



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.19.8

SEPTEMBER 30, 2013

## EFFECTIVE DATE

(09-30-2013)

## PURPOSE

- (1) This transmits revised IRM 8.19.8, *Collection Cases*.

## MATERIAL CHANGES

- (1) Revised IRM to delete references to S corporations and added information about Letter 4735. Some of the content was reorganized into more targeted sections to make it more user friendly.

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 8.19.8 dated September 28, 2012.

## AUDIENCE

All appeals employees working on collection cases involving liabilities from TEFRA partnerships.

Nancy C. Wright  
Acting Director, Specialty Operations



---

8.19.8  
Collection Cases

## Table of Contents

- 8.19.8.1 Overview
  - 8.19.8.1.1 TEFRA Partnerships
  - 8.19.8.1.2 TEFRA Terms
- 8.19.8.2 Contents of Case File
- 8.19.8.3 Considerations in TEFRA Partnership Cases
  - 8.19.8.3.1 Finality of the Liability
    - 8.19.8.3.1.1 Mathematical Computations
    - 8.19.8.3.1.2 Penalties
    - 8.19.8.3.1.3 Interest Abatement
    - 8.19.8.3.1.4 Innocent Spouse
    - 8.19.8.3.1.5 Interest on Tax-Motivated Transactions
  - 8.19.8.3.2 Consistent Settlement
- 8.19.8.4 Collection Due Process Cases
- 8.19.8.5 Offers In Compromise



8.19.8.1  
(09-30-2013)  
**Overview**

- (1) IRM 8.19.8 is intended to give appeals officers (AO) and settlement officers (SO) specific guidance in handling collection related cases on partners that involve income tax liabilities resulting from adjustments to TEFRA partnerships. Since TEFRA provisions require different technical and procedural treatment from those used for non-TEFRA cases, AOs and SOs should be familiar with the entire contents of this Handbook.
- (2) The types of collection related cases that may be received in Appeals include offers in compromise (OIC), collection due process (CDP), and claims for refund or abatement.

**Caution:** Users are cautioned to seek guidance from the Appeals TEFRA Technical Specialists if questions of authority arise.

8.19.8.1.1  
(09-30-2013)  
**TEFRA Partnerships**

- (1) A TEFRA partnership is subject to the unified audit and litigation procedures of IRC 6221 through IRC 6234 (i.e. TEFRA partnership).
- (2) For more information on TEFRA partnerships, including an overview of the TEFRA audit and litigation procedures, refer to IRM 8.19.1, Procedures and Authorities.

**Note:** S corporations cease to be subject to these procedures for S corporation tax years beginning after December 31, 1996.

8.19.8.1.2  
(09-30-2013)  
**TEFRA Terms**

- (1) For purposes of this section of IRM 8.19, there are a few TEFRA terms that are relevant. For a more comprehensive list of TEFRA terms, refer to IRM Exhibit 8.19.1-1.
- (2) **Tax Matters Partner (TMP):** the statutory representative designated by the TEFRA partnership to act as a liaison between the partners, the IRS, and the federal courts.
- (3) **Notice Partner:** any identified partner in a TEFRA partnership having 100 or less partners or any partner owning a 1% or more profits interest in a TEFRA partnership with more than 100 partners. A notice partner is entitled to receive notices directly from the Service.
- (4) **Notice Group:** a group of partners collectively owning 5% or more of a partnership having more than 100 partners. The group is formed solely for the purpose of receiving the notices required by IRC 6223, i.e., the NBAP and FPAA.
- (5) **Non-notice Partner:** A partner to whom the Service is not required to send notices.
- (6) **Notice of Beginning of Administrative Proceeding (NBAP):** the required notice sent to notice partners, which officially begins the examination of the partnership under TEFRA audit and litigation procedures.
- (7) **Final Partnership Administrative Adjustment (FPAA):** the required notice sent to notice partners and the representative of a notice group providing the results of the partnership proceeding.
- (8) **Partnership Items:** any item that is required to be taken into account for the partnership's taxable year to the extent that the regulations provide that such

item is more appropriately determined at the partnership level. Examples include the partnership's income, expenses, deductions, credits, and accounting method.

- (9) **Affected Items:** any item on a partner's return that requires adjustment as a result of adjustments to the partnership items. Examples include a partner's basis in the partnership, penalties, and a partner's medical expense deduction that is based on a percentage of adjusted gross income.
- (10) **Nonpartnership item:** an item that is not a partnership item (example, a partner's interest income from a bank), or that ceases to be a partnership item (example, when a partner signs a settlement agreement).
- (11) **Pass-thru Partner:** any partnership, estate, trust, S corporation, nominee, or other similar person from whom other persons hold an interest in the TEFRA partnership.

8.19.8.2  
(09-30-2013)  
**Contents of Case File**

- (1) The TEFRA partner's case file will include the documents that would normally be expected depending on the type of case, i.e., OIC, CDP, claim for refund/abatement, etc.
- (2) If there was an assessment resulting from a TEFRA partnership, the file should also include one or more of the following documents that relate to TEFRA procedures. Examples are:
  - a. Letter 1787, *Notice of Beginning of Administrative Proceeding (NBAP)*;
  - b. Letter 1827 or Letter 1829, *60 day Letter* - used to transmit the audit report to the taxpayer;
  - c. Letter 1830, *Notice of Final Partnership Administrative Adjustment (FPAA)*;
  - d. Letter 4735, *Notice of Computational Adjustment* - computation reflecting the additional tax and/or penalties owed by the taxpayer based on the adjustments to the tax return of the TEFRA partnership;
  - e. Form 4605-A, *Examination Changes – Partnerships, Fiduciaries, S Corporations, and Interest Charge Domestic International Sales Corporations*;
  - f. Form 886-Z, *TEFRA Partners' Shares of Income*;
  - g. Form 4700-T, *TEFRA Workpapers* ;
  - h. Settlement Agreement (if applicable): Form 870-P , Form 870-P(AD), Form 870-PT , Form 870-PT(AD) , Form 870-L, Form 870-L(AD), Form 870-LT or Form 870-LT(AD);
  - i. Federal court decision on the TEFRA partnership (if applicable).

**Note:** If there is an indication that the liability includes an assessment relating to a TEFRA partnership and the file does not include any of these documents, the entire administrative file should be requested from the applicable campus in order to confirm that the liability relates to an assessment from a TEFRA partnership and the amount of such liability.

8.19.8.3  
(09-30-2013)  
**Considerations in  
TEFRA Partnership  
Cases**

- (1) There are two concepts that must be considered in collection cases involving assessments related to TEFRA partnerships: (a) Finality of the Liability, and (b) Consistent Settlement.

8.19.8.3.1  
(09-30-2013)  
**Finality of the Liability**

- (1) A taxpayer's liability resulting from an assessment from a TEFRA partnership is final and conclusive. Thus, a taxpayer will not be able to raise challenges to the underlying liability to the extent that it involves deficiencies in tax relating to disallowance or adjustment of losses, deductions, or credits regardless of how the deficiencies were assessed, by settlement agreement, by defaulted FPAA, or by a federal court decision. This applies to doubt as to liability offers, a CDP case, or a claim for refund/abatement. However, it does not apply to doubt as to collectibility offers or hardship offers.

8.19.8.3.1.1  
(09-30-2013)  
**Mathematical Computations**

- (1) A taxpayer cannot contest erroneous mathematical computations applying the determined partnership items to the taxpayers return, including interest computations, if the taxpayer received a notice of computational adjustment that offers the taxpayer an administrative opportunity to address any mathematical errors and the administrative opportunity has lapsed before issuance of the CDP notice. The administrative opportunity need not be before the Office of Appeals. A taxpayer can, however, contest erroneous mathematical computations applying the determined partnership items to the taxpayer's return, including interest computations, if the taxpayer has not received a notice of computational adjustment that offers the taxpayer an administrative opportunity to address any mathematical errors. The IRS started providing such an opportunity when it began sending Letter 4735 (11-2011), Notice of Computational Adjustment, giving this right. If the notice of computational adjustment was issued without using Letter 4735, the taxpayer may raise this issue at the CDP hearing. If the taxpayer was issued and received a notice of deficiency relating to the partnership items adjustments, the taxpayer may not dispute issues that were or could have been raised in that deficiency proceeding.

8.19.8.3.1.2  
(09-30-2013)  
**Penalties**

- (1) For partnership tax years ending after August 5, 1997, the applicability of penalties is determined at the partnership level. For the same reasons as described above, an individual partner may be precluded from challenging a partnership-level penalty in CDP. Individual partners may, however, assert partner-level penalty defenses, including partner-level reasonable cause, even if they received a notice of computational adjustment giving them an opportunity to file a refund claim within 6 months after the IRS mailed the computation to the taxpayer. This is true even if the penalties were included in a settlement of partnership-level issues agreement, a defaulted FPAA, or a federal court decision. Penalties included in Part II of a Form 870-LT or Form 870-LT(AD) settlement agreement are considered to have been resolved with finality.

**Note:** For partnership tax years ending before August 6, 1997, the applicability of penalties is determined at the partner level through a notice of deficiency, which represents a IRC 6330(c)(2)(B) *opportunity*; moreover, penalties included in a Form 870-L or Form 870-L(AD) settlement agreement are considered to have been resolved with finality.

8.19.8.3.1.3  
(09-30-2013)  
**Interest Abatement**

- (1) Taxpayers can raise interest abatement as part of a doubt as to liability offer, CDP hearing, or a claim for abatement. Abatement of interest is not a liability issue under IRC 6330(c)(2)(B). However, if the taxpayer previously sought IRC 6404(e) relief from Appeals, IRC 6330(c)(4) prevents the taxpayer from obtaining a determination by Appeals in the CDP hearing, unless the taxpayer did not meaningfully participate in the prior Appeals proceeding. Generally, Appeals will not grant abatement of interest under IRC 6404(e) in a TEFRA related doubt as to liability offer, a non-hardship offer (under either public policy

or equity grounds), a CDP case or a claim for abatement without special circumstances. Where abatement appears warranted, discuss the issue with the Appeals TEFRA Technical Specialist.

8.19.8.3.1.4  
(09-30-2013)  
**Innocent Spouse**

- (1) A taxpayer may file a request for innocent spouse relief after the liability from a TEFRA proceeding is determined. However, the tax treatment of the partnership items and affected items giving rise to the assessment cannot be redetermined. Taxpayers seeking relief under IRC 6015(b) and IRC 6015(c) must file a request no later than two years from the first collection activity occurring after July 22, 1998, against the requesting spouse. See IRM 25.15.3.4.4, Collection Activity, for a definition of "collection activity". For claims filed under IRC 6015(f), the claim is timely as long as the refund statute or collection statute is open. Where innocent spouse treatment appears warranted, the issue must be discussed with the Appeals TEFRA Technical Specialist who will coordinate a response with the Appeals Program Analyst responsible for the innocent spouse program.

8.19.8.3.1.5  
(09-30-2013)  
**Interest on  
Tax-Motivated  
Transactions**

- (1) Taxpayers will not be able to raise challenges to the underlying liability, to the extent that it involves interest relating to tax-motivated transactions, assessed under the provisions of former IRC 6621(c). Where such consideration appears warranted, before adjustments or reduction are recommended, the issue must be discussed with the Appeals TEFRA Technical Specialist.

8.19.8.3.2  
(09-30-2013)  
**Consistent Settlement**

- (1) Consistent settlement (sometimes referred to as consistent agreement or consistent treatment) is a term unique to TEFRA and provides that if the IRS enters into a settlement agreement with a partner, it must also offer these same terms to any other partner who requests it. IRC 6224(c)(2) provides certain time frames by which a partner must request consistent settlement.
- (2) Consistent settlement is only available for partnership items, not affected items or nonpartnership items. However, for partnership tax years ending after August 5, 1997, the applicability of penalties at the partnership level are subject to a request for consistent settlement.
- (3) Consistent settlement is not available to partners that have signed settlement agreements or otherwise had their partnership items converted to nonpartnership items.
- (4) Partnership items are converted to nonpartnership items in the following situations:
  - a. A settlement agreement is signed by the partner;
  - b. A petition in bankruptcy is filed by a partner;
  - c. An indirect method is used in determining a partner's gross income, and a notice of deficiency is issued to the partner based on the indirect method;
  - d. The IRS issues a termination or jeopardy assessment to the partner;
  - e. A request for prompt assessment is filed by the partner;
  - f. If the IRS notifies a partner that he is the subject of a criminal investigation and notification is sent in writing that his partnership items are being converted to nonpartnership items;
  - g. If the IRS mails a partner a letter notifying him that his partnership items are being converted to nonpartnership items, the partner items are converted on the date that the letter is mailed;



- h. If the partner elects to have his partnership items converted due to not receiving timely notice under IRC 6223 (when the TEFRA proceeding is still ongoing), or the items automatically convert as a result of not receiving timely notice (when the TEFRA proceeding has concluded).
- (5) Partnership items are not converted to nonpartnership items in the following situations:
  - a. An FPAA is issued and no petition is filed;
  - b. An FPAA is issued and no timely petition is filed; or
  - c. An FPAA is issued, a timely petition is filed, and the TEFRA proceeding is resolved as a result of a federal court decision.
- (6) Doubt as to liability and non-hardship effective tax administration (ETA) offers (under either public policy or equity grounds) should not be accepted from taxpayers where their TEFRA liabilities were assessed and their partnership items *were not converted to nonpartnership items* because the same settlement may have to be offered to other partners that are still in the partnership proceeding under the provisions of consistent settlement. See also the second example in IRM 5.8.11.2.2(3).

**Note:** As mentioned earlier, assessed TEFRA liabilities are final determinations, whether the matter was resolved with a settlement agreement or resulted in an FPAA being issued. This is another reason why doubt as to liability offers should not be accepted where they relate to liabilities arising from TEFRA partnerships.

- (7) For doubt as to collectibility and hardship ETA offers, there are no consistent settlement implications. This is because a taxpayer's individual financial situation is not a partnership item.

8.19.8.4  
(09-30-2013)  
**Collection Due Process  
Cases**

- (1) Taxpayers who are partners in TEFRA partnerships may not challenge the treatment of partnership items in a CDP hearing because IRC 6621 requires that the tax treatment of any partnership item be determined at the partnership level.
- (2) Partners also are precluded under IRC 6330(c)(2)(B) from challenging the treatment of partnership items, because a partnership-level proceeding is an *opportunity*. After a Final Partnership Administrative Adjustment (FPAA) is mailed to the Tax Matters Partner (TMP) and notice partners, IRC 6226(a) allows the TMP 90 days to file a petition for a readjustment of partnership items with the Tax Court, the United States Court of Federal Claims, or the United States District Court in which the partnership's principal place of business is located. If the TMP does not file a petition, any notice partner or 5-percent group of non-notice partners (group owning in the aggregate 5 percent or more of the interest in partnership profits) may file a petition with any of these courts within 60 days after the close of the 90-day period. Regardless of which partner files the petition, IRC 6226(c) provides that:
  - a. Each person who was a partner in the partnership at any time during the year being litigated shall be treated as a party to such action.
  - b. The court having jurisdiction of the case will allow such persons to participate in the action.
- (3) Because IRC 6223(g) and IRC 6223(h) requires a TMP and any pass-thru partner (generally a partnership, estate, trust or S corporation) to forward a

copy of the FPAA to any non-notice partner who is not entitled to notice from the Service a partner's claim that they never received notice of the FPAA generally must be rejected. IRC 6230(f) further provides that the failure of the TMP or pass-thru partner to provide any notice or perform any action required under the TEFRA procedures on behalf of a partner does not affect the applicability of any proceeding or adjustment to such partners. In other words, notice to the partner's agent (TMP or pass-thru partner) constitutes notice to the partner as a matter of law.

- (4) When a taxpayer claims that they did not receive proper notification of the adjustment, the hearing officer will review the case file for the following indications of proper notification such as:

- A notice of FPAA was received;
- Settlements entered into by partners by signing waivers, closing agreements, or settlement agreements.

- (5) Partners who have filed bankruptcy petitions will also presumably have received a notice of deficiency, even for a TEFRA year, because their partnership items would have been converted to nonpartnership items due to the bankruptcy filing.

- (6) For other information regarding TEFRA liabilities in CDP cases, see IRM 8.22.8.20.

#### 8.19.8.5 (09-30-2013)

#### Offers In Compromise

- (1) Upon receipt of an offer in compromise case, secure an AMDIS or AMDISA print:
- a. If there is a Partnership Investor Control File (PICF) Code 4 or 5, there is at least one open TEFRA key case linkage. The taxpayer should have been advised by the investigating officer or function that an offer cannot be considered until all TEFRA partnership issues have been resolved. See IRM 5.8.4.15.1. Attempt to secure a withdrawal. If the taxpayer refuses to withdraw the offer, it should be returned to the investigating officer as a premature referral.
  - b. If there is a PICF Code 7, there is at least one closed TEFRA key case linkage. Verify that any assessment as a result of the TEFRA key case was made and that the additional liability is included in the offer.
- (2) Doubt as to liability offers should not be accepted because a taxpayer's liability resulting from a TEFRA assessment is final and conclusive. In addition, the consistent settlement provisions of IRC 6224(c)(2) may apply.
- (3) Doubt as to collectibility offers and hardship ETA offers may be accepted, where appropriate, even where the tax liability involved an assessment resulting from a TEFRA partnership. The fact that the liability is final is not a reason for rejecting the offer. See IRM 8.19.8.3.1. The consistent settlement provisions of TEFRA do not apply to either doubt as to collectibility offers or hardship ETA offers. See IRM 8.19.8.3.2.
- (4) Non-hardship ETA offers based on public policy or equity grounds should not be accepted based on a taxpayer's contention that a provision of the tax law is unfair, or that the TEFRA rules or the TMP's actions on behalf of the taxpayer caused an inequitable result. Other facts and circumstances may be present

such that acceptance of an offer would be fair and equitable (see IRM 5.8.11), but consideration has to be given to whether the consistent settlement provisions of IRC 6224(c)(2) would apply.

- (5) Appeals employees considering acceptance of a non-hardship ETA offer that includes an assessment resulting from a TEFRA proceeding must discuss the issue with the Appeals TEFRA Technical Specialist who will coordinate a response with the Appeals Program Analyst responsible for the Offer program.
- (6) For other information regarding TEFRA liabilities in OIC cases, see IRM 8.23.3.11.1.

