- ☐ ACM & CAR

ATM (for C3 EXAMS ONLY)

- ☐ Email Form 4194 w/e-signature
- ☐ Email FADL (#1371 or 1371-A)

Reading Room

- ☐ Letter 437
- ☐ FADL (#1371 or 1371-A)
- ☐ FADL - Redacted
- ☐ Proposed Adverse or 30-Day Letter with Form 886-A
- ☐ Redacted Proposed Adverse or 30-Day Letter
- ☐ Envelopes or labels addressed to:

IRS, Attention: CC:PA:LPD:DLS
Ben Franklin Station
P.O. Box 7604
Washington, DC 20044

State Notification (for EXAMS ONLY)

- ☐ FADL (#1371 or 1371-A)
- ☐ Email to Cheryl.A.Teser@irs.gov

Counsel (for 501(c)(3) only)

- ☐ FADL (#1371 or 1371-A)
- ☐ Fax to Amber MacKenzie, Chief Counsel IRS at (202) 317-4815 or email amber.l.mackenzie@irs.gov

Exhibit 8.7.8-5 (03-23-2018)
PF Final Adverse Determination Check Sheet

PF Final Adverse Determination Check Sheet

Taxpayer

- ☐ Final Adverse Determination Letter (FADL #1372 or 1372-A)
- ☐ Closing agreement (Form 906), if applicable
- ☐ Envelopes or labels

Taxpayer (Redactions, EXAMS ONLY)

- ☐ Letter 437
- ☐ FADL (#1372 or 1372-A)
- ☐ FADL - Redacted
- ☐ 30-Day Letter with Form 886-A
- ☐ Redacted 30-Day Letter with Form 886-A
- ☐ Envelopes or labels

Representative

- ☐ Letter 937
- ☐ FADL (#1372 or 1372-A)
- ☐ Copy of closing agreement (Form 906), if applicable
- ☐ Envelopes or labels

Representative (Redactions, EXAMS ONLY)

- ☐ Letter 937
- ☐ Letter 437
- ☐ FADL (#1372 or 1372-A)
- ☐ FADL - Redacted
- ☐ 30-Day Letter with Form 886-A
- ☐ Redacted 30-Day Letter with Form 886-A
- ☐ Envelopes or labels

EO Mandatory Review or Determinations Quality Assurance

- ☐ Form 5402
- ☐ FADL (#1372 or 1372-A)
- ☐ ACM
- ☐ Copy of closing agreement (Form 906), if applicable
- ☐ Envelopes or labels

EO Mandatory Review
1100 Commerce Street
MS-4920DAL
Dallas, TX 75242-1027 (**for EXAMS**)

IRS TEGE:EOD, Determinations Quality Assurance
550 Main St, Room 7008
Cincinnati, OH 45202-3222 (**for DETERMINATIONS**)

Case File

- ☐ FADL (#1372 or 1372-A)
- ☐ FADL - Redacted (**Exams**)
- ☐ Closing agreement (Form 906), if applicable
- ☐ Letter 437 (**Exams**)
- ☐ 30-Day Letter with Form 886-A (**Exams**)
- ☐ Redacted 30-Day Letter with Form 886-A (**Exams**)
- ☐ Form 5060 (**Exams**)
- ☐ Form 5402
  (Agreed cases, notate: "Do not hold for 90 days")
  (For Determinations, notate: "APS Please return case file to EO Determinations Quality Assurance in Cincinnati")
- ☐ ACM & CAR

ATM (EXAMS ONLY)

- ☐ Email Form 5060 (w/e-signature)
- ☐ Email FADL (#1372 or 1372-A)

Reading Room (EXAMS ONLY)

- ☐ Letter 437
- ☐ FADL (#1372 or 1372-A)
- ☐ FADL - Redacted
- ☐ 30-Day Letter with Form 886-A
- ☐ Redacted 30-Day Letter with Form 886-A
- ☐ Envelopes or labels addressed to:

IRS, Attention: CC:PA:LPD:DLS
Ben Franklin Station
P.O. Box 7604
Washington, DC 20044

Counsel

- ☐ FADL (#1372 or 1372-A)
- ☐ Fax to Amber MacKenzie, Chief Counsel IRS at (202) 317-4815 or email amber.l.mackenzie@irs.gov

(NOTE: Determinations cases where exemption is recognized but PF issue is contested is treated as a favorable determination. No redaction per IRC 6110 is required. Thus, no Letter 437 or redactions needed.)

Exhibit 8.7.8-6 (03-23-2018)
Disclosures to State Agencies Under IRC 6103(d) and IRC 6104(c)

Send information listed in the tables below for all applicable taxpayers by email (preferred) or mail to:
Cheryl Teser
Fed/State Liaison
IRS
Stop 4730
1616 Capitol Avenue
Omaha, NE 68102

501(c)(3)

Type of Adjustment/Change	501(c)(3)	Approved States	Information to include
Revocation	X	CA, GA, PA, SC, KY, MN, WI, NE, WV, DC	FADL
990-T	X		No longer necessary to send to Liaison.
Chapter 41/42 Section 507	X	CA, GA, PA, SC, KY, MN, WI, NE, WV, DC	Agreement Form, Audit Statement

501(c) other

Type of Adjustment/Change	501(c) other	Approved States	Information to include
990-T	X		No longer necessary to send to Liaison.

Disqualified Persons

Type of Adjustment/Change	Disqualified Persons	Approved States	Information to include
Chapter 41/42 Section 507	X	CA, GA, PA, SC, KY, MN, WI, NE, WV, DC	Agreement Form, Audit Statement

Exhibit 8.7.8-7 (03-23-2018)
Appeals TE/GE Payment Processing

Item	Description
Resource	IRM 8.7.17, Technical and Procedural Guidelines, Appeals Remittance Procedures
Expedited Processing Time	• Process payments within 24 hours of receipt. • Always use Next Day Air to forward payment to the campus. • Send payment with Form 3210, Document Transmittal, with tracking number. Follow up in 10 days if acknowledgement is not received.
Form 3244-A	Always mail with Form 3210: include tracking number Complete separate form for each period and/or type of tax. Transaction Codes: • 640-before assessment • 670-after assessment • 680-designated interest Attach copy to face of relevant return(s). Copy of Form 3210 and Form 3244-A in Appeals Admin File
Form 5402	Make a note on Form 5402 that payment was received (mandatory)
TEB (MFT 46) Closing Agreements	Internal Revenue Service Attn: Deposit STOP 7777 Operations Manager, Receipt & Control 333 W. Pershing Road Kansas City, MO 64108 If the payment is $100,000 or more, **also** send email to ***CTR KC Field Office Teller Team**. Include: date payment sent, amount, city and state of office sending the payment, tracking number – No TP data required. Do **not** include copy of Closing Agreement. Form 3244-A **MUST** contain report number.

Exhibit 8.7.8-7 (Cont. 1) (03-23-2018)
Appeals TE/GE Payment Processing

Item	Description
EP, EO, FSL/ET, ITG, returns that are MF accounts 419 SBSE PenApp Payments TFRP (after assessment)	Internal Revenue Service Attn: Deposit STOP 7777 Operations Manager, Receipt & Control 333 W. Pershing Road Kansas City, MO 64108 If the payment is $100,000 or more, **also** send email to ***CTR KC Field Office Teller Team**. Include: date payment sent, amount, city and state of office sending the payment, tracking number – No TP data required.
EO Forms 4720A (NMF)	Internal Revenue Service Stop 31-Team 31405 if < $1M Stop 317-Team 31405 if ≥ $1M Operations, Receipt and Control 201 West River Center Blvd Covington, KY 41011 Payments $100,000 or more, **also** send email to: *W&I CAS:SP:CN:RC Include: date payment sent, amount, city and state of office sending the payment, tracking number – No TP data required. Enter in Remarks: Form 4720A – NMF Acct
Closing Agreements **(other than TEB**):MFT 28 (NMF)	Internal Revenue Service Operations, Receipt and Control Stop 31-Team 31405 if < $1M Stop 317-Team 31405 if ≥ $1M 201 West River Center Blvd Covington, KY 41011 Payments $100,000 or more, **also** send email to: *W&I CAS:SP:CN:RC Include: date payment sent, amount, city and state of office sending the payment, tracking number – No TP data required. Enter in Remarks: “NMF Acct” and “Closing Agreement to follow” OR “NMF Acct” and “Adv payment for Closing Agreement, F906 not yet executed”. Do NOT include a copy of the unexecuted Closing Agreement with the Form 3244-A. When the CA is signed by ATM, mail copy of CA and copy of Form 3244-A to: IRS, Stop 31, 201 W. River Center Blvd. Covington, KY, 41011. Attn: Supervisory Financial Clerk. Payments $100,000 or more, **also** send email to: *W&I CAS:SP:CN:RC **(see above for required info)**