



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.21.7

JULY 7, 2025

EFFECTIVE DATE

(07-07-2025)

PURPOSE

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

MATERIAL CHANGES

- (1) Added IRM 8.21.7.1 , Program Scope and Objectives, and related sections containing internal control information required by IRM 1.11.2.2.4, Address Management and Internal Controls.
- (2) Added paragraph (2) to IRM 8.21.7.1.6 to provide reference to IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.
- (3) In IRM 8.21.7.1.6, Taxpayer Bill of Rights (TBOR) content updated 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).
- (4) Updated references, position titles, and organizational titles throughout the IRM.

EFFECT ON OTHER DOCUMENTS

IRM 8.21.7, Barred Statute Procedures, dated November 6, 2013, is superseded.

AUDIENCE

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8.21.7

Barred Statute Procedures

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8.21.7.1
(07-07-2025)
Program Scope and Objectives

- (1) Purpose: This IRM section provides procedures for Appeals employees regarding barred statute procedures.
- (2) Audience: Appeals Employees
- (3) Policy Owner: Director, Operations Support
- (4) Program Owner: Director, Policy, Planning, Quality & Analysis
- (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.

8.21.7.1.1
(07-07-2025)
Background

- (1) The mission of the Independent Office of Appeals (Appeals) is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the IRS. Appeals accomplishes its mission by considering protested and Tax Court cases and negotiating settlements in a manner which ensures Appeals employees act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. See IRM 8.1.1.2, Accomplishing the Appeals Mission.

8.21.7.1.2
(07-07-2025)
Authority

- (1) IRC 6501, Limitations on Assessment and Collection, provides the legal basis for assessment statute of limitation periods.
- (2) IRM 25.6.1.13, Barred Assessments/Barred Statute Cases, provides Service-wide information on barred statutes.
- (3) IRM 6.751.1.16, Disciplinary and Non-Disciplinary Action Defined, provides authority for disciplinary actions, including barred statute-related actions.

8.21.7.1.3
(07-07-2025)
Responsibilities

- (1) The Director, Operations Support, is the executive responsible for Appeals' policy and procedural guidance.
- (2) The Director, Policy, Planning, Quality & Analysis (PPQ&A) is responsible for program oversight.

8.21.7.1.4
(07-07-2025)
Program Reports

- (1) PPQ&A provides trends and data analyses and detailed summary reports for Appeals.

8.21.7.1.5
(07-07-2025)
Terms and Acronyms

- (1) The table lists commonly used acronyms and their definitions:

Term or Acronym	Definition
ACDS	Appeals Centralized Database System is Appeals' computerized case control system, used to control and track cases throughout the appeal process (IRM 8.20.3).
ACM	Appeals Case Memo (IRM 8.6.2)

Term or Acronym	Definition
AIMS	Audit Information Management System is a computer database system used by Appeals and Compliance (for examination-sourced cases) to control returns, input assessment/adjustments to Master File and provide management reports.
APS	Account and Processing Support (IRM IRM 8.20)
ASED	Assessment Statute Expiration Date
ATE	Appeals Technical Employee
Compliance	Originating Function
IDRS	Integrated Data Retrieval System
PTM	Processing Team Manager
TCS	Tax Computation Specialist

- (2) Also, see IRM Exhibit 8.1.1-1, Common Terms Used by Appeals.

8.21.7.1.6
(07-07-2025)

Related Resources

- (1) The following table lists related IRM guidance:

IRM	Title
IRM 25.6.1.13	Barred Assessments/Barred Statute Cases, provides Service-wide information on barred statutes.
IRM 25.6.1.13.2.1	Barred Statute Report (Form 9355/3999)

- (2) In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals will work collaboratively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience. For more information, see IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.
- (3) 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>.

8.21.7.2 (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 assessments are made timely. 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, Offer in Compromise Mandatory Acceptance.
- (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, TEFRA, for information about Tax Equity and Fiscal Responsibility Act of 1982 (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 (ATMs) and Processing Team Managers (PTMs).
- (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).

8.21.7.3 (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 nondocketed 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.
- (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 10 days following determination of civil liability.

8.21.7.4
(08-14-2007)
**Joint Investigation Case
- Statute Expiration
Reports**

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.

8.21.7.5
(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.

8.21.7.6
(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 timeframes 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.

8.21.7.6.1
(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 their group is responsible in any way.
- (2) If it is determined their group is responsible in any way, the team manager will immediately contact 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 contact the team manager of the Appeals group that **is** responsible and advise them 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 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 Processing Employee Automated System (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.

8.21.7.7

(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, Identifying Barred Statute Cases, outlines dollar tolerances in barred statute cases.

- (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 director, Examination Appeals, Director Collection Appeals, Director, Specialized Examination Programs & Referrals (SEPR), or Director, Case Support, and the Area Manager will notify the Director, APS, who will then notify the Director, Operations 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, YYYY, (Calendar Year and Month of Discovery)."
 - b. The file naming format for attachments sent with the preliminary Form 3999 is "TPName. P3999, YYYY (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 Director will forward it to their respective director, Examination Appeals, Director Collection Appeals, Director, SEPR, or Director, Case Support, and Senior Operations Advisor (SOA) (or their designee), and the Area Manager will forward to the Director, APS, who in turn will forward it to the Director, Operations Support, and the SOA for Operations Support within five 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 in PPQ&A 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 SOA (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 in PPQ&A, and no further action will need to be taken.
- (10) If all of the facts are known at the time of discovery and the 10 business day timeframe can be met, a final Form 3999 can be submitted in lieu of a preliminary report.

8.21.7.7.1 (11-06-2013) Headquarters Control of the Preliminary and Final Report - Form 3999

- (1) The Program Analyst responsible for statutes in PPQ&A will control all potentially barred statutes on a shared storage drive. Electronically signed copies of both preliminary and final Forms 3999 and attachments will be maintained on a shared storage drive.
- (2) The SOA (or their designee) will send electronic copies of all preliminary and final Forms 3999 and attachments to the Program Analyst within 10 business days of receipt.

8.21.7.8 (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 director, Examination Appeals, Director Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations Support, and that Block 2 contains the office designation of the office originating the report.

8.21.7.8.1
(07-07-2025)
**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. Once 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.
 - b. 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.

- c. Area Director or Area Manager will review the *final* Form 3999 and attachments for completeness.
 - d. Area Director and Area Manager will, within **10 business days from receipt**, sign as the “Second Level Manager” and forward the *final* Form 3999 to the appropriate director, Examination Appeals, Director, Collection Appeals, Director, SEPR, or the Director, APS, and the SOA. That Director will forward to the Director, Case Support, or Director, Operations Support, and the SOA.
 - e. director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations Support, is responsible for final review and approval, and indicates approval by signing in the “Third Level Manager” signature block on the *final* Form 3999.
 - f. Once approved, the Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations Support (or a designee), will send a copy of the **approved** report and package of backup documentation to the responsible Program Analyst in PPQ&A. See IRM 8.21.7.7.1, Headquarters Control of the Preliminary and Final Report - Form 3999. At the same time, the Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations 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 Document Locator Number (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. YYMM (Calendar Year and Month of Discovery).”
 - b. The file naming format for attachments sent with the final Form 3999 is “TP Name. F3999. YYMM (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, Disciplinary and Non-Disciplinary Action Defined. Also see IRM Exhibit 6.751.1-1, Internal Revenue Service Guide for Penalty Determinations.

8.21.7.9
(07-07-2025)
**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 10 business days from the date of discovery. If the

Area Director concurs that Compliance appears to be responsible, the Area Director will send their concurrence to the ATM by e-mail.

- (3) Upon receipt of the Area Director's concurrence, the ATM 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, Identifying Barred Statute Cases, outlines dollar tolerances in barred statute cases..

- (4) When Compliance does not agree with the determination by the Area Director that the statute barred while in Compliance jurisdiction, the Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations 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 of Appeals determines that **Appeals is responsible for the barred statute**, then the final Form 3999 procedures at IRM 8.21.7.8, Steps to Preparing a Final Barred Statute Report, should be followed.
- (7) If the Chief of Appeals determines that **Compliance is responsible for the barred statute**, then the Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations 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 timeline 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 Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, or Director, APS, within 10 business days from date of receipt. After review, the package is to be forwarded to the Director, Case Support, or the Director, Operations Support. If the package requires additional information, the Area Director or Area Manager will return it to the appropriate manager.
 4. The Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations 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:
 - Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations 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 manager.

- 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 in which 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 Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations 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 responsible for statutes in PPQ&A.

8.21.7.10

(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 Exhibit 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.

8.21.7.11
(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 types of errors should be detected by the ATM 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.

8.21.7.11.1
(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.

8.21.7.11.2
(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.

8.21.7.12
(08-14-2007)
Taxpayer Notification of Statute Expiration and Acceptance of Voluntary Payments on Barred Statutes

- (1) IRM 1.2.1.5.20, Policy Statement 4-65, Voluntary payment of barred deficiency or account shall not be solicited, provides that the IRS 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 their free will shall be accepted.

8.21.7.12.1
(07-07-2025)
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 their return has been discontinued because the statutory period that the IRS can legally assess and enforce collection of any amount due has expired.
- (2) Written notification to the taxpayer will be a personal letter similar to Letter 5321. An Appeals report should be sent as well.
 - 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. Adjustments that give the taxpayer a beneficial "double deduction" are prohibited as discussed in 26 CFR 1.161-1 (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, they 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, Letter 5319 should be sent to the taxpayer, acknowledging receipt of the payment. 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 Letter 5318 should be issued to the taxpayer. This letter explains that the examination has been discontinued because the statutory period the IRS 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 Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations Support, signs the final Form 3999 and the letter is date-stamped and mailed by their 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 Director, Examination Appeals, Director, Collection Appeals, Director, SEPR, Director, Case Support, or Director, Operations Support, retains a copy for the "Read File" and forwards through channels to the Program Analyst responsible for statutes in PPQ&A.