



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.19.9

OCTOBER 1, 2012

EFFECTIVE DATE

(10-01-2012)

PURPOSE

- (1) This transmits revised IRM 8.19.9, *Non-TEFRA Procedures*.

MATERIAL CHANGES

- (1) Revised IRM to reflect new organizational titles resulting from the Appeals 2012 Alignment Project.
- (2) Updated references to Large and Mid-Size Business (LMSB) Operating Division to Large Business and International (LB&I).

EFFECT ON OTHER DOCUMENTS

IRM 8.19.9 dated May 23, 2008 is superseded.

AUDIENCE

All Appeals employees working with non-TEFRA pass-through entity returns or investors.

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8.19.9

Non-TEFRA Procedures

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8.19.9.1
(10-01-2012)
Overview

- (1) IRM 8.19.9 is intended to give appeals employees, including appeals officers, tax computation specialists, and Account and Processing Support (APS) specific guidance in working non-TEFRA pass-through entity cases, especially non-TEFRA key cases. Since non-TEFRA provisions require different technical and procedural treatment from those used for TEFRA cases, appeals employees should be familiar with the entire contents of this Handbook.

Caution: Position titles and delegated authorities referenced in IRM 8.19.9 attempt to reflect the results of the IRS reorganization. Users are cautioned to seek guidance from the Appeals Technical Specialist(s) for TEFRA if questions of authority arise.

- (2) The Appeals Office will have jurisdiction of the non-TEFRA key case. As a general rule, the non-TEFRA key case and one protesting investor case will be sent to Appeals.
- (3) The non-TEFRA key case is any pass-through entity for which adjustments are proposed and which is not subject to the TEFRA provisions.
- (4) All guidance in this section concerning the Campus TEFRA Functions (CTFs) is for cases controlled on the Partnership Control System (PCS). The CTFs only work with key cases and investors controlled on the PCS.

8.19.9.1.1
(10-01-2012)
ACDS Processing

- (1) Account and Processing Support will card the non- TEFRA key case in on ACDS as a separate work unit, not as a reference return. This will allow time to be charged to the case by the appeals officer. Use Type Code "I" instead of "REF".
- (2) If the non-TEFRA key case is an S Corporation (Form 1120-S), the feature code "FEATRC" should be SB.
- (3) Unless the non-TEFRA key case is a taxable S Corporation, other workunit information should be as follows:
 - a. STATDATE: Enter the actual statute date.
 - b. CODE (statute code): Enter "RFRTN".
 - c. PropdTax: No dollars should be entered.
- (4) If the non-TEFRA key case is a taxable S Corporation, other workunit information should be as follows:
 - a. STATDATE: Enter the actual statute date.
 - b. CODE (statute code): No entry.
 - c. PropdTax: Enter the deficiency from the revenue agent report.
- (5) In the NOTES section "Non-TEFRA Key Case" may be entered and "Related to: NNNNNNNNNN". (NNNNNNNNNN = investor case work unit number(s)). Other identifying information may be included as space permits.
- (6) If a notice of deficiency is later issued on an investor case that is related to the non-TEFRA key case and the unagreed issues include those raised for the non-TEFRA key case, the non-TEFRA key case should be moved to Part 3 of the appeals officer's timesheet if there is a petition filed to the Tax Court. The docket number of the investor case should be entered on the non-TEFRA key case in ACDS. The non-TEFRA key case should not be closed from either ACDS or AIMS, and instead should be sent to Counsel for answer along with the investor case.

(7) For more information, see IRM 8.20.5.7

8.19.9.1.2
(05-23-2008)

**Non-TEFRA
Pass-Through Entity
Defined**

- (1) A non-TEFRA pass-through entity is any pass-through entity that does not fall under the TEFRA provisions. They are usually the types of entities described below:
- a. A partnership, LLC (limited liability company), or REMIC (real estate mortgage investment conduit) which meets the small partnership exception to TEFRA partnership rules and has not elected to be included under TEFRA rules as provided in IRC section 6231(a)(1)(B);
- Note:** An LLC, which has more than one member and has not elected to be classified as a corporation under Treas. Reg. section 301.7701-3 (effective January 1, 1997) is required to file Form 1065; an LLC that has only one member and has not elected to be classified as a corporation will be treated as a disregarded entity for federal income tax purposes.
- b. An S corporation whose tax period begins before January 1, 1997, which meets the small partnership exception to TEFRA S corporation rules and has not elected to be included under TEFRA rules as provided in IRC section 6231(a)(1)(B).
 - c. An S corporation whose tax period begins after December 31, 1996. The Small Business Job Protection Act of 1996 made S corporations and their shareholders subject to non-TEFRA procedures. S corporations cannot make an election to be subject to TEFRA after this date.
 - d. A fiduciary or trust; a business entity which is not a trust or corporation that may be treated as a partnership or corporation (if as a corporation, an S corporation election may be made); a joint venture; or similar type entity such as a REMIC.

(2) A non-TEFRA pass-through entity:

- a. In general, has no tax liability for itself, but passes the tax consequences to its partners, shareholders, beneficiaries, or investors. S corporations and Electing Large Partnerships occasionally pay tax at the entity level.
- b. Might not file a tax return and may not be required to file a return (i.e., a Schedule C or F syndication or promotion reported directly on each investor's Form 1040).
- c. Has no unified proceeding as in TEFRA. There is also no Notice of Beginning of Administrative Proceeding (NBAP), Final Partnership Administrative Adjustment (FPAA) or Final S Corporation Administrative Adjustment (FSAA) issued. However, a Notice of Beginning of Partnership Audit (Letter 3457), Notice of Beginning of S Corporation Audit (Letter 3458), or Notice of Beginning of Trust Audit (Letter 3459) may be issued. There are also similar letters that Compliance field offices use to keep taxpayers informed and similar procedures for linking investor cases on PCS.

8.19.9.1.3
(07-01-2006)

**Non-TEFRA Investor
Returns**

- (1) An investor in a non-TEFRA entity may be examined for both pass-through and non pass-through issues.
- (2) Unlike TEFRA examinations, the issues cannot be split. If a statutory notice of deficiency is later issued, it must contain ALL adjustments, both pass-through and non pass-through. Generally, unagreed, non-docketed cases sent to Appeals must include all non-pass-through and all non-TEFRA pass-through

issues. Exceptions include issues referred under the Early Referral Program outlined in Rev. Proc. 99-28, 1999-2, CB 109.

- (3) If an investor has more than one unresolved non-TEFRA pass-through issue, and all are not included in the examiner's report (RAR), the appeals officer should consider returning the case to the Compliance office as a premature referral under IRM 8.21.1.5.

8.19.9.2
(07-01-2006)
**Case File Review
Procedures**

- (1) When a non-TEFRA key case is assigned, the appeals officer should follow the procedures stated below in addition to normal procedures.
- (2) First review the case file to ensure that all necessary documents are included in the key case file and that the ACDS Case Summary Card is accurate.
- (3) Use IRM 8.19.1.6.3 to ensure that the partnership is not subject to the unified proceedings of TEFRA and IRM 8.19.1.6.4 to ensure that the S corporation is not subject to the unified proceedings of TEFRA. Pay particular attention to the small partnership and small S corporation exceptions (IRM 8.19.1.6.3.1 and IRM 8.19.1.6.4.1, respectively). An error in the determination of the applicability of the small partnership or small S corporation exceptions may result in barred deficiencies. For partnership tax years ending after August 5, 1997, the Service may rely on the information on the partnership tax return (if such reliance is reasonable) to determine whether the unified proceedings apply (IRC section 6231(g)). If the determination is arguably not reasonable (e.g. an election issue exists), consult associate area counsel. All S corporations are non-TEFRA for tax years beginning after December 31, 1996.

8.19.9.2.1
(05-23-2008)
Contents of Case File

- (1) The key case file will contain the documents included in a regular unagreed case, such as the revenue agent report (RAR), tax returns, etc. In addition, the following items should be included:
 - Form 886-S for partnerships, Form 886-X for S corporations, and Form 886-W for estates and trusts
 - Form 4605-A (Examination Changes - Partnerships, Fiduciaries, S Corporations, and Interest Charge Domestic International Sales Corporations)
 - Form 886-A Explanation of Items
 - Form 13824, Non-TEFRA Linkage Package Check Sheet, if the non-TEFRA key case was linked on the Partnership Control System (PCS)---see IRM 8.19.9.4
- (2) The investor case file will contain the documents included in a regular unagreed case, such as the RAR, tax returns, 30-day letter, etc. In addition, the following items should be included:
 - Power of Attorney, if applicable
 - Protest
 - Form 4549-A
 - Form 4700, Examination Workpapers (if the investor case was worked by one of the Campus TEFRA Functions (CTF), Brookhaven or Ogden)
 - Form 4318, Examination Workpapers (if the investor case was worked by the examiner that handled the examination of the non-TEFRA key case)
- (3) There may be other issues raised with respect to the investor in addition to those related to the investor's share of the adjustments to the non-TEFRA key case.

8.19.9.2.1.1
(07-01-2006)

**Forms 886-S, 886-X, and
886-W**

- (1) Forms 886-S (partnerships), 886-X (S corporations), and 886-W (estates and trusts) list each investor's name and TIN, and are used to show each investor's pro rata share of the corrected items. .
- (2) The appeals officer should verify that the shares of each item total 100% of that item. The corrected items must also reconcile with the corrected amounts shown on the examiner's Form 4605-A. If these amounts do not reconcile, the appeals officer should contact the examiner for clarification.

8.19.9.2.1.2
(07-01-2006)

Protest

- (1) A written protest may be filed by **any** investor. Generally, only one protesting investor will be sent to Appeals.

8.19.9.3
(05-23-2008)

**Statute of Limitations for
Non-TEFRA
Pass-Through Entity**

- (1) The statute of limitations for non-TEFRA pass-through entities, including non-TEFRA key cases, is controlled at the investor level. See IRC section 6501; Bufferd v. Commissioner, 506 U.S. 523 (1993). Accordingly, any extension of the statute of limitations for adjustments proposed to the pass-through entity's returns must be protected by securing a statute extension from each investor in the pass-through entity. (This is in contrast to TEFRA entities where the statute of limitations for each investor is extended by the tax matters partner/person).

Note: As noted in IRM 8.19.9.4.1.1, Appeals is only responsible for statutes on investors that are received with a key case.

- a. The statute extension at the investor level includes any issues unrelated to the investor's share of adjustments for the non-TEFRA pass-through entity.
- b. The non-TEFRA pass-through entity's statute on the AIMS database is updated to GG (i.e. 04-GG-2005) changing only the day. On ACDS, the actual statute date is entered, and "RFRTN" is entered for the statute code. See IRM 8.20.5.7.
- (2) An exception is for S corporations, wherein an extension of the statute of limitations under IRC section 6501 is needed where corporate level taxes under IRC sections 1374 or 1375 are raised, or where the S corporation is being converted to a C corporation.

Example: A case where it was determined that no S corporation election was made. An extension of the statute would be needed as the corporation is now treated as a C corporation.

Example: A case where the S corporation is determined to owe built-in gains tax under IRC section 1374. An extension of the statute would be needed as the corporation owes taxes.

- (3) The Service must notify the taxpayer (or authorized representative executing a consent) on each occasion when the taxpayer is requested to extend the statute by consent as to the following rights as required by IRC 6501(c)(4)(B):
 - a. The right to refuse to extend the limitations period.
 - b. The right to request the extension to be limited to particular issues held open for further examination or appeal.

Note: The taxpayer or their representative may request, verbally or in writing, restrictive wording on the Form 872. The Appeals employee will review the return for other issues and verify the use of a restrictive paragraph. If the use

of a restrictive paragraph is approved, refer to IRM 25.6.22.8 for instructions in preparing the restrictive paragraph consent.

- c. The right to request the limitations period.
- d. Separate notification must be made to each spouse on joint returns

8.19.9.4
(07-01-2006)
**Partnership Control
System**

- (1) The Partnership Control System (PCS) is a database designed to control and monitor pass-through entities and linked investor returns. It does not replace AIMS inventory control, but it provides the additional information needed to control investor and pass-through returns. It interfaces with AIMS to establish returns, access information, and provide mass updates to AIMS.
- (2) PCS allows an unlimited number of investors to be linked to each key case or tier and allows an investor to be linked to an unlimited number of pass-through entities. The linkage charges the returns to the appropriate area office or CTF and places a pass-through entity Partnership Investor Control File (PICF) Code 2 for the key case on the AIMS database. It also places an investor PICF Code 6 on the AIMS database so that any other part of the Service can see that an entity related to the investor return is under examination. This prevents premature closure of an investor return until all key case issues are resolved. It should also prevent improperly restricted statute extensions.
- (3) The PCS is described in detail in the text of IRM 4.29, Partnership Control System (PCS) Handbook and IRM 4.31, Pass-Through Entity Handbook. See also IRM 8.19.5.19.
- (4) AIMS freeze code "H" is input on the non-TEFRA key case record to prevent premature closing of the key case before the results of the examination are associated with all of the investors.

8.19.9.4.1
(10-01-2012)
**Non-TEFRA Entities and
PCS**

- (1) Non-TEFRA entities may or may not have been linked on PCS by the examiner. The numbers of investors and/or their geographic locations are factors that are considered. If the case was linked on PCS, there will be a PICF code 2 on the AMDISA.
- (2) When the non-TEFRA key case is linked on PCS, the investor returns for SBSE cases are sent to the key case CTF, which is responsible for protecting the statute on the investor cases. For investor cases already charged out to either SBSE or LB&I, the examiner with control of the investor case has the statute responsibility. The CTF will also secure agreements, assess tax and send notices of deficiency when necessary. The CTF for SBSE cases is Brookhaven, while the CTF for LB&I cases is Ogden.
- (3) For non-TEFRA entities that are linked on PCS, in order to determine which CTF is the key case CTF, follow these steps:
 - a. Order IDRS Command Code TSINQP on each year of the key case.
 - b. Look in the "CTF" field for either "OSC" (Ogden) or "BSC" (Brookhaven).
 - c. If the TSINQP shows Ogden, then Ogden is the key case Campus.
 - d. If the TSINQP shows Brookhaven, then order IDRS Command Code TXMODC on the non-TEFRA key case; if there is no data, then Ogden is the key case Campus; if there is data, look in the "Control Base and History Information" section; if the "Assign To" column has numbers that begin with 0179, then Brookhaven is the key case Campus; if there are no numbers in the "Assign To" column, then Ogden is the key case Campus.

- (4) The PCS system places a PICF Code 6 on the AIMS record for the investor. The code alerts personnel to the existence of an ongoing examination of the key case return and prevents its premature closure.
- (5) If the non-TEFRA key case is not linked on PCS, the key case examiner is responsible for statute control for all of the investor returns. The CTF has no responsibility for any statute protection for any investor unless that investor is in the CTF because of another non-TEFRA linkage.

8.19.9.4.1.1
(07-01-2006)

Investor Returns

- (1) As a general rule, the key case and one protesting investor case will be sent to Appeals. Exceptions are:
 - a. If protesting investors have different representatives, one case from each representative is sent to Appeals.
 - b. If an investor has no representative and files a protest, the investor case is sent to Appeals.
 - c. If there are unagreed non-pass-through issues, the investor case is sent to Appeals.
- (2) Most of the other investor returns are held in suspense (at the key case CTF), even if the investor does not respond to the 30-day letter. However, the CTF will transfer the following investor returns to an examination group:
 - a. Coordinated Industry Case (CIC) corporations;
 - b. Joint Committee cases; and
 - c. Other corporate specialty cases.

Note: For Compliance's purposes, other corporate specialty cases are Forms 1120 with letters after the 1120 (other than A, S, or X)..

- (3) If the key case is not linked on PCS, Appeals will only accept protesting investor cases if both of the following conditions are met:
 - a. The non-TEFRA key case has five or fewer investors, and
 - b. None of the investors is a pass-through entity.

Note: If a case that is not linked on PCS fails to meet the above criteria, the key case examiner must either link the case before it is sent to Appeals or retain responsibility for the investor returns.

- (4) Appeals is responsible for statute protection on any investor returns that it receives with the non-TEFRA key case.

8.19.9.5
(05-23-2008)

Conference Procedures

- (1) Generally, the key case pass-through entity and one investor will be sent to Appeals, therefore there will only be a conference for that investor. However, if additional investors are sent to Appeals with the key case, each is entitled to an Appeals conference.
- (2) If there is only one investor, the conference for any issues raised in the key case will be offered in the Appeals Office servicing the area where the pass-through entity has its principal place of business. However, the conference may be held at a location closer to the investor's residence or place of business, and the books and records are available there. Refer to IRM 8.20.6.9.2, Transfers for the Convenience of Taxpayers.

- (3) In general, if there is more than one investor, the conference for any issues raised in the key case will be offered in the Appeals Office servicing the area where the pass-through entity has its principal place of business. However, if there is agreement among all of the investors whose cases are in Appeals, the conference may be held at a location closer to a selected investor's residence or place of business, and the books and records are available there.

Note: Any other issues raised with respect to the investors can generally not be handled at the conference on the key case issues unless the investors have the same representative.

- (4) If the conference requires space to accommodate a large group of participants, the appeals officer should inquire if adequate government facilities are available. However, if it is necessary to rent conference space, the investors should make the arrangements and be responsible for the cost.

8.19.9.6
(07-01-2006)
Settlement Practice

- (1) The appeals officer should be mindful of procedural problems that certain settlement offers may cause for the CTFs in processing the case.

8.19.9.6.1
(07-01-2006)
Settlements for Net Cash Investment

- (1) Avoid settlements based upon a net cash investment unless the examining agent has already substantiated the amount of each investor's cash investment. The CTFs will not have the means to verify cash investments for investors in suspense.

8.19.9.6.2
(07-01-2006)
Allocation Issues

- (1) If the correct allocation of the interest in the key case is an issue being considered, do not settle an investor case unless all investors (including those that may be in suspense at a CTF or which were retained by the examiner) agree to the allocation by executing Form 870(AD).
- (2) If either the key case CTF or the examiner is holding investors in suspense, and will be mailing the Forms 870(AD) to those investors, include instructions on Form 3210 (as part of the closing package) to alert the key case CTF or examiner to return the agreement forms to the appeals officer without executing them. The appeals officer should include envelopes to ensure that the CTF or examiner returns the agreements to the appeals officer.
- (3) Notify the appeals officer or manager assigned to execute agreements at the CTF (or the examiner) that any agreements received should be returned to the appeals officer that is assigned the non-TEFRA key case in order to be executed.
- (4) Refer to IRM 8.19.3.6.4 and IRM 8.19.2.10.2 for more information on allocation issues.
- (5) See IRM 8.19.9.9 for further guidance on securing agreements from the other investors and preparing and mailing the closing package.

8.19.9.6.3
(10-01-2012)
Penalties

- (1) If penalties are asserted on investors as a result of adjustments to the key case return, the appeals officer will review the RAR and determine a recommended settlement position on the penalties based upon the activities at the key case level. This will include the overvaluation of assets.
- (2) The appeals officer will prepare an abbreviated appeals case memo (ACM) for the recommended settlement position on the penalties.

- (3) The recommended settlement position will be based upon the activities at the key case level only. Any additional facts, which are based on the activities at the investor level, will be considered in evaluating the investor's individual case. If no additional facts are presented at the investor level, follow the settlement position recommended at the key case entity level.
- (4) Account and Processing Support will mail a copy of the abbreviated penalty ACM to the key case CTF (or the examiner) as part of the closing package, and will retain a copy in the office file. See IRM 8.19.9.9.6 for the documents that should be included in a closing package.
- (5) Penalties on non-TEFRA cases are not subject to the consistent settlement rules of TEFRA provided in IRC section 6224(c)(2). But, the Service strives for consistent settlements generally.

8.19.9.7
(07-01-2006)
Key Case Preparation at Conclusion of Settlement Negotiations

- (1) At the conclusion of the settlement negotiations, the appeals officer will prepare an ACM for the non-TEFRA key case reflecting the revised adjustments, and any settlements recommended.

8.19.9.7.1
(10-01-2012)
Appeals Case Memo

- (1) The appeals officer will follow the usual format in preparing an ACM for non-TEFRA key cases.
- (2) Include an evaluation of each penalty in an abbreviated ACM. The proposal for settlement of the penalties will become the key case position for all investors.
- (3) Account and Processing Support will mail a copy of the ACM (and the penalty ACM if applicable) to the key case CTF (or the examiner) as part of the closing package, and will retain copies in the office file. See IRM 8.19.9.9.6 for the documents that should be included in a closing package.

8.19.9.7.2
(07-01-2006)
Other Documents

- (1) The Appeals tax computation specialist will prepare the following forms for the non-TEFRA key case, provided that there were changes made to the forms already in the case file:
 - a. Form 886-S for partnerships, Form 886-X for S corporations, and Form 886-W for estates and trusts
 - b. Form 4605-A
- (2) The Appeals tax computation specialist will prepare an audit statement for each investor case that is in Appeals. The audit statement should reflect each investor's share of the revised adjustments to the non-TEFRA key case, together with any other adjustments that were included in the investor's RAR (as revised by Appeals).
- (3) If Appeals does not have all of the investors, the Appeals tax computation specialist will prepare:
 - a. Sample statutory notice language reflecting the adjustments to the non-TEFRA key case;
 - b. Form 6657 (Related Returns Examination Report).

Note: The Form 6657 should list all of the investors that are not in Appeals, and is used to transmit the results of Appeals consideration; a TSUMYP print can be attached to the Form 6657 in lieu of listing the investors on the form.

Caution: If the key case was linked on PCS, Form 6657 will also be prepared even if Appeals does have all of the investors.

8.19.9.7.3
(07-01-2006)
No-Change Cases

- (1) When the appeals officer recommends no changes to the key case return, no agreement forms are needed from the investors. The Appeals tax computation specialist will not prepare Form 886-S, 886-X, 886-W, or Form 4605-A.
- (2) The Appeals tax computation specialist will prepare an audit statement for any investor case that is in Appeals if the investor case has other issues.
- (3) If Appeals does not have all of the investors or the key case was linked on PCS, the Appeals tax computation specialist will prepare Form 6657.

Note: The Form 6657 should list the investors that are not in Appeals, and is used to transmit the results of Appeals consideration; a TSUMYP print can be attached to the Form 6657 in lieu of listing the investors on the form.

8.19.9.8
(07-01-2006)
Agreement Forms

- (1) The appeals officer will follow the usual procedures when securing agreement forms from investors. For non-docketed investors, if more finality is needed a Form 870(AD) may be used. Only secure agreements from the investors that are in Appeals with the non-TEFRA key case. The settlement that is reached on the non-TEFRA key case should be approved by the manager before any agreement forms (non-docketed cases) or decision documents (docketed cases) are mailed to investors.
- (2) No agreement form is secured on behalf of the non-TEFRA key case.
- (3) Using instructions and information from the closing package that is prepared by Appeals, the key case CTF or the examiner will secure agreements from investors that they are holding in suspense.
- (4) If there is an allocation issue, Form 870(AD) (non-docketed investors) or decision documents (docketed investors) should be secured from the investor(s) in Appeals. The CTF will mail Form 870(AD) to the investors that are in suspense at the CTF. The examiner will mail Form 870(AD) to investors that he/she is holding in suspense. See IRM 8.19.9.6.2 for more guidance on allocation issues.

8.19.9.8.1
(05-23-2008)
Closing Agreements

- (1) Closing agreements from partners in a partnership or shareholders in an S corporation should be avoided if possible. If the key case becomes a TEFRA entity in a subsequent tax year, on the date a closing agreement is executed, the one-year minimum assessment period under IRC 6229(f) is triggered for subsequent years covered in the closing agreement, unless the agreement constitutes a partial agreement. Also, a closing agreement may have been the unintended result of making adjustments that could foreclose further adjustments in a separate TEFRA proceeding for the same tax year.
- (2) Closing agreements relating to non-TEFRA entities should be entered into only with the individual investors and not the entity. This is because a closing agreement with the entity will not be binding on the investors.

Note: A closing agreement with a non-TEFRA entity may be sought to encourage the entity to file subsequent year returns in a specified manner. The agreement will not bind the individual investors. Separate closing agreements should be sought from each investor.

- (3) If a separate determination is to be made concerning one of the investor's individual tax matters, a separate closing agreement should be entered into with that investor. A copy of the closing agreement should be provided to the investor and/or the representative once it is executed on behalf of the Commissioner.
- (4) For detailed instructions on closing agreements, refer to IRM 8.13.1 (Processing Closing Agreements in Appeals).

8.19.9.9
(07-01-2006)
Closing Procedures

- (1) Closing procedures will differ slightly depending on whether
 - a. Appeals has some or all of the investor cases with the non-TEFRA key case,

Note: Some investor cases may either be in suspense at the key case CTF (when the investor returns are linked on PCS) or being held by the key case examiner (when the investor returns are not linked on PCS)

- b. The investors in Appeals have an interest in other unresolved TEFRA or non-TEFRA key cases,
- c. The case is non-docketed or docketed, and
- d. There are any investors that have not accepted the settlement.

8.19.9.9.1
(10-01-2012)
**Closing The Key Case
When Appeals Has All of
the Investors**

- (1) Where Appeals has all of the investors with the non-TEFRA key case, the appeals officer should mail agreements (non-docketed cases) and decision documents (docketed cases) to each investor.
- (2) If there is an allocation issue, Forms 870(AD) should not be signed and decision documents (in docketed cases) should not be forwarded to the associate area counsel until all have been received. See IRM 8.19.9.6.2 for more guidance on allocation issues.
- (3) If all investors agree, the key case may also be closed from ACDS (using closing code 03) and from AIMS. However, if the key case was linked on PCS, all of the investors must have 22222222 in the one-year assessment date fields on their PCS records (see IRM 8.19.9.9.3(3) below) and the AIMS "H" freeze released by the key case CTF before the key case can be closed from AIMS.
- (4) If there are any unagreed investors, the key case should not be closed on either ACDS or AIMS, but should be associated with the unagreed investor(s). If a notice of deficiency is later issued on an investor case that is related to the non-TEFRA key case and the unagreed issues include those raised for the non-TEFRA key case, the non-TEFRA key case should be moved to Part 3 of the appeals officer's timesheet if there is a petition filed to the Tax Court. The docket number of the investor case should be entered on the non-TEFRA key case in ACDS.
- (5) If the key case was linked on PCS, the appeals officer, or tax computation specialist will prepare a closing package for Account and Processing Support to mail to the key case CTF, which will include information and instructions regarding the settlement. See IRM 8.19.9.9.6 for guidance in preparing and mailing the closing package.

8.19.9.9.2

(10-01-2012)

**Closing the Key Case
When Appeals Does Not
Have All of the Investors**

- (1) If the appeals officer does not have all of the investors with the non-TEFRA key case, agreements (non-docketed cases) and decision documents (docketed cases) should only be mailed to investors that are in Appeals jurisdiction. Other investors will generally be in suspense at the applicable CTF, but may be with the examiner if the non-TEFRA key case was not linked on PCS.
- (2) If there is an allocation issue, Form 870(AD) should not be signed and decision documents (in docketed cases) should not be forwarded to the associate area counsel until all have been received. See IRM 8.19.9.6.2 for more guidance on allocation issues.
- (3) If all investors agree, including those in suspense at the key case CTF or with the examiner, the key case may be closed on ACDS (using closing code 03) and from AIMS. However, if the key case was linked on PCS, all of the investors must have 22222222 on their PCS records (see IRM 8.19.9.9.3(3) below) and the AIMS "H" freeze released by the key case CTF before the key case can be closed from AIMS.
- (4) The key case should be associated with the investor(s) who are not in Appeals using the following procedures:
 - a. If the investors are in suspense at the CTF, the key case should be closed on ACDS (using closing code 03). The AIMS database should be updated to status 33 and the PBC will be updated to either 295 (for Brookhaven CTF) or 398 (for Ogden CTF).. Forward the administrative file by controlled correspondence (Form 3210) to the key case CTF. . See IRM 8.19.9.4.1(3) for instructions for determining whether Brookhaven or Ogden is the key case CTF.
 - b. If the investors are in suspense with the examiner, the key case should be closed on ACDS (using closing code 03). The AIMS database should be updated to status 21. AIMS will reset to the closing PBC. Forward the administrative file by controlled correspondence (Form 3210) to the appropriate Examination Technical Services unit based on the location of the originating Examination group.
- (5) If the key case was linked on PCS, the appeals officer or tax computation specialist will prepare a closing package for Account and Processing Support to mail to the key case CTF, which will include information and instructions regarding the settlement.. If the key case was not linked on PCS, the closing package will be mailed to the key case examiner. See IRM 8.19.9.9.6 for guidance in preparing and mailing the closing package.

8.19.9.9.3

(10-01-2012)

**Closing An Investor
Case Who Does Not
Have an Interest in
Another Unresolved Key
Case**

- (1) In order to identify if an investor is linked to any other unresolved key cases, IDRS command code AMDISA should be secured.
 - a. A PICF code 6 indicates at least one open non-TEFRA key linkage and no TEFRA key case linkages. Command code TSUMYI should then be secured for each tax year of the investor to identify any other open non-TEFRA linkages apart from the non-TEFRA key case that is being considered by Appeals. See IRM 8.19.9.9.4 below for additional procedures to follow if there are open non-TEFRA key case linkages other than the key case that is being considered by Appeals.
 - b. A PICF code 5 indicates at least one open TEFRA key case linkage. See IRM 8.19.9.9.5 below and IRM 8.19.6.7.2 for additional procedures to follow.

- c. A PICF code 7 indicates no open key case linkages and at least one closed TEFRA key case linkage. This would mean that the investor in the non-TEFRA key case being considered by Appeals was not linked to the non-TEFRA key case on PCS. The audit statement should begin with taxable income as corrected based on any assessments from the closed TEFRA linkages. See IRM 8.19.6.7.1 for additional procedures to follow.
 - d. A PICF code 8 indicates no open key case linkages and at least one closed non-TEFRA key case linkage but no closed TEFRA key case linkages. This would mean that the investor in the non-TEFRA key case being considered by Appeals was not linked to the non-TEFRA key case on PCS. The audit statement should begin with taxable income as corrected based on any assessments from the closed non-TEFRA linkages.
 - e. A PICF code 0 indicates no open key case linkages. This would also mean that the investor in the non-TEFRA key case being considered by Appeals was not linked to the non-TEFRA key case on PCS. The audit statement should begin with taxable income from the return or from any prior assessments (if any).
- (2) If an investor has additional non-TEFRA issues apart from the interest in the non-TEFRA key case, these should be included in the settlement computations and the tax included in the agreement or settlement document.
 - (3) Account and Processing Support may fully close agreed investors from ACDS and AIMS using normal closing procedures. If PCS controls were established on the non-TEFRA key case, once the assessment has been made, Form 8339 (See Exhibit 8.19.9-1) should be completed and processed in order to update the one-year statute field on PCS to 22222222 for each tax year of the investor that is at issue. Local procedures determine who inputs the Form 8339. Form 5403 should also reflect both AMCLSA and TSCLS for the investor case if it is being fully closed.
 - (4) Unagreed non-docketed investors should be processed under normal notice of deficiency procedures. See IRM 8.17.4.11.6 for the proper presentation of the explanation of adjustments with respect to the pass-through entity. Unagreed docketed investors should be processed using normal closing procedures for unagreed docketed cases.

8.19.9.9.4
(10-01-2012)
**Closing An Investor
Case Who Has An
Interest in Another
Unresolved Non-TEFRA
Key Case**

- (1) This section includes additional guidelines where an investor has an interest in another non-TEFRA key case that has not as yet been resolved.
- (2) Such cases should generally have been returned to the Compliance office as a premature referral. See IRM 8.19.9.1.3. However, it is possible that the investor that is in Appeals became linked to another non-TEFRA key case after the investor case was received in Appeals.
- (3) If Form 870 or Form 870(AD) is used in a non-docketed case, it should be modified to provide that it is not final as to these adjustments. See IRM 8.6.4.4.2.
- (4) Account and Processing Support may close investors with unresolved non-TEFRA linkages from ACDS, but should not close them from AIMS. If PCS controls were established on the non-TEFRA key case that is being partially resolved by Appeals, once the assessment has been made, Form 8339 should

be completed and processed in order to update the one-year assessment date field on PCS to 22222222 for each linkage and tax year of the investor that is at issue and resolved by Appeals.

- (5) For CIC corporations and Compliance's other corporate specialty cases, the case will be handled as a partial closing and the administrative file will be forwarded to Examination Technical Services. APS will:
- Prepare Form 5403 following partial procedures. In item A, Special Handling Instructions, write "Non-TEFRA Linkage [Insert either: CIC 1120 or Other Corporate Specialty Case] — After Partial Closing, Forward to Examination Technical Services."
 - Once the partial assessment has been input, update the AIMS database to status 21. AIMS will reset to the closing PBC.
 - Forward the administrative file via Form 3210 to the appropriate Examination Technical Services Unit based on the location of the originating Examination group. Ensure that a copy of the input Form 5403 is attached to the face of the return. Examination Technical Services will forward the case to the appropriate group, who will place the file in suspense awaiting the outcome of the non-TEFRA examination.

Note: For Compliance, other corporate specialty cases include Forms 1120 followed by a letter other than A, S, or X; a corporation with an activity code of 219 or higher is not an other corporate specialty case unless it is also a CIC corporation or a Form 1120 followed by a letter other than A, S, or X.

- (6) For cases other than CIC Corporations and Compliance's other corporate specialty cases, the case will be handled as a partial closing and the administrative file will be forwarded to the Campus TEFRA Function (CTF). APS will:
- Prepare Form 5403 following partial procedures. In item A, Special Handling Instructions, write "Non-TEFRA Linkage — After Partial Closing, Forward to CTF."
 - Once the partial assessment has been input, update the AIMS database to status 33. Update the PBC to 295 (for the Brookhaven CTF) or 398 (for the Ogden CTF).
 - Forward the administrative file via Form 3210, to the appropriate CTF. Ensure that a copy of the input Form 5403 is attached to the face of the return. The CTF will place the file in suspense awaiting the outcome of the non-TEFRA examination.

Note: In order to determine the CTF to send the investor case to, follow these steps:

- Order IDRS Command Code TSINQP on each year of the key case.
 - Look in the "CTF" field for either "OSC" (Ogden) or "BSC" (Brookhaven).
 - If the TSINQP shows Ogden, then Ogden is the key case Campus.
 - If the TSINQP shows Brookhaven, then order IDRS Command Code TXMODC on the non-TEFRA key case; if there is no data, then Ogden is the key case Campus; if there is data, look in the "Control Base and History Information" section; if the "Assign To" column has numbers that begin with 0179, then Brookhaven is the key case Campus; if there are no numbers in the "Assign To" column, then Ogden is the key case Campus.
- (7) The appeals officer should process unagreed non-docketed investors under normal notice of deficiency procedures. However, any issues related to the un-

resolved non-TEFRA key case must be included in the notice of deficiency. Contact should be made with the function that is assigned the other non-TEFRA key case in order to secure statutory notice language. Unagreed docketed investors should be processed using normal procedures for unagreed docketed cases. .

8.19.9.9.5
(10-01-2012)

**Closing An Investor
Case Who Has An
Interest in an
Unresolved TEFRA Key
Case**

- (1) See IRM 8.19.6.7.2, IRM 8.19.5.18.4, IRM 8.19.4.10, IRM 8.19.4.11, IRM 8.19.4.12, and IRM 8.19.4.13 for detailed procedures on handling both agreed and unagreed investors when non-TEFRA issues are resolved prior to the TEFRA issues. IRM 8.19.4.11 includes procedures for unagreed investors where a Munro computation is necessary or where the investor return is over-sheltered.
- (2) See IRM 8.19.5.18.5 when the non-TEFRA and TEFRA issues are settled together and IRM 8.19.5.18.6 when the resolution of the non-TEFRA investor case results in a no-change.

8.19.9.9.6
(10-01-2012)

Closing Package

- (1) If the key case was linked on PCS, a closing package must be mailed to the key case CTF even if Appeals has all of the investors. This ensures that the Appeals findings will be associated with any investors that are in suspense at the CTF and that the findings are included in the CTF centralized RAR files. A copy of the closing package must also be mailed to the examiner if any of the investors are being held in suspense in the field group.

Note: For non-TEFRA entities that are linked on PCS, in order to determine which CTF is the key case CTF, follow these steps:

- a. Order IDRS Command Code TSINQP on each year of the key case.
- b. Look in the "CTF" field for either "OSC" (Ogden) or "BSC" (Brookhaven).
- c. If the TSINQP shows Ogden, then Ogden is the key case Campus.
- d. If the TSINQP shows Brookhaven, then order IDRS Command Code TXMODC on the non-TEFRA key case; if there is no data, then Ogden is the key case Campus; if there is data, look in the "Control Base and History Information" section; if the "Assign To" column has numbers that begin with 0179, then Brookhaven is the key case Campus; if there are no numbers in the "Assign To" column, then Ogden is the key case Campus.
- (2) In addition to the Form 3210, the closing package will consist of the following:
 - a. Form 4605-A (not applicable for no-change cases);
 - b. Form 886-S for partnerships, Form 886-X for S corporations, or Form 886-W for estates and trusts (not applicable for no-change cases);
 - c. Form 6657 (with the investors listed or with a TSUMYP attached);
 - d. Form 5402;
 - e. Copy of ACM and abbreviated penalty ACM (if applicable);
 - f. Sample statutory notice language (if applicable);
 - g. Sample closing agreement language (if a closing agreement is being recommended for the settlement);
 - h. Any special instructions (such as what type of agreement should be secured from each investor in suspense, or to return all agreement forms to Appeals because there is an allocation issue or they require Appeals approval and signature).

- (3) If revised tax computations are needed based on the settlement, the appeals officer is responsible for requesting the tax computation specialist to begin preparing the closing package and Form 3210.

Note: If at the time that the tax computation specialist prepares the closing package and the Form 3210, some of the documents have not yet been prepared by the appeals officer (for example, the ACM or Form 5402) or information is not yet available, the appeals officer will complete the preparation of the closing package.

- (4) If revised tax computations are not needed based on the settlement, the appeals officer is responsible for preparing the closing package and Form 3210.
- (5) The appeals officer, secretary, clerk, or Account and Processing Support (as determined locally) will make photocopies of the documents to be included in the completed closing package.
- (6) In all situations, the appeals officer is responsible for:
- the accuracy and completeness of the Form 3210,
 - reviewing the completed closing package, and
 - submitting it to Appeals Processing Services.
- (7) Account and Processing Support is responsible for:
- ensuring all documents listed on the Form 3210 are attached,
 - sending the completed package to the CTF and/or examiner by controlled mail, and
 - monitoring the return of the acknowledged Form 3210.
- APS will maintain suspense copies of Forms 3210 with instructions to the mail room for the acknowledgement copy to be returned.
 - Place suspense copies of Forms 3210 in a review file and check daily to verify the document has been received.
 - The acknowledgement copies of all Forms 3210 must be documented with the date received.
 - If after ten (10) business days the receipt has not been acknowledged, the originator must follow-up to resolve the missing acknowledgement and document the actions taken.
 - The documentation must either be recorded on or attached to the originator's copy of the Forms 3210.
 - When items are determined to be lost in transit, APS should notify the appeals officer who will determine the appropriate procedures to follow.
- (8) See Exhibit 8.19.9-2, Exhibit 8.19.9-3, and Exhibit 8.19.9-4 for sample Forms 3210.
- (9) Using instructions and information from the closing package that is prepared by Appeals, the key case CTF and/or the examiner will mail agreements to investors that they are holding in suspense. If the key case was linked on PCS, the key case CTF will release the "H" freeze on the key case once the results of the examination of the key case have been associated with the last investor and the last investor one-year assessment date field is updated to 22222222.

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Form 8339 to Update One-Year Assessment Date

Partnership Control System (PCS)

PCS Change

See IRM Exhibit 4.29.2-4 for complete instructions.

1. CC TSCHG (Line 01, Positions 1 – 5)

A. Direct Linkage Information (Return information of the Entity to which the taxpayer is directly linked)

2. TIN

3. MFT

4. Tax Period (yyyymm)

5. Type of record to be changed (P - Key Case I - Investor)

6. TIN

7. MFT

8. Tax Period (yyyymm)

6. TIN

7. MFT

8. Tax Period (yyyymm)

C. Related Investor

9. TIN

10. MFT

11. Tax Period (yyyymm)

12. Change(s) – See reverse for element numbers and value ranges (Begin Line 3-12)

Item No.

New Data

13. Name of Requester

14. PBC

15. EGC

16. Approved by

17. Date (mmddyyyy)

18. Title

19. Signature

20. Signature

21. Date (mmddyyyy)

22. Signature

23. Title

24. Signature

25. Date (mmddyyyy)

22. Name of Input Operator

23. Title

24. Signature

25. Date (mmddyyyy)

Form 8339 (Rev. 1-2008)

Catalog Number 62447J

Department of the Treasury — Internal Revenue Service

Form 3210 -- Closing Package Mailed to Campus (case linked on PCS and Appeals has secured agreements from and assessed all investors)

Department of the Treasury
Internal Revenue Service

Exhibit 8.19.9-3 (07-01-2006)

Form 3210 -- Closing Package Mailed to Campus (case linked on PCS and Appeals does not have all of the investors—Campus to mail agreements)

Document		To (Show complete and correct address)		Release date	Page _ of
Transmittal		Key Case Campus TEFRA Function		Transmittal code (from Serial no. - to)	
				Numbered	Unnumbered
Document Identification			Remarks	Shipment Information	
Quantity	Code or Type	Instructions: When transmitting reports please show the type of report and the period covered. For other items, show identifying information such as blocks, DLN, EIN, SSN, etc.	Non-TEFRA Key Case: Campus to mail agreements to investors	Container No.	Rec'd √
		Name of Entity: _____ MFT: _____ EIN: _____ Year(s): _____ Form: _____			
		ENCLOSURES:			
		Form 5402 Appeals Case Memorandum Penalty Appeals Case Memorandum (if applicable) Form 886-S, Form 886-W, or Form 886-X Form 6657 Form 4605-A Statutory Notice Language (These are for "Information Only" --Do Not Mail to Taxpayer)			
		Small return envelope			
		NECESSARY ACTIONS:			
		(1) Return a copy of Form 3210 within 10 days in the envelope. (2) Mail agreements to investors listed on Form 6657 that are not in Appeals and issue notice of deficiency to those investors who do not agree (3) Release H freeze once last investor has been assessed			
		NOTE: Include any special instructions if: (1) Penalties are applicable; (2) If a Form 870(AD) is required from the investors; or (3) If there is an allocation issue and the Campus is to return the Form 870(AD) to the Appeals Officer to be executed			
		Appeals Officer (Name, telephone number and fax number)			
From (Originator must supply complete address below)			Releasing official (signature and title)		
Appeals Office Address			Appeals Officer of Other Releasing Official		
			Received and Verified (signature and title)		
			Originator telephone number		
			Date Acknowledged		

Form 3210 (Rev. 7-90)

Department of the Treasury
Internal Revenue Service

Exhibit 8.19.9-4 (07-01-2006)

Form 3210 -- Closing Package Mailed to Examiner (case not inked on PCS and Appeals does not have all of the investors—Examiner to mail agreements)

Document		To (Show complete and correct address)		Release date	Page _ of
Transmittal		Key Case Examiner		Transmittal code (from Serial no. - to)	
				Numbered	Unnumbered
Document Identification			Remarks	Shipment Information	
Quantity	Code or Type	Instructions: When transmitting reports please show the type of report and the period covered. For other items, show identifying information such as blocks, DLN, EIN, SSN, etc.	Non-TEFRA Key Case: Examiner to mail agreements to investors	Container No.	Rec'd √
		Name of Entity: _____ MFT: _____ EIN: _____ Year(s): _____ Form: _____			
		ENCLOSURES:			
		Form 5402 Appeals Case Memorandum Penalty Appeals Case Memorandum (if applicable) Form 886-S, Form 886-W, or Form 886-X Form 6657 Form 4605-A Statutory Notice Language (These are for "Information Only" --Do Not Mail to Taxpayer)			
		Small return envelope			
		NECESSARY ACTIONS:			
		(1) Return a copy of Form 3210 within 10 days in the envelope. (2) Mail agreements to investors listed on Form 6657 that are not in Appeals and issue notice of deficiency to those investors who do not agree (3) Mail a copy of package to the Campus TEFRA Function for the Centralized RAR file			
		NOTE: Include any special instructions if: (1) Penalties are applicable; (2) If a Form 870(AD) is required from the investors; or (3) If there is an allocation issue and the examiner is to return the Form 870(AD) to the Appeals Officer to be executed			
		Appeals Officer (Name, telephone number and fax number)			
From (Originator must supply complete address below)			Releasing official (signature and title) Appeals Officer of Other Releasing Official		
Appeals Office Address			Received and Verified (signature and title)		
			Originator telephone number		
			Date Acknowledged		

Form 3210 (Rev. 7-90)

Department of the Treasury
Internal Revenue Service

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