



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.21.7

NOVEMBER 6, 2013

## EFFECTIVE DATE

(11-06-2013)

## PURPOSE

- (1) This transmits revised IRM 8.21.7, *Appeals Statute Responsibility, Barred Statute Procedures*.

## MATERIAL CHANGES

- (1) IRM 8.21.7.1 (1) - Clarified responsibility for Collection cases.
- (2) IRM 8.21.7.1 (2) - Added reference for OIC mandatory acceptance.
- (3) IRM 8.21.7.1 (7) - Added reference for the meaning of "Area Managers".
- (4) IRM 8.21.7.2 - Changed title to "*Determination of Reporting Requirement for Barred Deficiencies*".
- (5) IRM 8.21.7.2 (1) - Clarified barred deficiency cases.
- (6) IRM 8.21.7.5 (3) - Provided additional guidance for Counsel assist requests.
- (7) IRM 8.21.7.6 (7) - Clarified procedures for preparing and submitting the preliminary Form 3999.
- (8) IRM 8.21.7.6 (9) - Deleted sentence referencing "*Part B, line 13(c)*" to avoid confusion in the preparation of Form 3999.
- (9) IRM 8.21.7.6 (10) - Clarified time frame as "ten (10) **business days**" for submitting the final report, in lieu of the preliminary report.
- (10) IRM 8.21.7.6.1 (2) - Clarified time frame as "ten (10) **business days** of receipt" for the SOA to submit the preliminary and final Forms 3999 and attachments to the program analyst responsible for statutes..
- (11) IRM 8.21.7.7.1 (1) - Defined the "preliminary Form 3999 date".
- (12) IRM 8.21.7.7.1 (2) (e) - Revised Executive barred statute notification to include "the SOA".
- (13) IRM 8.21.7.7.1 (2) (g) - Provided additional procedures for cases closed to "Files" and included reference to IRM 8.21.7.6.1.
- (14) IRM 8.21.7.8 (7) (4) - Updated the notification requirement for Appeals AD's, AM's, ATM's and PTM's.

## EFFECT ON OTHER DOCUMENTS

IRM 8.21.7, Barred Statute Procedures, dated August 14, 2012, is superseded.

## AUDIENCE

Appeals

Susan L. Latham  
Director, Policy, Quality and Case Support



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8.21.7

Barred Statute Procedures

## Table of Contents

- 8.21.7.1 Reporting Barred Statutes
- 8.21.7.2 Determination of Reporting Requirement for Barred Deficiencies
- 8.21.7.3 Joint Investigation Case - Statute Expiration Reports
- 8.21.7.4 Non-Joint Investigation Case - Statute Expiration Reports
- 8.21.7.5 Potentially Barred Statutes
  - 8.21.7.5.1 Discovering a Potentially Barred Statute
- 8.21.7.6 Preparing the Preliminary Report - Form 3999
  - 8.21.7.6.1 Headquarters Control of the Preliminary and Final Report - Form 3999
- 8.21.7.7 Steps to Preparing a Final Barred Statute Report
  - 8.21.7.7.1 Final Barred Statute Report
- 8.21.7.8 Procedures for Preparing Form 3999 When Compliance is Responsible for Barring the Statute
- 8.21.7.9 Preparing Barred Report When Multiple Appeals Functions are Involved
- 8.21.7.10 Determining the Level of Responsibility for a Barred Statute
  - 8.21.7.10.1 Factors that May Influence the Level of Responsibility
  - 8.21.7.10.2 Responsibility Shared with Compliance
- 8.21.7.11 Taxpayer Notification of Statute Expiration and Acceptance of Voluntary Payments on Barred Statutes
  - 8.21.7.11.1 Guidelines for Deficiency Cases



8.21.7.1  
(11-06-2013)  
**Reporting Barred  
Statutes**

- (1) Appeals employees are responsible for protecting the Assessment Statute Expiration Date (ASED) by securing a valid consent to extend, issuing a statutory notice of deficiency, or ensuring that the assessments are timely made. When the ASED is not properly protected the result is a barred statute.

**Note:** Principal responsibility for protecting the statute of limitations on Collection cases rests with the Collection function. However, Appeals employees have the duty to verify the statute on Collection cases in their inventories to ensure the statute is suspended, when applicable, or to note short statute cases. Since the principal responsibility for the Collection Statute Expiration Date (CSED) rests with the Collection function, Appeals has no requirement to prepare and submit a barred statute report if the CSED is determined to be barred.

- (2) If the case involves mandatory acceptance of an Offer in Compromise (OIC) because the IRS did not make a determination within 24 months from the date IRS received the OIC, see the reporting procedures in IRM 8.21.5.7.
- (3) Form 3999, Statute Expiration Report, is used to report a barred deficiency or barred overassessment on any Appeals case that is not a TEFRA case. See IRM 8.19.1.5 for information about TEFRA.
- (4) **If the barred statute is a TEFRA case**, prepare a Form 3999-T, Statute Expiration Report (for TEFRA key cases). Substitute Form 3999-T for any reference to Form 3999 used in this section and follow these procedures. Notification of the barred statute is sent to the key case entity and each investor. The key case Campus TEFRA Function (CTF) must also be notified of the statute expiration.
- (5) All references to Team Managers in this IRM section include Appeals Team Managers and Processing Team Managers
- (6) All references to Area Directors in this IRM section includes Director, Domestic Operations and Director, International Operations.
- (7) All references to Area Managers in this IRM section refer to Campus Directors and Field Managers under the Director, Account and Processing Support (APS).

8.21.7.2  
(11-06-2013)  
**Determination of  
Reporting Requirement  
for Barred Deficiencies**

- (1) A barred deficiency is one which can't be legally assessed because the prescribed period for assessment has expired for one or more periods after being assigned for examination or Appeals consideration.
- (2) The term "barred deficiency" includes cases involving restricted interest even though, as a result of the application of net operating loss carrybacks, there is no deficiency or overassessment.
- (3) A statute expiration report is not necessary when Compliance **initiates** an examination on a barred year. The case should be returned to Compliance and jurisdiction released.
- (4) A statute expiration report is not required for a return assigned for examination after the three-year period has expired even though a deficiency was asserted under one of the exceptions to the regular period, e.g., fraud, IRC 6501(c), and it is subsequently determined that such exception does not apply. Such reports are also not required for returns held solely for reference purposes.

- (5) If the deficiencies are recovered due to imposition of the fraud penalty, application of IRC 6501(c), or for similar reasons, no report is required because deficiencies may be assessed. The report is not required at the time the case is received by an Appeals Office if the return is open under any of the exceptions to the regular period of limitations. However, in such a case if Appeals later determines that the regular statutory period of limitations applies but the tax cannot be assessed, the deficiency is considered barred at that time and a report may be required. See examples below. The report is prepared whether the case was closed in non-docketed status, docketed status, or by decision of the United States Tax Court.
- (6) In cases described in (4) above requiring a statute expiration report where reasons for allowing the period of limitations for assessments to expire do not appear in the administrative file, Appeals will request such information from the appropriate Compliance field official when preparing the report. A copy of the report is sent by the Area Director to the appropriate Compliance field official. The items on Form 3999 relating to corrective action taken or recommended and disciplinary action taken, if any, are not to be filled in by Appeals.
- (7) The following examples illustrate when barred deficiency reports are required.
  - a. Appeals receives a case with the fraud penalty proposed by Compliance for the years 2004, 2005, and 2006. When the returns were assigned for examination the regular statutory period had expired for 2004. The regular statutory period was allowed to expire for 2005 and 2006 because criminal prosecution was pending. Appeals determines no fraud in 2004 and 2005 and no deficiency for 2006. When such determination is made, no statute expiration report is required for 2004 because the regular period had expired before the return was assigned for examination. Further, no report is required for 2006 because there is no barred deficiency. However, a report is required for 2005 because it was open under the regular period of limitation when assigned by Compliance and the period was permitted to expire.
  - b. Appeals receives a case with fraud penalty proposed by Compliance for the years 2004 and 2005. Regular statutory period for 2004 expired before assignment by Compliance. Appeals determines no fraud for either year. The regular statutory period for 2005 expired in error (no criminal prosecution involved). No statute expiration report is required for 2004 because the regular period expired before assignment by Compliance. However, a statute expiration report is required for 2005 since the regular statutory period expired in error.
- (8) Statute expiration reports in Appeals cases are prepared by Appeals even though the regular period of limitations was allowed to expire deliberately (criminal prosecution recommended) or erroneously by Appeals.

8.21.7.3  
(08-14-2007)  
**Joint Investigation Case  
- Statute Expiration  
Reports**

- (1) A statute expiration report is prepared by Appeals on Form 3999 for all joint investigation cases where there is a barred deficiency or barred overassessment by taking the following steps:
  1. Submit the Form 3999 to the Area Director within ten (10) days following determination of civil liability.

2. The Area Director will review and transmit the Form 3999 to the appropriate Special Agent in Charge, Criminal Investigation Division, or the appropriate Compliance field official in areas or territories without a Special Agent in charge..

8.21.7.4  
(03-19-2012)  
**Non-Joint Investigation  
Case - Statute Expiration  
Reports**

- (1) **Form 3999 will be prepared by Appeals Offices in non-joint investigation cases and submitted to the Area Director when the statutory period has expired without assessment or overassessment.** In cases not involving factors of uncertainty as to probability of assessment, such as possible imposition of fraud penalty, the reports will be prepared immediately upon discovery that the statutory period expired without assessment. In cases where a determination cannot be made at time of discovery, for example, where the fraud penalty may be asserted, the reports are submitted when it is finally determined that the assessment will not be made because of the expiration of the statutory period.
- (2) Where the regular period of limitations expired during prior jurisdiction and the case was forwarded to Appeals to protest the six-year, fraud, or other statute provisions or issues affecting such and they were not sustained, Appeals will prepare Form 3999 as prescribed in IRM 8.21.7.6.

8.21.7.5  
(11-06-2013)  
**Potentially Barred  
Statutes**

- (1) When analysis of a case reveals that the legal tax assessment or overassessment may not have been processed by the ASERD, a potentially barred statute occurs and a preliminary Form 3999 must be prepared.
- (2) It is important to timely prepare and submit the preliminary report so that all Appeals functions involved in statute control of that case are made aware of the potentially barred statute. The following sections detail the time frames that should be followed.
- (3) A statute is considered "potentially barred" until sufficient research of the facts allows a determination whether it is an actual barred statute or not.

**Note:** If Counsel assistance is needed to determine if the statute is barred, the request for Counsel advice should be initiated immediately and the Preliminary Form 3999 should be timely submitted to all Appeals functions involved in the statute control of the case pending Counsel's final determination.

8.21.7.5.1  
(03-19-2012)  
**Discovering a Potentially  
Barred Statute**

- (1) When employees discover that a case has a potentially barred statute, they should immediately contact their team manager. The case should be reviewed to determine if the statute is open under any other provisions, such as IRC 6501(e). If the statute is determined to be potentially barred, the team manager will review the facts to determine if his or her group is responsible in any way.
- (2) If it is determined his or her group is responsible in any way, the team manager will immediately telephone the Area Director or Area Manager to explain the facts as known at that time.
- (3) If it is determined the team that discovered the potentially barred statute is not responsible in any way, the team manager will immediately telephone the team manager of the Appeals group that **is** responsible and advise him or her of the facts as they are known at that time.
- (4) Regardless of the group or team responsible for the potentially barred statute, the employee or team manager of the employee who discovered the potentially

barred statute will prepare a preliminary Form 3999 and the team manager will forward it to the Area Director or Area Manager within ten (10) business days from the date of discovery.

- (5) The case with the potentially barred statute should remain on the Appeals Centralized Database System (ACDS) until a final decision is made as to whether the statute is actually barred or until the final Form 3999 has been submitted. If the responsibility for the final Form 3999 is with APS, then ACDS should be closed and PEAs kept open in suspense and monitored until a final decision is made as to whether the statute is actually barred or until the final Form 3999 has been submitted. This includes retaining the administrative file.

8.21.7.6  
(11-06-2013)  
**Preparing the  
Preliminary Report -  
Form 3999**

- (1) Appeals will prepare Form 3999 for **all** expired statutes. However, only expired statutes meeting the specific criteria for each Compliance operating division will be forwarded to the operating division responsible for the expired statute.

**Note:** IRM 25.6.1.13.2.4 outlines dollar tolerances in barred statute cases for W&I criteria, IRM 25.6.1.13.2.8 for SB/SE criteria, and IRM 25.6.1.13.2.9 for LB&I criteria.

- (2) If a barred statute report is required, the team manager of the group that discovered the barred statute must immediately contact the Area Director or Area Manager. The Area Director will notify their respective Directors, Field Operations (East or West), Director, Specialty Operations, or Director, Campus Operations and the Area Manager will notify the Director, Account and Processing Support (APS), who will then notify the Director, Policy, Quality and Case Support.
- (3) The employee who discovered the potentially barred statute usually has the most knowledge about the case and the discovering employee or their team manager should initiate preparation of the preliminary Form 3999. The discovering employee's manager should sign and date the preliminary Form 3999 in Part A, number 12, in the block labeled "Signature of Preparer of Form 3999." The team manager should ensure that the discovering employee properly completes or provides input for completion of the preliminary Form 3999 in a timely manner.
- (4) The Form 3999 and all attachments should be submitted electronically.
  - a. The file naming format for the preliminary Form 3999 is "TPName. P3999, YYMM, (Calendar Year and Month of Discovery)."
  - b. The file naming format for attachments sent with the preliminary Form 3999 is "TPName. P3999, YYMM (Calendar Year and Month of Discovery and a brief identification of the attachment, (Example- CAR, TXMODA, Employee Key, etc.)."
- (5) The Area Director or Area Manager will review the preliminary Form 3999 and attachments. The Area Directors will forward it to their respective Directors, Field Operations, Director, Specialty Operations or Director, Campus Operations and Senior Operations Advisor (or their designee) and the Area Manager will forward to the Director, Account and Processing Support (APS) who in turn will forward it to the Director, Policy, Quality and Case Support and the Senior Operations Advisor (SOA) within five (5) business days of receipt.



- (6) The SOA (or their designee) will forward a copy of the preliminary Form 3999 to the Program Analyst responsible for statutes on the staff of the Director, Tax Policy and Procedure (Examination) upon receipt of the potentially barred statute.
- (7) The preliminary Form 3999 should contain the following information:
  - a. Entity information.
  - b. The status and location of the return at the time of the statute expiration.
  - c. A detailed explanation including how the potentially barred statute was discovered and by whom, the cause of the statute expiration and if necessary attach a timeline and/or narrative leading up to the potential statute expiration. The explanation should specifically identify the job title of the **person(s) potentially responsible** for the barred statute.

**Note: It is not necessary to include the name of the employee on Form 3999 and related attachments. Any attachments submitted with Form 3999 can be sanitized and the respective employees can be referred to by their job titles. (Ex. A/O #1, A/O #2, T/E #1, etc.)**

- d. The Preliminary 3999 should include all available attachments, explanations and communications that were considered when it was determined that a statute is **potentially** barred.
- e. If it is necessary to seek Counsel advice, this should also be included with the report.
- f. Steps that will be taken to notify and transmit case to manager of responsible group if different than their own.
- (8) Subsequently if it is determined that the potentially barred statute is not actually barred, an e-mail should be sent by the Senior Operations Advisors (or their designee) to everyone who received copies of the preliminary report explaining why the statute was determined not to be barred.
- (9) The preliminary report will be sent to the Program Analyst responsible for statutes on the staff of the Director, Tax Policy and Procedure (Examination) , and no further action will need to be taken.
- (10) If all of the facts are known at the time of discovery and the ten (10) business day time frame can be met, a final Form 3999 can be submitted in lieu of a preliminary report.

8.21.7.6.1  
(11-06-2013)  
**Headquarters Control of the Preliminary and Final Report - Form 3999**

- (1) The Program Analyst on the staff of Director, Tax Policy & Procedure (Examination) will control all potentially barred statutes on the shared P drive. Electronically signed copies of both preliminary and final Forms 3999 and attachments will be maintained on the shared P drive.
- (2) The SOAs (or their designee) will send electronic copies of all preliminary and final Forms 3999 and attachments to the TPP (Exam) Program Analyst within ten (10) business days of receipt.

8.21.7.7  
(10-01-2012)  
**Steps to Preparing a Final Barred Statute Report**

- (1) The final Form 3999 must be prepared and submitted to the Area Director or Area Manager within 60 business days from the preliminary report date. There are several items that must be accomplished before this can occur.
- (2) Determine if the deficiency can be assessed and the revenue protected.

- (3) If unable to determine or in doubt if the assessment can be made and the revenue protected:
  - a. send an expedited request to local Counsel to review and provide guidance.
  - b. include as much factual data as possible about the taxpayer in question (including transcripts, TXMOD and/or CFOL information) with the case submitted to Counsel for opinion.
- (4) Gather the necessary facts to fully ascertain what transpired, who was involved and why it happened. This includes locating the following backup documents, if applicable, to accompany the final Form 3999:
  - a. interest computations
  - b. memos from affected parties
  - c. copy of the letter notifying the taxpayer of the issue
  - d. copies of documents reflecting remedial actions to prevent recurrence
  - e. proposed disciplinary action to be taken with respect to the responsible employee(s)

**Note: Do not include the name of the employee on the Form 3999.**

- (5) Analyze a current transcript for each tax year and entity that is determined to have a barred statute for the purpose of determining whether there is a credit balance on the account for that tax year. Any credit balance that exists should be moved to an "Excess Account".
- (6) After obtaining Counsel's opinion, review the Form 3999 for correctness and completeness and mark the form as "*final*" before signing in the "First Level Manager" block on the "*final*" Form 3999.
  - a. Insure that Block 1 reflects the appropriate Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or Director, Policy, Quality and Case Support and that Block 2 contains the office designation of the office originating the report.

8.21.7.7.1  
(11-06-2013)  
**Final Barred Statute  
Report**

- (1) The *final* Form 3999 and package of backup documentation must be prepared and sent to the Area Director or Area Manager **within 60 business days from the preliminary Form 3999 date**. The "preliminary Form 3999 date" is the preparer's signature date in Part A, Section 12. When the *final* Form 3999 and backup documentation are submitted electronically, encrypted e-mail must be used.
- (2) The following is a step-by-step explanation of what must be done to process the final report up to and after approval:
  - a. The team manager will also sign and date the preliminary Form 3999 in Part B, in the block labeled "First-Level Manager" and forward it to their Area Director or Area Manager within ten (10) business days from the date of discovery.
  - b. Since the final decision has been made that a barred statute has occurred, the case can be closed off of ACDS and the taxpayer can be notified. However, the administrative file should be retained until a copy of the approved final report is returned.

- c. APS will close the case using closing code 20 or 21. Generally, closing code 20 will be used when the case is closed as a premature referral and jurisdiction is released. Generally, closing code 21 will be used when the case has been dismissed with no Appeals time. Refer to Document 6209 for a further explanation of closing codes 20 and 21.
  - d. Area Director or Area Manager will review the *final* Form 3999 and attachments for completeness.
  - e. Area Director and Area Manager within **ten (10) business days from receipt**, will sign as the “Second Level Manager” and forward the *final* Form 3999 to the appropriate Directors, Field Operations, Director, Specialty Operations or Director, Campus Operations or Director, Account and Processing Support and the SOA. The Director, Account and Processing Support will forward to the Director, Policy, Quality and Case Support and the SOA.
  - f. Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or the Director, Policy, Quality and Case Support is responsible for final review and approval. He or she indicates approval by signing in the “Third Level Manager” Signature block on the *final* Form 3999.
  - g. Once approved, the Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or Director, Policy, Quality and Case Support (or a designee) will send a copy of the **approved** report and package of backup documentation to the responsible Program Analyst in Tax Policy and Procedure (Examination). See IRM 8.21.7.6.1. At the same time the Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or Director, Policy, Quality and Case Support (or a designee) will send a copy to the report originator who will enclose a copy of the final Form 3999 in the administrative file before sending to files. The backup documentation and attachments **should not be sent** to the report originator. In situations where cases have already been sent to “Files”, a copy of the final Form 3999 should be associated with the case under the current Refile DLN.
- (3) The Form 3999 and all attachments should be submitted electronically.
- a. The file naming format for the final Form 3999 is “TP Name. F3999. YYYY (Calendar Year and Month of Discovery)”
  - b. The file naming format for attachments sent with the final Form 3999 is “TP Name. F3999. YYYY (Calendar Year and Month of Discovery) and a brief identification of the attachment, (Example- DFO Memo, Counsel Memo, Discipline, etc.) ”
- (4) The final barred statute report should include an explanation of the recommended disciplinary action against each employee deemed responsible. However, the final report should never contain the names of the employees involved.
- (5) No disciplinary action can be taken until the appropriate Executive has approved the final barred statute report. Disciplinary actions are to be administered under the provisions of IRM 6.751.1.16. Also see IRM Exhibit 6.751-1, Internal Revenue Service Guide for Penalty Determinations.

8.21.7.8  
(11-06-2013)

**Procedures for  
Preparing Form 3999  
When Compliance is  
Responsible for Barring  
the Statute**

- (1) When Appeals makes a preliminary determination that Compliance is responsible for the potentially barred statute, the employee that discovered the potentially barred statute will immediately notify their team manager and prepare a preliminary Form 3999.
- (2) The team manager will forward the preliminary Form 3999 to the Area Director or Area Manager within ten (10) business days from the date of discovery. If the Area Director concurs that Compliance appears to be responsible, the Area Director will send his or her concurrence to the Appeals team manager by e-mail.
- (3) Upon receipt of the Area Director's concurrence, the Appeals team manager will inform the manager of the responsible group in Compliance and obtain their concurrence. Only expired statutes meeting the specific criteria for each Compliance operating division will be forwarded to the operating division responsible for the expired statute.

**Note:** IRM 25.6.1.13.2.4 outlines dollar tolerances in barred statute cases for W&I criteria, IRM 25.6.1.13.2.8 for SB/SE criteria, and IRM 25.6.1.13.2.9 for LB&I criteria.

- (4) When Compliance does not agree with the determination by the Area Director that the statute barred while in Compliance jurisdiction, the Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or Director, Policy, Quality and Case Support, or their designee, should send the preliminary Form 3999 and all attachments to the Executive Assistant to the Chief of Appeals for recommendation.
- (5) During this process, jurisdiction of the case will remain in Appeals.
- (6) If the Chief Appeals determines that **Appeals is responsible for the barred statute**, then the final Form 3999 procedures at IRM 8.21.7.7 should be followed.
- (7) If the Chief Appeals determines that **Compliance is responsible for the barred statute**, then the Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or the Director, Policy, Quality and Case Support will take the following actions:
  1. The ATM or PTM will complete Form 3999, Part A accompanied by a narrative supporting the preliminary determination and a time-line of events leading to the barring of the statute.
  2. The ATM or PTM will forward Form 3999 and supporting documentation to the Area Director or Area Manager.
  3. The Area Director or Area Manager will review Form 3999 and supporting documentation. If the package is correct and complete, the Area Director or Area Manager will forward it to the Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or Director, APS within ten (10) business days from date of receipt. After review, the Director, APS will forward the package to the Director, Policy, Quality and Case Support. If the package requires additional information, the Area Director or Area Manager will return it to the appropriate manager.
  4. The Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or Director, Policy, Quality and Case Support will review the package. If the package is ready, the management chain will be notified and the following notifications will be sent to Compliance:

- Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations, or Director, Policy, Quality and Case Support will send an e-mail containing an explanatory memo and the package to the Compliance Executive responsible for the subject work stream (i.e. Examination, Collection, Specialty Programs, etc.) and a courtesy copy to the respective Compliance Area Director or equivalent level
- Appeals Area Director or Area Manager may send a courtesy e-mail containing an explanatory memo and the package to the respective Compliance Territory Manager or equivalent level manager
- ATM or PTM may send a courtesy e-mail containing an explanatory memo and the package to the Compliance Group or Processing Manager of the responsible group

- (8) When Appeals has jurisdiction of a case where the statute barred in Compliance the case should be returned as a Premature Referral and ACDS should be updated to reflect closing code 20 or 21, whichever is appropriate. Generally, closing code 20 will be used when the case is closed as a premature referral and jurisdiction is released. Generally, closing code 21 will be used when the case has been dismissed with no Appeals time. (Refer to Document 6209 for a further explanation of closing codes 20 and 21).
- (9) Upon notification to the Compliance Executive, the Directors, Field Operations, Specialty Operations, Campus Operations, or Policy, Quality and Case Support (or their designee) will forward a copy of the Director's explanatory memo that was sent to the Compliance Executive (signed and dated) to the Program Analyst for Tax Policy and Procedure (Examination).

#### 8.21.7.9

(08-14-2007)

#### **Preparing Barred Report When Multiple Appeals Functions are Involved**

- (1) It is common that more than one Appeals employee may have contributed in some way to a barred statute. Each case requires independent review to determine all of the employees who may have contributed in any way to the barred statute.
- (2) The manager of the group who last handled the case will be responsible for contacting the managers of other responsible employee(s) involved. All managers impacted should discuss how the back-up documentation will be gathered and who will prepare the final report.
  - a. Generally, the manager of the group who last handled the case will take control of coordinating the final report preparation.
- (3) After the final report is prepared, it will be electronically sent to all managers who had employees that contributed in any way to the barred statute. Each should be allowed an opportunity to review and concur with the report before it is forwarded for approval.
  - a. This review process does not extend the due date of the final report, which must be sent to the Area Director or Area Manager within 60 business days from the preliminary Form 3999.
- (4) All managers who are given an opportunity to review the report should indicate their concurrence by e-mail to the coordinating manager, who will note in the final report that all managers of groups that contributed to the barred statute were provided copies of the report for review and have concurred.

- (5) Area Directors and Area Managers must ensure that proposed disciplinary actions meet the criteria in IRM 6.751.1–1, Internal Revenue Service Guide To Penalty Determinations.
- (6) When more than one employee is found to have contributed to a statute barring, the respective senior managers should make every effort to reach agreement on the proposed discipline for all employees involved.

8.21.7.10  
(08-14-2007)

**Determining the Level of Responsibility for a Barred Statute**

- (1) As a general rule, all employees who contributed in any way to a barred statute may be subject to some form of disciplinary action. However the discipline will not necessarily be the same for all involved employees.
- (2) When determining the level of disciplinary action, the following facts should be considered individually for each employee:
  - a. Severity of the employee's error
  - b. Point in time during the processing of the case the employee made the error
  - c. Number and position of other employees who handled the case subsequent to the employee

*For Example:* The severity of an error made by APS when the case is established, diminishes if the error goes undetected after the case is subsequently handled by management and higher-graded technical employees. Ideally, these type errors should be detected by the Appeals Team Manager when the case is received for assignment and/or when the higher-graded technical employee reviews the case upon assignment. Thus, the APS employee may not be totally relieved of responsibility but their disciplinary action will not equal that imposed on the technical employee and the technical employee's manager who subsequently handled the case if the error goes undetected until later in the Appeals process.

- (3) Because each case is different, the level of responsibility will be determined on a case-by-case basis.
- (4) In most barred statute cases, multiple employees contribute to the situations that result in a barred statute. Therefore, all factors must be considered when determining the degree of responsibility for each.

8.21.7.10.1  
(11-06-2013)

**Factors that May Influence the Level of Responsibility**

- (1) Even though an employee has jurisdiction of a case on ACDS, another employee may have actual possession and virtual control over the movement of that case.
- (2) The employee with jurisdiction of the case must continue to take every possible action to get the employee with possession and control of movement to act.
- (3) All actions taken by the employee with jurisdiction should be clearly detailed in the Case Activity Record (CAR) so that there is documentation to support the attempts made.
- (4) When an employee with possession and control of the movement of a case fails to adhere to the employee with jurisdiction's requests to handle the case in a timely manner in order to prevent a barred statute, the employee with possession and control of the movement may be held fully responsible for the barred statute.



8.21.7.10.2  
(08-14-2007)  
**Responsibility Shared  
with Compliance**

- (1) It is possible for an Appeals employee and a Compliance employee to share responsibility for a barred statute. When this occurs, the impacted Appeals manager must prepare the preliminary and final reports for Appeals.
- (2) The fact that Compliance is involved does not change the requirement that the Appeals manager follow all the procedures for preparing and submitting a barred statute report described in this IRM section.
- (3) Managers are encouraged to consult with their counterpart in Compliance to discuss and coordinate the facts of the case leading up to the barred statute.

8.21.7.11  
(08-14-2007)  
**Taxpayer Notification of  
Statute Expiration and  
Acceptance of Voluntary  
Payments on Barred  
Statutes**

- (1) Policy Statement P-4-65 provides that the Service shall not make any effort, real or implied, to solicit voluntary payments of a deficiency or taxpayer delinquent account barred by statute. However, payments made by the taxpayer completely of his/her free will shall be accepted.

8.21.7.11.1  
(11-06-2013)  
**Guidelines for  
Deficiency Cases**

- (1) During the consideration of a case, an explanation to the taxpayer will be necessary. A verbal explanation to the taxpayer is not necessary in each case. The taxpayer should be advised that the processing of any deficiency resulting from the consideration of his/her return has been discontinued because the statutory period that the Service can legally assess and enforce collection of any amount due has expired.
- (2) Written notification of the taxpayer will be a personal letter similar to Pattern Letter P-427 (IRM 4.2.1-1 , General Examination Information) and send an Appeals report.
  - a. The report is a copy of the Examination report which the taxpayer protested or a revision of the Examination report based upon Appeals determination.
  - b. The report should reflect a deficiency resulting from issues that have been considered by Appeals. The taxpayer does not need to agree to the adjustments since Pattern Letter P-427 advises the taxpayer that "the report reflects our determination". Adjustments that give the taxpayer a beneficial "double deduction" are prohibited as discussed in IRC Treasury Regulation 1.161, e.g., capitalizing an item previously expensed and allowing a depreciation deduction in subsequent years. IRC 6401(a) provides that the term "overpayment" includes: Any payment of any Internal Revenue tax which is assessed or collected after the expiration of the period of limitation applicable. It will generally be possible for the taxpayer to file a timely claim within two years and have any payment refunded. This permits a double deduction if any report includes any issues that involve subsequent returns.
  - c. The purpose of the report is to assist the taxpayer in filing subsequent returns and to furnish the amount of the deficiency if the taxpayer elects to make voluntary payment.
  - d. The report will clearly show that the statute has expired and the taxpayer is under no legal obligation to pay the deficiency shown.
- (3) If the taxpayer inquires about making voluntary payments, he/she should be informed that the payment will be accepted and can be mailed to the office

contacted. The subject of voluntary payments should not be discussed unless the taxpayer inquires about voluntary payments.

- a. If payment is received, prepare Form 3244-A, Payment Posting Voucher, treating the payment as an advance payment. Notate on Form 3198, Special Handling Notice, that payment from the taxpayer was voluntarily received after statute expiration. Submit the case for normal processing.
  - b. If the taxpayer does make payment, a personal letter similar to Pattern Letter P-429 (see IRM 4.2.1-3, General Examination Information) should be written acknowledging receipt of the payment and expressing appreciation. Since the taxpayer will not receive any bill identifying the payment, this letter should contain enough detail to identify the payment and the return involved in the barred deficiency.
- (4) If the examination has not reached the point where the deficiency can be determined, a letter similar to Pattern Letter P-428 (see IRM 4.2.1-2, General Examination Information) should be issued to the taxpayer. Pattern Letter P-428 explains that the examination has been discontinued because the statutory period the Service can legally issue a refund or assess and enforce collection of amounts due has expired.
- (5) In multi-year and related examinations, it is not necessary to separately process the year in which the statute expired. The return can follow the case file through the normal examination process. However, a copy of the final approved Form 3999 report is required to be placed in the case file.
- (6) The responsibility to prepare the notification letter, mailing of it and routing are outlined as follows:
  - a. The undated notification letter is prepared and signed by the ATM or PTM of the party responsible for the statute expiration.
  - b. The Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or Director, Policy, Quality and Case Support signs the final Form 3999 and the letter is date-stamped and mailed by his/her secretary/staff assistant. The date of taxpayer notification is entered in Box 7 of Form 3999.
  - c. A copy of the notification letter and copy of Form 3999 are forwarded back to the manager via second-level management.
  - d. The Directors, Field Operations, Director, Specialty Operations, Director, Campus Operations or Director, Policy, Quality and Case Support retains a copy for the "Read File" and forwards through channels to the Statute Program Analyst for Tax Policy and Procedures, Examination.