



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.26.5

AUGUST 17, 2015

EFFECTIVE DATE

(08-17-2015)

PURPOSE

- (1) This transmits revised IRM 8.26.5, *Post Appeals Mediation (Non-Collection Cases) Procedures*.

MATERIAL CHANGES

- (1) Revised IRM to reflect updates from recently published Revenue Procedure 2014–63.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 8.26.5 dated September 27, 2012.

AUDIENCE

Appeals Employees

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8.26.5

Post Appeals Mediation (PAM) Procedures for Non-Collection Cases

Table of Contents

8.26.5.1 Introduction to Post Appeals Mediation (PAM) Procedures for Non-Collection Cases (Mediation)

8.26.5.2 Headquarters' Involvement

8.26.5.3 Scope of Mediation

8.26.5.3.1 Authority

8.26.5.3.2 Joint Committee (JC) Procedures

8.26.5.3.3 Cases/Issues Eligible for Mediation

8.26.5.3.4 Cases/Issues Not Eligible for Mediation

8.26.5.4 Mediation Process for Non-Collection Cases

8.26.5.4.1 Filing Requirements

8.26.5.4.2 ACDS Requirements

8.26.5.4.3 Review of Mediation Request

8.26.5.4.3.1 Request Denied

8.26.5.4.3.2 Request Approved

8.26.5.4.4 Administrative Conference Call

8.26.5.4.5 Agreement to Mediate

8.26.5.4.5.1 Statute of Limitations

8.26.5.4.6 Appeals Technical Specialist Review and Concurrence

8.26.5.4.7 Participants

8.26.5.4.8 Selection of Appeals Mediator and Expenses

8.26.5.4.8.1 Conflict Statement

8.26.5.4.9 Selection of Non-IRS Co-Mediator and Expenses

8.26.5.4.10 Discussion Summaries

8.26.5.4.11 Confidentiality

8.26.5.4.11.1 Taxpayer's Consent to Disclose

8.26.5.4.11.1.1 Section 7214(a)(8) Disclosure

8.26.5.4.12 Ex Parte Contacts with Mediator Prohibited

8.26.5.4.13 Withdrawal

8.26.5.4.14 Mediator's Report

8.26.5.4.15 Appeals Procedures Apply - Agreement Reached

8.26.5.4.16 Appeals Procedures Apply - No Agreement Reached

8.26.5.4.17 Tracking Time

Exhibits

8.26.5-1 Model Agreement to Mediate

8.26.5-2 Model Mediation Participants List

-
- 8.26.5-3 Consent to Disclose Tax Information
 - 8.26.5-4 Model Mediator's Report
 - 8.26.5-5 Model Mediator's Conflict Letter

Post Appeals Mediation (PAM)

Procedures for Non-Collection Cases 8.26.5

page 1

8.26.5.1 (08-17-2015) Introduction to Post Appeals Mediation (PAM) Procedures for Non-Collection Cases (Mediation)

- (1) On December 29, 2014, the Service published Revenue Procedure 2014–63, 2014–53 I. R. B. 1014. This revenue procedure updates Revenue Procedure 2009–2 C. B. 462, pertaining to the previously established mediation procedure for cases in the Appeals administrative process. Rev. Proc. 2014-63 expands and clarifies the types of cases that may be mediated in Appeals and supersedes Rev. Proc. 2009–44.
- (2) Post Appeals Mediation (PAM) is an extension of the Appeals process and will enhance voluntary compliance.
- (3) PAM is a non-binding process that uses the services of a mediator or mediators, as neutral third parties, to help Appeals and the taxpayer reach their own negotiated settlement. To accomplish this goal, the mediator will act as a facilitator; assist in defining the issues; and promote settlement negotiations between Appeals and the taxpayer. The mediator will not have settlement authority in the mediation process and will not render a decision regarding any issue in dispute.
- (4) Publication 4167, *Appeals - Introduction to Alternative Dispute Resolution*, explains the PAM process and is included as an enclosure with the Uniform Acknowledgement Letter (UAL) sent by the Appeals Team Manager (ATM) when a case is received in Appeals.

Note: It should be documented in the Case Activity Record (CAR) that Pub. 4167 was included as an enclosure with the UAL. See IRM 1.4.28.3.1 and IRM 8.2.1.7 for the UAL procedures for ATMs and Appeals Officers.

8.26.5.2 (08-17-2015) Headquarters' Involvement

- (1) All requests for mediation for non-collection cases under Rev. Proc. 2014–63, or any successor guidance, require the involvement of the designated Appeals Tax Policy and Procedure (TPP) program analyst (the analyst) for Post Appeals Mediation Non-Collection cases.
- (2) This includes, but is not necessarily limited to, the Appeals Team Manager (ATM):
 - notifying the analyst immediately upon receipt of a mediation request;
 - providing the analyst with an electronic copy of the mediation request by e-mail within five days of receipt;
 - consulting with the analyst before making a decision on denying a mediation request;
 - ensuring that the Feature Code “MD” has been added;
 - providing the analyst by e-mail with an electronic copy of the signed denial letter sent to the taxpayer, if applicable;
 - including the analyst in any conference calls with the taxpayer to discuss the mediation procedures, process, and the identification and selection of Appeals mediators and non-IRS co-mediators;
 - having the analyst review the mediation agreement before the ATM signs it on behalf of Appeals;
 - providing the analyst by e-mail with an electronic copy of the mediation agreement signed by all parties;
 - keeping the analyst informed of the progress of the mediation throughout the process; and
 - providing the analyst by e-mail with an electronic copy of the mediator’s report or ensuring the Appeals mediator provides a copy to the analyst.

8.26 Alternative Dispute Resolution (ADR) Program

- (3) If the ATM encounters lengthy delays or other difficulties at any time during the process or while negotiating the terms of the agreement, the ATM should contact the Area Director, who may in turn elevate to the Director, Field Operations or Director, Specialty Operations.
- (4) **For all Appeals Campus cases** - upon receipt of a mediation request and prior to taking any action, the ATM is required to contact the Director, TPP (Exam).

8.26.5.3 (08-27-2010) Scope of Mediation

- (1) The mediation procedure will attempt to resolve issues in cases that qualify under the guidance contained herein while they are in the jurisdiction of Appeals.
- (2) Mediation may be used only after Appeals settlement discussions are unsuccessful, and, generally, when all other issues are resolved but for the issue(s) for which mediation is being requested. Neither party will be bound by their prior settlement position(s) or offer(s) with respect to the issue(s) being mediated.
- (3) Post Appeals mediation is not the appropriate venue for the presentation and consideration of any new facts or arguments. Any new facts or arguments must be presented by either party prior to the commencement of the mediation session. If either party attempts to introduce new facts or arguments once the mediation session has begun, the session will be terminated and the new facts or arguments will be addressed through the regular Appeals process.
- (4) Once a case has been closed by Appeals with the issuance of a Statutory Notice of Deficiency, the issuance of a Statutory Notice of Claim Disallowance or issuance of any other closing letter under established closing procedures, the case is no longer in Appeals jurisdiction and no longer eligible for Appeals mediation procedures.

8.26.5.3.1 (08-27-2010) Authority

- (1) The mediation procedure does not create any special authority for settlement by Appeals. During the mediation process, Appeals is still subject to the procedures that would be applicable if the issue was being considered under the standard Appeals process, including procedures in the Internal Revenue Manual (IRM) and existing published guidance.

8.26.5.3.2 (08-17-2015) Joint Committee (JC) Procedures

- (1) Under IRC 6405, the Service is required to report certain refunds and credits to the Joint Committee on Taxation (JCT). Currently the jurisdictional amount is any amount in excess of \$2,000,000 (\$5,000,000 for corporations).
- (2) When the final outcome of a post appeals mediation settlement could potentially result in a refund meeting the jurisdictional requirement and other criteria, Joint Committee procedures must be considered throughout the mediation process.
- (3) See IRM 8.7.9, *Joint Committee (JC) Cases*, for guidance on JC reporting requirements and procedures. See IRM 8.7.9.5.6 for specific instructions regarding closing agreements and their review by the JCT.

8.26.5.3.3

(08-17-2015)

Cases/Issues Eligible for Mediation

(1) Cases/Issues eligible for mediation are:

- a. Legal issues;
- b. Factual issues;
- c. Compliance Coordinated [formerly Industry Specialization Program (ISP)] Issues (CCI) and Appeals Coordination Issues (ACI) ;
- d. Early referral issues when an agreement is not reached, provided the early referral issue(s) meets the requirements for mediation;
- e. Issues for which the taxpayer intends to seek competent authority assistance, provided the taxpayer has not filed a request for competent authority assistance;
- f. Unsuccessful attempts to enter into a closing agreement under IRC §7121; and
- g. Offer in compromise and Trust Fund Recovery Penalty cases. See Revenue Procedure 2014-63 and IRM 8.26.9, *Alternative Dispute Resolution (ADR) Program, Post-Appeals Mediation Procedures for Collection Cases*.

8.26.5.3.4

(08-17-2015)

Cases/Issues Not Eligible for Mediation

(1) Cases/Issues not eligible for mediation are:

- a. Cases in which mediation is not appropriate under either 5 U.S.C. section 572 or 5 U.S.C. section 575, which provide the general authority and guidelines for use of alternative dispute resolution in the administrative process;
- b. An issue designated for litigation or docketed in any court;
- c. Collection cases, except for certain offer in compromise and Trust Fund Recovery Penalty cases as provided for in Revenue Procedure 2014-63 and IRM 8.26.9;
- d. A Compliance Coordinated Issue (CCI) or Appeals Coordinated Issue (ACI) where the taxpayer has declined the opportunity to discuss the CCI or ACI with the Appeals Technical Specialist during the course of the Appeals settlement discussions;
- e. A CCI or ACI where the Appeals position, as reflected in settlement guidelines, is that no concession by Appeals would be appropriate;
- f. Issues for which mediation would not be consistent with sound tax administration, e.g. issues governed by closing agreements, by *res judicata*, or by controlling Supreme Court precedent;
- g. Frivolous or groundless issues, such as, but not limited to, those identified in Section 4.04 of Rev. Proc. 2015-2, 2015-1 I.R.B. 105 (or any successor document), Notice 2010-33, 2010-17 I.R.B. 1 (or any successor document), and IRM 4.10.12.1.1, *Frivolous Arguments*. (Use the Rev. Proc. and IRM for guidance. Also see the IRS web site at www.irs.gov/pub/irs-utl/friv_tax.pdf for a description of frivolous arguments);
- h. "Whipsaw" issues, such as, but not limited to, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of participation of the other party; whipsaw issues include issues on a joint return where both spouses do not agree to participate in the same mediation proceeding or where a spouse is claiming innocent spouse treatment under section 6015;
- i. Issues that have been otherwise identified in subsequent guidance issued by the IRS as excluded from the mediation program;

- j. Cases that were previously mediated through a different alternative dispute resolution program within Appeals, such as Fast Track Settlement or Fast Track Mediation; and
- k. Cases where the taxpayer did not act in good faith during settlement negotiations, such as, but not limited to, the following:

Examples of not acting in good faith:

- failure to timely respond to document requests;
- failure to timely respond to offers to settle;
- failure to render a genuine and substantive offer or counteroffer to settle;
- submission of only nuisance or *de minimus* offers; or
- failure to address arguments and precedents raised by Appeals.

8.26.5.4
(08-17-2015)
**Mediation Process for
Non-Collection Cases**

- (1) Mediation is optional. A taxpayer and Appeals may request mediation after consulting with each other. Mediation will not occur unless both parties agree to participate in the process.
- (2) If, in the opinion of the ATCL or AO, the issue(s) does not qualify for mediation under existing guidance, the ATCL or AO will note this in the case activity record (CAR). The ATCL's or AO's decision is subject to the review and approval of the Appeals Team Manager (ATM).

8.26.5.4.1
(08-17-2015)
Filing Requirements

- (1) *Where to file.* To request mediation, the taxpayer should send a written request to the appropriate Appeals Team Manager (ATM), with a copy to the appropriate Area Director.
- (2) *Required information.* The taxpayer's mediation request should:
 - Provide the taxpayer's name, TIN, address, and the name, title, address and telephone number of a different person to contact, if applicable;
 - Provide the Appeals Team Case Leader's or Appeals Officer's name;
 - Identify the taxable period(s) involved;
 - Describe the issue(s) for which mediation is being requested, including the dollar amount of the adjustment in dispute; and
 - Contain a representation that the issue is not an excluded issue. See IRM 8.26.5.3.4.

8.26.5.4.2
(11-10-2011)
ACDS Requirements

- (1) Upon receipt of a request for PAM, the ATCL or AO assigned the case will input Action Code MI in CARATS on the date the request is received.
- (2) The ATCL or AO will input the Action Code MO in CARATS on the date the PAM denial letter is issued or the PAM session is concluded.
- (3) Only one entry of each code will be allowed. Once selected, the code will be grayed out so it cannot be selected again.
- (4) If the MD Feature Code has not already been input, the system will automatically update to the MD Feature Code when MI is input.
- (5) The system will automatically delete the corresponding system generated feature code if the action code is deleted.

- (6) The system will not automatically delete a manually input feature code if the action code is deleted.
- (7) The system will allow the ATCL or AO to delete the MD Feature Code and then delete the corresponding MI Action Code. However, if the MO Action Code is also present, it must be deleted before deleting the corresponding MI Action Code.
- (8) The system will not allow the input of Action Code AC-FR if the case has Action Code MI without Action Code MO as appropriate. A system message will appear to inform that an MO must be input.

8.26.5.4.3 (08-17-2015) **Review of Mediation Request**

- (1) Within five days of receipt of the mediation request, the Appeals Team Manager (ATM) must submit a copy by e-mail to the analyst.
- (2) The ATM will confer with the analyst before making the decision to approve or deny the request.
- (3) Generally, the ATM will respond to the taxpayer and the Appeals Team Case Leader (ATCL) or Appeals Officer (AO) within two weeks after receiving the request for mediation.

8.26.5.4.3.1 (08-17-2015) **Request Denied**

- (1) If the ATM denies the mediation request, he or she will promptly inform the taxpayer in writing and advise the ATCL or AO of the decision. The ATM will provide an electronic copy of the signed written denial letter by e-mail to the analyst.
- (2) Although no formal appeal procedure exists for the denial of a mediation request, the taxpayer may request a conference with the ATM to discuss the denial.
- (3) The denial of a mediation request is not subject to judicial review.

8.26.5.4.3.2 (10-26-2007) **Request Approved**

- (1) If the ATM approves the mediation request, he or she will inform the taxpayer and the ATCL or AO.

8.26.5.4.4 (08-17-2015) **Administrative Conference Call**

- (1) Once the ATM has approved the request to mediate, he or she will schedule a conference or conference call with the taxpayer and the analyst to:
 - discuss the mediation process;
 - negotiate the terms of the mediation agreement; and
 - discuss the selection of the Appeals mediator and, if the taxpayer so chooses, a non-IRS co-mediator.

8.26.5.4.5 (08-17-2015) **Agreement to Mediate**

- (1) The taxpayer and Appeals will enter into a written agreement to mediate. This agreement may be negotiated during the administrative conference call. Either party may initiate the drafting of the agreement. See IRM 8.26.5.4.3.
- (2) The agreement to mediate should:
 - be as concise as possible;
 - specify the issue(s) that the parties have agreed to mediate;

8.26 Alternative Dispute Resolution (ADR) Program

- contain an initial list of witnesses, attorneys, representatives, and observers for each party;
- identify the location and the proposed date of the mediation session; and
- prohibit ex parte communications or contacts between the parties and the mediator outside of the mediation session.

Note: The Model Agreement, as presented in the exhibit, should be followed as closely as possible but may be modified to accommodate the particular circumstances of each case. The Appeals Team Manager (ATM) has the discretion to determine to what extent, if any, modifications may be made. See Exhibit 8.26.5-1.

- (3) The Appeals Team Manager (ATM) will request that the analyst review the agreement prior to signing it on Appeals' behalf.
- (4) Generally, the agreement to mediate will be completed within three weeks after notification that Appeals has approved the mediation request and the mediation session will occur within 60 days after signing the agreement.
- (5) Appeals may withdraw from the mediation process if a taxpayer's inability to adhere to these time frames is without reasonable cause.
- (6) The ATM will sign the agreement to mediate on behalf of Appeals.
- (7) Once signed by all parties, the ATM will forward a copy of the signed agreement by e-mail to the analyst.

8.26.5.4.5.1 (08-17-2015) **Statute of Limitations**

- (1) The statute of limitations must have at least 12 months remaining at the conclusion of the mediation session. This is to ensure there is sufficient time to complete the Appeals case closing procedures.

8.26.5.4.6 (08-17-2015) **Appeals Technical Specialist Review and Concurrence**

- (1) When a taxpayer requests mediation for a Compliance Coordinated Issue (CCI) or an Appeals Coordinated Issue (ACI) where the Appeals Technical Specialist must review and concur with the Appeals Team Case Leader's or Appeals Officer's proposed settlement, Appeals will include the Appeals Technical Specialist on the Appeals mediation team. The Appeals Technical Specialist can participate either in person or by telephone conference.
- (2) When Appeals agrees to mediate a CCI or an ACI that requires review and concurrence by the Appeals Technical Specialist, the mediation agreement will provide that the provisions in IRM 8.7.3.4.1, *Review and Concurrence - Appeals Technical Specialist Responsibility*, apply if there is a disagreement during the mediation between the Appeals Technical Specialist and the Appeals individual with settlement authority.

8.26.5.4.7 (08-27-2010) **Participants**

- (1) The taxpayer and Appeals will be the parties to the mediation process. Each party must have at least one participant with decision-making authority attend the mediation session.
- (2) The agreement to mediate will set forth the procedures by which the parties inform each other and the mediator of the participants in the mediation and any limitation on the number, identity, or participation of such participants.

- (3) In general, the taxpayer and Appeals are encouraged to include in the mediation process, in addition to the required decision-makers, those persons with information and expertise that will be useful to the decision-makers and the mediator.
- (4) Appeals has the discretion to communicate *ex parte* with the Office of Chief Counsel, the originating function (e.g. Compliance), or both in preparation for or during the mediation session.
- (5) Appeals also has the discretion to have Counsel, the originating function, or both participate in the mediation proceeding to present the position and views of the Service, and to rebut representations and arguments made by the taxpayer.
- (6) In order to minimize the possibility of a last-minute disqualification of the mediator, each party must notify the mediator and the other party of the participants on the party's mediation team no later than two weeks prior to the mediation. See Exhibit 8.26.5-2.

8.26.5.4.8
(08-17-2015)
**Selection of Appeals
Mediator and Expenses**

- (1) The mediation procedure requires the use of an Appeals employee who is a trained mediator.
- (2) The parties will discuss the selection during the conference or conference call. See IRM 8.26.5.4.3.
- (3) The Appeals Team Manager (ATM) and the taxpayer will select the Appeals mediator from a list of trained individuals who, generally, will be from the same Appeals office or geographic area where the case is assigned, but not from the same group or team.
- (4) Appeals will pay the expenses associated with the Appeals mediator.

8.26.5.4.8.1
(08-27-2010)
Conflict Statement

- (1) Due to the inherent conflict that results because the Appeals mediator is an employee of the IRS, the Appeals mediator will provide the taxpayer a written statement confirming:
 - his or her proposed service as a mediator,
 - that he or she is a current employee of the IRS,
 - that a conflict results from his or her continued status as an IRS employee, and
 - that this conflict will not interfere in his or her ability to impartially facilitate the mediation.

See Exhibit 8.26.5-5

- (2) The agreement to mediate will also include this statement.

8.26.5.4.9
(08-17-2015)
**Selection of Non-IRS
Co-Mediator and
Expenses**

- (1) In addition to the Appeals mediator, the taxpayer may elect to use a non-IRS co-mediator. If so, the taxpayer and the Appeals Team Manager (ATM) should make the selection from any local or national organization that provides a roster of neutrals or contact the analyst for additional guidance.
- (2) The taxpayer will pay the expenses associated with a non-IRS co-mediator.
- (3) Criteria for selecting a non-IRS co-mediator may include:

- completion of mediation training;
- previous mediation experience;
- a substantive knowledge of tax law; or
- knowledge of industry practices.

- (4) An individual is not eligible to be a non-IRS co-mediator if the individual has an official, financial, or personal conflict of interest with respect to the parties, unless such interest is fully disclosed in writing to the taxpayer and the ATM and they agree that the mediator may serve. See 5 U.S.C. section 573.

8.26.5.4.10
(08-27-2010)

Discussion Summaries

- (1) The taxpayer and Appeals will each prepare a discussion summary of the issue(s) (including their arguments in favor of their positions) for consideration by the mediator(s). Although Paragraph 5 of the Model Agreement (Exhibit 8.26.5-1) specifically states that each party's written summation may not exceed 20 pages, this is merely suggested language and the parties are not bound to that limitation. Rather, the length of the discussion summaries will be mutually agreed upon and included in the agreement to mediate.
- (2) The taxpayer and Appeals will submit the discussion summaries to the mediator and each other no later than two weeks before the mediation session is scheduled to begin or as determined in the agreement to mediate.

8.26.5.4.11
(08-17-2015)

Confidentiality

- (1) The mediation process is confidential. Therefore, all information concerning any dispute resolution communication is confidential and may not be disclosed by any party, participant, observer or mediator except as provided by statute, such as IRC 6103 and 5 U.S.C. section 574.
- (2) A dispute resolution communication includes all oral or written communications prepared for the purposes of the dispute resolution proceeding.
- (3) IRS employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to IRC 6103(n) that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including IRC 6103, IRC 7213, and IRC 7431.

8.26.5.4.11.1
(08-17-2015)

Taxpayer's Consent to Disclose

- (1) In order to participate in the mediation process, under IRC 6103(c), the taxpayer must consent to the disclosure of the taxpayer's return and return information relative to the mediation to the mediator and any participant or observer identified in the initial list of participants and observers and to any subsequent participants and observers identified in writing by the parties.
- (2) The taxpayer must execute a separate consent to disclose tax information. This consent is separate from, but attached to, the agreement to mediate. See Exhibit 8.26.5-3 for a model consent to disclose tax information.
- (3) If the agreement to mediate and the consent to disclose tax information are executed by a person pursuant to a power of attorney executed by the taxpayer, that power of attorney must clearly express the taxpayer's grant of authority to consent to disclose the taxpayer's return and return information to third parties.
- (4) A copy of the power of attorney must be attached to the agreement.

8.26.5.4.11.1.1
(08-27-2010)
**Section 7214(a)(8)
Disclosure**

- (1) Under IRC 7214(a)(8), IRS employees must report information concerning violations of any revenue law to the Secretary. The agreement to mediate will state this requirement and the parties will acknowledge this duty.

8.26.5.4.12
(08-17-2015)
**Ex Parte Contacts with
Mediator Prohibited**

- (1) To ensure that one party is not in a position to exert undue influence on the mediator, there will be no unsolicited communications or contact with the mediator by the taxpayer or Appeals outside the mediation session.
- (2) This prohibition is intended to apply only to unsolicited contacts with the mediator from one of the parties outside the mediation session. It ensures the mediator does not receive information or evidence the other party is unaware of and is unable to respond to or rebut.
- (3) This provision does not prevent the mediator from contacting a party outside of the mediation session, or a party from answering a question or request posed by the mediator outside of the mediation session provided that the information furnished to the mediator is made available to both parties so that no party is unaware of or unable to respond to or rebut the information.

8.26.5.4.13
(10-26-2007)
Withdrawal

- (1) Either the taxpayer or Appeals may withdraw from the process anytime before reaching a settlement of the issues being mediated by notifying the other party and the mediator in writing.

8.26.5.4.14
(08-17-2015)
Mediator's Report

- (1) Regardless of the outcome and at the conclusion of the mediation process, the mediator will prepare a brief written report and submit a copy to each party and to the analyst. See Exhibit 8.26.5-4.
- (2) The Appeals Team Manager (ATM) will ensure that either the mediator or the ATM provides the analyst with an electronic copy of the mediator's report with the results of the mediation session.

8.26.5.4.15
(08-17-2015)
**Appeals Procedures
Apply - Agreement
Reached**

- (1) If Appeals and the taxpayer reach an agreement on some or all of the issues through the mediation process, Appeals will use established closing procedures including, where appropriate, preparation of Form 906, *Closing Agreement on Final Determination Covering Specific Matters*. See IRM 8.13.1, *Processing Closing Agreements in Appeals*, for additional information. See IRM 8.20.7, *Closing Procedures*, for general case closure instructions. Also see IRM 8.7.9, *Joint Committee (JC) Cases*.

8.26.5.4.16
(08-17-2015)
**Appeals Procedures
Apply - No Agreement
Reached**

- (1) If Appeals and the taxpayer do not reach an agreement on an issue being mediated, Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues, or the case will be processed using established closing procedures if there is no deficiency. See IRM 8.2.1.10, *Reaching a Conclusion in the Case*. See IRM 8.20.7, *Closing Procedures*, for general case closing instructions.

8.26.5.4.17
(08-17-2015)
Tracking Time

- (1) For purposes of accurately tracking the amount of direct time on Appeals cases, the Appeals mediator will be assigned as a team member on the mediation case.
- (2) The Appeals mediator will request that Account and Processing Support (APS):
 - a. first, input the feature code "TL" to create the Team Leader record for the Appeals Team Case Leader (ATCL) or Appeals Officer (AO) even if there are no other team members on the case besides the Appeals mediator;
 - b. then, input the feature code "TM" to create the Team Member record for the Appeals mediator; and
 - c. input the feature code "MD" on the same case to indicate it is a mediation case. (This feature code will only be used on cases for which the taxpayer requests mediation while the case is in Appeals jurisdiction.)
- (3) The ATCL or AO is responsible for verifying that APS follows the procedures in IRM 8.7.11, *Working Appeals Team Cases*, in establishing the team member assignment.

Exhibit 8.26.5-1 (08-17-2015)

Model Agreement to Mediate

Agreement to Mediate

1. *The Mediation Process.*

Mediation will be an extension of the Appeals process to help **[NAME OF TAXPAYER]** and the Internal Revenue Service (IRS) - Appeals (the PARTIES) reach a negotiated settlement of the issues to be mediated. See (2) below for the participants in the mediation process. To accomplish this goal, the mediator will act as a facilitator, assist in defining the issues and promote settlement negotiations between the PARTIES. The mediator will inform and discuss with the PARTIES the rules and procedures pertaining to the mediation process. The mediator will not have settlement authority and will not render a decision regarding any issue in dispute. The PARTIES will continue to have settlement authority for all issues considered under the mediation process.

2. *Nature of Process, Participants, Withdrawal.*

- (a) The mediation process is optional.
- (b) Each PARTY must have at least one participant attending the mediation session with decision-making authority. No later than two weeks before the mediation, each PARTY will submit to the other PARTY and the mediator a list of the participants who will attend the mediation session on behalf of or at the request of the PARTY, including a designation of the person(s) with decision-making authority who will represent the PARTY at the mediation session. Each PARTY's list of participants will contain the participant's name, the participant's position with the PARTY or other affiliation (e.g., a member of the XYZ law firm, counsel to the taxpayer), and the participant's address (telephone number and fax number). All participants attending the mediation on behalf of or at the request of a PARTY will be listed on the PARTY's list of participants, including witnesses, consultants, and attorneys.

[Insert limitations on the number or types of participants, if any.]

- (c) Either PARTY may withdraw from the process at any time prior to reaching a settlement of the issues to be mediated by notifying the other PARTY and the mediator in writing.

3. *Selection of Mediator and Costs.*

- (a) Appeals will pay the costs associated with the Appeals mediator. The taxpayer will pay the cost of a non-IRS co-mediator.
- (b) The taxpayer, by signing this agreement, acknowledges that (i) the Appeals mediator is a current employee of the IRS, (ii) a conflict results from his or her continued status as an IRS employee, and (iii) this conflict will not interfere in the mediator's ability to facilitate the case impartially.

4. *Issues to be Mediated.*

The mediation session will encompass the following issues in the IRS audit of the federal tax returns of **[NAME OF TAXPAYER]** for the tax year(s) _____.

- (a) Issue #1

Exhibit 8.26.5-1 (Cont. 1) (08-17-2015)**Model Agreement to Mediate****Agreement to Mediate**

(b) Issue #2

5. *Submission of Materials*

Each PARTY will present to the mediator a separate written summation not to exceed 20 pages (exclusive of exhibits consisting of pre-existing documents and reports) regarding each issue. The mediator will have the right to ask either PARTY for additional information before the mediation session if deemed necessary for a full understanding of the issues to be mediated. Each PARTY will simultaneously submit to the other PARTY a copy of any submission to the mediator .

6. *Place of Mediation.*

The PARTIES will attempt to select a site at or near the mediator's office, [NAME OF TAX-PAYER]'s office, or an Appeals office.

7. *Proposed Schedule.*

Subject to the approval of the mediator, the mediation session will be conducted according to the following schedule:

Submission of Materials to Mediator: **A DATE NO LATER THAN TWO WEEKS BEFORE THE DATE OF MEDIATION SESSION**

Mediation Session **By Month Day, Year and Time**

8. *Confidentiality.*

IRS employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to section 6103(n) of the Internal Revenue Code (including the mediator) that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213 and 7431. See also 5 U.S.C. 574.

9. *Ex Parte Contacts Prohibited.*

There will be no ex parte contacts from a PARTY to the mediator outside the mediation session. This provision is not intended to prevent the mediator from contacting a PARTY, or a PARTY from responding to the mediator's request for information.

10. *Section 7214(a)(8) Disclosure.*

The PARTIES to this agreement acknowledge that IRS employees involved in this mediation are bound by the section 7214(a)(8) disclosure requirements concerning violations of any revenue law.

11. *No Record.*

There will be no stenographic record, no audio or video tape recording, or other transcript of the mediation session(s).

12. *Report by Mediator.*

Exhibit 8.26.5-1 (Cont. 2) (08-17-2015)

Model Agreement to Mediate

Agreement to Mediate

At the conclusion of the mediation session, the mediator will issue a brief report to the PARTIES identifying each issue described in section 4, above, and whether the PARTIES either agreed to resolve or did not resolve the issue.

13. *Appeals Procedures Apply.*

If the mediation process enables the PARTIES to reach agreement on the issues, Appeals will use established procedures to close the case. Delegation Order 4–24, IRM 1.2.43.22 (addressing settlement authority for issues in a Coordinated Exam Program) or section 7122(b) (regarding offer in compromise cases) may apply to settlements resulting from the mediation process. Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues (or the case will be processed using established closing procedures if there is no deficiency).

14. *Precedential Use*

A settlement reached by the PARTIES through mediation will not be binding on the parties (or be otherwise controlling) for taxable years not covered by the agreement. Except as provided in the agreement, no PARTY may use such settlement as precedent.

INTERNAL REVENUE SERVICE, APPEALS

By: _____

Name

Title: Appeals Team Manager

Date: _____

NAME OF TAXPAYER

By: _____

Name

Title:

Date: _____

Exhibit 8.26.5-2 (10-26-2007)**Model Mediation Participants List****Mediation Participants List**

Case Name: _____

Submitted By: _____

Date: _____

Please list below *all* participants attending the mediation, including witnesses, consultants, and attorneys. This form must be sent to the other PARTY and to the mediator(s) no later than two weeks before the mediation session. Insert an **asterisk (*)** before the name of the person who has decision-making authority at the mediation session:

Name	Position or Affiliation	Address	Telephone & Fax Number
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Exhibit 8.26.5-3 (08-27-2010)

Consent to Disclose Tax Information

Consent to Disclose Tax Information

Pursuant to section 6103(c) of the Internal Revenue Code of 1986 (as amended), I hereby consent to the disclosure of return information (as defined in section 6103(b)(2)) relating to the mediation session between _____(Taxpayer) and the Commissioner of Internal Revenue to be held on _____(date), as follows:

- . The Internal Revenue Service may disclose the taxpayer's return and return information incident to the mediation to the mediator and any participants or observers identified in the initial list of participants and to any subsequent participants and observers identified in writing by the parties

This consent relates to the mediation session that is the subject of an agreement to mediate dated _____. I am aware that in the absence of the authorization, the return and return information of _____(Taxpayer) is confidential and may not be disclosed except as authorized by the Internal Revenue Code.

I certify that I have the authority to execute this consent on behalf of the Taxpayer

Taxpayer Name: _____

Taxpayer Identification Number: _____

Taxpayer Address: _____

By: **[Name of Individual Executing Consent]** _____

Title: **[Title of Individual Executing Consent]** _____

Signature: _____

Date: _____

Exhibit 8.26.5-4 (08-17-2015)**Model Mediator's Report****Mediator's Report****(Name of Taxpayer)**

The parties below agreed to mediate their dispute and attended a mediation session on **MONTH, DAY, YEAR** in an attempt to settle the following issue(s):

ISSUE:

SETTLEMENT:

☐ Yes☐ No☐ Partial

Proposed Adjustment Amount(s):

Sustained Amount(s):

ISSUE:

SETTLEMENT:

☐ Yes☐ No☐ Partial

Proposed Adjustment Amount(s):

Sustained Amount(s):

Settlement documents will be prepared under established Appeals procedures.

DATED this _____ day of _____

/s/ Mediator_____
/s/ Party_____
/s/ Party

Post Appeals Mediation (PAM)

Procedures for Non-Collection Cases 8.26.5

page 17

Exhibit 8.26.5-5 (11-10-2011)

Model Mediator's Conflict Letter

As a proposed mediator in the dispute between *[INSERT TAXPAYER NAME]* and the IRS Appeals Office located in *[INSERT LOCATION]*, I have considered whether I have any possible official, financial, or personal conflicts of interest with respect to the issues in controversy. Such conflicts would include both actual and apparent conflicts.

Based on the information provided to me from the parties, I am currently aware of no potential conflicts.

As an employee of the IRS, I have a responsibility under IRC 7214(a)(8) to report information concerning violations of any revenue law. This may be considered a conflict of interest, of which the parties are being informed. Moreover, I am an Appeals employee; this organization is one of the parties to the dispute.

Optional Inserts:

- After reviewing the list of participants, I know *[INSERT NAMES]*, from when they were employees of the IRS.
- In my position as *[INSERT POSITION TITLE]*, I have worked with *[INSERT NAMES OF PARTICIPANTS]*.
- *Note any personal relationships with any of the parties; other cases involving the same taxpayer.*
- I do not believe that knowing these participants will affect my ability to be impartial. Having disclosed this, however, I recognize that one or both of the parties may either decide that I should not mediate their dispute, or they may both agree to continue to use me as the mediator. A decision to use me may be reconsidered in the future in light of further information.

I recognize that I have a continuing responsibility to disclose any conflicts of interest of which I become aware during the pendency of this mediation process.

Signed: _____
Title

Date: _____

Address:

Telephone:

FAX

E-Mail

