



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.26.11

JUNE 23, 2017

## EFFECTIVE DATE

(07-01-2017)

## PURPOSE

- (1) This transmits IRM 8.26.11, *Alternative Dispute Resolution (ADR) Program - Rapid Appeals Process (RAP)*.

## MATERIAL CHANGES

- (1) This IRM contains the procedures for Appeals employees to follow when working a Rapid Appeals Process (RAP) case. RAP is an elective alternative dispute resolution method available to taxpayers who appealed:
  - Large Business and International (LB&I) sourced cases, except International Individual Compliance (IIC) cases
  - Small Business/Self-Employed (SB/SE) Estate and Gift (E&G) cases
- (2) The contents of Interim Guidance AP-08-0117-0001- Appeals Team Case Leader Team Managers Will Sign Form 5402 for Cases Worked by Appeals Team Case Leaders are incorporated.
- (3) Program Scope and Objectives and its related subsections to comply with the Deputy Commissioners of Services and Enforcement and Operations Support memo dated September 14, 2016, entitled Heightened Awareness, Sensitivity, and Understanding of Internal Controls are added in new 8.26.11.1.
- (4) ACDS requirements are added as a result of the May 23, 2017, ACDS deployment of Appeals Work Request (AWR) 460.
- (5) Editorial changes to section titles are made throughout the document.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.26.11 dated May 06, 2014

## AUDIENCE

Appeals Employees

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8.26.11

Rapid Appeals Process (RAP)

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8.26.11.1  
(07-01-2017)  
**Program Scope and Objectives**

- (1) A primary objective of the Internal Revenue Service (IRS) 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. The Rapid Appeals Process (RAP) is one such ADR process.
- (2) The goals and process time frames in RAP provide taxpayers more timely resolution of their tax dispute.
- (3) RAP takes place while the case is in Appeals' jurisdiction.
- (4) RAP is designed to be completed in one conference.

8.26.11.1.1  
(07-01-2017)  
**Background**

- (1) The Rapid Appeals Process was introduced in 2005 and more uniformly in 2012, and was previously limited to LB&I cases assigned to an Appeals Team Case Leader (ATCL).
- (2) RAP is a tool used to improve the efficiency and timeliness of Appeals resolutions using mediation techniques.

8.26.11.1.2  
(07-01-2017)  
**Authority**

- (1) RAP is a breakthrough initiative for Appeals Team Case Leader Operations. It was the recommendation of a joint Appeals/NTEU team, incorporating some of the most successful practices of the Fast Track Settlement (FTS) process implemented in March 2003.

8.26.11.1.3  
(07-01-2017)  
**Responsibilities**

- (1) Appeals manages and administers RAP. The executive with program oversight is Appeals, Director Case and Operations Support.

8.26.11.1.4  
(07-01-2017)  
**Program Reports**

- (1) Using Appeals Centralized Database System (ACDS) data, Appeals compiles and disseminates monthly reports on ADR initiatives. These reports include a full year performance and year-to-date comparisons of closures, receipts, and average days to settle and close, etc. for each ADR initiative. The reports also contain data for the total life of each initiative, as well as, key program information.
- (2) Appeals shares the monthly reports with its leadership and key Appeals stakeholders.
- (3) Appeals holds ADR stakeholder meetings to report on ADR program data and activities.

8.26.11.1.5  
(07-01-2017)  
**Terms and Acronyms**

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

Term	Acronym
Alternative Dispute Resolution	ADR
Rapid Appeals Process	RAP
Fast Track Settlement	FTS
Other Common Appeals Acronyms	See IRM 8.1.1-1

## 8.26 Alternative Dispute Resolution (ADR) Program

8.26.11.1.6  
(07-01-2017)

### Related Resources

- (1) Additional RAP program information can be found:
  - Pub 5083 *Welcome to ATCL Operations*
  - *Appeals RAP website*
  - Letter 5248, *Introduction to Rapid Appeals Process*
  - Form 14525, *Waiver of Restrictions on Ex Parte Communications in Rapid Appeals Process*

8.26.11.2  
(07-01-2017)

### General Provisions

- (1) Appeals' mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. Appeals' vision is to promote an independent and innovative environment that drives quality and timely resolution of tax disputes by empowering a highly skilled, motivated, and cohesive workforce.
- (2) The Rapid Appeals Process is a tool used to improve the efficiency and timeliness of Appeals resolutions. If all parties agree, the pre-conference becomes a working conference where Appeals utilizes mediation techniques to resolve unagreed issues. If the process is unsuccessful, the traditional Appeals process continues.
- (3) RAP is available to taxpayers who appealed:
  - LB&I sourced cases, except International Individual Compliance (IIC) cases
  - SB/SE Estate and Gift (E&G) cases

8.26.11.3  
(07-01-2017)

### Settlement Authority

- (1) During the RAP session, previous resolution discussions between the taxpayer and Exam should be presented to the ATCL/Appeals Officer (AO) for consideration. However, Appeals will make an independent evaluation of the hazards and will not execute a settlement if it does not fall within such evaluation or established settlement guidelines for the issue.
- (2) If the ATCL/AO does not accept a settlement proposed between the taxpayer and Exam, he/she will explain why it is not acceptable to both parties.
- (3) There are differences between the RAP and FTS processes:
  - a. Under RAP, the case is in Appeals' jurisdiction, and under FTS, the case is in Exam's jurisdiction.
  - b. Under RAP, if an issue is determined not to be eligible for one of the reasons described in IRM 8.26.11.6, the remaining issues may still be eligible for RAP. Under FTS, if an issue is determined not to be eligible, all other disputed issues in the case are not eligible for FTS.
- (4) Considering factual and legal issues in RAP 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.
- (5) RAP does not create any special authority for settlement by (non-ATCL) Appeals Officers.

8.26.11.4  
(07-01-2017)  
**Collaborative Process**

- (1) RAP takes place while the case is in Appeals' jurisdiction and is designed to be completed in one conference.
- (2) Appeals manages and administers the RAP program.
- (3) RAP enables taxpayers and Exam to work together to expedite the resolution of unagreed issues in Appeals.
- (4) RAP provides an opportunity for Exam and taxpayers to resolve their disputes with an ATCL/AO. The ATCL/AO uses mediation skills and techniques to focus the issues and guide Exam and the taxpayer to self-determine the outcome of the dispute. The ATCL uses his/her settlement authority to facilitate resolution. The ATCL Team Manager (ATCLTM) will sign Form 5402 to confirm that the ATCLTM has no proposed changes to the settlement. For non-ATCL cases, the AO's settlement is subject to managerial review and approval.
- (5) RAP is designed to:
  - a. Reinforce existing efficiencies
  - b. Improve customer satisfaction
  - c. Introduce mediation techniques to resolve issues faster
  - d. Reduce the burden for the taxpayer and the Service
  - e. Assist Appeals in understanding the government's and taxpayer's positions, including the central disagreement between the parties
  - f. Reduce overall cycle time
- (6) RAP presumes the unagreed issue is fully developed and ready for immediate consideration and resolution and that Exam and the taxpayer have already articulated their specific points of disagreement of the issue. An issue cannot be fully developed prior to the receipt of all necessary referrals, technical advice, Counsel advice, valuation reports, or other relevant documentation.
- (7) If at any point the ATCL/AO determines that the RAP process is not facilitating the resolution of the unagreed issue, the RAP process is terminated, and the ATCL/AO continues consideration of the issue(s) using the traditional Appeals process.
- (8) RAP is elective. Both the taxpayer and Exam must agree to participate in the process and either party can withdraw from the process at any time.
- (9) RAP does not eliminate or replace existing dispute resolution options, including the opportunity for consideration under the traditional process.
- (10) Four Elements of RAP:
  1. Fit for use
  2. One conference to settle
  3. Reduce delays in traditional Appeals process
  4. Utilize best practices

8.26.11.5  
(07-01-2017)  
**Eligibility**

- (1) RAP is available for all LB&I (except IIC) cases, including those with issues listed below:
  - a. Appeals Coordinated Issues (ACI)
  - b. Compliance Coordinated Issues (CCI)
  - c. Practice Areas, Practice Networks and/or Campaign Issues
  - d. Listed transactions
- (2) RAP is available for all E&G cases.

## 8.26 Alternative Dispute Resolution (ADR) Program

### 8.26.11.6 (07-01-2017) Excluded Cases

- (1) RAP is not available for the following:
  - a. Constitutional issues
  - b. Issues designated for litigation or docketed in any court
  - c. Issues under consideration for designation for litigation
  - d. Issues for which a taxpayer requests the Simultaneous Appeals/Competent Authority procedure described in section 6 of Rev. Proc. 2015-40
  - e. IIC cases
  - f. Issues that are part of a whipsaw transaction
  - g. Issues identified in a Chief Counsel Notice, or Advice, as excluded from the RAP process
  - h. Issues for which mediation is not consistent with sound tax administration

### 8.26.11.7 (07-01-2017) Initiating the Process

- (1) After assignment of the case, if all parties agree to the RAP process, the ATCL/AO contacts the taxpayer and the Exam Team Manager to start the RAP planning process and sends Letter 5248, *Introduction to Rapid Appeals Process*. The ATCL/AO documents completion of the actions in the case activity record.
- (2) To ensure the taxpayer and Exam have a basic understanding of RAP, the ATCL/AO contacts both parties to explain the process and benefits, outlines a plan to ensure that the taxpayer and Exam understand the expectations for the working conference, and schedules a mutually agreeable conference date.
- (3) The ATCL/AO identifies and discusses the need to limit the number of participants in the RAP session.
- (4) Where an issue is coordinated, the ATCL/AO follows the procedures in IRM 8.7.3.2, *Coordinated and Appeals Emerging Issues*.
  - a. The Appeals Technical Specialist (Technical Guidance or International) can serve as a team member or consultant and participate in the RAP session with the taxpayer and Exam.
  - b. If the Appeals Technical Specialist is not part of the RAP Team, settlement of the coordinated issue remains subject to the review and concurrence of the Appeals Technical Specialist. This may be accomplished via telephone discussion.
  - c. If there is a disagreement between the Appeals Technical Specialist and the ATCL/AO on appropriate settlement terms for the issue, follow the resolution procedures in IRM 8.7.3.4, *Review and Concurrence - Appeals Technical Specialist Responsibility*.

### 8.26.11.8 (07-01-2017) Parties to the Process

- (1) All three parties - Exam, the taxpayer, and Appeals - are active participants in the RAP process.
- (2) The taxpayer's "decision-makers" are encouraged to participate.
- (3) The taxpayers are encouraged to bring their experts into the process.
- (4) Exam participants include the Team Manager, Revenue Agents and others who have the knowledge and expertise to contribute to issue resolution.
- (5) The Exam Team Manager, in consultation with the assigned ATCL/AO determines the Exam participants.



- (6) Exam participants also include Technical Specialists. In those instances where the issues are industry specific or there is a Technical Specialist position established for the issue, the participation of appropriate Technical Specialists is strongly recommended.

8.26.11.9  
(07-01-2017)  
**ACDS Requirements**

- (1) Upon offering RAP, the ATCL/AO assigned the case will input Action Code RI in CARATS on the date the offer is made; the ATCL/AO will input Sub-action Code RIA to show the date RAP is accepted or Sub-action Code RIR to show the date RAP is rejected.
- (2) If RAP is rejected, the ATCL/AO will input Action Code RO and the appropriate Sub-action Code to indicate by whom:
  - ROE - Rejected by Exam
  - ROT - Rejected by Taxpayer
  - ROA - Rejected by Appeals
- (3) If RAP is accepted, the ATCL/AO will input Action Code RE and the appropriate Sub-action Code to indicate the disposition:
  - REA - Fully agreed
  - REP - Partially agreed
  - REU - Unagreed
  - REW - Withdrawn
- (4) The system will automatically update the RP Feature Code when the Action Code RI is input.
- (5) The system will allow multiple uses of the codes to capture by issue.
- (6) The system will not allow input of the Action Code AC-FR if the case has Action Code RI without Action Code RO or RE as appropriate. A system message will appear to inform that either RO or RE must be input as applicable.

8.26.11.10  
(07-01-2017)  
**Ex Parte Communication  
in RAP Cases**

- (1) In RAP, the ATCL/AO is acting as a mediator in addition to his/her traditional role. RAP works best when the taxpayer/representative signs a waiver for the term of the session to allow ex parte communications between the ATCL/AO and Exam as provided by section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998. Use Form 14525, *Waiver of Restrictions on Ex Parte Communications in Rapid Appeals Process*, for this purpose. Limitations to the waiver may be appropriate in full consultation with the taxpayer.
- (2) If RAP is unsuccessful -
  - a. The taxpayer's waiver of restrictions on ex parte communications between Appeals and other Internal Revenue Service employees is terminated.
  - b. Information disclosed by the taxpayer and Exam during the RAP session can be used by Appeals in evaluating the hazards of litigation.

## 8.26 Alternative Dispute Resolution (ADR) Program

8.26.11.11  
(07-01-2017)

### Planning and Conducting the RAP Session

- (1) Planning begins when the ATCL/AO, Exam and taxpayer agree to participate in a RAP session.
- (2) Feature Code RP will be input by the ATCL/AO when the parties agree to participate in RAP.
- (3) When conducting the RAP session, the ATCL/AO will provide an agenda. The agenda guides the conference meetings, sets the order of issue discussion, and includes questions to clarify each issue.
- (4) The ATCL/AO provides the Schedule of Adjustments to all participants early in the process, and updates it as the session progresses.
- (5) The RAP session is led by Appeals, but all three parties are active participants.
- (6) RAP employs various alternative dispute resolution techniques to propose solutions.
- (7) Using mediation techniques, Appeals uses an interest-based approach to bring the parties to a mutual resolution of the issues during the session.
- (8) After an initial joint session, Appeals may conduct the entire RAP session jointly, or meet with the parties separately (subject to the provision of a satisfactory ex-parte waiver).

8.26.11.11.1  
(05-06-2014)

### Terminating the RAP Session

- (1) If after a reasonable time, it is apparent no further benefit will be derived from the process, any party may jointly or separately terminate the process.

8.26.11.11.2  
(07-01-2017)

### Reaching Agreement on the RAP Session

- (1) If settlement is reached in the RAP session:
  - a. Appeals will provide a copy of the Schedule of Adjustments notated with the basis of settlement.
  - b. All parties will sign the Schedule of Adjustments to indicate agreement with the settlement reached during the Rapid Appeals Process.
  - c. The ATCL/AO may follow-up with a brief Memorandum of Understanding for the parties to acknowledge, or
  - d. The ATCL/AO may have the parties provide a letter or e-mail confirming the nature of the settlement.
  - e. If the case is subject to Joint Committee review, all RAP Schedules of Adjustment and Memoranda of Understanding will include the following statement: "This settlement will not be effective until the date the Joint Committee on Taxation completes its review (if needed) without objection."
- (2) Because the case is in Appeals' jurisdiction, normal Appeals closing procedures apply, including those pertaining to Joint Committee Review. For cases assigned to ATCL Operations, see IRM 8.7.11, *Working Appeals Team Cases*.
- (3) If the case is not resolved using RAP, the taxpayer is entitled to traditional Appeals consideration on all remaining unagreed issues. The ATCL/AO who facilitated RAP will also consider the traditional appeal of the unagreed issues.