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Department of the Treasury
Internal Revenue Service

8.26.1

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EFFECTIVE DATE

(09-24-2013)

PURPOSE

- (1) This transmits revised IRM 8.26.1, Alternative Dispute Resolution, Fast Track Settlement for Large Business and International (LB&I) Taxpayers.

MATERIAL CHANGES

- (1) The revision to this IRM contains several editorial changes.

EFFECT ON OTHER DOCUMENTS

This IRM revision supersedes IRM 8.26.1 dated September 21, 2012.

AUDIENCE

Appeals

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

8.26.1

Fast Track Settlement for Large Business and International (LB&I) Taxpayers

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8.26.1.1
(10-01-2012)

Objective of Large Business and International Fast Track Settlement Program (LB&I FTS)

- (1) A primary objective of the Service is to resolve tax controversies at the lowest level without sacrificing the quality and integrity of those determinations. Alternative Dispute Resolution (ADR) programs achieve this objective.
- (2) The IRS Restructuring and Reform Act of 1998 (RRA 98), P.L.105-206 directs the IRS to implement procedures that allow broader use of early Appeals programs and to establish procedures that allow alternative dispute resolution including mediation and arbitration.
- (3) Rev. Proc. 2003-40 establishes the Large Business and International Fast Track Settlement Program (LB&I FTS) specifically for cases in LB&I with the goal of expediting case resolutions and expanding the range of dispute resolution options available to taxpayers.

Note: Section 3.02 of Rev. Proc. 2003-40 provides that in certain circumstances, other Operating Divisions and taxpayers may participate in the LB&I FTS program.

8.26.1.2
(10-01-2012)

What to Know About LB&I FTS

- (1) LB&I FTS is premised on the basis that LB&I and the taxpayer have exhausted existing issue resolution strategies available within LB&I, and now want to use an optional strategy to reach resolution.
- (2) To ensure the taxpayer has a basic understanding of the LB&I FTS process, LB&I provides a copy of Publication 4539, Fast Track Settlement - A Process for Prompt Resolution of Large Business and International Tax Issues, to the taxpayer prior to considering an "Application for Fast Track Settlement", Form 14017.
- (3) If the LB&I FTS process is unsuccessful in resolving an issue, a taxpayer is not precluded from requesting traditional Appeals consideration.
- (4) The LB&I Team Manager consults with Appeals FTS Program Manager to ensure proper screening, application and submission of the case.
- (5) The ATM is available to assist with any concerns regarding the LB&I FTS process.
- (6) For LB&I procedures and guidelines leading up to the acceptance of a case into the LB&I FTS program, see IRM 4.51.4.

8.26.1.3
(10-01-2012)

Fast Track Settlement Authority for Appeals

- (1) Appeals has settlement authority under Delegation Order 8-3 found in IRM 1.2.47, Delegation of Authorities for the Appeals Process.
- (2) An Appeals official with delegated settlement authority, such as an Appeals Team Case Leader (ATCL) or Appeals Team Manager (ATM), can enter into and approve any LB&I FTS agreement involving hazards of litigation by using a Form 906, Specific Matters Closing Agreement, or a general waiver via Form 870-AD.
- (3) Appeals makes its own evaluation of the hazards on LB&I FTS issues. LB&I must not commit, or appear to commit, to a settlement that exceeds their authority to resolve issues prior to referral to LB&I FTS.
- (4) Potential settlement positions discussed with the taxpayer before an LB&I FTS referral are presented to the ATCL or Appeals Officer (AO) for consideration

8.26 Alternative Dispute Resolution (ADR) Program

during the session. However, Appeals does an independent evaluation of the hazards and does not execute a settlement if it does not fall within such evaluation or established settlement guidelines for the issue.

- (5) If the ATCL or AO does not accept a settlement proposed between the taxpayer and LB&I, he/she explains why it is not acceptable to both parties.
- (6) If a Joint Committee report is required for the case, Appeals delays execution of the closing agreement until LB&I completes the Joint Committee procedures. Where Appeals settlement authority is utilized on a Joint Committee case, the ATCL or AO involved in the settlement is available to respond to inquiries from the Joint Committee regarding the settlement.

8.26.1.3.1 (10-01-2012) **Ex Parte in LB&I FTS Cases**

- (1) In LB&I FTS, ATCLs and AOs are not acting in their traditional Appeals settlement role. As a result, the prohibition on **ex parte** communications between Appeals and other Internal Revenue Service employees provided by Section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications in the process.
- (2) If the LB&I FTS process is unsuccessful -
 - Appeals may not issue a statutory notice of deficiency.
 - Information disclosed by the taxpayer to LB&I during the FTS session can be used by LB&I to complete the examination report.
 - The taxpayer retains all traditional appeal rights.
- (3) See also Section 2.05 of Rev. Proc. 2012-18 and IRM 8.1.10.3.6 for information on ex parte for FTS.

8.26.1.3.2 (10-01-2012) **Considering Factual and Legal Issues in LB&I FTS**

- (1) Appeals Hazards Settlements:
 - a. LB&I FTS allows the parties to consider hazards regarding what facts, if any, a court will accept and hazards regarding the merits of different possible legal interpretations of law in resolving disputes.
 - b. Where the disposition of an issue involves consideration of the hazards of litigation, Appeals exercises delegated settlement authority to accept the settlement in a closing agreement that finally determines the treatment of the issues.
- (2) Mediated Agreements:
 - a. While settlement authority is available in the process, the issues are often resolved in a mediated agreement between the taxpayer and Examination.

8.26.1.4 (09-24-2013) **Benefits of Using LB&I FTS**

- (1) LB&I FTS takes place while the case is in LB&I's jurisdiction and the process is designed to be completed in approximately **120 calendar days**.
- (2) Appeals and LB&I jointly manage and administer the LB&I FTS Program.
- (3) The program enables taxpayers and the IRS to work together to resolve outstanding issues while the case remains in the jurisdiction of LB&I.
- (4) It provides LB&I and taxpayers an opportunity to resolve their disputes with an ATCL or AO providing mediation skills and settlement authority. The mediation techniques used focus issues and lead LB&I and the taxpayer to self-determine the outcome of the dispute.

- (5) LB&I FTS is designed to:
- Increase issue resolution at the lowest level.
 - Use Appeals tools in Exam.
 - Decrease the overall time from return filing to ultimate resolution.
 - Reduce the burden for the taxpayer and the Service.

8.26.1.5
(10-01-2012)
Parties to the Process

- (1) Parties to the Process:
- a. The decision makers must fully participate in the LB&I FTS process.
 - b. The decision makers decide who to invite to the LB&I FTS session.
 - c. The parties are encouraged to bring their best experts into the process. This includes Technical Advisors in those instances where the issues are industry specific, or where a Technical Advisory position was established for the issue.
- (2) All three parties - LB&I, the taxpayer, and Appeals - are active participants in the process, and all three must agree before a proposed resolution is implemented. When a resolution is not reached through mediation, Appeals may propose a resolution, but that proposal is not imposed on either party.

- (3) **All** “decision-makers” are required to be present.

8.26.1.5.1
(09-24-2013)
LB&I Participants in the FTS Process

- (1) LB&I is fully involved in the LB&I FTS process as an equal participant.
- (2) LB&I participants include the LB&I Team Manager, Revenue Agents and others who have the knowledge and expertise to contribute to issue resolution.
- (3) In addition to the Team Manager, LB&I participants generally include the Team Coordinator and/or Revenue Agents primarily responsible for the development of the subject issue(s).
- (4) LB&I participants also include Specialists and/or Technical Advisors. In those instances where the issues are industry specific or there is a Technical Advisory position established for the issue, the participation of appropriate Technical Advisors is strongly recommended.
- (5) The LB&I Team Manager, in consultation with the assigned ATCL or AO, determines the LB&I participants.
- (6) For CAP issues, LB&I participants include the Team Manager, and the LB&I Account Coordinator (AC), as well as any Specialists and/or Technical Advisors, if needed. If necessary, the LB&I Territory Manager and the Director of Field Operations also participate in the FTS process.

8.26.1.5.2
(10-01-2012)
ATCL’s or AO’s Role in the LB&I FTS Process

- (1) Within **ten business days** after assignment of the case, the ATCL or AO calls the taxpayer and the LB&I Team Manager to start the FTS session planning process and follows-up in writing with an FTS Acknowledgement Letter. The ATCL or AO should document the case activity record when these actions have been taken.
- (2) The ATCL or AO identifies and discusses the need to limit the number of participants in the FTS session.

8.26.1.5.3
(09-24-2013)

**Appeals
Domestic/International
Operations Technical
Specialist's Role in
Coordinated Issues**

- (3) LB&I FTS cases are excluded from the Settlement Authority Panel Review, because LB&I must agree to any disposition of the issues.
- (1) Where an issue is coordinated, the ATCL or AO follows the procedures in IRM 8.7.3.2, Coordinated and Appeals Emerging Issues.
- (2) To meet the requirements that all decision-makers attend the LB&I FTS session, and that coordinated issues be reviewed by the Appeals Domestic /International Technical Specialist, the Appeals Technical Specialist generally serves as a team member and participates in the FTS session with the taxpayer and LB&I.
- (3) If the Appeals Technical Specialist is not part of the Fast Track Team, settlement of the coordinated issue remains subject to the review and concurrence of the Appeals Technical Specialist. This is accomplished via telephone discussion, review and concurrence.
- (4) If there is a disagreement between the Appeals Technical Specialist and the ATCL or AO on appropriate settlement terms for the issue, follow the resolution procedures in IRM 8.7.3.4., Review and Concurrence Procedures.

8.26.1.6
(09-24-2013)

**Types of Cases
Accepted into LB&I FTS**

- (1) LB&I FTS is generally available for all cases worked under the jurisdiction of LB&I. However, it is not the appropriate dispute resolution process for all cases involving LB&I taxpayers. The LB&I Group Manager or designee and the taxpayer must evaluate their individual circumstances to determine if this process meets their needs.
- (2) Appeals Coordinated Issues (ACIs), Compliance Coordinated Issues (CCIs), Industry Specialization Program (ISP) Issues and listed transactions are accepted into LB&I FTS.

8.26.1.6.1
(10-01-2012)

**Bankruptcy Cases in
LB&I FTS**

- (1) Bankruptcy cases are accepted when LB&I follows the IRM provisions regarding notification to Chief Counsel and the Justice Department.
 - a. Appeals provides an ATCL or AO to assist Examination and the taxpayer in evaluating the merits of the issues, including hazards of litigation.
 - b. Since the final tax determination is generally under the jurisdiction of a court, a closing agreement is generally not used because no one representing the taxpayer possesses the authority to execute the closing agreement. The decision to reduce the liability in the proof of claim rests with LB&I, in accordance with Chief Counsel and the Justice Department.

8.26.1.6.2
(10-01-2012)

**TEFRA Cases in LB&I
FTS**

- (1) TEFRA cases are accepted under limited circumstances with the concurrence of both the Appeals Fast Track Program Manager and the LB&I Territory Manager.
- (2) LB&I FTS is used for cases in a TEFRA proceeding where the first level partnership and the major controlling partners are included in the FTS session.
- (3) LB&I must agree to maintain responsibility for both the partnership and the partner statutes, and to complete the required TEFRA administrative proceedings, including NOPA, NBAP and FPAA procedures, and to secure and process partner settlement agreements for all levels.

- (4) An ATCL or AO conducts the FTS session at the first entity level and helps the parties reach a settlement.
- (5) Secure the following Waiver on Assessment agreements from the partners:
 - a. For partnership tax years ending before 8/6/1997, secure Form 870-P, Agreement to Assessment and Collection of Deficiency in Tax for Partnership Adjustments, or Form 870-P(AD) , Settlement Agreement for Partnership Adjustments, whichever is appropriate.
 - b. For partnership tax years ending after 8/5/1997, secure Form 870-PT, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, or Form 870-PT(AD), Settlement Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, whichever is appropriate.
- (6) Generally, a closing agreement is not used in TEFRA cases, but may be used at the option of the parties. Refer to IRM 8.13.1.2.6 for guidance in preparing closing agreements for partners in a TEFRA partnership.
- (7) The Appeals Official signs Form 870-P(AD) or Form 870-PT(AD) for all partners when he/she uses the settlement authority delegated to him/her to resolve issues based on an analysis of the hazards of litigation. If an Appeals Official does not use his/her settlement authority, LB&I secures Form 870-P or Form 870-PT from all partners.

Caution: If the correct allocation of a partnership interest is an issue being considered, do not accept any settlement agreements unless all partners agree to the allocation by executing appropriate agreement forms. See IRM 8.19.3.6.4 for more information on allocation issues.

8.26.1.6.3
(10-01-2012)
**Compliance Assurance
Process (CAP) Cases in
LB&I FTS**

- (1) FTS is available on an issue-by-issue basis for LB&I cases participating in the Compliance Assurance Process (CAP). The IRS formally announced CAP in Announcement 2005-87, 2005-50 I.R.B. CAP is an LB&I program designed to resolve tax issues prior to the filing of a tax return.
 - a. Under CAP, corporations are assigned to an LB&I Account Coordinator (AC) who works with the taxpayer and coordinates additional IRS resources as needed to resolve economic events and material tax transactions in a contemporaneous manner with the goal of resolving tax issues prior to filing the corporate tax return.
 - b. The LB&I AC engages the taxpayer to identify and resolve material issues during the tax year rather than waiting several years after a tax return is filed.
 - c. When an agreement to the proper tax treatment is reached, the taxpayer receives an acceptance letter from the IRS, omitting the need for post filing review of specific transactions or issues.
- (2) For LB&I taxpayers participating in CAP who do not utilize FTS prior to the return being filed, the option is available to elect FTS during the post-filing examination process. An exception is a change in facts and circumstances the parties subsequently agree merits the use of FTS.

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- (3) Fully developed, but unagreed issues not resolved using FTS during pre-filing are incorporated into a 30-day letter once the return is filed and the case is forwarded through the traditional Appeals process for CAP issues.
- (4) Binding arbitration is not an option available for CAP issues.
- (5) The agreed resolution is incorporated into the appropriate closing agreement for LB&I CAP issues resolved during the FTS session.

8.26.1.6.4 (10-01-2012) Non-LB&I Cases in LB&I FTS

- (1) Non-LB&I cases are accepted under Section 3.02 of Rev. Proc. 2003-40 when the Appeals Fast Track Program Manager and the referring Operating Division's first line management concur.
 - a. The appropriate non-LB&I Examination Operating Division manager carries the responsibilities of the LB&I Team Manager.

8.26.1.7 (09-24-2013) Types of Cases Excluded from LB&I FTS

- (1) Generally, docketed cases, constitutional issues, and cases in which a 30-day letter was issued are excluded from the LB&I FTS program.
- (2) LB&I FTS is **not** available for the following:
 - a. Issues in a taxpayer's case designated for litigation.
 - b. Issues in a taxpayer's case under consideration for designation for litigation.
 - c. Issues for which a taxpayer requests the Simultaneous Appeals/Competent Authority procedure described in section 8 of Rev. Proc. 2006-54.
 - d. Issues outside of LB&I jurisdiction (e.g. Collection, Employee Plans, Exempt Organizations) except as noted above.
 - e. Issues that are part of a whipsaw transaction.
 - f. Issues identified in a Chief Counsel Notice, or equivalent publication, as excluded from the FTS process.
 - g. Issues for which mediation is not consistent with sound tax administration.
- (3) Issues specifically excluded under Rev. Proc. 2003-40 result in the exclusion of the entire case.

8.26.1.8 (10-01-2012) Initiating LB&I FTS

- (1) LB&I FTS is initiated any time after an issue is fully developed. An issue is generally considered fully developed when -
 - a. For cases from LB&I - when Form 5701, Notice of Proposed Adjustment, was issued to the taxpayer clearly setting out the Government's position, and the taxpayer has prepared a written response defining their position and the basis for disagreement.
 - b. For cases from other Operating Divisions - when the case could otherwise be written up as unagreed with a 30-day or 90-day letter.
- (2) It is best to consider all unagreed issues of a case in one "Application for Fast Track Settlement"; however, depending on the availability of sufficient Appeals resources, individual issues may be accepted into LB&I FTS. When it is in the best interest of tax administration, accept the "Application for Fast Track Settlement" for individual issues or groups of issues.
- (3) The greatest opportunity to reduce administrative burden and costs for all parties exists when

- All issues are raised and the examination process is nearly complete.
- All claims are filed and examined.
- Issues are fully developed.
- Taxpayer states their position in writing.
- There are a limited number of unagreed issues.

- (4) With the concurrence of the Appeals Fast Track Program Manager and the LB&I Territory Manager, an issue is accepted when it is adequately developed to facilitate resolution, even though it may not be developed to the extent required for a Revenue Agent Report (RAR).

8.26.1.9
(09-24-2013)
**Determining Acceptance
of LB&I FTS Case**

- (1) When the “Application for Fast Track Settlement”, Form 14017, is ready to submit and is signed by the appropriate LB&I Territory Manager, the referring LB&I Team Manager emails the application to the FTS mailbox at *AP ATCL FTS@irs.gov.
- (2) In most cases, the Appeals Fast Track Program Manager notifies the ATM that an LB&I FTS case is coming to the local office. When time permits, the ATM pre-assigns an ATCL or AO to the case.
- (3) Within **three business days** of receipt, the Appeals Fast Track Program Manager reviews the “Application for Fast Track Settlement” to determine if the LB&I FTS eligibility requirements are met.
- (4) Any case started without concurrence of both the Appeals Fast Track Program Manager and the Examination Territory Manager will, at the discretion of either manager, be treated as a withdrawn case.
- (5) Except with the concurrence of the LB&I Territory Manager and the Appeals Fast Track Program Manager, the FTS process is **limited to 120 calendar days**.

8.26.1.9.1
(10-01-2012)
Accepting the LB&I FTS

- (1) If the Appeals Fast Track Program Manager determines the case is eligible, he/she signs the Application to Fast Track Settlement and forwards it to the local ATM for concurrence.
- (2) If the ATM concurs with the acceptance of the application, he/she signs the “Application for Fast Track Settlement” and faxes a signed copy to the Appeals Fast Track Program Manager.
- (3) Another ATM can be assigned to do the review if the first ATM notifies the Appeals Fast Track Program Manager that he/she does not recommend acceptance.

8.26.1.9.2
(10-01-2012)
**Denying the LB&I FTS
Request**

- (1) If the Appeals Fast Track Program Manager or ATM determines that a case does not qualify for LB&I FTS (e.g. issues not fully developed, issues do not qualify, Appeals resources are not available, issues excluded), the ATM discusses the reason(s) for the denial with the Appeals Fast Track Program Manager.

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- (2) Requests for Technical Advice, Field Service Advice, etc. are not made during the LB&I FTS process. Cases requiring such issue development actions are not ready for Fast Track, and the Appeals Fast Track Program Manager or ATM recommends rejection.
- (3) The Appeals Fast Track Program Manager may concur with a recommended denial of the LB&I FTS request by an ATM, or may accept the case and identify necessary resources.
- (4) If the LB&I FTS request is recommended for rejection, the Appeals Fast Track Program Manager discusses the reason(s) for rejection with the LB&I Territory Manager.
- (5) The Appeals Fast Track Program Manager notifies both the taxpayer and LB&I Team Manager of the reason(s) for the denial within **ten business days** of receipt of the "Application for Fast Track Settlement."

8.26.1.10 (10-01-2012)

Appeals Receipt of LB&I FTS Cases

- (1) When Appeals receives an LB&I FTS case, it is required that the administrative file includes the following documents:
 - Application for Fast Track Settlement
 - Form 5701, Notice of Proposed Adjustment, and/or Form 886-A. (For CAP issues, include the LB&I Issue Position Paper.)
 - Taxpayer's written response.
- (2) Any concerns the LB&I Team Manager or taxpayer have are referred to either LB&I or the Appeals Fast Track Program Manager before the formal FTS package is completed.

8.26.1.10.1 (10-01-2012)

Carding in the LB&I FTS Case

- (1) The "Application for Fast Track Settlement" must be signed by the ATM, the Appeals Fast Track Program Manager and the LB&I Territory Manager before the case is input into ACDS.
- (2) Carding in a Fast Track Settlement case is given priority treatment.
- (3) When carding in the LB&I FTS case, the Lead Large Case Processor (LLCP) follows the general provisions for carding in cases contained in IRM 8.20.5.1, Appeals Processing Manual, Processing and Establishing New Receipts. However, the following special entries are made on the case inventory screen:
 - Source = FE (check AMDISA for Aging Reason Code 04, if present, source is CE)
 - Feature Code = LS (CAP issues include Feature Code = CP in addition to the LS)
 - ASGNDATE = Consistent with normal ACDS procedure
 - REQAPPL = Later of date Application signed by taxpayer or the LB&I Territory Manager
 - RECDATE = Later of acceptance dates by the Appeals Fast Track Program Manager or the ATM
 - CREDATE = Consistent with normal ACDS procedure
- (4) Add return level information as follows:
 - AIMS Indicator = E
 - STATDATE = leave Blank
 - STATCODE = EXAM

- PBC = Check AMDISA for the correct code
- Proposed Tax/Proposed Penalty = enter an amount equal to 35% of the adjustments to taxable income and the dollar-for-dollar effect of adjustments to credits

- (5) The LLCP will obtain IDRS Command Code AMDISA research to verify whether the case is in Status 15 with an Aging Reason Code (ARC) 23. If these codes are present, 15-23 will be entered into the LOC9 Field on ACDS.

8.26.1.11
(10-01-2012)
**Assignment of the LB&I
FTS Case**

- (1) Upon acceptance of the "Application for Fast Track Settlement," and the concurrence of the Appeals Fast Track Program Manager, the ATM assigns the case to an ATCL or AO within ***seven business days*** of receipt of the application.
- (2) Use the following general guidelines when assigning cases from LB&I:
- a. Primarily assign to a Grade 15 ATCL trained in mediation.
 - b. In limited cases, assign individually to a Grade 14 AO trained in mediation, or assign it jointly to an AO and an Appeals Team Manager (ATM) who act as co-mediators.
- (3) Use the following general guidelines when assigning cases from other Operating Divisions participating in the LB&I FTS program as follows:
- a. Primarily assign to a Grade 14 AO trained in mediation in conjunction with an ATM.
 - b. In limited cases, assign to a Grade 13 AO trained in mediation in conjunction with an ATM.
- (4) When determining a reasonably convenient site for the LB&I FTS session, the ATCL or AO follows the provisions of IRM 8.6.1.3.1 for providing convenient conference opportunities.
- (5) The ATM and ATCL or AO coordinate on the need to use a team of AOs.
- (6) When the case includes Appeals Coordinated Issues (ACI) or LB&I Coordinated Issues (CCI), the ATCL or AO follows the requirements in IRM IRC 8.7.3.4.2, and IRM 8.1.3.9, to refer the issues to Appeals Domestic/International Operations. Initiate the referral by phone and follow up with a formal written referral.
- (7) The Appeals LB&I FTS Program Manager requests that Appeals management assign the FTS case to ATCLs or AOs with experience or particular technical expertise in the issue, such as CCI/ACI issues, international issues or listed transactions.

8.26.1.12
(10-01-2012)
**Planning and
Conducting the LB&I
FTS Session**

- (1) The LB&I FTS session includes all activities from the acceptance date of the LB&I FTS case through the date all three parties reach a final agreement.
- (2) Planning begins when the taxpayer and LB&I complete the "Application for Fast Track Settlement," which includes a target completion date.
- (3) The parties must agree to a plan that allows completion of the LB&I FTS process within ***120 calendar days***.

8.26.1.12.1
(10-01-2012)

Purpose of the Session Report

- (1) The FT Session Report, Form 14000, assists the parties in planning the LB&I FTS session and reports progress on the issues in dispute.
- (2) Use the FT Session Report to identify the issues and reflect agreement by all parties on the number and description of issues, the amounts in dispute, conference dates, and a plan of action to follow in the LB&I FTS process.
- (3) In addition to documenting all contacts in the ACDS activity record and conference notes, the ATCL or AO uses the FT Session Report at the start of the process, and updates it as decisions are made.
- (4) The ATCL or AO gives the taxpayer and LB&I a copy of the FT Session Report at the beginning of the process with Letter 4365, FTS Acknowledgement Letter, and after each decision is reached and the report is updated. He/She confirms the parties agree with all entries.
- (5) At the conclusion of the process, the FT Session Report forms the basis for drafting closing agreements and the Revenue Agent's Report (RAR).
- (6) The ATCL or AO solicits signatures of the taxpayer and LB&I Team Manager at the conclusion of the session whether agreed or unagreed. Signing the FT Session Report does not constitute a final settlement. The signatures carry no more force and effect than a memorandum of understanding between the parties.
- (7) The FT Session Report is not a waiver of restrictions on assessment, does not terminate consents to extend the statute of limitations, nor does it start the running of any statute of limitations, in particular the one-year statute under IRC 6229(f) involving TEFRA proceedings.
- (8) LB&I FTS cases involving TEFRA partnerships must include the above language on the face of the FTS Session Report.
- (9) The signature of a Service official on the FT Session Report does not create a promise against reopening the case.

8.26.1.12.2
(10-01-2012)

Conducting the LB&I FTS Session

- (1) When conducting the LB&I FTS session, the ATCL or AO uses a FTS Session Report and an agenda. The agenda guides the communication, sets the order of issue discussion, asks questions to clarify each issue and guides conference meetings.
- (2) The ATCL or AO provides the FTS Session Report to all decision makers early in the process, and updates it as the session progresses.
- (3) The LB&I FTS session is led by Appeals, but all three parties are active participants with equal voices.
- (4) LB&I FTS employs various alternative dispute resolution techniques to propose solutions.
- (5) Appeals does not act in a traditional Appeals role, but first uses an interest-based approach to facilitate a settlement of the issues between the parties.
- (6) Using mediation techniques, Appeals attempts to bring the parties to a mutual resolution of the issues during the FTS session.

- (7) Appeals may conduct the entire LB&I FTS session jointly with LB&I and the taxpayer, or with LB&I and the taxpayer separately after an initial joint session.
- (8) As issues are resolved, Appeals posts the results to the FTS Session Report and gives an updated copy to all participants. Appeals maintains a history of the updated FTS Session Reports.

8.26.1.12.3
(10-01-2012)
**New Information
Received During LB&I
FTS Session**

- (1) If the taxpayer or LB&I presents new information during the LB&I FTS session, Appeals gives the receiving party adequate time to evaluate it.
- (2) If consideration of substantial new information unacceptably delays the FTS session, Appeals withdraws the case from LB&I FTS. The case is resubmitted for acceptance into LB&I FTS after the issues are fully developed.
- (3) In situations where substantial new information is disclosed as part of the FTS process, the information serves as a basis to raise a new issue or file a claim. Where the process is not delayed beyond **120 calendar days**, and all parties agree to accept the new issue or claim, it is accepted into the existing LB&I FTS process.

8.26.1.12.4
(10-01-2012)
**New Issues/Claims
Raised During LB&I FTS
Session**

- (1) Once a case comes to LB&I FTS, the expectation is that all issues and claims were raised, all relevant information is disclosed, and the case is ready for resolution. The ATCL or AO confirms all issues are listed on the FTS Session Report at the beginning of the process.
- (2) New issues or claims are generally not accepted if the FTS process cannot be completed within **120 calendar days**.
- (3) The grounds for raising a new issue or claim must be substantial, and the potential effect on the tax liability must be material. New issues or claims are not raised to trade against existing issues.
- (4) A taxpayer's claim requires LB&I action. However, such action need not be part of the LB&I FTS process.
- (5) New, unrelated claims or new issues raised are not attached to an existing FTS process, but generally are considered in a separate process outside of FTS.
- (6) While the parties work to resolve the issues originally referred to LB&I FTS, the process is not suspended to allow examination of the new issues/claims.
- (7) If the taxpayer declines to bring the LB&I FTS process to a conclusion prior to consideration of such claims, the Service withdraws the case from LB&I FTS. The taxpayer then reapplies for LB&I FTS after LB&I completes a review of the new claim.
- (8) **NEW ISSUES** - To raise a new issue, there must be good, sound, substantial grounds already existing in the record or known to the decision maker. Substantial grounds are those that cause a decision maker to be quite certain, at the time a new issue is raised, that the Government will prevail if the issue is litigated. Quite certain does not necessarily mean 100 percent certain, but it does mean a very high degree of certainty.

8.26.1.12.5
(10-01-2012)

**Terminating the LB&I
FTS Session**

- (1) If after a reasonable time, it is apparent no further benefit will be derived from the process, the LB&I Team Manager and/or the ATCL or AO considers terminating the session. If it is determined the session should be terminated, he/she consults the Appeals Fast Track Program Manager before making the final decision to terminate the session.
- (2) A decision by the LB&I Team Manager to terminate the FTS session requires concurrence of the appropriate LB&I Territory Manager.
- (3) If no issues are resolved prior to termination, no further reporting to the taxpayer or LB&I by Appeals are required.
- (4) If some issues are resolved at the time of termination, follow standard LB&I FTS process closing procedures for the resolved issues.
- (5) The taxpayer retains all standard appeal rights with regard to any issues remaining unresolved at the time of termination. However, the traditional appeal will not be assigned to the same ATCL or AO that heard the FTS session, unless concurrence is received in writing from the taxpayer and LB&I prior to assignment.

8.26.1.12.6
(10-01-2012)

**Withdrawal from LB&I
FTS Session**

- (1) If after assignment, it is determined a case is not ready for the LB&I FTS process, or there is a change in status, the ATCL or AO discusses withdrawal of the case with the appropriate Appeals Fast Track Program Manager and Appeals Team Manager.
- (2) A change in status may include but is not limited to filing for bankruptcy, a change in corporate structure, finding the case is not sufficiently developed to proceed, or a determination on a Service-wide basis that a particular issue is not subject to a negotiated settlement.
- (3) In the event of the withdrawal of a case, the ATCL or AO -
 - a. Sends a letter to both the taxpayer and LB&I identifying who participated, listing the unresolved issues, and explaining that the taxpayer retains full rights to a traditional appeal.
 - b. Returns the administrative file to LB&I without an Appeals Case Memorandum (ACM). The file consists only of Form 5701 and the taxpayer's written response to Examination .
 - c. Follows closing procedures listed in IRM 8.26.1.15. for closing procedures.
- (4) A case may be withdrawn without prejudice, and after the question is addressed, the "Application for Fast Track" may be reconsidered.
- (5) When resubmitting a withdrawn case, management decides how to assign an ATCL or AO. *Ex parte* restrictions are not imposed on intra-Appeals communications. Appeals management takes appropriate action to fulfill the Appeals Mission to be fair and impartial. This policy must be made clear to the taxpayer at the beginning of the process, and if the taxpayer is unable to accept this policy, the taxpayer may decide to forego the LB&I FTS option and go to traditional Appeals.
- (6) The taxpayer may withdraw from LB&I FTS at any time by providing written notice to the LB&I Team Manager and the ATCL or AO.
- (7) For any unresolved issue(s), taxpayers retain all traditional appeal rights. However, the traditional appeal will not be assigned to the same ATCL or AO

who heard the FTS session, unless the taxpayer and LB&I provides written concurrence is received prior to assignment.

- (8) When a taxpayer requests an Appeals hearing and submits an acceptable protest, LB&I closes the case as “Unagreed” or “Partially Agreed,” as appropriate, and forwards the case to Appeals.
- (9) The taxpayer is advised that the case will be closed using the standard LB&I closing process.

8.26.1.13 (10-01-2012) **Appeals Recommendation for Settlement**

- (1) Appeals uses various methods and techniques to meet the needs and circumstances of each particular case.
- (2) The ATCL or AO may make recommendations regarding the settlement of any or all issues (both factual and legal). If acceptable to both parties, the settlement proposal is adopted. However, neither party is required to accept a proposal.
- (3) Both LB&I and the taxpayer must agree with the settlement proposal. If the LB&I Team Manager rejects the ATCL’s or AO’s settlement proposal, the LB&I Territory Manager must concur in writing with the rejection.
- (4) If the LB&I Territory Manager concurs with the LB&I Team Manager’s rejection of the proposed settlement, and an acceptable alternative settlement is not reached, the issue is closed unagreed.
- (5) If the LB&I Territory Manager does not concur with the rejection of the proposed settlement, the settlement proposal is accepted by LB&I.

8.26.1.14 (10-01-2012) **Reaching Agreement on the LB&I FTS Case**

- (1) On the day agreement is reached, at the conclusion of the LB&I FTS session, the amounts of the agreed adjustments are put into the FT Session Report and Appeals asks the parties to indicate agreement by signing the report.
- (2) For those issues resolved using Appeals settlement authority, Appeals advises the taxpayer the settlement is not final until a closing agreement is signed. All parties are given a copy of the signed FT Session Report.
- (3) With an agreement reached, the parties have several weeks to complete the final closing procedures, including the preparation of the tax computations by LB&I. For issues settled by Appeals, Appeals prepares a brief ACM and a closing agreement. After the taxpayer and Appeals sign the closing agreement, LB&I secures the appropriate case closing documents from the taxpayer and closes the case through standard examination procedures.

8.26.1.15 (10-01-2012) **Unresolved Issues in LB&I FTS**

- (1) As in traditional Appeals cases when there are both resolved and unresolved issues in LB&I FTS cases, the resolved issues are closed using the agreed procedures.
- (2) When the LB&I FTS process is unsuccessful in resolving an issue (including withdrawn issues), Appeals sends a letter to both the taxpayer and LB&I identifying who participated in the process, listing the issues not resolved, and explaining the taxpayer’s rights to appeal.

8.26 Alternative Dispute Resolution (ADR) Program

- (3) The administrative file consisting of the Form 5701 with the taxpayer's written response, any FTS workpapers prepared by LB&I and Form 5402 are provided to LB&I for inclusion in the case file. No Appeals Case Memorandum (ACM) is prepared for unresolved issues.
- 8.26.1.16**
(10-01-2012)
Reconsideration of FTS Session Report Agreements
- (1) The FT Session Report is considered final when it is signed, unless the specific conditions outlined below warrant altering the agreement.
- (2) If an agreement is reached, but a subsequent authoritative decision is rendered affecting the agreement in a substantive and material manner, either LB&I or Appeals reconsiders the agreement unless both the taxpayer and Appeals previously signed a closing agreement Form 906, or Form 870-AD.
- (3) If the change is substantive and material, the agreement is renegotiated. The word substantive means a change in law or legal precedent which results in a meaningful change to Appeals' assessment of the hazards of litigation.
- (4) Any agreement reached in a LB&I FTS session may be reopened in the case of fraud, malfeasance, concealment or misrepresentation of a material fact.
- (5) The grounds for such action must be substantial (strong, possessing real merit) and the potential effect on the tax liability must be material (having real importance and great consequence).
- (6) Outside of these strict parameters, LB&I and Appeals will respect the terms agreed to on the FTS Session Report.
- (7) LB&I and Appeals commit to advocate the agreement reached in a signed FTS Session Report to reviewing authorities, such as the Joint Committee.
- (8) In the event of a request from Appeals or LB&I to reconsider the FT Session Report agreement, the LB&I Territory Manager and the ATM must agree on the decision to reconsider. If LB&I and Appeals are unable to agree, the decision is elevated to the Executive owners of the LB&I FTS process.
- 8.26.1.17**
(10-01-2012)
Closing the LB&I FTS Case
- (1) When an agreement is reached, the parties have several weeks to complete the final closing procedures, including the preparation of the tax computations by LB&I.
- (2) For issues settled by Appeals, Appeals prepares a brief ACM and a closing agreement.
- (3) After the taxpayer and Appeals sign the closing agreement, LB&I secures the appropriate case closing documents from the taxpayer and from Appeals, then closes the case through standard examination procedures.
- 8.26.1.17.1**
(10-01-2012)
Closing Agreement Distribution and Taxpayer Closing Letter
- (1) The following details the distribution for the closing agreement:
- Original to Examination to staple to return
 - Duplicate to taxpayer
 - Triplicate to Appeals closed file records
 - Copy to Appeals Fast Track Program Manager
- (2) Send the taxpayer the closing agreement with a closing letter containing the following text:

"The agreement we reached on your LB&I FTS case has been approved and we will return the file to LB&I so that they may complete processing of your case. The enclosed copy of the accepted closing agreement is for your records. The LB&I team will compute the tax and give you a report. If you have any questions, please call me at the phone number shown above."

- (3) For CAP issues, forward the closing letter to the LB&I AC and LB&I Team Manager.

8.26.1.17.2
(10-01-2012)
Brief Appeals Case Memorandum (ACM)

- (1) For issues settled using Appeals settlement authority, Appeals prepares a brief ACM and a closing agreement. A brief ACM summarizes the significant facts, body of law relied upon by the parties, and includes a brief evaluation and recommendation on whether the disposition should be accepted.
- (2) For issues settled using the authority of the LB&I Team Manager rather than Appeals settlement authority, Appeals does not prepare an ACM. Appeals may be asked to assist in preparing a closing agreement for LB&I resolved issues, but an authorized LB&I manager executes the closing agreement.
- (3) No ACM is required for issues not resolved in the FTS session.

8.26.1.17.3
(10-01-2012)
Preparing Form 5402, Appeals Transmittal and Case Memo

- (1) The ATCL or AO prepares Form 5402 and includes the following entries:
 - a. Item 8, Revised Findings – enter an amount equal to 35% of the agreed adjustments to taxable income and the dollar-for-dollar effect of agreed adjustments to credits.
 - b. Item 11, Remarks – enter "This is an LB&I Fast Track Settlement Case"
 - c. Item 11, Closing Code – enter either :
 - 14 – Fully resolved
 - 15 – Not resolved (includes taxpayer withdrawals)
 - 16 – Partially resolved
 - 20 – Withdrawn for procedural reasons (further development, bankruptcy)
 - d. Joint Committee Cases – note in Item 11, Remarks, "The closing agreement should be returned to Appeals for signature after the Joint Committee completes consideration of the settlement."

8.26.1.17.4
(10-01-2012)
Closing an LB&I FTS Case Subject to Joint Committee

- (1) Follow special procedures in cases subject to Joint Committee reporting requirements.
- (2) Upon assignment of an LB&I FTS case, Appeals must confer with both the taxpayer and LB&I to determine whether the case is subject to Joint Committee reporting requirements, and record the results in the ACDS case activity record.
- (3) At the completion of the LB&I FTS process, the case status relative to Joint Committee reporting is reconfirmed, taking into consideration the results of the settlement process, before finalizing the settlement.
- (4) When issues are resolved by Appeals using delegated settlement authority, Appeals is responsible for preparing an ACM and providing a copy to LB&I for inclusion in their Joint Committee Report.

8.26 Alternative Dispute Resolution (ADR) Program

- (5) On the day agreement is reached, the terms and dollar adjustments of the resolved issues are documented on the FT Session Report. All parties (Appeals, LB&I and the taxpayer) sign-off on the FT Session Report, and LB&I begins preparing the tax computation and the Joint Committee Report. Appeals explains to the taxpayer that the agreement is treated as final for computation purposes, but it is subject to review by the Congressional Joint Committee on Taxation.
- (6) Appeals prepares the closing agreement on settled issues, and solicits the taxpayer's signature on the closing agreement, but the closing agreement is not signed by Appeals until the Joint Committee clearance letter is received.
- (7) Immediately after the taxpayer signs the closing agreement, Appeals closes the case on ACDS using Form 5402. The ATCL or AO notes in Item 11, Remarks, on the Form 5402: "The closing agreement should be returned to Appeals for signature after the Joint Committee completes consideration of the settlement."
- (8) Since the case is in LB&I jurisdiction, LB&I makes the final tax computation, and writes the Joint Committee Report. Appeals prepares an ACM explaining **only** those LB&I FTS issues resolved with Appeals settlement authority. The explanation provides sufficient detail and analysis to apprise the Joint Committee of the Appeals evaluation and settlement of the LB&I Fast Track issues. On the settled issues, Appeals responds to any concerns raised by the Joint Committee.
- (9) LB&I includes the Form 5402, ACM and closing agreement in their Joint Committee Report.
- (10) Issues resolved between the taxpayer and LB&I without the need for Appeals settlement authority (resolved within the LB&I Team Manager's authority), are written up by LB&I who will respond to Joint Committee concerns for these issues.

8.26.1.17.5
(10-01-2012)

LB&I FTS Closing Package

- (1) When the LB&I FTS case is completed, submit a "LB&I FTS Closing Package" to the following:
 - a. ATM
 - b. Appeals Fast Track Program Manager (or designee)
 - c. LB&I Team Manager
- (2) The "LB&I FTS Closing Package" consists of:
 - a. Form 5402
 - b. Brief ACM (if required)
 - c. Closing Agreement (if required)
 - d. FT Session Report(s)
 - e. Agenda(s)
 - f. Case Activity Record
 - g. All correspondence received from and sent to the taxpayer/representative
- (3) Close the administrative file along with the LB&I Team Manager's closing package to the LLCP and flag it with **LB&I Fast Track Settlement - Expedite Handling**

8.26.1.17.6
(10-01-2012)
**LLCP Closing
Procedures for LB&I
FTS Cases**

- (4) The ATCL or AO forwards the Appeals Fast Track Program Manager's closing package directly to the Appeals Fast Track Program Manager (or designee).
- (1) The general provision for LLCP closing procedures is found in IRM 8.20.7, Appeals Processing Manual - Appeals Case Closures.
- (2) The package is forwarded to the Appeals Fast Track Program Manager.
- (3) The LLCP returns the administrative file and "LB&I FTS Closing Package" to LB&I using Form 3210.

