



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.19.10

DECEMBER 20, 2021

EFFECTIVE DATE

(12-20-2021)

PURPOSE

- (1) This transmits revised IRM 8.19.10, Receipt, Assignment, and Consideration of TEFRA Partnership Cases.

MATERIAL CHANGES

- (1) Added new IRM section, Program Scope and Objectives, and its related subsections to comply with the Deputy Commissioner of Services and Enforcement and Operations Support memo, dated September 14, 2016, entitled Heightened Awareness, Sensitivity and Understanding of Internal Controls.
- (2) Added new IRM section, Related Resources, information on the Taxpayer Bill of Rights (TBOR), based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration).
- (3) Revised IRM 8.19.10.5.1, Initial Case Procedures to incorporate Interim Guidance Memorandum AP-08-0621-0019, Reissuance of Interim Guidance on Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases - 06/30/2021.
- (4) Removed IRM 8.19.10.2.2, Partnership Tax Years Ending Before August 6, 1997. Renumbered subsequent sections.
- (5) Updated references to Appeals TEFRA Team, Campus TEFRA Function (CTF), Partnership Control System (PCS) and TEFRA Coordinator to Appeals TEFRA/BBA Team, Campus Pass-through Function (CPF), Pass-through Control System (PCS) and Pass-through Coordinator throughout.

EFFECT ON OTHER DOCUMENTS

IRM 8.19.10 dated April 19, 2016 is superseded. Incorporated Interim Guidance Memorandum AP-08-0621-0019, Reissuance of Interim Guidance on Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases – 06/30/2021.

AUDIENCE

All Appeals employees working with TEFRA partnership returns.

Jennifer L. Vozne
Director, Specialized Examination Programs and Referrals

8.19.10

Receipt, Assignment, and Consideration of TEFRA Partnership Cases

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- 8.19.10-1 Formula for Assigning Dollar Value to Partnership Case for ACDS
- 8.19.10-2 Appeals Case Summary Card
- 8.19.10-3 Affected Item Appeals Case Memo (ACM)

- 8.19.10.1
(12-20-2021)
Program Scope and Objectives
- (1) Purpose: This IRM section describes the statute processes and procedures for working TEFRA Key and Partner Cases in the IRS Independent Office of Appeals (Appeals).
 - (2) Audience: Appeals Technical Employees and Appeals Team Managers that work TEFRA cases
 - (3) Policy Owner: Appeals Technical Guidance is under the Director, Specialized Examination Programs and Referrals
 - (4) Program Owner: Appeals Technical Guidance is the program office responsible for providing technical and Procedural Guidance to Appeals employees for TEFRA issues.
 - (5) Contact Information: Appeals employees should follow established procedures on HOW TO CONTACT AN ANALYST. Other employees should contact the Product Content Owner shown on the Product Catalog Information Page for this IRM.
- 8.19.10.1.1
(12-20-2021)
Background
- (1) TEFRA was passed in 1982 to allow examinations and statutes to be controlled at the partnership level. This eliminated the need to control each individual partner statute.
 - (2) Section 1101 of the Bipartisan Budget Act (BBA) of 2015 repealed TEFRA partnership and Electing Large Partnership (ELP) provisions beginning with tax years beginning 1/1/2018 and replaced it with a new centralized partnership audit regime. The new regime provides for determination, assessment and collection of underpayments at the partnership level unless certain elections are made by the partnership.
- 8.19.10.1.2
(12-20-2021)
Authority
- (1) TEFRA policy was established in response to the partnership provisions of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982.
- 8.19.10.1.3
(12-20-2021)
Responsibilities
- (1) The author of this IRM is shown on the Product Catalog Page as the originator.
- 8.19.10.1.4
(12-20-2021)
Program Reports
- (1) Policy, Planning, Quality, and Analysis (PPQA) provides trend and data analyses and detailed summary reports for Appeals.
- 8.19.10.1.5
(12-20-2021)
Terms and Acronyms
- (1) See IRM 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8. Terms listed in this exhibit are not included in this section.
- 8.19.10.1.6
(12-20-2021)
Related Resources
- (1) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>

- 8.19.10.2
(10-30-2013)
Receipt, Assignment, and Consideration of TEFRA Partnership Cases
- (1) All guidance in this section of the IRM concerning the Campus Pass-through Functions (CPF) is for cases controlled on the Pass-Through Control System (PCS). The CPFs only work with key cases and partners controlled by PCS. All references in this IRM to appeals officers (AO) applies equally to appeals team case leaders and any actions required by appeals team managers (ATM) are performed by appeals team case leaders as to their own cases.
- 8.19.10.2.1
(04-19-2016)
Appeals TEFRA BBA Team (ATT)
- (1) Appeals employees must follow the work request procedures to request ATT assistance. Use of the ATT is mandatory for agreement package, closing package, and FPAA preparation. Follow the work request procedures in IRM 8.19.1.1.1, Appeals TEFRA BBA Team (ATT). Also see detailed procedures for using the ATT on their *Appeals TEFRA SharePoint site*. A link to the site is found on the *Appeals TEFRA & Bipartisan Budget Act (BBA) of 2015 website*.
- 8.19.10.2.2
(04-19-2016)
Receiving and Closing TEFRA Partnerships
- (1) IRS source functions that send TEFRA partnership cases to Appeals should follow the *Appeals Case Routing* page listed on SERP.
- (2) Route Closed TEFRA cases to APS as directed (via the direct shipment routing table) when ACAP is entered.
- 8.19.10.3
(10-30-2013)
Guidance for Account and Processing Support (APS)
- (1) This subsection provides procedures on the receipt of TEFRA partnership cases by APS and other Appeals employees responsible for processing duties.
- (2) This subsection supplements the general information contained in IRM 8.20, Appeals Case Processing Manual. It contains information on TEFRA partnership cases only. Information on partner cases is contained in IRM 8.19.6 and information on Administrative Adjustment Requests (AARs) is contained in IRM 8.19.7.
- (3) The duties of APS will generally be standardized. However, because job titles and duties vary from office to office in the processing areas, these instructions generally will not specify the title of the person responsible for the task. Local office staffing may dictate who will process various documents.
- 8.19.10.3.1
(10-30-2013)
Receiving Case Files
- (1) The partnership case can be either a non-docketed or docketed case. The return will be filed on a Form 1065.
- (2) All TEFRA partnership cases should be transmitted to Appeals on Form 3210. APS will promptly sign and date stamp the Form 3210 and return a copy to the originator.
- (3) Each TEFRA partnership case should be clearly marked as a TEFRA case by Compliance. The partnership case file should be flagged with Form 3198, Special Handling Notice for Examination Case Processing. In the block titled "Forward to Technical Services", the box for TEFRA or Non-TEFRA Key Case should be checked.
- (4) If the case was noted as a TEFRA key case, it is mandatory that the case be controlled on the Pass-Through Control System (PCS). APS should secure a current AMDISA as well as TSUMYP and TSINQP prints and include them in the case file (the PICF code should be 1). Refer to IRM 4.29 for information on the PCS.

- (5) Compute and enter the estimated *proposed* deficiency on ACDS when the case is carded in. Depending upon local procedures, either APS or a TCS will compute the estimated revised deficiency for APS to enter it on ACDS when the case is closed. If the TCS is computing the estimated revised deficiency, it should be prepared when the final computations are being prepared. An Excel spreadsheet containing Exhibit 8.19.10-1 may be found on the *Appeals TEFRA & Bipartisan Budget Act (BBA) of 2015 website*.

8.19.10.3.2
(10-30-2013)
Non-docketed Cases

- (1) The partnership case administrative file should contain the following items:
 - a. Form 1065 for a TEFRA partnership
 - b. Consents (if any) extending the statute of limitations. Form 872-P and Form 872-O extend the statute for all partners
 - c. Notice of Beginning of Administrative Proceeding (NBAP) sent to TMP
 - d. Certified Mailing List (CML) verifying the CPF mailed the NBAP to notice partners
 - e. Examiner's unagreed report
 - f. Explanation of Adjustments (either on Form 886-A or Form 5701)
 - g. 60-day letter, (Letter 1827, TEFRA Partnership 60-Day Letter, or Letter 1829, TEFRA Partnership 60-Day Letter for Penalties and Adjustments)
 - h. Reconciliation of partner distributions
 - i. Form 4605-A
 - j. Form 886-Z listing notice partner information (See IRM 8.19.10.5.3.1)
 - k. Form 886-Z or comparable form listing non-notice partner information, if applicable
 - l. Copies of executed Form 870-PT, or Form 870-LT with schedule of adjustments (if any partners agreed with the examiner's findings). These forms should have been processed and any additional tax assessed as to these partners, and PCS updated.
 - m. Protest
 - n. An affected item report if partner level elements of penalties or affected items have been proposed by the examiner (See IRM 8.19.10.5.3.3)
 - o. Power of Attorney, if applicable (See IRM 8.19.10.5.3.4)
 - p. Compliance required mandatory check sheets, if applicable. The following is a list of the check sheets: (See IRM 8.19.10.5.3.5 and IRM 4.31.2.2.3)
 - Partnership Procedures Check Sheet, Form 13813
 - Electronic linkage check sheets: Form 14090, TEFRA Electronic Linkage check Sheet (LB&I), or Form 14091, TEFRA Electronic Linkage Check Sheet (SB/SE)
 - Tax Matters Partner (TMP) Qualification Check Sheet, Form 13828
 - Tax Matters Partner (TMP) Designation Check Sheet, Form 13827

8.19.10.3.2.1
(04-19-2016)
Processing Steps

- (1) These are the steps APS takes when a non-docketed case is received:
 - a. Verify the statute of limitations date. At least 365 (or at least 180 for cases being returned from Compliance after their considerations of a new issue or new information) days must remain on the statute when non-docketed TEFRA partnership cases are received in Appeals.

- b. Ensure that two clean copies of Form 886-Z are in the file. The clean copies should show taxpayer information, but adjustments should not be filled in. These copies may be used to record any adjustments made in Appeals.
- c. Complete ACDS processing as shown below.

8.19.10.3.3
(10-30-2013)
Docketed Cases

- (1) The administrative file should contain the same items shown in IRM 8.19.10.3.2 (except a protest). In addition, the following information should be included:
 - a. A copy of the FPAA
 - b. A copy of the certified mailing list
 - c. A copy of the Tax Court petition or petitions

8.19.10.3.3.1
(10-30-2013)
Processing Steps

- (1) The processing procedures discussed in IRM 8.19.10.3.2.1 (other than verifying the statute of limitations date) also apply to docketed cases. In addition, after establishing the controls as stated in IRM 8.19.10.3.4, forward the case file to Associate Area Counsel for answer.
- (2) If multiple petitions have been filed, advise Associate Area Counsel at the time the case is sent for answer so that the appropriate action can be taken. Until Associate Area Counsel advises which petition is controlling, control each docket number on ACDS as a separate partnership case workunit.
- (3) When Appeals is notified of the controlling docket number, all other related docket numbers will be dismissed. Upon receipt of the TLCATS Transmittal with dismissal information, APS updates ACDS as follows:
 - **ACTION CODE:** "ORDENT"
 - **TODATE:** The order entered date as indicated on the TLCATS transmittal
- (4) When copies of the dismissals are received, APS closes the dismissed docketed cases on ACDS as follows:
 - a. **CLOSING CODE 08** if dismissed, Compliance field office or Campus issued FPAA and Appeals hours expended.
 - b. **CLOSING CODE 11** if dismissed, Appeals issued FPAA.
 - c. **CLOSING CODE 21** if dismissed, Compliance field office or Campus issued FPAA and no Appeals hours expended.
 - d. **CLOSING DATE:** Date closed.
 - e. **ACTION CODE:** ACKCLS.
 - f. **TODATE AND FROMDATE:** Date closed.
 - g. **NOTES:** "Dismissed--multiple petitions filed, controlling DKT#XXXX-XX."
- (5) Place copies of the dismissals in the TEFRA partnership administrative file.

8.19.10.3.3.2
(10-30-2013)
Notifying the Campus Pass-through Function (CPF)

- (1) If the case was controlled on the Pass-Through Control System (PCS), APS notifies the key case CPF that the TEFRA key case is docketed.
Note: Instructions for determining which CPF is the key case CPF may be found on the *Appeals TEFRA & Bipartisan Budget Act (BBA) of 2015 website*.

- (2) APS instructs the CPF to mark their key case file to show the docket number and to insert a statement that no agreement forms should be executed without contacting the AO first.
- (3) APS instructs the CPF to add the docket number to the PCS database.
- (4) The key case CPF should be notified with this information using secure email.

8.19.10.3.4
(04-19-2016)
**Appeals Centralized
Database System
(ACDS) Processing**

- (1) APS updates ACDS to reflect case level information and return level information. The information listed below emphasizes elements unique to TEFRA cases. See IRM 8.20.3 for up-to-date information on ACDS processing and Exhibit 8.19.10-2 for an example of a case summary card for a TEFRA partnership case.

Reminder: A TEFRA partnership case should not be accepted in Appeals unless there are at least **365 days** remaining on the statute.

8.19.10.3.4.1
(10-30-2013)
Case Level Information

- (1) The case level information specific to non-docketed TEFRA cases that must be input on ACDS is as follows:
 - a. **TYPE:** TEFRA for a TEFRA partnership case.
 - b. **MFT:** 06 for Form 1065.
 - c. **FEATURE CODE:** Enter appropriate code, when applicable. The most common codes are: TS for Tax Shelter. A TEFRA case is not automatically a tax shelter. CE for CIC (Coordinated Industry Cases).
 - d. **KEY T/P:** Always blank on TEFRA partnership case.
 - e. **KEY TIN:** Always blank on TEFRA partnership case.
 - f. **SNTYPE:** Enter one of the following codes as applicable:
 - **FPAA** - for FPAA issued by Appeals
 - **FPAD** - for FPAA issued by Compliance
 - **FPAS** - for FPAA issued by a Campus
 - g. **SNDATE:** Date FPAA was mailed to the TMP.

8.19.10.3.4.2
(10-30-2013)
Return Level Information

- (1) The following information represents return level information for TEFRA partnership cases that must be input on ACDS.
 - a. **STATUTE CODE:** Must have an entry if the statute date is blank.
 - **872-O** - open ended partnership consent (Form 872-O)
 - **DOCKT** - pending Tax Court case
 - b. **SND:** Was an FPAA issued?
 - **Y** - yes
 - **N** - no
 - c. **TAX:**
 - **Proposed \$ (Def-O/A)** - refer to Exhibit 8.19.10-1

- **Revised \$ (Def-O/A)** - refer to Exhibit 8.19.10-1; this is not entered until the case is closed from ACDS

d. **PENALTY:**

- **Proposed \$ (Def-O/A)** - leave blank
- **Revised \$ (Def-O/A)** - leave blank

8.19.10.3.5
(10-30-2013)
Statute of Limitations

- (1) For information on APS responsibility for statutes, including processing a consent, refer to IRM 8.21.2.
- (2) For additional responsibilities for TEFRA partnership cases, refer to IRM 8.21.6.3.1.

8.19.10.3.6
(10-30-2013)
Closed Office Files

- (1) Effective May 1, 2012, APS will no longer create and maintain office files.
- (2) After a case has been closed in Appeals and if information is needed from the administrative file, the AO must request the file by completing the ACDS Update Request Form found in APGolf. The completed form should be sent to the following mailbox for processing: *AP-TS-APS Closed Case Doc Request.

8.19.10.4
(10-30-2013)
Pass-Through Control System (PCS)

- (1) The PCS is a separate database with TEFRA and non-TEFRA pass-thru entity and investor information that interfaces with Master File and AIMS.
- (2) The PCS does the following:
 - a. Contains pass-thru entity and related investor records.
 - b. Establishes a linkage relationship between pass-thru entity (key case) records and related investor records.
 - c. Distinguishes between TEFRA and non-TEFRA cases using numeric codes. Generally, non-TEFRA investor cases have even numbers and TEFRA partner cases have odd numbers (PICF Codes).
 - d. Places a freeze condition on the corresponding AIMS record of investors. This prevents premature closure of the AIMS record.
 - e. Generates various reports for the purpose of maintaining the data base and processing pending statute cases.
 - f. Generates investor settlement letters.
 - g. Generates notices to TEFRA partners.
 - h. Provides IDRS terminal research capabilities for investor and key case records.
 - i. Provides reports for CPF's TEFRA and non-TEFRA inventory and management information.
 - j. Identifies TEFRA cases with penalty issues.
- (3) PCS does not replace AIMS, but PCS supplements AIMS by providing additional information. Appeals assessments are made by closing the case file through AIMS using Form 5403.
- (4) Refer to IRM 4.29, Pass-Through Control System (PCS) Handbook for additional information on the PCS.

8.19.10.4.1
(10-30-2013)
**Establishing Records
Using PCS**

- (1) Records established on AIMS by PCS receive the same processing as any other record established on AIMS.
 - a. If the information provided to Master File is incomplete or inaccurate, the record is rejected and AIMS will not be established.
 - b. If the record already exists on AIMS, the PCS request does not alter any information on the existing AIMS record except to update the Partnership Investor Control File (PICF) indicator on the AIMS record.
- (2) A record may be established on PCS as a key case record whether or not it is linked to an investor.
- (3) A record established on PCS as an investor record must be linked to a key case. If all linkages to a previously established investor record are closed or deleted from PCS, the investor record will drop from PCS.
- (4) A PCS record is considered a tier if it is linked to a key case and itself has investors. A tier is identified by the # sign on a TSUMY.
- (5) A closed key case record is retained on the system as long as at least one investor record is linked to it.

8.19.10.4.2
(10-30-2013)
Researching PCS

- (1) If the PCS data base has records on both a partner and a key case, an inquiry for both records is necessary to obtain complete information.
- (2) To secure full research on a tiered partnership, it is necessary to make two PCS inquiries. You must request both of the following:
 - a. A TSUMYI to secure information on the partnership which is the controlling key case.
 - b. A TSUMYP to secure information on the partners in the tier.
- (3) Command Code (CC) TSUMY gives a display of linkage information.
 - a. TSUMY "I" will list all key cases a partner is linked to.
 - b. TSUMY "P" will list all partners linked to a specific key case.
- (4) The AIMS PICF code displayed on the AMDIS or AMDISA inquiry request can determine whether a return is on PCS.
 - a. PICF codes of 1 through 8 indicate the record appears on PCS. A PICF code of 0 indicates the record does not appear on PCS.
 - b. PICF codes are displayed and defined in IRM 8.19.10.4.4.2. This information is also located in Document 6209 (ADP and IDRS Information).
- (5) Command Code TSINQI can provide information about a partner and a specific partnership linkage.
- (6) Command Code TSINQP provides detailed key case information only. The CPF code which indicates the key case CPF is on the TSINQP. For information on identifying the key case CPF, refer to the *Appeals TEFRA & Bipartisan Budget Act (BBA) of 2015 website*.

- (7) Refer to IRM 4.29.4, Pass-Through Control System (PCS) Handbook, PCS Reports, IRM 2.2.9, PCS Command Code TSUMY, and IRM 2.2.4, PCS Command Code TSINQ, for additional research information and examples of these command codes.

8.19.10.4.3
(10-30-2013)
PCS Research

- (1) Some of the information that you can receive as a result of PCS research is as follows:

- One-Year Statute Date (one-year assessment date)
- Investor Closing Code
- 120-Day Date
- 60-Day Date

- (2) For more information on these items, refer to IRM 4.29.3, PCS Database Elements.

8.19.10.4.3.1
(10-30-2013)
One-Year Statute Date

- (1) The one-year statute date is the date by which the Service must make the TEFRA assessment on the individual partner, without any further statute extension. This date can be verified using the TSUMY command codes.

Note: The one-year statute date is also referred to as the one-year assessment date or one-year date.

- (2) Once the TEFRA assessment is made, the one-year statute date must be updated to "11111111" and the assessment amount must be input by whoever completes the case.

- a. This update shows that the assessment on this TEFRA issue was made.
- b. This update is input using CC TSCHG after the assessment has been made.
- c. This can be verified using CC TSUMY.

Note: If a partner is assessed because of an FPAA petition to a U. S. District Court or the U. S. Court of Federal Claims, after the 11111111s are entered they will be replaced with 55555555s. The 55555555s will be entered by inputting a TSCHG 05 - 55555555J. This will allow the campuses to better track those partners that are in suspense pending a final decision by a U. S. District Court or the U. S. Court of Federal Claims.

8.19.10.4.3.2
(10-30-2013)
Investor Closing Code

- (1) The investor closing code is a one digit code to communicate the event that created the one-year statute date. The code is input using CC TSCHG and will be input immediately after the one-year statute date when it is entered.

- (2) The code will be displayed on CC TSINQI.

- (3) The following codes are to be used when entering or updating a one-year statute date:

- **A** = AAR
- **B** = Bankruptcy
- **C** = Court decision
- **D** = Defaults
- **N** = No Change

- **O** = Conversions (indirect methods, criminal investigations, jeopardy assessments, etc)
- **S** = Settlement

Note: “J” is a valid Investor Closing Code, but can only be entered using TSCHGI 05 when overriding existing 11111111’s (for an FPAA petition to a U. S. District Court or the U. S. Court of Federal Claims).

- (4) The one-year statute date will be entered as follows: TSCHG 05-MMDDYYYYA, where A is the Investor Closing Code.

8.19.10.4.3.3
(10-30-2013)
120-Day Date

- (1) The 120-Day Date is the date that is 120 days after the Notice of Beginning of Administrative Proceeding (NBAP) is issued to the last notice partner. It signifies the earliest date that a FPAA can be issued to the Tax Matters Partner (TMP) without triggering an “untimely notice to a partner” problem. See IRM 8.19.1.6.7.
- (2) The key case CPF manually inputs the 120-Day Date to the key case record by CC TSCHG using Form 8339.
- (3) The 120-Day Date may be researched by using CC TSINQP.

8.19.10.4.3.4
(10-30-2013)
60-Day Date

- (1) The 60-Day Date is the date that the FPAA was mailed to the TMP. The FPAAs for the notice partners must be mailed within 60 days of mailing the FPAA to the TMP.
- (2) If the FPAA is not mailed to a notice partner by the 60th day after the FPAA was mailed to the TMP, and the TEFRA proceedings are still ongoing at the time he/she receives notice, the partner may elect to have the partnership items treated as nonpartnership items under IRC 6223. See IRM 8.19.1.6.7.
- (3) If the FPAA is not mailed to a notice partner by the 60th day after the FPAA was mailed to the TMP, and the proceeding has already been completed, the partnership items will automatically convert to nonpartnership items unless the partner elects to apply the FPAA, a court decision, or settlement agreement. See IRM 8.19.12.8.
- (4) The 60-Day Date may be researched using CC TSUMYP and CC TSINQP.

8.19.10.4.4
(10-30-2013)
Record Indicators on IDRS Systems

- (1) PCS record indicators are database elements that notify users that there is a unique relationship between the PCS record and other databases (AIMS) or between one PCS record and another.
- (2) The PCS record indicators are displayed to assist the user in obtaining information on the account for processing purposes.
- (3) Some of the record indicators are as follows:
- 424 Indicator
 - PICF Indicator
 - TEFRA Indicator
 - Tier Indicator

- Penalty/Affected Item Report Indicator
- TEFRA Penalty/Affected Item Code

(4) For more information on these items, refer to IRM 4.29.3, PCS Database Elements.

8.19.10.4.4.1
(10-30-2013)
424 Indicator

(1) The 424 indicator shows that a full record has not been established on AIMS. When the 424 indicator appears on the PCS record, only the following will be displayed on the PCS record:

- AIMS status code
- Special project code
- Name control
- Source code
- Employee group code
- TIN
- MFT
- Tax period
- Primary business code (PBC)
- Activity code

(2) The AIMS name and statute date for the account will not appear on the PCS until the record is fully established on AIMS.

8.19.10.4.4.2
(10-30-2013)
**Partnership Investor
Control File (PICF)
Indicator**

(1) The PICF indicator prevents an AIMS account from closing until all linkage record freezes are released using CC TSCLS.

(2) The PICF indicator is automatically set on the AIMS record by establishing the record on PCS.

(3) The PICF indicator appears on an AMDIS or AMDISA display by the literal PICF Code X on page 1.

(4) PICF indicator codes and conditions are as follows:

- **0** = no partnership investor control file data.
- **1** = Linked TEFRA key case.
- **2** = Linked non-TEFRA key case.
- **3** = Electing large partnership key case.
- **4** = Investor with both open TEFRA linkage and open non-TEFRA linkage
- **5** = Investor with at least one open TEFRA key case linkage.
- **6** = Investor with at least one open non-TEFRA key case linkage but no TEFRA key case linkage.
- **7** = Investor with no open linkages and at least one closed TEFRA key case linkage.
- **8** = Investor with no open linkages and at least one closed non-TEFRA key case linkage, but no closed TEFRA key case linkage.

8.19.10.4.4.3
(10-30-2013)
TEFRA Indicator

(1) The TEFRA indicator identifies key case, tier, and other investor records as TEFRA or non-TEFRA.

- (2) On a TSUMY screen the “T” will appear to indicate it is a TEFRA case. A blank indicates non-TEFRA.
- (3) On a TSINQ screen, the word Yes will appear in the TEFRA field.
- 8.19.10.4.4.4
(10-30-2013)
Tier Indicator
- (1) The tier indicator identifies investor records that are pass-thru entities. These records appear in the PCS on the key case record and on the investor record.
- (2) The tier indicator appears as a “#” on TSUMY and TSINQ screens.
- 8.19.10.4.4.5
(10-30-2013)
Penalty/Affected Item Report Indicator
- (1) The penalty/affected item report indicator identifies one-year statute dates that are present only for penalty or affected items purposes. When the indicator is present, it alerts a user to the fact that the one-year statute date is for a penalty and/or an affected item issue, and that the TEFRA tax adjustment issue is already complete.
- (2) The penalty/affected item report indicator is displayed on TSINQ and TSUMY screens immediately after the one-year statute date, i.e., MMDDYYYYXP (04151998XP) (Where X = the Investor Closing Code).
- 8.19.10.4.4.6
(10-30-2013)
TEFRA Penalty/Affected Item Code
- (1) The TEFRA Penalty/Affected Item code determines the type of notice generated for partners in a TEFRA key case.
- (2) There are five different penalty/affected item codes. Each code has a significant meaning and causes different notices and attachments to be generated by the CPF. Only the codes A, P, and X are all applied at the key case level.
- (3) The codes have the following significance:
- **A** – Affected items apply to the partners
 - **P** – Penalties apply to adjustments
 - **X** – Penalties apply to adjustments, and there are affected items
- (4) The TEFRA penalty/affected item code is displayed on TSINQ and TSUMY screens.
- 8.19.10.4.5
(10-30-2013)
User Special Message Field
- (1) The PCS provides a unique field to add an optional message to a linked record. Up to 20 characters, letters or numbers, can be used. The message may be used to identify, locate, or process an investor. This field is used to show the docket number, when applicable.
- a. User Special Messages may appear on CC TSINQ.
- (2) The following is an example of how the Special User Message is used.
- Example:** Sub of... TIN of parent company
- 8.19.10.4.6
(10-30-2013)
Appeals Changes
- (1) *Appeals changes to the PCS database should be infrequent.* All PCS changes except updating one-year statute dates should be routed through the TEFRA team member, if assigned, or the TEFRA technical specialists. The TSCHG command code updates one-year statute dates on PCS.

- (2) Form 8339 is used to update a one-year statute date on PCS (either to a date or to reflect that an assessment has been made). Form 8344 may also be used to update a one-year statute date on PCS, but only to a date. Instructions for both forms are on the back of the respective forms and are also available on the *Appeals TEFRA & Bipartisan Budget Act (BBA) of 2015 website*.

8.19.10.5
(10-30-2013)
**Guidance for Appeals
Officers (AO)**

- (1) This subsection is intended to give AO's specific guidance in working TEFRA partnership cases. Since the provisions of TEFRA require different technical and procedural treatment from those used for non-TEFRA cases, the AO should be familiar with the entire contents of IRM 8.19.10.

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

- (2) The Appeals Office will have jurisdiction of the partnership case. When it is completed, they will close it to Laguna Niguel APS. The key case CPF will take the necessary actions to notify the partner CPF to close the partner returns when the proceeding is completed, including issuing closing letters based on the instructions provided by Appeals.

8.19.10.5.1
(12-20-2021)
Initial Case Procedures

- (1) Within 45 days of receipt of a newly assigned or transferred case:
- Complete statute verification

Note: For TEFRA key cases, this guidance shall extend the statute verification time frame provided in IRM 8.21.6.3.2, Appeals Technical Employees (ATE) Statute Responsibility for TEFRA Key Cases, to 45 calendar days for field ATEs only. The five (5) workday time frame for validation by the TEFRA ATE, done prior to assignment of the case to a field ATE, shall remain in effect.
 - The acknowledgment letter procedures in IRM 8.2.1 apply to these cases. An acknowledgement letter should be sent to the Tax Matters Partner (TMP) and partners who have filed protests or petitions. For docketed cases, the acknowledgement letter should also be sent to counsel of record. The ATM or his/her designee will generate and issue the acknowledgment letter(s) .

8.19.10.5.2
(10-30-2013)
Preliminary Review

- (1) When a TEFRA partnership case is assigned, procedures provided in this subsection should be followed in addition to procedures that would be followed in a non-TEFRA case. These should be performed before scheduling the conference.
- (2) Use IRM 8.19.1.6.3 to verify that a partnership is subject to the unified (TEFRA) proceedings.
- a. Pay particular attention to the small partnership exception for partnerships (IRM 8.19.1.6.3.1). An error in the determination of the applicability of the small partnership exception may result in barred deficiencies.
 - b. For partnership tax years ending after August 5, 1997, the Service may rely on the information on the partnership tax return to reasonably determine whether the unified proceedings apply (IRC 6231(g)). If the determination is arguably not reasonable (e.g. an election issue exists), consult Associate Area Counsel.

- (3) Use IRM 8.19.1.6.5.3 to determine the correct TMP for the partnership.
 - a. The TMP executes statute extensions on behalf of the partners of the TEFRA partnership. An error in the determination of the correct TMP may result in barred deficiencies.
 - b. If it is determined that the TMP designated by the partnership did not qualify to be the TMP (especially if the TMP signed statute extensions), consideration should be given to returning the case as a premature referral.

8.19.10.5.3
(10-30-2013)
Contents of Case File

- (1) Review the case file to ensure that all necessary documents are included in the partnership case file; see IRM 8.19.10.3.2 (for non-docketed cases) and IRM 8.19.10.3.3 (for docketed cases).
- (2) Ensure that there is a current TSUMYP and TSINQP in the file that was secured by APS.
- (3) If any partners agreed with the examiner's findings, copies of executed agreement forms (Form 870-PT, or Form 870-LT) with a Schedule of Adjustments should be in the file. These forms should have been processed and any additional tax assessed as to these partners, and PCS updated.

Note: If these have not been processed and PCS updated, the examiner should be contacted as soon as possible.

8.19.10.5.3.1
(10-30-2013)
Form 886-Z

- (1) Form 886-Z (TEFRA Partners' Shares of Income) is used to show the partners' pro-rata share of the corrected partnership items, penalties, and affected items.
- (2) Form 886-Z shows the partners' name, address, TIN/SSN and profit sharing or loss percentage in the TEFRA partnership. The mailing addresses shown are usually those provided with the partnership return and may not be current. They are perfected by the key case CPFs when PCS interfaces with AIMS before an FPAA is issued.
- (3) Verify that the profit or loss sharing percentage of all partners shown on the Form 886-Z totals 100%. If the profit or loss sharing percentage of all partners shown on the Form 886-Z does not total 100%, review the administrative file for the examiner's explanation of the discrepancy. If it cannot be determined from the file, consideration should be given to returning the case as a premature referral if the case is non-docketed.
- (4) The corrected totals of all partnership items must reconcile with the corrected amounts shown on the examiner's Form 4605-A. The adjustments shown on the Form 4605-A must also reconcile with the Schedule of Adjustments page attached to the 60-day letter or FPAA. If these amounts do not reconcile, the AO should contact the examiner for clarification.
- (5) One copy of the Form 886-Z will be used by the key case CPF to certify the date and to whom the NBAPs (Notice of Beginning of Administrative Proceeding) were mailed. The mailing of an NBAP to each notice partner is a statutory requirement.
- (6) See IRM 8.19.1.6.7 for information regarding the requirements for mailing timely notices.

- (7) If the key case CPF has identified and linked non-notice partners, a separate form 886-Z will show their names and addresses. This information is included to assist in soliciting agreements for affected item issues.
- (8) The TCS will generally complete a revised Form 886-Z when closing the case. Only the adjusted partnership items need to be included on the form. Addresses are only needed on the Form 886-Z when Appeals mails agreement forms to the partners. See IRM 8.19.11.6.2.

8.19.10.5.3.2
(10-30-2013)

Protest

- (1) For non-docketed cases, a written protest may be filed by the TMP and/or any notice partner or notice group.
- (2) There may be more than one protest in the file.

8.19.10.5.3.3
(10-30-2013)

Affected Item Report

- (1) Partner level elements of penalties or affected items proposed by Compliance should be included in an Affected Item Report. If this report is not in the file, contact the examiner to obtain a copy.
- (2) If partner level elements of penalties or affected items were proposed and the examiner did not prepare the report, consider returning the case to Compliance to prepare the report, if the case is non-docketed. See IRM 8.19.10.5.7 if penalties or affected items are at issue.

8.19.10.5.3.4
(10-30-2013)

Power of Attorney

- (1) Under TEFRA, a Power of Attorney and Declaration of Representative (Form 2848) should be the POA of the TMP and the TMP should sign the Form 2848. In filling out the Form 2848 include the partnership's TIN and the partnership's name and address preceded by the name of the TMP and that the person is the TMP. There may be situations where other partners wish to participate in the TEFRA exam and may wish to have a representative. Those partners should complete their own Forms 2848. However, it is important to note that partners other than the TMP and those partners' POAs are generally not authorized to sign a partnership level statute extension.
- (2) The TMP, not a representative, is the best person to sign legally significant documents, such as consents on behalf of the partnership or settlement agreements that bind non-notice partners. It is always advised to seek counsel approval when a POA is signing a statute extension, since failure to complete Form 2848 correctly can potentially lead to barred statutes.

8.19.10.5.3.5
(10-30-2013)

**Check Sheets
Completed by
Compliance**

- (1) One or more of the following check sheets (which are now mandatory for Compliance) should be in the administrative file:
 - a. Form 13813 (Partnership Procedures Check Sheet): used by the examiner to ensure that TEFRA procedures are followed in a timely manner.
 - b. Form 13828 (TMP Qualification Check Sheet): used by the examiner to ensure that the general partner (or member manager of an LLC) identified as the TMP is properly qualified and their status as TMP has not terminated.
 - c. Form 13827 (TMP Designation Check Sheet): used by the examiner in following the proper procedures when a new TMP must be designated by the TEFRA partnership or selected by the Service.
 - d. Form 14090 (TEFRA Electronic Linkage Request Check Sheet (LB&I)): used to initiate an electronic linkage for an LB&I case.

- e. Form 14091 (TEFRA Electronic Linkage Request Check Sheet (SB/SE)): used to initiate an electronic linkage for an SB/SE key case.

8.19.10.5.4
(10-30-2013)
PCS Controls

- (1) If the key case is still in process 60 days after the case goes into status 12, the examiner initiates linking the case on the PCS. IRM 4.31.2.2.7.2. In order to link the case on PCS, a TEFRA Electronic Linkage Check Sheet (LB&I), (Form 14090), or TEFRA Electronic Linkage Check Sheet (SB/SE), (Form 14091), is completed by the examiner.
- (2) For non-docketed cases, if the key case was not linked on PCS, it is recommended that the case be returned to the examiner as a premature referral. Several problems could arise if the case is not linked on PCS:
 - a. The CPF would not be involved and the NBAPs may not have been mailed to the TMP and all notice partners; this could create an untimely notice issue later on (see IRM 8.19.1.6.7).
 - b. The CPF would not be able to mail settlement letters or FPAAs---Appeals would have to mail all of these.
 - c. The one-year statute dates of the partners could not be tracked on PCS.
- (3) For docketed cases, if the key case was not linked on PCS, prepare and send Form 8341 (PCS Establish or Add Without Notice Generation) to the PCS Coordinator at the key case CPF. The transmittal should clearly inform the CPF that the linkage is being requested on a TEFRA partnership. NBAPs should not be sent to the partners. The Compliance function may agree to perform the linking procedure for Appeals.
- (4) If the case is linked on PCS, it should include all notice partners whose partnership items have not converted to nonpartnership items. The TSUMYP should be compared to the Schedules K-1. If any partners whose partnership items have not converted to nonpartnership items are not linked, the examiner should be contacted as soon as possible in order that these partners may be linked.

8.19.10.5.5
(04-19-2016)
Statute of Limitations

- (1) Refer to IRM 8.19.1.6.6 for guidelines in determining the expiration date for the statute of limitations for TEFRA partnerships.

Reminder: A TEFRA partnership case should not be accepted in Appeals unless there are at least **365 days** (or at least 180 for cases being returned from Compliance after their considerations of a new issue or new information) remaining on the statute.

- (2) See IRM 8.19.1.6.6.8 for information on extending the statute of limitations. The Restructuring and Reform Act of 1998 (RRA '98) section 3461(b) imposed provisions that must be followed in solicitation of a consent to extend the statute of limitations. 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-P or Form 872-O. Form 872-O is an open-end consent for TEFRA Returns. Soliciting this form is not recommended as the Form 872-N will terminate the agreement leaving only 90 days to complete the Appeals hearing or issue an FPAA. The Appeals hearing officer 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. Or the right to request that any extension be limited to a specific period of time.

- (3) See IRM 8.21.6.3 for statute procedures for TEFRA partnership cases.
- (4) If an entity files as a partnership and it is later determined that the filing was incorrect (i.e. it was not a partnership), the unified (TEFRA) proceedings, including the statute of limitations provisions under IRC 6229 still apply unless it is found that the entity was a small partnership or a return was filed only in order to make an election under IRC 761(a).
- (5) The TMP, not a representative, is the best person to sign consents on behalf of the partnership.
- (6) For consolidated tax years beginning before June 28, 2002, if a subsidiary in a consolidated filing group is the TMP of a partnership, both the signature of the parent (signing on behalf of the subsidiary TMP) and the signature of the subsidiary TMP are recommended on any statute extension on behalf of the partners of the TEFRA partnership. The signature blocks would appear as follows:
- [Name of common Parent corporation] by [name of authorized representative of Parent corporation, title], as common parent of the [name of Parent corporation] and Subsidiaries consolidated group, on behalf of [name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership].
 - [Name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership] by [name of authorized representative, title].
- (7) For consolidated tax years beginning on or after June 28, 2002, if a subsidiary in a consolidated filing group is the TMP of a partnership, the signature of the subsidiary TMP is recommended on any statute extension signed by the TMP on behalf of the partners of the TEFRA partnership. See *Treas. Reg. 1.1502-77(a)(3)(v)*. The signature block would appear as follows:
- [Name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership] by [name of authorized representative, title].
- (8) The Appeals hearing officer will send a copy of all partnership case statute extensions to both CPFs. Current contact information may be found on the *Appeals TEFRA & Bipartisan Budget Act (BBA) of 2015 website*.
- (1) Generally, if the TMP or any unagreed partner files a protest, an Appeals conference will be offered in the Appeals Office servicing the area where the partnership has its principal place of business.

- (2) The TMP should be invited to attend the conference whether or not he/she filed the protest.
 - (3) Any unagreed partner has the right to attend the conference. However, in order to attend, they must notify the TMP that they wish to attend. This right also applies in docketed cases where the TMP or any unagreed partner filed a petition.
- 8.19.10.5.6.1
(10-30-2013)
Scheduling and Holding the Conference
- (1) For non-docketed cases, schedule the conference with the TMP. Send a conference letter to the TMP regardless of who filed the protest. Letter 4266 should be used when scheduling the conference with the TMP. If a partner other than or in addition to the TMP filed a protest, a standard Letter 965 should be sent to the partner.
 - (2) For docketed cases, schedule the conference with the counsel of record by using Letter 970.
 - (3) The TMP is required to notify all partners, notice or non-notice, of the scheduled conference.
 - (4) Appeals and the TMP will determine the time and place for all conferences. Arrangements will generally not be changed merely for the convenience of another partner.
 - (5) If the conference requires space to accommodate a large group of participants, the AO should inquire if adequate government facilities are available. However, if it is necessary to rent conference space, the TMP should make the arrangements and be responsible for the cost.
- 8.19.10.5.7
(10-30-2013)
Penalty and Affected Item Issues
- (1) Partner level elements of penalties and affected item issues should be considered with the partnership case.
 - (2) Review the examiner's affected item report and determine a recommended settlement position on the partner level elements of penalties or affected items based upon the activities at the partnership level. This will include the over-valuation of assets.
 - (3) Prepare an abbreviated affected item appeals case memo (ACM) for the recommended settlement position. A copy of the abbreviated affected item ACM will be included with the closing package to the key case CPF. See Exhibit 8.19.10-3 for a sample affected item ACM.
 - (4) Generally, any additional facts which are based on activities at the partner level will only be considered in evaluating a partner's individual case after the partnership proceeding has been completed (but see (5) below):
 - a. For partnership tax years ending after August 5, 1997, penalties are determined at the partnership level. Any penalties determined will be assessed and the partner must file a refund claim after the penalties are assessed and paid, at which time additional facts unique to that partner (including partner reasonable cause and good faith defenses to a penalty) may be presented.

- b. For affected items, the partner will receive a notice of deficiency or affected item report at which time additional facts unique to that partner may be presented.
- (5) For partnership tax years ending after August 5, 1997, if the number of partners is relatively small (generally five or fewer), you may consider *partner level defenses* to a penalty as part of the consideration of the partnership case. If a settlement is reached, Form 870-LT(AD) will be used. On the Schedule of Adjustments page of the Form 870-LT(AD), partnership level penalties (including percentages) will be shown in Part I and partner level defenses to these penalties (including percentages) will be shown in Part II. Exhibit 8.19.1-5 is an example of a Form 870-LT(AD) Schedule of Adjustments page with penalties.

Example: If a partnership level accuracy penalty is determined to be 20%, it will be shown in Part I. If after considering a partner level defense to the penalty it is determined that the penalty will be reduced to 10% due to reasonable cause, it will be shown in Part II.

Caution: It is very important that any reduction of a partnership level penalty after considering a partner level defense be shown in Part II. Partner level defenses are not partnership items and are therefore not subject to a request for consistent settlement. If a partner level penalty is shown in Part I, it would be subject to a request for consistent settlement by any other partners (including those that did not establish reasonable cause, such as a promoter).

- (6) For partnership tax years ending after August 5, 1997, if the penalty is unagreed when the partnership proceeding concludes, Appeals will issue a Notice of Final Partnership Administrative Adjustment (FPAA) to address the penalty at the partnership level.
- a. Partners who wish to contest penalties on the basis of partnership level defenses must contest them as a part of the partnership proceeding.
 - b. Partners who wish to contest penalties on the basis of partner level defenses, such as good faith and reasonable cause, must contest the penalties by filing a refund claim after the penalties are assessed and paid. See IRC 6230(c)(4).
- (7) In evaluating penalty issues on a partnership case (e.g., overvaluation), should you become aware that an IRC 6700 penalty for promoting an abusive tax shelter was asserted, contact the examiner to advise of the proposed partnership case penalty settlement, particularly if the proposal is a full concession by the Government.

8.19.10.5.8
(10-30-2013)
Settlement Practice

- (1) When evaluating the settlement position for a case, consider the effect any offer may have on all partners in view of their right to consistent settlement.
- (2) In addition, be mindful of procedural problems that certain settlement offers may cause for the CPFs in processing the case.

8.19.10.5.8.1
(10-30-2013)

Consistent Settlement

- (1) IRC 6224(c)(1) allows partners to enter into a settlement agreement to fix the correct treatment of partnership items with finality. IRC 6224(c)(2) gives other partners the right to request a settlement consistent with another partner's settlement of partnership items.
- (2) The request for consistent settlement must be made by the later of:
 1. 150 days after an FPAA was mailed to the TMP;
 2. 60 days after the settlement agreement was accepted for the Commissioner; or
 3. 45 days after an untimely FPAA is mailed to the partner.
- (3) The partner must request the consistent settlement in writing and identify the specific settlement for which he/she is requesting consistent settlement.
- (4) The consistent settlement will be processed on Form 870-PT(AD) and identified as "Consistent Settlement." Appeals personnel should write the term "Consistent Settlement" on the top of the agreement form. See IRM 8.19.1.6.11.1. For docketed cases, also follow the procedures in IRM 8.19.13.

Caution: If the agreement is not identified as a "Consistent Settlement" another partner may claim the agreement starts a second 60-day period for requesting consistent settlement.

8.19.10.5.8.2
(10-30-2013)

Partnership Case CPF Processing

- (1) Consider any effect the settlement will have on the ability of the CPF to process the partner returns. When a settlement has been formulated in a large project case, the key case CPF should be provided the terms of the settlement and pro forma copies of the documents that they will be required to process.
- (2) If a closing agreement (Form 906) is required, Appeals is responsible for preparing all closing agreements and securing them from the partners. Refer to IRM 8.13.1.2.6 for information when using closing agreements in docketed cases.
- (3) If partial agreements are required, Appeals is responsible for preparing all partial agreements and securing the agreements from all partners. Refer to IRM 8.19.11.11 for more information on partial agreements.
- (4) If the case is not linked on PCS, the CPF cannot be used to mail any agreement forms or FPAAs to the partners.

8.19.10.5.8.3
(10-30-2013)

Settlement for Net Cash Investment

- (1) Avoid settlements based upon a net cash investment unless the examiner has already substantiated the amount of each partner's cash investment. The key case CPF will not have the means to verify cash investments. Cash out-of-pocket settlements based on a partner's cash investment are generally not compatible with the concept of a unified proceeding because of the verification problem.
- (2) If a partner's cash contribution percentage does not equal his/her profit and loss percentage, a cash out-of-pocket settlement may also create consistency problems.
- (3) Avoid this problem by offering all partners their pro-rata share of a specific dollar amount for settlement purposes.

8.19.10.5.8.4
(12-20-2021)

Allocation Issues

- (1) If the correct allocation of the partnership interest is an issue being considered, do not accept any agreement forms unless all changed partners agree to the allocation by signing appropriate agreement forms. The allocation of partnership level items of all partners affected by the allocation must be fully disclosed on the Schedule of Adjustments page included with those partners' agreement forms. See IRM Exhibit 8.19.11-5 and IRM Exhibit 8.19.11-6 for sample Schedules of Adjustment pages for allocation issues.

Caution: Disclose a partner's partner level item adjustments only to the specific partner.

- (2) If the key case CPF is mailing the agreement forms, include instructions on Form 3210 to alert the key case CPF to return the agreement forms to you without executing them. Include envelopes to ensure that the CPF returns the agreement forms to you. These packages are sent electronically.
- (3) Notify the Pass-through Coordinator that is assigned to execute agreements at the CPF that any agreements received there should be returned to you and not be executed.
- (4) This is a whipsaw issue requiring agreement by all parties. If the reallocation has an effect on basis, reflect the corrected basis amounts on the Form 886-Z.

8.19.10.5.8.5
(12-20-2021)

Basis Adjustments

- (1) The determination of a partner's adjusted basis in the partnership which is not properly determinable at the partnership level is an affected item. The correct treatment of an affected item must be determined after the partnership proceeding is concluded. See IRM 8.19.1.6.9.3 for a discussion of adjusted basis as an affected item.
- (2) When changes are made at the partnership level which affect basis, clearly explain the change in the Form 3210 and in the remarks section of the Form 4605-A. Each partners' basis should be shown on the Form 886-Z. These packages are sent electronically.

8.19.10.5.8.6
(10-30-2013)

Partnership Pays Assessment

- (1) Where there are many direct and indirect partners in a TEFRA partnership, it may be beneficial for both the IRS and the partnership to process the case by having the partnership pay the assessment instead of distributing the adjustments to all partners.
- (2) This type of a settlement would be particularly useful in large promotions when the CPF is either holding hundreds of partners in suspense or has decided to not link one or more indirect partners because there are hundreds of partners that would have to be linked to that partner. Allocating adjustments to hundreds of indirect partners requires substantial resources by the CPF and the dilution of the adjustments after the allocation may ultimately result in little or no tax owed by these partners.
- (3) This type of settlement would also often be beneficial to the partnership as it would not have to amend hundreds of Schedule K-1s for subsequent tax years if the settlement would have resulted in additional deductions in those years.
- (4) The details of a partnership level settlement are explained in a Form 906, Closing Agreement on Final Determination Covering Specific Matters.

Generally, a partnership level agreement can only be secured when the adjustments passing through to all underlying partners will result in a deficiency.

- (5) The highest level effective tax rate should be used when calculating the amount of tax owed. The partnership must also pay all additions to tax including interest and penalties.
- (6) The payment made by the partnership is considered a distribution to the partners in the year paid or the year when the payment became fixed and determinable.
- (7) The impact of the payment as a distribution to the partners should be included in the Form 906 settlement agreement.
- (8) The payment made by the partnership will impact the basis of partners. The partners' capital accounts and basis should be increased by the amount of income that should have been reported, and then reduced by their share of the tax paid by the partnership. That share is treated as a distribution in the year paid and will generate additional tax to the extent it exceeds the partner's outside basis or increases income (by reducing basis) on the sale of the partnership interest.
- (9) If this type of a settlement is being contemplated, the AO should contact the *Appeals TEFRA Technical Specialists* for additional information.

8.19.10.5.8.7
(10-30-2013)
**IRC 1441–1446 Foreign
Withholding Tax**

- (1) An entity that is treated as a partnership for U.S. tax purposes and has a foreign partner could be required to withhold tax under the following withholding tax authorities:
 - IRC 1441 and IRC 1442, U.S. source Fixed Determinable Annual Periodical (FDAP) income, and
 - IRC 1446, Effectively Connected Taxable Income (ECTI)
- (2) The withholding tax under IRC 1441 and IRC 1442 requires:
 - a. A domestic partnership to withhold tax on a foreign partner's allocable share of U.S. source FDAP income.
 - b. Additionally, IRC 1441 and IRC 1442 require withholding any time a partnership makes a payment of U.S. source FDAP income to a nonresident alien regardless of whether this person is a partner in the partnership making the payment.
- (3) The withholding tax under IRC 1446 requires any partnership engaged in a trade or business within the U.S. to withhold tax on a foreign partner's allocable share of ECTI.
- (4) Partnerships should also be aware of possible withholding obligations under IRC 1443 (regarding ECTI allocable to IRC 501(c) foreign tax exempt organizations and gross investment income of a private foundation) and IRC 1445 (regarding the disposition of U.S. real property interest by a foreign partnership).

- (5) Taxes withheld on a foreign partner's income under IRC 1441, IRC 1442, and IRC 1446 are considered partnership items. IRC 6231(a)(3). An examination of a TEFRA partnership with respect to these withholding tax sections is subject to the TEFRA partnership procedures.
- (6) Appeals technical employees encountering the foreign withholding tax issue on a TEFRA partnership should contact the TEFRA team member assigned to their case or the Appeals TEFRA Technical Specialist(s).

8.19.10.5.9
(10-30-2013)

No-Change Cases

- (1) When no changes are recommended to the partnership return, either obtain agreement forms showing no change from all notice partners remaining in the proceeding, issue a no-change FPAA, or issue a No Adjustments Letter.
- (2) Generally if the CPF is not able to use the Form 1065 and Schedule K-1s for a no-change case, the case is not a true no change. In this situation, follow the procedures for cases with changes.
- (3) Procedures for securing agreement forms are the same for agreed cases and no-change cases and are found in IRM 8.19.11. Procedures for issuing an FPAA are in IRM 8.19.12. Procedures for issuing a No Adjustments Letter are in IRM 8.19.11.13.
- (4) The no-change FPAA or no-change agreement form gives notice of the completion of the administrative proceeding to all notice partners still participating in the proceedings, allows the Service to assess inconsistent filing partners, and to issue a notice of deficiency on the affected items requiring partner level determinations. This will also prevent any partner from later filing an Administrative Adjustment Request with respect to the partnership items.
- (5) The No Adjustments Letter provides a streamlined procedure for use on true no-change cases.

8.19.10.5.9.1
(10-30-2013)

No Change - 3 Options

- (1) Issue a no-change FPAA (IRM 8.19.12), if:
 - a. Partnership level determinations were made resulting in changes to affected items at the partner level (e.g. at-risk limitation, partner's basis in partnership interest, passive activity losses), or
 - b. The taxpayer raises an affirmative issue (such as a business expense not previously claimed), which was not allowed by the AO, or
 - c. One or more partners (whose partnership items have not converted to nonpartnership items) filed inconsistently with the partnership return and notified the Service of their inconsistent filing, or
 - d. An Administrative Adjustment Request (AAR) has been filed by either the TMP or any partner.
- (2) Obtain settlement agreements showing no change from all notice partners remaining in the proceeding (IRM 8.19.11).
- (3) Issue a No Adjustments Letter (Letter 2621) if:
 - a. The case is a true no change (no change to partnership or affected items).
 - b. No partnership determinations were made resulting in changes to affected items at the partner level (e.g., at-risk limitations, partner's basis in partnership interest, passive activity losses).
 - c. The taxpayer did not raise an affirmative issue.

- d. An Administrative Adjustment Request (AAR) has not been filed by either the TMP or any partner.
- e. The TMP has indicated agreement with the no change.
- f. No partner (whose partnership items have not converted) filed inconsistently with the partnership return and notified the Service of the inconsistent filing.
- g. At least one year remains on the key case statute.

8.19.10.5.9.2 (10-30-2013)

No Change with Affected Items

- (1) Be careful to use the no-change procedure only if no partnership level item is changed and the TMP has agreed to the no-change determination. Some determinations may appear to be a no-change but are not. Changes to partnership level components of basis, at risk and passive losses are not no-change situations. See paragraphs (2), (3) and (4) below for details.
- (2) Changes to partnership level components of basis are not no-change situations. Some partnership level components for basis are the amounts of:
 - a. the initial capital contributions to the partnership;
 - b. all subsequent capital contributions to the partnership;
 - c. distributions from the partnership;
 - d. partner's share of taxable income, nontaxable income, losses, and deductions;
 - e. partner's share of partnership liabilities; and
 - f. optional adjustments to the basis of partnership property pursuant to an IRC 754 election.
- (3) Changes to partnership level components of at risk are not no-change situations. Some partnership level components of at risk are:
 - a. Whether the loans or notes are recourse, nonrecourse, or contingent.
 - b. Whether the partner is a limited or a general partner.
 - c. Whether the lender has an interest other than as a creditor.
- (4) Changes to partnership level components of passive activity losses are not no-change situations. Some partnership level components of passive activity losses are:
 - a. Whether the partnership was engaged in a rental activity.
 - b. Whether the partnership was engaged in a trade or business for purposes of IRC 162.
 - c. Whether a partner should be treated as a limited partner.
 - d. Whether income is portfolio income.
- (5) In addition to paragraphs (2), (3) and (4) above, the following should also not receive a no-change settlement agreement or a no-change FPAA:
 - a. Changing the character of partnership level items even if there are no changes in the amount shown on the return.
 - b. Any other change to a partnership item determination which changes affected items at the partner level.
 - c. Any change to allocation percentages.

- 8.19.10.5.10
(10-30-2013)
Conclusion of Settlement Negotiations
- (1) At the conclusion of settlement negotiations, several actions are needed before agreement forms may be mailed to the partners.
- 8.19.10.5.10.1
(10-30-2013)
Appeals Case Memorandum (ACM)
- (1) Follow the usual format in preparing the ACM for a TEFRA partnership case. Include an evaluation of the penalty in the ACM.
- (2) Include an evaluation of each affected item at issue in the abbreviated affected item ACM. See IRM 8.19.10.5.7 for guidelines in preparing the affected item ACM.
- 8.19.10.5.10.2
(10-30-2013)
Form 5402
- (1) Prepare a Form 5402 using the customized Form 5402 for TEFRA key cases in APGolf. The type code "TEFRA" on ACDS will allow you to generate a customized Form 5402.
- (2) Instructions for preparing the customized Form 5402 may be found in the APGolf utilities menu and on the Appeals TEFRA website.
- 8.19.10.5.10.3
(10-30-2013)
Agreement of Tax Matters Partner
- (1) It is recommended that a copy of the Schedule of Adjustments page be shared with the TMP before having agreement forms mailed to the partners. This is to ensure that the amounts shown on the Schedule of Adjustments accurately reflect the negotiated settlement. Procedures for preparing the Schedule of Adjustments page and mailing the agreement forms to the partners are covered in IRM 8.19.11.
- (2) An agreement form will not be mailed to the TMP in his capacity as the TMP unless there are non-notice partners. This is also covered in IRM 8.19.11.
- 8.19.10.5.10.4
(10-30-2013)
Manager's Review and Approval
- (1) After the Form 5402, ACM, Schedule of Adjustments page, and agreement forms (if Appeals will be mailing them to the partners) are prepared, submit the case to your ATM for review and approval.
- (2) All settlements must be reviewed and approved by the manager before agreement forms are mailed to the TMP or to the partners. This is especially important because of the consistent settlement provisions of the unified proceedings. If just one partner agreement is erroneously executed, the Service may be bound to the same settlement for all unagreed partners.

Receipt, Assignment, and Consideration of TEFRA Partnership Cases 8.19.10

Exhibit 8.19.10-1 (10-30-2013)

Formula for Assigning Dollar Value to Partnership Case for ACDS

FORMULA FOR ASSIGNING DOLLAR VALUE TO KEY CASE

Formula for Assigning Dollar Value to Key Case for ACDS

Partnership Name and EIN:	Tax Year: 12/31/XXXX
1. Ordinary Income (Loss) Adjustment - Form 4605-A, Line 2	0.00
2. Separately Stated Item Adjustments - Form 4605-A, Line 5 **	
a.	0.00
b.	0.00
c.	0.00
d.	0.00
3. Subtotal	-
4. Multiply by highest individual tax rate ***	<u>0.0%</u>
5. Result	-
6. Add amount of disputed credit (Proposed adjustment to basis for credit multiplied by rate of credit	-
a.	0.00
b.	0.00
7. Total Credit	-
8. Add line 5 and 7 = PROPOSED DOLLARS	<u><u>0.00</u></u>

** Items on Schedule K in the categories of Income (Loss) and Deductions

*** For tax years 1982-1986 use 50%
 For 1987 use 38.5%
 For 1988 - 1990 use 33%
 For 1991 - 1993 use 31%
 For 1994 - 2000 use 39.6%
 For 2001 use 39.1%
 For 2002 use 38.6%
 For 2003-2012 use 35%

**Exhibit 8.19.10-2 (10-30-2013)
Appeals Case Summary Card**

**Exhibit 8.19.10-2
Appeals Case Summary Card**

TP: BEGONIA PARTNERSHIP	WUNO: X102069008	SOURCE: FE	DO:	PART: 1
TIN: A1-0123456	PROJCD:	MFT: 06	AO: TULIP,J (XXXX/ANT/01)	
TIN2:	ACTIVITY: 482	SRCSYS: ACDS	TYPE: TEFRA	ASNDATE: 07/25/2010
LOCATION: FE-0X-00-ANT	PRIBUSCD: 304	FEATRCD:		REQAPPL: 06/21/2010
CAT: IC-	ABSSIND:	CDPSegCD:		RECDATE: 07/21/2010
DKTNO:	DC OFFICE:	ATTORNEY:		CREATED: 07/21/2010
KEYTP:	KEYTIN:		KEYPER: 200512	
SNTYPE:	ACTION:		STATUS:	LOC1:
SNDATE:	TODATE:		NATLOBJ1:	LOC2:
SNEXPDATE:	FROMDATE:		CONFDATE:	LOC3:
CLOSINGCD:	LACTION:		ISSUECDS:	LOC4:
DATECLSD:	LTODATE:		CIRCTRIDE:	LOC5:
TOTHR:	LFROMDATE:		DESICONF:	LOC6:
ACKLTR:	CORWUGRADE:		DESIRESO:	LOC7:
ACAPDATE:			AQMSSELECT:	LOC8:
AIMSCLSD:				LOC9:
NOTE:				LOC10:
OfrNum:	TFRCorp:			LOC11:
WUpropsdOfrAmt:	TFRTin:			
WUacctpOfrAmt:				
WUDOLRS: 443,665	TOTPROASS: 443,665			
CASEDOLRS: 443,665	TOTREVDEF: 0		TOTCLMDIS: 0	
DUPLICAT: 0	TOTREVASS: 0		TOTAPPCLM: 0	
TOTPRODEF: 443,665	TOTCLM: 0		TOTAPPDIS: 0	

Summary Return Information

A	TAXPER	STATDATE	CODE	S	RSVD	P	Bodcd	PropdTax	PropdPen	RevsdTax	Revsdpen
Y	200512	12/31/2011		N			304-00000-0000	251,173	0	0	0
Y	200612	12/31/2011		N			304-00000-0000	193,492	0	0	0

Exhibit 8.19.10-3 (10-30-2013)
Affected Item Appeals Case Memo (ACM)

Exhibit 8.19.10-3

<p style="text-align: center;">APPEALS CASE MEMO Affected Items</p>

SUMMARY AND RECOMMENDATION

Partnership: Violet Partnership
Tax Year Ended: December 31, 2009

Issue: In order to claim the partnership loss, does the partner have sufficient basis and is the partner at-risk?

Facts: (Include brief description of documentation in the partnership file such as partner's initial and subsequent contributions to the partnership, amount of distributions from the partnership and the amount of partner's share of non-taxable income, taxable income, loss and deductions. Was the loan recourse or nonrecourse; amount of the note; did the partner bear the ultimate economic risk of loss with respect to a particular partnership liability.)

Recommended Key Case Settlement Position: (State recommended key case position based upon partnership level activities.)

