



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.26.4

SEPTEMBER 23, 2013

## EFFECTIVE DATE

(09-23-2013)

## PURPOSE

- (1) This transmits revised IRM 8.26. 4, Alternative Dispute Resolution (ADR) Program, Early Referral

## MATERIAL CHANGES

- (1) The revision to this IRM is to remove instructions to Account and Processing Support (APS).

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 8.26.2 dated September 25, 2012.

## AUDIENCE

Appeals

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



---

8.26.4

Early Referral Procedures

## Table of Contents

- 8.26.4.1 Overview of the Early Referral (ER) Program
- 8.26.4.2 Initiating the ER Process
- 8.26.4.3 Issues Eligible for Early Referral
  - 8.26.4.3.1 Early Referral Issues Involving Change in Accounting Method
  - 8.26.4.3.2 Employment Tax Issues in Early Referral
  - 8.26.4.3.3 Early Referral in Collection Issues
  - 8.26.4.3.4 Employee Plans and Exempt Organizations EP/EO
- 8.26.4.4 Issues Excluded from Early Referral
  - 8.26.4.4.1 Excluded Employee Plans Issues
  - 8.26.4.4.2 Excluded Exempt Organizations Issues
- 8.26.4.5 General Procedures for Handling ER Requests
  - 8.26.4.5.1 Exam and Collection Procedures
  - 8.26.4.5.2 Taxpayer Response to Proposed Adjustments
- 8.26.4.6 Receipt and Control of Early Referral Issues
  - 8.26.4.6.1 Assignment of an Early Referral Issues
- 8.26.4.7 Resolving Early Referral Issues
  - 8.26.4.7.1 Agreement Reached on Early Referral Issues
  - 8.26.4.7.2 Agreement Not Reached on Early Referral Issues
- 8.26.4.8 Withdrawal from Early Referral
- 8.26.4.9 Closing Early Referral Cases
- 8.26.4.10 Effect on the Conclusion of an Examination



## 8.26.4.1

(10-26-2007)

**Overview of the Early Referral (ER) Program**

- (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 programs were developed to achieve this objective. The objective of Early Referral is for Exam/Collection to work simultaneously with Appeals to resolve cases more expeditiously.
- (2) Rev. Proc. 99-28 establishes the Early Referral (ER) Program to allow taxpayers under examination to request the transfer of a developed but unagreed issue to Appeals while the other issues in the case continue to be developed in Examination (Exam) or Collection.
- (3) Since the ER process is optional, the Service feels the taxpayer will fully cooperate and timely submit requested information. The taxpayer's failure to cooperate or respond to requests timely is reason to end the ER.
- (4) Appeals takes jurisdiction over issues accepted for ER. All other issues in the case remain in Exam or Collection's jurisdiction.

## 8.26.4.2

(10-26-2007)

**Initiating the ER Process**

- (1) Either the taxpayer or Exam/Collection initiates ER to Appeals. When the taxpayer initiates the process, he/she must submit a written request to the Group Manager.

**Note:** There is no formal appeal if the ER request is denied in whole or part; however, the taxpayer can request a conference with the Group Manager who denied the request.

- (2) The taxpayer's ER request must -
  - a. identify the taxpayer and all related persons involved in the issues.
  - b. state each tax period and issue covered by the ER request.
  - c. describe the taxpayer's position and provide a brief discussion of the material facts and an analysis of the facts and law as they apply to each ER issue.
- (3) The taxpayer's written ER request must include the following declaration and be signed by either the taxpayer or the taxpayer's authorized representative:

***Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.***

## 8.26.4.3

(10-26-2007)

**Issues Eligible for Early Referral**

- (1) The taxpayer may request ER to Appeals on any developed, unagreed issue proposed during an audit. The case must still be under the jurisdiction of Exam or Collection. See IRM 8.26.5.3.2 (1) for an exception.
- (2) Appropriate issues for ER are limited to those that:
  - if resolved, can reasonably be expected to result in a quicker resolution of the entire case
  - both the taxpayer and Exam or Collection agree should be referred to Appeals
  - are fully developed
  - are part of a case where the remaining issues are not expected to be completed before Appeals can resolve the ER issue(s).

- (3) Procedures for the ER of issues proposed during the examination of the tax-exempt status of a bond issue are in IRM 4.46.1, Planning the Examination.

8.26.4.3.1  
(10-26-2007)

**Early Referral Issues  
Involving Change in  
Accounting Method**

- (1) ER generally applies to all examination issues. Examples of appropriate accounting method issues for ER include:
- the taxpayer's practice is a method of accounting.
  - the IRS is precluded from changing the taxpayer's method of accounting because, for example, the taxpayer obtained audit protection by initiating a voluntary accounting method change.
  - the taxpayer's present method of accounting clearly reflects income under IRC 446.
  - the method of accounting proposed by the IRS clearly reflects income under IRC 446.
  - the methodology used by the IRS to compute the IRC 481(a) or IRC 481(b) adjustment is appropriate.

8.26.4.3.2  
(10-26-2007)

**Employment Tax Issues  
in Early Referral**

- (1) ER generally applies to all employment tax issues. Examples of appropriate employment tax issues for ER include:
- worker classification issues, including whether a worker is an employee or independent contractor and whether a worker is a statutory employee or statutory non-employee.
  - liability issues, including whether IRC 530 applies; whether IRC 3509 rates are appropriate; and whether the taxpayer qualifies for an interest-free adjustment.
  - other issues, including whether certain payments are excepted from the definition of "wages", and whether certain services are excepted from the definition of "employment".

8.26.4.3.3  
(10-26-2007)

**Early Referral in  
Collection Issues**

- (1) ER generally applies to Collection issues. Procedures for utilizing ER are described in IRM 5.1.9, Collection Appeal Rights.
- (2) ER of Collection issues is a different process than the Collection Due Process (CDP) procedures for liens and levies.
- (3) The ER procedures apply to a broader range of Collection issues than the CDP procedures. Appropriate Collection issues for ER include proposed:
- notices of federal tax liens
  - levies
  - seizures
  - denials or terminations of installment agreements.

8.26.4.3.4  
(10-26-2007)

**Employee Plans and  
Exempt Organizations  
EP/EO**

- (1) ER generally applies to EP/EO issues; however EP/EO issues excluded from the early referral process are identified below. See IRM 8.26.4.4.

8.26.4.4  
(10-26-2007)

**Issues Excluded from  
Early Referral**

- (1) The following issues do not qualify for ER:

- Issues included in a 30-day letter that was issued. Thus, a qualified offer under IRC 7430(c) , may not be made as part of the ER process because such offers may only be made subsequent to the issuance of a 30-day letter
- Issues that are not fully developed
- Issues that cannot be resolved by Appeals before the remaining issues in the case are completed by Examination.
- Issues designated for litigation by the Office of Chief Counsel
- Issues for which the taxpayer filed a request for or intends to seek Competent Authority assistance.
- Issues that are part of a whipsaw transaction.

8.26.4.4.1  
(10-26-2007)  
**Excluded Employee  
Plans Issues**

- (1) The following list the types of Employee Plans (EP) issues excluded from ER:
  - procedural issues relating to matters that may be eligible for Administrative Policy Regarding Self-Correction, or submitted under the Voluntary Compliance Resolution program, Walk-in Closing Agreement program, or the Audit Closing Agreement Program. See Rev. Proc. 99-22.;
  - issues relating to excise taxes in IRC 4975;
  - issues concerning plan qualification if such issues are not covered by published precedent or are issues for which there may be non-uniformity between offices.

8.26.4.4.2  
(10-26-2007)  
**Excluded Exempt  
Organizations Issues**

- (1) The following list the types of Exempt Organizations (EO) issues excluded from ER:
  - issues subject to IRC 7428, including issues related to exemption or private foundation status;
  - issues arising in Church tax inquiries and examinations subject to IRC 7611;
  - issues relating to excise taxes in IRC 507 and Chapters 41 and 42 of the IRC;
  - issues relating to the revocation of exempt status.

8.26.4.5  
(10-26-2007)  
**General Procedures for  
Handling ER Requests**

- (1) The Exam or Collection Group Manager notifies the taxpayer of the decision to accept or reject an issue in the ER request within 14 days of receipt.
- (2) A taxpayer may not appeal the denial for ER; however, the taxpayer can request a conference with the Group Manager who denied the request.
- (3) If the Group Manager does not approve the ER request with respect to any issue, the taxpayer retains the right to pursue the traditional appeal process for that issue.

8.26.4.5.1  
(10-26-2007)  
**Exam and Collection  
Procedures**

- (1) Exam or Collection completes Form 5701, Notice of Proposed Adjustment, or equivalent referred to as "The Notification Form" for each ER issue approved. The form is sent to the taxpayer within 30 days from the date the ER request was accepted.
- (2) Once the taxpayer responds to "The Notification Form", Exam or Collection sends the "ER Package" to Appeals.

8.26.4.5.2  
(10-26-2007)

**Taxpayer Response to  
Proposed Adjustments**

- (1) The taxpayer must respond in writing to each proposed adjustment with an explanation of their position regarding the issues. The response is submitted to the Group Manager within 30 days (unless extended by the Group manager) from the date "The Notification Form" is sent to the taxpayer.
- (2) If a response is not received for any issue within the 30 days, the taxpayer's ER request is considered withdrawn.

8.26.4.6  
(10-26-2007)

**Receipt and Control of  
Early Referral Issues**

- (1) Appeals takes jurisdiction over the issues accepted for ER. All other issues in the case remain in Exam or Collection's jurisdiction. The "ER Package" must include copies of:
  - applicable portions of tax returns and workpapers;
  - the approved ER request;
  - "The Notification Form";
  - taxpayer's written response;
  - Exam or Collection's response to the taxpayer's position;
  - an estimate of the potential tax effect of the proposed adjustment.

8.26.4.6.1  
(10-01-2012)

**Assignment of an Early  
Referral Issues**

- (1) Upon receipt of an ER case, the ATM reviews the case for completeness and eligibility. If approved, the case is assigned and the "ER Package", including the name of the Appeals Officer, is sent to Account and Processing Support (APS) for input into ACDS.

8.26.4.7  
(10-26-2007)

**Resolving Early Referral  
Issues**

- (1) The taxpayer's written response to "The Notification Form" generally serves the same purpose as an Appeals protest so the established Appeals procedures in IRM 8.6.1, Conference and Settlement Practices apply.

8.26.4.7.1  
(10-26-2007)

**Agreement Reached on  
Early Referral Issues**

- (1) When an agreement is reached in an ER issue, generally Form 906, Closing Agreement on Final Determination Covering Specific Matters, is prepared. The closing agreement is used to compute the corrected tax as a partial agreement prior to or concurrently with the resolution of any other issues in the case.
- (2) If an ER issue results in a refund or credit requiring a report to the Joint Committee on Taxation as described in IRC 6405, the report must include a copy of the proposed closing agreement signed by or for the taxpayer, but **not** signed by or on behalf of the Commissioner. The Service signs the proposed agreement **after** review by the Joint Committee.

8.26.4.7.2  
(10-26-2007)

**Agreement Not Reached  
on Early Referral Issues**

- (1) If ER negotiations are unsuccessful and an agreement is not reached:
  - a. Taxpayers may request mediation for the issue, provided the ER issue meets the requirements for mediation. If mediation is **not** requested, Appeals closes and returns the ER file, with a copy of the Appeals Case Memorandum (ACM) to Compliance. Jurisdiction is changed to Compliance.
  - b. Appeals does not reconsider an unagreed ER issue if the entire case is later protested to Appeals, unless there has been a substantial change in the circumstances regarding the issue.



8.26.4.8  
(10-26-2007)  
**Withdrawal from Early Referral**

- (1) If a taxpayer withdraws an ER request after Appeals takes jurisdiction over the issues, the withdrawal is treated the same as if no agreement was reached. The withdrawal request must be communicated in writing to the Appeals Officer assigned the ER.

8.26.4.9  
(09-23-2013)  
**Closing Early Referral Cases**

- (1) In addition to the general closing procedures found in IRM 8.20.7.17, Early Referral Case Closing Procedures, complete the following:
  - CLOSINGCD = 03 (agreed) or 13 (unagreed)
  - PAYCODE = 7
  - RevsdTax = Revised dollars is computed the same way as the proposed deficiency except use the amount determined by Appeals for an agreed case. For an unagreed case, enter the proposed deficiency.

8.26.4.10  
(10-26-2007)  
**Effect on the Conclusion of an Examination**

- (1) When Exam or Collection completes the examination of any issues not referred as part of the ER process, a 30-day letter is issued with respect to unagreed issues. The letter includes any issues referred under the ER process that are still pending.
- (2) If the only unagreed issues in the case at the time the examination is concluded are issues that **were** considered by Appeals under the ER, a 30-day letter is **not** issued. Instead, a statutory notice of deficiency or 90-day letter is issued.
- (3) If Appeals takes jurisdiction of the remaining issues in the case after a 30-day letter is issued, all issues including the ER issues that are still open are considered under established Appeals procedures.



---

### E

#### Early Referral Issues

Exclusions.....	2
-----------------	---

