



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.13.1

MAY 25, 2018

EFFECTIVE DATE

(05-25-2018)

PURPOSE

- (1) This transmits revised IRM 8.13.1, *Closing Agreements*.

MATERIAL CHANGES

- (1) Moved information within IRM 8.13.1.7.1, Barred Years, to clarify the procedures when a taxpayer makes a voluntary payment in an indisputably barred year.
- (2) Updated to meet the requirements of P.L. 111-274 (H.R. 946), the Plain Writing Act of 2010.
- (3) Incorporated editorial and/or numbering changes throughout the subsections. The IRM and legal resources were checked and corrected, where necessary.
- (4) Added new IRM 8.13.1.1 Program Scope and Objectives to comply with new Internal Controls requirement under IRM section 1.11.2.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 8.13.1 dated August 20, 2012

AUDIENCE

All Operating Divisions (LB&I, SB/SE, TE/GE, W&I) and Appeals personnel who handle closing agreements under IRC 7121.

Signed by
Anita M. Hill
Director, Case and Operations Support

8.13.1

Processing Closing Agreements in Appeals

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8.13.1.1
(05-25-2018)
Program Scope and Objectives

- (1) **Purpose:** This IRM describes the requirements of entering into a closing agreement under IRC section 7121.
- (2) **Audience:** These procedures apply to Appeals Technical Employees including Appeals Officers and Appeals Team Case Leaders, LB&I, SB/SE, TE/GE, and W&I employees.
- (3) **Policy Owner:** The Policy Owner is Appeals Case Operations and Support.
- (4) **Program Owner:** Appeals Policy - Examination is under Appeals Case Operations and Support.
- (5) **Primary Stakeholders:** Appeals Technical Employees are the primary stakeholders for the procedures in this IRM section. They will be following these procedures to assist them in the resolution of their assigned cases.
- (6) **Program Goals:** The goals of this program are to assist in the preparation of closing agreements and clarify when they should be used to resolve assigned cases.

8.13.1.1.1
(05-25-2018)
Background

- (1) Closing agreements are used when it is advantageous to have a tax matter permanently and conclusively resolved.

8.13.1.1.2
(05-25-2018)
Authority

- (1) Closing agreements are written and used under the provisions of IRC section 7121.

8.13.1.1.3
(05-25-2018)
Responsibilities

- (1) The Director of Case Operations and Support is the executive responsible for the Closing Agreement program.
- (2) The Director of Policy is the program manager responsible for oversight of this program.
- (3) The Examination Policy program analyst is responsible for the content and updates to this IRM section including the clearance process.

8.13.1.1.4
(05-25-2018)
**Terms/Definitions/
Acronyms**

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

Acronyms

Acronym	Definition
W&I	Wage and Investment
LB&I	Large Business and International
SB/SE	Small Business and Self-Employed
TE/GE	Tax Exempt and Governmental Entities
CCDM	Chief Counsel Directives Manual
ACM	Appeals Case Memorandum
RAR	Revenue Agent Report

Acronym	Definition
TEFRA	Tax Equity and Fiscal Responsibility Act
TMP	Tax Matters Partner
LLC	Limited Liability Company
JCT	Joint Committee on Taxation

8.13.1.2
(05-25-2018)
Introduction to Closing Agreements

- (1) This IRM discusses closing agreements entered into under IRC 7121. This includes employees in the Wage and Investment (W&I), Small Business/Self-Employed (SB/SE), Large Business and International (LB&I), Tax Exempt and Government Entities (TE/GE) Operating Divisions, and the Appeals Functional Unit.
- (2) Closing agreement procedures processed by the Office of Chief Counsel are contained in CCDM 32.3.4, *Closing Agreements Covering Specific Matters*.
- (3) Pattern letters and other helpful information are shown in the exhibits. The closing agreement exhibits provide sample/pattern language for specific issues and not the complete document.

Note: A complete blank Form 866 and Form 906 are available from the Publishing web site.

- (4) The information contained in this IRM pertaining to the interpretation and application of IRC 7121 is advisory only and is not to be cited or relied upon as authority in disposing of issues. Such material is presented merely as a guide for applying IRC 7121 to help Service personnel reach uniform results in those areas not expressly covered by regulations and court decisions.
- (5) Unless otherwise indicated, the words “agreement” or “agreements” refer to “closing agreement” or “closing agreements,” respectively. References to Code sections (IRC) apply to the Internal Revenue Code of 1986 (unless otherwise indicated). In this IRM, reference to “executing,” “signing,” “accepting,” “approving,” or “entering into” (or derivatives of these terms) closing agreements by Service officials are intended to be synonymous with the act of exercising their delegated authority to “enter into and approve” these agreements.
- (6) “Generally,” “ordinarily,” “usually,” “may,” and similar words are permissive. Practices and procedures containing these words will be followed in most instances. The purpose in prescribing a procedure or practice with a permissive word is not only to promote uniformity but also to permit deviation for unusual situations. Reasons for deviating from normal procedures should be explained in the report transmittal (if none, workpapers) or Appeals Case Memorandum (ACM).

8.13.1.2.1

(05-25-2018)

**General Characteristics
of Closing Agreements**

- (1) A closing agreement is an agreement authorized under IRC 7121. A closing agreement contains some of the attributes of a contract, but it is not strictly subject to the law of contracts. For example, legal consideration is not required, and court decisions have held that closing agreements are interpreted using ordinary contract law principles. The greatest disparity between the ordinary contract and a closing agreement is the finality given to a closing agreement by the terms of the statute.

Note: Closing agreements must be drafted with great caution due to this finality. If a closing agreement contains an ambiguity, the ambiguity is resolved against the drafter of the agreement.

- (2) Treas. Reg. 301.7121-1(a) provides that: "A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement." In practice, if the taxpayer shows good reasons for requesting the agreement and furnishes necessary facts and documentation, and the government will sustain no disadvantage, a closing agreement will ordinarily be entered into so long as the content of the agreement can be agreed upon.
- (3) IRC 7121 states that such an agreement may be entered into with "any person," rather than "any taxpayer." There is no requirement for a tax liability with respect to the period to which the closing agreement relates. The words "in respect to any internal revenue tax" in the Code section requires some connection between the determination agreed upon and some tax liability, past or future, or, in appropriate cases, the lack of tax liability. The term "taxpayer" in this IRM will ordinarily have the same meaning as the word "person" in the Code section.
- (4) The term "tax liability" in the Code section requires that any adjustment to the taxpayer's liability be at least arguably consistent with the federal taxing statutes. Any closing agreement that results in an additional assessment of taxes but is based upon adjustments clearly contrary to the taxing statutes could be challenged as not being "in respect of any internal revenue tax." In *Utah Power & Light Co. v. United States*, 243 U.S. 389, 409 (1917), the United States Supreme Court stated, "The United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." However, the statutory language does not require that the matter be clearly consistent with the applicable Code provision, since closing agreements are intended to dispose of debatable matters.
- (5) Closing agreements with taxable periods ended prior to the date of the agreement determine either total tax liability of the taxpayer for one or more types of tax for such periods or one or more separate items affecting such liability or both. Agreements also may be entered into with respect to specific matters related to such periods and affecting future periods. Agreements having the foregoing characteristics are the types that will be entered into according to Delegation Order 8-3, *Closing Agreements Concerning Internal Revenue Tax Liability*, as revised. Closing agreements may be entered into by certain designated Service officials with respect to prospective transactions or completed transactions affecting returns to be filed.

- (6) There may be more than one closing agreement relating to the tax liability for a single period. No such closing agreement may modify any matter previously determined by closing agreement, except as provided by statute. Such closing agreements may provide determinations under IRC 1313 or may be the vehicle for allowing a deficiency dividend deduction under IRC 547. See IRC 547(c)(3), IRC 1313(a)(4) and related regulations for information as to other types of determinations for those cases. See IRM 8.7.1.2, *Personal Holding Company Tax Alleviated by Deficiency Dividend*.
- (7) A closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in or modification of the law enacted subsequent to the date of the agreement and applicable to such taxable period. Each closing agreement determining specific matters should state this. A subsequent “change in the law” does not refer to a subsequent interpretation and clarification of the law by a court decision. Information with respect to the effect of later legislation is discussed later in this section.
- (8) A closing agreement may be entered into at any time before the tax period comes within the jurisdiction of an appropriate court and may thereafter be entered into in appropriate circumstances when authorized by the court (e.g., certain bankruptcy situations). A closing agreement must not determine the amount of tax liability (or deficiency or overpayment) for any taxable period over which the United States Tax Court has jurisdiction since the liability for such docketed years is determined by the Tax Court.
- (9) Closing agreements may arise from matters originating in the tax year in litigation. These closing agreements are limited to “related specific items” affecting other non-docketed taxable periods. This type of closing agreement makes a determination for a year before the court, and that determination affects other years. Assuming it is proper to enter into this type of closing agreement, it is important to use a stipulation of settled issues along with a closing agreement that includes a condition precedent. Generally, the condition precedent will provide that the determinations in the closing agreement do not become effective until the corresponding stipulation of settled issues is accepted by the court. Assuming it is proper to enter into this type of closing agreement, it is important to use a stipulation of settled issues along with a closing agreement. The stipulation should state that a closing agreement covering the related specific items will be executed by the Service when the stipulation of settled issues is accepted by the court. Basically, the stipulation of settled issues is a proposed settlement for the tax year before the court, but a court is not required to accept that settlement. Consequently, a closing agreement that is dependent on acceptance of the stipulation by the court cannot be executed until that acceptance occurs.
- (10) Closing agreements may be shown on Form 866, *Agreement As to Final Determination of Tax Liability*; Form 906, *Closing Agreement on Final Determination Covering Specific Matters*, or the agreement may be drafted electronically utilizing the pattern language of Form 866 or Form 906. In addition, a combined agreement may be drafted that determines both tax liability and specific matters.
- (11) Treas. Reg. 301.7121-1(d)(2) provides that a deficiency or overpayment determined pursuant to a closing agreement shall be assessed, collected or credited, and refunded in accordance with applicable provisions of the law. A discussion of interest and waivers is covered later in this section. See IRM 8.13.1.3.18. See IRM 8.13.1.5.3.

8.13.1.2.2
(05-25-2018)
**Examples of Use of
Closing Agreements**

- (1) Tax liability closing agreements may be entered into when it is advantageous to have the matter permanently and conclusively closed, or when a taxpayer can show that there are good reasons for an agreement and that making the agreement will not prejudice the interests of the government. The following represent examples of acceptable reasons for entering into a determination of tax liability by closing agreement:
 - a. The taxpayer wishes to definitely establish its tax liability in order that a transaction may be facilitated, such as a sale of its stock.
 - b. The fiduciary of an estate desires a closing agreement so he or she can be discharged by the court.
 - c. The fiduciary of a trust or a receivership desires a final determination before a distribution is made.
 - d. A corporation in the process of liquidation or dissolution desires a closing agreement in order to wind up its affairs.
 - e. A taxpayer wishes to fulfill creditors' demands for authentic evidence of the status of its tax liability.
 - f. Where proposed assessments are contested on the theory that the years are barred and the taxpayer wishes to agree to some portion or all of the assessments.
 - g. A taxpayer wants to be assured that a controversy between it and the Service is disposed of with finality. As an alternative, a taxpayer may be satisfied that the reopening of his or her case is unlikely if the practice of the Service not to reopen cases is explained (see Rev. Proc. 2005-32, 2005-1 C.B. 1206, Policy Statements P-4-3 and P-8-3 (formerly P-8-50), and IRM 8.6.1.6, *New Issues and Reopening Closed Issues*). Use of special agreement forms in Appeals cases may also be satisfactory to the taxpayer.
 - h. To determine personal holding company tax in order to permit deficiency dividends under IRC 547.
 - i. To reflect a competent authority determination.
- (2) At the request of the taxpayer or the government, a determination of one or more specific matters may be accomplished by entering into a closing agreement. However, a closing agreement should not be entered into where there is a disadvantage to the government. A few examples of circumstances that may merit entering into such closing agreements follow:
 - a. Determine cost, fair market value, or adjusted basis as of a given date. For example, it may be desirable to have both an estate and its legatees or devisees (or both donors and donees) sign such agreements. See Exhibit 8.13.1-3.
 - b. Dispose of certain IRC 482 cases pursuant to Rev. Proc. 99-32, 1999-2 C.B. 296.
 - c. Ensure finality and consistency in disposing of cases involving divisions of community property between spouse incident to divorce.
 - d. Dispose of change of accounting method issues in Appeals cases involving principles similar to those applied in Rev. Proc. 97-27, 1997-1 C.B. 680, as modified by Rev. Proc. 2002-54, 2002-2 C.B. 432. See Exhibit 8.13.1-6.
 - e. Determine a fraud penalty reflecting complete or partial concession in cases where the statute of limitations is otherwise barred. See IRM 8.11.1.2.6, *Processing Fraud Penalty Cases*.
 - f. Determine the amount of net operating loss, tax credit, or capital loss.

- g. Provide determinations for disposition of cases involving mitigation (IRC 1311 to IRC 1314).
- h. Determine an alternative method of adjusting basis as a result of receipt of income from cancellation of indebtedness under IRC 108(a).
- i. Prevent loss of revenue from “whipsaw” situations. A closing agreement will prevent a related taxpayer from contesting an issue previously settled with another taxpayer by filing a claim to seek further tax benefits after the statutory period of limitations has expired with respect to the settling party. Once the Service resolves the dispute between the taxpayer and a related party, a closing agreement will bar the related party from attempting to create inconsistency in tax treatment for the matter(s) addressed in the closing agreement.
- j. Provide finality to those agreed upon issues involving mutual concessions in Appeals cases where partial settlements are effected.
- k. Determine the consequences of deferred intercompany transactions of domestic consolidated groups.
- l. Determine gross income, the amount of income from a transaction, the amounts of deductions for losses, depreciation, depletion, etc., or the year of includability or deductibility.
- m. Establish the effect on future years when an issue is disposed of on an intermediate basis and the issue is recurring (providing later tax treatment will not depend on factual circumstances of later years).
- n. Close cases involving failure to withhold income tax on payments such as taxable reimbursements of moving expenses.
- o. Resolve cases involving the settlement of employment tax controversies. See Exhibit 8.13.1-9.
- p. Resolve issues involving qualification of employee retirement plans. See IRM Part 7, *Rulings and Agreements*, on determinations relating to employee retirement plans.
- q. Reflect competent authority determinations under Rev. Proc. 2002-52, 2002-2 C.B. 242 .
- r. Resolve an issue in Coordinated Industry Cases (CIC) and Industry Cases (IC) audits under Rev. Proc. 94-67, 1994-2 C.B. 800.
- s. Finalize an agreement for an early referral issue under Rev. Proc. 99-28, 1999-2 C.B. 109.
- t. To address a mass error that affects a higher volume of information returns but involves a de minimis amount of understated reported income for select information returns.

8.13.1.2.3
(05-25-2018)
**Collateral Agreements
Distinguished**

- (1) Collateral agreements are utilized in compromise cases, estate tax cases and related income tax valuations, gift tax cases, and in other Appeals cases under appropriate circumstances. This subsection applies to all of the above categories of collateral agreements except those involving offers in compromise. Collateral agreements refer to statements secured from, and signed by or for, taxpayers or related parties to clarify, or obtain a commitment relative to, some related matter other than the amount of assessment or overassessment involved in the case disposition.
- (2) Collateral agreements are used to commit related taxpayers where there is privity of interest (mutual or successive relationship to the same rights of property) and legal consideration involved. For example, collateral agreements have been frequently obtained from trustees or beneficiaries who have received or will receive assets from an estate. The signing of a collateral

agreement may commit a trustee or beneficiary to use the same valuation for income tax purposes that was used for estate tax purposes.

- (3) Collateral agreements do not purport to bind the Service. They are one-sided commitments. The Service does not enter into and sign these agreements.
- (4) The most significant distinction between collateral agreements and closing agreements is that collateral agreements are administrative devices not expressly provided for by the Code while closing agreements are authorized by IRC 7121. Courts have pointed out that the Code provides two methods of disposing of tax matters by agreement with finality and that those methods are by offer in compromise under IRC 7122 and by closing agreement under IRC 7121. For example, if large amounts are involved and the government is potentially subject to a substantial loss of revenue if a taxpayer or related party should fail to comply with a contemplated disposition, a closing agreement should be secured instead of a collateral agreement.

8.13.1.2.4
(11-09-2007)
Basic Delegation

- (1) IRC 7121 empowers the Secretary of the Treasury to enter into closing agreements. Treasury Order No. 150-07, dated November 18, 1953, transferred all of the Secretary's closing agreement functions to the Commissioner of Internal Revenue.

8.13.1.2.4.1
(05-25-2018)
**Delegation Order 8-3,
Closing Agreements
Concerning Internal
Revenue Tax Liability,
as Revised**

- (1) Treas. Reg. 301.7121(a) states that the Commissioner has been delegated authority to enter into and approve closing agreements. See Delegation Order 8-3, *Closing Agreements Concerning Internal Revenue Tax Liability*, as revised. The Delegation Order does not redelegate the Commissioner's authority to set aside closing agreements.
- (2) Part of the Commissioner's authority to enter into and approve closing agreements has been redelegated by the Order to certain field officials. Most closing agreements are entered into by such field officials. Those agreements which field officials cannot sign are signed by the appropriate headquarters official. Included in the category of agreements not signed by field officials are those arising from:
 - a. Competent authority determinations under tax treaties.
 - b. Cases being litigated by the Department of Justice.
 - c. Docketed cases where Appeals has released jurisdiction, unless requested by Chief Counsel or his or her delegate.
- (3) The authorities conferred upon the Chief Counsel and upon the Deputy Chief Counsels, the Operating Division Counsels and the Operating Division Commissioners are not mutually exclusive.
 - a. If a taxable period has ended before the date of the agreement, the Chief Counsel may enter into an agreement with respect to a completed transaction affecting a return to be filed for that period. Under the same circumstances, the Deputy Chief Counsels, the Operating Division Counsels and the Operating Division Commissioners may enter into a closing agreement as to liability or as to specific matters (including transactions) affecting such taxable period.
 - b. Closing agreements with respect to completed transactions affecting returns to be filed are considered by the Office of Chief Counsel where a request for a ruling is involved.

- (4) There are two general limitations on the closing agreement authority of Operating Division officials and other field officials. Agreements must be with respect to cases under their jurisdiction, and such agreements must pertain to taxable periods ended before the dates of such agreements or to specific items related to such periods and affecting other taxable periods. In practice, closing agreements will be signed by the designated officials of Appeals offices or Compliance field offices.
- (5) Operating Division officials and other field officials are not authorized to sign closing agreements pertaining to prospective transactions. Such agreements are handled by Headquarters.
- (6) LB&I Team Managers have the authority to accept settlement offers and execute closing agreements on any issues in a CIC case under their jurisdiction where a settlement (including a hazards settlement) has been effected by Appeals with respect to the same issue in a previous, subsequent or same tax period. (See Delegation Order 4-24, *Settlement Offers and Closing Agreements in CEP Cases Where Appeals has Effected a Settlement*). They also have the same authority on coordinated issues in the Technical Advisor Program (formerly the Industry Specialization Program (ISP) and the International Field Assistance Specialization Program (IFASP)) where Appeals in combination with LB&I as appropriate, has issued settlement guidelines or positions (See Delegation Order 4-25, *Settlement Offers, Closing Agreements and Settlement Agreements Under Section 6224(c) in Cases with Technical Advisor (TA) Program Issues and Appeals Technical Guidance Program (Compliance Coordinated and Appeals Coordinated) Issues*). This authority may not be re-delegated.

8.13.1.2.5
(05-25-2018)

**Litigation and Other
Matters**

- (1) Treas. Reg. 601.202(b) provides “[a] request for a closing agreement which determines tax liability may be submitted and entered into at any time before the determination of such liability becomes a matter within the province of a court of competent jurisdiction and may thereafter be entered into in appropriate circumstances when authorized by the court (e.g. in certain bankruptcy situations.)”
 - a. A closing agreement must not be entered into by an Appeals official where the case is docketed in the Tax Court and is still under the jurisdiction of the Appeals office, with respect to the docketed taxable period. However, an Appeals official may only enter into a closing agreement that is limited to “related specific items” affecting other non-docketed taxable periods. This type of closing agreement should not be executed for the Commissioner until an agreed decision for the docketed year is entered or a decision in a tried case becomes final.
 - b. If a case is being litigated by the Department of Justice, a closing agreement to give effect to an agreed upon disposition of part of the matters in issue in such taxable period in litigation (even though it may directly apply only to periods or a related cases not in litigation) must be forwarded to the Office of the Chief Counsel. The closing agreement should be routed through the Chief, Appeals (if secured by Appeals), or the Operating Division Commissioner (if secured by the field office) for signature (or to the Deputy Commissioner, International) if that official has signing authority.
- (2) If a closing agreement originating under the jurisdiction of a Compliance field or Appeals office affects a year where the tax liability is being litigated or to

matters related to those being so litigated (e.g., a recurring issue), an expression of acquiescence (or a lack of objection) to the securing of the closing agreement must be obtained from Counsel before the agreement is executed.

8.13.1.2.6
(05-25-2018)
Statutory Authority

- (1) IRC 7121 states that the “Secretary” may enter into closing agreements. Treas. Reg. 301.7121-1 defines the Commissioner’s authority relating to closing agreements. Delegation Order 97, *Closing Agreements Concerning Internal Revenue Tax Liability*, contains the Commissioner’s primary re-delegation of that authority to various offices within the IRS and the Office of Chief Counsel.
- (2) The following list of authorities is not intended to be an exclusive listing nor to limit the use of closing agreements in other appropriate situations.
 - a. Treas. Reg. 1.547-2(b)(1)(iv) explains date of determination where a closing agreement, pursuant to IRC 547(c)(2) , determines personal holding company tax.
 - b. Treas. Reg. 1.1313(a)-2 explains authority provided in IRC 1313(a)(2) for use of closing agreements as determinations in cases involving mitigation of effect of limitations.
 - c. Treas. Reg. 1.1502-13(j) states circumstances under which a closing agreement may be entered into with a domestic regulated public utility to determine the consequences of deferred intercompany transactions or matters related to or affected by such transactions.
 - d. Treas. Reg. 1.1502-77 discusses the authority of a parent corporation to sign closing agreements covering members of affiliated groups.
 - e. Treas. Reg. 301.7121-1 contains regulations pertaining to IRC 7121.
- (3) The statement of Procedural Rules, at Treas. Reg. 601.202 contains published procedural instructions with respect to closing agreements.
- (4) There have been court cases dealing with some of the aspects of closing agreements. A discussion of some of these aspects is covered later in this section. See IRM 8.13.1.7 and 8.13.1.8. Technical advice, technical information, or technical assistance may be requested to help resolve these problems. See IRM 8.13.1.5.7 and IRM 8.13.1.6.2.4.

8.13.1.2.7
(11-09-2007)
Revenue Rulings

- (1) Rev. Rul. 56-322, 1956-2 C.B. 963, discusses the Service position that “A valid closing agreement establishing final determination of Federal tax liability for a prior taxable period is not affected by subsequent legislation retroactively applicable to the taxable period to which such closing agreement relates where such legislation is silent as to its effect on closing agreements.”
- (2) Rev. Rul. 57-305, 1957-2 C.B. 856, states that once a closing agreement (determining tax liability) has been executed by both the taxpayer and the Commissioner, the restrictions upon assessment which IRC 6213(a) imposes are no longer applicable and any waiver filed after that date is meaningless.
- (3) Rev. Rul. 60-287, 1960-2 C.B. 188, states: “A determination of a taxpayer’s liability for personal holding company tax made in an informal agreement entered into between the taxpayer and the Commissioner of Internal Revenue, as described in section 547(c)(3) of the Internal Revenue Code of 1954, does not have the effect of a final closing agreement under section 7121 of the Code.”

- (4) Rev. Rul. 72-486, 1972-2 C.B. 644, states that a closing agreement between a corporation and the IRS may not be set aside because of fraud committed by an officer against the corporation.
- (5) Rev. Rul. 72-487, 1972-2 C.B. 645, states that the right to examine the taxpayer's books is not affected by the execution and approval of a closing agreement and that an investigation may be made at any time to determine whether there is any fraud, malfeasance, or misrepresentation of material fact in connection with the execution of the agreement.
- (6) Rev. Rul. 73-459, 1973-2 C.B. 415, holds that a Revenue Agent's unintentional mistake in failing to include certain deductions in arriving at the result upon which a closing agreement was based does not constitute a misrepresentation of a material fact for which the agreement may be set aside.
- (7) Rev. Rul. 73-514, 1973-2 C.B. 416, holds that the taxpayer's filing of a claim for refund on the basis that an adjustment to the taxpayer's return was erroneous, and the sending of a letter to the Commissioner to the same effect, subsequent to the payment of a deficiency and the execution and submission of a closing agreement based on such adjustment but prior to the Commissioner's approval of the agreement, constitute implied revocations of the offer to enter into the closing agreement.

8.13.1.2.8
(05-25-2018)
Revenue Procedures

- (1) Rev. Proc. 68-16, 1968-1 C.B. 770, as modified by Rev. Proc. 94-67, 1994-2 C.B. 800, is a comprehensive explanation of procedures applicable to closing agreements other than those originating in and involving rulings prepared by the Office of Chief Counsel.
- (2) Rev. Proc. 78-15, 1978-2 C.B. 488, provides the procedure to be followed by a taxpayer who has requested an advance ruling seeking a variation from the general rule of Treas. Reg. 1.1017-1 relating to the adjustment to basis of property resulting from a discharge of indebtedness, and who desires to enter into a closing agreement pursuant to Treas. Reg. 1.1017-2(b) because the property of the taxpayer consists solely of stock of other corporations.
- (3) Rev. Proc. 85-44, 1985-2 C.B. 504, provides the procedure to be followed by a taxpayer who has requested an advance ruling seeking a variation from the general rule of Treas. Reg. 1.1017-1, relating to the adjustment to basis of depreciable property resulting from a discharge of indebtedness, and who desires to enter into a closing agreement pursuant to Treas. Reg. 1.1017-2(b) because the taxpayer has a substantial number of depreciable properties.
- (4) Rev. Proc. 94-67, 1994-2 C.B. 800, explains when and how a taxpayer, subject to a CIC or IC audit, requests an Accelerated Issue Resolution (AIR) agreement (which is a closing agreement under IRC 7121) from Compliance.
- (5) In general, Rev. Proc. 99-32, 1999-2 C.B. 296 supersedes Rev. Proc. 65-17, 1965-1 C.B. 833, for taxable years beginning after August 23, 1999. Rev. Proc. 99-32 states the Service position and provides procedures for the adjustment of accounts and the transfer of funds in connection with allocations of income or deductions pursuant to IRC 482 (primary adjustments), including certain taxpayer-initiated adjustments for purposes of reporting an arm's length result under the IRC 482 regulations. The revenue procedure applies to corporate taxpayers that enter into closing agreements with the Service. The revenue procedure permits the taxpayer to receive payment from, or make payment to,

a controlled party after a Service-initiated primary adjustment, without being subject to federal income tax consequences that would otherwise follow from the secondary adjustment.

- (6) Rev. Proc. 2002-52, 2002-2 C.B. 242, explains the procedures to be used by the IRS and taxpayers in certain cases of double taxation that are governed by income tax treaties of the United States. The cases covered by this revenue procedure concern the allocation of income and deductions between a United States taxpayer and a related person (including a branch office) subject to the taxing jurisdiction of a country ("treaty country") that has entered into an income tax treaty with the United States.
- (7) Generally, a revenue procedure is issued annually which updates and restates the general procedures of the IRS in issuing rulings, determination, opinion, notification, and information letters to taxpayers and in entering into closing agreements on specific issues as to the interpretation or application of the federal tax laws.

8.13.1.3
(05-25-2018)
Matters of Form

- (1) This section describes types of closing agreements and how to prepare and assemble the files.
- (2) There are two closing agreement forms:
 - a. Form 866, *Agreement as to Final Determination of Tax Liability*
 - b. Form 906, *Closing Agreement on Final Determination Covering Specific Matters*
- (3) This section also discusses combined agreements that address both tax liability and specific matters.
- (4) IRM 7.2.1, *TE/GE Closing Agreements, Closing Agreements Originating in EP Technical*, provides additional information on closing agreements relating to employee plans and exempt organization matters.

8.13.1.3.1
(05-25-2018)
Form 866, Agreement as to Final Determination of Tax Liability

- (1) Final determinations of tax liability under IRC 7121 are shown on Form 866, *Agreement as to Final Determination of Tax Liability*. In those cases where space on the form is insufficient to indicate all the periods, taxes, and liabilities covered by the agreement, insert "See Attachment" in that space and put the information on a separate sheet in the same format indicated on the form. Any separate sheets should be clearly identified at the top as: "Closing Agreement with (name of taxpayer)." See IRM 8.13.1.3.4.2
- (2) A determination of tax liability should reflect the total corrected tax liability for each period and the type of tax covered in the agreement, after application of credits reducing liability but before application of payments or prepayment credits. Special care should be taken when preparing closing agreements where earned income tax credits or other refundable credits are involved.
- (3) If any matter in addition to tax liabilities is to be finally determined by the agreement, a combination agreement should be used.
- (4) Qualified liability determinations should be avoided whether determined on a Form 866 or in a combined agreement.
- (5) Generally, closing agreements determining self-employment tax liability should be avoided. A later disagreement between the IRS and the Social Security

Administration on the incidence of self-employment tax may arise as a result of an application for Social Security benefits and may be referred to the Department of Justice for resolution. It is possible that a determination on self-employment tax liability by closing agreement may not be consistent with the final decision on the incidence of such tax and the resulting Social Security benefits. If the final disposition is inconsistent with the closing agreement, the taxpayer may have overpaid tax that cannot be refunded or may owe additional tax that cannot be collected.

8.13.1.3.2
(05-25-2018)
Form 906, Closing Agreement on Final Determination Covering Specific Matters

- (1) Final determinations of specific matters pursuant to IRC 7121 are ordinarily reflected on Form 906, *Closing Agreement on Final Determination Covering Specific Matters*.
 - a. Where Form 906 is used and the space provided on the form is insufficient for the content, a portion of the content may be reflected on additional pages (but not on the reverse side) inserted between the pages of the form.
 - b. If Form 906 is not used, the entire agreement may be drafted electronically using the pattern language of the form.
- (2) Closing agreements where no form is used should contain all of the printed clauses reflected on Form 906. The form number should not be reflected on the agreement.
- (3) In a specific matter closing agreement, the signature page should contain at least some portion of the last determination clause.

8.13.1.3.3
(05-25-2018)
Combined Agreements

- (1) Form 866 and Form 906 are not designed for closing agreements which determine both tax liability and specific matters. Instead, a combined agreement should be prepared in accordance with the format and standard language reflected in Exhibit 8.13.1-4.
- (2) The principal necessity for combined agreements is that a determination of liability alone does not determine the amount of any item of income or deduction (or any other related matter) that may have been considered in arriving at that liability. This becomes important where the amount of one or more such items affects or could affect the computation of taxable income for another year.

Example: The computation of taxable income may take into account the parties' resolution of the issue of the fair market value of a charitable contribution. The use of a combined agreement in this situation is desirable to set forth the fair market value of the charitable contribution for purposes of determining the excess charitable contribution carryover. By setting forth the fair market value of the charitable contribution in a combined agreement, the parties will be precluded from taking an inconsistent position with respect to valuation in subsequent years affected by the carryover. Exhibit 8.13.1-4.

- (3) Another situation where the use of a combined agreement may be appropriate is where the parties are resolving an issue with respect to the basis of depreciable property.
- (4) IRM 8.13.1.7.1 discusses the use of combined agreements for barred years.

8.13.1.3.4
(05-25-2018)

**Guidelines for Preparing
Closing Agreements**

- (1) This section provides instructions for proper format and language to use when preparing closing agreements.

8.13.1.3.4.1
(05-25-2018)

Identification of Parties

- (1) The names of all taxpayers entering into the closing agreement should be accurately set forth at the beginning of the agreement and in the signatures. Where any tax returns involved do not reflect the correct name, this fact should be noted in the introductory portion of the agreement. Each taxpayer's identification number should be shown at the beginning of the agreement.
- (2) If the taxpayer's name has changed since the beginning of the first taxable period affected by the closing agreement, this change should be explained in one of the introductory clauses of the agreement. Similarly, important relationships should be explained.

Example: An appropriate opening paragraph for an agreement entered into by a parent corporation on behalf of all members of a consolidated group is:
"Under section 7121 of the Internal Revenue Code, (Parent's Name), EIN xx-xxxxxx, Main Street, Any City, Any State, xxxxx, on behalf of itself and as agent for the (Name of the Consolidated Group), and the Commissioner of Internal Revenue Service make the following agreement...."

- (3) If shortened versions of proper names or other designations such as "taxpayer," "other party," "other entity," and "second other party" are to be used in the body of the agreement, the introductory portion of the agreement should explain this usage. Different parties should not be similarly identified (e.g., "taxpayer") unless all provisions using such designation in lieu of names are applicable to all parties so identified.

8.13.1.3.4.2
(05-25-2018)

Arrangement of Content

- (1) Closing agreements follow a standard format. They begin with the standard caption at the top, which states the nature of the document. Thereafter, the parties to the agreement should be identified. Provisions of an agreement should not be reflected on the reverse side of a page. The following instructions, except as otherwise noted, apply primarily to closing agreements determining specific matters.
- (2) The identification of the parties is followed by one or more WHEREAS clauses which serve to introduce the subject matter of the agreement and states premises upon which it is based. These clauses should be brief, as demonstrated in the exhibits.
- (3) It is important to distinguish between matters that are merely informative and explanatory, and matters that are agreed upon. These matters should be segregated from each other and reflected in the WHEREAS clauses mentioned in (2) above. To emphasize the transition from recitals to matters being determined and agreed upon, agreed upon matters should be separated from and follow the WHEREAS clauses and should be preceded by the caption "NOW IT IS HEREBY DETERMINED AND AGREED," usually followed by the qualification "for Federal tax purposes that....".
- (4) For clarity, the matters being agreed upon should be logically grouped in separate numbered determination clauses. Each clause should be drafted with the view that it is a continuation of the statement "NOW IT IS HEREBY

DETERMINED AND AGREED for Federal ...tax purposes that...". These determination clauses should be consistent with the WHEREAS clauses and should be clearly stated.

- a. A determination of a net operating or capital loss carryover should state the year in which the loss was sustained and the amount being carried over from that year.
 - b. State the date when basis is determined.
 - c. Where possible, use dollar amounts rather than formulas or percentages.
 - d. Determination clauses should not be stated as executory clauses or as promises made by taxpayers. Do not determine that "Taxpayer will report gain of \$1,000 on the above-described sale of real estate as ordinary income in the tax return to be filed for the year ending December 31, 1997." Instead, determine "Gain of \$1,000 on the above-described sale of real estate is includible in taxpayer's gross income as ordinary income for the taxable year ended December 31, 1997." Another example — Do not determine "Taxpayer will not claim alimony deduction for taxable year ending December 31, 1997." Instead determine "No deduction is allowable for alimony for the taxable year ending December 31, 1997."
 - e. State precisely any agreed-upon ramifications of the closing agreement on subsequent taxable periods.
- (5) An agreement determining only tax liability should end with provisions identical to those printed in the concluding portions of Form 866. Combined agreements or agreements determining specific matters should end with provisions identical to those printed in the concluding portion of Form 906. These standard provisions should be followed by the dated signatures of the parties. Information pertaining to execution and attachments are covered later in this section.
 - (6) When the agreement is more than one page in length, it is preferable to number the pages as "Page 1 of 4," "Page 2 of 4," etc. Also, each page after the first page should be identified as: "Closing Agreement With (name of taxpayer)." Where there are several parties to an agreement, the name of the first named party in the agreement plus "et al." may be used to identify the additional pages. Agreements submitted with pages not identified in accordance with the preceding instructions or properly numbered may nevertheless be accepted. Service personnel must not add such identification and numbering or make any changes whatsoever in the agreement after it has been signed and submitted by the taxpayer, with an exception. See IRM 8.13.1.3.17. If necessary, draw a diagonal line across the page following the last item in the body of the agreement before the agreement is mailed to the taxpayer, in order to prevent any unauthorized additions. Additional requirements pertaining to closing agreements covering specific matters were previously discussed.
 - (7) References in the agreement to other provisions of the agreement should be precise. For example, acceptable references would be "...subject to the provisions of determination clauses numbered 3 and 7 herein..." or "...subject to the provisions of determination clause (a), preceding, and determination clause (d) succeeding,..." It is preferable to avoid use of "above" and "below" in this context when drafting the agreement since references may be to provisions that will not be on the same page as the reference when the document is in final form. A reference should be clear that it pertains to another provision of

the agreement, rather than to a provision of some other document. An adequate reference for this purpose could be “. . .as provided in Attachment 1 of this agreement....”

8.13.1.3.4.3
(11-09-2007)
Dating

- (1) The date the agreement is signed by an official on behalf of the Commissioner is the date the agreement becomes effective.
 - a. The date the agreement is signed on behalf of the Commissioner must be shown.
 - b. Stamp the date received from the taxpayer on the reverse side of all copies of the agreement.
- (2) The taxpayer's signature to the agreement constitutes an offer which should be acted upon within a reasonable time.
 - a. The date of the taxpayer's signature should be shown.
 - b. If a taxpayer fails to date the signature and the file contains a letter or some other indication of the date the agreement was submitted, it is not necessary to return the agreement to the taxpayer solely for the purposes of inserting the date.
 - c. Do not insert a date of signature for the taxpayer.

8.13.1.3.5
(05-25-2018)
Execution By Taxpayer

- (1) Closing agreements must always be signed by the taxpayer before they are signed for the Commissioner. The taxpayer's signature constitutes an offer to agree and the signature for the Commissioner constitutes an acceptance and approval of the offer. All copies should be signed by or for all parties, with an exception. See IRM 8.13.1.3.5.2.
- (2) The signature lines are at the end of the agreement or, where there are attachments, at the end of the main body of the agreement. The signatures should not be on a page by themselves. If taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the consent by fax, the IRS can accept by fax taxpayer closing agreements involving any amount of tax.
 - a. In a specific matter closing agreement, the signature page should contain at least some portion of the last determination clause.
 - b. Attachments and pages other than the signature page should not be signed and ordinarily need not be initialed but there is no objection to the initialing of such pages by the taxpayer. Erasures and alternations are discussed later in this section. Also, signatures of receiving and reviewing officers are discussed later.
 - c. The signature of a corporate officer on behalf of a corporation should be preceded by the name of the corporation and followed by the officer's title.
 - d. Signatures of trustees and executors should, similarly, reflect the name of the taxpayer, the signature and fiduciary capacity of the signer. Information on joint returns is discussed later in this section.

8.13.1.3.5.1
(05-25-2018)
Consolidated Returns

- (1) Treas. Reg. 1.1502-77 provides, in general, that the common parent may act as agent for other members of the affiliated group. The common parent, signing for the members, should state that it is signing as agent for the group. See IRM 8.13.1.3.4.1.

Note: The alternative agent provision of Treas. Reg. 1.1502-77A is not applicable to determining who is the proper party to sign a closing agreement for a consolidated group. Contact Counsel if there is any question concerning the proper party to sign the closing agreement.

- (2) Information pertaining to a closing agreement that relates to a TEFRA partnership when the partner was a subsidiary of a consolidated group is discussed in IRM 8.13.1.2.6.

8.13.1.3.5.2
(05-25-2018)

**Power of Attorney
Holder**

- (1) General instructions for powers of attorney are contained in the Statement of Procedural Rules, at 26 CFR 601.501 to 509 inclusive. A power of attorney is required when a taxpayer wishes to authorize a representative to execute a closing agreement on behalf of the taxpayer (see 26 CFR 601.504(a)(4)). Form 2848, *Power of Attorney and Declaration of Representative*, may be used for this purpose.
 - a. A representative acting under the authority of a valid Form 2848 may execute a closing agreement on behalf of the taxpayer with respect to the taxable periods listed on the Form 2848, assuming the taxpayer has not eliminated the representative's authority to sign closing agreements by specific deletion of that authority in paragraph 5 of Part 1 of the Form 2848.
 - b. If the closing agreement is signed by a power of attorney holder and Form 2848 is not used, the power should be examined to make sure it properly authorizes the signing of the agreement.
 - c. If a closing agreement purports to bind the taxpayer beyond those stated in the power of attorney, then the taxpayer's signature is required on the agreement.
 - d. If counsel of record in a case being litigated wishes to sign a closing agreement for the litigant, counsel must submit a power of attorney authorizing him or her to do so.
 - e. If a closing agreement is signed pursuant to a power of attorney a copy of the power should be attached to all copies of the agreement.
- (2) The following illustrates an acceptable form of signature by a power of attorney holder:

Example: The Blank Corporation
By (signature of attorney or agent) Attorney (Agent)

- (3) It is possible that the signature on a closing agreement may not be legible as the name shown on the power of attorney. One solution is to request that the signer's name be typed (or printed or stamped) in by the signer just below the signature.

8.13.1.3.5.3
(05-25-2018)

**Decedents and Their
Estates**

- (1) A closing agreement for a decedent or an estate should be executed by an executor or administrator, if one has been appointed and is acting and responsible for disposition of the matter. An attested copy of the letters testamentary or the order of the court vesting such person with authority to so act, and a recent certificate to the effect that such authority remains in full force and effect, should be submitted with the agreement.
- (2) The agreement should be executed by the trustee if a trustee under a will (or a trustee of a lifetime trust that becomes irrevocable on the decedent's death) is

acting with respect to the matter agreed upon. If both the executor and the trustee are functioning and the matter affects both, the agreement should be signed by both. The file should include appropriate evidence of the authority of the trustee to act (ordinarily including Form 56, *Notice Concerning Fiduciary Relationship*).

- (3) If no executor, administrator, or trustee under a will is currently responsible for disposition of the matter, and the estate has been distributed to the residuary legatees, then the agreement should be executed by the residuary legatees. Where feasible under the circumstances, the file should contain a statement from a court of competent jurisdiction certifying that no executor, administrator, or trustee under a will is acting or responsible for disposition of the matter, naming the residuary legatees, and indicating the proper share to which each is entitled. Alternatively, copies of court orders containing such information may suffice. If a decedent died intestate and the administrator has been discharged and is not responsible for disposition of the matter, or none was ever appointed, the agreement must be executed by the distributees. The file should include evidence of the discharge of the administrator (if one had been appointed). It should also include statements made under the penalties of perjury concerning the relationship of the deceased signatories to the agreement and the right of each of them to the respective shares claimed under the applicable law.
- (4) If appointment of a fiduciary is imminent, it may be preferable to defer execution of the agreement until the appointment is made.
- (5) If there is more than one executor or administrator, all should sign the closing agreement unless it is shown that less than all have the authority to act. In the latter event, the Revenue Agent's Report (RAR) or Appeals Case Memorandum (ACM) should explain the matter and the file should contain appropriate supporting evidence.

8.13.1.3.5.4
(05-25-2018)
Trusts

- (1) A closing agreement in which a trust is a party should be signed by the trustee or trustees. In cases where more than one trustee has been appointed, all should sign the agreement unless it is shown that less than all have authority to act. If all trustees have authority to act, the report or appeals case memorandum should explain the matter. The file should contain adequate documentary evidence of the authority of the trustees to act (ordinarily including Form 56, *Notice Concerning Fiduciary Relationship*). Such evidence may be either a copy of the trust instrument (possibly a will), properly certified, or a certified copy of extracts from the trust instrument (or will) showing:
 - a. Date of instrument,
 - b. That it is or is not of record in any court,
 - c. The beneficiaries,
 - d. The appointment of the trustee, the authority granted, and such other information as may be necessary to show that such authority extends to Federal tax matters, and
 - e. That the trust has not been terminated, and that the trustee appointed therein is still acting.
- (2) If the trustee appointed in the original trust instrument is no longer acting and has been replaced by another trustee, adequate documentary evidence of the appointment of the new trustee should be submitted.

8.13.1.3.5.5
(11-09-2007)

Dissolved Corporations

- (1) If a liquidating trustee is appointed, or if a trustee or other fiduciary derives authority over the corporation under a state statute, the agreement should be signed by the trustee. If there is more than one trustee, all must sign unless it is established that less than all have authority to act in the matter. The file should contain a copy of the instrument under which the trustee derives the authority to act, properly authenticated, and evidence that such authority remains in full force and effect (ordinarily submitted with Form 56).
- (2) If a trustee's authority is based on a state statute, the trustee should submit a statement indicating the pertinent statutory authority, as well as a statement made under the penalties of perjury that (1) the facts required by statute as a condition precedent to the vesting of the authority in the trustee have been met and (2) the trustee's authority has not been terminated. Any court orders concerning the trustee's authority to enter into the agreement must be submitted.
- (3) If it involves an involuntary dissolution prior to the appointment of a trustee, the agreement must be signed by shareholders representing a majority of voting stock of the corporation at the date of dissolution or at a prior date when substantially all the distributions in liquidation were made. The RAR or ACM should show the total number of outstanding shares of voting stock at the date of dissolution and should contain an indication of why it is believed that no trustee exists. The file should reflect the amount of any distributions to the principal stockholders.
- (4) If a corporation executes a closing agreement prior to dissolution, the agreement may be valid under state law despite the fact that the Commissioner signed and approved the agreement after the dissolution. See, e.g., *Parish & Bingham Corp. vs. United States*, 44 F2d. 993 (Ct.Cl. 1930).

8.13.1.3.5.6
(05-25-2018)

Partnerships

- (1) This discussion pertains to all non-TEFRA partnerships. Closing agreements for TEFRA partnerships are discussed in a subsequent section. See IRM 8.13.1.3.6. Closing agreements for Electing Large Partnerships as defined in IRC 775 are discussed later in this section. See IRM 8.13.1.3.6.2.
- (2) Closing agreements relating to non-TEFRA partnerships should be entered into only with the individual partners and not the partnership. This is because a closing agreement with the partnership will not be binding on the partners.

Note: A closing agreement with a non-TEFRA partnership may be sought to encourage the partnership to treat an item in a specific way on the subsequent year returns. The agreement will not bind the individual partners. Separate closing agreements should be sought from each partner.

- (3) If a separate determination is to be made concerning one of the partners' individual tax matters, a separate closing agreement should be entered into with that partner.
- (4) A closing agreement with a dissolved partnership should be signed by each of the former partners.
 - a. If any of the partners are deceased, their legal representatives should sign.
 - b. If, however, under the laws of a particular state, surviving partners at the time of the execution of the agreement have the exclusive right to the

control and possession of the firm's assets for the purpose of winding up its affairs, their signatures alone may be sufficient.

- c. If only the surviving partners sign the agreement, the file should contain a citation to and extract from the pertinent provisions of the state law under which they claim authority exclusive of the legal representatives of any deceased partners.

8.13.1.3.6
(05-25-2018)
TEFRA Partnerships

- (1) This discussion pertains to TEFRA partnerships. Closing agreements entered with respect to non-TEFRA partnerships are discussed in the previous section. See IRM 8.13.1.3.5.6 Closing agreements entered with respect to Electing Large Partnerships are discussed below.

- (2) A closing agreement for a partner of a TEFRA partnership is made under the authority of IRC 6224(c) and IRC 7121. Both sections should be cited in the initial paragraph of the closing agreement. An appropriate opening paragraph for an agreement made with a partner in a TEFRA partnership follows:

Example: "Under Sections 6224(c) and 7121 of the Internal Revenue Code of 1986, (Taxpayer's name, address, and social security number) ("the taxpayers") and the Commissioner of Internal Revenue make the following closing agreement.... "

- (3) Agreements to partnership items are generally made as settlement agreements on Form 870-P, Form 870-P(AD), Form 870-L, Form 870-L(AD), Form 870-PT, Form 870-PT(AD) , Form 870-LT, and Form 870-LT(AD). IRC 6224(c)(1) provides that the IRS and the partner are bound by the settlement agreement, in the absence of fraud, malfeasance, or misrepresentation of fact. Because of the binding nature of the settlement agreement, closing agreements will not provide greater certainty than the partnership settlement agreement forms. Closing agreements in TEFRA partnerships should be used only in unusual circumstances.
- (4) A closing agreement with a partner in a TEFRA partnership constitutes a settlement agreement under IRC 6224(c).
 - a. A settlement agreement may be made for all partnership items or only for selected issues. If the agreement only addresses selected issues, it is a partial agreement. The phrase "Partial Agreement" should be typed in bold at the top of each page. Appropriate language to be included in the determination section is discussed in (7) below.
 - b. Except for partial agreements, the Service will have one year from the date the agreement is countersigned to make any resultant assessments. See IRC 6229(f)(1). For partial agreements, the one year statute does not apply, and the statute of limitation is calculated as if the partial agreement had not been entered into. See IRC 6229(f)(2). The closing agreement should be processed in the same manner as the TEFRA agreement forms. This includes sending copies of the closing agreements to the Campus TEFRA Function (if the case was linked on the partnership Control System) in accordance with IRM 4.31.2.4.7.2, *Conversion to Nonpartnership Items by Execution of Form 906 Closing Agreement*, and IRM 8.19.11, *Agreed TEFRA Partnership Cases*. The closing agreement will act as a settlement under IRC 6224(c) for all years covered by the agreement, even if the partnership return for the year in question has not been examined.

- c. The consistent settlement rules of IRC 6224(c)(2) apply to closing agreements. The terms of the closing agreement must be offered to any other partner who requests this information. The time and manner of the request is described in section 301.6224(c)-3T(c) of the Regulations on Procedure and Administration. See also *Greenberg Brothers Partnership #4 v. Commissioner*, 111 T. C. 198 (1998).
 - d. Tax Court Rule 248(b) governs the actions to be taken if all participating partners enter into a settlement agreement in a docketed case or do not object to entry of decision. Tax Court Rule 248(c) governs the actions to be taken if one or more partners make a settlement agreement in a docketed case, but at least one participating partner remains as a party to the action.
 - e. A closing agreement with terms affecting subsequent years is an effective settlement agreement pursuant to IRC 6231(b)(1)(C) and removes that partner and those partnership items immediately from the TEFRA partnership provisions, even before the future year commences. If a closing agreement makes reference to the reporting of any item in a subsequent year, the agreement should be considered to be a partial agreement. The phrase "Partial Agreement" should be typed in bold at the top of each page of the closing agreement. Appropriate language to be included in the determination section is discussed in (7)(e) below.
- (5) A closing agreement entered into with respect to a TEFRA partnership should identify both the partner and the partnership by name, address, and taxpayer identification number (with the partner as the party to the agreement and the partnership identified in one of the introductory clauses).
- (6) The closing agreement should be signed by the partner.
- a. Under IRC 6231(a)(2), the term partner means a partner in the partnership and any other person whose income tax liability under subtitle A is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership. Therefore if a partner files a joint return, both husband and wife must sign the closing agreement.
 - b. If a partnership has more than 100 partners, all partners with less than a one percent profits interest in the partnership are considered non-notice partners. IRC 6223(b). A group of non-notice partners may form a notice group if the group owns five percent or more interest in the profits of the partnership and files a notice with the IRS in accordance with section 301.6223(b)-1T of the Regulations on Procedure and Administration. The Tax Matters Partner (TMP) may sign a closing agreement for partnership items that binds non-notice partners who are not members of a notice group and who have not otherwise elected not to be bound by any TMP settlement. In order to be effective, the agreement must expressly state that the TMP agrees to bind them. IRC 6224(c)(3). For example, the closing agreement may say, "The agreement is made by the Tax Matters Partner and binds all other partners to the terms of the agreement for whom the Tax Matters Partner may act under IRC 6224(c)." The TMP cannot enter into any agreement to bind non-notice partners for affected items other than partnership-level determinations of penalties for partnership tax years ending after August 5, 1997.
 - c. If the partner is a subsidiary corporation that files a consolidated return with its parent, *and the subsidiary is not the TMP*, the closing agreement should include the name and TIN for both the parent and subsidiary (with

the parent as the party to the agreement and the subsidiary identified in one of the introductory clauses). The parent should sign the agreement as "Parent Company" on behalf of "Subsidiary Company". See IRM 8.13.1.3.5.1. The signature block would appear as follows:
[Name of Common Parent corporation] by [name of authorized representative title], on behalf of [name of Subsidiary corporation], Partner of [name of TEFRA entity].

For consolidated return taxable years beginning on or after June 28, 2002, however, the closing agreement should include the name and TIN of the subsidiary (as the party to the agreement), and the subsidiary partner must sign the closing agreement. Treas. Reg. 1.1502-77(a)(6)(iii). The signature block would appear as follows:
[Name of Subsidiary corporation], by [name of authorized representative title], Partner of [name of TEFRA entity].
The parent should also sign, as only the parent can bind the other members of the group.

The signature block would appear as follows:
[Name of Parent corporation], by [name of authorized representative title], on behalf of each of its subsidiaries, including [subsidiary company], Partner of [name of TEFRA entity].

- d. If the partner is a subsidiary corporation that files a consolidated return with its parent, *and the subsidiary is the TMP*, the closing agreement should include the name and TIN for both the parent and subsidiary (with the parent as the party to the agreement and the subsidiary identified in one of the introductory clauses). The parent should sign the agreement as "Parent Company" on behalf of "Subsidiary Company". The signature block would appear as follows:
[Name of Common Parent corporation] by [name of authorized representative title], on behalf of [name of Subsidiary corporation], Partner of [name of TEFRA entity]

If the agreement is also intended to bind the non-notice partners, the subsidiary should also be a party to the agreement and the agreement should also be signed by the subsidiary. The signature block for the subsidiary would appear as follows:
[Name of Subsidiary corporation], by [name of authorized representative title], Partner of [name of TEFRA entity].

For consolidated return years beginning on or after June 28, 2002, however, the closing agreement should include the name and TIN for the subsidiary (as the party to the agreement) and only the subsidiary's signature is required. The parent should also sign, as only the parent can bind the other members of the group. The signature block would appear as follows:

[Name of Subsidiary corporation], by [name of authorized representative title], Partner of [name of TEFRA entity].

The parent should also sign, as only the parent can bind the other members of the group.

The signature block would appear as follows:
[Name of Parent corporation], by [name of authorized representative title], on behalf of each of its subsidiaries, including [subsidiary company], Partner of [name of TEFRA entity].

- e. A partnership, estate, trust, S corporation, nominee, or other similar person that holds an interest in the partnership is considered a pass-through partner. A person holding an interest in a partnership through one or more pass-through partners is considered an indirect partner. An unidentified indirect partner is one who has not identified himself to the IRS in accordance with the rules of IRC 6223(c)(3) and section 301.6223(c)-1T of the Regulations on Procedure and Administration. If a pass-through partner enters into a closing agreement with respect to partnership items, that agreement binds all unidentified indirect partners holding an interest in that partnership through the pass-through partner. The pass-through partner cannot enter into any agreement to bind indirect partners for affected items other than the partnership-level determination of penalties for partnership tax years ending after August 5, 1997.

(7) The determination section of the closing agreement must include two waiver language paragraphs.

- a. For partnership tax years ending before August 6, 1997, if the agreement is not a partial agreement and relates solely to partnership items, use this language:

“The undersigned taxpayers, in accordance with IRC 6224(b) and IRC 6213(d), offer to waive the restrictions provided in IRCs 6225(a) and 6213(a) and consent to the assessment and collection of any deficiency attributable to partnership and affected items (plus any interest as provided by law).”

“This agreement becomes effective upon execution by the Commissioner of Internal Revenue or his delegate. The one-year extension of the IRC 6501 period of limitations on assessment pursuant to IRC 6229(f) will not begin to run until the Commissioner’s representative signs this settlement agreement on the Commissioner’s behalf.”

- b. For partnership tax years ending before August 6, 1997, if the agreement is not a partial agreement and relates to both partnership and affected items, use this language:

“The undersigned taxpayers, in accordance with IRCs 6224(b) and 6213(d), offer to waive the restrictions provided in IRCs 6225(a) and 6213(a) and consent to the assessment and collection of any deficiency attributable to partnership and affected items (plus any interest provided by law).”

“This agreement becomes effective upon execution by the Commissioner of Internal Revenue or his delegate. The one-year extension of the IRC 6501 period of limitations on assessment pursuant to IRC 6229(f) will not begin to run until the Commissioner’s representative signs the settlement agreement on the Commissioner’s behalf.”

- c. For partnership tax years ending after August 5, 1997, if the agreement is not a partial agreement and relates solely to partnership items with or without partnership level determinations as to penalties, use this language:

“The undersigned taxpayers, in accordance with IRCs 6224(b) and 6213(d), offer to waive the restrictions provided in IRCs 6225(a) and 6213(a) and consent, to the assessment and collection of any deficiency attributable to partnership items part-

nership level determinations as to penalties and additions to tax, and additional amounts that relate to adjustments to partnership items (plus any interest provided by law)."

"This agreement becomes effective upon execution by the Commissioner of Internal Revenue or his delegate. The one-year extension of the IRC 6501 period of limitations on assessment pursuant to IRC 6229(f) will not begin to run until the Commissioner's representative signs this settlement agreement on the Commissioner's behalf."

- d. For partnership tax years ending after August 5, 1997, if the agreement is not a partial agreement and relates to both partnership items with or without partnership-level determinations as to penalties and other affected items, use this language:

"The undersigned taxpayers, in accordance with IRCs 6224(b) and 6213(d), offer to waive the restrictions provided IRCs 6225(a) and 6213(a) and consent to the assessment and collection of any deficiency attributable to partnership items, partner level determinations and, penalties and additions to tax that relate to adjustments to partnership items (plus interest provided by law)."

"This agreement becomes effective upon execution by the Commissioner of Internal Revenue or his delegate. The one-year extension of the IRC 6501 period of limitations on assessment pursuant to IRC 6229(f) will not begin to run until the Commissioner's representative signs this settlement agreement on the Commissioner's behalf."

- e. In the case of a partial agreement, the second of the two waiver paragraphs should be changed to the following:

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

8.13.1.3.6.1
(05-25-2018)
**Investors in TEFRA
Partnerships**

- (1) If non-TEFRA issues are being settled and the taxpayer is an investor in an open TEFRA partnership proceeding, the waiver (Form 870 or Form 870-AD) and the closing agreement (Form 866 or Form 906) should include language stating that any change to the deficiency caused by the resolution of the TEFRA proceeding can be assessed at the conclusion of the TEFRA proceeding as a computational adjustment. See IRM Exhibit 8.19.6-6, Munro Language for Forms 870 or 870-AD for Agreed Non-Docketed Cases for approved language.

8.13.1.3.6.2
(11-09-2007)
**Electing Large
Partnerships**

- (1) Because of the unique nature of the entity and the lack of regulations, contact the Associate Area Counsel for guidance in the construction of a closing agreement for Electing Large Partnerships.

8.13.1.3.6.3
(05-25-2018)

Non-TEFRA Sub-chapter S Corporations

- (1) As a part of the Small Business Job Protection Act, Public Law 104-188, enacted August 20, 1996, the TEFRA provisions applicable to S corporations were repealed. This is effective for all S corporations with taxable years beginning after December 31, 1996. (In general, S corporations with a return due date on or after January 30, 1987, with more than 5 shareholders were subject to TEFRA procedures prior to the repeal.)
- (2) Closing agreements relating to S corporations should be entered into only with the individual shareholders and not the S corporation. This is because a closing agreement with the S corporation will not bind the shareholders.

Note: A closing agreement with a non-TEFRA S Corporation may be sought to encourage the S corporation to file subsequent year returns. This agreement will not bind the individual shareholders, so separate closing agreements should be sought from each shareholder.

- (3) Dissolved corporations are discussed above. See IRM 8.13.1.3.5.5.

8.13.1.3.6.4
(05-25-2018)

TEFRA Sub-chapter S Corporations

- (1) This section applies only to certain S corporations with taxable years beginning before January 1, 1997.
- (2) If the S corporation being considered falls under TEFRA procedures, then a closing agreement constitutes a settlement agreement under IRC 6224(c) that is made applicable by former IRC 6244.
- (3) A closing agreement entered into with respect to a TEFRA S corporation should identify both the shareholder and the S corporation by name, address, and taxpayer identification number (with the shareholder as the party to the agreement and the S corporation identified in one of the introductory clauses). An agreement should be signed by each shareholder that is to be bound since all shareholders are "notice" shareholders under former IRC 6343.
- (4) The procedures in this section are applicable to TEFRA S corporations. Settlement agreements as to S corporation items are made on Form 870-S or Form 870-S(AD) .

8.13.1.3.7
(05-25-2018)

Limited Liability Companies

- (1) A limited liability company (LLC) is a legal entity created under state law or under the laws of another country. The entity is separate from its owners. It owns property, incurs debts, enters into contracts, and can sue or can be sued. Owners are called members. Members are shielded from the entity's liabilities. All 50 states and the District of Columbia allow the formation of LLCs. Some states allow an LLC to be owned by only one person (single member LLCs).
- (2) LLCs will file tax returns based under their classification under Treas. Reg. 301.7701-1, Treas. Reg. 301.7701-2, and Treas. Reg. 301.7701-3. For tax purposes, the LLC may be classified as a partnership, a corporation, or a disregarded entity.
- (3) An LLC classified as a partnership is subject to the TEFRA partnership rules and the exception for small partnerships. Also see the following:
 - Non-TEFRA partnerships. See IRM 8.13.1.3.5.6.
 - Electing Large Partnerships. See IRM 8.13.1.3.6.2.
 - TEFRA partnerships. See IRM 8.13.1.3.6

- (4) An LLC classified as a corporation can make an election under Sub-chapter S, if it otherwise meets the criteria for making the election.
- (5) A disregarded entity is a single member LLC which has not elected to be classified as a corporation. It is called a disregarded entity because the owner reports the activity of the LLC as if the entity did not exist.
 - a. If the single member is a corporation, LLC transactions are recorded as if they were a branch or division of the owner.
 - b. If the single member is a natural person, LLC transactions are recorded on the owner's Form 1040. For example, business activity of the LLC is reported on Schedule C and the LLC rental income and expenses are reported on Schedule E.
 - c. If the single member is a trust, LLC transactions are recorded on the Trust's tax return.
- (6) The WHEREAS section of the closing agreement should state the LLC's tax classification.

Example: "WHEREAS, ABC LLC is a limited liability company that is classified as a partnership", or "WHEREAS, DEF LLC is a limited liability company that is classified as a disregarded entity."

- (7) If the LLC is a disregarded entity, both the name and identification number of the LLC and the name and identification number of the owner should be shown as the taxpayer.
- (8) If an agreement is made with a member of an LLC that is classified as a partnership, the WHEREAS section of the closing agreement should so state.

Example: " WHEREAS, (Taxpayer Name), is a member of ABC LLC, that is classified as a partnership."

8.13.1.3.8
(05-25-2018)
Insolvent Taxpayers

- (1) The file should contain a certificate from the court having jurisdiction over the insolvent taxpayer showing the appointment and qualifications of the trustee or receiver, and that such authority has not been terminated. In a case pending before a district court of the United States, an authenticated copy of the order approving the bond of the trustee or receiver may meet this requirement.
 - a. If a court has appointed an attorney to act for a trustee or receiver, a copy of the court order should be secured.
 - b. If no attorney has been appointed, the trustee or receiver should execute the agreement and the aforementioned evidence should be secured showing the appointment of the trustee or receiver.
- (2) If agreements are entered into in bankruptcy cases, extreme care should be taken to ascertain that the person executing the agreement has the specific authority to do so. Evidence of authority under these circumstances includes court authorization to enter into the agreement, or court approval of the proposed agreement. Care should also be taken to ensure that a closing agreement entered into in a bankruptcy case covers the correct taxable periods for the proper taxable entities. See IRC 1398.

8.13.1.3.9
(05-25-2018)
**Guardians and Other
Fiduciaries Appointed
By Court of Record**

- (1) The agreement should be executed by the fiduciary in the name of, and on behalf of, the person or entity to whom he/she stands in a fiduciary relationship. The file should contain a copy of the court certificate or court order showing that such fiduciary has been appointed and that the appointment has not been terminated, as well as the notice required by IRC 6903 (usually Form 56, *Notice Concerning Fiduciary Relationship*).

8.13.1.3.9.1
(11-09-2007)
Minors

- (1) There is no general Federal statute dealing with the legal competency of minors. The Code does not define a minor or suggest any reference for the determination of legal competency or capacity to execute documents. Generally, closing agreements with minors should be signed for them by the legal guardian of their property.
- (2) In states where the parent is not the guardian of the minor's property, it will be necessary to secure an appointment of a guardian before a closing agreement with the minor can be entered into. Ordinarily, the law of the domicile of the minor should be referred to. If necessary, a legal opinion can be requested from the Associate Area Counsel.

8.13.1.3.10
(05-25-2018)
Effect of Bylaws

- (1) Receiving officers do not need to inquire into corporate charters (or equivalent) and bylaws to determine matters with respect to signing authority. For example, the bylaws may require that two officers sign documents equivalent to closing agreements, such as contracts. Treas. Reg. 1.6062-1(c) provides "An individual's signature on a return, statement, or other document made by or for a corporation shall be prima facie evidence that such individual is authorized to sign such return, statement or other document." However, prima facie evidence is rebuttable.
- (2) If the receiving officer is on notice that the agreement has not been signed in accordance with the charter or bylaws (ordinarily such authority would be covered in the bylaws), the receiving officer should bring this matter to the attention of the taxpayer or the representative and request compliance with the requirements of the corporation.
- (3) Unless unusual circumstances indicate that the signature is not authentic, the receiving officer will generally rely on the provisions of IRC 6064 that, "The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him."

8.13.1.3.11
(05-25-2018)
**Effect of State
Law/Corporate Seals**

- (1) Receiving officers need not concern themselves with the provisions of state laws as to the signing of documents and the imprinting of corporate seals thereon. Reliance will generally be placed on the provisions of IRC 6061, IRC 6062, IRC 6064, IRC 6065 and the regulations thereunder. The corporate seal is not required on closing agreements.

8.13.1.3.12
(05-25-2018)
**Multiple Party
Agreements**

- (1) If the number of taxpayer parties to the agreement is large, obtaining the signature of each party on all copies of the agreement could be impracticable or inconvenient. Two alternative methods of signing are available:
 - a. The parties may, by power of attorney, authorize one or a small number of individuals to sign the agreement on their behalf.

- b. Alternatively, each party or their respective representatives may separately sign three copies of the agreement. If this alternative is used, each agreement should contain the following statement immediately preceding the signature lines:

“This agreement is being executed in multiple counterparts for ease of execution.”

- (2) The representative for multiple parties may agree to distribute all taxpayer copies or to make copies for distribution to the taxpayers. The number of required copies is discussed in a later section. See IRM 8.13.1.3.15.
- (3) When entering into multiple party closing agreements, it is necessary to ensure that no unauthorized disclosures of taxpayer information are made. See IRC 6103. If disclosure of taxpayer information between the parties is not expressly authorized by IRC 6103, then written authorization to disclose such information should be secured from the appropriate party or parties. If written authorization cannot be obtained, separate closing agreements should be entered into with each taxpayer.

8.13.1.3.13
(11-09-2007)
**Execution for the
Commissioner**

- (1) A Service official executing a closing agreement pursuant to authority delegated by the Commissioner of Internal Revenue should sign following the words “Commissioner of Internal Revenue” and show (by writing, printing, typing, or stamping) the signer’s title and the date signed.
- (2) Individuals designated in writing to act in the capacity of such authorized officials may sign closing agreements in their own names.

8.13.1.3.14
(05-25-2018)
**Receiving and
Reviewing Officers’
Recommendations**

- (1) The reverse side of each copy of the closing agreement retained by the Service should reflect the dated signatures of the receiving and reviewing officers recommending the agreement for acceptance and approval. (The receiving and reviewing officers may sign the reverse side of one agreement and make copies to attach to the other retained agreements.) If forms are not used, the recommendation should be reflected in the same manner as shown on the form.
- (2) If the receiving officer has neglected to sign and is no longer available, the supervisor or another officer familiar with the case should sign the agreement. The same official should not sign as receiving officer and reviewing officer. Similarly, the same official should not sign as the reviewing officer and execute the agreement for the Commissioner. Operating Division field personnel should consult local procedures.
- (3) The initiating attorney should sign as the receiving office for agreements received by Counsel. A Counsel manager should initial the reviewing officer block before forwarding the agreement to Appeals or the local Compliance officer for review and acceptance.

8.13.1.3.15
(05-25-2018)
**Number of Copies —
One Taxpayer or Joint
Return Agreements**

- (1) When only one taxpayer (or a husband and wife filing a joint return) is a party to a closing agreement, three original copies of the agreement will be prepared and executed. In the joint return situation, the taxpayers may request that each spouse be furnished an executed original or a copy of the agreement. Information pertaining to the additional copies needed for follow-up purposes is discussed later. See IRM 8.13.1.5.5

- (2) Closing agreements may be prepared using Form 866 or Form 906 which may be computer generated. Regardless of how the closing agreement is prepared, once it is finalized, three copies of the closing agreement should be prepared for execution by both the taxpayer and the approving official. Where multiple parties are involved, additional executed copies may be necessary if all parties desire copies bearing original signatures. Two additional copies of the agreement will be required for each additional party. One of the additional copies will be furnished to the additional party (or representative), and the other will be attached to the additional party's return. See IRM 8.13.1.3.17.2 This subsection covers joint returns. Alternative methods of executing closing agreements where the execution of numerous copies by all parties becomes impracticable or inconvenient are previously covered in Multiple Party Agreements. See IRM 8.13.1.3.12 If desired, copies may be certified under IRC 7622. Distribute executed copies of the closing agreement in accordance with the instructions in the subsequent subsection. See IRM 8.13.1.6.2.3.

8.13.1.3.16
(05-25-2018)
**Attachments to
Agreements**

- (1) The matters determined in a closing agreement should be contained in the body of an agreement, rather than in an attachment. Attachments may cause problems if they become unattached, or if inadvertent substitutions are made, or if they conflict with, or render ambiguous, the determinations recited in the body of the agreement. Attachments are advantageous for reflecting voluminous data, generally as part of the premises underlying the determinations.
- (2) When used, attachments should be clearly identified in the appropriate portion of the agreement. The top of each page of the attachment should include a statement that it is an attachment to a closing agreement with the name of the taxpayer. For example, where the pages of the attachment are already numbered, each page of the attachment may be labeled "Attachment A of Closing Agreement With XYZ Corporation, Page 2 of 4," etc. If there are several parties to the agreement, the name of the first named party in the agreement plus "et al" may be used to identify pages of the attachment.

8.13.1.3.17
(05-25-2018)
Erasures and Alterations

- (1) Significant matters should be set forth in the closing agreement in original print. . Avoid pen and ink changes to significant matters. If a pen and ink change is made with respect to a nonmaterial aspect of an agreement, prior to execution, the change should be initialed and dated by all parties to the agreement.
- (2) After receipt of a signed closing agreement from a taxpayer, and before the agreement is signed for the Commissioner, Service personnel should not make any changes or additions to the agreement above the signature lines, without obtaining the written agreement of the taxpayer. If a correction is necessary after the closing agreement has been executed by the taxpayer, the correction may be handwritten, and all parties to the agreement should initial and date the change. Service personnel may correct printed titles of Service officials, where appropriate, after the agreement has been executed by the taxpayer.
- (3) Nonmaterial typographical errors should not be corrected, whether noticed before or after execution of the agreement.
- (4) Any necessary date stamping or notations should be made on the reverse side of the agreement.

8.13.1.3.17.1
(05-25-2018)
Required Signatories

- (1) All parties signing the closing agreement should be shown as parties at the beginning of the agreement. Conversely, the agreement should be signed by or for all persons (entities) identified as parties at the beginning of the agreement. An agreement cannot determine matters with respect to a person who is not a party to, nor a signatory of, the agreement. Such other persons may, of course, be bound by a separate agreement. See IRM 8.13.1.8.5. This covers information with respect to unidentifiable successors in interest.
- (2) The receiving officer should consider whether it is necessary to secure a closing agreement from a related party in order to protect the Government's interest. See IRM 8.13.1.3.5.1 This subsection provides an example where consolidated returns are involved.

8.13.1.3.17.2
(05-25-2018)
Joint Return

- (1) An agreement as to liability for a year which a joint income tax return was filed must be signed by both spouses, if it is intended to bind both spouses.
 - a. One spouse may sign as agent for the other, if a copy of a power of attorney or other document specifically authorizing the spouse to act in that capacity has been submitted. A copy of the power of attorney or other authorization should be attached to the agreement.
 - b. An agreement may be entered into with one spouse for a joint return year, where appropriate. An agreement signed by one spouse (who is not authorized to act as an agent for the other spouse) will not bind the non-signing spouse.

Note: In community property states, when entering into a closing agreement with only one spouse, special care must be taken to ensure that the community aspects are properly resolved.

- (2) Where a divorce has occurred, or one spouse has died, subsequent to the beginning of the first taxable period covered by the agreement, the identity of the parties to the agreement, and the return(s) that may be affected by the agreement, should be carefully determined.

8.13.1.3.17.3
(05-25-2018)
Conditions

- (1) Conditions that would preclude a closing agreement from taking effect or remaining in effect should be avoided.

Note: It is permissible to include a provision in the body of an agreement that sets forth the treatment of an item upon the occurrence of a future event, for example, the subsequent sale of a depreciable asset.

- (2) Occasionally a taxpayer will submit a closing agreement with a letter stating that the submission of the agreement is conditioned upon some other action. Ordinarily the agreement should not be accepted unless a letter is received withdrawing the conditions. The condition that another closing agreement from a related taxpayer be accepted simultaneously would be an exception if the other agreement is submitted and concurrently determined to be acceptable. See IRM 8.13.1.4.10. This subsection covers information concerning the requirement of finality.

8.13.1.3.17.4
(11-09-2007)

**Penalties and Additions
to Tax — Preassessment**

- (1) If the agreement contains a determination of tax liability, the agreement should also show the liability for applicable penalties. The amount of each type of penalty for each taxable period should be shown on a separate line of the agreement. Exhibit 8.13.1-2. If the taxpayer requests that the agreement determine the inapplicability of certain specific penalties (perhaps because they were at issue during consideration of the case), the agreement may reflect the inapplicability of such penalties. Exhibit 8.13.1-2. The agreement should not contain a general statement that there are no penalties applicable to a given taxable period or applicable to a specified type of tax for a given taxable period.
- (2) The additions to tax for nonpayment under IRC 6651 and bad checks under IRC 6657 should not be waived in advance if there is an unpaid liability. As a further precaution, the agreement should make it clear that the penalty shown is applicable to the particular type of tax shown. To illustrate, the negligence penalty (addition to tax) with respect to an income tax liability should not be shown in such manner as to preclude later assertion of a negligence penalty with respect to another type of tax liability. Exhibit 8.13.1-2. Ordinarily, Exhibit 8.13.1-2 should be used in preference to Exhibit E of Rev. Proc. 68-16, 1968-1, C.B. 770.

8.13.1.3.17.5
(05-25-2018)

**Penalties and Additions
to Tax —
Postassessment**

- (1) Under the penalty appeal procedure detailed in IRM 8.11.1, *Penalties Worked in Appeals*, *Return Related Penalties in Appeals*, and IRM 20.1.1, *Introduction and Penalty Relief*, taxpayers are afforded postassessment appeals rights on penalties (including additions to tax and additional amounts) that have been asserted against them. While closing agreements are generally not necessary on postassessment penalty appeal cases, under some circumstances a closing agreement may be appropriate. For example it may be appropriate to enter into a closing agreement with a taxpayer who owes a large dollar penalty based on a tax liability subject to increase by deficiency proceedings.
- (2) It is not necessary to enter into a closing agreement if the penalty is sustained in full or abated in full.

8.13.1.3.18
(05-25-2018)

Interest and Waivers

- (1) Unless there is some issue with respect to interest liability, a closing agreement should neither determine nor address interest liability or make any provision therefor. However, see information about barred years. See IRM 8.13.1.8.1. Interest legally due should not be waived in a closing agreement. Interest applicable to tax liabilities determined by a closing agreement must be assessed and collected pursuant to IRC 6201, IRC 6301 and Regulations 26 CFR section 301.7121-1(d)(2) of the Regulations on Procedure and Administration. The latter provides: "Collection, credit or refund. Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law."
- (2) The provisions of IRC 6601(c), relating to the suspension of interest for a period beginning 30 days after a waiver of restrictions under IRC 6213(d) is received or accepted where an Appeals waiver such as Form 870-AD, are not applicable unless such waiver:
 - a. is received (or accepted where acceptance is necessary) before the closing agreement is approved; and
 - b. is not conditioned upon execution of the closing agreement. See IRM 8.13.1.5.3 and IRM 8.13.1.6.2.1.

8.13.1.3.18.1
(11-09-2007)

Interest Abatement

- (1) A closing agreement may be used to determine with finality the period of time, and the amount of tax, with respect to which interest should be abated.

8.13.1.3.19
(05-25-2018)

Transferee Cases

- (1) Closing agreements determining transferee liability are ordinarily entered into as combined agreements. Exhibit 8.13.1-7. The combined agreement should set forth the amount of the transferee's liability and make specific determinations as to the transferee's status as a transferee and the extent of the transferee's liability (e.g., the value of the property transferred to the transferee).
- (2) A determination of transferee liability should be set forth in a separate closing agreement and not combined with determinations of the tax liability of the transferor or other tax liabilities of the transferee. In a closing agreement with a transferee, the recital of the name of the taxpayer entering into the agreement should indicate that the taxpayer is acting in the capacity of a transferee (e.g., John Doe, as Transferee of the Estate of Mary Roe). The applicable taxable period (or date of death, etc.) and type of tax (citing Code chapters and subchapter), penalty and interest of the transferor should be specified in the agreement, as well as the amount of transferee liability agreed to with respect to such transferor liability. See IRM 8.13.1.8.5. See this subsection for information on successors in interest.
- (3) A closing agreement with a transferee should be signed in a manner equivalent to the following:

Transferee Signature Block:

John Doe (signature)

Transferee of Richard Roe

or

John Doe Corporation

Transferee of Richard Roe Corporation

by: John Doe (signature)

President, John Doe Corporation

8.13.1.4
(05-25-2018)

Matters of Content

- (1) IRC 7121 provides that closing agreements may not be reopened, or modified by any officer, employee, or agent of the United States in the absence of fraud, malfeasance or misrepresentation of a material fact. Closing Agreements cannot be annulled, modified, set aside, or disregarded in any suit, action, or proceeding unless any of these exceptions applies. IRM 8.13.1.4.1 Because of the finality of these agreements, it is extremely important that they be carefully drafted.
- (2) The instructions in this section are intended to cover frequently encountered problems concerning the content of closing agreements.
- (3) Determinations should be stated completely and clearly. Although backup material and testimony may be used to explain the intent of the agreement, the

agreement itself must be the primary basis for future action. Every non-essential word used in an agreement is a potential source of ambiguity or internal inconsistency in the document. The agreement language should be as brief and concise as possible. Reference to specific Code sections should be made when applicable.

- (4) All parties and years must be clearly identified, and all matters explained in sufficient detail to eliminate any ambiguity. Descriptive terms should use statutory language where available and specific code sections should be cited when they apply. The agreement should state the specific treatment (capital, ordinary, etc.) that an amount to be included in income will receive.

8.13.1.4.1
(11-09-2007)
**Matters Not Properly
Determinable**

- (1) Determinations should not attempt to settle matters for future years where correct tax treatment will depend on events occurring after the date of the agreement, such as the application of capital gains treatment to future sales of IRC 1231 assets (there may be a loss) or treatment of farm losses for future years (practice may change).
- (2) Although closing agreements may reflect corrected taxable income and tax liability for specified taxable periods, interpretive difficulties can occur if a deficiency or over-assessment is determined. To prevent interpretation problems, a determination of a tax deficiency or over-assessment should be avoided in closing agreements.

8.13.1.4.2
(05-25-2018)
Cases in Litigation

- (1) A closing agreement should not determine tax liability where this determination is in the jurisdiction of an appropriate court (unless authorized by court order), as in a bankruptcy case). Closing agreements determining specific matters arising in years being litigated affecting years not before the court may be appropriate. Such a closing agreement will not be executed by or for the Commissioner until an agreed decision is entered or a decision in a tried case becomes final. Paragraphs (8) and (9) discuss that the agreement not be executed until certain events occur.

8.13.1.4.3
(05-25-2018)
**Scope of Coverage —
Recurring Matter**

- (1) If unknown future developments will not change the tax treatment of items arising from a completed transaction (recurring matters), the agreement should provide for this treatment (stating amounts where determined) in all applicable years. However, there are laws or rule of law exceptions in the Internal Revenue Code overriding the agreement. See IRM 8.13.1.7.1.2.

8.13.1.4.4
(05-25-2018)
Joint Committee Cases

- (1) In cases involving Joint Committee review, closing agreements should not be executed on behalf of the government until a report, in accordance with IRC 6405, has been submitted to the Joint Committee on Taxation (JCT) and the views of the JCT have been considered. See IRM 8.13.1.5.6.1

8.13.1.4.5
(05-25-2018)
Related Cases and Years

- (1) The determination of a specific matter may have a direct or indirect impact on other years or related cases. This impact, particularly where another office may have jurisdiction, should be carefully considered. Coordination with other offices on related cases or years should be initiated at the earliest possible stage in the processing of closing agreements.
- (2) The closing agreement portion of the report or Appeals Case Memorandum should describe the extent and result of such coordination. See IRM 8.13.1.5 and IRM 8.13.1.6.

8.13.1.4.6
(05-25-2018)
**Agreement Should Not
Depend on Taxpayer's
Promise**

- (1) The agreement should not depend upon executory provisions, i.e., that the taxpayer agrees to do something. To avoid the difficulties that may occur if the taxpayer does not do what is promised, the agreement should state the tax treatment to be given the transaction or amount. Do not include a statement that "the taxpayer shall report" but rather use statements such as "such amount is includible in the taxpayer's taxable income in the year of receipt."

Example: Do not state "Taxpayer will report gain of \$1,000 on an above described sale of real estate as ordinary income in the tax return filed for the year ending December 31, 1995." Instead, state "Gain of \$1,000 on the above-described sale of real estate is includible in taxpayer gross income as ordinary income in the taxable year ending December 31, 1995."

8.13.1.4.7
(05-25-2018)
**Provisions for
Reasonable
Eventualities**

- (1) A closing agreement should provide adequate coverage for reasonably foreseeable developments. For example, an agreement signed by husband and wife determining taxable treatment of a specific matter as it impacts future years should be stated so as to avoid interpretive problems if there is a divorce or separate returns are filed for whatever reasons.
- (2) It is preferable to determine the taxable consequences of an event that has not yet occurred by reference to the event rather than to the specific taxpayer (e.g., by stating that an item is includible in income in the year of receipt).
- (3) It is not necessary or desirable to attempt to foresee all possible eventualities relating to the matter being settled. Many eventualities are better left to the general application of the Internal Revenue Code rather than providing for specific tax treatment in a closing agreement.

8.13.1.4.7.1
(05-25-2018)
**Limitations of Indefinite
Future Effect**

- (1) A closing agreement should not be given indefinite future effect.
- (2) A method of accounting or accounting practice should not be made applicable to all future periods. Changed conditions may make the method or practice completely unsuitable for use in the taxpayer's future taxable periods. For example, a determination as to whether a farm is a business or a hobby for years after the closing agreement should not be made because the facts may change from year to year.

8.13.1.4.7.2
(05-25-2018)
Debt Versus Equity

- (1) Closing agreements are useful in resolving debt versus equity issues. A payment should be identified as debt, equity, or some of each, as of a specific date (ordinarily at the end of the latest examined year) that is on or before the date of the closing agreement. This action should help to prevent later disputes on the nature of payments (e.g., interest, dividends or repayments of principal) related to the original transfer. However, a closing agreement should not determine the taxable treatment in future years of past transfers or future payments relating to them. Taxpayer's intent is a key distinction between a stockholder and a creditor, and intentions can change. Due to this reason, economic and business conditions, and tax law changes, defining transfers as of a current or past date is preferable and should be followed. Exhibit 8.13.1-20.

8.13.1.4.7.3
(11-09-2007)

**Advances Between
Related Entities**

- (1) Although the Service will normally treat advances between related entities that have been involved in IRC 482 allocations (see Rev. Rul. 67-79, 1967-1 C.B. 117) in a consistent fashion, a taxpayer may request additional assurance of such treatment. A closing agreement can define the nature of the advance as of a date on or before the closing agreement date. This date should be at the end of the most recent taxable year for which the Service possesses adequate information to be certain the nature of the advance has not changed. The closing agreement should not attempt to define or specify the nature of the advance for years after the agreement. Once the advance has been defined by means of a closing agreement, only a significant factual change concerning the advance (or occurrence of grounds for setting aside the agreement) would justify any change in treatment for years ending after the agreement date.

8.13.1.4.8
(05-25-2018)

**Reclassification of
Transaction or Entity**

- (1) If the agreement reclassifies a transaction or taxable entity (for example, corporate returns were filed but the business should be treated as a partnership), look for consequential changes which need to be covered. In this example, the agreement should specify appropriate treatment for pension plan contributions made after the effective date of the change in status and for benefits to be received pursuant to the plan by the "partners". The validity of various elections, the basis of "corporate" assets deemed owned by the "partners", and treatment of distributions received by the "partners" (e.g., passive versus active or the timing of particular tax effects on the "partner"), all should be determined.

8.13.1.4.9
(05-25-2018)

**Inconsistencies and
Irrelevances**

- (1) Inconsistencies between parties or years should be avoided or adequately justified. This requirement covers the language used and the conclusions reached. For example, a transfer of funds should not be referred to as a gift in one portion of the agreement but determined to be includible in taxable income in another. Payments in different years to the same entity or to different entities in the same taxable year should receive the same treatment. Where different treatment is justified by circumstances, it must be thoroughly explained in the transmittal letter, report, workpapers, or Appeals Case Memorandum.
- (2) A closing agreement should not include matters of discussions, contentions, or other material unless needed for the determination. Any relevant additional information should be placed in the transmittal letter, report, workpapers, memorandum for reviewers or Appeals Case Memorandum.

8.13.1.4.10
(05-25-2018)

Finality Required

- (1) Closing agreements must not contain provisions which would retroactively rescind or cancel the agreement. A retroactive cancellation provision would violate the congressional intention that closing agreements dispose of matters with finality.
- (2) Closing agreements may determine what the taxable treatment will be until a specified event occurs (or after it fails to occur within a specified period or by a specified date). See previous discussion when one agreement is contingent upon acceptance of another. See IRM 8.13.1.3.17.3
- (3) A closing agreement should not include a promise or requirement to renegotiate the matter(s) resolved by the agreement. An agreement that certain taxable treatment will apply until renegotiated is not final, since it would permit modification of the established treatment at any time. See IRM 8.13.1.7. This is a general discussion of finality and possible methods for resolving interpretive problems in agreements.

8.13.1.5
(05-25-2018)
**Authority — Closing
Agreements**

- (1) As explained in Delegation Order 8-3, *Closing Agreements Concerning Internal Revenue Tax Liability* (as revised), Director, International; Compliance Operating Division officials and other field officials; Area Counsel; Service Center Directors; Directors, Appeals Operating Units; Appeals Area Directors and Appeals Team Managers, and Appeals Team Case Leaders with respect to team cases, have authority to execute closing agreements in cases under their jurisdiction. Most closing agreements originating in Compliance cases will be executed by the Compliance Operating Division official (or designee) having jurisdiction. See IRM 8.13.1.5.6.1 This covers information for Joint Committee case closing agreement procedures. See IRM 8.13.1.5
- (2) Compliance Operating Division officials sign agreements to determine either tax liability or specific matters related to the years under their jurisdiction and affecting other taxable periods. Agreements are used when it is desirable to protect the interests of the taxpayer or the government or both in disposing of an agreed upon tax matter before the Service. However, see limitations described in previous subsection. See IRM 8.13.1.2.4.1.
 - a. If disposition of a case requires an agreement with a related taxpayer, the Compliance Operating Division official may make the agreement. In such a case it will be necessary to determine if the related taxpayer has a case pending that might be affected and whether or not the office having jurisdiction over that case has any objection to securing the closing agreement as planned. The office seeking agreement should not disregard the other office's views if the pending case would be adversely affected.
 - b. If there is no pending case, the Compliance field office having jurisdiction over the related taxpayer in the event of examination should be contacted and given an opportunity to comment. If the results of these checks and contacts do not conflict with the proposed agreement, the office seeking the agreement should proceed.
- (3) With respect to the authority to sign the following types of closing agreements, see the sections cited:
 - a. Agreements arising out of and pertaining to taxable periods being litigated by the Department of Justice. See IRM 8.13.1.6.2.5.
 - b. Agreements as to prospective transactions. See IRM 8.13.1.9.
 - c. Agreements giving effect to competent authority determinations. IRM 8.13.1.8.1.
 - d. Joint Committee case closing procedures at IRM 8.7.9, *Joint Committee (JC) Case Procedures*. See IRM 8.13.1.5.6.1.
- (4) Persons in an acting capacity (pursuant to written authorization) may sign closing agreements in their own names as, e.g., Acting Title.

8.13.1.5.1
(05-25-2018)
Responsibilities

- (1) Examining officers and reviewers should have sufficient information to permit a reasonable justification for any recommendation concerning acceptance of a closing agreement, whether it is an agreement determining tax liability (or net income or net operating loss) (Form 866 or equivalent), or a specific matters closing agreement (Form 906).
 - a. If the taxpayer is under examination for the years in question, a "quality audit," as defined in IRM 4.8.3, *Technical Services, Examination Quality Measurement Staff (EQMS)*, is required.

- b. If the taxpayer is not under examination, an equivalent level of certainty should be reached by whatever means prove necessary.
- (2) It is the responsibility of those preparing, receiving, and reviewing closing agreements to ensure that:
 - a. The agreements clearly express the intended disposition of the matters determined (finality of a closing agreement is meaningless if it has more than one reasonable interpretation. See IRM 8.13.1.4
 - b. The agreements are received and signed so as to become binding upon the parties after execution for the Commissioner. The agreement may be voided or otherwise ineffective if improperly signed or if qualifying conditions not stated in the agreement can be shown to have been known to the Service. See IRM 8.13.1.3
 - c. The matters determined are suitable for determination by closing agreement (should not fix tax treatment for future years which depend upon circumstances not yet present, and should not have indefinite future effect).
 - d. Their recommendations are based on adequate record (described in IRM 8.13.1.5.1 and IRM 8.13.1.5.4

8.13.1.5.1.1
(05-25-2018)

Follow-Up Responsibility

- (1) The Compliance Operating Division official should establish sufficient controls to ensure that needed follow-up actions are taken with respect to all the terms of closing agreements affecting or relating to tax liability for later unexamined (or future) periods or related entities.
- (2) Procedures relating to Information Reports should be utilized.
- (3) Compliance should take whatever action is needed to facilitate follow-up.

8.13.1.5.2
(05-25-2018)

Preparation and Submission of Agreements

- (1) Preparation of the closing agreement will differ considerably among cases. The entire agreement may be prepared by the taxpayer or representative, or it may be entirely written by the examiner. In most situations, it is preferable that the parties collaborate in drafting the agreement. Where appropriate pattern agreements are available (see the exhibits) the draft should be based upon a pattern agreement that the Service has previously found to be acceptable, regardless of who prepares the draft. If one of the pattern agreements in Rev. Proc. 68-16, 1968-1, C.B. 770 is being used, the taxpayer should be aware of this fact. The pattern agreement should be carefully matched to the circumstances of the case before using it. Typically the pattern agreement must be modified to fit the case. Such modifications should be adequately discussed in the report. Lack of a closely matching pattern agreement does not preclude the use of a closing agreement in a particular situation. See IRM 8.13.1.3.4.3 This subsection covers stamping the agreements when submitted.

Note: See Exhibit 8.13.1-2. This exhibit should be used rather than Exhibit E of Rev. Proc. 68-16 where penalty determinations are involved.

- (2) Each Compliance Operating Division will designate reviewers responsible for closing agreements recommended for acceptance by the examiner. If the examiner needs assistance in preparing or processing a closing agreement, the designated reviewer should be contacted. To avoid having the taxpayer sign one or more revised agreements, the proposed agreement should be

submitted to the reviewer for approval before securing the taxpayer's signature, even where prepared by the taxpayer.

- (3) When a closing agreement is forwarded for approval, it will be accompanied by affected tax returns, a completed RAR, if available, the workpapers, and any necessary additional documentary evidence to support the agreement. This will specifically include comment by specialist examiners e.g., international or engineering agents if applicable, and advisory opinions of Associate Area Counsel, if available.

Note: If the agreement involves an Accelerated Issue Resolution (AIR) pursuant to Rev. Proc. 94-67, 1994-2 C.B. 800 the approval of Associate Area Counsel is necessary for execution of the proposed agreement. (See the Rev. Proc. for additional requirements and procedures.)

- (4) The examining officer (or team coordinator or team manager, as appropriate) must sign and date the reverse side of the Form 906 , *Closing Agreement on Final Determination Covering Specific Matters*, in the space provided, as Receiving Officer. The reviewer, or if absent a designated alternate or the reviewer's supervisor must also sign, as Reviewing Officer. Each copy of the closing agreement to be retained by the service should reflect these. However, only one original need be signed. Additional copies may be made and attached to the other retained forms. If computer generated or completely typed forms are used, a similar receiving and reviewing page must be included with each copy. The reviewer should also complete and attach to the file a checklist, for each agreement to assist in the review.
- (5) After approval by the reviewer, three (3) copies of the final agreement with an original signature of the taxpayer will be provided for execution by or for the Compliance Operating Division official. An additional copy of the executed agreement will be forwarded by the reviewer to the appropriate location if needed for a follow-up file. See IRM 8.13.1.5.4. This covers when the examination is not completed at the time of execution of the closing agreement.
- (6) Operating Division employees cooperate in securing closing agreements arising out of, and relating to, cases being litigated, when requested to do so by an appropriate office. When such an agreement affects years not being litigated, the Operating Division employee should prepare a memorandum detailing the effect of the agreement on those years. This memorandum, along with a copy of the proposed agreement, should be forwarded to the office that requested the agreement be secured. The final agreement must be signed by the appropriate officers on the reverse side of the form. A copy of the executed agreement should be returned to the requesting office.
- (7) Where the agreement will not be executed by the local office, a memorandum will accompany the proposed closing agreement, when it is returned to the requesting office for their action.

8.13.1.5.3
(05-25-2018)
**Waivers of Restrictions
on Assessment**

- (1) Liabilities determined by a Form 866 or combined agreement.
 - a. The liabilities determined in a Form 866 or combined agreement can be assessed without a separate waiver, as the closing agreement itself provides the necessary authority for making an assessment. See *Marathon Oil Co. v. United States*, 42 Fed. Cl. 267, 280 (1998), *aff'd per curiam*, 215 F.3d 1343 (Fed. Cir. 1999); *Manko v. Commissioner*, 126

T.C. No. 9, 12-13 (2006). Nevertheless, the Service ordinarily secures a Form 870 or another waiver of the restrictions on assessment and collection for taxable periods being determined by a Form 866 or a combined agreement if there is a deficiency or overassessment for those periods. If the Service receives (or accepts, in the case of certain waivers used by Appeals), an unrestricted waiver before the closing agreement is executed on behalf of the Commissioner, and if notice and demand for payment of any deficiency is not made within thirty days after the waiver becomes effective, a closing agreement should be processed to avoid the suspension of interest under § 6601(c) of the Code. Otherwise, interest cannot be imposed on the deficiency for the period beginning immediately after the thirtieth day and ending with the date of the notice and demand. IRC 6601(c). Interest cannot be imposed during this period on any interest with respect to the deficiency for any prior period. If the Service secures a waiver that will become effective when a closing agreement determining tax liability is executed on behalf of the Commissioner, the waiver has no effect on interest. See Rev. Rul. 57-305, 1957-2 C.B. 856. Form 3198, *Special Handling Notice for Examination Case Processing* (or equivalent form), should be used where the interest computation is affected by a closing agreement.

- (2) Specific issues determined by a Form 906 or combined agreement.
 - a. Specific issues determined by a Form 906 or a combined agreement, other than specific issues related to TEFRA partnerships. An assessment cannot be based upon a specific issue determined by a Form 906 or a combined agreement, unless the restrictions on assessment under IRC 6213 do not apply. See *Manko v. Commissioner*, 126 T.C. 195 No. 9 (2006). These restrictions do not apply to any amount paid as a tax or in respect of a tax. IRC 6213(b)(4). The restrictions on assessment also do not apply if they are specifically waived. IRC 6213(d). A waiver can be effected in one of two ways: on a separate waiver form, such as Form 870, or as one of the determinations in the closing agreement. If a waiver is included in a Form 906 or combined agreement, it should be explicit (e.g., "By signing this agreement, taxpayer consents to the assessment and collection of the liabilities for tax, interest, additions to tax, and penalties determined by or resulting from the determinations of this agreement, waiving all defenses against and restrictions on the assessment and collection of those liabilities.") As with a waiver executed on a Form 870 or other similar form, interest must be suspended under IRC 6601(c) on a waiver executed as part of a Form 906 or as part of a combined agreement, if notice and demand for payment of the underlying deficiency is not made within 30 days after the closing agreement is executed on behalf of the Commissioner.
 - b. Specific matters related to TEFRA partnerships - Forms 870-LT, 870-LT (AD), 870-PT, 870-PT (AD), 870-L, 870-L (AD), 870-P, and 870-P (AD) are typically used to determine specific matters related to TEFRA partnerships. Each of these forms contains an integrated waiver of the restrictions on assessment and collection of any partnership items determined in the agreement; Forms 870-LT, 870-LT (AD), 870-L, and 870-L (AD) also contain an integrated waiver of the restrictions on assessment for affected items. If a Form 906 or combined agreement is used to determine specific matters related to TEFRA partnerships, that form should either be accompanied by a separate waiver form or contain appropriate waiver language in a determination clause

within the agreement. See IRM 8.13.1.3.6 (e.g., “By signing this agreement, taxpayer consents to the assessment and collection of the liabilities for tax, interest, additions to tax, and penalties determined by or resulting from the determinations of this agreement, waiving all defenses against and restrictions on the assessment and collection of those liabilities.”) Although settled partnership items are not subject to deficiency procedures, certain items affected by the settled partnership items may be subject to deficiency procedures under IRC 6230(a)(2)(A)(i). An assessment cannot be based upon a specific matter determined by a Form 906 or a combined agreement, unless the restrictions on assessment under IRC 6213 and IRC 6225(a) do not apply. See *Manko v. Commissioner*, 126 T.C. 195 No. 9 (2006). For partnership tax years beginning after August 5, 1997, in the case of a settlement under IRC 6224(c) that results under IRC 6231(b)(1)(C) in the conversion of partnership items to non-partnership items, interest is suspended on the computational adjustment resulting from the settlement if notice and demand for payment of the adjustment is not made within 30 days after the settlement.

(3) Conditional waivers -

If the taxpayer desires that a waiver be effective only on approval of a closing agreement covering a tax liability, specific matters or both, that provision may be included on the waiver form.

8.13.1.5.4
(05-25-2018)
**Revenue Agent’s Report
(RAR)**

- (1) The Revenue Agent’s report (RAR) and workpapers should adequately discuss all significant factors relating to the closing agreement (including the source of and modifications to pattern agreements). This discussion should be prominently located in the file and should explain the reasons for obtaining the agreement (or denying it), and what the parties intend to accomplish by it. This requirement covers all closing agreements, whether specific matters, determinations of net income or net operating loss, or determining tax liability. Follow the quality audit standard cited in the prior subsection in all cases with closing agreements. See IRM 8.13.1.5.1.
- (2) The discussion should address the following points:
 - a. A complete discussion of all major adjustments in the report that relate to the closing agreement; and
 - b. A discussion of any major unchanged items that may affect the acceptability of the closing agreement.
- (3) A specific matter closing agreement may be secured even though Compliance action on the case cannot be completed for reasons not related to and not preventing acceptance of the closing agreement. In such cases, the returns, relevant files and workpapers, and explanation as to why the agreement should be approved prior to the case closure, and the RAR, if available, should be forwarded to the reviewer. Review and approval procedures covered in the prior subsection should be followed. See IRM 8.13.1.5.2.

8.13.1.5.5
(05-25-2018)
Returns and Files

- (1) Attach an original signed copy of the agreement to the latest return in the file affected by the agreement.
- (2) All returns in the case file covering years affected by the agreement will be marked as follows: “Agreement under section 7121, Internal Revenue Code of 1986, Year Affected _____. Closing agreement attached to return for taxable period ended _____.”

- (3) If follow-up action is required, send a copy of the executed agreement and other relevant material to the Planning and Special Programs Branch (PSP), or equivalent, for appropriate future action and retain a copy in the file of the executed agreement together with sufficient backup material for use of the agreement in subsequent examinations. If there is no RAR file, return the third original signature copy of the agreement to the reviewer for retention in the files.
 - a. If one or more filed returns of a party to which the agreement pertains are not in the file, the campus (or other local office if it is known the returns are there) should mark the returns as indicated in the subsection below.
 - b. If none of the filed affected returns of a party to the agreement are in the file, a transmittal should request that an executed original of the agreement, preferably, be attached to the latest filed affected return. (Attachment to the latest affected return in the file is acceptable if marking any later filed returns is requested.)
 - c. If one or more parties to the agreement are located in areas or territories not serviced by the service center of the approving area or territory, one copy of the executed closing agreement, supporting material, and RAR (if the principal case will be closed) for each party located in such other areas or territories will be forwarded to the appropriate service center (or directly to the areas or territories if the returns are known to be there), with similar instructions.
 - d. If, the agreement affects taxable periods for which returns are not yet due for any party to the agreement, follow-up procedures will be taken. See IRM 8.13.1.5.1.1.
 - e. Where follow-up action may be required in another office, an additional copy of the executed agreement, supporting material, and RAR (if available) should be sent to that area or territory addressed to the appropriate Compliance Operating Division official: "Attention: Planning and Special Programs (or equivalent) Branch."
 - (4) An executed original of the closing agreement will be mailed to the taxpayer (or to the representative) by appropriate transmittal letter patterned after Exhibit 8.13.1-23. Certified or registered mail will be used if required by other instructions (e.g. personal holding company tax liability.) A copy of the letter should be included in the RAR file.
 - (5) The designated reviewer will maintain sufficient material (including copies of executed agreements) to provide a historical record of all closing agreements executed in the district. This file will permit responses to questions from whatever source to be made from a central location, as well as to provide additional samples for later use.
-
- (1) Responsibility for protecting the statute of limitations will remain in the recommending office, if it had such responsibility immediately before forwarding the agreement.
 - (2) When the statute of limitations for a period (or return) involving a closing agreement will expire within 120 days from the date the agreement is to be submitted to Headquarters, the taxpayer will be advised that the closing agreement will not be forwarded unless a consent is signed extending the

8.13.1.5.6
(05-25-2018)
**Cases With Statute of
Limitation Issues**

statute to a date at least 180 days after the agreement is signed by the taxpayer or 120 days after the agreement is submitted to Headquarters, whichever is later.

- (3) To comply with this section, consents will be secured to cover years for which overassessments are proposed.

8.13.1.5.6.1
(05-25-2018)

Joint Committee Cases

- (1) In cases subject to Joint Committee review that involve a closing agreement, the agreement will be signed by or for the taxpayer, but **not** by the approving Service official, and will be submitted as part of the original Joint Committee report. However, the report or transmittal should contain a statement indicating tentative approval of the closing agreement by the Compliance Operating Division official. If the Joint Committee on Taxation (JCT) takes no exception to the report and the proposed closing agreement, the Compliance Operating Division official may sign the closing agreement.

8.13.1.5.7
(05-25-2018)

Technical Advice and Technical Assistance

- (1) Assistance should be requested from the Commissioner, LB&I Operating Division if a closing agreement is proposed that may be used throughout an industry, homogeneous commercial group, or a large group of taxpayers in similar circumstances where that agreement would:
 - a. constitute a precedent for disposing of a prevalent or significant issue on a basis not previously employed;
 - b. establish precedent on such an issue where the Service position is not established or published; or have serious administrative or revenue implications.
- (2) This request should be contained in a memorandum to the Commissioner, LB&I Operating Division, forwarding three copies of the proposed Agreement (which will not be returned) and explaining the surrounding circumstances. One of the three copies will be forwarded by the Commissioner, LB&I Operating Division to the Chief, Appeals, C:AP.

Note: Do not forward any copies signed by the taxpayer.

- (3) If a problem arises concerning the interpretation, scope, and/or application of IRC 7121 which cannot be readily resolved by referring to existing instructions and regulations, a request for Technical Advice may be submitted.

8.13.1.5.8
(05-25-2018)

Criminal Investigation

- (1) The local Criminal Investigation field office has certain functions with respect to setting aside a closing agreement, as explained. See IRM 8.13.1.7.2.1.1.

8.13.1.6
(05-25-2018)

Appeals Authority, Responsibility, and Procedure

- (1) IRC 7121(a) authorizes the Secretary to enter into a written agreement "with any person relating to the liability of such person... in respect of any internal revenue tax for any taxable period."
- (2) That authority is delegated to the Commissioner in Treasury Order 150-07, and described in section 26 C.F.R. sec. 301-7121-1 of the Regulations on Procedure and Administration. Delegation Order 8-3, *Closing Agreements Concerning Internal Revenue Tax Liability*, contains the Commissioner's redelegation of that authority to various officials within the IRS and the Office of Chief Counsel.

- (3) Paragraph 2 of Delegation Order 8-3 delegates to Chief Counsel the authority to enter into and approve a written agreement “with respect to any prospective transactions or completed transactions,” provided returns have not yet been filed. This delegation gives Chief Counsel broad authority to resolve matters involving future tax periods.

Note: Associate Area Counsel is not delegated any authority to sign closing agreements, either on docketed or non-docketed cases. Associate Area Counsel attorneys will generally seek review and execution of such agreements through the Appeals office, following the procedures outlined in herein.

- (4) Paragraphs 15 and 19 of Delegation Order 8-3, as revised, prescribe the authority of the Directors, Appeals Operating Units, Appeals Area Directors and designated officials of Appeals offices to execute closing agreement in cases under their jurisdiction.
- (5) The extent of authority delegated by the Commissioner is not the same under paragraphs 13 and 17 of Delegation Order 8-3. For non-docketed cases, paragraph 13 delegates to Appeals officials the authority to enter into agreements relating to tax liability “for a taxable period or periods ended prior to the date of the agreement and related specific items affecting other taxable periods.” This delegation covers determinations of the total tax liability in a period ending before the date of the agreement as well as determinations of specific matters that affect the calculation of tax liability in a period ending before the date of the agreement. Additionally, because the delegated authority extends to “related specific items affecting other taxable periods,” determinations can be made for specific items that occurred in a period ending after the date of the agreement even though they do not affect the tax liability of that period, so long as they are related to the other determinations being made and could affect another taxable period (including a period that ends after the date of the agreement). Such a related specific item is illustrated by the following:

Example: “A” purchased 500 shares of stock of the XYZ Corporation (a closely held company) during the 1994 taxable year. “A” sold 200 shares of such stock during the 1995 taxable year, which was later examined during 1997. The local Appeals office and “A” could enter into a closing agreement that determines the basis of the 200 shares of stock and the resulting gain to be recognized during 1995. Additionally, the closing agreement may also determine the basis of the remaining 300 shares of stock as of a date in a taxable year ended prior to the date of the closing agreement for purposes of computing gain or loss in a subsequent sale. With respect to the 300 shares, it is important to note that the determination does not relate to the tax liability for a taxable year ended prior to the date of agreement, but instead the determination concerns a related specific item affecting other taxable years. It is also important to note that 300 shares of stock were already acquired by the taxpayer.

- (6) For cases docketed in the Tax Court, paragraph 15 of Delegation Order 8-3 delegates to Appeals officials the authority to enter into agreements relating to tax liability, “but only in respect to related specific items affecting other taxable periods.” Generally, there is no need to enter into a closing agreement for a year before the Court unless there is a specific matter that has some relevance in another year; otherwise, the matter could be resolved solely by

stipulation. Closing agreements for docketed cases generally involve a similarly worded stipulation and generally contain a condition precedent concerning the court's acceptance of the stipulation.

- (7) Concerning the question of who has authority to sign the following types of closing agreements, see the sections cited:
 - a. Agreements arising out of and pertaining to taxable periods being litigated by Department of Justice. See IRM 8.13.1.6.2.5.
 - b. Agreements as to prospective transactions.
 - c. Agreements giving effect to competent authority determinations. See IRM 8.13.1.8.1 .
 - d. Joint Committee case closing agreement procedures. See IRM 8.13.1.5.6.1. and See IRM 8.7.9, *Joint Committee (JC) Case Procedures* .
- (8) Appeals officials authorized to enter into and approve closing agreements cannot authorize the signing of their names to such agreements by others. However, those properly fulfilling the duties of such officials in an acting capacity (pursuant to written authorization) may sign closing agreements in their own names as Acting Area Director, Acting Team Manager, etc.

8.13.1.6.1
(05-25-2018)
Responsibilities

- (1) For agreements dealing with specific matters, the objective should be to state as concisely as possible a description of the transaction or event giving rise to the specific matter requiring an adjustment. In the determination section of the agreement the preparer should clearly and precisely provide for the adjustments to be made to taxable income, deductions, basis, etc.
- (2) It is the responsibility of those preparing, receiving, reviewing, and executing closing agreements to ensure that:
 - a. The agreements are prepared using terms that clearly express the intended disposition of the matters determined;
 - b. The agreements are received and signed in such form and manner as to become binding upon the parties after execution for the Commissioner;
 - c. The matters determined are suitable for determination by closing agreement; and
 - d. Their approval or recommendation is based on an adequate record.
- (3) With respect to IRM 8.13.1.6.1(2)(a), the unique finality of a closing agreement may become meaningless if the provisions are reasonably subject to more than one interpretation. See IRM 8.13.1.4 (3).
- (4) With respect to IRM 8.13.1.6.1(2)(b), the agreement may be ineffectual if it can be attacked on various grounds of improper execution or upon showing of qualifying conditions stated in a separate document within possession of the Service. See IRM 8.13.1.3.
- (5) With respect to IRM 8.13.1.6.1(2)(c), specific matter closing agreements generally should not purport to make a determination for a taxable period that has not ended prior to the date of the agreement. See IRM 8.13.1.6. Of course, a specific matter closing agreement that makes a determination affecting the calculation of tax liability in a period ending before the date of the agreement can also affect future taxable periods ending after the date of the agreement. For example, determinations can be made concerning the basis and depreciation method of a particular asset that was already acquired in a

year ended before the date of the agreement. These determinations will establish the amount of depreciation deduction in the early year and affect the calculation of the depreciation deductions in future years. (See IRC 446(e)).

- (6) With respect to IRM 8.13.1.6.1(2)(d) above, Appeals Officers and reviewers should have sufficient information to permit a reasonable justification for any recommendation concerning acceptance of a closing agreement, whether it is an agreement determining tax liability (or net income or net operating loss) (Form 866 or equivalent), or a specific matters closing agreement (Form 906). In specific matters agreements the record must exhibit adequate development and coverage of matters pertinent to determining the acceptability of the agreement. Such development should be sufficient to provide the basis for the ACM discussion required. See IRM 8.13.1.6.2.2 (2).
- (7) Appeals Area Directors are responsible for ensuring that the closing agreement function is successfully carried out by the Appeals offices in their areas.

8.13.1.6.2
(05-25-2018)
Procedure

- (1) Ordinarily, the closing agreement, executed on behalf of the taxpayer, is submitted for review along with the ACM.
- (2) Appeals officials authorized to enter into and approve closing agreements should appoint a reviewer for closing agreements for their respective offices. It is generally desirable that a review of the draft take place prior to signing by the taxpayer. This review is concerned primarily with the substance of the agreement. Another review should be made of the final version of the closing agreement, after it is executed by the taxpayer. This review is primarily to ensure proper layout, format, and execution of the agreement and should be done concurrently with execution by the reviewer of the Closing Agreement Checklist, Form 4222. The checklist should be distinctly labeled with the notation "do not destroy until six years after the end of the fiscal year in which the case is closed." During the case closing process, a folder should be set up, with a copy of the closing agreement, and should be retained as provided in the *Records and Information Management, The Records and Information Management Program*, IRM 1.15.1 and *Account and Processing Support*, IRM 8.20. Both the Appeals Officer who prepares and the official who reviews the agreement must sign the reverse side as receiver and reviewer, respectively.

8.13.1.6.2.1
(05-25-2018)
**Waivers of Restrictions
on Assessments**

- (1) See IRM 8.13.1.5.3.

8.13.1.6.2.2
(05-25-2018)
**Appeals Transmittal
Memorandum and
Appeals Case
Memorandum**

- (1) One of the blocks at the top of Form 5402 , Appeals Transmittal Memorandum and Appeals Case Memorandum, is checked where a closing agreement is executed in the case. If the agreement affects subsequent years, Form 5402 so indicates in order that Compliance may establish necessary follow-up controls. See IRM 8.13.1.5.1.1.
- (2) If the closing agreement determines tax liability, the Appeals Case Memorandum comments on all significant matters involved in the case, whether changed or unchanged by the Service. The reasons for recommending the closing agreement and what the parties intend to accomplish by it are also stated. If only specific matters are being determined, the ACM contains the

reasons for recommending the closing agreement and a statement as to the relationship of the specific matter to other aspects of the case, including:

- a. A discussion of major adjustments proposed in the examination report that affect the acceptability of the closing agreement; and
 - b. A discussion of any major unchanged items that affect the acceptability of the closing agreement.
- (3) If the agreement is based on a pattern prepared by a function other than Appeals, departures from it should be explained in the ACM.
 - (4) In a Joint Committee case the closing agreement signed by or for the taxpayer is not executed by the approving Service official at the time the file is forwarded for Joint Committee review. Tentative approval of the agreement should be indicated in the report or transmittal to the Joint Committee.

8.13.1.6.2.3
(05-25-2018)
Returns and Files

- (1) Upon approval of the closing agreement, the Account and Processing Support (APS) of the Appeals office attaches the original to the taxpayer's most recent return in the file covering a year to which the agreement pertains. Where a closing agreement may require follow-up action, a copy of the Form 5402, *Appeals Transmittal Memorandum*; the ACM; and the closing agreement are sent to the Operating Division office having jurisdiction over the taxpayer by using Form 2842, *Transmittal Memorandum*. One original of the agreement, together with the checklist, is retained in a folder within the Appeals office. The folder should be distinctly labeled with the notation: "Do not destroy until after---." This date is obtained from the reverse side of the closing agreement checklist. These folders should be retained for at least the applicable period. Such folders may be disposed of as provided. See IRM 8.13.1.6.2 (2). All returns in the case file covering years to which the agreement pertains will be marked to so indicate and will state the return to which the agreement is attached. Marking on the return should be as follows:

"Agreement under section 7121, Internal Revenue Code of 1986, Years Affected _____. Closing Agreement attached to return for taxable period ended _____. "

- (2) If one or more filed returns of a party to the agreement are not in the file, the campus (or Operating Division office if it is known the returns are there) should request the returns. Once the returns are received, they should be marked as shown above. See IRM 8.13.1.6.2.3
- (3) If none of the filed affected returns of a party to the agreement are in the file, the transmittal should request that an original signed copy of the agreement be attached to the latest filed affected return.
- (4) If one or more parties to the agreement are located in Operating Division areas or territories not served by the campus of the approving Operating Division office, one copy of the closing agreement, Form 5402, and ACM for each party located in such other Operating Division areas or territories is forwarded by Form 2842, *Transmittal Memorandum*, to the appropriate campus or to the appropriate Operating Division office, if known.

8.13.1.6.2.4
(10-01-2012)

**Technical Assistance
Agreements**

- (1) Occasionally, closing agreements are prepared or received in an Appeals case which (if accepted and made known throughout an industry, homogeneous commercial group, or a large group of taxpayers having similar circumstances) might:
 - a. constitute a precedent for disposing of a prevalent or significant issue on a basis not previously employed;
 - b. establish a precedent on such an issue where Service position is not established or published; or
 - c. have serious administrative or revenue implications.
- (2) Where the issue has not been identified as an Appeals Coordinated Issue (ACI), the Appeals office should consider contacting the Director, Domestic Operations to determine the need for nationwide coordination or technical assistance. Technical assistance may also be requested from the Chief, Appeals, with respect to any procedural questions or problems which arise in drafting a closing agreement.
- (3) To request technical assistance, the Appeals office explains the surrounding circumstances peculiar to the case in a memorandum to the Director, Domestic Operations and attaches two copies of the proposed closing agreement.
- (4) If a concern arises with respect to the interpretation or application of IRC 7121, the Appeals office should seek technical advice or technical information. See IRM 8.6.3, *Appeals Rulings*.

8.13.1.6.2.5
(11-09-2007)

**Department of Justice
Cases**

- (1) Where Appeals offices have cases related to a case being litigated by the Department of Justice, the former may proceed to tentatively resolve issues unrelated to the issues of the litigated cases without obtaining prior clearance from the Department of Justice. However, such clearance must be obtained before final action is taken on the related Appeals case and before a closing agreement is obtained in that case.

8.13.1.6.2.6
(05-25-2018)

Counsel Involvement

- (1) Appeals Team Managers and Team Case Leaders, with respect to their team cases, have authority under Delegation Order 8-3, *Closing Agreements Concerning Internal Revenue Tax Liability*, as revised, to enter into and approve closing agreements when so requested by Chief Counsel or his/her delegate **with respect to related specific items** in docketed cases under the sole jurisdiction of Counsel. Since closing agreements secured with respect to docketed cases are necessarily related to non-docketed taxable periods (or liabilities), the reviewing Appeals manager must be alert to the impact of these agreements. He/she must consider the reasonableness of the relationship between the docketed case and the impact on the non-docketed years. If the signing Appeals official does not believe the agreement should be approved, he/she should so inform Counsel, ordinarily by memorandum. If the Appeals manager and Counsel cannot reach an agreement, the matter should be elevated to the Appeals Area Director level.
- (2) If Counsel requests Appeals to approve a closing agreement with a related taxpayer who does not have tax years before Appeals or Counsel, there should be coordination with the appropriate Operating Division office or other appropriate office as explained. See IRM 8.13.1.6(7). Local or area arrangements will govern who effects the coordination.

- (3) Appeals should retain a copy of the executed closing agreement, checklist, Counsel decision (if any), Form 5402 and the (ACM). These documents will be retained as indicated. See IRM 8.13.1.6.2.3(1). Counsel, as initiator, has responsibility for preparing the closing agreement, checklist, related correspondence and an adequate explanation of the need for and purpose of the closing agreement. Counsel also forwards to the petitioner.

8.13.1.7
(11-09-2007)
**Finality, Setting Aside,
and Interpretive
Problems**

- (1) IRC 7121 imparts statutory finality to closing agreements. Specifically, IRC 7121(b) provides:

“If such agreement is approved by the Secretary (within such time as may be stated in such agreement, or later agreed) such agreement shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misinterpretation of material fact—
(1) the case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and
(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.”

(2) Agreements made under IRC 7121 may be set aside by the Commissioner upon a showing of fraud, malfeasance, or misrepresentation of a material fact.

8.13.1.7.1
(05-25-2018)
Finality

- (1) Such agreement may not be modified by any officer, employee, or agent of the United States nor annulled, disregarded, or set aside in any suit or proceeding. The courts have consistently recognized and upheld the statutory finality of such agreements. In view of the statutory language, the parties to a closing agreement cannot rescind or modify it by consent. There is an exception to those statutory reasons for which a closing agreement may be set aside. See IRM 8.13.1.7 (2). There is also a treaty authorizing modification or setting aside. See IRM 8.13.1.7.1.2 and IRM 8.13.1.8.3.
- (2) Although a closing agreement is final, it only determines matters expressly stated therein.
 - a. For example a closing agreement determining tax liability does not determine the amount of income or the amounts of any components of income.
 - b. As another example, it has been held that the fact that a tax liability was determined by closing agreement on a consolidated return basis did not support a later contention by the taxpayer that a consolidated return was validly filed for the year such liability was determined. (*Export Leaf Tobacco v. Commissioner*, 78 F. 2d (2d Cir. 1935)).
- (3) Although a closing agreement is final, where a specific matters type agreement was entered into, there would be no prohibition against entering into another agreement covering specific matters with the same taxpayer pertaining to the same taxable period determining other matters not expressly covered in the first.
- (4) Similarly, a closing agreement may not be modified or rescinded by the parties either unilaterally or with the consent of all parties. See the exceptions discussed in IRM 8.13.1.7.1.2 and IRM 8.13.1.8.3. It may be possible to satisfactorily remedy a dispute as to the meaning of the contents of the agreement.

If one or more provisions of the closing agreement are reasonably subject to two or more interpretations and the parties have reasonably differed in their interpretation of such provision(s), it is possible for the parties to enter into a new closing agreement which, in terms acceptable to all parties, restates more clearly the intended meaning of the disputed provision(s). This is not a modification of the agreement but a clarification of its terms. This procedure should rarely be necessary. It is not to be used where the taxpayer's interpretation is unreasonable and unlikely to prevail in the event of litigation. Careful draftsmanship should prevent the necessity of resorting to this procedure.

8.13.1.7.1.1
(05-25-2018)
**Law of Contracts Not
Controlling**

- (1) As an agreement pursuant to statutory authority, a closing agreement is not strictly subject to the law of contracts. No consideration is required. See *Perry v. Page*, 67 F. 2d 635, (1st Cir. 1933). Closing agreements may not be modified or disregarded by the officers, agents, or employees of the United States or by the courts. A mere mistake of fact or law, though substantial, will not be grounds for setting aside a closing agreement.
- (2) Though the closing agreement is a creature of statute, and not strictly subject to the law of contracts, courts have held that for many purposes closing agreements are treated like contracts. They may be subject to attack on the grounds that a valid agreement was never entered into or that a taxpayer lacked capacity to do so, or for other reasons. Some examples:
 - a. The validity of the agreement may be challenged if the taxpayer becomes legally disabled (e.g., for loss of sanity) after signing the proposed agreement but before execution for the Commissioner.
 - b. A taxpayer could demonstrate that he withdrew his offer to enter into a closing agreement, before execution for the Commissioner.
 - c. A taxpayer might prove that, in his letter transmitting the signed closing agreement to the Service, he stated a condition precedent that had not been fulfilled. Cover letters should be carefully read to ensure that they do not state conditions or qualifications that impair the effectiveness of the agreement or prevent its becoming effective.

8.13.1.7.1.2
(05-25-2018)
**Law or Rule of Law
Exceptions in Code**

- (1) A number of Code sections contain language which would allow effect to be given to certain provisions therein, notwithstanding any law or rule or law (or in some provisions, any law or rules of law other than IRC 7122). Examples include the following provisions:
 - a. IRC 45H(e)(4) (credit for production of low sulfur diesel fuel)
 - b. IRC 118(d)(2) (contributions to the capital of a corporation)
 - c. IRC 183(e)(4) (activities not engaged in for profit).
 - d. IRC 302(c)(2) (distributions in redemption of stock)
 - e. IRC 354(a)(2) (exchanges of stock and securities in certain reorganizations)
 - f. IRC 355(e)(4) (distribution of stock and securities of a controlled corporation)
 - g. IRC 409(k) (qualifications for tax credit employee stock ownership plans)
 - h. IRC 451(i)(7) (general rule for taxable year of inclusion)
 - i. IRC 453(e)(8) (installment method).
 - j. IRC 473(f)(1) (qualified liquidations of LIFO inventories)
 - k. IRC 481(b)(3) (adjustments required by changes in methods of accounting).
 - l. IRC 501(p)(6) (exemption from tax on corporations, certain trusts, etc.)

- m. IRC 514(b)(3) (unrelated debt-financed income)
 - n. IRC 617(a)(2) (deductions and recapture of certain mining exploration expenditures)
 - o. IRC 982(c)(2) (admissibility of documentation maintained in foreign countries)
 - p. IRC 1033(a)(2)(C) and (D) (involuntary conversions).
 - q. IRC 1042(f)(2) (sales of stock to employee stock ownership plans or certain cooperatives)
 - r. IRC 1233(h)(2) (gains and losses from short sales)
 - s. IRC 1311(a) and (b)(2) (mitigation of limitations).
 - t. IRC 1359(d)(2) disposition of qualifying vessels)
 - u. IRC 2032A(f)(2) (valuation of certain farm, etc., real property)
 - v. IRC 6015(g)(1) (relief from joint and several liability on joint return)
 - w. IRC 6038A(e)(4)(A) & (B) (information with respect to certain foreign-owned corporations)
 - x. IRC 6229(b)(2) (period of limitations for making assessments)
 - y. IRC 6230(a)(2) (additional administrative provisions)
 - z. IRC 6234(g)(1) declaratory judgement relating to treatment of items other than partnership items with respect to an oversheltered return)
 - aa. IRC 6241(c)(2) (partner's return must be consistent with partnership return)
 - ab. IRC 6511(d)(2) (net operating loss and capital loss carrybacks).
 - ac. IRC 6511(d)(4) (certain credit carrybacks)
 - ad. IRC 6511(d)(5) (overpayment of self-employment tax)
 - ae. IRC 6521 (mitigation-related taxes).
 - af. IRC 7609(b)(1) & (2) (special procedures for third-party summonses)
 - ag. IRC 7874(e)(4) (rules relating to expatriated entities and their foreign parents)
- (2) The foregoing IRC provisions may have to be given effect in an applicable taxable period despite the fact that tax liability or specific matters with respect to such period have been determined by closing agreement. Their application, then, may act as an impingement upon the finality of closing agreements. For example, a standard closing agreement determining only income tax liability will not preclude later reduction of such liability (and a refund) by allowance of a net operating loss deduction based on a net operating loss carryback.
- Note:** If the closing agreement includes the carryback in determining the liability, further adjustment to the tax liability of the carryback year will not be permitted if the loss year is later adjusted. There is very little that can be used as interpretative authority as to the interaction between IRC 7121 and other Code sections mentioned. See IRM 8.13.1.7.1.2(1).
- (3) If the application of one of the Code sections stated in IRM 8.13.1.7.1.2(1) is at issue, or if such section is being applied on an agreed-upon basis, it is possible to prevent subsequent reopening of the matter by expressly providing in a closing agreement the extent to which such Code section is applicable for the period. Of course, such agreements should not attempt to determine the extent to which such sections will be applicable as a result of circumstances yet to occur in future periods. In other words, the applicability of the foregoing provisions, as listed in IRM 8.13.1.7.1.2(1), may be finally determined by express provisions in a closing agreement insofar as past taxable periods (that is, periods that have ended prior to the date of execution of the closing agreement for the Commissioner) are concerned.

Example: To illustrate the instructions above, suppose that during an examination of the 1994 tax year, it is decided between the examiner and the taxpayer that a net operating loss occurring in calendar year 1997 should be carried back to calendar year 1994 and allowed as a net operating loss deduction in that prior year. Suppose further that the taxpayer or the Service would like to achieve finality with respect to the net operating loss and avoid any further conflict on that item. This could be done by providing that the allowable net operating loss deduction for the calendar year 1994 attributable to a net operating loss carryback from the calendar year 1997 is \$Y.

In both cases, the 1997 net operating loss determination would be final with respect to its effect on the 1994 year. The carryback allowed in the closing agreement could not be adjusted by reason of examination changes to its source year. The determination of the net operating loss deduction in 1994 could be affected by the law or rule of law provisions referred to in the standard language at the end of the agreement, however. For example, a loss from another year (an unrelated year not considered in the original determination) could arise and be carried to 1994, displacing or modifying the carryback from 1997, notwithstanding the prior closing agreement determination covering that matter. If, for compelling reasons, the parties wish to prevent this result and have the carryback determined with complete finality as to all source years (or, on the other hand, leave it open for adjustment upon a subsequent examination of a source year), the language of the determination covering the loss deduction should explicitly spell out the intent of the parties, and should expressly purport to override the law or rule of law provisions, as explained in the following.

Caution: Extreme care must be exercised in allowing a net operating loss carryback in a closing agreement. As previously noted, a net operating loss determination in a closing agreement is ordinarily final, and a later adjustment to a source year does not permit the Service to change the determinations reflected in the closing agreement. For evidentiary reasons, the second format discussed in the example is preferable to the first, because the second eliminates the need to prove what source years were intended to be encompassed in the closing agreement determination.

- (4) Where circumstances motivate action by closing agreement limiting the application of any of the Code sections referred to above the matter should be expressly and explicitly dealt with in a determination clause of the agreement. Such clause may appropriately apply as follows: "Despite the exception below, which states, 'This agreement is final and conclusive except it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law,' except this agreement allows the taxpayer *[insert specific tax benefit or liability agreed upon, e.g., 'a credit in the amount of \$X,XXX].* "
- (5) Offers in compromise pursuant to IRC 7122 are in some respects more final than closing agreements since they are exceptions to the operation of several of the Code provisions cited. See IRM 8.13.1.7.1.2. However, offers in compromise involving collateral agreements to make future payments may be declared in default on behalf of the Commissioner if the taxpayer is not complying with the terms of the compromise. Also, compromises are largely

subject to the law of contracts (for example, mutual mistake may nullify them). They may be set aside pursuant to stipulations on Form 656, *Offer in Compromise*.

- (6) Giving required effect to one of the statutory provisions referred to in IRM 8.13.1.7.1.2(1), or to a statute enacted after the agreement is signed does not constitute the modifying, reopening, disregarding, annulling or setting aside of the agreement contemplated in IRC 7121(b). Therefore, giving effect to such provisions does not require the Commissioner's approval. See IRM 8.13.1.8.3.

8.13.1.7.2
(05-25-2018)
**Reopening, Modifying
and Annulling
Agreements**

- (1) Setting aside the closing agreement, however, does not authorize assessment for a barred year. If litigated, the burden of proof for setting aside the agreement has been held to be upon the party desiring to do so. See *Ingram v. Commissioner*, 32 B.T.A. 1063 (1935), aff'd., 87 F. 2d 915 (3d Cir. 1937), and *Holmes & Janes, Inc. v. Commissioner*, 30 B.T.A. 74 (1934). The latter case contains a statement on the authority of the Tax Court to review setting aside of a closing agreement. (See IRC 7206 and IRC 7207 for possible criminal penalties.) Giving required effect to Code provisions listed above or provisions enacted after the agreement was signed is not a setting aside, modifying, annulling, disregarding or reopening contemplated by IRM 8.13.1.7(2) or IRC 7121(b). **If circumstances indicate reasons for modifying or setting aside a closing agreement, local Counsel should be consulted and Headquarters should be notified before taking any action.**

Note: The standards for setting aside a closing agreement are strict; they will be met only rarely. Moreover, the Commissioner must personally approve any set-aside. Thus, it is imperative that Counsel be notified whenever setting aside a closing agreement is contemplated

- (2) Since there is considerable material available defining fraud, a definition of the term is unnecessary here. However, three facets of the fraud question do require comment:
- a. Setting aside of the closing agreement upon discovery of fraud is not mandatory. If the Government determines retaining the agreement is in its best interests, it may refrain from setting the agreement aside.
 - b. The term "fraud," as applied under IRC 7121(b), must be based upon evidence showing intent to evade the payment of tax that the taxpayer believed to be owing as distinguished from mistake, inadvertence, reliance on incorrect technical advice, honest differences of opinion, negligence, or carelessness. See Policy Statement P-9-5 and IRM 25.1.6.1, *Civil Fraud, Overview*.
 - c. Fraud in a case which does not relate to the premises upon which the closing agreement is based and the determination therein will probably be insufficient to sustain setting aside the agreement. Therefore, in such a situation, no attempt should be made to have the closing agreement set aside unless the fraud goes to the agreement itself (See *Helvering v. Kehoe*, 309 U.S. 277, (1940). See IRM 8.13.1.7.2 (4).
- (3) The term "malfeasance" means violation of a public trust, or guilt with respect to some form of official act.
- (4) The term "misrepresentation," when used as a ground for setting aside a closing agreement, connotes intentional deceit. It does not refer to a mere

mistake of fact or law, whether unilateral or mutual, no matter how material. In *Ingram*, supra. at 1066, the Board of Tax Appeals stated:

“Obviously the use of the word misrepresentation denotes something more deliberate or more conscious than a mere error or mistake. Otherwise the entire rationale of a closing agreement would be lost. Congress intended that innocent mistakes should be buried in a closing agreement. This still leaves an ample field for protection against an agreement founded in trickery or deception.”

- (5) See Rev. Rul. 72-437, 1972-2 C.B. 660, and Rev. Rul. 96-13, 1996-1 C.B. 616, for the impact of tax treaty provisions on previously executed closing agreements, which may be substantial.

8.13.1.7.2.1
(11-09-2007)
**Procedure for Setting
Aside Agreements**

- (1) If any examining officer should discover facts indicating the existence of fraud, malfeasance, or misrepresentation of a material fact affecting a closing agreement, a report of the available facts, without reexamination of the taxpayer's books or records, will be submitted to the Compliance Operating Division field official for evaluation by the Chief, Criminal Investigation.
- (2) If after such evaluation, the Compliance Operating Division field official finds that there are sufficient facts on which to make a decision but that such facts do not warrant a recommendation that the agreement be set aside, he or she will so indicate in a written directive to the appropriate Operating Division official. Pursuant to the directive, the closing agreement will be adhered to in any necessary further examination of the case unless newly discovered facts justify another report on the matter to the Compliance Operating Division field official which results in a reversal of the prior conclusion.

8.13.1.7.2.1.1
(05-25-2018)
**Reinvestigation Before
Setting Aside
Agreements**

- (1) If it is decided that there are not sufficient facts available to justify a reopening of the agreement, but that further investigation should be made, advise the local Criminal Investigation field office. See Policy Statement P-4-3 as to Compliance case re-openings and IRM 8.6.1.6 , *New Issues and Reopening Closed Issues*, and Policy Statement P-8-3 (formerly P-8-50) as to Appeals case re-openings.
- (2) If it is further decided that an examination of the taxpayer's books will be necessary, inform the chief of the local Criminal Investigation field office that a request will be made to the appropriate Compliance Operating Division official for the issuance of a notice under IRC 7605(b). This request will be made in accordance with the provisions of IRM 4.10.8, *Examination of Returns, Report Writing* . Criminal Investigation will promptly inform the appropriate Compliance Operating Division field official as to whether a special agent will be assigned to the case to conduct a joint investigation. If an Appeals office signed the agreement, it should be apprised of the intended course of action by memorandum.
- (3) Upon completion of the investigation, a report of the findings will be submitted to the Compliance Operating Division official. Whether the closing agreement may be set aside depends upon the results reported. Consequently, the investigation should proceed in the same manner as any fraud investigation. The report, which is of a confidential nature, should show, if possible, the nature of the investigation made by the original examining officer, that is, whether it was detailed or perfunctory, why the evidence could not have been discovered upon the original investigation, etc.

- a. If the reinvestigation shows that the taxpayer made any misrepresentation of facts or withheld material facts from the original examining officer, this should be clearly set forth in the report.
 - b. If a joint investigation is made, no action will be taken by the Compliance Operating Division official until advice is received from the Chief, Criminal Investigation Division or the Director of Investigations as to whether criminal prosecution will be recommended.
 - c. If criminal prosecution is recommended, the case will be handled in accordance with the Manual provisions of IRM 25.1, *Fraud Handbook*.
- (4) If criminal prosecution is not recommended, but the Compliance Operating Division official reaches the conclusion that there is a sufficient showing of fraud, malfeasance, or misrepresentation of a material fact to warrant the setting aside of the closing agreement, a special preliminary letter (Letter 1707(P)). Exhibit 8.13.1-24. This will be sent to the taxpayer (by certified mail, return receipt requested) granting a period of 30 days in which to file a protest.
 - (5) The special preliminary letter will be accompanied by a statement showing the proposed adjustments and the reasons therefor, but no computation of tax will be shown. The letter will also be accompanied by instructions in Publication 5, *Your Appeal Rights and How to Prepare a Protest If You Don't Agree*, for unagreed cases for the preparation of protests (where required).
 - (6) After criminal prosecution aspects have been disposed of, non-criminal case closing agreement procedures apply.

8.13.1.7.2.1.2
(05-25-2018)

Procedure After Special Preliminary Letter Before Setting Aside

- (1) Where the taxpayer initially agrees to the special preliminary letter or where a protest is filed and the taxpayer thereafter agrees to the resulting deficiency in tax, interest, and penalty, if any, the taxpayer will be requested to sign an appropriate waiver of restrictions on assessments and collection (such as Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*) containing special provisions. See IRM 8.13.1.7.2.1.3. At the same time, the taxpayer will also be requested to submit a check in payment of the liability.
- (2) The Compliance examiner will prepare a memorandum, in triplicate. Exhibit 8.13.1-25. The entire administrative file (including a copy of the closing agreement) will then be transmitted as follows:
 - a. If the agreement was recommended by or approved in an Appeals office, the file should be forwarded to that office;
 - b. If the agreement was approved by Headquarters, the file should be forwarded to the appropriate Headquarters Operating Division official; and
 - c. If the Director, International Operations, recommended or approved the agreement, the file should be sent to him or her (through the Appeals office if (a) applies).

(See IRM 8.13.1.7.4. This covers agreements processed by the Office of Chief Counsel)

- (3) If the agreement was signed by the Compliance Operating Division field official, the file should be forwarded to the appropriate Headquarters Operating Division official. The Appeals office (if the agreement was recommended by an Appeals official) will, by memorandum to the appropriate Appeals Director,

Field Operations, state its views as to whether the agreement should be set aside. It will also attach a copy of the closing agreement and accompanying explanatory memorandum or report to the memorandum patterned after Exhibit 8.13.1-25. If Appeals consideration of the adjustments to income or liability is requested and the Compliance Operating Division field office determines no additional facts are presented in the protest or request, or if the consideration of additional facts presented is not productive of the agreement, the case will be transmitted to the Appeals office.

- (4) If no protest is filed and Appeals consideration is not requested, and the taxpayer has not agreed to the proposed action, the memorandum and file referred to in the preceding paragraph will be transmitted to Headquarters (through the Appeals office, where applicable). When the matter has been acted upon by Headquarters, the Compliance Operating Division official and the Appeals office (where applicable) will be advised of that action. In the event an agreement is set aside, both offices (where applicable) will be advised and the case will thereafter be handled in accordance with the applicable general procedure. The Appeals office (unless the agreement was signed in Headquarters or by Compliance) will promptly notify the taxpayer by letter (ordinarily based on a pattern letter using certified mail) that the agreement has been set aside. Exhibit 8.13.1-26. If the agreement was executed in Headquarters, notification will be sent to the taxpayer from that office, with copies to Compliance and Appeals offices (where applicable). If the closing agreement was executed by Compliance, the Compliance Operating Division official will notify the taxpayer.

8.13.1.7.2.1.3
(11-09-2007)

**Paragraph in Waiver of
Restrictions — Setting
Aside Agreements**

- (1) The following paragraph or substantially equivalent language ordinarily will be reflected on the waiver of restrictions (Form 870, etc.) secured in each case where the setting aside of a closing agreement is recommended:

“The taxpayer further agrees that a closing agreement entered into between the taxpayer and the Commissioner of Internal Revenue on _____, _____, under the provisions of section 7121 of the Internal Revenue Code of 1986 with respect to income tax liability for the year(s) ended _____, _____, may be set aside and that case may be opened for the assessment and collection of the deficiency(ies) in tax and penalty (if any) in the amount(s) set forth above, but no greater amount(s), together with interest thereon as provided by law; provided the deficiency(ies) set forth above is (are) accepted by or on behalf of Commissioner of Internal Revenue as a basis for closing the case and provided the Commissioner sets aside the aforesaid closing agreement.”

- (2) Any necessary modification may be made in the language above to cover an estate, gift, excise, or employment tax case or to cover particular circumstances of any other type of case (such as prior setting aside of closing agreement before the waiver is signed).

8.13.1.7.3
(05-25-2018)

**Setting Aside
Agreements — Appeals
Cases**

- (1) When the tax liability in a Compliance case involving the setting aside of a final closing agreement is considered by an Appeals office and a settlement is reached, the taxpayer will be requested to sign an appropriate waiver of restrictions on assessment and collection containing special provisions. IRM 8.13.1.7.2.1.3. The Appeals office will endeavor also to obtain a check in payment of the liability, and will be responsible for the preparation of the memorandum, in triplicate. Exhibit 8.13.1-25. The case file, including the

memorandum, the original, if available, or triplicate copy of the closing agreement and accompanying explanatory memorandum or report, will then be transmitted by memorandum to the Chief, Appeals. After action by Headquarters (by the Commissioner if the agreement is set aside), the file will be returned using certified mail by the Chief, Appeals, to the Appeals office for necessary action, including notifying the taxpayer unless the agreement was signed in Headquarters. Exhibit 8.13.1-26.

- (2) If the Appeals office sustains the position of the Compliance Operating Division field official, in part or in full, but is unable to effect an agreed-upon disposition of the case, the Appeals office will be responsible for the preparation of the memorandum referred to in the preceding paragraph and will transmit the memorandum and the file to the Chief, Appeals. Upon receipt of advice by Headquarters that the closing agreement has been set aside, the Appeals office will issue any necessary notice of deficiency and will proceed with the case in accordance with applicable procedure, including notifying the taxpayer by certified mail unless the agreement was signed in Headquarters.
- (3) After the Compliance Operating Division field official determines that there are sufficient facts to justify reopening a case and setting aside a closing agreement, or after a finding that further investigation should be made to determine whether the agreement should be set aside, and the closing agreement was obtained while the case was under jurisdiction of an Appeals office, the Appeals office that handled the case must be apprised by memorandum of the Compliance Operating Division field official's views on the matter before any further contact is made with the taxpayer with regard to the possible reopening of the closing agreement and before a request is made for issuance of a notice under IRC 7605(b). See IRM 8.13.1.7.2.1.
- (4) If the Appeals office concurs, it will request permission to reopen the case from the Chief, Appeals (pursuant to Policy Statement P-8-3 and IRM 8.6.1.6, *New Issues and Reopening Closed Issues*, forwarding a copy of the Compliance Operating Division field official's memorandum. Such request must also reflect the concurring recommendation of the appropriate Appeals Director, Field Operations. The Chief, Appeals, will inform the Appeals Area Director of his or her decision. The latter will forward a copy of the decision to the Compliance Operating Division field official.
- (5) If the Appeals office believes the facts do not warrant proceeding toward the setting aside of the closing agreement or reopening the case previously closed by Appeals, it will apprise the Compliance Operating Division field official by memorandum. (See IRM 4.13.1, *Audit Reconsideration, Introduction*, and IRM 8.6.1.6, *New Issues and Reopening Closed Issues*, as to possible reopening of prior Appeals case for issues not considered by Appeals where prior Appeals disposition was not based on mutual concessions.) If the Compliance Operating Division field official disagrees with the Appeals office's conclusion, he or she will submit a memorandum to that effect to the Appeals Area Director and forward a copy to the appropriate Compliance Operating Division official. The Appeals Area Director will forward the two memoranda from the Compliance Operating Division field official and a copy of the memorandum to the Compliance Operating Division field official by a cover memorandum, to the appropriate Appeals Director, Field Operations. The appropriate Compliance Operating Division official and the appropriate Appeals Director, Field Operations will attempt to resolve the problem. If a decision is made to recommend reopening the case and setting aside the closing agreement, the appropriate

Appeals Director, Field Operations will request permission of the Chief, Appeals, to reopen the case (forwarding copies of the aforementioned memoranda and of the closing agreement). The Chief, Appeals, will inform the appropriate Appeals Director, Field Operations of that decision. The latter will transmit one copy to appropriate Compliance Operating Division official and one copy to the Compliance Operating Division field official.

- (6) If permission is given by the Chief, Appeals, to reopen the case, the issuance of the preliminary letter and the determination of civil liability will be made by the Appeals office subsequent to:
 - a. a decision by the Chief Criminal Investigation Division, that a joint investigation will not be made;
 - b. a decision of the Director of Investigations for the appropriate area that prosecution will not be recommended; or
 - c. in cases involving criminal prosecution, subsequent to notification permitting an ascertainment of civil liability as provided in IRM 8.7.1.9, *Cases Involving Criminal Prosecution and Restrictions on Appeals Jurisdiction in Criminal Cases*.

See IRM 8.13.1.7.2.1.

- (7) The Compliance Operating Division field office will assist the Appeals office in the determination of civil liability by conducting such investigation as the Appeals office requests in order to make an informed disposition of the case. After the Appeals determination of liability is made, and the taxpayer's agreement (by execution of a waiver of restrictions) or disagreement with the determination is ascertained (and payment requested if agreed to), the memorandum referenced to in IRM 8.13.1.7.3(1) should be prepared and forwarded in accordance with that subsection (unless the agreement was previously set aside while criminal aspects were under consideration). Exhibit 8.13.1-25.
- (8) If information pertaining to a taxable year over which Appeals has jurisdiction is discovered that indicates that a closing agreement should be set aside, or that further investigation should be made to determine whether a closing agreement should be set aside, procedures similar to the foregoing will be employed. The Appeals office must, however, make the initial decision as to whether the facts at hand justify asking permission of the Chief, Appeals, to reopen the case. The Appeals office will determine the civil liability. See IRM 8.13.1.7.3.

8.13.1.7.4
(05-25-2018)
**Setting Aside
Agreements — Office of
Chief Counsel**

- (1) Questions regarding the setting aside of a closing agreement covering specific matters that was processed in the Office of Chief Counsel should be submitted to that office, with a full statement of facts and a recommendation. See IRM 8.13.1.9. A decision in the matter will be made by the Office of Chief Counsel.
 - a. If it is decided that the facts and situation do not warrant setting aside the closing agreement, a memorandum to that effect, stating the basis therefor, will be issued to the recommending office.
 - b. In those cases where it is found that setting aside the closing agreement is justified, the Office of Chief Counsel will notify the taxpayer and will furnish appropriate copies to the recommending office.
- (2) The case will thereafter be handled in accordance with the applicable general procedure.

8.13.1.7.5
(11-09-2007)
**Paragraph For Notice of
Deficiency — Setting
Aside Agreements**

- (1) When a notice of deficiency (90-day letter) is issued to a taxpayer covering a taxable year or years for which a closing agreement has been set aside, the statement attached to the notice should contain the following paragraph:

“The Commissioner of Internal Revenue has set aside the final closing agreement previously entered into with you (name of corporation or other entity) on _____, _____, with respect to your (type of tax) liability for the taxable year(s) ended _____, _____.”

8.13.1.7.6
(05-25-2018)
**Setting Aside Not
Concurred With By
Chief, Appeals**

- (1) If the Chief, Appeals, does not concur with the recommendation to set aside a closing agreement, and the recommending offices have no further information to submit that might change the decision, the closing agreement must be adhered to in subsequent action.
- (2) Adjustments not inconsistent with the closing agreement or adjustments required by statute may be handled under established procedures.

8.13.1.8
(05-25-2018)
**Technical Aspects and
Pattern Agreements**

- (1) This IRM discusses closing agreements involving years barred by statute. A waiver of restrictions on assessment (Form 870, etc.) need not be secured for the barred years covered in the closing agreement. See IRM 8.13.1.8.1.
- (2) Other technical aspects discussed include Offer in Compromise and Successors in Interest.
- (3) The pattern agreements contained as exhibits in this section are merely guides for the drafting of agreements in related or similar circumstances. See IRM 8.13.1.8.6.

8.13.1.8.1
(05-25-2018)
Barred Years

- (1) When a taxpayer voluntarily makes a payment of additional tax liability for an **indisputably** barred year, and there is no material evidence to support an assessment of such liability made by the Government, the taxpayer will not ordinarily be requested to sign a closing agreement. Also a closing agreement does not in any way alter the lack of authority to make refunds or credits for years for which all statutes for refund or credit have clearly expired.
- (2) The matter of whether or not a closing agreement determining tax liability for barred years is effective and enforceable is not clearly covered by the statute, regulations or judicial precedent. Existing authority indicates that such an agreement is valid. See *Dubinsky v. Becker*, 64 F. 2d 601 (8th Cir. 1933), *agg'g* 15 A.F.T.R. 691 (E.D. Mo. 1931). On point is the language of the lower court, which may be found at 15 A.F.T.R. at 695. “The statute clearly points out the instances in which the agreement may be questioned. They are for fraud, malfeasance and misrepresentation. It does not say that such an agreement may be overturned upon a showing that a part, or all, of the taxes paid were assessed after they were barred by limitation. If it had been so intended the legislature would have said it. It didn't. So there can be no recovery unless the agreement is vulnerable for one or more of the above reasons.”
- (3) While a literal reading of IRC 6401 might indicate to the contrary, payment of tax pursuant to a closing agreement determining tax liability executed after the expiration of the statutory period of limitations on assessment is not ordinarily considered to be refundable upon filing a claim for credit or refund that is timely with respect to the date of payment. A closing agreement only deter-

mines the matters contained therein, and the statute of limitations issue must be resolved in the agreement itself. Otherwise, a taxpayer could challenge the timeliness of the assessment even though it would be precluded by the closing agreement from challenging the amount.

- (4) If tax liability is at issue for a year barred (or arguably barred) by expiration of the statutory period of limitations, an agreed upon disposition of the year involving a deficiency without application of the fraud penalty should be finalized by use of a closing agreement determining tax liability for such year.
- (5) The closing agreement should also expressly determine agreed penalties and the applicability (if determinable, the amount) of interest liability pertaining to the specified type of liability. In instances of partial payment, interest liability to date may be shown and the agreement may provide for additional interest and possible nonpayment penalty to the extent determined amounts remain unpaid after the specified date.
- (6) If, for any reason, it would appear that it will take more than 30 days to have the closing agreement approved, an unqualified waiver may be taken (received or accepted before the date of approval of the closing agreement) that will suspend interest for a period beginning 30 days after receipt of the waiver if notice and demand has not been made. See IRM 8.13.1.5.3 and IRM 8.13.1.6.2.1. Both of these subsections discuss waivers in closing agreement cases. It is uncertain whether interest on deficiencies for barred years can be assessed and collected where only tax liability and penalties for such years are determined by closing agreement. Exhibit 8.13.1-5. This exhibit covers barred year agreements.
- (7) While assessment and collection of a deficiency resulting from a determination of tax liability by a Form 866 closing agreement for a barred year can be made upon authority of the closing agreement without a waiver of restrictions from the taxpayer and without issuing a notice of deficiency, it is preferable to obtain payment of the unpaid tax, penalty, and interest from the taxpayer before execution of the closing agreement for the Commissioner. A transcript of account should be secured after payment is obtained to ensure the payment is properly applied. If collection of the deficiency and interest in advance cannot be obtained, a closing agreement may nevertheless be entered into and assessment and collection made. It is important that the closing agreement recite the underlying circumstances to ensure that the taxpayer is aware of the legal consequences of his or her act in entering into a closing agreement.
- (8) Technical advice or technical assistance may be requested on problems involving potentially barred years, including those with possible competent authority implications.

8.13.1.8.2 (05-25-2018)

Definition of Liability

- (1) In the broad sense, the term "tax liability" includes interest and penalties. However, it is ordinarily undesirable to determine the entire tax liability for a period in such fashion as to preclude any further assessment of any type of tax. Therefore, generally only liabilities for specific types of taxes and specific applicable penalties are determined. See IRM 8.13.1.8.1. For these reasons, Form 866, *Agreement as to Final Determination of Tax Liability*, narrows the extent of the determination to those specific types of taxes and penalties (and, in unusual cases, applicable interest) specifically stated therein.

- (2) A closing agreement determining tax liability should reflect the total corrected tax liability, separately stating penalties (including additions to tax and additional amounts under Subchapter A of Chapter 68 of the Code) and interest if the latter is at issue or if a barred year or transferee interest is involved. See other sections with regard to penalties and interest. Consider information on barred years. Exhibit 8.13.1-5. The corrected tax liability is that resulting from the types of tax and taxable periods or returns covered in the agreement, after reduction for all applicable credits other than those representing payment of such liability. In other words, the closing agreement reflects liability after application of credits reducing liability but before application of credits discharging liability.

8.13.1.8.3
(05-25-2018)
**Effect of Later
Legislation**

- (1) A closing agreement establishing final determination of tax liability for a prior taxable period is valid and binding upon the parties concerned and cannot be set aside in the absence of a showing of fraud, malfeasance, or misrepresentation of material fact. See IRM 8.13.1.7.1.1 and IRM 8.13.1.7.1.2. Insofar as they relate to taxable periods ending at or before the date of the agreement, determinations in the agreement are not affected by subsequent legislation retroactively applicable to the taxable period to which the agreement relates where the legislation is silent as to its effect on closing agreements. Insofar as closing agreement determinations relate to periods ending subsequent to the date of the agreement, they are subject to statutory changes enacted subsequent to that date applicable to such periods. On the other hand, should the Supreme Court declare a statutory provision unconstitutional after liability is based thereon has been determined by a closing agreement, the agreement stands. See Rev. Rul. 56-322, 1956-2 C.B. 963, for authority and cases on point.

8.13.1.8.4
(05-25-2018)
**Joint Disposition By
Offer in Compromise
and Closing Agreement**

- (1) In some respects closing agreements are more final than accepted offers in compromise under IRC 7122 and in other respects less final. A number of Code sections that are to be given effect specifically exempt compromise cases from their provisions but fail to mention cases disposed of by closing agreement. Yet accepted offers in compromise involving collateral agreements to make future payments may be withdrawn by the Commissioner should the taxpayer fail to comply with the terms of the compromise. Compromises are less likely to withstand challenge under the general law of contracts than closing agreements. The former may be set aside pursuant to stipulations on Form 656, *Offer in Compromise* (see IRC 7206 for criminal penalties expressly applicable to both offers in compromise and closing agreements). If a tax liability is compromised by acceptance of an offer based on doubt as to liability and concurrently determined by closing agreement, maximum finality would be achieved. In such a situation extreme caution would have to be exercised as to the effect upon any latent carrybacks and carryovers that might subsequently arise.
- (2) If acceptance of an offer in compromise requires an enforceable agreement covering additional matters affecting the computation of unassessed tax liabilities, such additional matters should be covered in a specific matter closing agreement.

8.13.1.8.5
(11-09-2007)

Successors in Interest

- (1) Circumstances arise where it appears desirable to attempt to bind possible successors in interest to prevent circumvention of closing agreement determinations. However, there is uncertainty as to the effectiveness of purporting to bind devisees, legatees, heirs, assigns and other presently unidentifiable related or controlled successors in interest who are not parties to the agreement. For example, there is some question as to the effectiveness of a closing agreement provision determining the applicable tax treatment with respect to a transaction of the taxpayer-corporation and any successor in interest controlled directly or indirectly by it (or by its controlling stockholders) where such successor is unidentified and not a party to the closing agreement. Judicial and regulatory interpretation on the precise point are extremely limited. See however, *Phillips v. Commissioner*, 178 F.2d 270 (3rd Cir.1949), aff'g per curiam 11 T.C. 652 (1948), which supports the position that strangers to the closing agreement are not bound by it and cannot take advantage of it. The presence of Code provisions prescribing rules for successors in interest under specified circumstances (as in subchapter C of the Internal Revenue Code) may imply that in the absence of specific Code provisions a successor in interest is to be given independent treatment and that the Commissioner lacks authority to create successor rules by closing agreements (assuming the successors are not parties to the agreement).
- (2) Despite uncertainty as to legal effect, provisions of closing agreements purporting to bind controlled or related successors in interest do not affect the validity of the agreements and may motivate compliance.

8.13.1.8.6
(05-25-2018)

Pattern Agreements

- (1) If the circumstance of the case fits, an agreement closely modeled after the applicable pattern should be acceptable and effective. See IRM 8.13.1.5.2 and IRM 8.13.1.6.2.2.
 - a. Where the agreement follows the pattern, the reviewer will be concerned with whether or not the circumstances of the case call for departure from the pattern.
 - b. Where the agreement varies from the pattern, the reviewer should determine whether or not all essential matters have been clearly determined. Such variations should be explained in the Revenue Agent's Report (or the workpapers where there is no transmittal letter) or in the Appeals Case Memorandum.
 - c. Where not adequately explained, a note to this effect and additional explanation may be necessary on Form 4222, *Closing Agreement Checklist*, or in an informal written recommendation to the supervisor.
- (2) If a reviewer finds that an issue is giving rise to or incorporated in a number of closing agreements with circumstances that this is likely to be the case in other offices of the country, the reviewer should consider whether or not use of a pattern agreement or pattern clauses would be desirable. Unless a pattern agreement or pattern clauses appear impractical, a memorandum should be prepared to the appropriate Compliance Operating Division official, or the Chief, Appeals, fully describing the recurring issue and the need for a pattern clause or pattern agreement. The reviewer should prepare as an attachment to the memorandum, pattern clauses or a recommended pattern agreement to fit circumstances. If consideration by the Headquarters indicates a need for it, a pattern agreement or pattern clause will be incorporated in this handbook. Such a recommendation may also be made in the form of an employee suggestion. Similarly, if the user of an existing pattern agreement identifies a

problem with the language contained therein, the appropriate Compliance Operating Division official or the Chief, Appeals, should be notified via memorandum.

- (3) Pattern agreements must be carefully considered in light of the circumstances in the case. Modification of a pattern agreement is permissible and frequently necessary. Therefore, in discussing a draft closing agreement following one of the pattern agreements, the examiner or Appeals Officer should not represent the draft as following a pattern prescribed by Headquarters. The taxpayer's representative may discover some valid objection to the use of some provisions of the pattern agreement. Alternatively, the taxpayer may request that a published pattern agreement be followed in circumstances where the examiner or Appeals Officer does not agree. If so, Section 11.01 of Rev. Proc. 68-16, 1968-1 C.B. 770, 791, may be referred to as affirming the Service practice to revise or depart from most recently issued patterns where necessary. Variations from pattern and instructions in this handbook should be explained in Compliance field reports and Appeals Case Memoranda.

8.13.1.9
(05-25-2018)
**Agreements Processed
by the Office of Chief
Counsel**

- (1) The Chief Counsel is authorized (Delegation Order 8-3, *Closing Agreements Concerning Internal Revenue Tax Liability*, as revised) to enter into and approve a written closing agreement with any person relating to the tax liability of such person (or of the person or estate for whom he or she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed. This applies to all federal taxes other than alcohol, tobacco, and firearms taxes (but including the manufacturer's excise tax on firearms under IRC 4181 and IRC 4182).
- (2) Closing agreements originating within the office of Chief Counsel are usually based on rulings, covering prospective transactions, or completed transactions affecting returns to be filed. Generally, these agreements are signed by an Associate Chief Counsel. Closing agreements are entered into in these situations if there appears to be an advantage in having the matter permanently and conclusively closed, or good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined that the United States will sustain no disadvantage through consummation of such an agreement. A taxpayer may be required to enter into a closing agreement as a condition to the issuance of a ruling in any case in which the interest of the Service will be served. Closing agreements signed in Headquarters may also be based on procedures set forth in revenue rulings or revenue procedures.
- (3) Upon approval and signing of a closing agreement by an Associate Chief Counsel:
 - a. An executed original is retained in the files of the appropriate division;
 - b. An executed original is mailed to the taxpayer; and
 - c. An executed original is mailed to the appropriate Compliance Operating Division field official, together with a copy of the related ruling and a copy of the transmittal letter to the taxpayer.
- (4) Correspondence concerning a closing agreement signed by or on behalf of the Chief Counsel, Deputy Chief Counsel, or an Associate Chief Counsel should be addressed to the appropriate division or associate office. Reference should be made to the control number, as well as to the taxpayer's name and address.

- (5) CCDM 32.3.4 contains further instructions concerning closing agreements originating in the office of an Associate Chief Counsel.
- (6) The following closing agreements originate in the office of the Associate Chief Counsel (International):
 - a. IRC 1503(d) provides that the net operating loss of a domestic corporation that is subject to a foreign country's tax on worldwide income or on a residence basis (dual resident corporation) cannot reduce the taxable income of any other member of a domestic affiliate for that year or any other year, except to the extent provided by regulations where the loss does not offset the income of any foreign corporation under the laws of a foreign country. Similar rules apply to separate units of domestic corporations. Treas. Reg. 1.1503-2(g)(2) which is generally effective for dual consolidated losses incurred in taxable years beginning on or after October 1, 1992, and before April 18, 2007, offers relief from the limitation on the use of dual consolidated losses if the taxpayer agrees to recapture them if there is a later use of those losses by another person or if certain other triggering events occur within a certification period. One event that usually triggers losses is the disaffiliation of the dual resident corporation from its domestic group. Recapture of losses is, however, not required if the parties to disaffiliation (or on the occurrence of certain other eligible triggering events) enter into a closing agreement in which they accept joint and several liability for recapture should the losses be used within the certification period. These closing agreements under Treas. Reg. 1.1503-2(g)(2)(iv)(B)(3)(i) originate in Associate Chief Counsel (International). New regulations generally apply to dual consolidated losses incurred in taxable years beginning on or after April 18, 2007. Dual consolidated losses incurred under these new regulations are no longer eligible for closing agreements; instead, an alternative relief procedure applies.

8.13.1.9.1
(05-25-2018)
**Agreements Processed
by Other Operating
Division Officials**

- (1) Those closing agreements not coming within the authority and jurisdiction of the Chief Counsel and not coming within the signing authority of Compliance Operating Division field officials or the Director, International, are reviewed and signed in the office of the Director, Compliance (Small Business/Self-Employed, Wage and Investment); Industry Director (Large Business and International); the Director, Employee Plans; the Director, Exempt Organizations or the Director, Government Entities. See IRM 8.13.1.9. Each agreement or each related group of agreements forwarded for review and signature should be accompanied by a memorandum addressed to the appropriate official and signed by the recommending official. The memorandum should explain the recommendation for execution of the proposed closing agreement. The affected returns, workpapers, reports, and entire administrative file should be forwarded with the proposed closing agreement.

8.13.1.9.2
(05-25-2018)
**Additional Agreements
Processed by Other
Operating Division
Officials**

- (1) IRC 4371 generally imposes an excise tax on premiums paid with respect to each policy of insurance or reinsurance issued by any foreign insurer or reinsurer with respect to a risk wholly or partly within the United States, unless the premiums paid are taxed as income effectively connected with the conduct of a U.S. trade or business of the foreign insurer or reinsurer. The rate of tax is four cents on each dollar of premium paid for life insurance, sickness, accident policies, and annuity contracts. In addition, there is an excise tax imposed at a rate of one cent on each dollar of reinsurance relating to these policies.

Income tax treaties between the U.S. and foreign countries provide for an exemption from the tax imposed under IRC 4371. A foreign insurer or reinsurer that consider its premiums to be tax under a treaty is strongly encouraged to enter into a closing agreement substantially in the form set forth in Rev. Proc. 2003-78, 2003-2 C.B. 1029. Closing agreements under IRC 4371 are processed by the Director, International. Please contact the Director, International, if you have any questions regarding closing agreements under IRC 4371. Absent a closing agreement, U.S. persons who pay insurance or reinsurance premiums to foreign insurers or reinsurers are liable for any excise tax due with respect to the premiums they have paid to the foreign insurer or reinsurer.

- (2) The section 953(d) election allows certain controlled foreign corporations engaged in the insurance business to elect to be treated as United States corporations for all purposes of the IRC. The procedures for making the election are outlined in Rev. Proc. 2003-47, 2003-2 C.B. 55. For further information concerning the execution of a closing agreement pursuant to this election, contact the Director, International Operations.
- (3) In Compliance or Appeals cases involving offset relief, the field office and the taxpayer will agree upon all closing agreement determination clauses except those providing offset relief, subject to changes in amounts flowing automatically from later revisions of the expected amount of offset relief. The field office should specify either that it wishes the Director, International Operations, to clear with it all changes to the non-offset provisions of the proposed closing agreement or that it has no objection to such changes if they are of the “automatic” variety flowing from adjustments to the requested offset relief made by the Director. The transmitting memorandum will explain the reasons for variance between the closing agreement paragraphs specified therein and the paragraphs contained in the pattern agreement.
- (4) In Joint Committee cases involving offset or combined relief, the file is forwarded from the Compliance field or Appeals Office to the Director, International Operations. If the latter tentatively approves the closing agreement, the transmitting office is advised by a memorandum or other transmittal. A copy of the proposed closing agreement is attached to the report to the Joint Committee. The closing agreement is retained by the Director, International Operations until, in accordance with IRC 6405, the tentative resolution has been submitted to, and the timely views of the Joint Committee have been considered. When compliance with IRC 6405 is complete, the Deputy Commissioner, International Operations, signs the agreement, retains the original and forwards a copy to the taxpayer and the transmitting office. The transmittal document should indicate that returns affected be marked and, when applicable, a follow-up control be maintained on the agreement. See IRM 8.13.1.6.2.3.
- (5) IRC 995(b) treats a portion of a DISC’s taxable income for each taxable year as a deemed distribution to its shareholder, which is taxable to the shareholder as a dividend. Under IRC 996(a)(3), actual distributions by a DISC out of previously taxed income (PTI), which consists of amounts taxed to a DISC’s shareholder under IRC 995(b), are excluded from the shareholder’s gross income. Actual distributions by a DISC out of its accumulated DISC income (ADI) or other earnings or profits (not constituting either PTI or ADI) are taxable to the DISC’s shareholder as ordinary dividends. Redeterminations by the Service of intercompany prices or commissions determined under IRC

994(a) pricing rules generally have the effect of reducing a DISC's PTI and ADI for the taxable year of the redetermination. As a result of such reduction in PTI, a portion of any nontaxable distribution previously made by a DISC out of PTI as originally computed by the parties is reclassified as a taxable distribution out of ADI or other earnings and profits.

- a. Rev. Proc. 85-45, 1985-2 C.B. 505, sets forth procedures by which a DISC's related supplier or shareholder may request an adjustment of accounts and a reclassification of actual distributions previously made with respect to all or a part of the amount of the pricing or commission redetermination. These procedures include entering into a closing agreement between the Commissioner and the shareholder, the DISC, and any affected related supplier. These closing agreements are prepared by the Compliance field office or the Appeals office having jurisdiction of the case before closing action is taken on the redetermination of DISC taxable income.
- b. Please contact the Associate Chief Counsel (International) if you have any questions regarding adjustments to DISC transfer price or commission closing agreements.

8.13.1.9.3
(05-25-2018)
Agreements Processed
by the Deputy
Commissioner,
International

- (1) Relief under Section 3 of Rev. Proc. 64-54, 1964-2 C.B. 1008, Rev. Proc. 69-13, 1969-1 C.B. 402, and Rev. Proc. 65-17, 1965-1 C.B. 833 necessitates the use of a closing agreement. The Deputy Commissioner, LB&I (International), is authorized to secure and approve closing agreements that contain provisions for relief under those Revenue Procedures and Rev. Proc. 99-32 (or its predecessor, Rev. Proc. 65-17, as the case may be). To avoid added complications in the handling of Compliance or Appeals cases, the relief feature of Rev. Proc. 64-54 and Rev. Proc. 65-17, or Rev. Proc. 69-13 and Rev. Proc. 99-32 should generally be embodied in one closing agreement and matters not necessary to such relief, but warranting disposition by closing agreement, embodied in a separate subsequent agreement. Exhibit 8.13.1-22.
- (2) In Compliance or Appeals cases involving offset relief, the field office and the taxpayer will agree upon all closing agreement determination clauses except those providing offset relief, subject to changes in amounts flowing automatically from later revisions of the expected amount of offset relief. The field office should specify either that it wishes the Director, International Operations to clear with it all changes to the non-offset provisions of the proposed closing agreement or that it has no objection to such changes if they are of the "automatic" variety flowing from adjustments to the requested offset relief made by the Director. The transmitting memorandum will explain the reasons for variance between the closing agreement paragraphs specified therein and the paragraphs contained in the pattern agreement.
- (3) In Joint Committee cases involving offset or combined relief, the file is forwarded from the Compliance field or Appeals Office to the Director, International Operations. If the latter tentatively approves the closing agreement, the transmitting office is advised by a memorandum or other transmittal. A copy of the proposed closing agreement is attached to the report to the Joint Committee. The closing agreement is retained by the Deputy Commissioner, International Operations until notified that the Joint Committee Staff has cleared the case. Upon notification of clearance, the Director, International Operations signs the agreement, retains the original and forwards a copy to the

taxpayer and the transmitting office. The transmittal document should indicate that returns affected be marked as discussed previously and, when applicable, a follow-up control be maintained on the agreement. See IRM 8.13.1.6.2.3.

- (4) IRC 995(b) treats a portion of a DISC's taxable income for each taxable year as a deemed distribution to its shareholder, which is taxable to the shareholder as a dividend. Under IRC 996(a)(3), actual distributions by a DISC out of previously taxed income (PTI), which consist of amounts taxed to a DISC's shareholder under IRC 995(b) are excluded from the shareholder's gross income. Actual distributions by a DISC out of its accumulated DISC income (ADI) or other earnings or profits (not constituting either PTI or ADI) are taxable to the DISC's shareholder as ordinary dividends. Redeterminations by the Service of intercompany prices or commissions determined under IRC 994(a) pricing rules generally have the effect of reducing a DISC's PTI and ADI for the taxable year of the redetermination. As a result of such reduction in PTI, a portion of any nontaxable distribution previously made by a DISC out of PTI as originally computed by the parties is reclassified as a taxable distribution out of ADI or other earnings and profits.

 - a. Rev. Proc. 85-45, 1985-2 C.B. 505, sets forth procedures by which a DISC's related supplier and/or shareholder may request an adjustment of accounts and a reclassification of actual distributions previously made with respect to all or a part of the amount of the pricing or commission redetermination. These procedures include entering into a closing agreement between the Commissioner and the shareholder, the DISC, and any affected supplier. These closing agreements are prepared by the Compliance field office or the Appeals office having jurisdiction of the case before closing action is taken on the redetermination of DISC taxable income.
 - b. Please contact the Associate Chief Counsel (International) if you have any questions regarding adjustments to DISC transfer price or commission closing agreements.
- (5) IRC 995(b) treats a portion of a DISC's taxable income for each taxable year as a deemed distribution to its shareholder, which is taxable to the shareholder as a dividend. Under IRC 996(a)(3), actual distributions by a DISC out of previously taxed income (PTI), which consist of amounts taxed to a DISC's shareholder under IRC 995(b) are excluded from the shareholder's gross income. Actual distribution by a DISC out of its accumulated DISC income (ADI) or other earnings or profits (not constituting either PTI or SADI) are not taxable to the DISC's shareholder as ordinary income. Redeterminations by the Service of intercompany prices or commissions determined under IRC 994(a) pricing rules generally have the effect of reducing a DISC's PTI and ADI for the taxable year of the redetermination. As a result of such reduction in PTI, a portion of any nontaxable distribution previously made by a DISC out of PTI as originally computed by the parties is reclassified as a taxable distribution out of ADI or other earnings and profits.

 - a. Rev. Proc. 85-45, 1985-2 C.B. 505, sets forth procedures by which a DISC's related supplier and/or shareholder may request an adjustment of accounts and a reclassification of actual distributions previously made with respect to all or a part of the amount of the pricing or commission redetermination. These procedures include entering into a closing agreement between the Commissioner and the shareholder, the DISC, and any affected supplier. These closing agreements are prepared by the

Compliance field office or the Appeals office having jurisdiction of the case before closing action is taken on the redetermination of DISC taxable income.

- b. Please contact the Associate Chief Counsel (International) if you have any questions regarding adjustments to DISC transfer price or commission closing agreements.

Exhibit 8.13.1-1 (11-09-2007)**Pattern Tax Liability Agreement for General Use Form 866 - Agreement as to Final Determination of Tax Liability**

Taxable Period(s)	Kind of Tax or Penalty	Chapter Number and Sub-chapter Letter of Internal Revenue Code	Total Tax Liability for Period
Year Ending 12/31/95	Income	1A, I.R.C.	\$75,000.00
Year Ending 12/31/96	Income	1A, I.R.C.	\$98,000.00

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-2 (05-25-2018)**Pattern Language - Tax Liability Agreement Reflecting Additions to Tax for Use on Form 866 - Agreement as to Final Determination of Tax Liability**

Taxable Period(s)	Kind of Tax or Penalty	Chapter Number and Subchapter Letter of Internal Revenue Code	Total Tax Liability for Period
Year Ending 12/31/95	Income	1A, I.R.C.	
	Sec. 6662(b)(1)		\$25,000.00
	Addition to Income Tax	68A, I.R.C.	\$5,000.00
Year Ending 12/31/96	Income	1A, I.R.C.	\$15,000.00
	Sec. 6662(b)(1)		\$3,000.00
	Addition to Income Tax	68A, I.R.C.	

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-3 (11-09-2007)

Pattern Language for Determination of Basis for Use on Form 906 - Closing Agreement on Final Determination Covering Specific Matters

WHEREAS, the Commissioner and the taxpayer wish to resolve with finality the taxpayer's basis in real estate located in Land Lot 10 of Block 12 of Playa Lido Beach subdivision, as recorded in the land records of Kent County, Florida, Book 179, Folio 102;

NOW IT IS HEREBY DETERMINED AND AGREED for federal income tax purposes that the taxpayer's basis at December 31, 1994, for purposes of determining gain or loss, in the Playa Lido Beach property, shall be \$2,545,000.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-4 (11-09-2007)**Example of a Combined Agreement for Use on Form 906 - Agreement as to Final Determination of Tax Liability and Specific Matters****Agreement As To Final Determination of Tax Liability and Specific Matters**

WHEREAS, on December 30, 1992, the taxpayers donated certain rights, title and interest in a painting entitled _____ by artist _____ to the University of _____;

WHEREAS, the taxpayers placed a fair market value of \$500,000 on the painting and deducted an appropriate amount as a charitable contribution on their Federal Income Tax Return, Form 1040, filed for the year ending December 31, 1992;

WHEREAS, the taxpayers have claimed an excess charitable contribution carryforward in the amount of \$200,000,000 on their Federal Income Tax Return, Form 1040, for the taxable year ended December 31, 1993;

WHEREAS, it is desired to determine the Federal income Tax liability of the taxpayer(s) for the taxable year ended December 31, 1992, and to determine the fair market value of the contribution by them of the above painting for purposes of computing the excess charitable contribution carryover;

NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:

- (1) The Federal tax liability of the above named taxpayers with respect to the following type of tax for the following taxable period is stated hereinafter. However, except to the extent expressly determined hereinafter, this agreement does not determine the applicability or inapplicability of penalties or interest. In the preceding sentence "penalties" includes additions to tax or additional amount authorized by Subchapter A of Chapter 68 of the Internal Revenue Code.

Taxable Period	Kind of Tax or Penalty	Chapter Number and Sub-chapter Letter of Internal Revenue Code	Total Tax Liability for Period
Year ending December 31, 1992	Income	1A, I.R.C.	\$125,000.00
	Sec. 6662(b)(2)	68A, I.R.C.	\$15,000.00

- (2) With respect to the above described contribution by the taxpayers, the fair market value of these contributed rights, title and interest was \$75,000.00

Exhibit 8.13.1-4 (Cont. 1) (11-09-2007)**Example of a Combined Agreement for Use on Form 906 - Agreement as to Final Determination of Tax Liability and Specific Matters**

- (3) With respect to the above described contribution by the taxpayers, there is no excess charitable contribution carryover to any period subsequent to the taxable year ending December 31, 1992.

(Sample language only. Not a complete document.)

Exhibit 8.13.1-5 (05-25-2018)**Pattern Language for Barred Year Agreement****Agreement As To Final Determination of Tax Liability and Specific Matters**

WHEREAS, the taxpayers filed a joint income tax return for the taxable year 1996 on or before April 15, 1997; and

WHEREAS, the parties have resolved an issue as to whether the assessment and collection of a deficiency in income tax, addition to tax, and interest for the year 1996 are barred by the applicable limitations periods under IRC §§ 6501 and 6502;

- 1) The taxpayers' total income tax liability for the taxable year 1996 (including interest and penalties) is as stated below:

Taxable Period	Kind of Tax or Penalty	Chapter Number and Subchapter Letter of Internal Revenue Code	Total Tax Liability for Period
Year Ending December 31, 1996	Income	1A, I.R.C.	\$5,000.00
Year Ending December 31, 1996	Addition to Tax Sec. 6651(a)(1)	68A, I.R.C.	\$800.00
Year Ending December 31, 1996	Interest	67A, I.R.C.	\$1,200.00*

*Interest computed through (*Payment Date*)

- 2) The amounts set forth in paragraph (1) above may be assessed and collected on or before 60 days after the date this agreement is executed on behalf of the Commissioner of Internal Revenue, notwithstanding any provision of the Code that might otherwise bar assessment and collection of these amounts, absent this closing agreement.

(Note: It is preferable to obtain payment of the tax, penalty, and interest from the taxpayer upon execution of the closing agreement. Otherwise, additional determination paragraphs will be required to establish the Service's right to (1) collect the amounts set forth in the agreement within the limitations period on collection under I.R.C. § 6502; and, (2) to assess and collect interest accruing until the amounts due under the agreement are paid.)

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-6 (11-09-2007)**Pattern Language for Change of Accounting Practice or Method Agreement for Use on Form 906****WHEREAS,**

- (1) The taxpayers' present method of accounting for *(for example, "credit sales")* is the method of *(describe in detail the method of accounting being changed, for example, "including income from credit sales in gross income when payment is received")*;
- (2) *(Briefly describe why the method of accounting is being changed , for example, "The taxpayer maintains inventories and is required to account for sales under an actual method")*;
- (3) The taxpayer's method of accounting for *(for example, "credit sales")* is to be changed from its present method of *(describe the method of accounting to which the taxpayer is being changed, for example, "including income from credit sales in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy (an accrual method)")*.
- (4) The change in method of accounting for *(for example, "credit sales")* is to be effected for the taxable year ended *(insert date)* (the year of change);
- (5) An adjustment to income is required under §481(a) of the Internal Revenue Code in the amount of \$ *(insert amount in numbers)* *(insert amount in words, dollars)*, as of the beginning of the year of change *(insert date)*, for *(describe the adjustment for example, "accounts receivable on credit sales")*, which amount previously has not been included in the taxpayer's gross income;
- (6) For purposes of the audit protection under section 7.04 of Rev. Proc. 2000-*, 2000-* I.R.B.*, the taxpayer has filed federal income tax returns for the taxable year(s) ended *(insert date(s))*;
- (7) *(If applicable, insert The taxpayer has filed an amended return(s) for the taxable year(s) ended date(s) to reflect the change in method of accounting for (for example, "credit sales")*;
- (8) *(If applicable, insert "The taxpayer used its present method of accounting for two taxable years preceding the year of change")*;
- (9) *If applicable, insert "An audit adjustment of \$ (insert amount in numbers) (insert amount in words, dollars) is required to adjust the (describe the adjustment, for example, "accounts receivable for credit sales") as of the end of the year of change (insert date)";*
- (10) *(If applicable, insert "An audit adjustment of \$ (insert amount in numbers) (insert amount in words, dollars) is required to adjust the (describe the adjustment, for example, "accounts receivable for credit sales") as of the end of the taxable year ended (insert date)"; and*

Exhibit 8.13.1-6 (Cont. 1) (11-09-2007)**Pattern Language for Change of Accounting Practice or Method Agreement for Use on Form 906****WHEREAS,**

- (11) *(If applicable, insert A (if applicable insert "stipulated") decision has been entered by the Tax Court with respect to the taxable years ended (insert date(s) that reflects taxable income for those years computed using the new method of accounting for (for example, "credit sales").*

NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:

- (1) There is an increase of \$ *(insert amount in numbers) (insert amount in words, dollars)* in the taxpayer's taxable income, resulting from the change in the method of accounting for *(for example, "credit sales")*, the entire amount of which is includible in the taxpayer's taxable income for the year of change.
- (2) *(If applicable, insert "The increase in tax attributable to the increase in taxable income resulting from the change in the method of accounting for (for example, "credit sales ") is \$ (insert amount in number) (insert amount in words dollars), and this increase in tax has been computed by taking into account the limitations under §481(b).")*
- (3) *(If applicable, insert "There is an increase of \$(insert amount in numbers) (insert amount in words, dollars) in the taxpayer's taxable income, resulting from the audit adjustment to the (describe the adjustment for example, "accounts receivable for credit sales", the entire amount of which is includible in the taxpayer's taxable income for the year of change.)"*
- (4) *(If applicable, insert "There is an increase of \$ (insert amount in numbers) (Insert amount in words, dollars) in the taxpayer's taxable income, resulting from the audit adjustment to the (describe the adjustment for example, "accounts receivable for credit sales"), the entire amount of which is includible in the taxpayer's taxable income for the taxable year ended (insert date.)"*
- (5) The change in method of accounting for *(for example, "credit sales")* is a change in method of accounting within the meaning of Rev. Proc. 2000-*. This closing agreement does not make a determination that the method of accounting will be used for all future years.
- (6) *(If applicable, insert The taxpayer will file an amended return(s) for the taxable year(s) ended (insert date(s) to reflect the change in method of accounting for (for example, "credit sales").*

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-7 (11-09-2007)**Pattern Language for Transferee Agreement for Use on Form 906**

WHEREAS, the following type of federal tax liability of name, address and identification number, transferor, for the following taxable periods, was unpaid in the following amounts as of _____, 19____;

Taxable Period	Kind of Tax or Penalty	Chapter Number and Subchapter Letter of Internal Revenue Code	Total Tax Liability for Period
Year Ending December 31, 1997	Income	1A, I.R.C.	\$10,000.00
	Interest on Unpaid Income Tax	67A, I.R.C.	\$12,000.00
Year Ending December 31, 1998	Income	1A, I.R.C.	\$10,000.00
	Sec. 6662(a) Penalty on Income Tax	68A, I.R.C.	\$ 500.00
	Interest on Unpaid Income Tax	67A, I.R.C.	\$ 600.00

WHEREAS, the transferor was liquidated and its assets, in the amount of \$15,000.00 were distributed to _____, on March 31, 2000, without paying the above stated liability;

WHEREAS, the above-named taxpayer offers to agree that he is liable as a transferee for that portion of the above liability as determined below;

NOW IT IS HEREBY DETERMINED AND AGREED for federal income tax purposes that:

(1) The above named taxpayer is liable as a transferee for \$15,000.00 of the above stated liabilities (exclusive of interest). This amount (exclusive of interest) may be assessed and collected from the taxpayer (as transferee) without issuing the notice referred to in I.R.C. sections 6212 and 6901.

(2) To the extent unpaid during such period, interest at the rate of ____ percent per annum on the amount stated in determination clause (1) may be assessed and collected from the transferee for the period beginning _____, 20 _____, and ending on the date of payment of transferee liability;

(3) These determinations shall be final notwithstanding any subsequent administrative or judicial redetermination of the tax liabilities of the transferor for the said years or of the unpaid portion thereof.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-8 (06-03-2008)**Pattern Tax Liability Agreement Reflecting Trust Fund Recovery Penalty Assessment of Unpaid Federal Employment Taxes for Use on Form 866**

The liability described and agreed to herein is the unpaid Federal employment taxes withheld or that should have been withheld from wages of employees of _____ (*name and EIN of employer*) for the taxable periods listed below.

Taxable Period	Kind of Tax or Penalty	Chapter Number and Subchapter Letter of Internal Revenue Code	Total Tax Liability for Period
Calendar Quarter Ending September 30, 1987	Section 6672 Assessable Penalty	68B, I.R.C.	\$982.16
Calendar Quarter Ending December 31, 1987	Section 6672 Assessable Penalty	68B, I.R.C.	\$964.84

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-9 (06-03-2008)**Pattern Liability Agreement For Employment Tax for Use on Form 866**

Taxable Period	Kind of Tax or Penalty	Chapter Number and Subchapter Letter of Internal Revenue Code	Total Tax Liability for Period
Quarter Ending 3/31/98	FICA	21A & B, I.R.C.	\$2,000.00
3/31/98	Income Tax Withhold- ing	24A, I.R.C.	\$3,000.00
6/30/98	FICA	21A & B, I.R.C.	\$2,500.00
6/30/98	Income Tax Withhold- ing	24A, I.R.C.	\$3,750.00
9/30/98	FICA	21A & B, I.R.C.	\$2,700.00
9/30/98	Income Tax Withhold- ing	24A, I.R.C.	\$3,200.00
12/31/98	FICA	21A & B, I.R.C.	\$4,000.00
12/31/98	Income Tax Withhold- ing	24A, I.R.C.	\$4,800.00
Calendar Year 1998	FUTA	23, I.R.C.	\$850.00

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-10 (11-09-2007)**Pattern Language for Agreement on Failure to File for Use on Form 906**

WHEREAS, the taxpayer was required to file Form 1040, U.S. Individual Income Tax Return, for the taxable period ended December 31, 1994, on or before April 15, 1995, but did not file such return until July 5, 1995;

WHEREAS, the Internal Revenue Service has assessed an addition to the tax in the amount of \$13,500 pursuant to the provisions of Section 6651(a)(1) as a result of the taxpayer's failure to timely file the required return; and

WHEREAS, the Internal Revenue Service and the taxpayer desire to effect a settlement of the addition to the tax under Section 6651(a)(1) giving due regard to the debatable issue of whether or not the taxpayer had reasonable cause for failing to timely file the required return.

NOW IT IS HEREBY DETERMINED AND AGREED that of the amount of \$13,500 presently assessed as an addition to the tax provided by Section 6651(a)(1) for the taxpayer's taxable period ending December 31, 1994, \$5,400 is to be abated. It is expressly understood and agreed that this determination relates only to the addition to the tax under Section 6651(a)(1) for failure to file the return on time and is not a determination of the amount of income tax liability of the taxpayer for the taxable period ended December 31, 1994, nor a determination with respect to any other additions to the tax, additional amounts or assessable penalties that may otherwise be provided in the Code.

It is also expressly understood and agreed that in the event any subsequent determinations results in an increase in the amount of tax required to be shown on the return for the period ended December 31, 1994, then an additional amount equal to 9 percent of such increase in tax shall be assessed as an addition to the tax under Section 6651(a)(1); and if any subsequent determination results in a decrease to the amount of tax required to be shown on the return for the period ended December 31, 1994, then there shall be a decrease (to be abated, refunded or credited) in the addition to the tax under Section 6651(a)(1) in an amount equal to 8.1 percent of such decrease in tax.

It is expressly understood and agreed that no claim for abatement or refund will be filed or considered with respect to any amount sustained, and this settlement relates only to the addition to the tax under Section 6651(a)(1) for failure to file, and is not a determination regarding the tax liability of the taxpayer for the taxable period ending December 31, 1994, nor a determination with respect to any other additions to the tax, additional amounts or assessable penalties that otherwise may be provided in the Code.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-11 (11-09-2007)**Pattern Agreement For Flow-Through Entity Adjustments for Use on Form 906**

WHEREAS, the taxpayer(s) reflected distributive share(s) of (income, gain, loss, deduction and/or credit) on their/its Federal income tax return(s), Form (1040, 1120, etc.) for the taxable year(s) ending (final day of tax year) in the amount(s) of _____;

WHEREAS, a dispute has arisen between the taxpayer and the Commissioner (the “parties”) as to the correct amount(s) of the taxpayer’s distributive share of *income, gain, loss, deduction, and/or credit* from *(name and tax identifying number of entity(s))*;

WHEREAS, the parties wish to determine with finality the taxpayer’s distributive share of *income, gain, loss, deduction, and/or credit* from that/those entity(s);

NOW IT IS HEREBY DETERMINED AND AGREED, for Federal Income tax purposes, that:

- (1) The taxpayer(s)’s gain/loss with respect to its/their distributive share(s) of *(income, gain, loss, deduction and/or credit)* from that/those entity(s) for the taxable year ending _____ is a gain/loss in the amount of \$_____.
- (2) Losses and deductions with respect to that/those entity(s) are not deductible by the taxpayer(s) in any year before or after the taxable year ending _____.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-12 (05-25-2018)**Pattern Information Reporting Program (IRP) Closing Agreement for Understatement of Income on Forms 1099 by a Payer (and instructions) for Use on Form 906**

WHEREAS, the Taxpayer, a payer of income, understated reportable income in the total amount of \$ _____ (insert total amount of understated reportable income) on information return Forms 1099 _____ (insert actual form number) sent both to _____ payee (Payees) (insert number of payees involved) and to the Internal Revenue Service (“Service”) for the taxable year(s) _____ (insert year(s) involved), with respect to the _____ (insert name of account, fund, or other identifier of the specific source of the understated reportable income); and

WHEREAS, the Taxpayer has identified and fixed the error that was the cause of the above referenced understatement of reportable income, as described herein (described in sufficient detail the error made and cause of it);

WHEREAS, the Taxpayer has voluntarily worked with the Service for a final resolution regarding any and all liability of the Taxpayer to the Service arising from the understatement of reportable income on Form 1099 _____ (insert actual form number) described above;

NOW THEREFORE, IT IS HEREBY DETERMINED AND AGREED for Federal tax purposes, as more fully described below, that:

- (1) The Taxpayer shall pay \$_____ (enter amount of compliance fee) to the Service upon the Taxpayer’s execution of this agreement. Payment of this amount (the “compliance fee”) shall be made by certified check payable to the “Internal Revenue Service” and delivered to a duly authorized representative of the Service.
- (2) The Taxpayer (payer) is not to be required to file corrected information returns with the Service, and is not to be required to issue corrected payee statements.
- (3) The Taxpayer’s payment of the compliance fee satisfies the Taxpayer’s liability under IRC Sections 6721 and 6722, if any, arising from the understatement of reportable income described above.
- (4) No portion of the compliance fee described above shall be considered as gross income to any Payee.
- (5) The Payees are not required to include in their gross income any amount with respect to the understatement of reportable income as described above.
- (6) The Payees are intended beneficiaries of this Agreement only to the extent described in paragraphs (4) and (5) above.
- (7) The compliance fee paid by the Taxpayer pursuant to this Agreement is not deductible or otherwise amortizable or recoverable for tax purposes by the Taxpayer in any taxable year.

Exhibit 8.13.1-12 (Cont. 1) (05-25-2018)**Pattern Information Reporting Program (IRP) Closing Agreement for Understatement of Income on Forms 1099 by a Payer (and instructions) for Use on Form 906**

WHEREAS, the Taxpayer, a payer of income, understated reportable income in the total amount of \$ _____ (insert total amount of understated reportable income) on information return Forms 1099 _____ (insert actual form number) sent both to _____ payee (Payees) (insert number of payees involved) and to the Internal Revenue Service (“Service”) for the taxable year(s) _____ (insert year(s) involved), with respect to the _____ (insert name of account, fund, or other identifier of the specific source of the understated reportable income); and

- (8) The compliance fee paid by the Taxpayer pursuant to this Agreement is not refundable, or subject to credit or offset, under any circumstances.
- (9) This Agreement constitutes a resolution under the Internal Revenue Code of the specific matters discussed herein. No inference is intended with respect to whether this resolution satisfies other Federal law.
- (10) This Agreement shall not be construed as creating any liability on the part of the Taxpayer to the Payees.

(Pattern language only. Not a complete document.)

Explanation**INSTRUCTIONS:**

- 1) *Definition.* An IRP closing agreement is an agreement made in writing between the A/C Examination Function and a payer when a mass error has been made that affects a significant volume of information returns issued by that payer, but involves only an average de minimis amount of understated reportable income. This agreement will relieve the payer from having to file corrected information returns with the Service and from having to issue corrected payee statements. This agreement will also relieve the payees from having to file corrected information returns with the Service and from having to issue corrected payee statements. This agreement will also relieve the payees from having to file amended tax returns.
- 2) *Requirements.* Certain requirements must also be met before such a closing agreement will be considered by the Service. First, payers should voluntarily bring the error to the attention of the Service. If such errors are discovered by the Service, this closing agreement procedure will also apply if both parties agree that it is in the best interest of the Government, the payer and the payee to enter into such an agreement, however the compliance fee will be computed at a higher tax rate. Second, a payer cannot make the same or similar errors repeatedly and repeatedly request or be granted an IRP closing agreement. Third, the dollar amount of the average understated reportable income for the payees in question for a particular tax year must be de minimis. A listing must be provided by the payer that reflects the amount that was actually reported and the amount that should have been reported for each payee account. The taxpayer identification numbers for the payees do not need to be provided to the Service by the payer.

Exhibit 8.13.1-12 (Cont. 2) (05-25-2018)**Pattern Information Reporting Program (IRP) Closing Agreement for Understatement of Income on Forms 1099 by a Payer (and instructions) for Use on Form 906****Explanation**

- 3) *Compliance Fee.* Determining the amount due for an IRP closing agreement is unlike determining the amount due in other closing agreement situations because the individual tax returns of the payees are not available and will not be used. Therefore, an estimate of the amount that would make the government whole is an acceptable settlement amount for IRP issues. In cases of underreported income brought to the attention of the Service by a payer, a rate of 28% will be applied to the total amount of understated reportable income. In cases where the underreported income is discovered by the Service, or in cases of misreported capital gains distributions, a rate of 33% or 35% will apply. The closing agreement should state that the settlement amount or compliance fee is paid in satisfaction of any potential IRP penalties. The term used for the payment is important to help prevent the payment from being posted to a master file account.
- 4) *Availability of Procedure.* This procedure is available for all forms in the Form 1099 series and if the criteria set forth herein are met, the Service will readily consider such an agreement. It should be noted that an IRP closing agreement is not guaranteed or automatic. However, an IRP closing agreement should be entered into by the Service provided the requirements described in paragraph (2) are met and absent any extenuating circumstances that prejudice the interest of the Government. The Service will rely on facts provided by the taxpayer, subject to review by the Service.
- 5) *Other types of Information Returns Closing Agreements.* The service may enter into an IRP closing agreement in appropriate situations where the requirements of paragraph (2) are not met if the individual facts and circumstances warrant. This procedure is not intended for use with Forms W-2 because of the need to have accurate reporting of wage income to the Social Security Administration for determination of benefit eligibility. However, closing agreements with respect to errors on Forms W-2 may be handled on an individual basis and should be coordinated with the Social Security Administration.
- 6) *Deposit Procedure.* Please contact the Large Business and International Technical Advisor, Financial Services Industry, New York, New York.
- 7) An initial request from a payer for an IRP closing agreement should be responded to in writing by the Service. This response should indicate that the request has been approved or disapproved. If disapproved, the response should explain the reasons for disapproval, and instruct the payer to file the corrected information returns with the Service, as well as, corrected payee statements to the payees. If the request is approved, the response should transmit an unsigned closing agreement to the payer with a request for payment of the compliance fee, if it has not already been paid. After the closing agreement has been signed by a representative for the payer and returned to the Service with a check for the compliance fee and the requested listing of payee accounts, the Director of Field Operations should sign the closing agreement. At that time, the check should be deposited in accordance with the procedures above, and a copy of the signed agreement should be sent to the payer.

Exhibit 8.13.1-12 (Cont. 3) (05-25-2018)**Pattern Information Reporting Program (IRP) Closing Agreement for Understatement of Income on Forms 1099 by a Payer (and instructions) for Use on Form 906****Explanation**

- 8) *Record Retention.* For the purposes of keeping track of when closing agreements were issued and to whom, a file should be kept. IRP closing agreements should be filed under the name of the payer requesting the agreement, and organized on a fiscal year basis, in part due to the fact that a closing agreement can cover more than one tax year. This file will need to be checked prior to granting a closing agreement to determine if that payer has been issued previous closing agreements. This file will be necessary to collect statistics on the number of IRP closing agreements issued by fiscal year, in order to demonstrate potential additional staffing needs for this workload.

Exhibit 8.13.1-13 (11-09-2007)**Pattern Agreement For Corporate Retirement Plan — Qualification/Status - for Use on Form 906**

WHEREAS, the Y Corporation Retirement Plan (the Plan) was established on February 20, 1979, and the plan received favorable determination letters in 1979, 1982, and 1986; and

WHEREAS, pursuant to an examination of the Plan by the Atlanta Key District Office of the Internal Revenue Service (the Service) in 1990, the Service determined that the Plan was partially terminated in 1986 with regard to those employees working at the Y Corporation's Site 2 location, without the account balances of the Site 2 employees being treated as fully vested; and

WHEREAS, the Service proposed revoking the qualified status of the Plan retroactively to the Plan year beginning January 1, 1986; and

WHEREAS, Y Corporation will make a payment to the Plan to restore the amounts forfeited by Site 2 employees plus appropriate earnings on the amounts forfeited; and

WHEREAS, Y Corporation and the Plan will treat the Site 2 employees as fully vested in their account balances; and

WHEREAS, Y Corporation has determined that the agreement set forth herein is in its best interests;

NOW IT IS HEREBY DETERMINED AND AGREED for Federal Income tax purposes that:

1. The total amount due to the United States Treasury under this agreement is one hundred fifty thousand dollars (\$150,000.00). The purpose of this payment should be identified. This sum shall be paid by the Y Corporation to the United States Treasury contemporaneously with the execution of this closing agreement by the duly authorized representative of the Service.
2. Contemporaneously with the execution of this agreement by the duly authorized representative of the Service, Y Corporation will make a payment to the Plan of ninety-seven thousand, eight hundred thirty-four dollars (\$97,834.00), the amount required to restore the amounts forfeited from the accounts of the Site 2 employees as fully vested in their account balances.
3. Y Corporation will neither attempt to nor otherwise amortize, deduct, or recover any portion of the payment described in paragraph 1 from the Service or to receive any Federal tax benefit on account of such payment.
4. No portion of the payment described in paragraph 1 shall be considered as:
 - a) compensation to, or the discharge of any obligation or liability of, any employee or former employee of Y Corporation; or
 - b) taxable income of any employee or former employee of Y Corporation.

Exhibit 8.13.1-13 (Cont. 1) (11-09-2007)**Pattern Agreement For Corporate Retirement Plan — Qualification/Status - for Use on Form 906**

WHEREAS, the Y Corporation Retirement Plan (the Plan) was established on February 20, 1979, and the plan received favorable determination letters in 1979, 1982, and 1986; and

5. For the 1986, 1987, and 1988 Plan years, the Service will treat the Plan as not being disqualified on account of the 1986 partial termination regarding those employees working at the Y Corporation Site 2 location.
6. This agreement constitutes a resolution under the Code of specific matters discussed herein. No inference shall be made with respect to whether this resolution satisfied other Federal law including Title 1 of the Employee Retirement Income Security Act of 1974.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-14 (11-09-2007)**Pattern Agreement for Worker Classification Issue (Section 530 Relief) for Use on Form 906**

WHEREAS, there is a dispute between the parties as to whether certain workers classified by the taxpayer as _____ (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

WHEREAS, the taxpayer is presently treating the workers as independent contractors;

WHEREAS, the taxpayer has timely filed Forms 1099 for each of its _____ for all applicable periods from January 1, 19 ____, through December 31, 19 ____, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

WHEREAS, the parties wish to resolve this dispute for all _____ engaged by the taxpayer after _____.

NOW IT IS HEREBY DETERMINED AND AGREED for federal employment tax purposes that:

- (1) During the period _____, through _____, such persons are employees for federal employment tax purposes but taxpayer shall be given relief pursuant to section 530 of Revenue Act of 1978 and no additional federal employment taxes are due for these periods with respect to such persons.
- (2) The Internal Revenue Service will not disturb taxpayer's classification of such workers for federal employment tax purposes for any period from _____, through _____.
- (3) Beginning _____, and for all period thereafter, _____ and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-15 (11-09-2007)**Pattern Agreement for Worker Classification Issue (Worker Classification) for Use on Form 906**

WHEREAS, there is a dispute between the parties as to whether certain workers classified by the taxpayer as _____ (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

WHEREAS, the taxpayer is presently treating the workers as independent contractors;

WHEREAS, the taxpayer has timely filed Forms 1099 for each of its _____ for all applicable periods from January 1, 19 ____, through December 31, 19 ____, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and Rev. Rul. 81-224, 1981-2 C.B. 197; and

WHEREAS, the parties wish to resolve this dispute for all _____ engaged by the taxpayer after _____.

NOW IT IS HEREBY DETERMINED AND AGREED for federal employment tax purposes that:

- (1) The Internal Revenue Service will assess and the taxpayer will pay the following amounts to the United States Government in full discharge of any federal employment tax liability it may owe for the periods shown below resulting directly or indirectly from its failure to pay and/or withhold federal income tax, FICA, or FUTA taxes on the payments to its _____,

<u>PERIOD</u>	<u>TYPE OF TAX</u>	<u>AMOUNT TO BE ASSESSED</u>
---------------	--------------------	------------------------------

- (2) The Internal Revenue Service will not disturb taxpayer's classification of such workers for federal employment tax purposes for a period from _____, through _____.
- (3) Beginning _____, and for all period thereafter, _____ and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.
- (4) For purposes of ensuring that the taxpayer properly discharges its obligations pursuant to paragraph (3) of this agreement, any assessments of taxes due from the taxpayer under the provisions of I.R.C. Sections 3101, 3111, 3402, 3509 and 3301, for periods beginning: _____ and ending _____ together with penalties and interest thereon, may be made at any time on or before the later of _____, or the date on which the statute of limitations for the period would expire without regard to this closing agreement.

Exhibit 8.13.1-15 (Cont. 1) (11-09-2007)**Pattern Agreement for Worker Classification Issue (Worker Classification) for Use on Form 906**

WHEREAS, there is a dispute between the parties as to whether certain workers classified by the taxpayer as _____ (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes (“federal employment tax”);

- (5) I.R.C. Section 6205 shall apply to the amounts contained in paragraph (1) above, except FUTA tax, if the taxpayer pays the full amount within the later of 30 days of the parties’ execution of this agreement or the period otherwise provided under I.R.C. 6205.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-16 (11-09-2007)**Pattern Agreement for Worker Classification Issue (Workers Currently Treated as Employees) for Use on Form 906**

WHEREAS, there is a dispute between the parties as to whether certain workers classified by the taxpayer as _____ (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

WHEREAS, the taxpayer commenced treating the workers as employees on _____.

WHEREAS, the taxpayer has timely filed Forms 1099 for each of its _____ for all applicable periods from January 1, 19 ____, through December 31, 19 ____, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

WHEREAS, the parties wish to resolve this dispute for all _____ engaged by the taxpayer after _____.

NOW IT IS HEREBY DETERMINED AND AGREED for federal employment tax purposes that:

- (1) The Internal Revenue Service will assess and the taxpayer will pay the following amounts to the United States Government in full discharge of any federal employment tax liability it may owe for the periods shown below resulting directly or indirectly from its failure to pay and/or withhold federal income tax, FICA, or FUTA taxes on the payments to its _____,

PERIOD**TYPE OF TAX****AMOUNT TO BE ASSESSED**

Tax

Penalties

- (2) The Internal Revenue Service will not disturb taxpayer's classification of such workers for federal employment tax purposes for a period from _____, through _____.
- (3) Beginning _____, and for all periods thereafter, _____ and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.
- (4) For purposes of ensuring that the taxpayer properly discharges its obligations pursuant to paragraph (3) of this agreement, and any assessments of taxes due from the taxpayer under the provisions of I.R.C. Sections 3101, 3111, 3402, 3509 and 3301, for periods beginning _____, and ending _____, together with penalties and interest thereon, may be made at any time on or before the later of _____, or the date on which the statute of limitations for the period would expire without regard to this closing agreement.

Exhibit 8.13.1-16 (Cont. 1) (11-09-2007)**Pattern Agreement for Worker Classification Issue (Workers Currently Treated as Employees) for Use on Form 906**

WHEREAS, there is a dispute between the parties as to whether certain workers classified by the taxpayer as _____ (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes (“federal employment tax”);

- (5) I.R.C. Section 6205 shall apply to the amounts contained in paragraph (1) above, except FUTA tax, if the taxpayer pays the full amount within the later of 30 days of the parties’ execution of the agreement, or the period otherwise provided under I.R.C. 6205.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-17 (11-09-2007)**Instructions for Completing the Classification Settlement Program (CSP) Closing Agreements**

See IRM 4.23.6, *Classification Settlement Program (CSP)* and Exhibits 4.23.6-1 through 4.23.6-3 therein for additional information and sample closing agreements.

Exhibit 8.13.1-18 (05-25-2018)**Pattern Agreement for Estate Tax/Qualified Terminable Interest Property (QTIP) for use on Form 906**

1. **The estate of the Decedent filed Form 706, United States Estate Tax Return, on November 1, 1997, setting forth the gross estate of the Decedent in the amount of \$3,363,900, and claiming a total marital deduction in the amount of \$633,905. This total claimed marital deduction included:**

WHEREAS,

- (I) \$14,840 in property passing to the Surviving Spouse that would qualify for a marital deduction without regard to I.R.C. Section 2056(b)(7), and
 - (II) \$619,065 in property passing under item V of the Decedent's will to a testamentary trust, with his surviving spouse as income beneficiary during her life, and with his children as remainder Beneficiaries, which property was claimed to be eligible for the marital deduction under I.R.C. Section 2056(b)(7).
2. With respect to property listed as Qualified Terminable Interest Property ("QTIP property") on Schedule M, Part II, an ambiguity exists in the Decedent's will as to trust, which power might cause disqualification of some or all of the trust from the marital deduction.
3. The parties desire to settle the correct amount of marital deduction to which the Estate of the Decedent is entitled, and related matters under I.R.C. Sections 2044 and 2519 with respect to the Surviving Spouse.

NOW IT IS HEREBY DETERMINED AND AGREED for Federal estate, gift, and generation skipping tax purposes that:

1. In consideration of the agreement by the Commissioner set forth in paragraph 2 below, the Executors of the Estate of the Decedent, the Surviving Spouse, each Trustee of the Testamentary Trust, and each of the Remainder Beneficiaries agree that, because a deduction is being allowed under I.R.C. Section 2056(b)(7), pursuant to this agreement, for a portion of the property in the Testamentary Trust:
 - (A) The property in the Testamentary Trust will be treated as divided, on the decedent's date of death, into two separate trusts, a "non-QTIP Trust" and a "QTIP Trust", with each trust owing an equal one-half share of every asset of the decedent's residuary estate;
 - (B) The property properly remaining, at the surviving spouse's date of death, in the separate trust denominated the non-QTIP Trust shall not be properly described in I.R.C. Section 2044;

Exhibit 8.13.1-18 (Cont. 1) (05-25-2018)**Pattern Agreement for Estate Tax/Qualified Terminable Interest Property (QTIP) for use on Form 906**

1. **The estate of the Decedent filed Form 706, United States Estate Tax Return, on November 1, 1997, setting forth the gross estate of the Decedent in the amount of \$3,363,900, and claiming a total marital deduction in the amount of \$633,905. This total claimed marital deduction included:**
 - (C) The property properly remaining, at the surviving spouses date of death, in the separate trust denominated the QTIP trust shall be properly described in I.R.C. Section 2044, and as such, shall be includible in the gross estate of the Surviving Spouse at her death;
 - (D) If all or any part of the Surviving Spouse's income interest in the property belonging to the QTIP Trust is disposed of within the meaning of I.R.C. Section 2519 during the lifetime of the Surviving Spouse, the property will be properly described in Section 2519 of the Internal Revenue Code, and will be treated as a transfer of all interests in the property other than the qualifying income interest and therefore will be subject to gift tax.
2. In consideration of the agreement set forth in Paragraph 1 above, the Commissioner agrees to allow the Estate of the Descendent a marital deduction for \$_____ of Qualified Terminable Interest Property.
3. No transfer necessitated by this agreement shall be subject to the gift tax.
4. This agreement shall be binding upon the successors and assigns of the parties.
5. This agreement may not be cited or relied upon as precedent in the disposition of any other case.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-19 (05-25-2018)**Pattern Agreement for Debt vs. Equity for Use on Form 906**

WHEREAS, the taxpayer, sole stockholder of X Corporation, made advances to X Corporation during the year 1998 in the total amount of \$50,000;

WHEREAS, the taxpayer and X Corporation treated the advances as loans for Federal Income tax purposes;

WHEREAS, the taxpayer made corporate withdrawals of \$10,000 in the taxable year ended December 31, 1998, and \$8,000 in the taxable year ended December 31, 1999, which were treated as nontaxable loan repayments;

WHEREAS, a dispute has arisen between the taxpayer and the Commissioner relative to the proper tax treatment to be provided the subject corporate withdrawals;

WHEREAS, the parties wish to resolve this dispute;

- (1) Of the \$50,000 advanced by the taxpayer to X Corporation, \$15,000 constitutes valid indebtedness and \$35,000 represents a capital contribution.
- (2) The \$10,000 of corporate withdrawals in the taxable year ended December 31, 1998 constitutes a nontaxable loan payment.
- (3) \$5,000 of the \$8,000 of corporate withdrawals in the taxable year ended December 31, 1999 constitutes a nontaxable loan repayment and \$3,000 represents a corporate distribution within the meaning of I.R.C. section 301.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-20 (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)**

Use the following paragraphs or portions of paragraphs as applicable. Note: alternative language is italicized and bracketed.

WHEREAS, Taxpayer is a Corporation organized and existing under the laws of the State of _____ and _____ (Parent), which owns or controls Taxpayer within the meaning of section 482 of the Internal Revenue Code, is a corporation organized and existing under the laws of _____;

WHEREAS, Taxpayer entered into certain transactions *[Describe Transactions here]* with Parent during the taxable year ended *[Insert Date here]* (Year 1) *[define Year 2, Year 3, Year 4, etc., as needed]*

WHEREAS, Taxpayer and the Commissioner have agreed that Taxpayer's taxable income should be increased and that Parent's income should be decreased *[or: that Taxpayer's taxable income should be decreased and that Parent's income should be increased]* for federal income tax purposes as a result of allocations under section 482 of the Internal Revenue Code between Taxpayer and Parent;

WHEREAS, Taxpayer has asserted that such adjustments to income should be made in accordance with section 4 of Revenue Procedure 99-32, 1999-2 C.B. 296, in that Taxpayer has fully satisfied the conditions set forth in sections 3.01 and 3.03 of Rev. Proc. 99-32; and

WHEREAS, the Commissioner has agreed, based on information provided by Taxpayer that the provisions of Rev. Proc. 99-32 should apply to such adjustments to income.

NOW IT IS HEREBY DETERMINED AND AGREED, for all Federal income tax purposes that:

1) Adjustments to Income

- a) Taxpayer's taxable income for the year[s] indicated is increased *[or: decreased]* and Parent's income is decreased *[or: increased]* by the amount of the section 482 allocations reported in the following table:

Affected Taxable Year(s)	Taxable Entity Affected by Allocation, or changes in Earnings and Profits	Increase (Decrease) in Income due to 482 Allocation	Increase (Decrease) in Earnings and Profits
Year 1	Taxpayer		
Year 1	Parent		
Year 2	Taxpayer		
Year 2	Parent		

Exhibit 8.13.1-20 (Cont. 1) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)****2) Prepayment of the Accounts Receivable by Offset against Capital Contribution or Bona Fide Debt**

- a) The amount[s] and date[s] of the capital contribution[s] received by Taxpayer from Parent, which the Taxpayer elects to treat as a prepayment of the Accounts Receivable established pursuant to paragraph 4), below, under section 4.02 of Rev. Proc. 99-32 are:
- i) Date 1 - \$_____.
 - ii) Date 2 - \$_____.
 - iii) Date 3 - \$_____.
- b) The amount[s] of the capital contribution offset[s] described in paragraph 2)a), above, shall not be treated as a capital contribution to Taxpayer for any Federal income tax purpose. Consequently, Parent's basis in Taxpayer's stock shall not be increased by the amount of such capital contributions.
- c) The amounts of pre-existing principal and accrued but unpaid interest owed by Taxpayer to Parent that Taxpayer elects to offset against the Accounts Receivable established pursuant to paragraph 4), below, under section 4.02 of Rev. Proc. 99-32, and the date of such offset are

	Principal	Interest	Date of offset
Identify Debt Instrument #1	\$	\$	
Identify Debt Instrument #2	\$	\$	
Identify Debt Instrument #3	\$	\$	

3) [Prepayment of the Accounts Payable by Offset against Distribution or Bona Fide Debt]

- a) The amount[s] and date[s] of the distribution[s] received by Parent from Taxpayer, which Taxpayer elects to treat as a prepayment of the Accounts Payable established pursuant to paragraph 5), below, under section 4.02 of Rev. Proc. 99-32 are:
- i) Date 1 - \$_____.
 - ii) Date 1 - \$_____.
 - iii) Date 1 - \$_____.

Exhibit 8.13.1-20 (Cont. 2) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)****3) [Prepayment of the Accounts Payable by Offset against Distribution or Bona Fide Debt]**

- b) *The amount of the distribution offset[s] described in paragraph 3)a), above, shall not be treated as a dividend under section 316 of the Code or for any other Federal income tax purpose. Consequently, no dividend received deduction shall be allowed with respect thereto under sections 241 through 247 of the Code.*
- c) *The amounts of pre-existing principal and accrued but unpaid interest owed by Parent to Taxpayer that Taxpayer elects to offset against the Accounts Payable established pursuant to paragraph 5), below, under section 4.02 of Rev. Proc. 99-32, and the date of such offset are:*

	Principal	Interest	Date of Offset
<i>Identify Debt Instrument #1</i>	\$	\$	
<i>Identify Debt Instrument #2</i>	\$	\$	
<i>Identify Debt Instrument #3</i>	\$	\$	

4) Accounts Receivable Established by Taxpayer

- a) Taxpayer will establish [an] intercompany account[s] receivable (Account[s]/Receivable), which will be recorded on Taxpayer's books and treated as [a] term loan[s] to Parent reflecting the following balance[s], [each] such Account Receivable being deemed to have been created as of the last day of the taxable year to which it relates.

Date Account Deemed Established	Date 1	Date 2	Date 3
Amount of Receivable Established on Above Date			

- b) **Interest income will accrue to Taxpayer on the Account[s] Receivable at the following annual rates beginning on the first day after the [each] Account Receivable is established and ending on the date of this agreement:**

- i) Account Receivable established on Date 1 - ____%
- ii) Account Receivable established on Date 2 - ____%
- iii) Account Receivable established on Date 3 - ____%
- c) The amount of interest income to be accrued by Taxpayer pursuant to paragraph 4)b), above, for each taxable year through the date of this agreement is as follows:

Exhibit 8.13.1-20 (Cont. 3) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)**

Taxable Period	Amount of Interest
Year 1	
Year 2	
Year 3	
Year 4 (through date of this agreement)	

- d) From the date of this agreement through the earlier of either the date of payment pursuant to paragraph 6)b), below, or the 90th day after the date of this agreement, interest income will accrue to Taxpayer on the outstanding balance (including accrued but unpaid interest) of the Account[s]/Receivable at the daily rate [s] reported below:

Account Receivable	Daily Rate
Account Receivable Established on Date 1	%
Account Receivable Established on Date 2	%
Account Receivable Established on Date 3	%
Account Receivable Established on Date 4	%

5) [Accounts Payable Established by Taxpayer.

- a) Taxpayer will establish [an] intercompany account[s] payable (Account[s] Payable), which will be recorded on Taxpayer's books and treated as [a] term loan[s] from Parent reflecting the following balances, each such Account Payable being deemed to have been created as of the last day of the taxable year to which it relates.

Date Account Deemed Established	Date 1	Date 2	Date 3
Amount of Payable Established on Above Date			

- b) **Interest expense on the Account[s] Payable will accrue to Taxpayer at the following annual rates beginning on the first day after the [each] Account Payable is established and ending on the date of this agreement.**

- i) Account Payable established on Date 1 - ____%

Exhibit 8.13.1-20 (Cont. 4) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)**

- b) Interest expense on the Account[s] Payable will accrue to Taxpayer at the following annual rates beginning on the first day after the [each] Account Payable is established and ending on the date of this agreement.**
- ii) Account Payable established on Date 2- ____%
 - iii) Account Payable established on Date 3- ____%
- c) The amount of interest expense to be accrued by Taxpayer pursuant to paragraph 5)b), above, for each taxable year through the date of this agreement is as follows:**

Taxable Period	Amount of Interest
Year 1	
Year 2	
Year 3	
Year 4 (through date of this agreement)	

- d) From the date of this agreement through the earlier of either the date of payment pursuant to paragraph 6)b), below, or the 90th day after the date of this agreement, interest expense will accrue to Taxpayer on the outstanding balance (including accrued but unpaid interest) of the Accounts Payable at the daily rate reported below.]**

Account Receivable	Daily Rate
Account Receivable Established on Date 1	%
Account Receivable Established on Date 2	%
Account Receivable Established on Date 3	%
Account Receivable Established on Date 4	%

6) Payment of Accounts Receivable [, Accounts Payable,] and Interest.

- a) Payment of the Account [s] Receivable and interest thereon referred to in paragraph 4), above, (the Receivables) [of the Account[s] Payable and interest thereon referred to in paragraph 5), above, (the Payables)] in the manner and within the time set forth herein, will be free of the Federal income tax consequences of the secondary adjustments that would result from the primary adjustments described in paragraph 1), above, had Taxpayer and the Commissioner not entered into this agreement.
- b) Within 90 days after the date of this agreement, Parent will pay Taxpayer the amount of the Receivables. [Taxpayer will pay Parent the amount of the Payables].
- c) The manner of payment of the Receivables shall be as follows:

Exhibit 8.13.1-20 (Cont. 5) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)****6) Payment of Accounts Receivable [, Accounts Payable,] and Interest.**

- i) Parent shall pay Taxpayer \$ _____ in U.S. dollars in *[partial]* liquidation of the Receivables.
 - ii) ii) Parent as obligor shall issue to Taxpayer as obligee a promissory note, payable in the amount of \$ _____ in U.S. dollars in *[partial]* liquidation of the Receivables. The note shall bear interest at a fixed annual rate of __%, with interest payable semi-annually, and shall mature on _____, 20__.
 - iii) Parent and Taxpayer shall *[partially]* offset the Receivables against _____, a valid liability of Taxpayer to Parent. For purposes of this agreement, the amount of the offset shall be deemed to be \$ _____ in U.S. dollars.
 - iv) If payment of the Receivables in full pursuant to subparagraph[s] i), ii), or *[and]* iii) does not occur within 90 days after the date of this agreement, then the unpaid Receivables, or the unpaid portion of the Receivables, shall be treated as paid by Parent to Taxpayer and returned to Parent in the form of Taxpayer's distribution of property as of the expiration of the 90-day period.
- d) *[The manner of payment of the Payables shall be as follows:*
- i) *Taxpayer shall pay Parent \$ _____ in U.S. dollars in [partial] liquidation of the Payables.*
 - ii) *Taxpayer as obligor shall issue to Parent as obligee a promissory note, payable in the amount of \$ _____ in U.S. dollars in [partial] liquidation of the Payables. The note shall bear interest at a fixed annual rate of __%, with interest payable semi-annually, and shall mature on _____, 20__.*
 - iii) *Taxpayer and Parent shall [partially] offset the Payables against _____, a valid liability of Parent to Taxpayer. For purposes of this agreement, the amount of the offset shall be deemed to be \$ _____ in U.S. dollars.]*
 - iv) *If payment of the Payables in full pursuant to subparagraph[s] i), ii), or [and] iii) does not occur within 90 days after the date of this agreement, then the unpaid Payables, or the unpaid portion of the Payables, shall be treated as paid by Taxpayer to Parent and returned to Taxpayer in the form of Parent's contribution to Taxpayer's capital as of the expiration of the 90-day period.]*

7) Miscellaneous.

- a) This agreement does not prevent further allocations under section 482 with respect to taxable events involving Taxpayer and Parent that are attributable to taxable periods of Taxpayer for which allocations are not determined by this agreement.
- b) The date of this agreement is deemed to be the date on which this agreement is executed on behalf of the Commissioner.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-20 (Cont. 6) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)****Additional Comments (Pattern Rev. Proc. 99-32 Closing Agreement on Form 906).**

- A. This pattern closing agreement is intended as a model to assist in drafting closing agreements governed by Rev. Proc. 99-32 in connection with Service-initiated adjustments. Taxpayer-initiated adjustments subject to Rev. Proc. 99-32 should be reflected in a Federal income tax return and do not require a closing agreement. See Rev. Proc. 99-32, §5.02. These instructions do not address the issue of when Rev. Proc. 99-32 relief may be granted. Technical questions on Rev. Proc. 99-32 relief should be researched in published or internal management documents dealing with this subject matter.
- B. This pattern closing agreement is drafted on the assumption that the taxpayer is a domestic corporation the income of which is being increased with respect to certain transactions engaged in with its foreign parent. Alternative language is italicized and provided in brackets. Much of this alternative language deals with the situation in which the taxpayer's income is being decreased. The language of the draft closing agreement may have to be supplemented, shortened, or otherwise further rewritten to address the particular situation. For example, this pattern closing agreement assumes that adjustments involve only two entities: (1) a domestic corporate taxpayer and (2) its foreign corporate parent (Parent). If more than two entities are involved, this pattern agreement must be appropriately amended.
- C. Sections 4.01 and 4.02 of Rev. Proc. 99-32 permit the taxpayer to create account(s) receivable if its income is to be increased or accounts payable if its income is to be decreased and requires that the amount of the account(s) receivable or payable equal the primary adjustment for each year in which an adjustment is made except to the extent that an offset against the account(s) is permitted. The principal or interest on an account receivable may be offset against (i) a contribution of capital previously received by the taxpayer from Parent during the taxable year in which the closing agreement is executed or (ii) the bona fide debt of the taxpayer to Parent if such offset occurs during the taxable year in which the closing agreement is executed. Similarly, principal or interest on an account payable may be offset against (i) a distribution of property previously made by the taxpayer to Parent during the taxable year in which the closing agreement is executed or (ii) the bona fide debt of Parent to the taxpayer if such offset occurs during the taxable year in which the closing agreement is executed. Offsets against distributions and contributions are deemed to occur on the date of the distribution or contribution and determine the future treatment of the distribution or contribution for tax accounting purposes. Offsets against pre-existing debt are deemed to occur when an accounting entry is made to the books of the taxpayer recording such offset and such debt is deemed paid in whole or in part on the date of such entry for tax accounting purposes.
- D. It is unlikely that a closing agreement would be entered into that would incorporate all the provisions provided in this pattern closing agreement. Paragraphs 2), 4), and 6)c) of this pattern closing agreement are appropriate for increases to the taxpayer's income. Paragraphs 3), 5), and 6)d) are appropriate for decreases to the taxpayer's income. Inapplicable paragraphs or subparagraphs should be omitted (rather than retained with the amount shown as "None") and cross-references within the closing agreement should be appropriately amended.
- E. Comments on specific draft paragraphs.

Exhibit 8.13.1-20 (Cont. 7) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)****Additional Comments (Pattern Rev. Proc. 99-32 Closing Agreement on Form 906).**

Paragraph 1. Matters expressly determined in closing agreements are accorded finality under §7121 of the Code. Though certain inferences and substantially automatic consequences may appear to logically flow from such determinations, these results cannot be considered to be matters determined with finality unless expressly provided for in the closing agreement. It is for this reason that the table appended to paragraph 1) reports the effect of earnings and profits directly resulting from the section 482 allocations.

The pattern closing agreement assumes that the allocation is an income adjustment to the taxpayer and Parent. However, such assumption may not apply to all situations. For example, the allocation may be an income adjustment to one party and a capital item to the other.

Paragraph 2. If the taxpayer's income is to be increased by additional payments from its parent, section 4.02 of Rev. Proc. 99-32 permits the taxpayer to offset against the Account(s) Receivable memorialized under paragraph 4) either (i) contributions of property (which might otherwise be characterized as capital contributions) that the taxpayer received from Parent during the taxable year in which the closing agreement is executed or (ii) the taxpayer's outstanding bona fide debt to Parent. Paragraph 2) memorializes such offsets.

Paragraph 3. If the taxpayer's income is to be decreased by additional payments to its parent, section 4.02 of Rev. Proc. 99-32 permits the taxpayer to offset against the Account(s) Payable memorialized under paragraph 5) either (i) distributions of property (that might otherwise be characterized as dividends or returns of capital) the taxpayer made to Parent during the taxable year in which the closing agreement is executed or (ii) Parent's outstanding bona fide debt to the taxpayer. Paragraph 3) memorializes such offsets.

Paragraph 4. This paragraph should be included only if the taxpayer's income is being increased. The Accounts Receivable typically will be established in U.S. dollars. See generally Rev. Proc. 99-32, section 4.01(3).

Paragraph 5. This paragraph should be included only if the taxpayer's income is being decreased. The Accounts Payable typically will be established in U.S. dollars. See generally Rev. Proc. 99-32, section 4.01(3).

Paragraph 6. Payment typically will be in U.S. dollars. See generally Rev. Proc. 99-32, section 4.01(3). The pattern closing agreement provides for three different mechanisms for paying the Receivables and Payables: (i) cash payment, (ii) issuance of a new debt obligation, or (iii) offset against a pre-existing liability. Payment may use any or all of these mechanisms, but the total amount paid must equal the total amount of the outstanding Receivables or Payables. The terms of a promissory note must meet the requirements set forth in §4.01(4) of Rev. Proc. 99-32.

Exhibit 8.13.1-20 (Cont. 8) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (Foreign Parent)****Additional Comments (Pattern Rev. Proc. 99-32 Closing Agreement on Form 906).**

The pattern closing agreement treats payment as made within 90 days after the date of the agreement if full payment is not actually made before that time. As a result, interest accrual under paragraphs 4)d) and 5)d) does not exceed that 90-day period. In addition, the taxpayer is treated as receiving full payment from (or making full payment to) Parent with respect to the secondary adjustment and then making a distribution to (or receiving a capital contribution from) Parent in the same amount.

Draft language provided (including bracketed, italicized language) will accommodate the taxpayer that is recording both Accounts Receivable and Accounts Payable if necessary. If the taxpayer is recording only one or the other, then bracketed, italicized language in subparagraphs a) and b) must be included as appropriate. Subparagraph c) would not be included in the closing agreement if the taxpayer does not record Accounts Receivable. Similarly, subparagraph d) would not be included in the closing agreement if the taxpayer does not record Accounts Payable.

In this pattern agreement, the foreign entity is assumed to control the taxpayer. In the event that the taxpayer and its foreign counterpart are affiliates controlled by a common parent and there are Receivables, subparagraph c)iv) could be rewritten as follows:

“iv) If payment of the Receivables in full pursuant to subparagraph[s] i), ii), or [and] iii) does not occur within 90 days after the date of this agreement, then the unpaid Receivables, or the unpaid portion of such Receivables, shall be treated as paid by [Foreign Entity] to Taxpayer and simultaneously distributed by Taxpayer to [insert name of parent corporation] (Parent) as of the expiration of the 90-day period. The excess of such constructive distribution over earnings and profits shall be considered a distribution of capital by taxpayer to Parent. As of the date of such constructive distribution, the amount so treated as a distribution shall be treated as having been contributed by Parent to the capital account of [Foreign Entity].”

In the event that the taxpayer and its foreign counterpart are affiliates controlled by a common parent and there are Payables, subparagraph d)iv) could be rewritten in a similar manner.

Signature Blocks. In general, a person should be a signatory of a closing agreement if the closing agreement purports to determine tax matters for such person. IRM. 8.13.1.2.17.1. For persons authorized to enter into this closing agreement on behalf of the Commissioner, see paragraphs (5), (6), and (7) of Delegation Order 97, *Closing Agreements Concerning Internal Revenue Tax Liability* (Rev. 34) or, if Delegation Order 97 (Rev. 34) is rescinded, its successor.

Exhibit 8.13.1-21 (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)**

*(Use the following paragraphs or portions of paragraphs as applicable. Note: alternative language is italicized and bracketed.)*_____

WHEREAS, Taxpayer is a Corporation organized and existing under the laws of the State of _____ and _____ (Controlled Entity), which is owned or controlled by Taxpayer within the meaning of section 482 of the Internal Revenue Code, is a corporation organized and existing under the laws of _____;

WHEREAS, Taxpayer entered into certain transactions *[Describe Transactions here]* with Controlled Entity during the taxable year ended *[Insert Date here]* (Year 1) *[define Year 2, Year 3, Year 4, etc., as needed]*;

WHEREAS, Taxpayer and the Commissioner have agreed that Taxpayer's taxable income should be increased and that Controlled Entity's income should be decreased *[or: that Taxpayer's taxable income should be decreased and that Controlled Entity's income should be increased]* for federal income tax purposes as a result of allocations under section 482 of the Code between Taxpayer and Controlled Entity;

WHEREAS, Taxpayer has asserted that such adjustments to income should be made in accordance with section 4 of Revenue Procedure 99-32, 1999-2 C.B. 296, in that Taxpayer has fully satisfied the conditions set forth in sections 3.01 and 3.03 of Rev. Proc. 99-32; and

WHEREAS, the Commissioner has agreed based on information provided by Taxpayer that the provisions of Rev. Proc. 99-32 should apply to such adjustments to income.

NOW IT IS HEREBY DETERMINED AND AGREED, for all Federal income tax purposes that:

1) Adjustments to Income.

- a) a) Taxpayer's taxable income for the year[s] indicated is increased *[or: decreased]* and Controlled Entity's income is decreased *[or: increased]* by the amount of the section 482 allocations reported in the following table:

Affected Taxable Year(s)	Taxable Entity Affected by Allocation, or changes in Earnings and Profits	Increase (Decrease) in Income due to 482 Allocation	Increase (Decrease) in Earnings and Profits
Year 1	Taxpayer		
Year 1	Controlled Entity		
Year 2	Taxpayer		

Exhibit 8.13.1-21 (Cont. 1) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)**

Affected Taxable Year(s)	Taxable Entity Affected by Allocation, or changes in Earnings and Profits	Increase (Decrease) in Income due to 482 Allocation	Increase (Decrease) in Earnings and Profits
Year 2	Controlled Entity		

2) Prepayment of the Accounts Receivable by Offset against Distribution or Bona Fide Debt.

- a) The amount[s] and date[s] of the distribution[s] received by Taxpayer from Controlled Entity which the Taxpayer elects to treat as a prepayment of the Accounts Receivable established pursuant to paragraph 4), below, under section 4.02 of Rev. Proc. 99-32 are:
- i) Date 1 - \$_____.
- ii) Date 2- \$_____.
- iii) Date 3- \$_____.
- b) The amount[s] of the distribution offset[s] described in paragraph 2)a), above, shall not be treated as a dividend under section 316 of the Code or for any other Federal income tax purpose. Consequently, no foreign tax shall be deemed to have been paid with respect to such excluded dividends under section 902 of the Code for the purpose of the credit allowed under section 901 of the Code and no dividend received deduction shall be allowed with respect thereto under sections 241 through 247 of the Code.
- c) The amounts of pre-existing principal and accrued but unpaid interest owed by Taxpayer to Controlled Entity that Taxpayer elects to offset against the Accounts Receivable established pursuant to paragraph 4), below, under section 4.02 of Rev. Proc. 99-32, and the date of such offset are:

	Principal	Interest	Date of offset
Identify Debt Instrument #1	\$	\$	
Identify Debt Instrument #2	\$	\$	
Identify Debt Instrument #3	\$	\$	

3) [Prepayment of the Accounts Payable by offset against Capital Contribution or bona fide debt.

- a) *The amount[s] and date[s] of the capital contributions received by Controlled Entity from Taxpayer, which Taxpayer elects to treat as a prepayment of the Accounts Payable established pursuant to paragraph 5), below, under section 4.02 of Rev. Proc. 99-32 are:*
- i) *Date 1 - \$_____.*

Exhibit 8.13.1-21 (Cont. 2) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)****3) [Prepayment of the Accounts Payable by offset against Capital Contribution or bona fide debt.**

- ii) Date 2- \$_____.
- iii) Date 3- \$_____.
- b) *The amount of Taxpayer's capital contribution offset[s] described in paragraph 3)a), above, shall not be treated as a capital contribution to Controlled Entity for any Federal income tax purpose. Consequently, Taxpayer's basis in Controlled Entity stock shall not be increased by the amount of such capital contribution offsets.]*
- c) *The amounts of pre-existing principal and accrued but unpaid interest owed by Controlled Entity to Taxpayer that Taxpayer elects to offset against the Accounts Payable established pursuant to paragraph 5), below, under section 4.02 of Rev. Proc. 99-32, and the dates of such offsets are:*

	Principal	Interest	Date of offset
Identify Debt Instrument #1	\$	\$	
Identify Debt Instrument #2	\$	\$	
Identify Debt Instrument #3	\$	\$	

4) Accounts Receivable Established by Taxpayer.

- a) Taxpayer will establish [an] intercompany account[s] receivable (Account[s] Receivable), which will be recorded on Taxpayer's books and treated as [a] term loan[s] to Controlled Entity reflecting the following balance [s], [each] such Account Receivable being deemed to have been created as of the last day of the taxable year to which it relates.

Date Account Deemed Established	Date 1	Date 2	Date 3
Amount of Receivable Established on Above Date			

- b) **Interest income will accrue to Taxpayer on the Account[s] Receivable at the following annual rates beginning on the first day after the Account Receivable is established and ending on the date of this agreement:**
 - i) Account Receivable established on Date 1 - ____%
 - ii) Account Receivable established on Date 1 - ____%

Exhibit 8.13.1-21 (Cont. 3) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)**

- b) **Interest income will accrue to Taxpayer on the Account[s] Receivable at the following annual rates beginning on the first day after the Account Receivable is established and ending on the date of this agreement:**
- iii) Account Receivable established on Date 1 - ____%
- c) The amount of interest income to be accrued by Taxpayer pursuant to paragraph 4)b), above, for each taxable year through the date of this agreement is as follows:

Taxable Period	Amount of Interest
Year 1	
Year 2	
Year 3	
Year 4 (through date of this agreement)	

- d) From the date of this agreement through the earlier of either the date of payment pursuant to paragraph 6)b), below, or the 90th day after the date of this agreement, interest expense will accrue to Taxpayer on the outstanding balance (including accrued but unpaid interest) of the Account[s] Receivable at the daily rates reported below.]

Account Receivable	Daily Rate
Account Receivable Established on Date 1	%
Account Receivable Established on Date 2	%
Account Receivable Established on Date 3	%
Account Receivable Established on Date 4	%

5) [Accounts Payable Established by Taxpayer.

- a) *Taxpayer will establish [an] intercompany account[s] payable (Account[s] Payable), which will be recorded on Taxpayer's books and treated as [a] term loan[s] from Controlled Entity reflecting the following balances, each such Account Payable being deemed to have been created as of the last day of the taxable year to which it relates.*

Date Account Deemed Established	Date 1	Date 2	Date 3
Amount of Payable Established on Above Date			

Exhibit 8.13.1-21 (Cont. 4) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)**

- b) Interest expense on the Account[s] Payable will accrue to Taxpayer at the following annual rates beginning on the first day after the [each] Account Payable is established and ending on the date of this agreement.**
- i) Account Payable established on Date 1 - ____ %
 - ii) Account Payable established on Date 2- ____ %
 - iii) Account Payable established on Date 3 - ____ %
- c) The amount of interest expense to be accrued by Taxpayer pursuant to paragraph 5)b), above, for each taxable year through the date of this agreement is as follows:**

Taxable Period	Amount of Interest
Year 1	
Year 2	
Year 3	
Year 4 (through date of this agreement)	

- d) From the date of this agreement through the earlier of either the date of payment pursuant to paragraph 6)b), below, or the 90th day after the date of this agreement, interest expense will accrue to Taxpayer on the outstanding balance (including accrued but unpaid interest) of the Accounts Payable at the daily rates reported below.]**

Account Payable	Daily Rate
Account Payable Established on Date 1	%
Account Payable Established on Date 2	%
Account Payable Established on Date 3	%
Account Payable Established on Date 4	%

6) Payment of Accounts Receivable[Accounts Payable] and Interest.

- a) Payment of the Account [s] Receivable and interest thereon referred to in paragraph 4), above, (the Receivables) [of the Account[s] Payable and interest thereon referred to in paragraph 5), above, (the Payables)] in the manner and within the time set forth herein, will be free of the Federal income tax consequences of the secondary adjustments that would result from the primary adjustments described in paragraph 1), above, had Taxpayer and the Commissioner not entered into this agreement.
- b) Within 90 days after the date of this agreement, Controlled Entity will pay Taxpayer the amount of the Receivables. [Taxpayer will pay Controlled Entity the amount of the Payables].
- c) The manner of payment of the Receivables shall be as follows:

Exhibit 8.13.1-21 (Cont. 5) (11-09-2007)

Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)

- i) Controlled Entity shall pay Taxpayer \$ _____ in U.S. dollars in *[partial]* liquidation of the Receivables.
 - ii) Controlled Entity as obligor shall issue to Taxpayer as obligee a promissory note, payable in the amount of \$ _____ in U.S. dollars in *[partial]* liquidation of the Receivables. The note shall bear interest at a fixed annual rate of __%, with interest payable semi-annually, and shall mature on _____, 20__.
 - iii) Controlled Entity and Taxpayer shall *[partially]* offset the Receivables against _____, a valid liability of Taxpayer to the Controlled Entity. For purposes of this agreement, the amount of the offset shall be deemed to be \$ _____ in U.S. dollars.
 - iv) If payment of the Receivables in full pursuant to subparagraph[s] i), ii), or *[and]* iii) does not occur within 90 days after the date of this agreement, then the unpaid Receivables, or the unpaid portion of the Receivables, shall be treated as paid by Controlled Entity to Taxpayer and returned to Controlled Entity in the form of Taxpayer's contribution to Controlled Entity's capital as of the expiration of the 90-day period.
- d) *[The manner of payment of the Payables shall be as follows:*
- i) *Taxpayer shall pay Controlled Entity \$ _____ in U.S. dollars in [partial] liquidation of the Payables.*
 - ii) *Taxpayer as obligor shall issue to Controlled Entity as obligee a promissory note, payable in the amount of \$ _____ in U.S. dollars in [partial] liquidation of the Payables. The note shall bear interest at a fixed annual rate of __%, with interest payable semi-annually, and shall mature on _____, 20__.*
 - iii) *The Taxpayer and Controlled Entity shall [partially] offset the Payables against _____, a valid liability of Controlled Entity to Taxpayer. For purposes of this agreement, the amount of the offset shall be deemed to be \$ _____ in U.S. dollars.*
 - iv) *If payment of the Payables in full pursuant to subparagraph[s] i), ii), or [and] iii) does not occur within 90 days after the date of this agreement, then the unpaid Payables, or the unpaid portion of the Payables, shall be treated as paid by Taxpayer to Controlled Entity and returned to Taxpayer in the form of Controlled Entity's distribution of property to Taxpayer as of the expiration of the 90-day period.]*
- 7) Miscellaneous.
- a) This agreement does not prevent further allocations under section 482 with respect to taxable events involving Taxpayer and Controlled Entity that are attributable to taxable periods of Taxpayer for which allocations are not determined by this agreement.
 - b) The date of this agreement is deemed to be the date on which this agreement is executed on behalf of the Commissioner.

(Pattern language only. Not a complete document.)

Exhibit 8.13.1-21 (Cont. 6) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)****Additional Comments (Pattern Rev. Proc. 99-32 Closing Agreement on Form 906).**

- A. This pattern closing agreement is intended as a model to assist in drafting closing agreements governed by Rev. Proc. 99-32 in connection with Service-initiated adjustments. Taxpayer-initiated adjustments subject to Rev. Proc. 99-32 should be reflected in a federal income tax return and do not require a closing agreement. See Rev. Proc. 99-32, §5.02. These instructions do not address the issue of when Rev. Proc. 99-32 relief may be granted. Technical questions on Rev. Proc. 99-32 relief should be researched in published or internal management documents dealing with this subject matter.
- B. This pattern closing agreement is drafted on the assumption that the taxpayer is a domestic corporation the income of which is being increased with respect to certain transactions engaged in with a single foreign subsidiary. Alternative language is italicized and provided in brackets. Much of this alternative language deals with the situation in which the taxpayer's income is being decreased. The language of the draft closing agreement may have to be supplemented, shortened, or otherwise further rewritten to address the particular situation. For example, this pattern closing agreement assumes that adjustments involve only two entities: (1) a domestic corporate taxpayer; and (2) its controlled foreign corporate subsidiary (Controlled Entity). If more than two entities are involved, this pattern agreement must be appropriately amended.
- C. Sections 4.01 and 4.02 of Rev. Proc. 99-32 permit the taxpayer to create account(s) receivable if its income is to be increased or accounts payable if its income is to be decreased and requires that the amount of the account(s) receivable or payable equal the primary adjustment for each year in which an adjustment is made except to the extent that an offset against the account(s) is permitted. The principal or interest on an account receivable may be offset against (i) a distribution of property previously received by the taxpayer from Controlled Entity during the taxable year in which the closing agreement is executed or (ii) the bona fide debt of the taxpayer to Controlled Entity if such offset occurs during the taxable year in which the closing agreement is executed. Similarly, principal or interest on an account payable may be offset against (i) a capital contribution previously made by the taxpayer to Controlled Entity during the taxable year in which the closing agreement is executed or (ii) the bona fide debt of the Controlled Entity to the taxpayer if such offset occurs during the taxable year in which the closing agreement is executed. Offsets against distributions and contributions are deemed to occur on the date of the distribution or contribution and determine the future treatment of the distribution or contribution for tax accounting purposes. Offsets against pre-existing debt are deemed to occur when an accounting entry is made to the books of the taxpayer recording such offset and such debt is deemed paid in whole or in part on the date of such entry for tax accounting purposes.
- D. It is unlikely that a closing agreement would be entered into that would incorporate all the provisions provided in this pattern closing agreement. Paragraphs 2), 4), and 6)c) of this pattern closing agreement are appropriate for increases to the taxpayer's income. Paragraphs 3), 5), and 6)d) are appropriate for decreases to the taxpayer's income. Inapplicable paragraphs or subparagraphs should be omitted (rather than retained with the amount shown as "None") and cross-references within the closing agreement should be appropriately amended.

Exhibit 8.13.1-21 (Cont. 7) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)****Additional Comments (Pattern Rev. Proc. 99-32 Closing Agreement on Form 906).****E. Comments on specific draft paragraphs.**

Paragraph 1. Matters expressly determined in closing agreements are accorded finality under section 7121 of the Code. Though certain inferences and substantially automatic consequences may appear to logically flow from such determinations, these results cannot be considered to be matters determined with finality unless expressly provided for in the closing agreement. It is for this reason that the table appended to paragraph 1) reports the effect of earnings and profits directly resulting from the section 482 allocations.

The pattern closing agreement assumes that the allocation is an income adjustment to the taxpayer and Controlled Entity. However, such assumption may not apply to all situations. For example, the allocation may be an income adjustment to one party and a capital item to the other.

Paragraph 2. If the taxpayer's income is to be increased by additional payments from its subsidiary, Controlled Entity, section 4.02 of Rev. Proc. 99-32 permits the taxpayer to offset against the Account(s) Receivable memorialized under paragraph 4) either (i) distributions of property (which might otherwise be characterized as dividends or returns of capital) that the taxpayer received from Controlled Entity during the taxable year in which the closing agreement is executed, or (ii) taxpayer's outstanding bona fide debt to Controlled Entity. Paragraph 2) memorializes such offsets.

Paragraph 3. If the taxpayer's income is to be decreased by additional payments to its subsidiary, Controlled Entity, section 4.02 of Rev. Proc. 99-32 permits the taxpayer to offset against the Account(s) Payable memorialized under paragraph 5) either (i) contributions of property (which might otherwise be characterized as capital contributions) that the taxpayer made to Controlled Entity during the taxable year in which the closing agreement is executed, or (ii) Controlled Entity's outstanding bona fide debt to the taxpayer. Paragraph 3) memorializes such offsets.

Paragraph 4. This paragraph should be included only if the taxpayer's income is being increased. The Accounts Receivable typically will be established in U.S. dollars. See generally Rev. Proc. 99-32, section 4.01(3).

Paragraph 5. This paragraph should be included only if the taxpayer's income is being decreased. The Accounts Payable typically will be established in U.S. dollars. See generally Rev. Proc. 99-32, section 4.01(3).

Exhibit 8.13.1-21 (Cont. 8) (11-09-2007)**Form 906 - Pattern Agreement - Rev. Proc. 99-32 (U.S. Parent)****Additional Comments (Pattern Rev. Proc. 99-32 Closing Agreement on Form 906).**

Paragraph 6. Payment typically will be in U.S. dollars. See generally Rev. Proc. 99-32, section 4.01(3). The pattern closing agreement provides for three different mechanisms for paying the Receivables and Payables: (i) cash payment, (ii) issuance of a new debt obligation, or (iii) offset against a pre-existing liability. Payment may use any or all of these mechanisms but the total amount paid must equal the total amount of the outstanding Receivables or Payables. The terms of the promissory note must meet the requirements set forth in section 4.01(4) of Rev. Proc. 99-32.

The pattern closing agreement treats payment as made within 90 days after the date of the agreement if full payment is not actually made before that time. As a result, interest accrual under paragraphs 4)d) and 5)d) does not exceed that 90-day period. In addition, the taxpayer is treated as receiving full payment from (or making full payment to) Controlled Entity with respect to the secondary adjustment and then making a capital contribution to (or receiving a distribution from) Controlled Entity in the same amount.

Draft language provided (including bracketed, italicized language) will accommodate the taxpayer that is recording both Accounts Receivable and Accounts Payable if necessary. If the taxpayer is recording only one or the other, then bracketed, italicized language in subparagraphs a) and b) must be included as appropriate. Subparagraph c) would not be included in the closing agreement if the taxpayer does not record Accounts Receivable. Similarly, subparagraph d) would not be included in the closing agreement if the taxpayer does not record Accounts Payable.

In this pattern agreement, the taxpayer is assumed to control its foreign counterpart. In the event that the taxpayer and its foreign counterpart are affiliates controlled by a common parent and there are Receivables, subparagraph c)iv) could be rewritten as follows:

“iv) If payment of the Receivables in full pursuant to subparagraph[s] i), ii), or *[and] iii)* does not occur within 90 days after the date of this agreement, then the unpaid Receivables, or the unpaid portion of such Receivables, shall be treated as paid by [Foreign Entity] to Taxpayer and simultaneously distributed by Taxpayer to [insert name of parent corporation] (Parent) as of the expiration of the 90-day period. The excess of such constructive distribution over earnings and profits shall be considered a distribution of capital by taxpayer to Parent. As of the date of such constructive distribution, the amount so treated as a distribution shall be treated as having been contributed by Parent to the capital account of [Foreign Entity].”

In the event that the taxpayer and its foreign counterpart are affiliates controlled by a common parent and there are Payables, subparagraph d)iv) could be rewritten in a similar manner

Signature Blocks. In general, a person should be a signatory of a closing agreement if the closing agreement purports to determine tax matters for such person. IRM 8.13.1.2.17.1. For persons authorized to enter into this closing agreement on behalf of the Commissioner, see paragraphs (5), (6), and (7) of Delegation Order 97, *Closing Agreements Concerning Internal Revenue Tax Liability* (Rev. 34) or, if Delegation Order 97 (Rev. 34) is rescinded, its successor.

Exhibit 8.13.1-22 (11-09-2007)**Sample Letter Sending Taxpayer Copy of Closing Agreement - Letter 1595****Letter 1595(E) (Rev. 1-2007)-Exam Executed Closing Agreement Transmittal Letter ******

(Use Appropriate Letterhead)

Dear :

The closing agreement you submitted has been approved and signed. Enclosed is a signed duplicate of the closing agreement for your records.

Thank you for your cooperation.

Sincerely yours,

Enclosure:

Form 906, Closing Agreement

******Select appropriate letter**

Letter 1595 - *Draft Closing Agreement Request for Taxpayer Signature Transmittal Letter* - This letter is used as a cover letter when sending draft copies of a closing agreement to a taxpayer. This letter will be included in the TEGE Workcenter and will be used by EP examiners.

Letter 1595-A - *Final Closing Agreement Request for Taxpayer Signature Transmittal Letter* - This letter is used as a cover letter when sending final copies of a closing agreement to a taxpayer. This letter will be included in the TEGE Workcenter and will be used by EP examiners.

Letter 1595-B - *Closing Agreement Return for Correction Transmittal Letter* - This letter is used as a cover letter when returning a closing agreement because of improper payment or improper execution. This letter will be included in the TEGE Workcenter and will be used by EP examiners.

Letter 1595-C - *Final Signed and Approved Closing Agreement Transmittal Letter* - This letter is used as a cover letter when forwarding a final signed IRS approved closing agreement to a taxpayer. This letter will be included in the TEGE Workcenter and will be used by EP examiners.

Letter 1595-D - *Final Signed and Approved Closing Agreement Transmittal Letter* - This letter is used as the cover letter when forwarding a final, signed IRS approved closing agreement to the taxpayer when the closing agreement was signed by the Director of Employee Plans. The letter will be included in the TEGE Workcenter and will be used by EP examiners.

Letter 1595-E - *Exam Executed Closing Agreement Transmittal Letter* - This is a cover letter for use when forwarding a final signed and approved IRS closing agreement to a taxpayer who is part of a settlement initiative or agreement.

Exhibit 8.13.1-23 (11-09-2007)**Sample Letter Preliminary to Setting Aside Closing Agreement - Letter 1707(P)****Letter 1707(P) (Rev. 10-82)**

(Use Appropriate Letterhead)

Dear :

A closing agreement determining the income tax you owe for (tax period) was entered into between you and the Commissioner of Internal Revenue on (date agreement executed for the Commissioner) under the provisions of IRC 7121. However, we later received information that the correct tax was not disclosed in the agreement, so we must consider setting it aside.

I have enclosed a statement showing the basis for the proposed reopening of your case and the proposed adjustments to your tax. If you do not agree with the statement, file a protest within 30 days from the date of this letter with this office. Your protest should clearly state your exceptions and be prepared in accordance with the enclosed instructions. We will consider it carefully and, if you request, transfer your case to the appropriate Appeals office for further consideration. *

Sincerely,

Area Director

Enclosures: 2

cc: Name and address of representative

*In the unlikely event a protest is not required, this paragraph should be modified accordingly.

Exhibit 8.13.1-24 (05-25-2018)**Sample Memorandum Requesting That Closing Agreement Be Set Aside**

TO: Commissioner of the Internal Revenue

FROM: (Title of Recommending Officer)

SUBJECT: Request To Set Aside Closing Agreement

Reference is made to the closing agreement executed by (name and title of Service official) on (date of execution by Service official) under the provisions of IRC 7121 with respect to the (type of tax) tax owed by (name of taxpayer party(ies) to agreement) for the tax year ended (show dates).

(At this point set forth a clear statement of the pertinent facts which have been developed and why they warrant the setting aside of the agreement. If the taxpayer has agreed to the assessment and collection of the deficiency, filed an amended return and or has made payment of the deficiency in tax, interest and penalty (if any), a statement to that effect should also be included. The original of the closing agreement and explanatory memorandum, report or supporting statement that accompanies it should be attached to this memorandum.)

I recommend that the foregoing agreement be set aside for the reasons stated.

(Name of recommending officer)

RECOMMENDATION CONCURRED:

Chief, Appeals - IRS

COMMISSIONER'S ACTION

The closing agreement executed by (name and title of Service official) on (date of execution by Service official) under the provisions of IRC 7121 with respect to the (type of tax) owed by (name of taxpayer party(ies) to agreement) for the tax year(s) ended (show dates) is set aside on this date.

(Commissioner of the Internal Revenue)

(date)

Exhibit 8.13.1-25 (05-25-2018)**Letter From Appeals Office Notifying Taxpayer Closing Agreement Has Been Set Aside - Letter 1706(P)****Letter 1706(P)(10-82)**

(Use appropriate letterhead)

CERTIFIED MAIL

Dear:

The closing agreement pertaining to the income tax you owe for the year ended _____ and approved on _____, was set aside by the Commissioner of the Internal Revenue on _____.

(Select appropriate paragraph. See key below.)

1. The Area Director will contact you concerning further action on your case.
2. We will adjust your account in accordance with the waiver (offer of waiver) of restriction on assessment and collection that you signed, and figure the applicable interest. We will send you a bill and payment instructions for any amount that you owe.
3. We have considered (your protest and the evidence and arguments in support of your position) or (the evidence and arguments in support of the position you have taken). However, a mutually satisfactory basis for closing your case was not agreed on and a statutory notice of deficiency will be issued.

Sincerely yours,

cc: Name and address of representative

1. Used for cases under Area Director jurisdiction
2. Used for agreed Appeals case
3. Used for unagreed non-docketed Appeals case