



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.7.10

JANUARY 31, 2018

EFFECTIVE DATE

(01-31-2018)

PURPOSE

- (1) This transmits revised IRM 8.7.10, *Technical and Procedural Guidelines, Excise Taxes and IRA Adjustments*.

MATERIAL CHANGES

- (1) Updated references throughout the IRM.
- (2) The changes are listed in the table below:

IRM Reference	Description of Change
IRM 8.7.10.1	Added IRM 8.7.10.1 Program Scope and Objectives to comply with new Internal Controls requirement under IRM section 1.11.2. Subsequent sections renumbered accordingly.
IRM 8.7.10.13.5	Revised to incorporate Interim Guidance AP-08-0916-0007, <i>Excise Tax Dyed Fuel and Refusal Penalty Cases</i> .
IRM 8.7.10.13.6	Revised to incorporate Interim Guidance AP-08-0916-0007, <i>Excise Tax Dyed Fuel and Refusal Penalty Cases</i> .
IRM 8.7.10.7	Added guidance to comply with Deputy Commission for Services and Enforcement Memo, Revision of Policy For use of Fax in Taxpayer Submissions , dated November 15, 2015.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 8.7.10, *Technical and Procedural Guidelines - Excise Tax Cases and IRA Adjustments* dated October 15, 2014. Incorporated Interim Guidance Memorandum AP-08-0916-0007, *Excise Tax Dyed Fuel and Refusal Penalty Cases*, which was issued September 19, 2016 into this IRM.

AUDIENCE

Appeals

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8.7.10

Excise Tax Cases and IRA Adjustments

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8.7.10.1
(01-31-2018)
Program Scope and Objectives

- (1) This IRM section provides procedures for working Excise Tax cases in the Appeals Division.
- (2) **Purpose:** The purpose of this IRM section is to provide guidance to Appeals Technical Employees (ATEs) so they can prepare accurate excise tax reports.
- (3) **Audience:** The primary users of the IRM section are ATEs working Appeals excise tax cases.
- (4) **Policy Owner:** The Appeals Policy Owner for this IRM section is the Director, Case Operations and Support.
- (5) **Program Owner:** The Appeals Program Owner of this IRM section is Director, Policy.
- (6) **Primary Stakeholders:** Appeals Processing and Support (APS), Counsel, and SB/SE Specialty Examination, are the primary stakeholders for this IRM section.

8.7.10.1.1
(01-31-2018)
Background

- (1) Appeals may have jurisdiction over any protested excise tax case except alcohol and tobacco taxes under Subtitle E. Some of the more common excise taxes are covered in this section and include Highway Use Taxes, Chapters 41 through 44 Excise Taxes, Wagering Excise Taxes, and Excise Taxes on IRA adjustments.
- (2) Form 720, *Quarterly Federal Excise Tax Return*, is used to report many excise taxes. The taxes are identified on Form 720 by IRS No. (referred to as the abstract number).
- (3) Form 720 is due by the last day of the month following the end of the calendar quarter. For ozone depleting chemicals, communications, and air transportation taxes, the return is due by the last day of the second month following the end of the quarter. The statutory period for assessment is three years from the due date of the return or the date filed, whichever is later.

8.7.10.1.2
(01-31-2018)
Authority

- (1) Refer to IRM Exhibit 4.24.1-1 , *Listing of Non-Fuel Excise Taxes Including Associated IRS Sections and Trust Funds*, for the most significant statutes affecting excise taxes.
- (2) Please refer to the following references for information pertaining to excise taxes:
 - IRM 8.7.8, *Technical and Procedural Guidelines - Tax Exempt and Government Entities (TE/GE) Cases*.
 - IRM 8.11.1, *Penalties Worked in Appeals - Return Related Penalties in Appeals*.
 - IRM 8.13.1, *Closing Agreements - Processing Closing Agreements in Appeals*.
 - IRM 8.21, *Appeals Statute Responsibility*.
 - IRM 20.2.10, *Interest - Interest on Estate, Excise, Employment, and Foreign Taxes*. This IRM contains information on computing interest on estate tax, foreign tax and excise tax.
 - IRM 4.24, *Excise Tax*.
 - IRM 21.7.8, *Business Tax Returns and Non-Master File Accounts - Excise Taxes*.

8.7.10.1.3
(01-31-2018)
Responsibilities

- (1) Director, Case and Operations Support is the executive responsible for Excise Tax policy.
- (2) Director, Policy, is the responsible program owner of this IRM section.
- (3) Excise Tax Policy Program Analyst is responsible for the oversight of this IRM section.

8.7.10.1.4
(01-31-2018)
**Terms/Definitions/
Acronyms**

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

Acronym	Definition
ACDS	Appeals Centralized Database System
ACM	Appeals Case Memorandum
APS	Account and Processing Support
ATE	Appeals Technical Employee
ATM	Appeals Team Manager
FCO	Fuel Compliance Officer
FCA	Fuel Compliance Agent
IMS	Issue Management System
IRA	Individual Retirement Account
IRAF	Individual Retirement Account File
NMF	Non-Master File
SB/SE	Small Business/Self-Employed
TE/GE	Tax Exempt and Government Entities

8.7.10.2
(10-29-2013)
**Introduction to Excise
Taxes in Appeals**

- (1) Appeals may have jurisdiction over any protested excise tax case except alcohol and tobacco taxes under Subtitle E. Some of the more common excise taxes are covered in this section and include Highway Use Taxes, Chapters 41 through 44 Excise Taxes, Wagering Excise Taxes, and Excise Taxes on IRA adjustments.
- (2) Form 720, *Quarterly Federal Excise Tax Return*, is used to report many excise taxes. The taxes are identified on Form 720 by IRS No. (referred to as the abstract number).
- (3) Form 720 is due by the last day of the month following the end of the calendar quarter. For ozone depleting chemicals, communications, and air transportation taxes, the return is due by the last day of the second month following the end of the quarter. The statutory period for assessment is three years from the due date of the return or the date filed, whichever is later.

8.7.10.3

(01-31-2018)

Account and Processing Support (APS) Establishes ACDS Controls

- (1) For Account and Processing Support (APS) procedures regarding establishing cases on Appeals Centralized Database System (ACDS), refer to IRM 8.20.5, *Account and Processing Support (APS), Carding New Receipts*.
- (2) The Appeals Technical Employee (ATE) will verify the case was carded-in ACDS following the same procedures used when a regular income tax case is received except for the following:
 - TYPE = EX

8.7.10.3.1

(10-01-2012)

Routing and Assignment of Cases from SB/SE to the Appeals Officer Cadre

- (1) Excise cases originating from SB/SE Excise (PBC 214) are routed and assigned to a trained cadre of ATEs. The cadre members responsible for working excise tax cases for the specific areas are shown on the *Appeals Case Routing SharePoint page*. The cases will be routed from SB/SE Excise to Appeals and assigned as follows:

Step	Action
1	SB/SE Excise prepares Form 3198 and Form 3210 for the protested case and sends it to Appeals through SB/SE Technical Services.
2	SB/SE Technical Services sends case to the APS office based upon the state the taxpayer resides in.
3	APS cards case in.
4	APS delivers case to ATM for assignment to excise cadre member.

Note: A mis-routed case from SB/SE Excise, (PBC 214), is re-directed to the correct APS office for the applicable cadre member for card-in and assignment.

8.7.10.4

(01-31-2018)

Preliminary Review of Excise Tax Cases by Appeals Officer

- (1) Appeals will not return cases to Compliance as a premature referral when the case is not fully developed. Appeals will attempt to settle a case on factual hazards when the case submitted by Compliance is not fully developed and the taxpayer has presented no new information or evidence.
- (2) In resolving disputes, the ATE may consider new theories and/or alternative legal arguments that support the parties' positions when evaluating the hazards of litigation in a case. See IRM 8.6.1.6.6, *Taxpayer Raises New Theory or Alternative Legal Argument*, for additional information.
- (3) If a taxpayer raises a new issue, please refer to IRM 8.6.1.6.4, *Taxpayer Raises a New Issue*.
- (4) If a taxpayer presents new information, please refer to IRM 8.6.1.6.5, *Taxpayer Provides New Information*.

8.7.10.4.1

(10-15-2014)

Statute Review

- (1) New case receipts should have at least one year remaining on the period of limitations. Return cases with less than 365 days remaining on the statute to the origination function.

Exception: IRC 6206 cases: The time period for making assessments of tax under IRC 6206 may not be extended. Appeals will accept non-assessed cases with at least 270 days remaining on the statute for consideration. Cases with less 270 days remaining on the statute will be returned to Compliance for assessment.

- (2) If income tax and other taxes are involved, the “kind of tax” portion of the consent form should indicate each type of tax.

For example, one of the issues on a Form 1040 may involve an individual retirement account (IRA). The IRA issue may give rise to a Chapter 43 excise tax. If the “kind of tax” line of the consent is completed only for “income tax,” the statutory period for assessing any Chapter 43 excise tax deficiency may expire, barring the assessment. Thus, in the above example, the “kind of tax” on the consent form reads “income and Chapter 43”

- (3) Use Form 872-B, *Consent to Extend the Time to Assess Miscellaneous Excise Taxes*, if the statute needs to be extended.
- (4) Use Form 872-EX, *Consent to Extend the Time to Assess Miscellaneous Excise Taxes*, if the statute needs to be extended for the assessment of the civil penalty imposed by IRC 6675 on a Form 720-TO or 720-CS information report.
- (5) For additional information regarding statute see IRM 8.21.3, *Appeals Statute Responsibility - Appeals Technical Employees Statute Responsibility*.

8.7.10.4.2
(10-29-2013)
**Issue Management
System (IMS)**

- (1) Use of Issue Management System (IMS) is mandatory for working Excise Field cases. Cases carded in to ACDS after 02/06/12 must be worked in IMS in order to give Exam our feedback. The Appeals Centralized Database System (ACDS) will remain the Appeals system of record for case management and recording time on cases.
- (2) An Online 5081 is required to gain access to IMS. Each user should request the “IMS-PRODUCTION-LMSB USER ACCESS” application and add a statement indicating an Examination Return Control System (ERCS) ID is not required. Additional information on the various roles in IMS and training modules can be found on the Appeals BSP IMS Website, *Appeals BSP Website*.
- (3) Verify the case is on IMS. If not, ask your ATM to search the APS inventory in IMS for cases that are not currently in your Appeals IMS Case Inventory.

8.7.10.5
(10-26-2007)
**Unagreed Excise Tax
Cases**

- (1) Notices of Deficiency are issued by Appeals in Chapters 41, 42, 43, and 44 excise tax cases when a mutually satisfactory basis of settlement cannot be reached. Other excise tax cases are not issued a notice of deficiency when unagreed because those cases cannot be litigated in Tax Court.
- (2) In deficiency proceedings, Tax Court has jurisdiction to redetermine the deficiency determined by the Service. The provisions of IRC 6211 through IRC 6216 relate to deficiency procedures. The Tax Court has jurisdiction through these procedures. The jurisdiction of the Court depends, in a case commenced in the Court by a taxpayer, upon the issuance by the Commissioner of a notice

of deficiency in income, gift, or estate tax, or in the taxes under Code chapter 41, 42, 43, or 44 (relating to the excise taxes on certain organizations and persons dealing with them).

- (3) Letter 901(cg) is used for cases involving excise tax cases. When generating the letter on APGolf, select the appropriate opening paragraph for cases involving excise tax.
- (4) Letter 531-B is used for **excise tax** cases involving certain Chapter 43 excise taxes such as IRC 4971 taxes on failure to meet minimum funding standards, and IRC 4975 taxes on prohibited transactions.

8.7.10.6
(01-31-2018)
**Preparing an Excise Tax
Return under IRC
6020(b)**

- (1) When a taxpayer refuses to file an excise tax return (except Chapters 41 through 44 excise tax returns), the return may be prepared by the Service under the authority of IRC 6020(b) in either of the following two ways:
 - a. Collection personnel prepares a return that reflects the proposed tax for assessment under IRC 6020(b) case processing procedures.
 - b. Examination personnel generally use a “substitute for return” procedure with the proposed tax shown as a deficiency in the examiner’s report.

Note: Cases developed under either method may be protested to Appeals.

- (2) Excise tax cases (except Chapters 41 through 44) cannot be litigated in the Tax Court. Therefore, any unagreed tax (except for the exceptions listed above) is assessed without issuance of a Notice of Deficiency.
- (3) When the taxpayer has not previously filed a return, it might be more convenient to reflect Appeals determination on a return to be signed either by the taxpayer or ATE under authority of IRC 6020. The return may be prepared in duplicate and the duplicate sent to the taxpayer with a short-form settlement computation. The settlement computation with supporting schedules may also be attached to and made a part of an IRC 6020(b) return.

8.7.10.7
(01-31-2018)
**Agreed Excise Tax
Cases**

- (1) For agreed cases, non-hazards and regular settlements, request the taxpayer sign Form 2504-E, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment*, or Form 2504-AD, *Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment (Excise or Employment Tax)* for hazards settlements.
- (2) Appeals will expedite the closing of a certain “agreed and unpaid deficiency” or overpayment case, if the case meets the “large dollar” criteria described in IRM 4.4.18, *AIMS Procedures and Processing Instructions - Large Dollar Cases*. For additional procedures see IRM 8.2.1.10.1, *Expedite Processing for Certain Large Dollar Cases*.

Note: This guidance does not apply to a deficiency and/or overpayment case that requires Joint Committee. See IRM 8.7.9.2, *Cases Requiring JC Review*.

- (3) The Service has changed its policy to allow acceptance of signatures by fax on:
 - a. Consents to assess additional tax of any amount (Forms 2504-E, 2504-AD, and others);

- b. Closing Agreements involving any amount of tax; and
- c. Consents to extend the time to assess tax (Forms 872-B, 872-EX, and others).

- (4) If taxpayer contact has been made and the Case Activity Record (CAR) documents the date of contact and the taxpayer's desire to submit a consent by fax, Appeals can accept the documents shown in (3) above by fax.

Note: Please see **Deputy Commission for Services and Enforcement Memo, Revision of Policy for Use of Fax in Taxpayer Submissions**

, **dated November 19, 2015**, for additional information.

8.7.10.8
(01-31-2018)
**Customized Form 5402,
Appeals Transmittal and
Case Memo, for Excise
Tax Cases**

- (1) The Appeals Technical employee (ATE) is responsible for providing Account and Processing Support (APS) with the necessary disposition information to update IDRS.
- (2) Use of the Customized Form 5402, Appeals Transmittal and Case Memo, for Excise cases, is mandatory. See IRM 8.6.2.3, *Customized Form 5402*, for more information.
- (3) The ATE must provide the necessary information for all required adjustments and any special processing instructions on the Customized Form 5402 prior to sending the case to APS for closing.
- (4) APS will adjust the account using the amount listed on the Form 5402 for excise tax cases where a notice of deficiency can not be issued.
- (5) Instructions for completing the Excise Customized Form 5402 are posted on the Utilities menu of ACDS.

8.7.10.9
(01-31-2018)
**Settlement
Computations on Excise
Tax Cases**

- (1) The procedures for preparing excise tax computations (except chapters 41 through 44) are discussed in this subsection.
- (2) Tax Computation Forms:
 - a. Form 5385, *Excise Tax Examination Changes* - Used when adjusting Forms 720, 720-X, 2290, 730, 11-C, and 8849 and any other excise tax form.
 - b. Form 5384, *Excise Tax Examination Changes and Consent to Assessment & Collection* - The same as Form 5385, except it is a combination tax computation form and agreement form. (Generally Appeals uses Form 5385 instead of Form 5384.)

Note: For information on completing the forms see IRM Exhibit 4.24.10-1, "Instructions for Forms 5384 and 5385".

- (3) Form 3610 may be used as the face sheet for excise tax settlement computations, but it's not required. If Form 3610 is prepared, see instructions below:
 - a. *Kind of Tax* - Enter kind of tax as Form 720, *Quarterly Federal Excise Tax Return*.
 - b. Change "Tax Year Ended" to "Quarter Ended," "Calendar Year," or whatever period is covered.
 - c. Provide a breakdown of IRS numbers or Credit Reference Numbers.

- d. For Form 2290, *Heavy Highway Vehicles Use Tax Return*, show the month and year in which the tax period began.
- (4) Settlement Computations: Set out total additional tax for each quarter with the applicable IRS number so the required information can be easily entered on Form 5403.
 - a. If additional tax for two or more IRS numbers is involved, show a breakdown of additional tax for each IRS number immediately following the quarter total.
 - b. Compute and show additions to the tax or penalties on the total additional tax for the quarter rather than on each IRS number amount.
 - c. In addition, IRM 4.24.10, *Excise Tax - Appeals Referral Procedures*, provides guidelines for preparing excise tax reports.
- (5) Procedures to assess the “collected” excise taxes under IRC 4251, IRC 4261, and IRC 4271, which are directly assessed against the taxpayer, and not the collecting agency are discussed later in IRM 8.7.10.17. In addition, see IRM 4.24.6.9.6, *Direct Assessment Procedures Under IRC 4251, 4261, and 4271*.

8.7.10.10
(10-26-2007)
Highway Use Tax

- (1) The annual Highway Use Tax under IRC 4481 is reported on Form 2290, *Heavy Highway Vehicle Use Tax Return*. The tax is imposed on a heavy highway vehicle used on public highways and is based on the weight of the vehicle.
- (2) The tax period begins each July 1 and ends the following June 30. Form 2290 is due by the last day of the month following the month during the tax period in which the vehicle is first used on the public highway.
- (3) The annual return is due by August 31 of each tax period for vehicles in use in July. The statutory period for assessment is three years from the due date of the return or the date filed, whichever is later.
- (4) Due to the different due dates and interest computation dates, show the additional tax for the tax period on the settlement computation summary page, and list the beginning date.

8.7.10.11
(10-26-2007)
Chapter 41-44 Excise Taxes

- (1) Code Chapters 41 through 44 impose excise taxes on certain exempt organization and employee plan transactions. The following IRC sections, applicable to income, estate, and gift taxes also apply to these excise taxes:

IRC Section	Description
IRC 6211	Deficiency Proceedings
IRC 6212	Deficiency Proceedings
IRC 6213	Deficiency Proceedings
IRC 6405	Joint Committee Review
IRC 6601(c)	Suspension of interest 30 days after agreement date
IRC 6664(a)	Definition of underpayment
IRC 6665(b)	Deficiency procedures in assessing addition to tax
IRC 6861	Jeopardy Assessments
IRC 6871	Bankruptcy/Receivership
IRC 7422	Suits for refund

- (2) The following IRC sections are not applicable to these taxes:

IRC	Description
IRC 6901(a)(1)	Certain transferee procedures (see (3) below)
IRC 7463	Small case Tax Court Procedures

- (3) Transferee proceedings under IRC 6901(a)(2) are applicable to Chapters 41, 42, 43 and 44 taxes.

8.7.10.12 (10-29-2013)

Excise Taxes Imposed on Wagering

- (1) There are two excise taxes related to wagering:
- IRC 4401 imposes a tax on wagers as defined in IRC 4421. Form 730, *Monthly Tax Return for Wagers*, is used to report the tax on wagers. It must be filed every month by the last day of the month following the month in which a taxable wager is accepted.
 - IRC 4411 imposes an occupational tax on any person who receives wagers subject to tax under IRC 4401. Form 11-C, *Occupational Tax and Registration Return for Wagering*, is used to report the occupational tax and to register certain information with the IRS. Form 11-C must be filed before a person accepts a taxable wager and annually thereafter, by July 1, as long as the activity continues.
- (2) Tax is imposed by IRC 4401 at a rate of 0.25 percent of the amount of the wager for wagers authorized under the laws of the state in which accepted. All other taxable wagers are subject to a rate of 2 percent of the amount of the wager. IRC 4411(a) imposes a tax of \$500 per year on persons who accept taxable wagers. If a person accepts only wagers that are authorized under the laws of the state in which accepted, the tax is \$50.
- (3) The statutory period for assessment is three years from the due date of the return or the date filed, whichever is later. Due to the different due dates and interest computation dates, show on the audit statement summary page additional tax for the tax period and list the beginning date.
- (4) Form 5385, *Excise Tax Examination Changes*, may be used in these cases.

- (5) If the taxpayer does not agree to the changes proposed by Appeals, a statutory notice of deficiency cannot be issued. Instead, a report is prepared, the case is closed and the tax is assessed. The taxpayer's only recourse will be to pay the additional tax when assessed, and file a claim for refund.

Note: A statutory notice of deficiency cannot be issued for unagreed excise taxes related to wagering because notice of deficiency procedures only apply to the taxes specified in IRC 6212. IRC 6212 refers to excise taxes imposed by Chapters 41, 42, 43 and 44 of the Internal Revenue Code. IRC 4401 and IRC 4411 are Chapter 35 excise taxes.

8.7.10.13
(10-29-2013)

**Dyed Diesel Fuel Penalty
Cases**

- (1) IRC 6715 provides that if:
- any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel;
 - any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed;
 - any person willfully alters, or attempts to alter, chemically or otherwise, the strength or composition of any dye or marking done pursuant to IRC 4082 in any dyed fuel; or
 - any person who has knowledge that a dyed fuel which has been altered as described in (c) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel, then such person shall pay a penalty in addition to the tax (if any).
- (2) The penalty is the greater of \$1,000 or \$10 per gallon of the dyed diesel fuel or dyed kerosene (whether or not the fuel was dyed pursuant to section 4082) involved. After the first violation, the \$1,000 portion of the penalty increases depending on the number of violations. This penalty is in addition to any tax imposed on the fuel. If the penalty is imposed on any business entity, each officer, employee, or agent of the business entity who willfully participated in any act giving rise to the penalty is jointly and severally liable with that entity for the penalty.
- (3) Any owner of any building or place, or person having the agency or superintendence of the same, who refuses to admit any officer or employee of the Treasury Department acting under the authority of IRC 7606 (relating to the entry of premises for examination of taxable articles) or refuses to permit him to examine such article or articles, shall, for every such refusal, forfeit \$500 (known as the refusal penalty). See IRC 7342.
- (4) For further information regarding the dyed diesel fuel penalty see IRM 4.24.16.1, *Report Writing and Case Processing Overview* and IRM 4.24.16.2, *Administrative Appeals of Fuel Penalty*.
- (5) Rev. Proc. 2001-33 provides for an administrative appeal of certain dyed fuel penalties and gives the taxpayer the right to a pre-assessment appeal of the proposed dyed diesel and dyed kerosene fuel penalties and the refusal to admit entry for purposes of inspecting facilities and equipment and taking and removing samples.
- (6) See Publication 510, *Excise Taxes* for more information on Dyed Diesel and Dyed Kerosene fuels.

8.7.10.13.1
(01-31-2018)
**Receipt of Dyed Fuel
Penalty Cases**

- (1) For APS procedures regarding establishing cases on ACDS, refer to IRM 8.20.5, *Account and Processing Support (APS), Carding New Receipts*.
- (2) The Appeals Inventory Report definition of an IRC 6715 case is defined in Category "other" Subcategory "otherpens" type "6715".

8.7.10.13.2
(10-01-2012)
**Time for Making Appeals
Request**

- (1) If the Fuel Compliance Officer (FCO) or the Fuel Compliance Agent (FCA) proposes to assert either the Dyed Fuel Penalty or the Refusal Penalty against the taxpayer, the FCO/FCA will notify the taxpayer in writing. In processing cases to Appeals, excise employees follow guidelines located in IRM 4.24.16, *Excise Tax - Excise Fuel Compliance Report Writing, Case Processing and Appeals Procedures*.
- (2) If a taxpayer does not agree with the penalty, the taxpayer will complete Form 12009, *Request for an Informal Conference and Appeals Review*, and submit it within 30 days from the date of notification to the FCO's/FCA's Manager responsible for the case.
- (3) If the taxpayer does not submit Form 12009 within 30 days, Compliance will assess the penalty and take appropriate legal action to collect the penalty.
- (4) If the Form 12009 is submitted within 30 days, the FCO/FCA Manager responsible for the case will contact the taxpayer to arrange a conference.
- (5) If after this conference, Compliance still proposes to assert the penalty, the FCO/FCA Manager will notify the taxpayer. The taxpayer then has 30 days from this date of notification to request that the case be reviewed by Appeals.
- (6) If a taxpayer does not timely file a request for an appeal, then the penalty may be assessed. If the taxpayer still wants to appeal the penalty, they must first pay the penalty in full and file a claim for refund.
- (7) Claims are filed using Form 843 or Form 8849. The full amount of the assessed penalty must be paid before a claim from the taxpayer may be considered.

8.7.10.13.3
(01-31-2018)
**Issues for Appeals
Consideration**

- (1) All issues that remain in dispute between a taxpayer and the IRS involving either the Dyed Diesel Fuel Penalty or the Refusal Penalty are appropriate for an administrative appeal.
- (2) If there are any questions regarding the statute of limitations on this penalty, contact Counsel.
- (3) With respect to the Dyed Fuel Penalty, issues in dispute may include:
 - a. The fuel involved in an alleged violation was dyed
 - b. The taxpayer knew or had reason to know that the fuel was sold or held for sale for other than a non-taxable use (in a case involving IRC 6715(a)(1)).
 - c. The taxpayer knew or had reason to know that the fuel was dyed (in a case involving IRC 6715(a)(2)).
 - d. The taxpayer acted willfully (in a case involving IRC 6715(a)(3)).
 - e. The officer, employee, or agent of a business entity willfully participated in any act giving rise to the Dyed Fuel Penalty under IRC 6715(d).
 - f. The IRS correctly determined the amount of fuel subject to the Dyed Fuel Penalty.

- (4) With respect to the Refusal Penalty, issues in dispute may include whether the IRS had authority to make the inspection in question.
- (5) Under IRC 6715(e), a person's right to appeal an IRC 6715 violation is limited if the person has been penalized under this section at least twice after October 22, 2004. The person may still file an appeal, but only limited to the following:
 - fraud or mistakes in the chemical analysis, or
 - a mathematical calculation of the amount of the penalty.

8.7.10.13.3.1
(01-31-2018)
Working the Case

- (1) Cases transmitted to Appeals must include the following:
 - current inspection file including statements made by employees, taxpayer and group manager,
 - relevant workpapers indicating fuel tank measurement procedures, location of additional dyed fuel tanks, and confirmation of responsible party, if applicable,
 - computation of the penalty and results of the laboratory and field testing,
 - record of all taxpayer contacts, including results of the informal appeal,
 - prior inspections, both violation and non-violation, if available, and
 - record of the results of the informal appeal conference with the manager.

Note: A completed Form 3198 and Form 3210 will accompany the case file.

- (2) Since Appeals jurisdiction and consideration will be afforded to the taxpayer before the final determination of the penalty, collection activity will be suspended until Appeals has determined the penalty amount.
- (3) There is no reasonable cause exception to this penalty.
- (4) Each case will be reviewed and decided on its own merits.
- (5) IRM 4.24.16.2.1, *Appeals Case Routing Procedures for Penalty Cases* states the manager will follow up with Appeals on a quarterly basis on any cases older than 180 days in appeals status.

8.7.10.13.4
(10-15-2014)
**New Information
Provided by the
Taxpayer**

- (1) Taxpayer may provide new information and/or evidence to Appeals. New information is defined in IRM 8.6.1.6.5, *Taxpayer Provides New Information*. If the new information is relevant to the proposed deficiency and requires investigative action or additional analysis, and there is sufficient time remaining on the statute, then return the case to the originating function for consideration of the new information, releasing jurisdiction. See IRM 8.6.1.6.7, *Jurisdiction Released*, for additional information.

8.7.10.13.5
(01-31-2018)
**Reaching a Conclusion
in a Case**

- (1) Upon reaching a settlement determination of a dyed fuel and refusal penalty in whole or part, you must prepare:
 - a. Customized Form 5402
 - b. Appeals Case Memorandum, (ACM), (or remarks on Form 5402, if appropriate)
 - c. Closing Letter, and

- d. Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, if the penalties are not upheld. If upheld, verify the accuracy of the Form 8278 in the file.
- (2) If you sustain the proposed refusal penalty, also prepare Form 2828, Transmittal Memorandum, and forward the case to Area Counsel for advice and direction on penalty enforcement.
- (3) Use these closing codes on Form 5402:
 - a. 14 - Fully Sustained
 - b. 15 - Fully Abated
 - c. 16 - Partially Abated
- (4) Upload an electronic copy of Form 5402 and ACM into IMS if there is an IMS case.
- (5) There is no formal closing letter for these types of cases on ACDS at this time. Information in the closing letter may include the following statements:
 - a. We have considered your protest and the evidence and arguments in support of your position against the (insert penalty type here).
 - b. If you would like to challenge our determination in court, you may file a complaint in the United States District Court or the United States Court of Federal Claims. If you decide to do this, you must first pay the amount owed and file a claim for refund of the tax. Once the claim for refund is denied or six months have elapsed without any action by the Service, you may initiate suit.

8.7.10.13.6
(01-31-2018)
**Closing of Dyed Fuel
Penalty Cases**

- (1) For APS procedures regarding closing dyed fuel and refusal penalty cases, refer to IRM 8.20.7, *Closing Procedures*.

8.7.10.14
(10-01-2012)
Other Excise Taxes

- (1) There are other excise taxes subject to Appeals jurisdiction. Referrals, however, are infrequent, and for this reason specific comments are omitted. See IRM 4.24.1, *Excise Tax - Introduction to Excise Taxes* which provides an overview of the various taxes. When preparing settlement computations in these cases, observe these guidelines:
 - a. set out adjustments to taxable base;
 - b. show tax computation and additional tax; and
 - c. on summary page, show additional tax, penalty, or overassessment for each taxable period.

8.7.10.15
(10-15-2014)
**Preparing Form 1331 in
Excise Cases**

- (1) Depending upon local arrangements, Form 1331, *Notice of Adjustment*, may be prepared in part by APS and in part by the Campus on Non-Master File overassessments. Form 1331-C, *Notice of Adjustment (Wage or Excise Tax)*, is for use in excise cases.

Note: Form 1331 is available on Electronic Publishing.

- (2) For excise tax cases involving restricted interest, you will annotate Form 5402, *Appeals Transmittal and Case Memo* and Form 5403, *Instructions to APS*

Worksheet to provide notification to APS of the interest restriction. You will include the type of tax and IRC Section or applicable regulation authorizing the restriction of interest.

8.7.10.16
(10-29-2013)
**Restricted Interest in
Excise Tax Cases**

- (1) The Internal Revenue Code defines, in some instances generally and in others in specific terms, the conditions under which interest is either restricted or prohibited on Internal Revenue taxes. The table below lists the sections of the Internal Revenue Code and certain provisions having the effect of law, which govern adjustments resulting in deficiencies or overassessments on which interest is restricted in excise tax cases. It also lists an identifying title and the related provision which governs the computation of interest.

EXCISE TAXES

IRC Section	IRC Section Title	Related IRC Section
6416(b)	Certain Taxes on the Sale or Use of Certain Articles and the Return of Certain Installment Accounts	6416(b)
6412(a)(1)	Floor Stocks Refunds for Tires and Taxable Fuel	6412(a)
6420(a), 6421(a) and (b)	Gasoline Used on Farms or For Nonhighway Purposes, or by Local Transit Systems	6420(a), 6421(a) and (b)
6419(b)	Excise Tax on Wagers Laid-Off by Taxpayer	6419(b) Rebate
7405	Erroneous Refunds	6602 and 6404(e)(2)

8.7.10.17
(10-15-2014)
**Excise Tax—Direct
Assessment**

- (1) Assess excise tax imposed by IRC 4251 directly against the user of communications facilities and services if the tax is not paid to the collecting agency. Although liable for the tax, the user is not required to file a return.
- (2) Do not use a Form 720, *Quarterly Federal Excise Tax Return*, as a basis for these direct assessments of excise tax.
- (3) Process a Non-Master File (NMF) Form 5403 in the name of the person against whom the direct assessment is to be made.
- (4) If there is an overassessment of a NMF direct assessment, show the overassessment on Form 5403 with an attached Form 1331, *Notice of Adjustment*.
- (5) Apply these procedures to other direct assessments. See IRM 4.24.6.9.6, *Direct Assessment Procedures Under IRC 4251, 4261, and 4271* for more information regarding direct assessments.

8.7.10.18
(01-31-2018)
Closing Letter

- (1) There are no formal closing letters on ACDS for excise cases. The closing letter is sent to notify the taxpayer that the Appeals has taken final Appeals closing actions.

- (2) Letter 4451, *Employment Tax Closing Letter Unagreed Non WC*, may be used for unagreed cases.
- (3) Letter 913, *Closing Letter - Agreed Cases*, may be used for agreed cases.
- (4) At the time of mailing, APS will date all copies of the closing letter addressed to the taxpayer.

8.7.10.19
(01-31-2018)

**Routing Form 5402 and
ACM Feedback to SB/SE
for Excise Tax Cases**

- (1) If the excise tax case can not be worked in IMS, the Appeals Team Managers (ATM) will forward ACM's and Form 5402 in PDF file format via encrypted E-mail to a centralized point of contact within SBSE Excise Tax Compliance. The Outlook mailbox set up by Excise to receive the documents is *SBSE Area 214-Appeals Feedback. The E-mail to the encrypted SBSE Area 214-Appeals Feedback Outlook mailbox will include in the subject line the Appeals Work Unit Number (WUNO) assigned to the case.
- (2) APGolf Form 5402 will automatically populate for Primary Business Codes 214 with routing information for the ATM feedback routing instructions to SBSE Excise Tax.
- (3) If a case is worked in Issue Management System (IMS) then feedback does not need to be sent to the Excise mailbox. IMS will give Appeals the ability to provide Excise with timely feedback on the resolution of their issues.

8.7.10.20
(01-31-2018)

**Individual Retirement
Account Adjustments**

- (1) Adjustments pertaining to an Individual Retirement Account (IRA) may result in three types of deficiencies assessed in either the Individual Master File (IMF) account or the Individual Retirement Account File (IRAF), as follows:
 - a. An income tax deficiency due to an adjustment to taxable income, such as disallowance of an IRA deduction or receipt of early distributions is assessed on the Individual Master File account (IMF), MFT 30 using TC 300, and includes the 10% tax on early distributions described in paragraph (b).
 - b. An IRC 72 income tax deficiency due to early distributions is part of the income tax deficiency above and is assessed on the IMF as part of the TC 300.
 - c. An excise tax deficiency due to excess contributions, excess accumulations, excess regular distributions, or excess lump sum distributions is assessed on the Individual Retirement Account File (IRAF) using TC 300.
- (2) Show adjustments to taxable income, such as the disallowance of an IRA deduction or income from an early distribution, on Line 7, Adjustments to Income, of Form 5278.

Note: Line 1 of Form 4549 or Form 4549-A may also be used for these computations. References to Form 5278 in the rest of this IRM section also apply to Form 4549 and Form 4549-A.

- (3) Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, may be used to compute the following taxes:
 - IRC 72 — Tax on early distributions
 - IRC 4973 — Tax on excess contributions
 - IRC 4974 — Tax on excess accumulations
 - IRC 4980A — Tax on excess regular distributions

- IRC 4980A — Tax on excess lump-sum distributions

Note: IRC 4980A repealed for excess distributions received after December 31, 1996.

- (4) Show excise tax resulting from these adjustments on the "Plus Other Taxes" line of Form 5278.
- (5) The statutory deficiency shown on Form 5278 includes an increase to income tax due to both IRA and non-IRA adjustments as well as an increase to excise tax due to IRA adjustments. Since excise tax adjustments for 1975 and subsequent years are posted to the IRA Master File Account (IRAF), provide an allocation of income and excise taxes to aid the employee who prepares Form 5403. Provide the allocation of income and excise taxes on Form 3610 or Form 5278, or in any logical and practical manner.
- (6) The TC 300 excise tax assessment must be made to the Individual Retirement Account File (IRAF), MFT 29. This amount is the total excise taxes being assessed and requires identification of the increases (or decreases) of each type of excise tax by the following reference numbers:

<i>IRC</i>	<i>Increase (or decrease) to</i>	<i>Ref. No.</i>
IRC 4973	Tax on excess contributions	160
IRC 4974	Tax on excess accumulations	162
IRC 4980A	Tax on excess regular distributions	194
IRC 4980A	Tax on excess lump sum distributions	195

- (7) The amounts designated by Reference Numbers 160, 162, 194 and 195 must equal the TC 300 amount. Annotate the amounts on Form 3610 or Form 5278, or by providing them in any logical and practical manner.
- (8) If more than one IRA account is adjusted, provide separate data for each account.
- (9) In the case of a jointly filed Form 1040, there may be two IRA accounts (one for each spouse). If both IRA accounts are adjusted, separately provide the reference codes for each spouse. Insert information, similar to the following, in the blank space at the bottom of the Form 3610 or Form 5278, or by providing them in any logical and practical manner.

Allocation of income and excise tax:	
Tax from line 15 of Form 5278	56,999
IRA Tax - Section 721	<u>300</u>
Total	57,299
Less income tax assessed per return	<u>(51,961)</u>
Income Tax assessment - TC 300	5,338

Allocation of income and excise tax:	
John Maple Excise Tax Assessment - TC 300 (Reference code 194)	1,800
Mary Maple Excise Tax Assessment - TC 300 (Reference code 160)	<u>75</u>
Total tax assessed	7,213 =====

8.7.10.20.1
(01-31-2018)

**APS Closing Procedures
for IRA Accounts**

- (1) Examination of Form 1040, *Individual Income Tax Return*, for 1975 and subsequent tax periods may require adjustments to the IRA Master File (IRAMF) in addition to the normal adjustment to the Individual Master File (IMF) account.
- (2) For APS procedures regarding closing an individual retirement account (IRA), refer to IRM 8.20.7, "**Closing Procedures**".