



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

25.6.22

NOVEMBER 17, 2021

## EFFECTIVE DATE

(11-17-2021)

## PURPOSE

- (1) This transmits revised IRM 25.6.22, Statute of Limitations, Extension of Assessment Statute of Limitations by Consent.

## MATERIAL CHANGES

- (1) Significant changes to this IRM are listed below:

IRM Reference	Description of Change
IRM 25.6.22.1.3	<ul style="list-style-type: none"><li>Added information on the Taxpayer Bill of Rights.</li></ul>
IRM 25.6.22.1.5	<ul style="list-style-type: none"><li>Added new acronyms found in this manual.</li></ul>
IRM 25.6.22.1.6	<ul style="list-style-type: none"><li>Added new subsection titled Terms.</li></ul>
IRM 25.6.22.1.7	<ul style="list-style-type: none"><li>Added content on Bipartisan Budget Act of 2015 (BBA).</li><li>Moved TBOR content to IRM 25.6.22.1.3.</li><li>Added Knowledge Management links to the information previously found in the exhibits.</li></ul>
IRM 25.6.22.2.1	<ul style="list-style-type: none"><li>Added/reorganized guidance to explain the limitation period for the taxable year under examination will expire within 365 days if the case is included in LB&amp;Is Large Corporate Compliance (LCC) Program or Industry Case (IC) Program at LB&amp;I's request.</li></ul>
IRM 25.6.22.5.1	<ul style="list-style-type: none"><li>Added a paragraph to include guidance found in Interim Guidance Memorandum NHQ-01-0421-0001 and Interim Guidance Memorandum NHQ-10-0421-0002.</li></ul>
IRM 25.6.22.5.8.1	<ul style="list-style-type: none"><li>Added reference to Rev. Proc. 2014-42 information, and defined effective dates for both Rev. Proc. 2014-42 and Rev. Proc. 81-38.</li><li>Add BBA content.</li></ul>
IRM 25.6.22.5.11	<ul style="list-style-type: none"><li>Added a reference to Interim Guidance Memorandum NHQ-01-0421-0001.</li></ul>
IRM 25.6.22.5.12	<ul style="list-style-type: none"><li>Added a reminder for Interim Guidance Memorandum NHQ-01-0421-0001.</li><li>Removed the guidance to attach proof of the acting designation.</li></ul>
IRM 25.6.22.5.13	<ul style="list-style-type: none"><li>Clarified and expanded content.</li><li>Added BBA content.</li><li>Deleted content regarding obsolete TEFRA forms (Form 872-I and Form 872-IA).</li></ul>
IRM 25.6.22.6.2.1	<ul style="list-style-type: none"><li>Made minor but important changes to the examples per IRS Chief Counsel.</li></ul>
IRM 25.6.22.6.2.2	<ul style="list-style-type: none"><li>Updated legal content per Chief Counsel.</li></ul>

IRM Reference	Description of Change
IRM 25.6.22.6.2.3	<ul style="list-style-type: none"> <li>Updated legal content per Chief Counsel.</li> </ul>
IRM 25.6.22.6.2.3.1	<ul style="list-style-type: none"> <li>Updated legal content per Chief Counsel.</li> </ul>
IRM 25.6.22.6.2.4	<ul style="list-style-type: none"> <li>Updated legal content per Chief Counsel.</li> </ul>
IRM 25.6.22.6.2.5	<ul style="list-style-type: none"> <li>Deleted example per Chief Counsel.</li> </ul>
IRM 25.6.22.6.3	<ul style="list-style-type: none"> <li>Content was in prior version IRM 25.6.22.6.3.1, Subchapter S Corporation (TEFRA) dated 08-26-2011.</li> <li>Deleted old tax law from 1996. Deleted content was in IRM 25.6.22.6.3.1, Subchapter S Corporations (TEFRA) (08-26-2011).</li> <li>Deleted old tax law from 1996. Deleted content was in IRM 25.6.22.6.3.2, Converted Subchapter S Corporation Items (08-26-2011), Paragraph 2.</li> </ul>
IRM 25.6.22.6.17.5	<ul style="list-style-type: none"> <li>Updated guidance for Rev. Proc. 92-29.</li> <li>Added reference to new Form 921-M.</li> </ul>
IRM 25.6.22.6.17.8	<ul style="list-style-type: none"> <li>Updated the Note so the guidance would reconcile to Form 10498. Field Exam Director's staff made the recommendation and Criminal Investigation concurred with the changes.</li> </ul>
IRM 25.6.22.6.17.9	<ul style="list-style-type: none"> <li>Deleted old employment tax law. As of January 1, 2009, Notice 99-6 is obsolete.</li> </ul>
IRM 25.6.22.6.17.10	<ul style="list-style-type: none"> <li>Added information for international information return penalties per Office of Servicewide Penalties.</li> </ul>
IRM 25.6.22.6.17.12	<ul style="list-style-type: none"> <li>Added subsection to provide guidance for Additional Medicare Tax.</li> </ul>
IRM 25.6.22.7.1	<ul style="list-style-type: none"> <li>Removed the references to the old versions of consents.</li> </ul>
Exhibit 25.6.22-1	<ul style="list-style-type: none"> <li>Moved to Knowledge Management at: <i>Extension Forms Listed by Form Number</i>. Cross reference to Knowledge Management may be found in IRM 25.6.22.4.</li> </ul>
Exhibit 25.6.22-2	<ul style="list-style-type: none"> <li>Moved to Knowledge Management at: <i>Extension Forms Listed by Assessment and Return Type</i>. Cross reference to Knowledge Management may be found in IRM 25.6.22.4.</li> </ul>

- (2) Minor editorial changes were made throughout this IRM. Website addresses, form references and IRM references were reviewed and updated as necessary. Replaced Service with IRS throughout per SPDER guidance. Changed fictitious names and social security numbers to meet the requirements of Document 13324, Guidelines and Examples for Fictionalizing Domestic Taxpayer Information.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 25.6.22, Extension of Assessment Statute of Limitations by Consent, dated October 24, 2019. This revision incorporates Interim Guidance Memorandum NHQ-01-0421-0001, dated April 15, 2021. This revision incorporates Interim Guidance Memorandum NHQ-10-0421-0002, dated April 15, 2021.

**AUDIENCE**

Appeals, Large Business and International (LB&I), Small Business and Self-Employed (SB/SE), Tax Exempt and Governmental Entities (TE/GE), and Wage and Investment (W&I) employees.

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25.6.22

Extension of Assessment Statute of Limitations by Consent

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25.6.22.1  
(02-09-2018)  
**Program Scope and Objectives**

- (1) *Purpose.* This IRM provides guidance for securing an extension by agreement of the period of time for assessment.
- (2) *Audience.* These procedures apply to examiners in Appeals, Large Business and International (LB&I), Small Business and Self-Employed (SB/SE), Tax Exempt and Government Entities (TE/GE), and Wage and Investment (W&I) employees.
- (3) *Policy Owner.* The Director Examination - Field and Campus Policy, who is under the Director, Headquarters Examination.
- (4) *Program Owner.* Field Examination Special Processes (FESP), which is under the Director, Examination - Field and Campus Policy.
- (5) *Contact Information.* To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

25.6.22.1.1  
(02-09-2018)  
**Background**

- (1) This IRM provides guidance on the processes and procedures used to solicit, secure, and record an extension of the assessment statute of limitations.
- (2) The IRC provides that the statutorily prescribed period for assessment of tax may be extended, except for the estate tax imposed by Chapter 11, if both the Secretary and the taxpayer agree to do so in writing.
- (3) The written agreement by the taxpayer and the IRS to extend the period for assessment is often referred to as an “extension” or “statute extension”. The agreement is also referred to as a “consent”.

25.6.22.1.2  
(02-09-2018)  
**Authority**

- (1) By law, the IRS has the authority to extend the period for which an assessment of tax may be imposed with taxpayer consent under Title 26, Internal Revenue Code, Subtitle F - Procedure and Administration, which includes, but is not limited to, the following IRC sections:
  - IRC 6229(b), Extension by Agreement (repealed in 2015, no longer effective for returns filed after December 31, 2017).
  - IRC 6501(c)(4), Extension by Agreement.
  - IRC 6901(d), Extension by Agreement.

25.6.22.1.3  
(11-17-2021)  
**Responsibilities**

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for examination employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers’ rights. See IRM 1.1.16.3.5, Headquarters Examination, for additional information.
- (2) The Director, Examination - Field and Campus Policy, reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the examination process. See IRM 1.1.16.3.5.1, Field and Campus Policy, for more information.
- (3) Field Examination Special Processes (FESP), which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing

policy and procedural guidance on specialized examination processes to employees. See IRM 1.1.16.3.5.1.2, Field Exam Special Processes, for additional information.

- (4) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are required to inform taxpayers of their rights as outlined in the Taxpayer Bill of Rights (see Document 13190-B, Taxpayer Bill of Rights). Employees must be familiar with and act in accordance with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see *Taxpayer Bill of Rights FAQs*.

25.6.22.1.4  
(02-09-2018)

**Program Management  
and Review**

- (1) Periodic program reviews are conducted to:
- Assess the effectiveness of specific programs within Examination or across the organization,
  - Determine if procedures are followed,
  - Validate policies and procedures, and
  - Identify and share best/proven practices.

25.6.22.1.5  
(11-17-2021)

**Acronyms**

- (1) The following table lists common acronyms and their definitions as used throughout this IRM.

Acronym	Definition
AdMT	Additional Medicare Tax
AIMS	Audit Information Management System
AIQ	Advisory, Insolvency, and Quality
ASED	Assessment Statute Expiration Date
BBA	Bipartisan Budget Act of 2015
CEAS	Correspondence Examination Automation Support
CIC	Coordinated Industry Case
COVID-19	Coronavirus Disease 2019
EIN	Employer Identification Number
ERCS	Examination Returns Control System
FICA	Federal Insurance Contributions Act
FPAA	Final Partnership Administrative Adjustment
FSAA	Final S-Corporation Administrative Adjustment
FUTA	Federal Unemployment Tax Act
ILSC	Investor Level Statute Control
IRA	Individual Retirement Arrangement
IRC	Internal Revenue Code
IRM	Internal Revenue Manual

Acronym	Definition
JCT	Joint Committee on Taxation
LB&I	Large Business and International
LLC	Limited Liability Company
LLP	Limited Liability Partnership
PCS	Partnership Control System
PICF	Partnership Investor Control File
POA	Power of Attorney
RGS	Report Generation Software
RRA 98	IRS Restructuring and Reform Act of 1998
RRTA	Railroad Retirement Tax Act
SB/SE	Small Business and Self-Employed
SRP	Shared Responsibility Payment
SSN	Social Security Number
TCN	Terminal Control Number
TE/GE	Tax Exempt and Government Entities
TEFRA	Tax Equity and Fiscal Responsibility Act
TIN	Taxpayer Identification Number
TMP	Tax Matters Partner
W&I	Wage and Investment

25.6.22.1.6  
(11-17-2021)

**Terms**

(1) The following table contains terms and definitions as applied throughout this IRM.

Term	Definition
Investor	The Partner, Member, Shareholder, or Beneficiary return that reflects pass-through items from a pass-through entity directly or indirectly.
Investor Level Statute Control (formerly NonTEFRA)	Investor Level Statute Control (ILSC) refers to pass-through returns where the statute is controlled at the investor level. These include S Corporations, Partnerships not subject to TEFRA, and Partnerships that elect out of the Bipartisan Budget Act of 2015 regime.

Term	Definition
Key Case (ILSC)	A pass-through return, typically a Form 1120S, U.S. Income Tax Return for an S Corporation; a Form 1065, U.S. Return of Partnership Income; or a Form 1041, U.S. Income Tax Return for Estates and Trusts. It may also be a promotion or tax avoidance scheme (an agency or promoter examination) that results in pass-through items to partners, shareholders, or investors (individual returns or another pass-through entity).
Manager	The term manager refers to front-line, group or team managers, unless otherwise specified.
Partnership Representative	For partnership tax years beginning after December 31, 2017, the Bipartisan Budget Act of 2015 has eliminated the role “Tax Matters Partner” and created the role of “Partnership Representative” (IRC 6223). The partnership representative is separate and distinct from any individual that may be given POA to represent the partnership before the IRS. The partnership representative is the person who has the sole authority to act on behalf of the partnership under the centralized partnership audit regime (BBA).
Tax Matters Partner	The designated partner to whom the IRS interacts with as the primary representative of the partnership that is subject to a TEFRA proceeding.
Tax Period	The term <i>tax period</i> can be used interchangeably for references in this section to <i>tax return</i> .
Normal Statute of Limitations	References to the <i>normal</i> statute of limitations refer to the three-year period after a return is filed or due, whichever is later, for assessment of tax. See IRC 6501(a), General Rule.

25.6.22.1.7  
(11-17-2021)

#### Related Resources

- (1) The following table contains related manuals which cover additional processes and procedures that examiners may use and are referenced throughout this manual.

IRM	Title
IRM 1.2.1.5	Policy Statements for the Examining Process
IRM 1.2.2.5	Delegations of Authority for the Examining Process
IRM 1.2.2.14	Delegations of Authority for Special Topics Activities
IRM 1.4.40	SB/SE Field and Office Examination Group Manager
IRM 4.4.12	Examined Closings, Surveyed Claims, and Partial Assessments
IRM 4.5.2	TE/GE Examined and Non-Examined Closures
IRM 4.10.1	Overview of Examiner Responsibilities
IRM 4.10.2.2.2	26/27 Month Examination Cycle
IRM 4.10.15	Report Generation Software
IRM 4.23.14	Statute Control and Extension
IRM 4.24.8	Examination Guidance for Excise Claims for Refund or Abatement

IRM	Title
IRM 4.31.2	TEFRA Examinations - Field Office Procedures
IRM 4.31.9	Centralized Partnership Audit Regime (BBA) Field Examination Procedures
IRM 4.36.3	Examination Team Responsibilities
IRM 4.46.1	General Information and Definitions
IRM 4.71.9	Statute Control Procedures
IRM 5.7.3	Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP)
IRM 25.1.4	Administrative Joint Investigation
IRM 25.6.1	Statute of Limitations Processes and Procedures
IRM 25.6.23	Examination Process - Assessment Statute of Limitations Controls
IRM 25.15.6	Field Examination Procedures
Extension Forms Listed by Form Number	Moved to Knowledge Management at: <i>Extension Forms Listed by Form Number.</i>
Extension Forms Listed by Assessment and Return Type	Moved to Knowledge Management at: <i>Extension Forms Listed by Assessment and Return Type.</i>

- (2) Form 10949, Statute Extension Checksheet, is a job aid that provides information on preparing and processing consents. Use of the job aid is **strongly encouraged** for each consent solicitation made; however it is not a substitute for, nor does it take precedence over, the provisions found in this IRM (IRM 25.6.22, Statute of Limitations, Extension of Assessment Statute of Limitations by Consent).
- (3) For control of Bipartisan Budget Act of 2015 (BBA) partnership statute of limitations on making adjustments, see Interim Guidance Memorandums LB&I-04-0320-0005 (expiring April 01, 2022), LB&I-04-1019-010 (expiring October 31, 2021) and Form 15271, Bipartisan Budget Act (BBA) Partnership Adjustment Statute Extension Check Sheet, for more information. After, the expiration dates of the interim guidance memorandums, consult IRM 4.31.9, Centralized Partnership Audit Regime (BBA) Field Examination Procedures.

## 25.6.22.2 (03-26-2019) Guidelines for Soliciting Extensions

- (1) Generally, the extension of the period for assessment will be secured only in cases involving unusual circumstances. The need for the extension must be clearly identified before it is solicited. When the assessment statute date is determined and additional time is required to complete the examination of an open return or administrative processing of a case, an extension must be secured or other action must be taken to protect the interests of the Government.

**Note:** In addition to statute considerations, the 26/27 month examination cycle must be considered before a tax return is opened for examination. See IRM 4.10.2.2.2, Examination Cycles, for more information.

- (2) To be valid, the consent form evidencing the agreement to extend the period of time to assess tax must be executed by both the taxpayer and the IRS before the statutory period for assessment expires. The period initially agreed upon for assessing tax may be extended multiple times by the parties executing additional consent forms before the period of time prescribed in the preceding consent expires.
- (3) Waivers of restrictions on assessment, such as Form 4549, Income Tax Examination Changes, or Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, are not consents to extend the period of time to assess tax and the taxpayer's execution of these forms does not extend the period of time to assess tax.
- (4) Use of the term "original" within IRM 25.6.22, Statute of Limitations, Extension of Assessment Statute of Limitations by Consent, in relation to receipt of consent forms and taxpayer signatures includes faxed submissions **if** proper case file documentation is made. See IRM 25.6.22.5.1, Fax Signatures, for details on the use of fax policy for extension consent forms.
- (5) The following guidelines will be used to determine if an assessment statute extension will be requested from the taxpayer.

25.6.22.2.1  
(11-17-2021)

#### **Assessment Statute Extension**

- (1) It is the policy of the IRS to secure consents to extend the period to assess tax only in cases involving unusual circumstances. See Rev. Proc. 57-6, 1957-1 C.B. 729. Every attempt will be made to resolve cases before it is necessary to extend the statute of limitations. If it is necessary to extend the statute, the period of extension must be no longer than is necessary to complete the examination and other administrative actions.
- (2) An examiner must obtain the approval of their group manager before requesting a consent to extend the statute of limitations. Approval must be documented on Form 9984, Examining Officer's Activity Record, or other appropriate form. See IRM 4.10.9.6.2(4), Issue Lead Sheets.

**Exception:** Manager approval is not needed to solicit a consent solely so the case can go to Appeals. See IRM 1.4.40.4.3, Statute Controls, and IRM 4.10.8.12.1(1), 30-Day Letters (SB/SE Field and Office Examiners Only), for additional guidance.

- (3) The following conditions warrant asking for a consent to extend the statute of limitations. This list is not all inclusive and in rare circumstances consents may be solicited outside of these conditions. For situations other than those listed below, the case file must be documented with the reason(s) approval to solicit consent to extend the statute was granted.
  - a. The limitation period for a taxable year under examination will expire within 180 days and there is insufficient time to complete the examination and the administrative processing of the case.
  - b. The statute of limitations for the taxable year under examination requires extension so the case can go to Appeals.

**Note:** There must be **at least 395 days** remaining on the assessment statute of limitations when the case is received by Technical Services and **at least 365 days** remaining on the statute of limitations when the case is received by Appeals.

- c. The limitation period for the taxable year under examination will expire within 300 days and the case is included in LB&I's Large Corporate Compliance (LCC) Program or Industry Case (IC) Program. See IRM 4.46.1-1, Glossary of LB&I Terms, for definitions of LCC and IC cases.
- d. The limitation period for the taxable year under examination will expire within 180 days and involves a case in which the Form 6658, Notice of Special Investor Action, procedure is applicable. This form is used as a transmittal to send a copy of a K-1 to the Field/Campus Pass Through Function when an investor is manually linked to a pass-through entity.
- e. The limitation period will expire within 365 days for a case that will be (or was) placed in fraud suspense. See IRM 4.8.11.3.5.1, Statute Protection.
- f. The limitation period will expire within 24 months for a case that will be (or was) placed in Form 1254 Suspense. See IRM 4.8.2.11.1, Form 1254 Suspense.
- g. The limitation period to assess preparer penalties or appraiser penalties will expire within 180 days and there is insufficient time to complete the examination and process the return preparer penalty case or the appraiser penalty case.
- h. A joint investigation with Criminal Investigation is in progress and there is the likelihood that the work cannot be completed before expiration of the statutory period for assessment (see IRM 25.6.22.6.17.8, Fraud - Criminal, and IRM 25.1.4.3.8, Statute Protection, for further instructions).

**Reminder:** For cases jointly controlled by Criminal Investigation and Examination, Form 10498-B, Joint Investigations Intent to Solicit Consent to Extend Statute, must be secured prior to consent solicitation.

- (4) A consent will not be requested in any case in which no previous contact was made with the taxpayer, except when compelling tax administration reasons exist to justify the request for the consent. See IRM 4.10.2.2.2, 26/27 Month Examination Cycle, for more guidance. For example, consistent treatment of related taxpayers would be a compelling tax administration reason. When an exception such as this is considered, the decision, justification and any action taken must be documented in the case file.
- (5) It is IRS's practice to keep the statutory period of limitations open on all returns that the Joint Committee has under consideration, including returns recommended for survey action. The examiner will make every effort to obtain consents extending the period of limitations on all returns (including carryback and claim returns) directly involved in a Joint Committee case (including the non-reportable tax periods included in the Revenue Agent's Report) when the statutory period will expire within:
  - a. 12 months from the time the case is sent to the Joint Committee reviewer, or
  - b. 6 months from the date the report is transmitted to the Joint Committee Program Manager in Headquarters.
- (6) In the situation when a case was referred to Criminal Investigation function or is under joint investigation with Criminal Investigation, the primary responsibility for protecting the civil statute for assessment is that of the examiner charged with the return(s). Before a request is made to the taxpayer to extend the



statute, written agreement from Criminal Investigation, generally with a signed Form 10498-B, Joint Investigations Intent to Solicit Consent to Extend Statute, must be obtained. Consult IRM 25.6.22.6.17.8, Fraud - Criminal, and IRM 25.1.4.3.8, Statute Protection, for procedures for soliciting consents involving joint investigation cases.

- (7) If examination issues indicate that gross income was understated by more than 25 percent and the six-year statute may apply, the normal three-year statutory assessment period provided by IRC 6501(a), General Rule, will be extended, if the normal statute still has time remaining. If the examiner lets the normal three-year period for assessment expire in reliance on the 25 percent omission of gross income, but it is ultimately determined the understatement is 25 percent or less, the IRS would be barred from assessing the tax deficiency, absent some other exception to the normal period for assessment.
  - (8) Claims for refund do not extend the statutory period for assessing additional tax. Therefore, an open assessment statute must be protected, and a consent obtained, if the statute is within the above-specified time periods unless (9), immediately below, applies.
  - (9) If it was determined there is no need to protect the assessment statute because there is no potential for additional tax to be assessed, then examiners must document this determination on the Form 895, Notice of Statute Expiration, signed or initialed and dated by the examiner and the manager. This determination could pertain to cases involving claims for refund and carryback tax periods. See IRM Exhibit 25.6.23-3, Instructions for Updating the Statute on AIMS, for proper alpha coding of the assessment statute expiration date (ASED).
  - (10) In cases previously closed and reopened by taxpayers through the filing of claims for refund, the taxpayer will not be routinely requested to agree to a consent to extend the period of time for assessment unless new information or the re-examination of the return indicates that a redetermination of the tax liability may result in tax deficiencies.
- Note:** The claim for refund amount can be offset by additional taxes attributable to adjustments discovered through the re-examination process after the period for assessment has expired.
- (11) If the period for assessment is open as a result of a consent but closing action will not be completed within the time periods specified in the existing consent, another consent must be obtained to further extend the statute. In this case, the earlier consent(s) must always be retained and safeguarded. All consents must be attached to the back of page 1 of the tax return. These consents provide the proof that the statute was still open at the time a later consent was executed.
  - (12) Executed consent documents, including, but not limited to, the signed consent itself, must be scanned and included in the case file documents folder of Report Generation Software (RGS), Issue Management System (IMS) or other electronic case files as appropriate whenever possible. See IRM 4.10.15, Report Generation Software.



25.6.22.3  
(03-26-2019)  
**Notification of  
Taxpayer's Rights**

- (1) As a result of an amendment to IRC 6501, Limitations on Assessment and Collection, by the IRS Restructuring and Reform Act of 1998 (RRA 98), the IRS must notify the taxpayer of the following rights **each** time a request is made to the taxpayer to consent to extend the period of time for assessment:

- a. The right to refuse to extend the period of time for assessment.
- b. The right to request that the extension be limited to particular issues.
- c. The right to request that the period for assessment be limited to a particular period of time, for example, to a specific date.

Employees must clearly document these notifications were made in the case activity record.

- (2) These rights are set out in the "Your Rights as a Taxpayer" section of Form 872, Consent to Extend the Time to Assess Tax, and Form SS-10, Consent to Extend the Time to Assess Employment Taxes. These consent forms also provide information about Pub 1035, Extending the Tax Assessment Period.
- (3) Notification of rights is additionally addressed in Letter 907, Request to Extend Assessment Statute, Letter 967, Consent Extending Period of Limitation Transmittal, and Pub 1035, Extending the Tax Assessment Period.
- (4) The request for consent and notice of taxpayer's rights must be made to the taxpayer (see IRM 25.6.22.3.1, Separate Notification of Each Spouse, for joint return situations) and the taxpayer's properly authorized representative, if any, unless the taxpayer has placed restrictions on providing copies to the representative.
- (5) The IRS employee requesting the consent must:
- a. Mail or present to the taxpayer a properly completed consent form, which contains the notice of taxpayers' rights.
  - b. Along with the consent form, mail or present to the taxpayer a completed and dated Letter 907, Request to Extend Assessment Statute, or Letter 967, Consent Extending Period of Limitation Transmittal, in the case of the Office of Appeals, and Pub 1035, Extending the Tax Assessment Period.

**Note:** Pub 1035 need not be provided to the taxpayer if Letter 907-L, LB&I Request for Consent to Extend Period for Assessment, is used. This letter is appropriate for corporate, partnership or other return types examined by LB&I examiners on each occasion a consent is solicited.

- c. If the taxpayer is represented, mail or present a properly completed consent form and a copy of the Letter 907 or Letter 967 to the properly authorized representative along with a Letter 937, Transmittal for Power of Attorney. If the Letter 907 / Letter 967 and the consent form is presented to the representative, also mail the documents to the taxpayer along with Pub 1035. See IRM 4.10.1.3.3, Written Communication to the Taxpayer's Representative.

**Note:** Blank forms, notices, and publications available on *IRS.gov* will not be sent to the taxpayer's representative or appointee. This includes Pub 1035, Extending the Tax Assessment Period. Only copies of letters and other forms and documents addressed or specific to the

taxpayer will be enclosed with the Letter 937, Transmittal for Power of Attorney. The enclosure section of Letter 937 will show only the specific enclosures included with the letter.

- d. There is no legal requirement that the notice of rights required by IRC 6501(c)(4)(B), Notice to Taxpayer of Right to Refuse or Limit Extension, be signed. However, the Appeals Officer/Revenue Agent/TCO/Tax Examiner/Specialist must include their own name in the signature block and sign Letter 907, Request to Extend Assessment Statute, or Letter 967, Consent Extending Period of Limitation Transmittal, whichever is applicable.

Employees must clearly document these steps were made in the case activity record.

- (6) The IRS employee requesting the consent will keep a copy of Letter 907 or Letter 967 in the physical and electronic case file and will clearly document on Form 9984, Examining Officer's Activity Record, or other appropriate form:
  - The required notification of rights was made,
  - The date of notification,
  - The consent form(s), letters and publications provided,
  - Who was notified, and
  - How they were notified, for example, by mail or personal presentation.

**Caution:** Provide a clear documentation audit trail to document the steps taken to provide notification of taxpayer's rights in **each** instance a consent to extend the statute is solicited. For jointly filed returns, each taxpayer must be notified of their rights as outlined in IRM 25.6.22.3.1, Separate Notification of Each Spouse. Additionally, representatives, unless otherwise restricted, must be provided with a copy of the Letter 907 and Form 872, Form SS-10, Consent to Extend the Time to Assess Employment Taxes, or other applicable consent form(s) provided to the taxpayer.

**Example:** "12/1/2018 - Mailed Letter 907, Form 872 and Pub 1035 to the taxpayer to request consent to extend the 2015 ASER. A copy of Letter 907 and Form 872 were mailed to the representative with Letter 937."

**Example:** "12/1/2018 - Delivered Letter 937, a copy of Letter 907 and Form 872 to taxpayers' representative to request consent to extend the 2015 ASER during a follow-up appointment. Letter 907, Form 872 and Pub 1035 were mailed to taxpayer and taxpayer spouse separately at their respective addresses."

- (7) If a taxpayer and/or authorized representative responds to a request to extend the assessment statute with questions or other concerns, examiners will verbally discuss the taxpayer's rights to refuse or limit the scope or duration of the extension in plain language, the reason for the request, and any other pertinent information, such as how the proposed extension date was determined and the fact the statute can, if necessary, be extended again, to help the taxpayer make an informed decision. Verbal communications regarding statute extension consents must be documented in the case file using the guidelines above.
- (8) If a taxpayer chooses to exercise their right to decline to extend the statute, it will be explained to the taxpayer and/or authorized representative(s) that a

statutory notice of deficiency may be issued or other appropriate action taken in those instances when a notice of deficiency is not first necessary in order to assess tax. See Pub 1035 for more detailed discussion. Procedures will be explained to the taxpayer using plain language, in a manner consistent with the IRS mission statement and must be documented in the case file.

- (9) If the taxpayer requests an extension period that is shorter than needed to complete the examination and other administrative actions, the IRS is not compelled to agree to such period of time. Both the taxpayer and the IRS have the right to decide what they will agree to in the consent. If the proposed restricted consent is not agreed to, the examiner must explain to the taxpayer and/or authorized representative(s), if provided the opportunity, why the limited period is not agreed to and document such discussions and the final decision in the case file.
- (10) If the taxpayer requests the consent be restricted to specific items, the IRS is not compelled to sign such a consent in all situations. Both the taxpayer and the IRS have the right to determine what they will agree to in the consent. See IRM 25.6.22.8.1, Taxpayer's Rights Concerning Restricted Consents, and IRM 25.6.22.8.2, Situations Permitting Taxpayer's Request for Restricted Consent, for situations when restricted consents will normally be granted. If the proposed restricted consent is not agreed to, the examiner must explain to the taxpayer and/or authorized representative(s), if provided the opportunity, why the limited period is not agreed to and document such discussions and the final decision in the case file.

## 25.6.22.3.1 (08-26-2011) Separate Notification of Each Spouse

- (1) Section 3201(d) of RRA 98 requires that, wherever practical, any notice relating to a joint return be sent separately to each individual filing the joint return.
- (2) Requests for statute extensions are notices requiring issuance of separate notices, except in those situations when it was decided and **documented** in the case file that the individuals filing the joint return are residing at the same address. If both spouses are residing at the same mailing address, then:
  - a. Mail or present one complete set of documents, which contains the appropriate Letter 907, Request to Extend Assessment Statute, or Letter 967, Consent Extending Period of Limitation Transmittal, addressed to both spouses at the common address, a Pub 1035, Extending the Tax Assessment Period, and the required consent form which contains the notice of taxpayers' rights.
  - b. Document in the case activity record the date and fact of mailing of Letter 907 or Letter 967, Pub 1035 and the consent form or the date and fact of personal presentation and to whom presented.
- (3) If it is determined both spouses are **not** residing at the same address, document the separate addresses and mail separately a complete set of documents containing the Letter 907 or Letter 967 addressed to the respective separate address of each spouse, Pub 1035 and consent to each spouse and document the case activity record with the date and fact of separate mailings to each spouse. If the consent is personally presented, document the date and

fact of separate personal presentations or the date and fact of personal presentation to one spouse and the date and fact of mailing to the other spouse. For preparation of consents when the spouses are separated or divorced, see IRM 25.6.22.6.1.1, Joint Returns.

- (4) See IRM 4.10.1.2.2.1.2, Verification of Address for Each Spouse, and IRM 25.15.6.12, Addressing and Issuing Correspondence, for the requirements which specify that in every examination of a joint return, the examiner shall verify the last known mailing address for each spouse and document actions taken to verify the address.

25.6.22.4  
(02-09-2018)  
**Consent Forms, Letters,  
and Publications**

- (1) Various consent forms are used to extend the statutory period for assessment. See *Extension Forms Listed by Form Number* and *Extension Forms Listed by Assessment and Return Type* on Knowledge Management for a detailed listing.

25.6.22.4.1  
(02-09-2018)  
**Fiduciary Relationships**

- (1) In fiduciary situations Form 56, Notice Concerning Fiduciary Relationship, or Form 56-F, Notice Concerning Fiduciary Relationship of Financial Institution, is used to confirm a person's authority to sign the consent.
  - a. Generally, a fiduciary will file Form 56 when the fiduciary relationship is created or terminated. Some fiduciaries file the form with the first return. Therefore, Form 56 may already be on file. If the examiner has reason to doubt that the Form 56 on file remains valid, the examiner needs to verify that the fiduciary relationship still exists or to secure a current Form 56 (dated not later than the date the fiduciary dates the consent) to ensure the fiduciary relationship still exists, in order to enter into a consent agreement.
  - b. Part II of Form 56 concerns the authority for the fiduciary relationship, such as a will, a court order or a trust instrument. The instructions note that the fiduciary must be prepared to give evidence that substantiates the authority. This evidence may not be on file with the IRS. As noted below in IRM 25.6.22.6.1.2, Minor; IRM 25.6.22.6.1.3, Incompetent Persons; IRM 25.6.22.6.1.4, Decedents; IRM 25.6.22.6.6, Trusts; and IRM 25.6.22.6.7, Decedent's Estate (Income Tax – Form 1041), the fiduciary is generally required to provide the evidence of fiduciary authority when submitting the consent in order to ensure the validity of the consent. The file must contain a copy of the properly authenticated instrument under which the fiduciary derives the authority to act and which documents the fact that such authority remains in full force and effect on the date the consent is signed by the fiduciary. Form 56 and all supporting documentation relating to the authority to act as a fiduciary must be attached to the back of Page 1 of the tax return with the signed consent.

25.6.22.4.2  
(03-26-2019)  
**Letters and Publications  
Sent with Consents**

- (1) Examiners will use the following letters when consents are requested through the mail: A copy of the correspondence is to be provided to the authorized representative.

Letter	Description
Letter 907 (with various suffixes depending on operating division or Letter 967 in the case of Appeals)	Request to Extend Assessment Statute — Transmittal letter sent to the taxpayer with the consent. The number of days for the taxpayer to respond to the consent solicitation is to be inserted in the Letter 907, if not already specified in the particular version of the letter used. Generally, at least 10 calendar days from the date of the letter will be allowed for the taxpayer to respond.
Letter 928	TE/GE Request to Extend Statute – Follow-up Letter — Letter used, when appropriate, as a follow-up when consents have been previously requested but not received.
Letter 929	Transmittal to Taxpayer of Copy of Signed Consent — After consents have been properly executed, this letter may be used to transmit a copy of the executed consent to the taxpayer for their records.
Letter 1817	Letter to Taxpayer Regarding Consents — Letter used to request additional information or send the taxpayer “new” consent forms, if it is necessary to recontact the taxpayer about a consent.

- (2) Pub 1035, Extending the Tax Assessment Period, will be sent to the taxpayer in every instance when a consent is requested by mail.
- (3) If a face-to-face request for a consent is made to the taxpayer, the consent form, Letter 907, and Pub 1035 will be handed to the taxpayer.
- (4) If a face-to-face request for a consent is made to a properly authorized representative, the consent form, Letter 907, and Letter 937, Transmittal for Power of Attorney, will be handed to the representative.

**Note:** When soliciting a consent in person or verbally, examiners will give taxpayer(s) and/or authorized representative(s) an explanation using plain language of taxpayers’ rights and options, of why the extension is requested, and any other information relevant to allow the taxpayer to make an informed decision, such as how the proposed extension date was determined and the fact that the statute can, if necessary, be extended again. This communication must be included in the case file documentation of the solicitation.

## 25.6.22.5 (08-26-2011) Preparation of Consent Forms – General Procedures

- (1) This section covers the procedures for the preparation of consents that generally apply to consents for all taxpayers and types of tax. IRM 25.6.22.6, Preparation of Consents for Specific Entities and Taxes, below deals with requirements that pertain to specific taxpayers and types of tax.
- (2) A consent to extend the period for assessment is a unilateral waiver of a defense by a taxpayer and it is not a contract. Contract principles are significant, however, as IRC 6501(c)(4), Extension by Agreement, requires the parties enter into a written agreement as to the extension of the period of time to assess tax. Therefore, every effort will be made to ensure the following information is clear:
  - The terms of the agreement.
  - Who is the taxpayer?
  - What years are involved?

- Which individuals are authorized to sign the consent?
- Whether or not there are any conditions and/or restrictions posed by the taxpayer or the IRS.

- (3) There are fixed-date and open-ended (no fixed-date) consents. For further information as to the date the extended period for assessment ends see IRM 25.6.22.5.7, Expiration Date, and IRM 25.6.22.7, Open-ended Consents, as well as *Extension Forms Listed by Form Number*, to determine which forms are used to prepare fixed-date consents and which forms are used to prepare open-ended consents.

25.6.22.5.1  
(11-17-2021)  
**Fax Signatures**

- (1) On November 19, 2015, a revision to the IRS's fax policy was announced by the Deputy Commissioner for Services and Enforcement. This revision allows for the acceptance of taxpayer and/or taxpayer's representative signatures by fax on consents to extend the time to assess tax under the following conditions:
- Contact with the taxpayer(s) is made by phone or in-person,
  - The taxpayer(s) history/activity record documents the date and method of contact, and
  - The taxpayer(s) history/activity record notes the taxpayer wishes to send the consent by fax.
- (2) If all the conditions listed above are met, the receipt of a signed consent to extend the time to assess tax via fax will be considered an "original" consent form with "original" signature(s) for the purposes of IRM 25.6.22.

**Exception:** A temporary deviation from policy was announced by the Deputy Commissioner for Services and Enforcement. The temporary deviation was a part of the response to working in a telework environment due to COVID-19. The temporary deviation permits Images of taxpayer/representative signatures, and digital signatures, for extensions of statute of limitations on assessment or collection. The temporary guidance shall be relied upon as long as the temporary guidance is in effect or extended by another directive. See Interim Guidance Memorandum NHQ-10-0421-0002, Temporary Deviation from Handwritten Signature Requirements for Limited List of Tax Forms dated April 15, 2021, and Interim Guidance Memorandum NHQ-01-0421-0001, (1) Approval to Accept Images of Signatures and Digital Signatures (2) Approval to Receive Documents and Transmit Encrypted Documents by E-mail dated April 15, 2021, for more information.

25.6.22.5.2  
(02-09-2018)  
**Preparation of Consents**

- (1) The consent will be typewritten or computer generated. A pen may be used, but this practice is discouraged. Never use a pencil.
- (2) The consent must be prepared by the IRS, not by the taxpayer or the taxpayer's representative.

**Exception:** The Form 921 series may be prepared by the taxpayer and sent for acceptance under Rev. Proc. 92-29, 1992-1 C.B. 748. This revenue procedure pertains to the use of an alternative to the general method under IRC 461(h), Certain Liabilities Not Incurred Before Economic Performance, by developers of real estate.



- (3) Restricted consents are not acceptable, except as supported under the discussion of restricted consents at IRM 25.6.22.8, Restricted Consents.
- (4) The consent must be prepared in duplicate. A duplicate original signed by both the taxpayer (or duly authorized representative with proper authority to do so) and delegated IRS official is sent to the taxpayer. See IRM 25.6.22.5.12 (1), Examiner's Responsibilities after Receipt of Consent. The original and duplicate original must each be executed with original signatures of the taxpayer(s) and the IRS official. Consent forms signed by the taxpayer(s) or duly authorized representative and sent via fax are acceptable as long as taxpayer contact is made and the case is documented as described in IRM 25.6.22.5.1, Fax Signatures.
- (5) Consents with alterations, erasures, and corrections will not knowingly be provided to the taxpayer for signature, regardless of how seemingly slight or immaterial the corrections or alterations might be.
- (6) If the taxpayer has made alterations on the consent, a new consent must be prepared for the taxpayer's signature. However, if the alterations on the consent are acceptable to the IRS, the taxpayer has initialed each alteration, and there is not sufficient time to perfect the consent, the person signing for the IRS can initial the alterations and sign the consent. Advice of Area Counsel will be sought before relying on an altered consent to protect the statute.

**Caution:** The IRS will not make changes to a consent form after execution by the taxpayer.

- (7) Consents that contain errors (such as spellings, addresses, years, identification numbers) may not necessarily render the consent invalid; however, due diligence must be exercised to avoid errors. The courts have sometimes found that when the intent of the parties was to extend the period for assessment for the appropriate taxpayer and tax period, the errors in the consent did not invalidate the extension, for example, the court "reformed" the consent. Decisions concerning the validity of consents which have errors are not to be made without consulting Counsel.

**Note:** The most important factor with respect to consent preparation is that the written consent manifests the intent of the parties to extend the period of time for assessment.

25.6.22.5.3  
(10-24-2019)  
**Taxpayer's Name**

- (1) The consent must be prepared and signed with the name as shown on the return as filed.

**Example:** Name line — "Mary Salmon"

**Example:** Signature line — "Mary Salmon"

**Exception:** Unless since filing, there was a name change. In these situations, the consent will be prepared using the current and former names, but the signature line will show the current name, **or** it is acceptable to write and sign the current and former names on the signature line.

**Example:** Name line — “Mary Salmon, formerly Mary Fish”

**Example:** Signature line — “Mary Salmon”, **or** “Mary Salmon formerly Mary Fish”

- (2) Abbreviated names, such as “Geo.,” “Chas.,” “Jas.,” “Wm.,” will not be used in the name line of the consent or the signature line, unless they are used on the return in both the name and signature block. If an entity’s legal name has abbreviations, the abbreviations must be used.
- (3) For Employee Plan matters, the consent must show the name of the trust.

**Note:** Form 56, Notice Concerning Fiduciary Relationship must be secured to decide who is the current trustee. The trustee is the individual who has the authority to sign the extension consent form.

25.6.22.5.4  
(02-09-2018)  
**Kind of Tax**

- (1) The following will be entered on the “Kind of Tax” line on applicable consent form(s):

Type of Tax	Kind of Tax
Additional Medicare Tax	Additional Medicare Tax
Chapter 42 and 43, IRC 4940 through IRC 4980 involving tax-exempt organizations and qualified pension plans	excise
Excise tax reported on Form 1040	excise
Income	income
Individual Shared Responsibility Payment (SRP)	Section 5000A Shared Responsibility Payment - the word “tax” printed to the right of the entry field must be struck through when soliciting consent for the SRP statute only.
Excise Taxes reported on Forms 720, 730, 2290, and 11–C	See IRM 25.6.22.6.11 (4), Excise Tax
FICA tax on tips	FICA on tips
Foreign Persons, Withholding on U.S. Income of	withholding tax under IRC 1441–1464
Gift Tax	gift
Household Employment Tax	household employment
Penalties under IRC sections 6721 and 6722	penalties prescribed by IRC 6721 and IRC 6722 - the word “tax” printed to the right of the entry field must be struck-through.
Qualified Pension Plans	income

- (2) Certain tax forms show more than one kind of tax. If income taxes and separate and distinct other types of taxes are involved such as excise or employment taxes, “the kind of tax” portion of the consent form must indicate each type of tax. For example, in the examination of a Form 1040, there may



be income tax issues and one or more other issues present that involve an Individual Retirement Account (IRA). The IRA issues may give rise to Chapter 43 taxes reportable on Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, and Form 1040. If the “kind of tax” line of the consent is completed only for “income tax” the statutory period for assessing any Chapter 43 excise tax deficiency may expire, thus barring the assessment of the excise tax. Therefore, in this example, the “kind of tax” on the consent form must specify “income and excise.”

**Note:** The additional tax imposed by IRC 72, Annuities; Certain Proceeds of Endowment and Life Insurance Contracts, on early distributions from a qualified retirement plans, including an IRA, or modified endowment contract is not a separate and distinct type of tax. Therefore, the additional tax imposed by IRC 72, is covered by a consent which specifies the “kind of tax” as “income.” The same principle would also apply to the additional tax imposed by IRC 530, Coverdell Education Savings Accounts, on taxable distributions from Coverdell education savings accounts and qualified tuition programs. See IRM 25.6.1.9.4.3, Forms Reporting More Than One Item of Tax, for a discussion of separate and distinct types of tax reported on the same form.

25.6.22.5.5  
(08-26-2011)  
**Taxpayer’s Address**

- (1) The concept of last known address is irrelevant to the execution of consents to extend the period of limitations on assessment. Therefore, the taxpayer’s current address will be used, rather than the address shown on the return. The current address will be determined based on the best information available, including IDRS, correspondence from the taxpayer, or other sources. Therefore, in the case of a joint return when the spouses are not occupying the same address, the consent name line will be prepared in accord with IRM 25.6.22.5.3, Taxpayer’s Name, and IRM 25.6.22.6.1.1, Joint Returns; however the address line on the consent for the first spouse will reflect the current address of that spouse and the address line of the consent for the second spouse will reflect the current address of that spouse. As per IRM 25.6.22.3.1 (3), Separate Notification of Each Spouse, the separate consents are to be mailed to the separate addresses or personally presented to each spouse.
- (2) The use of the address shown on the return will not make the consent invalid.

25.6.22.5.6  
(08-26-2011)  
**Tax Period**

- (1) The year(s) covered by the consent must be stated in full, including the month, day, and year. Consents merely showing the year as “2020,” “202012” or “fiscal year ending March 2020” are not acceptable rather the tax period must be expressed as in the examples below.

**Example:** “December 31, 2020”

**Example:** “March 31, 2020”

- (2) The definition of a taxable year under IRC 441(b), Taxable Year, includes a period of less than 12 months. Thus, a return may be required for a period of less than 12 months. A consent covering the first or last return must show the

dates of the beginning and end of the fractional part of the year. The word “ended” on the consent form is to be crossed out or deleted in a consent for fractional parts of a year.

**Example:** In the case of an individual on a calendar year basis, who died on September 1, 2021, the consent covering the income tax return (such as Form 1040) is to reflect “for the period(s) January 1, 2021 to September 1, 2021.”

**Example:** The consent covering the income tax return of the estate (for example, Form 1041), in this example, will specify, if a calendar year is elected, “for the period(s) September 2, 2021 to December 31, 2021.”

- (3) Paragraph (2), immediately above, would also apply if the taxpayer changed the accounting period.
- (4) If a fiscal year trust exempt from taxation under IRC 501(a), Exemption from Taxation, loses its exempt status, its first taxable year would end on December 31. See IRC 644, Taxable Year of Trusts.

25.6.22.5.6.1  
(08-26-2011)

#### Multiple Tax Periods

- (1) More than one tax period can be shown on the consent if there is adequate space on the form for doing so. The month, day, and year must be shown for each tax period.

**Example:** “December 31, 2020 and December 31, 2021.”

**Example:** “December 31, 2019, December 31, 2020, and December 31, 2021.”

- (2) One consent form will only be used for multiple years when the following are the same for all tax periods covered:
  - Taxpayer’s name on each return.
  - Kind of tax.
  - Restricted issues.
  - Date to which period for assessment is extended.
- (3) The original consent, executed by both the taxpayer and the delegated IRS official, will be securely attached to the back of page 1 of the return for the latest year covered by the consent. A copy of the consent will be securely attached to the back of page 1 of all other returns covered by the consent and saved electronically.

25.6.22.5.7  
(08-26-2011)

#### Expiration Date

- (1) The statute can be extended to a specific date (fixed-date consent), or the statute can be extended for an indefinite period, (open-ended consent).
- (2) The open-ended consent ends after the occurrence of certain events plus 90 days. Thus, a specific extension date is not stated on the open-ended consent. The open-ended consents include Form 872-A, Special Consent to Extend the Time to Assess Tax, for income and various other tax returns and Form 872-O for TEFRA partnership returns. See IRM 25.6.22.7, Open-ended Consents, for further discussion of open-ended consents; as well as See *Extension Forms Listed by Form Number*, for other open-ended consent forms.
- (3) The fixed-date consent ends on a fixed date.

- (4) The extension date on the fixed-date consent must be entered as the month, day and year, for example, December 31, 2021.

25.6.22.5.8  
(08-26-2011)  
**Consent Signature and Date**

- (1) Neither IRC 6501(c)(4), Extension by Agreement, nor the regulations specify how consents are to be signed. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified by Rev. Rul. 84-165, 1984-2 C.B. 305, provides the consent will be signed in the same manner as the return that was filed, unless since filing, there was a name change. In these cases, the consent will be prepared using both names on the name line, but the signature line will only show the current name.

**Example:** Name line: "Mary Salmon, formerly Mary Fish".

**Example:** Signature line: "Mary Salmon".

- (2) The individual(s) who signs the consent will enter the date signed in the space provided to the right of their signature.

25.6.22.5.8.1  
(11-17-2021)  
**Executed by Authorized Representative**

- (1) An individual having a valid power of attorney from a taxpayer, which allows that individual (the authorized representative) to extend the statute of limitations, may execute a consent. The power of attorney must be valid at the time the consent is executed by the authorized representative.

- (2) If a consent is signed under a power of attorney authorization, the approving official will verify the power of attorney document:
- Is properly prepared, specifically showing type of tax and years covered and not merely "all years" or "all taxes."
  - Is specific in authorizing the representative to sign consents for the taxpayer.
  - Is held by an individual authorized to represent the taxpayer before the IRS.

**Caution:** Accepting a consent supported by a Form 2848, Power of Attorney and Declaration of Representative, or other power of attorney document, in which the power of attorney does not have the authority to sign the consent, can result in the monitoring of an incorrect statute date and, potentially, an expired statute/barred deficiency situation. In addition, a representative appointed by a taxpayer with proper grant of authority to sign a consent ceases to have authority to sign the consent upon the death of the taxpayer.

- (3) Rev. Proc. 81-38, 1981-2 C.B. 592, specifically provides that an unenrolled return preparer generally cannot sign any document (including a consent) for a taxpayer even though permitted to practice in a limited manner before the Examination function of the IRS with respect to the returns they prepared.

**Note:** Rev. Proc. 2014-42 modifies and supersedes Rev. Proc. 81-38 for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015. It is important to refer to the appropriate revenue procedure based on the date of return preparation.

- (4) Power of attorney documents must be dated before or share the same date with the signing of the consent by a representative.
- (5) In the case of a joint return, the authorized representative's signature on the consent is only valid for the taxpayers who actually grant and sign the power of attorney document. If only one spouse signs the power of attorney document, the representative's signature on the consent only pertains to that spouse. The other spouse will also have to sign the consent in order for them to be covered by the terms of the consent.
- (6) For the purposes of extending TEFRA entity statutes, it is preferred the consent be executed by the Tax Matters Partner. See IRM 4.31.2.5.2, Extension of Statute at the Partnership Level. If someone other than the Tax Matters Partner is delegated the authority to sign a consent, the examiner must contact their local TEFRA coordinator as coordination with Counsel may be necessary. The authorized representative will not sign the consent unless the requirements in the following references are met. Treas. Reg. 301.6229(b)-1 (See: 26 CFR 301.6229(b)-1) applies to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see 26 CFR 301.6229(b)-1T. See IRM 25.6.22.6.5.1, Partnerships (TEFRA), below, as well as IRM 4.31.2.3.8, Power of Attorney (POA) for TEFRA Partnerships, and IRM 4.31.2.5.4, Persons Empowered to Sign A Consent.
- (7) The power of attorney document must comply with Treas. Reg. 301.6223(c)-1(e) (See: 26 CFR 301.6223(c)-1(e)) when the authorized representative signs a consent for a **direct or indirect partner in a TEFRA partnership** in order for the consent (with appropriate TEFRA-related wording) to be effective in covering TEFRA partnership items and affected items. A power of attorney granted by a partner may not be valid for purposes of TEFRA partnership items and affected items unless the partner specifically requests the power be given in a statement furnished to the IRS in accordance with Treas. Reg. 301.6223(c)-1(b) (See: 26 CFR 301.6223(c)-1(b)), or in the power of attorney document (Form 2848) itself. The power of attorney document will include the following statement: "The acts authorized by this power of attorney include representation for the purposes of Subchapter C of Chapter 63 of the Internal Revenue Code." See IRM 4.31.2.3.10.1, Powers of Attorney (POA) for Partners in TEFRA Partnerships, for further discussion.

**Note:** Extending the TEFRA statute at the individual partner's level is not the usual approach and will only be used when circumstances dictate, such as the Tax Matters Partner is not readily determinable.

- (8) For BBA partnerships, a power of attorney will not sign Form 872-M, Consent to Extend the Time to Make Partnership Adjustments. See LB&I-04-1019-010, Interim Guidance on the Centralized Partnership Audit Regime Field Exam Procedures, and Form 15271, Bipartisan Budget Act (BBA) Partnership Adjustment Statute Extension Check Sheet, for more information. After the expiration dates of the interim guidance memorandum, consult IRM 4.31.9, Centralized Partnership Audit Regime (BBA) Field Examination Procedures.

25.6.22.5.9  
(08-26-2011)

**Taxpayer's SSN or EIN**

- (1) The taxpayer's SSN or EIN must be shown in the space provided in the upper right-hand corner of the consent.

25.6.22.5.10  
(08-26-2011)

## IRS Person Requesting Consent

- (1) Identification of the IRS person requesting the consent must be typed in the space provided in the upper right-hand corner of the consent form.

25.6.22.5.11  
(11-17-2021)

## Delegation of Authority to Sign for Commissioner and Date

- (1) Consents may be signed on behalf of the IRS by any person authorized to sign consents as specified in
  - IRM 1.2.2.14.2, Delegation Order 25-2 (Rev. 3) (formerly DO-25-2 and DO-42, Rev. 28), Authority to Execute Agreements to Extend the Period of Limitations on Assessment or Collection and to Accept Form 900, Tax Collection Waiver, or
  - IRM 1.2.2.5.16, Delegation Order 4-19 (Rev. 2) (formerly DO-4-19, (Rev. 1) and DO-209, (Rev. 5)) for TEFRA partner or TEFRA Subchapter S Corporation matters.

See IRM 1.2.2.14, Delegations of Authority for Special Topics Activities, and IRM 1.2.2.5, Delegation of Authorities for the Examining Process, for the above-referenced delegation orders, respectively.

- (2) The IRS officials to whom the Commissioner has delegated authority are specified in the applicable delegation order. An employee seeking to have a consent executed must look to the published Servicewide delegation orders to determine who may execute a consent.
- (3) The delegated IRS official will sign their own name and indicate their title and the date on the designated line of the form. Authorized IRS officials may sign statute extension consent documents (such as the Form 872, Consent to Extend the Time to Assess Tax; or Form SS-10, Consent to Extend the Time to Assess Employment Taxes) either manually or digitally at their discretion. If signing digitally, reference IRM 4.10.1.4.4, Digital Signatures, for guidance on acceptable digital signatures.

**Note:** The authority to use a digital signature to execute statute extension consents is limited to delegated IRS officials only and **does not** extend to taxpayer signatures.

**Exception:** As a result of COVID-19, Interim Guidance Memorandum NHQ-01-0421-0001 approves the acceptance of digital signatures and the receipt of encrypted documents by email while the memo is in effect.

- (4) The Division Executive's name and title are not required on the consent in order to make the consent valid as long as a delegated IRS official signs the consent. The various consent forms will be revised over the course of time to remove the line items for the name and title of the Division Executive from the consent form. Until the consent forms are revised to remove the line items for the name and title of the Division Executive, it is recommended (but not required) that the information regarding the executive's name and title be completed in order to avoid arguments as to the proper completion of the form. Due to the movement of personnel within the IRS, it is acceptable to leave the name of the Division Executive blank until the consent is signed by the delegated IRS official at which time the name line of the Division Executive may be completed.

**Note:** The name and title for the Division Executive depends upon an employee's business operating division or function:

- **Appeals:** Chief, Appeals.
- **Large Business and International:** Director, Field Operations (for your industry).
- **Small Business / Self-Employed:** Area Director for your area; Director, Specialty Programs; Director, Campus Compliance Services; Director, Fraud/BSA• Wage and Investment: Area Director; or Director, Field Compliance Services.
- **Tax Exempt and Government Entities:** Director, Exempt Organizations; Director, Employee Plans; Director, Government Entities.

- (5) Persons officially acting, for someone authorized to sign consents, may sign consents.

**Caution:** Employees must document and record in the physical and electronic case file the authority for the acting assignment in the event the person's authority to sign the consent is later questioned.

- (6) The IRS official executing the consent will enter the date in the space provided to the right of their signature.

25.6.22.5.12  
(11-17-2021)

**Examiner's  
Responsibility after  
Receipt of Consent**

- (1) It is the examiner's responsibility to review the consent to make sure it is correct and all procedures were followed, including but not limited to:
- a. The consent agreement and all copies have been date stamped by the receiving office.
  - b. Each consent agreement was properly executed by the taxpayer or signed by an authorized representative with authority to do so, and the taxpayer has not made any alterations on the consent or imposed any restrictions.

**Note:** The consent Form 872 and Form 872-A include the following wording in paragraph (5) regarding conditions or restrictions: "This Form contains the entire terms of the consent to extend the Time to Assess Tax. There are no representations, promises, or agreements between the parties except those found or referenced on this Form." Therefore, any restriction(s) must be included on these consent forms or clearly referenced on the forms to be binding.

**Caution:** If the taxpayer signs the consent but communicates, either orally or in writing, that their signature is predicated on some term or condition not included or referenced on the consent form, consult Area Counsel before proceeding. See IRM 25.6.22.8.6, Area Counsel Approval, for the requirement to obtain Area Counsel's approval prior to accepting (or soliciting) a restricted or conditional consent.

**Note:** Pub 1035, Extending the Tax Assessment Period, attempts to address and avoid instances when the taxpayer alters the consent without discussion with the examiner by advising taxpayers as follows: "If you wish to add or amend restrictions for a consent form submitted to you for your signature, please discuss your request with the IRS employee requesting the consent and the IRS generally will prepare a new consent form."

- c. Verify the delegated IRS official has signed the consent.



If	Then
The taxpayer returned both consent forms (original and duplicate original) with pen-and-ink signatures and the delegated IRS official elects to sign manually.	Both the original and the duplicate original will be manually signed and dated by the delegated IRS official. Either copy can be retained in the case file as the original, executed consent.
The taxpayer only returned one original consent with a pen-and-ink signature and the delegated IRS official elects to sign manually.	The pen-and-ink taxpayer signed consent form must be photocopied, and both the original and photocopy must be signed and dated with an original pen-and-ink signature of the delegated IRS official. The consent form with both the taxpayer's and the delegated IRS official's original pen-and-ink signature must be retained in the case file as the original, executed consent.
The taxpayer returned one (original) or both (original and duplicate original) consent form(s) with pen-and-ink signature(s) and the delegated IRS official elects to sign digitally.	One pen-and-ink taxpayer signed consent must be scanned and a digital signature applied by the delegated IRS official. The digitally signed consent must be retained as the original, executed consent.

**Note:** Consent forms signed by the taxpayer(s) or duly authorized representative and submitted via fax are acceptable **if** taxpayer contact is made and the case is documented as described in IRM 25.6.22.5.1, Fax Signatures.

If	Then
The taxpayer returned a signed consent form by fax and the delegated IRS official elects to sign manually.	The consent will be printed in duplicate with pen-and-ink signatures and dates applied to both copies by the delegated IRS official. One copy must then be retained in the case file as the original, executed consent.
The taxpayer returned a signed consent form by fax and the delegated IRS official elects to sign digitally.	A digital signature must be applied by the delegated IRS official. The digitally signed consent must be retained as the original, executed consent.

**Reminder:** Employees will follow Interim Guidance Memorandum NHQ-01-0421-0001, dated April 15, 2021, as long as it is in effect, when they accept images of signatures and digital signatures and receive documents and transmit encrypted documents by email. This IGM was in response to COVID-19.

- d. When delegated IRS officials elect to execute consent forms using manual signatures, examiners must attach the original, executed consent to the back of page 1 of the tax return to which it pertains using the guidelines above to identify the correct consent form to be attached. If the consent covers multiple years, the original, executed consent is attached to the back of page 1 of the most recent year's return to which the consent applies. Photocopies are then attached to the back of page 1 of the other tax returns that are covered by the consent.

**Caution:** Care must be exercised, if the original return, is not in the case file, and a photocopy of the return, is used to conduct the examination. If the consent is attached to the back of the first page of the photocopy, the consent could be lost if the photocopy is destroyed when the copy of the return is replaced in the case file by an original return. If a consent was signed timely, but was destroyed or lost, there is a possibility to establish that the execution of the agreement to extend the time to assess tax was timely. Contact Area Counsel regarding the sufficiency of evidence required to establish timely execution. If there is no original return to attach the consent, additional steps will be taken to protect the consent from unintentional destruction. Steps can include, but are not limited to, scanning the executed document for electronic retention and/or including a note atop the photocopied return showing an originally signed consent form is attached.

- e. When delegated IRS officials elect to execute consent forms using digital signatures, examiners must retain the fully executed consent in the electronic case file (RGS users see IRM 4.10.15.7.19, Office Documents and Case File Documents) and must print a copy of the fully executed consent and attach it to the back of page 1 of the tax return(s) to which it applies. Examiners may also retain any taxpayer pen-and-ink signed consents received in the paper case file as deemed appropriate.
- f. If the taxpayer returned both consents (original and duplicate original) and the delegated IRS official signed the consent manually, send the duplicate original with pen-and-ink signatures to the taxpayer with Letter 929, Transmittal to Taxpayer of Copy of Signed consent. If the submission and the delegated IRS official signed the consent manually, send a photocopy of the executed consent to the taxpayer with Letter 929. If the delegated IRS official signed the consent digitally, send a printed copy with the delegated IRS official's digital signature to the taxpayer with Letter 929. In all cases, document the case activity record that this action was accomplished. If the taxpayer has an authorized representative, use Letter 937, Transmittal for Power of Attorney, to transmit a copy of the executed consent to the authorized representative and document the case activity record that this action was accomplished.

25.6.22.5.13  
(11-17-2021)

**Manager's  
Responsibilities When  
Signing Consents**

- (1) The manager authorized to sign the consent on behalf of the IRS must complete due diligence to ensure all procedures are followed. The best tool available is Form 10949, Statute Extension Checksheet.
  - a. Managers must verify the consent was prepared using the current version of the relevant consent form. Consent forms are updated to contain the notice of rights required by IRC 6501(c)(4)(B), Notice to Taxpayer of Right to Refuse or Limit Extension, and these consent forms containing the notice of rights must be used.
  - b. Managers must verify the information entered on the consent is complete, accurate and consistent with the provisions of IRM 25.6.22, Statute of Limitations, Extension of Assessment Statute of Limitations by Consent.
  - c. Managers must verify the consent was properly executed by the taxpayer (including both spouses in joint return situations) or the taxpayer's authorized representative. One spouse must not sign for another unless so



authorized. Do not accept a signature if the word “by” is used to indicate one spouse has executed the consent for the other (without proper authorization). Signatures on the consent must be reviewed for obvious discrepancies with those on the return, prior consents or the power of attorney document; however, the manager is not expected to perform a handwriting analysis.

- d. Managers must verify if the consent is signed by the authorized representative, the power of attorney document permits the representative to sign the consent and the representative is not restricted in this regard. For example, unenrolled return preparers cannot sign consents even though they have a Form 2848, Power of Attorney and Declaration of Representative, and may be serving as the representative before the Examination function. See Treas. Reg. 601.502, Recognized Representative (See: 26 CFR 1.601.502). Also, see IRM 25.6.22.5.8.1, Executed by Authorized Representative, for additional details as to the requirements the power of attorney document must meet when the consent is signed by the authorized representative.
- e. Managers must verify the notification of rights was provided to the taxpayer and any authorized representative(s) per IRM 25.6.22.3, Notification of Taxpayer’s Rights. In the case of a joint return, that each spouse was separately notified of their rights in accordance with IRM 25.6.22.3.1, Separate Notification of Each Spouse.
- f. Managers must verify the Form 9984, Examining Officer’s Activity Record, or other appropriate form as specified by the procedures of a particular operating division or function, was properly documented to indicate the notification of rights was made to all required parties, including the taxpayer, spouse and/or representative(s) when applicable, and includes the date and method of notification, for example, by mail or personal presentation, in accordance with IRM 25.6.22.3, Notification of Taxpayer’s Rights.
- g. Managers must determine if the rules for partnerships subject to the Centralized Partnership Audit Regime (BBA) apply to the return and if so, ensure those rules are followed. For control of Bipartisan Budget Act of 2015 (BBA) partnership statute of limitations on making adjustments, see Interim Guidance Memorandums LB&I-04-0320-0005 (expiring April 01, 2022), LB&I-04-1019-0010, Interim Guidance on the Centralized Partnership Audit Regime Field Exam Procedures (expiring October 31, 2022), and Form 15271, Bipartisan Budget Act (BBA) Partnership Adjustment Statute Extension Check Sheet, for more information. After, the expiration dates of the interim guidance memorandum, consult IRM 4.31.9, Centralized Partnership Audit Regime (BBA) Field Examination Procedures.
- h. Managers will ensure the special rules for partnerships subject to the Centralized Partnership Audit Regime enacted by the BBA are followed. See Form 15261, Investor Level Statute Control (ILSC) Pass-Through Procedures Check Sheet.
- i. Managers must ensure the consent is executed by both the taxpayer and the manager before the period for assessment expires, see Treas. Reg. 301.6501(c)-1(d) (See: 26 CFR 301.6501(c)-1(d)).
- j. Managers must verify the information submitted to update ERCS/AIMS is consistent with the consent and once the update to ERCS/AIMS was entered, that the updated information is consistent with the terms of the consent.

25.6.22.6  
(08-26-2011)  
**Preparation of Consents  
for Specific Entities and  
Taxes**

- (1) This section covers the procedures for the preparation of consents that pertain to specific return situations and taxes. These procedures are to be followed in conjunction with the general requirements covered in IRM 25.6.22.5, Preparation of Consent Forms – General Procedures.

25.6.22.6.1  
(08-26-2011)  
**Individual Returns**

- (1) Use the name on the face of the return or the signature on the return, whichever is most complete.
- (2) The consent must be prepared and signed using the same name as that under which the return was filed, unless since filing, there was a name change. In these cases, the consent will be prepared using both names, but the signature line will only show the current name.

**Example:** Name line: “Mary Salmon, formerly Mary Fish”

**Example:** Signature line: “Mary Salmon”

- (3) Titles such as “Mr.”, “Mrs.”, “Dr.” “Rev.”, must be omitted in preparing and signing the consent. However, suffixes distinguishing closely related persons such as “Jr.” and “Sr.” appearing on a return, or in the signature, will be shown in the name, and signature on the consent. Suffixes denoting degrees conferred as “M.D.” or “L.L.B.” must be omitted in preparing a consent. However, if a taxpayer uses a suffix in signing a consent, it is acceptable.

25.6.22.6.1.1  
(08-26-2011)  
**Joint Returns**

- (1) For a joint return, the complete names of both spouses must be shown separately.

**Example:** “Taylor and Jordan Salmon” must be shown as “Taylor Salmon and Jordan Salmon.”

- (2) Each spouse has their own separate statute of limitations. Thus, each spouse must sign the consent. The signature of one spouse does not extend the statute for the other spouse.

**Exception:** One spouse may **separately** sign for the other spouse when acting as an attorney-in-fact or agent authorized by an acceptable power of attorney.

**Note:** If only one spouse signs the consent prepared for both spouses’ signatures, it is valid for the signing spouse only. The other spouse is not bound by the consent.

- (3) The return will be considered a joint return and one consent must be prepared and signed by both spouses (if neither filed a separate return) in the following situations:
  - a. If a return was filed in the names of both spouses and was signed by either or both.
  - b. If a return was filed in the name of one spouse but was signed by both.
  - c. If a return was filed by one spouse with a statement as to filing status but includes income and deductions of both spouses.
  - d. If a return was filed in the name of one spouse but statements in the return show a joint filing election.

- (4) Separate consents for each spouse must be prepared for each spouse for a joint return in the following situations:
  - a. Taxpayers are divorced or separated.
  - b. A spouse does not want the other spouse to know their whereabouts.
- (5) In situations described in Paragraph (4), immediately above, the consents will be prepared as follows:
  - a. The separate consents will show both names on the face of the consent in the taxpayers' name line, but the address and signature line will be that of the respective individual spouse who is signing the particular consent form in question.
  - b. If the spouses are divorced after filing a joint return and one spouse has had a name change, the consent will include both the current and former name, such as: "Taylor Salmon and Jordan Fish, formerly Jordan Salmon."
- (6) Separate consents are to be prepared and each spouse must sign their own consent when separate returns are filed.
- (7) Care must be exercised to make sure consents are not signed by one party, either of the spouses independently, for both spouses. If there is a similarity of handwriting or other indications that one spouse may have signed for both, a comparison will be made with the signatures on the return filed for that year. One spouse cannot sign for both unless they have a valid power of attorney.
- (8) The government's interest must be protected by obtaining an agreement and assessing the tax or issuing a statutory notice of deficiency must be issued against any non-consenting spouse(s), **before** the expiration of the normal assessment statute, if either or both spouse(s) will not consent to an extension of the statute.

## 25.6.22.6.1.2 (08-26-2011) Minor

- (1) Rev. Rul. 82-206, 1982-2 C.B. 356, holds that a minor child is responsible for making their own tax return. If, however, the minor is unable to make a return due to age or other reasons, the parent or guardian must make and sign the return for the child. While the IRS generally looks to who signed the tax return when determining who can sign the consent, this rule will not be applied in the case of a return signed by a minor; the consent must be executed by the parent, as natural guardian having custody of a child, or any legal guardian of the person appointed under state law if the taxpayer is a minor at the time the consent is signed. A consent executed by a minor might not be held to be valid if the consent's validity is disputed.
- (2) If there is a guardian of the *property* of the minor under state law, that guardian must sign the consent.
- (3) A consent, in the case of returns filed by or for a minor, must show the name of the minor on its face. The signature section must be completed and signed in the name of the minor, with their status (minor), and the parent's or guardian's name and title.

**Example:** "Jill Salmon, Minor - By Joe Salmon, Parent or (Guardian)"

- (4) In situations involving guardians, Form 56, Notice Concerning Fiduciary Relationship, and a copy of the court document evidencing appointment of the guardian must be attached to the consent.
- (5) After the minor has attained the age of majority under state law, they are the proper party to sign the consent. A consent signed by the parent or guardian of a minor after the minor has reached the age of majority is invalid.

**Caution:** Over the course of the examination a minor may reach the age of majority and is then able to sign consents on their own behalf. Therefore, the minor's age will be determined and monitored so that the initial consent and any subsequent consents are signed by the proper party.

- (6) If a return was executed and filed for a minor by a party other than the guardian, the person signing the return may not sign the consent. In such situations the guardian needs to execute the consent for the minor for the consent to be valid. The guardian may authorize a representative to execute a consent.
- (7) If there is an instance where a minor does not have a guardian or the status of the guardianship is not clear, a statutory notice of deficiency must be issued or the tax assessed before the statute expires, as dictated by the type of tax involved.

25.6.22.6.1.3  
(08-26-2011)

#### Incompetent Persons

- (1) A consent covering a return filed for an incompetent person will show on its face the name of the taxpayer. The signature on the consent will be prepared and signed in the name of the taxpayer, with their status, and the guardian's name and title.

**Example:** "John Salmon, Incompetent By Jane Salmon, Conservator"

- (2) Form 56, Notice Concerning Fiduciary Relationship, and a copy of the court document evidencing appointment of the guardian must go with the consent.

25.6.22.6.1.4  
(03-26-2019)

#### Decedents

- (1) A decedent and their estate are separate and distinct taxable entities. A separate consent is necessary for the return reflecting the decedent's income tax liability up to the date of death (Form 1040). A separate consent is needed for the fiduciary return for the income earned by the estate after the death (Form 1041).
- (2) For return(s) filed by the decedent prior to death and for the return(s) filed after the decedent's death, generally a consent for a Form 1040 must be signed by the executor, administrator, or personal representative of the decedent's estate, in accordance with the following examples:

**Example:** Separate or unmarried return filed: Name: "Estate of John Salmon (deceased)" Signature: "Estate of John Salmon (deceased) By Richard Cod, Executor, Administrator, or Personal Representative" (as appropriate)

**Example:** Joint return filed: Name: "Estate of John Salmon (deceased) and Mary Salmon" Signature: "Estate of John Salmon (deceased) By Richard Salmon, Executor, Administrator, or Personal Representative" (as appropriate) "Mary Salmon"

**Note:** Although a surviving spouse may file a joint return with a decedent if the decedent died within the taxable year and the surviving spouse did not remarry during the year, the executor or administrator for the decedent's estate generally must make and sign the return for the decedent. If no executor or administrator was appointed before the last day prescribed for filing, the surviving spouse may make and file a joint return; however, the executor or administrator may disaffirm the return within one year after the last day prescribed for filing. Even though a return filed by a surviving spouse is not disaffirmed, a consent to extend the statute requires signature by the executor or administrator if one was appointed.

- (3) In situations where no administrator is appointed in a community property state, area counsel must be consulted for the name and signature to be used when there is a community survivor.
- (4) A consent covering a return of a deceased person must be accompanied by a current Form 56, Notice Concerning Fiduciary Relationship, and, if required (see exception below), a certified copy of letters of testamentary or court certificate certifying the present status of the estate. A copy of the decedent's will, and codicils can also be used to evidence the appointment of the party as the personal representative, if the estate of the decedent has not been submitted to the court for administration.
  - a. Letters of testamentary or court certificates are considered current only if less than 60 days have elapsed since their certification. If, for any reason, there is doubt as to their continued validity, irrespective of how much time has elapsed from the issuance of the letters, a new copy must be obtained containing a certification of the clerk of the court that the instrument has not been revoked and that it is still in full force and effect.
  - b. The Form 56 and the letters of testamentary or court certificates, or other evidence of the appointment of the personal representative such as a copy of the will and codicils if the estate has not been submitted to the court for administration must be attached to the tax return with the original consent form.

**Exception:** There are situations where letters testamentary and/or court certifications may not be needed. When a decedent has passed without a will and there was a transfer of their estate to a surviving spouse or other heir under the property or estate and trust laws of the decedent's state of domicile, courts may not be involved. In such instances, the IRS may accept a signed Form 56 without additional supporting evidence. If, however, there are indications that the authority may not be accurately depicted on the Form 56, or any other concerns regarding the validity of the authority, examiners will seek the assistance of local area counsel to ensure the authority is valid.

- (5) If more than one executor or administrator are named, any one of them can sign a return. Consequently, a consent signed by any one of them is valid, even if that individual did not sign the return that is the subject of the consent. Further, more than one executor may sign the consent. See Treas. Reg. 1.6012-3(a)-(c) (See: 26 CFR 1.6012-3(a)-(c)) and Rev. Rul. 84-165, 1984-2 C.B. 305, clarifying Rev. Rul. 83-41, 1983-1 C.B. 349. If, however, the instru-

ment appointing the executors or administrators vests the authority to bind the estate in a specific individual, only that individual may sign the consent.

- (6) In the event an executor or administrator is not appointed, no one may sign a consent for the decedent, except in the case of a community survivor. However, heirs liable as transferees under IRC 6901, Transferred Assets, may sign a consent for their own liabilities.
- (7) The statute cannot be extended after the fiduciary was discharged. However, heirs may be liable as transferees. See the procedures for transferee liability at IRM 25.6.22.6.17.1, Transferee Liability.

**Caution:** Do not accept a consent to extend the period of time for assessment of the decedent's tax liability, or the liability of a transferee of the decedent's estate signed by a fiduciary who has already been discharged by the court having jurisdiction.

- (8) In Paragraphs (6) and (7) immediately above, if a joint return was filed, the surviving spouse may extend their own statute.

25.6.22.6.2  
(10-24-2019)  
**Corporations**

- (1) Generally, the name of the taxpayer shown on the return can be used on the consent, unless it is known that the name is not correct. Consents executed on behalf of corporations must be prepared in the correct name as disclosed by the corporate charter. Area counsel will be consulted if there is doubt as to the proper name of the corporation.
- (2) When a corporation changes its name only, continuing to operate under the old charter, the consent must be prepared in both names and the signature will reflect both names.

**Example:** "Flounder Company, formerly Lobster Company"

**Reminder:** Documentary evidence of the legal name change must be attached to the original consent. A copy of the relevant corporate minutes will suffice.

- (3) If the word "The" is part of the legal name of the corporation, it must be entered on the consent. The words such as "Co.," "Company," "Inc." and "Incorporated" must be shown as used in the legal name of the corporation. All punctuation must be properly reflected.
- (4) The consent must be signed with the corporate name, followed by the signature and title of such current officers of the corporation, as are empowered under the laws of the state in which the corporation is located, to sign for the corporation. Therefore, you must look to state law to determine who is empowered to sign. Generally, the president and the secretary of the corporation are empowered to sign the consent. Assistant officers and controllers are not empowered to sign consents unless they are authorized by the corporation's Board of Directors. Contact Area Counsel if there is any question as to the proper person to sign the consent.
  - a. Rev. Rul. 83-41, 1983-1 C.B. 349, states that a consent may be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to act in this capacity, whether or not they signed the return.



- b. It is important that the title of the signing officer be shown in the consent.
- c. Rev. Rul. 84-165, 1984-2 C.B. 305, clarifies and amplifies Rev. Rul. 83-41, 1983-1 C.B. 349, among others, in this respect: In states where directors are authorized to act for a corporation, any one of the directors may sign the consent for the corporation. While a consent signed by any one director is valid for federal tax purposes, more than one director may sign the consent.

- (5) It is not necessary that the corporate seal be affixed to the consent.

25.6.22.6.2.1  
(11-17-2021)  
**Consolidated Returns**

- (1) The applicable Agent of the Consolidated Group regulations depends on the consolidated return year extended:
  - a. Consolidated return year beginning before June 28, 2002: 26 CFR 1.1502-77A applies.
  - b. Consolidated return year beginning on or after June 28, 2002 and before April 1, 2015: 26 CFR 1.1502-77B applies.
  - c. Consolidated return years beginning on or after April 1, 2015: 26 CFR 1.1502-77(j)(1) applies.
- (2) For consolidated income tax returns, one consent will suffice to cover all companies included in the consolidated income tax return.
- (3) A single consent for more than one year may be obtained even though the composition of the group may have changed considerably during the period covered by the consent. This is so even if the parent of the group has changed; however, the years included on a single consent must be years during which the group is considered to have remained in existence. A single consent will not be used for both separate and consolidated return years.
- (4) Generally, the consent will be prepared in the name of the parent corporation as shown on the consolidated return. In all cases, however, the name in the caption of the consent must reference both the common parent corporation and the affiliated companies.

**Example:** When the common parent of the group is ABC Corporation, a proper caption would read: ABC Corporation and Subsidiaries.

- (5) The consent must be signed in the name of the common parent corporation. The name of the common parent must be typed on the "Corporate Name" line, followed by the signature and title of an officer who is empowered under state laws to sign for the common parent corporation.
- (6) **Years governed by 26 CFR 1.1502-77A (consolidated return year beginning before June 28, 2002), Examples**

**Example: Agent of the Group.** The Agent of the Consolidated Group will execute the consent. In most cases, the Agent of the group will be the common parent for the year to be extended. The consent caption must read: Corporation P (EIN XX-XXXXXXX) and Subsidiaries consolidated group. In the signature block, the name of the corporation that is the agent must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which the agent is located to sign for that agent.

**Example: Alternative Agent.** In certain cases, an alternative agent as described in Treas. Reg. 1.1502-77A(e)(4) (See: 26 CFR 1.1502-77A(e)(4)) for the year to be extended will execute the consent. Example - Corporation A is an alternative agent for the Corporation P and Subsidiaries consolidated group for the taxable year being extended. The consent caption must read: "Corporation A (EIN: XX-XXXXXXX), as alternative agent for the members of the Corporation P and Subsidiaries consolidated group.\*" Place an asterisk after "group." At the bottom of the consent, indicate: "\*\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation A, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which the Corporation A is located to sign for Corporation A.

**Example: Successor Corporation that is also an Alternative Agent.** Corporation A, a successor corporation to Corporation P (the common parent of the consolidated group for the years to be extended), also qualifies as an alternative agent under Treas. Reg. 1.1502-77A(e)(4)(ii) (See: 26 CFR 1.1502-77A(e)(4)(ii)), and will execute the consent. The consent caption must read: "Corporation A (EIN: XX-XXXXXXX), as successor to Corporation P (EIN: XX-XXXXXXX), and as agent for the members of the Corporation P and Subsidiaries consolidated group.\*" Place an asterisk after "group." At the bottom of the statute extension, indicate: "\*\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation A, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation A is located to sign for Corporation A.

**Note:** Corporation A is liable as a successor of Corporation P, the common parent of the consolidated group under audit. Corporation P, if it were still in existence, would be severally liable for the consolidated return tax. Corporation A as successor (as described in 26 CFR 1.1502-77A(e)(4)(ii)) succeeds to Corporation P's several liability.

**Note:** Corporation A is liable as a successor only of Corporation P. Thus, it is incorrect to state, "Corporation A, as successor to Corporation P and Subsidiaries." However, it is correct to state, "Corporation A, as successor to Corporation P." Note also that generally, where Corporation A is a successor under state law, it may also be an alternative agent under Treas. Reg. 1.1502-77A(e)(4)(ii) (See: 26 CFR 1.1502-77A(e)(4)(ii)), for the former members of the Corporation P consolidated group with respect to the group's pre-merger years.

**Example: IRS Deals with Subsidiary Member Separately.** The IRS is authorized to deal with a subsidiary member separately under Treas. Reg. 1.1502-77A(a) (See: 26 CFR 1.1502-77A(a)). The IRS determines it is administratively easier to deal solely with Subsidiary S, a subsidiary member of the group. The IRS first must send the common parent a "breaking agency" letter, and then deal separately with Subsidiary S in order to obtain an executed consent from it.



**Caution:** The IRS must send the common parent a **breaking agency** letter. The caption of the consent must read: "Corporation S.\*" Place an asterisk after the subsidiary's name in either the caption or signature block. At the bottom of the consent, indicate: "\*This is with respect to its several liability for the consolidated tax of the Corporation P and Subsidiaries consolidated group." The signature block must read: Corporation S, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation S is located to sign for Corporation S.

**Example: Common Parent that Changed Its Name Once.** Corporation P, the common parent of the consolidated group for the years to be extended, has changed its name one time and the IRS seeks to have it execute the consent. The consent caption must read: "Corporation Q (EIN: XX-XXXXXXX) (formerly Corporation P) and Subsidiaries consolidated group." In the signature block, Corporation Q must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation Q is located to sign for Corporation Q.

**Example: Common Parent that Changed Its Name Twice.** Corporation P, the common parent of the consolidated group for the years to be extended, has changed its name twice since the tax year to be extended. (Corporation P changed its name to Corporation Q and then changed its name again to Corporation R). The consent caption must read: "Corporation R (EIN: XX-XXXXXXX) (formerly Corporation Q, formerly Corporation P) and Subsidiaries consolidated group." In the signature block, Corporation R must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation R is located to sign for Corporation R.

**Example: Successor Corporation that Changed Its Name after Merging with the Common Parent** Corporation A merged with Corporation P, the common parent of the Corporation P consolidated group, Corporation A survived the merger. Afterward, Corporation A changed its name to Corporation B. Since Corporation A (now B) is the successor of Corporation P, the common parent, it may also be an alternative agent to the members of the Corporation P consolidated group with respect to the group's pre-merger years. The consent caption must read: "Corporation B (EIN: XX-XXXXXXX) (formerly Corporation A) as successor to Corporation P (EIN: XX-XXXXXXX), and as agent for the members of the Corporation P and Subsidiaries consolidated group.\*" Place an asterisk after "group." in the caption. At the bottom of the consent, indicate: "\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation B, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation B is located to sign for Corporation B.

**Example: Successor Corporation that Merged with Common Parent that had Previously Changed Its Name.** Corporation A (the successor corpora-

tion) merged into Corporation Q (the common parent of the consolidated group) and Corporation A survived the merger. Corporation Q had previously been known as Corporation P in the years to be extended. The consent caption must read: "Corporation A (EIN: XX-XXXXXXX), as successor to Corporation Q (EIN: XX-XXXXXXX) (formerly Corporation P), and as agent for the members of the Corporation P and Subsidiaries consolidated group\*." Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation A, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation A is located to sign for Corporation A.

**Example: Successor Corporation that Changed Its Name after Merger with Common Parent that had Previously Changed Its Name.** Corporation A merged with Corporation Q (the common parent of the consolidated group under audit) and Corporation A survived the merger. Immediately after the merger, Corporation A changed its name to Corporation B. For the years under audit, Corporation Q had been known as Corporation P. The consent caption must read: "Corporation B (EIN: XX-XXXXXXX) (formerly Corporation A) as successor to Corporation Q (EIN: XX-XXXXXXX) (formerly Corporation P), and as agent for the members of the Corporation P and Subsidiaries consolidated group\*." Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation B, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation B is located to sign for Corporation B.

**Example: Reverse Acquisition by Merger or Downstream Transfer by Merger.** Corporation A merged with Corporation P, that was the common parent of the Corporation P and Subsidiaries consolidated group for the years to be extended, in a reverse acquisition transaction. Corporation A survived the merger. Because the transaction constituted a reverse acquisition under Treas. Reg 1.1502-75(d)(3) (See: 26 CFR 1.1502-75(d)(3)), the Corporation P and Subsidiaries consolidated group continues to exist (and therefore does not file a short year return), but with Corporation A as the new common parent. The consent caption must read: "Corporation A (EIN: XX-XXXXXXX) as successor to Corporation P (EIN: XX-XXXXXXX), and as common parent agent of the Corporation P and Subsidiaries consolidated group\*." Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation A, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation A is located to sign for Corporation A.

**Note:** This example applies to extending taxable years that occurred prior to the year of the reverse acquisition. In the year of the reverse acquisition, the

new common parent Corporation A files the return in its own name and would therefore be the one that executes the statute extension.

**Example:** If the year to be extended is a year that Corporation A is the common parent, the consent caption must read: Corporation A (EIN: XX-XXXXXXX) and Subsidiaries. The signature block must read: Corporation A, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation A is located to sign for Corporation A.

**Example: Successor of the Successor to the Common Parent.** Corporation A merged with Corporation X that had previously merged with Corporation P (the common parent of the Corporation P and Subsidiaries consolidated group for the years to be extended). The consolidated years under audit are the pre-merger years of the Corporation P and Subsidiaries consolidated group. The consent caption must read: "Corporation A (EIN: XX-XXXXXXX), as successor to Corporation X (EIN XX-XXXXXXX), successor to Corporation P (EIN: XX-XXXXXXX), and as agent for the members of the Corporation P and Subsidiaries consolidated group.\*" Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation A, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation A is located to sign for Corporation A.

**Note:** Corporation A is liable as the successor to the successor of Corporation P, the common parent of the consolidated group. As a successor of a successor, Corporation A is severally liable in its own right as a successor to Corporation P and may be an alternative agent under Treas. Reg. 1.1502-77A(e)(4)(ii) (See: 26 CFR 1.1502-77A(e)(4)(ii)), for the former members of the Corporation P consolidated group.

- (7) **Years Governed by 26 CFR 1.1502-77B, (consolidated return year beginning on or after June 28, 2002 and before April 1, 2015) Examples.** The proper method for identifying consolidated taxpayer in caption of statute extension for consolidated taxable years beginning on or after June 28, 2002 and before April 1, 2015 follows:

**Example: Common Parent of the Group.** The common parent (the agent) for the year to be extended will execute the consent. Corporation P is the common parent of the Corporation P and Subsidiaries consolidated group for the year to be extended. Corporation P is still in existence. P will execute the consent for the members of the group. The consent caption must read: "Corporation P (EIN XX-XXXXXXX) and Subsidiaries consolidated group." The signature block must read: Corporation P, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation P is located to sign for Corporation P.

**Example: Common Parent Designates Its Successor as Substitute Agent.** The successor, as substitute agent for the year to be extended, will execute the consent. Before its existence terminated, Corporation P, the common parent of the Corporation P and Subsidiaries consolidated group, designated Corporation Y, its successor by merger, as substitute agent and the IRS approved this designation. Corporation Y will execute the consent for any and all years Corporation P was common parent. The consent caption must read: "Corporation Y (EIN: XX-XXXXXXX), as successor by merger to Corporation P (EIN: XX-XXXXXXX), and as agent for the members of the Corporation P and Subsidiaries consolidated group.\*" Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation Y, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation Y is located to sign for Corporation Y.

**Example: Common Parent Designates a Member of the Group as Substitute Agent.** The member, as substitute agent for the year to be extended will execute the consent. Before it goes out of existence, Common Parent Corporation P designates Corporation S, a member of the Corporation P and Subsidiaries consolidated group for the year to be extended, as Substitute Agent. Corporation S will execute the consent. The consent caption must read: "Corporation S (EIN: XX-XXXXXXX), as agent for the members of the Corporation P (EIN: XX-XXXXXXX) and Subsidiaries consolidated group.\*" Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation S, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation S is located to sign for Corporation S.

**Example: Default Substitute Agent.** The successor of the common parent, as default substitute agent for the year to be extended, will execute the consent. Common Parent Corporation P fails to designate a Substitute Agent; before it goes out of existence. By default, Corporation Y, the successor by merger to Corporation P, is the Default Substitute Agent. Corporation Y will execute the consent. The consent caption must read: "Corporation Y (EIN: XX-XXXXXXX) as successor to Corporation P (EIN: XX-XXXXXXX) and as agent for the members of the Corporation P and Subsidiaries consolidated group.\*" Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation Y, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation Y is located to sign for Corporation Y.

**Example: Common Parent Changed Its Name, Merged out of Existence and Failed to Designate a Substitute Agent.** The common parent's successor, as default substitute agent for the year to be extended, will

execute the consent. Common Parent Corporation P that changed its name to Corporation Q, failed to designate a Substitute Agent prior to merging out of existence; by default, Corporation Y, the successor to Corporation Q (formerly Corporation P), is the Default Substitute Agent. Corporation Y will execute the consent. The consent caption must read: "Corporation Y (EIN: XX-XXXXXX), as successor to Corporation Q (EIN: XX-XXXXXX) (formerly Corporation P), and as agent for members of Corporation P (EIN: XX-XXXXXX) and Subsidiaries consolidated group.\*" Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation Y, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation Y is located to sign for Corporation Y.

**Example: Common Parent Merged out of Existence, Failed to Designate a Substitute Agent, Common Parent's Successor, the Default Substitute Agent, Changed its Name Once** The common parent's successor, as default substitute agent for the year to be extended, will execute the consent. Example: Common Parent Corporation P failed to designate a substitute agent before it went out of existence. By default, Corporation Y, the successor by merger to Corporation P, is the Default Substitute Agent. Corporation Y changed its name to Corporation X. Corporation X will execute the consent. The consent caption must read: Corporation X (EIN: XX-XXXXXX) (formerly Corporation Y) as successor to Corporation P (EIN: XX-XXXXXX), and as agent for the members of the Corporation P and Subsidiaries consolidated group\*. Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: \*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group. In the signature block, Corporation X, the name of the corporation that is the agent, must be typed on the "Corporate Name" line, followed by the signature and title of a current officer who is empowered under the laws of the state in which the Corporation X is located to sign for Corporation X.

**Example: Common Parent Changed Its Name, Merged Out of Existence and Failed to Designate a Substitute Agent; Default Substitute Agent Changed Its Name.** The common parent's successor, as default substitute agent for the year to be extended, will execute the consent. Common Parent Corporation P changed its name to Corporation Q, merged out of existence, but failed to designate a Substitute Agent. Corporation Y, the successor to Corporation Q (formerly named Corporation P), and, the Default Substitute Agent, changed its name to Corporation X. Corporation X will execute the consent. The consent caption must read: "Corporation X (EIN: XX-XXXXXX) (formerly Corporation Y) as successor to Corporation Q (EIN: XX-XXXXXX) (formerly Corporation P), and as agent for members of the Corporation P and Subsidiaries consolidated group.\*" Place an asterisk after "group" in the caption. At the bottom of the consent, indicate: "\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group." In the signature block, Corporation X, the name of the corporation that is



the agent, must be typed on the “Corporate Name” line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation X is located to sign for Corporation X.

**Example: Successor to Parent Merges into Another Corporation (the Successor’s Successor).** The successor to the successor (the successor by merger to common parent) for the year to be extended will execute the consent. Corporation Y, the successor by merger to the Common Parent Corporation P, merged into Corporation Z. Corporation Y’s existence terminated. Corporation Z will execute the consents. The consent caption must read: “Corporation Z (EIN: XX-XXXXXX), successor to Corporation Y (EIN: XX-XXXXXX), successor to Corporation P (EIN: XX-XXXXXX), and agent for members of Corporation P (EIN: XX-XXXXXX) and Subsidiaries consolidated group.” Place an asterisk after “group” in the caption. At the bottom of the consent, indicate: “\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group.” In the signature block, Corporation Z, the name of the corporation that is the agent, must be typed on the “Corporate Name” line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation Z is located to sign for Corporation Z.

**Example: IRS Designates a Member of The Group as Substitute Agent.** The member, as Designated Substitute Agent for the year to be extended, will execute the consent. Before it terminates, Common Parent Corporation P fails to designate an agent. Commissioner designates Corporation S, a member of the group for the year to be extended, to act as Substitute Agent. Corporation S will execute the consent. The consent caption must read: “Corporation S (EIN: XX-XXXXXX), as agent for the members of the Corporation P (EIN: XX-XXXXXX) and Subsidiaries consolidated group.” Place an asterisk after “group” in the caption. At the bottom of the consent, indicate: “\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group.” In the signature block, Corporation S, the name of the corporation that is the substitute agent, must be typed on the “Corporate Name” line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation S is located to sign for Corporation S.

**Example: IRS Designates Successor of Member to Act as Substitute Agent.** The IRS may designate a successor of a member as the Substitute Agent; if so, the successor will execute the consent. Before it terminates, Common Parent Corporation P fails to designate a Substitute Agent. Corporation S, a member of the group, merges into Corporation T, an unrelated corporation. Commissioner designates Corporation T to act as Substitute Agent. Corporation T will execute the consent. The consent caption must read: “Corporation T (EIN: XX-XXXXXX), as successor by merger to Corporation S (EIN: XX-XXXXXX) (member of the Corporation P and Subsidiaries consolidated group), and as agent for the members of the Corporation P (EIN: XX-XXXXXX) and Subsidiaries consolidated group.” Place an asterisk after “group” in the caption. At the bottom of the consent, indicate: “\*This is with respect to the consolidated tax of the Corporation P and Subsidiaries consolidated group.” In the signature block, Corporation T, the name of the corporation that is the

substitute agent, must be typed on the “Corporate Name” line, followed by the signature and title of a current officer who is empowered under the laws of the state in which Corporation T is located to sign for Corporation T.

**Example: Common Parent Converts to an LLC disregarded from its owner for federal tax purposes and No Member Remains to Act as Substitute Agent.** Although deemed to have terminated, where no member remains to act as substitute agent, the common parent for the year to be extended, although disregarded as an entity for federal income tax purposes, nonetheless will execute the consent. Example: Common Parent Corporation P has two subsidiaries, Corporation S and Corporation S-1. Corporation P is acquired by Corporation Z. Upon being acquired, P, S and S-1 convert under state law into limited liability companies (LLCs) that are disregarded from their owner for federal income tax purposes. At that point, all of the former members of the Corporation P consolidated group become disregarded for federal income tax purposes, and P, LLC continues to be the agent because no eligible entity exists that can act as agent for the former members of the Corporation P and Subsidiaries consolidated group. P, LLC will execute the consent. The consent caption must read: P, LLC (formerly Corporation P) (EIN: XX-XXXXXXX) for itself, and as agent for the members of the Corporation P and Subsidiaries consolidated group\*. Place an asterisk after “group” in the caption. At the bottom of the consent, indicate: \*This is with respect to the consolidated tax of the Corporation P and subsidiaries consolidated group. The signature block must read: P, LLC, the name of the entity that is the agent. This is followed by the signature and title of a person who is empowered under the laws of the state in which P, LLC is located, to sign for P, LLC.

- (8) **Years governed by 26 CFR 1.1502-77, (consolidated return year beginning on or after April 1, 2015) Examples.** The proper method for identifying a consolidated taxpayer in the caption of Form 872 (or other suitable consent form) for consolidated taxable years beginning on or after April 1, 2015 in Treas. Reg. 1.1502-77 (See: 26 CFR 1.1502-77) is similar to the identification method employed by 26 CFR 1.1502-77B. However, because there are significant differences as to which type of entity can be an agent, a careful reading of the regulations is necessary to determine that the correct agent is identified.

**Note:** 26 CFR 1.1502-77 substitutes the term “Agent” in lieu of the term “Common Parent”: The term “Agent” is used in 26 CFR 1.1502-77A and 26 CFR 1.1502-77B. The common parent, however, in many instances will most likely be identified as the proper agent to bind the members of the consolidated group.

**Note:** 26 CFR 1.1502-77 includes disregarded entities and partnerships as entities that can be the agent for the group for prior consolidated years. For instance, 26 CFR 1.1502-77(g), Example 7, illustrates a fact scenario in which a partnership is identified as the proper agent for the members of a consolidated group. Below is an example which will help properly identify the agent where a partnership is the agent for the group:



- a. **Partnership is Agent for a Consolidated Group.** The partnership will execute the consent.

**Example:** Corporation B, a State M corporation, is the common parent of the B Corporation and Subsidiaries consolidated group that includes corporations S and S-1 for calendar years Year 1 and Year 2. On March 31 of Year 2, Corporation B merges under State M law into P Partnership, a State M law partnership. P Partnership is primarily liable under State M law for the liabilities, including the federal income tax liabilities, of Corporation B. As a result of the merger, the Corporation B and Subsidiaries consolidated group terminates as of March 31, Year 2. P Partnership is the default successor to Corporation B under Treas. Reg. 1.1502-77 (See: 26 CFR 1.1502-77). Therefore, P partnership is the agent for the Corporation B and Subsidiaries consolidated group for Years 1 and 2. P Partnership will execute the consent. The consent caption must read: P Partnership, successor to Corporation B (EIN: XX-XXXXXXX), and as agent for the members of the Corporation B and Subsidiaries consolidated group\*. Place an asterisk after “group” in the caption. At the bottom of the consent, indicate: \*This is with respect to the consolidated tax of the Corporation B and Subsidiaries consolidated group. The signature block must read: P Partnership for the name of the entity that is the agent. This is followed by the signature and title of a person who is empowered under the laws of the state in which P Partnership, the agent, is located, to sign for P Partnership.

25.6.22.6.2.2  
(11-17-2021)

**Subsidiary as Partner  
and as Member of a  
Consolidated Return**

- (1) Execution of Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items, for a TEFRA Partnership when the Tax Matters Partner is a Subsidiary Member of a Consolidated Group. A subsidiary acting as tax matters partner must sign Form 872-P to bind the partners of the TEFRA partnership. See 26 CFR 1.1502-77B(a)(1) and 26 CFR 1.1502-77B(a)(3)(v). (In general, the common parent is the sole agent (agent for the group) that is authorized to act in its own name with respect to all matters relating to the tax liability for that consolidated return year, but matters under IRC 6221 through IRC 6234 and the accompanying regulations are reserved exclusively to the subsidiary acting as tax matters partner.)
- (2) Member as Partner in a TEFRA Partnership Other Than One Acting as Tax Matters Partner. The Commissioner generally will deal directly with any member in its capacity as a partner of a partnership that is subject to the TEFRA provisions. See IRC 6221, Determination at Partnership Level, through IRC 6234, Judicial Review of Partnership Adjustment, and the accompanying regulations. The Commissioner will, however, obtain Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the time to Assess Tax from the common parent. (It is recommended that both the member and the common parent execute the appropriate consent form.) If requested to do so, the Commissioner may deal with the common parent as agent for such member on any matter related to the partnership, except to the extent the member acts as tax matters partner of the partnership as indicated above. See 26 CFR 1.1502-77A (for prior years beginning before June 28, 2002), 26 CFR 1.1502-77B (for prior years beginning on or after June 28, 2002)

and before April 1, 2015), and 26 CFR 1.1502.77 (for consolidated taxable years beginning on or after April 1, 2015).

**Note:** In order to reduce the potential for disputes, obtain consents from the common parent for consolidated taxable years beginning before June 28, 2002, and obtain consents from both the common parent and the member for consolidated taxable years beginning on or after that date.

**Note:** The Bipartisan Budget Act of 2015, P.L. 114-74 Section 1101, 129 Stat 584, 625-638 (2015), repealed the TEFRA rules for partnership tax years beginning after December 31, 2017.

- (3) Execution of Form 872 for an ILSC Partnership; Subsidiary Member of a Consolidated Group is a Partner in the Partnership. Only the common parent is authorized to sign the consent as the agent that is authorized to act in its own name with respect to all matters relating to the tax liability for that consolidated return year.

25.6.22.6.2.3  
(11-17-2021)  
**Parent and Subsidiary  
Corporations**

- (1) One consent may be used to extend the statute of the parent corporation and any or all its subsidiary corporations that filed separate returns provided that the procedures contained in this subsection are followed. No fixed percentage of ownership by the parent corporation is required. The subsidiaries included on the required rider (see immediately below) and covered by the consent may be less than wholly owned by the parent corporation. However, see IRM 4.23.14.5, Form SS-10, Consent to Extend the Time to Assess Employment Taxes, Paragraph 10, for special rules that apply to obtaining consent to extend the statutory period within which employment taxes may be assessed.
- (2) For one consent to cover the parent and subsidiaries, a rider (as required by Rev. Proc. 72-38, 1972-2 C.B. 813, clarified by Rev. Proc. 82-6, 1982-1 C.B. 409), which lists all the corporations covered by the consent and the following information, must be attached to the consent:
- The name of the parent corporation and the number of subsidiary corporations named on an attached rider shall be inserted in the space provided for the name of the taxpayer on the consent. The rider attached to the consent will contain a supplemental agreement and will clearly identify the parent corporation and the specific subsidiaries by showing the name, address, identification number, and the particular taxable year(s) of each subsidiary with respect to which the consent is applicable.
  - Both the consent and the rider shall be executed on behalf of the parent corporation and all the subsidiaries named on the rider by a duly authorized officer of the parent corporation who (1) is also a duly authorized officer of each of the subsidiaries, or (2) was specifically authorized to execute a consent by powers of attorney executed by each of the subsidiaries. The consent must specifically show that the person signing for the parent corporation and subsidiaries is signing in the capacity of an authorized officer of the parent corporation and as an authorized officer or attorney-in-fact for each and all of the listed subsidiaries.
  - In the event two or more officers of the parent corporation are authorized to sign for the various subsidiaries, in accordance with (b) above, the

rider attached to the consent will be arranged to show the names of the subsidiaries for which each officer or attorney-in-fact is signing.

- (3) The responsible employee will attach a statement to the income, excise, or employment tax return of each of the subsidiary corporations indicating that a consent executed on behalf of the subsidiary was secured and associated with the return of the parent. The statement will also show the name, address, and identification number of the parent corporation, the office in which the applicable tax return of the parent corporation was filed and the period of the extension agreed to in the consent.
- (4) The original consent and rider will be attached to the tax return for the parent's most recent taxable year covered by the consent. Copies of the consent and rider will be attached to the tax returns of the parent for other years covered by the consent. Copies will also be attached to each of the subsidiaries' returns covered by the consent.
- (5) For the format of the rider for Form 872 or Form 872-A (income tax), Form 872-B (excise tax), or Form SS-10 (employment tax), see the Exhibits in Rev. Proc. 72-38, 1972-2 C.B. 813.

25.6.22.6.2.3.1  
(11-17-2021)

**Liquidation of a  
Subsidiary IRC Section  
332**

- (1) When an IRC 332(b), Complete Liquidations of Subsidiaries, distribution of property occurs over a period of more than one taxable year **and** all of the assets are not distributed to the receiving corporation by the end of the tax year in which the first distribution was made, the receiving corporation or its consolidated group's common parent must file a waiver on the statute of limitations on assessment for each year that falls wholly or partly in the liquidation period. See 26 CFR 1.332-4(a)(2).

**Note:** The receiving corporation or consolidated group's common parent may also be required to file a bond. See 26 CFR 1.332-4(a)(3) and IRM 4.2.1.19, Income Tax Bonds Under IRC 332(b) and IRC 905(c). The bond must satisfy the requirements of IRC 7101, Form of Bonds, and 26 CFR 301.7101-1.

- (2) Form 952, Consent to Extend the Time To Assess Tax Under Section 332(b), extends the period of assessment on behalf of the receiving corporation and any consolidated group of which it is a member on the complete liquidation of a subsidiary under IRC 332(b).
- (3) Form 952 statute extensions are restricted statutes, which requires Area Counsel's approval. See IRM 25.6.22.8, Restricted Consents. This statute extension relates only to issues that pertain to the IRC 332(b) liquidation.
- (4) Form 5348, AIMS/ERCS Update (Examination Update), is used to update AIMS/ERCS and Statute Consent Code R = Restricted will be checked. An "R" indicator is placed next to the updated statute date to indicate it is a restricted statute and warns that the underlying documents must be reviewed before relying on the statute date. See IRM 4.4.34.4.19, Statute Consent Code.
- (5) Form 952 allows the IRS to assess tax during the four-year period that begins on the later of the due date of the receiving corporation's or consolidated group's common parent's income tax return or the date the return is filed for the 3rd tax year beginning after the end of the tax year of the first distribution. See 26 CFR 1.332-4 and the example below:

**Example:** An initial distribution of property was made in tax year 201212. The 3rd tax year beginning after the end of the 201212 year is 201512. The four-year period for assessment of tax begins on the later of the due date or filed date of the 201512 tax return. Assuming a timely filed 201512 return with a due date of March 15, 2016, the four-year period would run from March 15, 2016 through March 15, 2020.

- (6) **Who must file:** A domestic corporation that is the receiving corporation in an IRC 332(b) transaction or its consolidated parent; if applicable. A foreign corporation that is the receiving corporation in an IRC 332(b) transaction only if gain from the receipt of the distribution would be effectively connected with the conduct of the trade or business in the United States and therefore the foreign corporation is required to file Form 1120-F, U.S. Income Tax Return of a Foreign Corporation. A corporation that files a U.S. tax return must file Form 966, Corporate Dissolution or Liquidation, if required under IRC 6043(a). Foreign corporations that are not required to file Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, or any other U.S. tax return are generally not required to file Form 966. U.S. shareholders of foreign corporations may be required to report information regarding a corporate dissolution or liquidation. See Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, and its instructions for more information.
- (7) **Consolidated return considerations:** When the receiving corporation is a member of a consolidated group, the consent must be prepared in the name of the consolidated group's common parent on behalf of the receiving corporation and the statute extension must be signed by an officer authorized to sign on behalf of the consolidated group's common parent since the consolidated return statute is being updated. See IRM 25.6.22.6.2.1, Consolidated Returns. The officer's name and title, the common parent name, the Employer Identification Number (EIN) of the common parent, consolidated group name and receiving corporation name and EIN must be typed under the signature block of the officer empowered to sign for the common parent corporation.

**Example:** Jane Flounder, President, (common parent name) (EIN number: XX-XXXXXXX), common parent agent for (consolidated group name) which includes (receiving corporation name) (EIN number XX-XXXXXXX).

- (8) If the consolidated group has multiple IRC 332(b) transactions, the taxpayer must attach a statement to Form 952 with the EIN, name and address of each receiving corporation and liquidating corporation and the date of first distribution for each transaction.
- (9) Form 952 is routed to Exam Classification. AIMS controls will be assigned if not already under examination. The Field will work with Area Counsel to execute the Form 952. See IRM 25.6.22.5.12, Examiner's Responsibility after Receipt of Consent. Form 952 is mailed by the taxpayer to:

Internal Revenue Service  
Ogden Submissions Processing Center  
P.O. Box 9941  
Ogden, UT 84409-0941

- (10) The signed and executed consent must be attached to the tax return for the taxable year covered by the consent and the ASER must be updated on AIMS/ERCS. If the return is surveyed, a paper survey is required because the original Form 952 needs to be retained in files. See IRM 4.4.21.5.2.1, Paper Case File. Form 5346, Examination Information Report, will also be completed and submitted to the appropriate Planning and Special Programs (PSP) function with a copy of the executed Form 952 for future monitoring, if applicable.
- (11) The Form 952 consent must be signed by an officer authorized to sign on behalf of the receiving corporation or consolidated group's common parent. See IRM 25.6.22.6.2.1, Consolidated Returns. If the consent is signed by an attorney or agent of the receiving corporation or consolidated group's common parent, a copy of the valid authorization must be attached to the consent form. See IRM 25.6.22.5.8.1, Executed by Authorized Representative, for further information on valid authorizations. This consent may be signed on behalf of the IRS by any person authorized to sign consents as specified in Servicewide Delegation Order 25-2 (Rev. 2). See IRM 25.6.22.5.11, Delegation of Authority to Sign for Commissioner and Date.
- (12) **Foreign Corporation Issues:** Under the general rule in IRC 331, Gain or Loss to Shareholder in Corporate Liquidations, amounts received by one corporation in complete liquidation of another corporation are treated as full payment in exchange for stock in such other corporation, and gain or loss from the receipt of such amounts is to be determined as provided in IRC 1001, Determination of Amount of and Recognition of Gain or Loss. IRC 332, Complete Liquidations of Subsidiaries, excepts from the general rule property received, under certain specifically described circumstances, by one corporation as a distribution in complete liquidation of the stock of another corporation and provides for the nonrecognition of gain or loss in those cases which meet the statutory requirements. IRC 367, Foreign Corporations, places a limitation on the application of IRC 332 in the case of foreign corporations. See 26 CFR 1.332-1.
- If the corporation receiving the liquidating distribution is a controlled foreign corporation (within the meaning of IRC 957, Controlled Foreign Corporations; United States Persons), the statement required by 26 CFR 1.332-6(a) to be filed by the recipient corporation must be included by each United States shareholder (within the meaning of IRC 951(b), United States Shareholder Defined) with respect thereto on or with its return.
  - If the liquidating corporation is a foreign corporation see 26 CFR 1.367(b)-3 as to whether the shareholders receiving the liquidating distributions are required to recognize income or gain on the liquidation. In addition, the shareholders may be required to file a notice under 26 CFR 1.367(b)-1(c).
  - If a domestic corporation makes a distribution of property in a complete liquidation under IRC 332 to a foreign corporation that meets the stock ownership requirements of IRC 332(b) with respect to stock in the domestic liquidating corporation, then IRC 337(a) and IRC 337(b)(1) will not apply and the domestic liquidating corporation will recognize gain or loss on the distribution of property to the foreign distributee corporation, except as provided in 26 CFR 1.367(e)-2(b)(2) (discussed below) See IRC 367(e)(2) and 26 CFR 1.367(e)-2(b)(1).
  - If the requirements of 26 CFR 1.367(e)-2(b)(2)(i)(A) are met, a domestic liquidating corporation will not recognize gain or loss (described in 26



CFR 1.367(e)-2(b)(1)) on its distribution of property (including inventory, but not intangibles described in IRC 367(d)(4)) used by the domestic liquidating corporation in the conduct of a trade or business within the United States.

- One of the requirements of 26 CFR 1.367(e)-2(b)(2)(i)(A) is that the domestic liquidating corporation attach the statement described in 26 CFR 1.367(e)-2(b)(2)(i)(C) to its timely filed U.S. income tax return. In addition, the foreign distributee corporation must attach a copy of the property description (see 26 CFR 1.367(e)-2(b)(2)(i)(C)(2)) to its timely filed U.S. income tax returns for the tax year that includes the date of distribution. 26 CFR 1.367(e)-2(b)(2)(i)(C)(5) requires that the statement include a provision extending the statute of limitations. Form 8838, Consent To Extend the Time To Assess Tax Under Section 367 - Gain Recognition Agreement, will be filed for this purpose.
- In addition, if any recipient corporation received a liquidating distribution from the liquidating corporation pursuant to a plan (whether or not that recipient corporation has received or will receive other such distributions from the liquidating corporation in other tax years as part of the same plan) during the current tax year, such recipient corporation must include a statement (described in 26 CFR 1.332-6(a)) on or with its return for such year. If any recipient corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) must include this statement on or with its return.
- A corporation that files a U.S. tax return must file Form 966, Corporate Dissolution or Liquidation, if required under section 6043(a). Foreign corporations that are not required to file Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, or any other U.S. tax return are generally not required to file Form 966. U.S. shareholders of foreign corporations may be required to report information regarding a corporate dissolution or liquidation. See Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, and its instructions for more information.

25.6.22.6.2.4  
(11-17-2021)

## Dissolved Corporations

- (1) Generally, consents will not be obtained from the dissolved corporation, unless area counsel approval was obtained.
- (2) In the cases of dissolved corporations, whether a valid consent can be obtained depends upon the law of the state of incorporation. The state law determines the period the corporation is considered in existence for purposes of winding up its business affairs. State law will not shorten the statute of limitations for the assessment of Federal taxes, but it can limit the period of time in which the officers of the dissolved corporation may act for the corporation. State law may prescribe a fixed period, reasonable period, or indefinite period of time.
- (3) After the corporation's existence is terminated, there is usually no person with authority to act on its behalf to sign a consent for the corporation.
- (4) When a corporation commences dissolution, its corporate existence is extended by operation of state law under the state law winding-up statute. For a consent executed while the corporation is in dissolution to be valid, it must be signed by a current officer of the corporation before the expiration of the

state law winding-up statutory period. (The best practice, however, is to issue a statutory notice of deficiency before the expiration of the winding up period.) A consent so signed is valid for the period as extended in the consent, even though the corporation's existence terminates at the expiration of the state law winding-up period. A consent so signed extends the statute of limitations and is valid against state law transferees. The 1-year transferee statute of limitations under IRC 6901, Transferred Assets, begins on the expiration of the period as extended by the consent.

- (5) In situations where transferee liability exists, action will be taken to protect the statute of limitations of the transferee as well as the transferor.

- a. In addition to the consent for the dissolved corporation, Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Against a Transferee or Fiduciary; Form 2045, Transferee Agreement (used in income tax situations); Form 4016, Consent Fixing Period of Limitation upon Assessment of Employment or Miscellaneous Excise Taxes Against a Transferee, will be secured. See IRM 25.6.22.6.17.1, Transferee Liability. Form 977, Form 2045, and/or Form 4016 must be secured in duplicate.

**Note:** Form 2045 is an admission of status as a transferee and waives any requirement for issuance of a statutory notice of deficiency to the transferor and must be obtained as part of the process in income tax situations but it is not an extension of the ASER of the transferor or transferee.

- b. If there is any doubt in a particular case as to whether it would be advisable to accept an agreement from the transferee as a basis for not proceeding against a dissolved corporation, the group or team manager with jurisdiction over the return will request advice from area counsel. The request must be accompanied by a comprehensive statement of the facts and circumstances of the case.

25.6.22.6.2.5  
(11-17-2021)

#### Merged Corporations

- (1) As a matter of state law, the successor (acquiring) corporation in a merger or consolidation becomes primarily liable for the debts of the predecessor (acquired) corporation by operation of law. Also, the merger or consolidation agreement may provide that the successor corporation will be liable for the tax indebtedness of the predecessor, in which case the successor is liable as a transferee. In such a case, it is important that the agreement of merger be examined to be sure that there are no limitations or exclusions on the successor's liability.

- (2) The consent must be prepared and executed as follows:

**Example:** Caption Name: "XYZ Corporation (XYZ's EIN), Successor to ABC Corporation (ABC's EIN)" Signed by: "An officer of XYZ Corporation."

- (3) Consult area counsel if there are any questions as to the proper names or format to be used.
- (4) To minimize the risk of relying on an invalid consent, action will be taken to protect the statute of limitations of the transferee as well as the transferor. In addition to the consent for the dissolved corporation, Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Against a Transferee or Fiduciary; Form 2045, Transferee



Agreement (used in income tax situations); and/or Form 4016, Consent Fixing Period of Limitation upon Assessment of Employment or Miscellaneous Excise Taxes Against a Transferee, will be secured. See IRM 25.6.22.6.17.1, Transferee Liability. Form 977, Form 2045, and/or Form 4016 must be secured in duplicate.

**Note:** Form 2045 is an admission of status as a transferee and waives any requirement for issuance of a statutory notice of deficiency to the transferor and must be obtained as part of the process in income tax situations but it is not an extension of the ASER of the transferor or transferee.

- a. If there is any doubt in a particular case as to whether it would be advisable to accept an agreement from the transferee as a basis for not proceeding against a dissolved corporation (transferor), the group or team manager with jurisdiction of the return will request advice from area counsel. The request must be accompanied by a comprehensive statement of the facts and circumstances of the case.

25.6.22.6.3  
(08-26-2011)  
**Subchapter S  
Corporations (Investor  
Level Statute Control)**

- (1) There is no statute on an S corporation return for pass-through items to the shareholders. The statute of limitation is determined at the shareholder level for each shareholder. Therefore, the statute for each shareholder is extended by following the consent procedures for the individual or entity shareholder returns.
- (2) Where there is potential for tax or penalty on the S corporation itself, the statute must be protected at the S corporation level. Tax or penalty due at the S corporation level can occur in the following situations:
  - a. Tax imposed on S corporation built-in gains — IRC 1374, Tax Imposed on Certain Built-In Gains.
  - b. Tax imposed on S corporation passive investment income — IRC 1375, Tax Imposed When Passive Investment Income of Corporation Having Accumulated Earnings and Profits Exceeds 25 Percent of Gross Receipts.
  - c. If the corporation has filed as an S corporation and it is later determined that it does not qualify as an S corporation, it will be converted to a C corporation. The statute of the converted C corporation begins with the filing of the S corporation return. Therefore, if there is a potential that the S corporation will be converted to a C corporation, the statute must be protected.
  - d. Penalty imposed on the S Corporation for late filing or failure to disclose a “listed” transaction.
- (3) To extend the statute in situations described in paragraph (2) above, follow the consent procedures for C corporations.

25.6.22.6.3.1  
(11-17-2021)  
**Converted Subchapter S  
Corporation Items**

- (1) If TEFRA Subchapter S items are converted to non-Subchapter S items under IRC 6231(b), Timing of Notices. IRC 6229(f), Special Rules, provides that the statute for assessment of tax on the shareholder's return for these items shall not expire before the date that is one year from the date of conversion. This one-year period can be extended by consent.

25.6.22.6.4  
(08-26-2011)  
**Associations**

- (1) A consent covering a return filed by an association must be accompanied by a copy of the articles of agreement. The legal name of the association, as it appears in the articles of agreement, will be shown in the name caption of the consent.
- (2) The name of the association and the names and titles of the signers must be entered above the authorized signatures.
- (3) Use Form 872, Consent to Extend Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax.

25.6.22.6.5  
(08-26-2011)  
**Partnerships (Investor Level Statute Control)**

- (1) There is no statute for a partnership return except for the assessment of penalties, if the partnership is ILSC. The statute of limitation is determined at the partner level for each partner. Therefore, the statute for each partner is extended by following the consent procedures for the individual or entity partner's return.
- (2) Penalties may also be assessed against the partnership so the partnership statute must be protected; if penalties are applicable.

**Example:** The penalty for failing to file a partnership return under IRC 6698, Failure to File Partnership Return. The consent form must indicate, "The amount of any IRC section [insert Internal Revenue Code section number] penalty [cross out the preprinted word tax on the consent form and insert the word penalty] due with respect to any return(s) made by or for the above taxpayer(s) for the period ended...."

**Note:** The example applies to all partnership returns.

25.6.22.6.5.1  
(08-26-2011)  
**Partnerships (TEFRA)**

- (1) The statute of limitations for assessing deficiencies attributable to TEFRA partnership items and affected items, such as pass-through items to the partner, is generally determined at the partnership level. Therefore, the consent must be executed at the partnership level. TEFRA partnership items and affected items are defined in IRC 6231(a)(3), Notice of any Final Partnership Adjustment Resulting From Such Proceeding, and 26 CFR 301.6231(a)(3)-1 and 26 CFR 301.6231(a)(5)-1.
- (2) The TEFRA procedures set forth in IRC 6229, Period of Limitations for Making Assessments [Effective for returns filed for partnership taxable years beginning before January 1, 2018], must be followed. See IRM 4.31.2.5, Statutes, for the procedures to be followed in obtaining consents for TEFRA partnerships.
- (3) The consent must show the correct name of the partnership as it appears in the partnership agreement.
- (4) The consent agreement may be signed by the Tax Matters Partner of the partnership or other authorized person who complies with the requirements set forth in 26 CFR 301.6229(b)-1. The properly executed consent under IRC 6229(b)(1)(B), holds the statute open for all the partners, as to the partnership items and affected items. See IRM 4.31.2.4.2, Extension of Statute at the Partnership Level. See also IRM 25.6.22.6.5.1 (8), Partnerships (TEFRA), below, for proper consent forms.
- (5) If a consent agreement is not obtained from the Tax Matters Partner or other authorized person empowered to sign a consent with respect to all partners,

either as a result of the fact that no consent could be secured after solicitation or because no consent was solicited at the TEFRA entity level, the statute for assessing any tax attributable to partnership items and affected items may be extended under IRC 6229(b)(1)(A) with respect to any partner by a properly executed consent entered into by the Secretary and such partner. If such consent is secured at the partner level, it must specifically provide that it extends the period for assessment of tax attributable to partnership items and affected items. This requirement is met through use of Form 872 or Form 872-A.

- (6) For situations where the general partner is a limited liability company (LLC) that is treated as a disregarded entity, although an LLC that is a disregarded entity is disregarded for all federal tax purposes under 26 CFR 301.7701-2(c)(2)(i) these regulations do not alter state law, and state law determines a partner's status as a general partner. The disregarded entity may be authorized to bind the partnership under state law. If the LLC's single owner has no power to bind other partners as a general partner under state law, the single owner cannot step into the shoes of LLC and sign the consent, as the tax matters partner. Rev. Rul. 2004-88, 2004-2 C.B. 165 holds that an LLC that is a disregarded entity for federal tax purposes may be designated the tax matters partner of a partnership subject to the TEFRA partnership provisions when it is a general partner under state law. In order to avoid hazards of litigation, both the single member of the LLC and the LLC's manager under state law must sign any tax matters partner consent.

**Note:** For employment tax returns for periods beginning on or after January 1, 2009, single-owner LLCs will no longer be classified as disregarded entities for employment tax purposes. See T.D. 9356, 72 F.R. 45891-01 (August 16, 2007).

- (7) If a consent is secured at the TEFRA partnership level and there are ILSC adjustments on partners' returns, separate consents with respect to ILSC adjustments will need to be executed by each partner. Use the consent procedures for the individual or entity partner returns.
- (8) Consent forms used for TEFRA partnership statutes are:
- Form 872-P: This form extends the statute to a fixed date for all partnership items and affected items passing from the particular partnership.
  - Form 872-O: This form is an open-ended statute date for all partnership items and affected items passing from the particular partnership.
  - Form 872-N: This form is used to terminate the open-ended extension on the Form 872-O.
  - Form 872 revised 10-2009 or later: This form extends the statute to a fixed date for individual partners for TEFRA partnership items (and affected items) as well as all other adjustments to the partner's return.
  - Form 872-A revised 10-2009 or later: This form is an open-ended statute date for individual partners for TEFRA partnership items (and affected items) as well as all other adjustments to the partner's return.

**Note:** Form 872-I and Form 872-IA were designated as obsolete on October 29, 2009, when the TEFRA-related wording was included on the Form 872 and Form 872-A; however, consents recorded on the Form 872-I and Form 872-IA are still valid.

25.6.22.6.5.2  
(08-26-2011)

**Converted Partnership  
Items**

- (1) If TEFRA partnership items are converted to non-partnership items under IRC 6231(b), Timing of Notices, IRC 6229(f), Special Rules, provides that the statute for assessment of tax on the partner's return for these items shall not expire before the date that is one year from the date of conversion. This one-year period can be extended by consent.
- (2) Form 872-F, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership That Have Converted Under Section 6231(b) of the Internal Revenue Code, or alternatively, when the examiner is attempting to protect the statute for both TEFRA and ILSC items on the partner's return, Form 872 or Form 872-A is used to extend the statute.
- (3) A Form 872-F (or revised October 2009 or later Form 872 or Form 872-A) must be obtained for each partner's return that needs to be extended. One Form 872-F (or Form 872 or Form 872-A) does not cover all of the partners' returns.
- (4) Unlike the Form 872 or Form 872-A, the Form 872-F only extends the statute on the partner's return for the converted partnership items.
- (5) Defaulted Final Partnership Administrative Adjustment (FPAA) and court decisions **are not** conversions under IRC 6231(b). In these cases, the one-year assessment period can be extended by using the Form 872 or Form 872-A.

25.6.22.6.6  
(08-26-2011)

**Trusts**

- (1) Consents for trust returns (Form 1041, U.S. Income Tax Return for Estates and Trusts) including trusts related to Employee Plan returns (Form 5500, Annual Return/Report of Employee Benefit Plan), will be obtained in the name of the trust to secure a consent. The signature will show the name of the trust, followed by the name and designated title of the person or persons authorized by the trust instrument.

**Example:** Name: "John Salmon Trust"

**Example:** Signature: "John Salmon Trust By Richard Row, Trustee"

- (2) A consent covering a return of a trust must be accompanied by Form 56, Notice Concerning Fiduciary Relationship, and the trust instrument.
- (3) Use Form 872, Form 872-A or Form 872-H. For Employee Plan purposes, use only a Form 872 or Form 872-H. See IRM 25.6.22.6.13, Employee Plans, for additional details and preparation of Form 872-H related to Employee Plans.
- (4) Where several trustees are appointed under a trust instrument, any one of the trustees may sign the consent, if the trust instrument provides that acts of one or more trustees are binding on all.
- (5) If no single trustee's signature is binding on all the trustees, the names of all the trustees must be shown in the consent and Form 56, Notice Concerning Fiduciary Relationship. All trustees must sign the consent. This is true whether one or all trustees sign the filed return.
- (6) When a trust is terminated, the trustees may not sign a consent. See instructions for transferee liability cases at IRM 25.6.22.6.17.1, Transferee Liability.

- (7) For adjustments relating to assets held by a grantor trust, the period to keep open for assessment of tax is that of the owner whom the IRS may assess. The filing of the grantor trust return does not start any period of limitations for items reported on that return, and a trustee does not have authority to execute a consent on behalf of the owner regarding those items. If there is a question as to whether or not the trust will be treated as a grantor trust, consents must be obtained from both the owner and trustee.

25.6.22.6.7  
(08-26-2011)  
**Decedent's Estate  
(Income Tax – Form  
1041)**

- (1) A consent covering the income tax return of an estate (Form 1041) must be in the name of the estate. The signature must show the name of the estate, followed by the name and designated title of the person or persons authorized to act for the estate. The authorized person is the executor, administrator, or other fiduciary.

**Example:** Name: "Estate of John Salmon"

**Example:** Signature: "Estate of John Salmon, By Mary Salmon, Executrix"

**Example:** Name: "Estate of John Salmon"

**Example:** Signature: "Estate of John Salmon, First National Bank, Executor, By Richard Cod"

- (2) A consent covering an income tax return of an estate must be accompanied by Form 56, Notice Concerning Fiduciary Relationship, and the certified copy of letters of testamentary or court certificate certifying as to the present status of the estate, including the name of the present fiduciary and the fiduciary's capacity.
- a. Probate courts may have form certificates which are used by the court in furnishing certifications to the fiduciary.
  - b. The certification by the court must not postdate the date of signature on the consent.
- (3) Use Form 872 or Form 872-A.
- (4) Where several executors, administrators or other fiduciaries are appointed under a will, any one of them may sign the consent, if the will provides that acts of one or more personal representatives are binding on all.
- (5) If no executor's or administrator's signature is binding on all the executors or administrators, the names of all the executors or administrators must be shown in the consent and Form 56. All executors or administrators must sign the consent and Form 56. This is true whether one or all sign the return which was filed.
- (6) When an estate was closed and the executor discharged, a valid consent cannot be secured, unless the former fiduciary petitions the court to re-open the estate. If there is no such re-opening, see the procedures pertaining to transferee liability cases at IRM 25.6.22.6.17.1, Transferee Liability.

25.6.22.6.8  
(08-26-2011)  
**Decedent's Estates  
(Estate Tax – Form 706  
series)**

- (1) There is no provision in the law for entering into an agreement to extend the statute of limitations for assessment of the estate tax imposed by Chapter 11 of the IRC.
- (2) If distributions were made to heirs, the transferee liability rules can apply. See IRM 25.6.22.6.17.1, Transferee Liability.

25.6.22.6.9  
(08-26-2011)  
**Gift Tax**

- (1) In gift tax cases in which the husband and wife have elected to split their gifts pursuant to IRC 2513, Gift by Husband or Wife to Third Party, separate consent agreements will be prepared for each spouse. One consent will be prepared for the husband as donor with the wife as consenting spouse, and another for the wife as donor with husband as consenting spouse. Signatures of both spouses must appear on both sets of consents.
- (2) Use Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax.

25.6.22.6.10  
(08-26-2011)  
**Employment Taxes**

- (1) The period for assessment of employment taxes can be extended by using the Form SS-10, Consent to Extend the Time to Assess Employment Taxes. This form is for the taxes imposed under the Federal Insurance Contributions Act (Form 941, Employer's Quarterly Federal Tax Return; Form 943, Employer's Annual Tax Return for Agricultural Employees; Form 944, Employer's ANNUAL Federal Tax Return), the Federal Unemployment Tax Act (Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return), the Railroad Retirement Tax Act (Form CT-1, Employer's Annual Railroad Retirement Tax Return, and Form CT-2, Employee Representative's Quarterly Railroad Tax Return), and IRC provisions relating to collecting income tax at the source on wages and other payments and distributions (Form 941; Form 943; Form 944 and Form 945, Annual Return of Withheld Federal Income Tax).
- (2) The consent (Form 872, for example) obtained to extend the income tax return of the employer does not extend the period of time for assessment of employment taxes.
- (3) The name of the controlling entity will be used in the consent. This is usually the name on the employment tax return.
- (4) In the case of a sole proprietorship (Schedule C business), the primary taxpayer's name as shown on the employment tax return will be input on the Form SS-10 followed by "dba" (the abbreviation "for doing business as").
  - a. If the taxpayer filed a joint return, the primary taxpayer is the person who owns the business or exercises substantially all of the management and control of the trade or business. Following is an example where the Schedule C is operated by only one spouse on a joint return:  
  
**Example:** "Jane Salmon dba Veterinary Clinic."
- (5) The instructions for signing the consent in various entity situations are as follows:
  - a. Corporations - The consent must be signed by a corporate officer authorized to execute the consent. See discussion on those authorized to sign extensions for the income tax return at IRM 25.6.22.6.2, Corporations.



- b. Partnership - Any general partner authorized to bind the partnership may sign the consent, even if they did not sign the return.
- c. Limited liability company classified as either a partnership or corporation - any officer or other person authorized to bind the LLC under the terms of LLC operating agreement may sign the consent.
- d. For periods beginning before January 1, 2009, limited liability company classified as a disregarded entity - the single owner of the LLC must sign the consent even if the employment tax return was filed by the LLC.

**Note:** For employment tax returns for periods beginning on or after January 1, 2009, single-owner LLCs will no longer be classified as disregarded entities for employment tax purposes. See T.D. 9356, 72 F.R. 45891 (August 16, 2007). If an LLC is not a disregarded entity for employment tax purposes, the consent must be secured from the LLC for employment tax issues. See IRM 25.6.22.6.17.9, Limited Liability Companies (LLCs), for instructions on securing consents for LLCs.

- (6) For purposes of extending the period for FICA, FUTA, RRTA, and withholding taxes, the “tax periods from (Month DD. YYYY) through (Month DD YYYY)” are to include the periods covered under the extension. More than one period may be covered by one Form SS-10.

**Example:** The Federal Unemployment Tax Act, for calendar years “1995 and 1996”.

**Example:** The Federal Insurance Contribution Act, for tax periods “from January 1, 1995 through December 31, 1996”.

**Example:** The Income tax withholding provisions of existing or prior revenue laws, for tax periods “from January 1, 1995 through December 31, 1996”.

**Example:** The Railroad Retirement Act, for tax periods “from January 1, 1995 through December 31, 1996”.

- (7) A single consent may be used to extend the statute for the FICA, FUTA, withholding taxes, and the Railroad Retirement tax provided that the appropriate lines are completed on the consent form for the relevant type of tax.
- (8) A single consent may be used to cover all quarterly returns filed for employment taxes as well as other returns which report the same type of employment taxes, if the taxpayer filed the other returns. For example, Form 941, Employer’s Quarterly Federal Tax Return; Form 943, Employer’s Annual Tax Return for Agricultural Employees; Form 944, Employer’s Annual Federal Tax Return; and Form 945, Annual Return of Withheld Federal Income Tax, all report income tax withholding. This is true for a consent covering a one year period of time or covering a period of more than one year.
- (9) The statute of limitations for all timely-filed quarterly employment tax returns for a single calendar year expire at the same time. See IRC 6501(b)(2), Return of Certain Employment and Withholding Taxes. Therefore, a consent will usually include all four returns if returns were timely filed.



- (10) For conversion issues where FICA coverage is converted to RRTA coverage and Form CT-1 have been filed, care must be taken to cover both taxes (FICA and RRTA) on Form SS-10. Note that the statute date for RRTA is three years from the last day of the second month following the end of the tax year, or the date the Form CT-1 is filed, whichever is later.
- (11) Transferee liability - Consent Form 4016 is used for extending the statutory period of limitations for assessment of employment taxes against a transferee, arising on liquidation or dissolution of a corporation or partnership, or on a reorganization within the provisions of IRC 368(a), Reorganization.

25.6.22.6.10.1  
(08-26-2011)

**Employment Taxes –  
Employee Share of FICA**

- (1) During an examination, assessments for the employee share of FICA tax (IRC 3101, Rate of Tax) can be made against either the employer or the employee.
- (2) The statute on the employee share of FICA tax is determined by the statute date of the Form 941, Employer's Quarterly Federal Tax Return, filed by the employer. This is true regardless of the entity being assessed. The assessment statute date must be considered if the examiner intends to pursue the assessment against an individual employee. The statute date of the employee share of FICA tax corresponds to the statute date of the employer's Form 941, not the employee Form 1040 filing date.
- (3) A Form SS-10, Consent to Extend the Time to Assess Employment Taxes, is used to extend the statute on either the employer or employee portion of FICA tax. The Form SS-10 can be secured from the employee on the employee portion of FICA tax. However, examiners must ensure that the expiration dates that are being monitored for protection are those of the employer's Form 941. The Form SS-10 must specifically refer to the employee liability for the employee share of FICA tax by adding at the top of the consent form or in the blank, fillable portion (below paragraph (3)) of the form: "This consent applies to employee share of FICA."
- (4) There are special instances when the mitigation provisions under IRC 6521, Mitigation of Effect of Limitation In Case of Related Taxes Under Different Chapters, would allow an offset against the employee payment of Self-Employment Tax, but the timing of the FICA Tax assessment, in relation to the expiration of the statute on Form 941 and Form 1040, becomes critical. Examiners are advised to take a conservative approach and protect the FICA tax statute rather than rely on the mitigation provisions.

25.6.22.6.10.2  
(08-26-2011)

**FICA Tax on Tips Not  
Reported to Employer**

- (1) Form SS-10 is the form to use to extend the statute of limitations with respect to FICA tax on under-reported tips. However, Form 872 or Form 872-A may be used to extend the statute for assessing additional FICA tax on tips if those forms specify that they relate to FICA tax. See IRM 4.23.7.8, Statute of Limitations for Tip Examinations, and IRM 4.23.7.8.1, Extending Statute of Limitations for Tip Examinations of Employees (Form 1040).
- (2) If income tax and FICA tax on tips were reported on the same return, the statute for assessment of additional FICA tax is the same as the statute for the income tax.
- (3) If the FICA tax on tips was not reported on the return, there is no statute on the assessment of the FICA tax and an extension is not necessary in order to assess the FICA tax. See Rev. Rul. 79-39, 1979-1 C.B. 435

- (4) The kind of tax to specify on the consent is "FICA on tips".

25.6.22.6.10.3  
(08-26-2011)  
**Trust Fund Recovery  
Penalty**

- (1) The period of limitations for assessment of the Trust Fund Recovery Penalty (IRC 6672, Failure To Collect And Pay Over Tax, Or Attempt To Evade Or Defeat Tax) can be extended by consent as per IRC 6501(c)(4), Extension by Agreement. Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, is used for this purpose.
- (2) The Trust Fund Recovery Penalty period for assessment is not protected by the Form SS-10, Consent to Extend the Time to Assess Employment Taxes, on the corresponding employment tax returns.
- (3) All examiners are responsible for protecting the Trust Fund Recovery Penalty statute of limitations. See IRM 5.7.3.5, Statutory Assessment Period, and IRM 5.7.3.6, Extension of Statutory Assessment Period, for determining the period for assessment of the Trust Fund Recovery Penalty.
- (4) Form 2750 must be obtained from **all** persons who appear to be responsible for, but did not collect, account for, and/or pay over the taxes which are "collected" taxes. See IRM 5.7.3.1.1, Introduction. If Form 2750 cannot be secured, Form 6238, Referral Report for Potential 100 Percent Penalty Cases, must be completed by the examiner and sent to Advisory, Insolvency and Quality (AIQ).
- (5) The Form 2750 must be secured when the Trust Fund Recovery Penalty statute will expire within 1 year for agreed cases or 2 years for unagreed cases, see IRM 5.7.3.4.1, Referral from Examination.
- (6) The waiver will provide for extension of the statutory assessment period to allow ample time during which issues bearing on assertion of the penalty may be resolved, so that normally it will be necessary to secure only one waiver from each responsible officer.
- (7) Care must be exercised in determining the date to which the statute will be extended. In the absence of unusual circumstances, this date will not be after December 31 of the year following the year in which the statutory period will expire (such as one year and 260 days after the April 15 filing date of the Form 941). See IRM 5.7.3.6.1, Form 2750 Waiver.
- (8) The consent Form 2750 will be signed by the person(s) potentially responsible if they agree to extend the assessment statute.

25.6.22.6.11  
(08-26-2011)  
**Excise Tax**

- (1) Form 872-B, Consent to Extend the Time to Assess Miscellaneous Excise Tax, is used to extend the statutory period of limitation on assessment of the excise taxes reported on Form 720, Quarterly Federal Excise Tax Return; Form 2290, Heavy Highway Vehicle Use Tax Return; Form 730, Monthly Tax Return for Wagers; and Form 11-C, Occupational Tax and Registration Return for Wagering.
- (2) Separate consents are needed for each type of excise tax return (such as Form 2290 and Form 720) for which the limitations period will be extended.
- (3) For the kind of tax, name the specific excise tax being extended. The pertinent code section must be stated in the space provided in the consent.

**Example:** “The amount of liability for Federal Excise Heavy Truck & Trailers Sold at Retail tax, imposed on the taxpayer(s) by section 4051 of the Internal Revenue Code...”

- (4) If an extension is desired for more than one type of tax reported on the same Form 720, each type of tax and its corresponding code section must be listed separately on the consent form.
- (5) The periods (“due for the period”) will be shown inclusive, beginning with the first day of the earliest period and ending with the last day of the most recent period.

**Example:** “January 1, 2020 through June 30, 2023”

- (6) Transferee liability — Consent Form 4016, Consent Fixing Period of Limitation Upon Assessment of Employment or Miscellaneous Excise Taxes Against a Transferee, is used for extending the statutory period of limitations for assessment of excise taxes against a transferee, arising on liquidation or dissolution of a corporation or partnership, or on a reorganization within the means of IRC 368(a), Reorganization. See IRM 25.6.22.6.17.1, Transferee Liability.
- (7) Limited Liability Companies—

**Note:** For certain excise tax liabilities imposed or collected in periods beginning on or after January 1, 2008, single-owner LLCs will no longer be classified as disregarded entities for excise tax purposes. See T.D. 9356, 72 FR 45891 (August 16, 2007). If an LLC is not a disregarded entity for excise tax purposes, the consent must be secured from the LLC for excise tax issues. See IRM 25.6.22.6.17.9, Limited Liability Companies (LLCs), for instructions on securing consents for LLCs. Per T.D. 9462, 74 F.R. 46903–46904 (September 14, 2009), the LLC not disregarded as an entity for certain excise tax purposes will be treated as a corporation for tax administration purposes related to those excise taxes. The treatment as a corporation under the temporary regulations is effective September 14, 2009, but will expire on September 11, 2012, according to the regulations.

- (8) The penalty imposed by IRC 6725, Failure To Report Information Under Section 4101, for failure to provide the required information or providing incorrect information on Form 720-TO, Terminal Operator Report, and Form 720-CS, Carrier Summary Report, returns may be extended by using Form 872-B. The consent form is to be modified by deleting all references to the word “tax” in paragraphs (1), (2) and (3) and inserting in lieu thereof the word “penalty.” Since some entities have multiple filings under a single employer identification number (EIN), the Form 872-B must be specific as to the respective terminal/vessel/pipeline. The specific terminal control number (TCN) of the respective terminal is to be reflected for Form 720-TO filers. Information to identify and distinguish respective vessel/pipeline is to be reflected on the Form 872-B.
- (9) For information on whether or not the period of time for assessment for paid claims assessed under IRC 6206, can be extended, see IRM 4.24.8, Examination Guidance for Excise Claims for Refund or Abatement.

25.6.22.6.12  
(08-26-2011)  
**Exempt Organizations**

- (1) Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax, is used to extend the statute for assessment of taxes under Chapters 41 (Public Charities) and 42 (Private Foundations and Certain Other Tax-Exempt Organizations) of the IRC.
- (2) When consent agreements are entered into extending the statutory period of limitations for assessment of income and Chapter 41 or 42 taxes, the same consent form can be used. The kind of tax will be shown as "income and excise."
- (3) For the Form 990-T, Exempt Organization Business Income Tax Return, the consent must be signed by an officer or fiduciary.
- (4) The statutory period for assessment of Chapter 41 or 42 taxes imposed upon a disqualified person, foundation manager, organization manager, public charity, a private foundation, or a black lung benefit trust may be extended when necessary by securing an executed Form 872 or Form 872-A for each year in which acts (or failures to act) occur which give rise to the Chapter 41 or 42 taxes.
- (5) The consent form must also cover all other years in the taxable period because excise taxes are imposed for each year in the taxable period and not merely the year in which the act occurred.
- (6) The consent must always be obtained from the person upon whom the tax is imposed even though the period of limitations is determined by the due date of the annual return (Form 990, Return of Organization Exempt From Income Tax; Form 990-PF, Return of Private Foundation or Section 4947(a)(1), Trust Treated as a Private Foundation; Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Person; or Form 5227, Split-Interest Trust Information Return, or the date the return is filed, whichever is later.

**Example:** Assume Foundation Y correctly reports a transaction with a disqualified person that occurred on July 30, 1995 on its timely filed Form 990-PF for calendar year 1995, and that this transaction is an act of self-dealing. Assume also that an examining officer discovers the uncorrected act on January 12, 1999 and recommends imposition of IRC 4941 tax on the disqualified person, who is a calendar year taxpayer. As of January 12, 1999 the first level tax imposed on the act occurring on July 30, 1995 would be 5 percent (see IRC 4941, Taxes on Self-Dealing, to verify rate of tax at the time the self-dealing occurred) of the amount involved for each of the 5 full or partial tax years of the disqualified person within the taxable period. Because the three-year statutory period will expire in less than 180 days on May 15, 1999, the examining officer must attempt to secure Form 872 to extend the statutory period for all years in the taxable period. Separate consent forms must be secured from the self-dealer and any foundation managers who may be liable for self-dealing taxes. If the same person is liable for the tax both as a self-dealer and a foundation manager, separate consent forms are not needed for that person. Even though it was the foundation's return that started the running of the period of limitations on assessment, a Form 872 does not have to be secured from the foundation unless it may be liable for other Chapter 42 taxes. Using the wording "years that are fully or partially

within the taxable period” on the Form 872 automatically includes all years within the taxable period, including any taxable years after the year in which the Form 872 is secured.

25.6.22.6.13  
(10-24-2019)  
**Employee Plans**

- (1) Form 872, Consent to Extend the Time to Assess Tax, is used to extend the statute for assessment of taxes under Chapter 43 (Qualified Pension, Etc., Plans) of the IRC.
- (2) The statutory period for assessment of the IRC 4975(a), Initial Taxes on Disqualified Person, excise tax on a disqualified person may be extended when necessary by securing an executed Form 872 for each year in which transactions occur that give rise to the excise tax. The consent must always be obtained from the person upon whom the tax is imposed, even though the period of limitations is determined by the due date of the annual return (Form 5500 series) or the date the return is filed, whichever is later.
- (3) When consent agreements are entered into extending the statutory period of limitations for assessment of Chapter 43 taxes, the kind of tax will be shown as “excise.”
- (4) Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, must be signed by the person (employer, entity, individual) against whom the tax will be assessed and any consent Form 872 pertaining to the Form 5330 must be signed by the same person or another person authorized to sign the consent.
- (5) Consents related to a Form 5500, Annual Return/Report of Employee Benefit Plan, are secured with respect to Form 1041, U.S. Income Tax Return for Estates and Trusts. The most current version of Form 872-H must be used when extending a statute of limitations for a Form 1041 related to a Form 5500. Form 56, Notice Concerning Fiduciary Relationship, must also be sent to the trustee(s) for completion when extending the statute of limitations on a trust. Since an examination of Form 5500 may result in the revocation or disqualification of the plan, consents must be secured for the trust for the **applicable year**.
- (6) Once a plan is no longer qualified under IRC 401(a), Requirements for Qualification, the trust becomes taxable. See IRM 4.71.9, Statute Control Procedures.
- (7) In some cases, the trust may be required to file a Form 1041, U.S. Income Tax Return for Estates and Trusts, for those years during which the plan is disqualified and the statute of limitations is open. It is the trustee (or authorized representative) who must sign the Form 872-H, Consent to Extend the Time to Assess Tax on a Trust, consent in order for the extension to be valid. The consent to extend the statute of limitations must be signed by a **current** trustee, which may be a different individual than the person who was trustee when Form 5500 was filed/the plan became disqualified.
- (8) Research must be conducted to determine if the trust has an EIN. The correct trust EIN will be used on Form 872-H if the trust has an EIN. The applicable line will be left blank if the Trust does not have an EIN. When preparing Form 872-H:
  - Input the trust name and current address on the appropriate lines.
  - Input the word “Income” on the “Kind of tax” line.

- Input a date on the “Expiration date” line that is far enough in the future to allow ample time for the case to be processed.
- The trustee(s) must sign the consent form exactly as their name appears on Form 56 (the trustee must be a current trustee).
- Make sure the consent is dated on the “Date signed” line next to the signatures.
- See IRM 4.71.9, Statute Control Procedures, for guidance on completing Form 872-H.

25.6.22.6.14

(08-26-2011)

**Form 1042 Withholding  
on U.S. Income of  
Foreign Persons**

- (1) A Form 872 or Form 872-A is used to extend the period of limitations for Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons. See IRM 4.23.14.9, Form 872, Consent to Extend the Time to Assess Tax for Form 1042, for guidance regarding preparation of the consent.
- (2) Separate consent forms will be used to extend the periods of limitation for Form 1120 and Form 1042.

25.6.22.6.15

(08-26-2011)

**Preparer Penalty**

- (1) The statute for the preparer penalties imposed by IRC 6694(a), Understatement Due to Unreasonable Positions, and IRC 6695, Other Assessable Penalties with Respect to the Preparation of Tax Returns for Other Persons, can be extended by agreement.

**Note:** See Rev. Rul. 78-245, 1978-1 C.B. 435 for the legal definition of the limitation period for return preparer penalties.

**Note:** See IRM 20.1.6, Preparer, Promoter, Material Advisor Penalties, for more information.

- (2) The statute must be extended using Form 872-D, Consent to Extend the Time on Assessment of Tax Return Preparer Penalty.

**Note:** A signed consent extending the period for assessment of tax liabilities of the taxpayer has no effect on the statute of limitations for assessing preparer penalties.

- (3) A separate consent will be obtained for each taxable period under consideration, and the related taxpayer returns, for which the penalties are applicable must be included on each consent.

25.6.22.6.16

(08-26-2011)

**Appraiser Penalty**

- (1) The statute for the penalties imposed by IRC 6695A, substantial and gross valuation misstatements attributable to incorrect appraisals, can be extended by agreement.
- (2) The statute is extended by using Form 872-AP, Consent to Extend the Time on Assessment of IRC Section 6695A Penalty.

**Note:** A signed consent extending the period for assessment of tax liabilities of the taxpayer has no effect on the statute of limitations for assessing penalties on the appraiser.



- (3) Generally, a separate consent will be obtained for each taxable period under consideration and the related taxpayer returns for which the penalties are applicable must be identified on each consent.

25.6.22.6.17

(08-26-2011)

#### Special Situations

- (1) Special conditions affect the statute of limitations. This subsection deals with the effect of these conditions on consents to extend the period of time for assessment of tax.

25.6.22.6.17.1

(08-26-2011)

#### Transferee Liability

- (1) A statute extension obtained from the transferor (the primary taxpayer) extends the transferee period for assessment. Therefore, if possible, the transferor statute must be extended.

**Note:** See IRM 4.11.52, Transferee Liability Cases, for more information.

**Note:** See IRC 6901, Transferred Assets.

- (2) The statutory period for assessment against a transferee can be extended by consent. The forms used for this purpose are:
- Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Against a Transferee or Fiduciary.
  - Form 4016, Consent Fixing Period of Limitation Upon Assessment of Employment or Miscellaneous Excise Taxes Against A Transferee.

**Caution:** A consent signed by one transferee does not extend the period for assessment for another transferee or a succeeding transferee (a transferee of a transferee). See *Columbia Pictures Industries, Inc. v. Commissioner*, 55 T.C. 649 (1971). Also, see General Counsel Memorandum, GCM 34599.

- (3) Form 2045, Transferee Agreement (used in income tax situations), is an agreement between the transferee and the Commissioner in which the Commissioner agrees to discontinue action against the corporation transferor and the transferee agrees to be liable as a transferee for, and to pay, the tax liability of the transferor. The examiner must try to obtain this agreement, as appropriate, but it is not required in order to extend the statute. Form 2045 does not extend the statute for assessment against the transferee or transferor.
- (4) A separate extension Form 977 and/or Form 4016 and agreement Form 2045 (in income tax situations) must be obtained from each transferee.
- (5) The transferee's statute of limitations date is one year after the expiration of the period of limitations for assessment against the transferor. See IRC 6901(c). If the transferor's statute is extended by a consent, the transferee's statute expires one year after the assessment can be made against the transferor under the terms of the consent.

25.6.22.6.17.2

(08-26-2011)

#### More Than 25 Percent Omission of Gross Income

- (1) A six-year statute applies when gross income reported on the return is understated by more than 25 percent or as a result of an understatement of more than \$5,000 of income which is attributable to foreign financial assets. This six-year statute can be extended by consent in the same manner as the normal three-year statute (for instance, the three-year period provided by IRC 6501(a),



General Rule) is extended by consent. See IRM 25.6.23-3, Instructions for Updating the Statute on AIMS. See IRM 25.1.4.3.8.1, IRC 6501(e), 6-Year Statute.

- (2) Form 872, Consent to Extend the Time to Assess, and Form 872-A, Special Consent to Extend the Time to Assess, are used for income tax returns. Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items, and Form 872-O, Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items, are used for TEFRA partnership returns.
- (3) No special wording is required for the consent forms to extend the statute when more than 25 percent of gross income was omitted from the return, whether the normal three-year statute has expired or not. If the normal three-year statute has expired, the following wording can be added at the top of the consent, if desired: "This consent is valid only if IRC 6501(e) is applicable."
- (4) If examination issues indicate that gross income was understated by more than 25 percent and the six-year statute may apply, the normal statutory period must be extended, if it is still open. If the examiner lets the normal three-year statute pass due to reliance on the "more than 25 percent of gross income" understatement, but it is ultimately determined the understatement is 25 percent or less, the IRS would be barred from assessing any underpayment of tax. See IRM 25.6.1.13, Barred Assessments/Barred Statute Cases, for more information on barred assessments.

25.6.22.6.17.3  
(08-26-2011)  
**IRC 183, Activities not  
Engaged in for Profit  
Election**

- (1) The period of limitations for an assessment of any deficiency attributable to the IRC 183, Activities Not Engaged in for Profit, activity, for which an election was made, will not expire any earlier than a special period provided in IRC 183(e)(4), if a taxpayer makes an election under IRC 183(e), Special Rule. See Form 5213, Election to Postpone Determination as to Whether the Presumption Applies That an Activity is Engaged in for Profit.

**Note:** See requirements for filing Form 5213 under "When to File" portion of instructions for Form 5213. In order to rely on the IRC 183(e)(4) statute and to further extend the IRC 183(e)(4) statute, as discussed immediately below, the form must have been filed timely, in accord with the instructions.

- (2) A consent to extend the IRC 183(e)(4) statute may be entered into after expiration of the normal three-year statutory period but must be entered into before expiration of the IRC 183(e)(4) statute. In this case, the extension would only apply to the specific activity for which the IRC 183 election was made.
- (3) Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax, is used for this purpose.
- (4) No special wording is required to be added to the consent form to extend the IRC 183(e)(4) statute. The following wording can be added at the top of the extension form if desired: "This consent is under the provisions of IRC Section 183(e)(4)."

25.6.22.6.17.4  
(08-26-2011)  
**IRC 6501(d), Request for  
Prompt Assessment**

- (1) A qualifying corporate taxpayer or executor, administrator, or other fiduciary representing the estate of a decedent may shorten the period for assessment to 18 months after the date the request for prompt assessment is filed. See IRC 6501(d), Request for Prompt Assessment. This shortened statute expiration date may be extended by consent, if the case cannot be closed (including administrative processing) prior to the shortened expiration date. See IRM 4.15, Jeopardy/Termination Assessments.
- (2) Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax, is used for this purpose. No special wording needs to be added to the consent.
- (3) If a joint return was filed by two spouses, the period for assessment of tax cannot be shortened under IRC 6501(d) as to the surviving party to the joint return by the fiduciary requesting a prompt assessment as to the deceased party.

25.6.22.6.17.5  
(11-17-2021)  
**Rev. Proc. 92-29  
Estimated Costs of  
Common Improvements**

- (1) A taxpayer requesting to use the alternative method under Rev. Proc. 92-29, 1992-1 C.B. 748, with respect to a real estate project must agree to extend the period of limitation for assessment for each taxable year in which that method is used. The consent is limited to the assessment of deficiencies attributable to the use of that method with respect to the project covered by the consent.
- (2) Form 921 series is as follows:
  - a. Form 921, Consent to Extend the Time to Assess Income Tax;
  - b. Form 921-A, Consent Fixing Period of Limitations On Assessment of Income and Profits Tax;
  - c. Form 921-I, Consent Fixing Period of Limitations On Assessment of Income and Profits Tax;
  - d. Form 921-M, Consent Fixing Period of Limitation on Assessment to Make Partnership Adjustments, or
  - e. Form 921-P, Consent Fixing Period of Limitations On Assessment of Income and Profits Tax.
- (3) Form 921 is used by C Corporations or single member LLC/disregarded entities filing a Form 1040, Schedule C. It provides for a period of assessment ending one year after a return is filed for the tax year in which the project is expected to be completed.
- (4) Form 921-A is used for an S Corporation, Partnership, Limited Liability Company, Trust, Syndicate, Pool, and other similar entities. It provides a period for assessment ending on a date specified in the consent. However, it has virtually been replaced by the two new forms: Form 921-I and Form 921-P, see below.
- (5) Form 921-I is used by investors in an electing S Corporation, Partnership, Limited Liability Company, Trust, Syndicate, Pool, and such that are not subject to unified audit and litigation procedures under TEFRA (Tax Equity and Fiscal Responsibility Act). It provides a period for assessment ending one year after the date a return is filed for the tax year in which the project is expected to be completed.
- (6) Form 921-M will be used by entities subject to the centralized partnership audit regime procedures under the Bipartisan Budget Act of 2015. It provides a period for making partnership adjustments ending one year after the date a

return is filed for the tax year in which the project is expected to be completed. Form 921-M, Consent Fixing Period of Limitation on Assessment to Make Partnership Adjustments will be used to extend the period of limitations for making partnership adjustments for each taxable year in which the alternative method under Rev. Proc. 92-29, 1992-1 C.B. 748 is used.

- (7) Form 921-P is used by entities subject to the unified audit and litigation procedures under TEFRA. It provides a period for assessment ending one year after the date a return is filed for the tax year in which the project is expected to be completed. Form 921-P, Consent Fixing Period of Limitations On Assessment of Income and Profits Tax, are used to extend the period of limitations for assessment for each taxable year in which the alternative method under Rev. Proc. 92-29, 1992-1 C.B. 748, is used.

25.6.22.6.17.6  
(08-26-2011)  
**Bankruptcy**

- (1) For taxpayers who are in bankruptcy, consult Area Counsel or local procedures that have been approved by Area Counsel to determine who is authorized to sign the consent.
- (2) Bankruptcy does not affect the name used on the consent. Follow the same rule for a taxpayer who is not in bankruptcy. For more information on Bankruptcy, see IRM 4.27.1, Examiner Responsibilities and Procedures.

25.6.22.6.17.7  
(08-26-2011)  
**Fraud - Civil**

- (1) Although tax and penalties can be assessed after the expiration of the normal period for assessment when the return is false or fraudulent with intent to evade tax, if the period for assessment is still open, it must be protected. See IRM 25.1, Fraud Handbook, and IRM 25.6.23, Examination Process-Assessment Statute of Limitations Controls, for more information.
- (2) If the examiner allows the period for assessment to expire, in reliance on the return being false or fraudulent with the intent to evade tax, but it is ultimately determined the return is not false or fraudulent with the intent to evade tax, the IRS would be barred from assessing any deficiency. See IRM 25.6.1.13, Barred Assessments/Barred Statute Cases, for more information on barred assessments.

25.6.22.6.17.8  
(11-17-2021)  
**Fraud - Criminal**

- (1) The examiner and their manager are responsible, in administrative joint investigation cases, for taking any action necessary to protect the interest of the government with respect to the statutory period for assessment (the civil statute). See IRM 25.1, Fraud Handbook, and IRM 25.6.23, Examination Process-Assessment Statute of Limitations Controls, for more information. It is not the responsibility of the criminal investigator to protect the civil statute. The referral of a case to Criminal Investigation does not protect the statutory period of assessment. The assessment period continues to run during the criminal proceedings.
- (2) The examiner will not request the taxpayer(s) to extend the period for assessment without first obtaining written agreement from Criminal Investigation, generally with a signed Form 10498-B, Joint Investigations Intent to Solicit Consent to Extend Statute. See IRM 25.1.4.3.8, Statute Protection, for procedures to follow with regard to extending the statute or letting it expire in joint investigation cases.

**Note:** If Criminal Investigation (CI) recommends to Exam not to solicit a consent on the Form 10498-B, it is mandatory for CI to provide a written explanation, via an attached memorandum to the Form 10498-B. CI explanation will generally indicate such actions may imperil a successful prosecution. If a consent to extend the statute is not secured and a statutory notice of deficiency is not issued, CI and Compliance are relying on the fraud statute (IRC 6501(c)) to keep the civil action (assessment and right to collect) open. The fraud statute will only be relied upon if CI and Compliance are reasonably assured the civil fraud penalty (IRC 6663) can be sustained for the tax year in question.

25.6.22.6.17.9  
(11-17-2021)

**Limited Liability  
Companies (LLCs)**

(1) In General:

- In general, the tax classification of an LLC is determined in accordance with 26 CFR 301.7701-1, and the following references. A business entity that is not classified as a corporation under 26 CFR 301.7701-2(b) (eligible entity) can elect its classification for federal tax purposes as provided in 26 CFR 301.7701-3.
- If no election is made by a domestic entity and if it has at least two members, it is classified as a partnership by default, or if it has a single owner, it is classified as a disregarded entity.
- If no election is made by a foreign entity and if it has at least two members and at least one member does not have limited liability, it is classified as a partnership by default; if all members have limited liability, it is classified as an association (which, in turn, is classified as a corporation), or if it has a single owner that does not have limited liability, it is classified as a disregarded entity.

**Note:** There may be a lag between the time an LLC becomes a successor and the time it elects its status or defaults to disregarded entity status. In such a situation, contact Area Counsel to consider whether dual consents are appropriate.

**Note:** The date an entity classification election takes effect may vary. An election may be effective on the date specified by the entity on Form 8832, Entity Classification Election, or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. 26 CFR 301.7701-3(c)(1).

(2) Association (which, in turn, is classified as a corporation):

- If an LLC has elected to be treated as an association taxable as a corporation, the instructions above for corporation consents must be followed.

(3) Partnership:

- An LLC must have two or more members to be classified as a partnership, see 26 CFR 301.7701-2(c)(1). Thus, if an LLC is treated as a partnership, the instructions above for partnership consents must be followed.

- While the consent may be executed by the members of the LLC, if under state law the members are not liable for the debts of the LLC, absent fraudulent transfers or other special circumstances, the IRS may not collect the LLC's employment tax liability from the members, including by levy on the property and rights to property of the members. Rev. Rul. 2004-41, 2004-1 C.B. 845.

(4) Disregarded entity:

- a. In General - A disregarded entity has a single owner. It is disregarded as an entity separate from that owner and, instead is treated as a branch, division or proprietorship of the owner. See 26 CFR 301.7701-2(c)(2)(i). If an LLC is a disregarded entity, the consent generally must not be prepared for the LLC, but instead, must be prepared for the single owner of the LLC.

**Note:** A disregarded entity is an entity separate from its owner for state law purposes and the IRS cannot collect from the LLC's property to satisfy the single owner's federal tax liability.

25.6.22.6.17.10  
(11-17-2021)  
**Assessable Penalties**

- (1) The consent Form 872, Consent to Extend the Time to Assess Tax, can be modified to extend the period of time for assessment of assessable penalties, so long as the period of limitations to assess the penalties is still open. Certain assessable penalties can be assessed at any time, such as IRC 6700, Promoting Abusive Tax Shelters, Etc., penalty.
- (2) An example of an assessable penalty which does not require a statutory notice of deficiency to assess and the assessment statute must be open in order to assess would be the penalty prescribed by IRC 6707A, Penalty for Failure to Include Reportable Transaction Information with Return, for failure to include reportable transaction information with the return. If a separate consent form is used to extend the period of time to assess the penalty, the consent form can be modified as follows: "(1) The amount of any IRC Section 6707A penalty due with respect to any return(s) made by or for the above taxpayer(s) for the period(s) ended Month DD, YYYY may be assessed at any time on or before Month DD, YYYY".
- (3) The Form 872 can be modified by adding the following wording to cover both a tax deficiency and the IRC 6707A penalty on the same consent form: "Without otherwise limiting the applicability of this agreement, this agreement also extends to the expiration date, identified in paragraph (1) above, the period of limitations for assessing any penalty pursuant to IRC section 6707A, Penalty For Failure to Include Reportable Transaction Information with the Return, with respect to the taxpayers, kind of tax, and tax periods identified above."
- (4) A Form 872, Consent to Extend Time to Assess Tax, can be used to extend the statute of limitations on international information return penalties by adding the following language "Without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations to assess any penalty imposed for failure to provide information required under IRC §§ 6038, 6038A, 6038B, 6038D, 6046, 6046A, or 6048."

25.6.22.6.17.11  
(02-09-2018)

**Section 5000A Individual  
Shared Responsibility  
Payment**

- (1) The general assessment statute expiration date (ASED) for assessing the individual shared responsibility payment (SRP) imposed by IRC 5000A, Shared Responsibility Payment, is the same as that prescribed by IRC 6501(a), Limitations on Assessment and Collection, for the income tax reported on the federal income tax return on which the individual SRP is to be reported. See 26 CFR 1.5000A-5(a).
- (2) An alternative ASED or other IRC section that would ordinarily extend the normal three-year assessment statute of limitations, such as the situations listed below, generally will not protect the assessment statute for the individual SRP:
  - An Alpha statute as referenced in IRM Exhibit 25.6.23-3, Instructions for Updating the Statute on AIMS, or
  - The suspension provisions of IRC 6503, Suspension of Running of Period of Limitation, effective upon issuance of a Statutory Notice of Deficiency.

**Note:** Only ASED suspensions that relate directly to the reporting of health care coverage or time periods disregarded for all purposes, such as what may be provided for under IRC 7508, Time for Performing Certain Acts Postponed by Reason of IRS in Combat Zone or Contingency Operation, will also suspend the period of limitations for the individual SRP.
- (3) The individual SRP statute can be extended by consent using Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A, Special Consent to Extend the Time to Assess Tax. To specifically identify the individual SRP period of limitations, insert the term "Section 5000A Shared Responsibility Payment" in the "Kind of tax" line of the form.

**Caution:** Unless the consent form specifically lists the individual SRP, a signed consent form extending the period for assessing a taxpayer's income tax liabilities may have **no effect** on the statute of limitations for assessing that taxpayer's individual SRP.

**Note:** Individuals who file a joint return are jointly liable for the individual SRP. Please see IRM 25.6.22.6.1.1, Joint Returns, for guidance on securing consents from jointly filed taxpayers.

- (4) An examiner may use a single consent form to secure agreements to extend both the income tax and the individual SRP assessments; however, **both** assessment types ("Section 5000A Shared Responsibility Payment" and "income") must be listed on the "Kind of tax" line of the form used to secure the consent. When soliciting consents on one form examiners will not line through the word "tax" to the right of the entry field.

25.6.22.6.17.12  
(11-17-2021)

**Additional Medicare Tax**

- (1) The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, H.R. 3590, 111th Cong. (2010) (Affordable Care Act), added IRC 3101(b)(2) to the Code. IRC 3101(b)(2) imposes an additional Medicare tax (AdMT) of 0.9 percent on an individual's FICA wages received in any taxable year beginning after December 31, 2012, which are in excess of certain threshold amounts. AdMT is distinct from Medicare tax in that AdMT is imposed only on wages that exceed a threshold amount based on the filing status of the individual.



- (2) An examiner must be aware of the statute to assess employment taxes, including the Additional Medicare Tax, and the AdMT statute may not be the same as the statute for the Form 1040, U.S. Individual Income Tax Return. Special care must be taken to determine the correct statute.
- (3) **For the Employee Examination Form 1040:** With regard to the employees' liability for AdMT, either the Form SS-10 or the Form 872 may be used to extend the statute of limitations on assessment for the Form 1040.
- (4) When Form SS-10, Consent to Extend the Time to Assess Employment Taxes, is used to protect the statute with regard to the employees' liability for AdMT, it must specify that it is extending the period with respect to the **employees' liability** for AdMT. While Form SS-10 can be used to extend the AdMT statute for employees, the best practice in such situations is to use Form 872, Consent to Extend the Time to Assess Tax, in conjunction with the extension request for the Form 1040. When Form 872 is used to protect the statute with regard to employees' liability for AdMT, it must specify that it is extending the period for AdMT.
- (5) See IRM 4.23.14, Employment Tax, Statute Control and Extension, for more information. See Additional Medicare Tax on Knowledge Management at: *Additional Medicare Tax*.

25.6.22.7  
(08-26-2011)  
**Open-Ended Consents**

- (1) The open-ended consent holds the period of limitations open to an unspecified date. The purpose is to extend the statute for the time required for the IRS to complete its consideration of the case plus 90 days for administrative closing action. Open-ended consent forms:
  - Form 872-A, Special Consent to Extend the Time to Assess Tax.
  - Form 872-O, Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items.

25.6.22.7.1  
(11-17-2021)  
**Form 872-A Special  
Consent to Extend the  
Time to Assess Tax**

- (1) Form 872-A, Special Consent to Extend the Time to Assess Tax, is an open-ended consent form. This form can be used instead of the Form 872, the fixed-date consent form.
- (2) Form 872-A extends the period of limitations as follows:
  - a. 90 days after the IRS office considering the case receives a Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, from the taxpayer electing to terminate Form 872-A.
  - b. 90 days after the IRS mails a Form 872-T to the taxpayer for such period to the taxpayer's last known address.
  - c. 90 days after the IRS mails a notice of deficiency, plus another 60 days after the period the IRS is prohibited from making an assessment.
  - d. The date of assessment or overassessment of tax that reflects a final determination of tax and administrative Appeals consideration. See (3) below for further discussion of final determination of tax and administrative Appeals consideration.

**Note:** Items a), b), and c), are now printed on the form as established in Rev. Proc. 79-22, 1979-1 C.B. 563.

- (3) Some assessments do not reflect a final determination and Appeals consideration, and, therefore, will not terminate the agreement before the expiration date. Examples of assessments that do not constitute final determination and appeals consideration are:
- Tax under a partial agreement.
  - Tax in jeopardy.
  - Tax to correct mathematical or clerical errors.
  - Tax reported on amended returns.
  - A tax assessment not attributable to a TEFRA partnership shall not terminate the consent for items attributable to a TEFRA partnership.
  - The issuance of a notice of deficiency will not terminate consent for the items described in paragraph (7), relating to TEFRA, of the Form 872-A.

**Note:** The execution of a Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax & Acceptance of Overassessment, does not constitute a final determination and assessment because the first paragraph of the instructions provides "It will not prevent us from later determining, if necessary, that you owe additional tax."

- (4) Unassessed payments, such as amounts treated by the IRS as cash bonds and advance payments not assessed by the IRS, will not terminate the consent agreement.
- (5) The agreement entered into on Form 872-A, will end on the date determined in paragraph (2) above, regardless of any assessment for any period includable in a report to the Joint Committee on Taxation (JCT) submitted under IRC 6405, Reports of Refunds and Credits. See IRM 4.36.3.5, Statute of Limitations, for procedures to be followed in cases reportable to the JCT under IRC 6405.
- (6) Form 872-A will be used by Examination personnel in situations where its use would benefit both the IRS and the taxpayer.
- (7) The Form 872-A is processed in the same manner as the Form 872:
- a. Form 872-A will be requested at the same time a Form 872 would be normally requested.
  - b. Form 872-A may be used as a renewal consent if Form 872 had previously been secured.
  - c. Form 872-A may contain restrictive wording.
- (8) The Form 872-A is signed by the same persons authorized to sign the Form 872.

25.6.22.7.1.1  
(08-26-2011)

**Form 872-T Notice of Termination of Special Consent to Extend the Time to Assess Tax**

- (1) Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, is the written notification to the IRS (or to the taxpayer by the IRS) that terminates the open-ended consent 90 days after issuance by the IRS or 90 days after the date on which the Form 872-T is received by the office designated by the Commissioner of Internal Revenue. See IRM 25.6.22.7.1.4.

25.6.22.7.1.2  
(08-26-2011)

**Signatures**

- (1) The IRS or the taxpayer may terminate Form 872-A. Therefore, signatures of both parties are not required to terminate the Form 872-A.

- (2) Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, may be signed on behalf of the IRS by any person authorized to sign consents as specified in IRM 1.2.2.14.2, Delegation Order 25-2 (Rev. 3) (formerly DO-25-2 and DO-42, Rev. 28), Authority to Execute Agreements to Extend the Period of Limitations on Assessment or Collection and to Accept Form 900, Tax Collection Waiver, or IRM 1.2.2.5.16, Delegation Order 4-19 (Rev. 2) (formerly DO-4-19, (Rev. 1) and DO-209, (Rev. 5)), for TEFRA partnership or TEFRA Subchapter S corporation matters.
- (3) The same persons authorized to sign a consent for the taxpayer can also sign the Form 872-T.

25.6.22.7.1.3  
(08-26-2011)

## **Inform Taxpayer of the Method for Terminating Form 872-A Consent**

- (1) The transmittal letter for the executed Form 872-A, Special Consent to Extend the Time to Assess Tax, must explain the use of Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, to terminate the consent and that it may be requested from the IRS office considering the case.
- (2) If the taxpayer requests the Form 872-T, the IRS will partially complete the form by filling in the taxpayer's name and address, identification number, type of tax, issuing office, campus where return was filed, and in the body of the form, the date Form 872-A was executed by the IRS official. This information will aid in locating the return in the event Form 872-T is sent to an office other than the one considering the case.
- (3) Letter 1343, Transmittal Letter - Form 872-A, and Letter 1344(DO), Transmittal Letter - Form 872-T, may be used to transmit executed Form 872-A and partially completed Form 872-T to the taxpayer, respectively.

25.6.22.7.1.4  
(08-26-2011)

## **Taxpayer's Termination**

- (1) Receipt of a properly executed Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, from the taxpayer in the IRS office considering the case will start the running of the 90-day period for assessment of tax or issuance of a notice of deficiency.

**Caution:** Although the 90-day period does not start until the office considering the case receives the Form 872-T, if it is received by another IRS office, care must be taken to get the Form 872-T to the office considering the case as soon as possible. Examiners will act based upon the earliest received date.

- (2) If the taxpayer attempts to terminate Form 872-A, Special Consent to Extend the Time to Assess Tax, other than by using Form 872-T (such as by letter or orally), the IRS office considering the case will notify the taxpayer in writing that termination may only be made by submitting a properly executed Form 872-T. In this situation, a partially completed Form 872-T will be enclosed with a letter to the taxpayer.
- (3) If it appears that an inadvertently completed Form 872-T is received from the taxpayer, the taxpayer must be contacted to decide if termination was intended. If the taxpayer did not intend to terminate Form 872-A, obtain a new Form 872-A from the taxpayer. After the new Form 872-A is executed, void the Form 872-T by noting thereon "Void — superseded by subsequent Form 872-A dated Month DD, YYYY."

25.6.22.7.1.5  
(08-26-2011)

**IRS's Termination**

- (1) The IRS will prepare and issue the Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, for all "no change" taxable years closed to the campus. Otherwise, upon the closing of the case to the campus, the statute would remain open.

**Caution:** Prior to sending Form 872-T on a no change return ensure that any carryback years with statutes controlled by the originating year Form 872-A, Special Consent to Extend the Time to Assess Tax, have been protected or assessed. The statute date for any carryback returns open under an originating year Form 872-A will be 90 days from the date the Form 872-T is mailed.

- (2) Generally, in a "no change" case, the Form 872-T must be prepared and signed at the time a case is closed at the group level. It will be mailed to the taxpayer by the case closing unit of the respective operating division or function. When the examiner closes a "no change" case with a Form 872-A, they will note on the Form 3198 on Page 2, under Letter Instructions for CCP — Other Instructions, that the Form 872-T needs to be mailed.
- (3) Do **not** issue Form 872-T for fully agreed taxable years resulting in an assessment or overassessment in which a Form 872-A was secured. In those cases, the period of limitations for assessment generally will terminate immediately after assessment of an increase in tax which reflects the final administrative appeals consideration for any such period. The provision on Form 872-A concerning the automatic termination of the period of limitation applies equally to an overassessment date of a decrease in tax for a taxable year, if such overassessment reflects the final determination of tax and the final administrative appeals consideration.

25.6.22.7.1.6  
(08-26-2011)

**Location of Executed  
Form 872-T in Case File**

- (1) A copy of an executed Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, mailed to or received from the taxpayer must be attached to the back of the first page of the tax return to which it applies. If it covers multiple years, the original will be attached to the tax return for the latest year and photocopies will be attached to the tax return for the earlier years.

25.6.22.7.1.7  
(08-26-2011)

**Final Adverse  
Determination**

- (1) A final adverse determination subject to declaratory judgment under IRC 7428, Declaratory Judgments Relating to Status and Classification of Organizations Under Section 501(c)(3); IRC 7476, Declaratory Judgments Relating to Qualification of Certain Retirement Plans; or IRC 7477, Declaratory Judgments Relating to Value of Certain Gifts; will not terminate Form 872-A, Special Consent to Extend the Time to Assess Tax. A final adverse determination case containing Form 872-A may be received from either Appeals or the TE/GE Division. If the "fully agreed" requirement is met, Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, will be mailed by the case closing unit of the respective operating division or function upon closing of the agreed case.

25.6.22.7.1.8  
(08-26-2011)  
**Accumulated Earnings  
Tax**

- (1) If the taxpayer terminates Form 872-A, Special Consent to Extend the Time to Assess Tax, in an accumulated earnings tax case, in order to protect the interests of the government, it may be necessary to issue a notice of deficiency even if the taxpayer's statement under IRC 534(c), Statement by the Taxpayer, and Treas. Reg 1.534-2(d), Statement by Taxpayer (See: 26 CFR 1.534-2(d)) has not yet been received.

25.6.22.7.1.9  
(08-26-2011)  
**Personal Holding  
Company Tax**

- (1) If the taxpayer terminates Form 872-A, Special Consent to Extend the Time to Assess Tax, in a personal holding company tax case prior to execution of Form 2198, Determination of Liability for Personal Holding Company Tax, the Form 2198 must not be accepted. In the event the taxpayer terminates the Form 872-A after Form 2198 is executed, subsequent processing will be determined by the area office in accordance with the time available for assessment and processing of the case.

25.6.22.7.1.10  
(08-26-2011)  
**Notice of Deficiency**

- (1) If a notice of deficiency is mailed to the taxpayer and the IRS or the taxpayer has not previously terminated Form 872-A, Special Consent to Extend the Time to Assess Tax, issuance of the notice of deficiency will constitute termination of the IRS consideration of the case.

**Note:** A notice of deficiency that is not valid will not terminate the consent as the terms of the consent agreement have not been fulfilled.

- (2) If a notice of deficiency is sent to the taxpayer, the time for making an assessment will expire 60 days after the end of the period during which the making of an assessment is prohibited.

25.6.22.7.2  
(08-26-2011)  
**Form 872-O Special  
Consent to Extend the  
Time to Assess Tax  
Attributable to  
Partnership Items**

- (1) The Form 872-O, Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items, is an open-ended consent form for use at the TEFRA partnership level. This form may be used instead of the fixed-date consent Form 872-P. See IRM 25.6.22.6.5.1, Partnerships (TEFRA), and IRM 4.31.2.5, Statutes, for discussion of Form 872-P.
- (2) See IRM 25.6.22.7.1, Form 872-A, Special Consent to Extend the Time to Assess Tax, for discussion of the procedures for open-ended consents and IRM 4.31.2.5.2, Extension of Statute at the Partnership Level, for further information on statute extensions for TEFRA returns.
- (3) Form 872-N, Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items, is the written notification to the IRS (or to the taxpayer) that terminates the open-ended consent (Form 872-O) 90 days after issuance by the IRS or 90 days after the date on which the Form 872-N is received by the office designated by the Commissioner of Internal Revenue.
- (4) To determine the person empowered to sign the consent for the partnership, see the IRM 4.31.2.5, Statutes.
- (5) The Form 872-O is handled in a similar fashion as the Form 872-P:
  - a. Form 872-O will be requested at the same time a Form 872-P would normally be requested.

- b. Form 872-O may be used as a renewal consent if Form 872-P had previously been secured.
- c. Form 872-O may contain restrictive wording.

- (6) If the partner has signed a Form 872 or Form 872-A with respect to issues unrelated to the terminated Form 872-O (for example, ILSC partnership adjustments), that Form 872 or Form 872-A remains in full force and effect for the ILSC partnership adjustments.

25.6.22.8  
(08-26-2011)  
**Restricted Consents**

- (1) A restricted consent is a consent which extends the assessment statute of limitations for one or more specific issues only. The statute of limitations is allowed to expire on all other issues.

25.6.22.8.1  
(08-26-2011)  
**Taxpayer's Rights  
Concerning Restricted  
Consents**

- (1) The taxpayer has the right to **request** a restricted consent.
- (2) The Internal Revenue Service Restructuring and Reform Act of 1998 requires the IRS to notify taxpayers of their right to limit the extension to particular issues (effective for requests to extend the period of limitations made after December 31, 1999). See IRM 25.6.22.3, Notification of Taxpayer's Rights, regarding notification.
- (3) It is the position of the IRS that the taxpayer's right to a restricted consent is the right to **request** a restricted consent. The IRS is not compelled in all circumstances to agree to a restricted consent. A consent constitutes a mutual agreement, with both parties, the taxpayer and the IRS, having the right to determine what they will agree to in the consent.
- (4) See IRM 25.6.22.8.2, Situations Permitting Taxpayer's Request for Restricted Consent, immediately below for circumstances where the IRS will enter into a restricted consent requested by taxpayers.

25.6.22.8.2  
(08-26-2011)  
**Situations Permitting  
Taxpayer's Request for  
Restricted Consent**

- (1) As a general rule, as reflected in Pub 1035, Extending the Tax Assessment Period, the IRS will enter into a restricted consent requested by the taxpayer if all of the following conditions are met:
  - a. The number of unresolved issues required to be covered by the restricted consent do not make it impractical to do so.
  - b. The scope of the restrictions must be clearly and accurately described for all the unresolved issues.
  - c. The issues not covered by the restricted consent are agreed and provision is made for assessing any deficiency or, under certain situations, scheduling any overassessment (refund or credit) attributable to the agreed issues.
  - d. The use of the restricted consent is approved by an appropriate IRS official.
  - e. The wording in the restricted consent is approved by Area Counsel.
- (2) Restricted consents will be discouraged, if possible, until the examination is completed to the extent that all potential issues have been identified.
- (3) Generally, restricted consents will not be accepted for returns included in a Joint Committee case. See IRM 4.36.3.5.1, Restricted Consents.
- (4) Since a restricted consent is used to allow the statute to expire with regard to all items on the return except those included in the restrictive statement, the



examiner must include a statement on the Form 895, Notice of Statute Expiration, to the effect that all conditions noted above have been met.

25.6.22.8.3  
(08-26-2011)

## **Situations when the IRS may Request Restricted Consents**

- (1) Generally, the IRS will not ask for restricted consents.
- (2) The IRS may request a consent restricted to one or more issues, when, in the light of reasonable tax administration, resolution of such issue or issues requires establishment of an IRS position through court decision, regulation, ruling or other Headquarters action, or when other equally meritorious circumstances exist. See Rev. Proc. 68-31, 1968-2 C.B. 917 (modified by Rev. Proc. 77-6, 1977-1 C.B. 539, for other matters).

25.6.22.8.4  
(08-26-2011)

## **Issues Not Subject to Restricted Consent**

- (1) If there are issues other than those subject to the restricted consent, a partial agreement on Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax & Acceptance of Overassessment, must be obtained and the assessment made within the regular period for assessment and extensions thereof.
- (2) The report transmittal for the partial agreement report must be clearly marked, "partial agreement report." The basic report form will clearly set forth that it is a partial agreement report and a final report will be prepared when the examination is completed. Process Form 5344, Examination Closing Record, in accordance with the instructions contained in IRM 4.4.12, Examined Closings, Surveyed Claims, and Partial Assessments; or Form 5599, TE/GE Examined Closing Record; and the instructions in IRM 4.5.2, TE/GE Examined and Non-Examined Closures.

**Caution:** The additional tax on the partial agreement must be assessed on or before the statute date for all issues not covered by the restricted consent.

- (3) When appropriate, a partial overassessment may be made. See IRM 1.2.1.5.17, Policy Statement 4-41, Partial Overassessment May be Allowed in Certain Contested Cases.

25.6.22.8.5  
(08-26-2011)

## **Authority to Sign Restricted Consent on Behalf of the IRS**

- (1) A restricted consent may be signed on behalf of the IRS by any person authorized to sign consents as specified in IRM 1.2.2.14.2, Delegation Order 25-2 (Rev. 3) (formerly DO-25-2 and DO-42, Rev. 28), Authority to Execute Agreements to Extend the Period of Limitations on Assessment or Collection and to Accept Form 900, Tax Collection Waiver, or IRM 1.2.2.5.16, Delegation Order 4-19 (Rev. 2) (formerly DO-4-19, (Rev. 1) and DO-209, (Rev. 5)) for TEFRA partnership or TEFRA Subchapter S corporation matters.

25.6.22.8.6  
(08-26-2011)

## **Area Counsel Approval**

- (1) The area office is responsible for preparing the restrictive wording and must obtain the approval of Area Counsel as to its legal sufficiency **prior** to issuing to the taxpayer.

**Note:** For exceptions to this requirement for ILSC small business corporations and partnerships, or organizations treated as partnerships by the taxpayer (all of which are referred to collectively as ILSC pass-through entities), see discussion at IRM 25.6.22.8.8, Investor Level Statute Control / Pass-Through Entities.

25.6.22.8.7  
(08-26-2011)

**Restricted Consents  
Prepared by  
Coordinating  
Areas/Divisions**

- (2) Any questions regarding the use of restricted consents or restrictive wording will be discussed with Area Counsel.
- (1) When other areas or divisions are involved, only the area/division having jurisdiction of the controlling entity (hereinafter the “coordinating” office) will prepare the restrictive statement and obtain approval from Counsel. The “coordinating” area/division will then distribute the approved restrictive statements to the impacted offices. When such a restricted consent is prepared, the restrictive wording will not be modified to cover an additional unresolved issue of any particular taxpayer without first obtaining approval of the “coordinating” office.
  - (2) In those cases where the coordinating area/division and its Area/Division Counsel determine that it is not appropriate for the impacted office to secure a modified restricted consent, the “coordinating” area/division will notify the other impacted areas/divisions of this decision by memorandum. The reasons why a restricted consent would not be appropriate will be set forth in the memorandum.
  - (3) The area/division preparing the consent must anticipate the possibility of issues present in the tax period, for which the consent is sought based on the continuing effects, of a prior year adjustment. The preparing area/division can cover such possible situations by including the following statement as the first provision of the description of the issues to which the consent is restricted: “(1) items affected by continuing tax effects caused by adjustments to any prior tax return.” Such an opening provision is followed by provisions describing the major areas of consideration. The addition of the restrictive statement addressing the continuing tax effects of adjustments to prior tax periods does not require approval by the coordinating office.
  - (4) When requesting a restricted consent which was prepared by the “coordinating” area/division, the examiner must explain to the taxpayer that, for consistency purposes, the restricted consent cannot be changed and that all similarly situated taxpayers are requested to sign either a general consent or this restricted consent. If the restrictive wording contains a provision for the continuing tax effects of prior year adjustments, the examiner must explain the provision was included to cover possible situations of numerous taxpayers and, if there are no continuing tax effects from adjustments or proposed adjustments in a prior year, the provision has no effect.
  - (5) When approval of Area/Division Counsel is required for the restrictive wording, such approval must be sought no later than 90 days prior to the earliest statute expiration date of any related taxpayer’s return. Concurrently, the “coordinating” area/division also will seek Area/Division Counsel approval of wording for adjustments to be used in statutory notices in the event such notices become necessary when consents cannot be secured from the related taxpayers.
  - (6) If the request for approval cannot be made within the time limit prescribed in (5) above, the request to Counsel must be made in writing signed by the Territory Manager in LB&I, SB/SE and W&I, or the Area Manager in TE/GE of the coordinating office.

25.6.22.8.8  
(08-26-2011)

**Investor Level Statute  
Control / Pass-Through  
Entities**

- (1) When the only unresolved issues appearing on a taxpayer's return are those resulting from the ILSC pass-through items, the division office having jurisdiction over the shareholder's or partner's (hereinafter referred to as "distributee") tax return will prepare the restricted consent using the wording contained in IRM 25.6.22.8.15 (5), IRM 25.6.22.8.15 (6), or IRM 25.6.22.8.15 (7), Examples, except in unusual circumstances. When the wording specified in these examples is used without modification, approval of Area Counsel is not required. For this purpose, the addition of a statement regarding the continuing tax effects of prior year's adjustments as an area of consideration is not considered to be a modification requiring the approval of Area Counsel.

**Note:** With the prior approval of Area Counsel, other unresolved issues (for example, issues other than those resulting from pass-through items) may be included on the restricted consent, consistent with this IRM section.

- (2) Prior to soliciting a restricted consent from a distributee, the division office with jurisdiction over the distributee's return will determine if other pass-through entities are being examined by researching AIMS and PCS. The Partnership Control System (PCS) places a Partnership Investor Control File (PICF) code of "6" on the AIMS record for the investor. The code alerts IRS personnel to the existence of an ongoing examination of the key case return and prevents its premature closure.

**Example:** An examiner in Peoria may be auditing Investor A's individual income tax return when an examiner in Boston begins the examination of an ILSC partnership in which Investor A is a partner. If Investor A asks for a restricted consent, the Peoria examiner must check the PICF Code and determine whether the restricted consent will include any pass-through entities. Investor A's examination cannot be closed without addressing the PCS linkage.

25.6.22.8.9  
(08-26-2011)

**TEFRA Entities**

- (1) Although the restricted consent procedures apply to the returns of TEFRA entities, a consent containing wording restricting adjustments to one or more items of a partnership may not be solicited without the prior written approval of Area Counsel. Because of the potential impact on distributees and the interrelationship of partnership items, managers and technical personnel must consider the difficulties in clearly and accurately describing the scope of a restricted consent covering items of a TEFRA partnership. Suggested wording for restricted consents for TEFRA partnerships is provided in IRM 25.6.22.8.15, Examples; however, review by Area Counsel of the restrictive wording is still required.

25.6.22.8.10  
(08-26-2011)

**Multiple Year Consents**

- (1) Restricted issues must be identical for each tax period, to have one consent form to cover multiple tax periods. See IRM 25.6.22.5.6.1, Multiple Tax Periods, for more information on multiple tax period consents.

25.6.22.8.11  
(08-26-2011)

**Preparing Restricted  
Consents**

- (1) Extreme care must be exercised when drafting restrictive wording for use in a consent.

- a. The restriction must not eliminate the utilization of alternative rationale for making the adjustment, if such action becomes necessary. Thus, the restrictive wording will describe the area or areas of consideration rather than the proposed tax treatment.
- b. Internal Revenue Code sections will not be included in the restrictive wording; except, as provided in IRM 25.6.22.8.12, Basic Restrictive Statement.
- c. Each restricted consent must contain a basic restrictive statement (see IRM 25.6.22.8.12) and a description of the area(s) of consideration. While the area(s) of consideration may vary with each restricted consent, the basic restrictive statement will remain constant.
- d. See IRM 25.6.22.8.7, Restricted Consents Prepared by Coordinating Areas/Divisions, for a discussion concerning the continuing effects of a prior year adjustment that will be considered for inclusion in the restrictive statement.

25.6.22.8.12  
(08-26-2011)  
**Basic Restrictive  
Statement**

- (1) The basic restrictive statement is: "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to (description of the area(s) of consideration), any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."
- (2) The following wording will also be included on Form 872 and Form 872-A when the consent is restricted: "The provisions of IRC 6511(c) are limited to any refund or credit resulting from an adjustment for which the period for assessment is extended under this agreement."
- (3) Definitions: (also see Rev. Proc. 77-6, 1977-1 C.B. 539, modifying Rev. Proc. 68-31, 1968-2 C.B. 917)
  - **Adjustment:** The word "adjustment" in the basic restrictive statement means any change or changes within a restricted area of consideration, whether reported or not reported on the return. The change can be in amount, taxable status, allocation, or other items.
  - **Consequential changes:** The term "consequential changes" in the basic restrictive statement means any direct or indirect effect. For example, the prime effect of the disallowance of an exemption for a dependent is an increase in taxable income — the "adjustment." One possible direct consequence of the "adjustment" is the disallowance of any medical expenses claimed for the disallowed dependent. If this direct consequence reduces the total itemized deductions to the point that the standard deduction amount is greater, the disallowance of all itemized deductions and the allowance of the standard deduction amount would be indirect consequences of the "adjustment," the disallowance of the dependency exemption. To illustrate further, an "adjustment" which increases adjusted gross income can have a direct consequence on the statutory limitations for medical expenses and contributions.

25.6.22.8.13  
(08-26-2011)  
**Placement of Restrictive  
Statement on the  
Consent Form**

- (1) The restrictive statements must be typed on the consent in the space provided, depending upon the particular consent form used.

- (2) On some consent forms there is very little space for typing a restrictive statement. If the restrictive statement will not fit on the consent form, a reference is to be made on the consent form to an attachment. A key consideration is that the attention of both the taxpayer and the IRS is clearly directed to the restriction. Consent Form 872, Consent to Extend the Time to Assess Tax, and Form 872-A, Special Consent to Extend the Time to Assess Tax, specify that "This Form contains the entire terms of the consent to extend the Time to Assess Tax. There are no representations, promises, or agreements between the parties except those found or referenced on this Form." Also, see IRM 4.31.2.5.2, Extension of Statute at the Partnership Level.

25.6.22.8.14  
(08-26-2011)  
**Expiration Date of the  
Restricted Consents**

- (1) The expiration date of the consent will generally be sufficient to provide time for disposition of the case without a foreseeable need for obtaining a renewal consent. This is particularly important when the outcome of the case is dependent upon a court decision in another case.
- (2) If it becomes necessary to extend the statutory period beyond the date originally agreed upon, renewal consents may be secured before the expiration date of the original consent. Renewal consents may be obtained by using an open-ended consent agreement even if the preceding consent was a fixed-date consent.
- (3) If a restricted consent was secured originally, the restrictive statement on the renewal consent must be worded exactly as the original restricted consent. If a general consent had been obtained originally, the renewal consent may be restricted to certain areas of consideration using the principles described in this IRM section.

25.6.22.8.15  
(08-26-2011)  
**Examples**

- (1) The examples illustrate the principles to be used in drafting the restrictive statement.
- Note:** The restrictive statement in IRM 25.6.22.8.12 (2), Basic Restrictive Statement, pertaining to IRC 6511(c), for example, "The provisions of Section 6511(c) of the Internal Revenue Code are limited to any refund or credit resulting from an adjustment for which the period for assessment is extended under this agreement, is not included in the examples contained in (2) through (9), immediately below, but this restrictive statement is required to be included if the restricted consent form used is a Form 872 or Form 872-A".
- (2) **In General** — Assume the taxpayer and the IRS are awaiting a court decision involving the deduction for dependency exemptions for the taxpayer's parents in a particular factual setting. The only unresolved issue on a subsequent return of the taxpayer involves the same issue with the same facts. The basic restrictive statement with the description of the area of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to the total number of exemptions, any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

- (3) **Shareholder Receiving Distribution** — Assume the taxpayer in a particular taxable year received distributions as a shareholder from Corporation A. The corporation advised shareholders that the distribution was only 50 percent taxable, but the taxable status of the distribution has not yet been made by the IRS. The only unresolved issue on the return of the taxpayer/shareholder involves the amount of the distribution subject to tax. The basic restrictive statement with the description of the area of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to distributions from Corporation A, any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment.”

- (4) **Shareholder Receiving Distribution in Exchange for Stock** — In any examination, an adjustment to the tax treatment of a particular item in one year can have continuing effects on items in a subsequent year. For example, assume a situation where the shareholders of Corporation X received common stock of Corporation Y in exchange for their shares of Corporation X common in a merger. The shareholders treated the transaction as a tax-free exchange, but the IRS is questioning that treatment. For the year of the exchange, the basic restrictive statement with the description of the area of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to the exchange of shares of common stock of Corporation X for shares of common stock of Corporation Y, any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment.”

- a. For a subsequent year, the many possible continuing effects of a change in the tax treatment of the prior year exchange can be covered with the following description of the area of consideration:

**Example:** “Items affected by the (insert year of exchange) exchange of shares of common stock of Corporation X for shares of common stock of Corporation Y.”

- (5) **S Corporation Shareholder/Partner Consent (ILSC) Covering Only Specific Entities on Return** — In examinations of S corporations or partnerships (hereinafter referred to as “pass-through entity”), the adjustments may be at the pass-through entity level with changes in profit, loss, and so forth, passing to the shareholders’ or partners’ returns based on the pass-through entity adjustments. However, adjustments also may be reflected at the shareholder or partner level due to changes in the shareholder’s or partner’s basis in the pass-through entity. For example, in partnership-leveraged tax shelter situations utilizing nonrecourse financing, a possible IRS position is that the loans lack economic substance and create artificial losses because taxpayers never intend to honor the loans. Disallowance of the losses on such grounds is a partnership level adjustment. If the fair market value of the property underlying the nonrecourse loans is not at least equal to the loans, an alternative IRS position would be the disallowance of a portion of the losses at the partner



level on the grounds that the losses exceed the partner's basis in the partnership. A partner's basis includes nonrecourse liabilities only to the extent of the fair market value of the property underlying such liabilities. In certain partnership situations, it is also possible to argue that the partnership is an association taxable as a corporation. In such situations, the "distributive shares" of income, gain, loss, deduction, or credit of the "partnership" are not recognized to the "partners" but are taxable to the association. However actual distributions to the "partners" from the association, as opposed to distributive shares from the "partnership", could be taxable as dividends. In preparing restricted consents to be obtained from shareholders or partners in any pass-through ILSC entity situation, the restrictive statement will cover all of the possible issues. Additionally, the restrictive consent will exclude all pass-through ILSC entities which are not under examination. The following restrictive wording may be used to include specific pass-through entities on the consent. The wording in IRM 25.6.22.8.15 (6) and IRM 25.6.22.8.15 (7), Examples, below may be used to include all pass-through entities appearing on the return or all pass-through entities except specifically named pass-through entities, respectively. Except in unusual circumstances, the appropriate restrictive wording provided in this paragraph, or in IRM 25.6.22.8.15 (6) or IRM 25.6.22.8.15 (7), Examples, below, will be used on Form 872 or Form 872-A. The restrictive statement with the description of the areas of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

- a. Small business corporation **and** partnership pass-through items to shareholder/partners within the same taxable year:

**Example:** "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from (list names of small business corporation(s) and partnership(s) or organizations treated as partnership(s) on the taxpayer's return which are to be included); (b) the tax basis of the taxpayer's interest(s) in the aforementioned corporation(s) and partnership(s) or organization(s) treated by the taxpayer(s) as a partnership; and (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer's interest in such corporation(s) and partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

- b. Only small business corporation pass-through items to shareholders:

**Example:** "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from (list names of small business corporation(s) which are to be included); (b) the tax basis of the taxpayer's interest(s) in the aforementioned corporation (s); and (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer's interest in such corporation(s); any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

- c. Only partnership pass-through items to partners:

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer’s distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from (list name(s) of partnership(s) or organization(s) treated as partnership(s) on the taxpayer’s return which are to be included); (b) the tax basis of the taxpayer’s interest(s) in the aforementioned partnership(s) or organization(s) treated by the taxpayer(s) as a partnership; and, (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer’s interest in such partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment.”

**Note:** As stated in IRM 25.6.22.8.8, approval of Area Counsel is not required if the above wording in IRM 25.6.22.8.15 (5), Examples, (a), (b) or (c) is suitable for use under the circumstances without modification except to add the statement pertaining to the IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples, or the continuing tax effects of adjustments to prior years. As discussed in IRM 25.6.22.8.7, Restricted Consents Prepared by Coordinating Areas/Divisions, Area Counsel approval is not required for the addition of the restrictive statement regarding items affected by continuing tax effects caused by adjustments to a prior tax return.

(6) **S Corporation Shareholder/Partner Consent (ILSC) Covering All Entities on Return** — The following restricted consent wording may be used if all (one or more) pass-through entities in which the taxpayer is a shareholder or partner are under examination or if the examiner is **unable to determine** if one or more of the pass-through entities are under examination. If the taxpayer is involved in numerous pass-through entities, not all of which are under examination, the wording in IRM 25.6.22.8.15 (7), Examples, below may be used to exclude specifically named pass-through entities or, alternatively, the wording in IRM 25.6.22.8.15 (5), Examples, above (naming specific pass-through entities to be covered) may be used. The restrictive statement with the description of the areas of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

- a. Small business corporation **and** partnership pass-through items to shareholder/partners within the same taxable year:

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer’s distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from any small business corporation(s) and any partnership(s) or organizations treated as partnership(s) on the taxpayer’s tax return; (b) the tax basis of the taxpayer’s interest(s) in such corporation(s) and partnership(s) or organization(s) treated by the taxpayer(s) as a partnership; and (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer’s interest in such corporation(s) and partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment.”

- b. Small business corporation pass-through items to shareholders:

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer’s distributive share of

any item of income, gain, loss, deduction, or credit of, or distribution from any small business corporation(s); (b) the tax basis of the taxpayer's interest(s) in such corporation(s); and (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer's interest in such corporation(s); any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

- c. Partnership pass-through items to partners:

**Example:** "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from any partnership or any organization treated by the taxpayer as a partnership on the taxpayer's tax return; (b) the tax basis of the taxpayer's interest(s) in such partnership(s) or organization(s) treated by the taxpayer as a partnership; and (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer's interest in such partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

**Note:** As stated in IRM 25.6.22.8.8, approval of Area Counsel is not required if the above wording in IRM 25.6.22.8.15 (6), Examples, (a), (b) or (c) is suitable for use under the circumstances without modification except to add the statement pertaining to the IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples, or the continuing tax effects of adjustments to prior years. As discussed in IRM 25.6.22.8.7, Restricted Consents Prepared by Coordinating Areas/Divisions, Area Counsel approval is not required for the addition of the restrictive statement regarding items affected by continuing tax effects caused by adjustments to a prior tax return.

- (7) **S Corporation Shareholder/Partner Consent (ILSC) Covering All Entities on Return Except Those Specified** — The following restricted consent wording effectively modifies the "any small business corporation and any partnership" clause in IRM 25.6.22.8.15 (6), Examples, above to exclude specifically named pass-through entities. The "exclusion" applies to all pass-through entities which are not under examination. Alternatively, the wording in IRM 25.6.22.8.15 (5), Examples, above (naming specific pass-through entities to be covered) may be used. The restrictive statement with the description of the areas of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

- a. Small business corporation and partnership pass-through items to shareholder/partners within the same taxable year:

**Example:** "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from any small business corporation(s) and partnership(s) or organizations treated as partnership(s) on the taxpayer's return except (list name(s) of small business corporation(s) and partnership(s) or organization(s) treated as partnership(s) on the taxpayer's return to be excepted);

(b) the tax basis of the taxpayer's interest(s) in the aforementioned corporation(s) and partnership(s) or organizations(s) treated by the taxpayer(s) as a partnership; and (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer's interest in such corporation(s) and partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

- b. Small business corporation pass-through items to shareholders:

**Example:** "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from any small business corporation(s) except: (list name(s) of small business corporation(s) to be excepted); (b) the tax basis of the taxpayer's interest(s) in the aforementioned corporation(s); and (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer's interest in such corporation(s); any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

- c. Partnership pass-through items to partners:

**Example:** "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from any partnership or any organization treated by the taxpayer as a partnership on the taxpayer's tax return except (list name(s) of partnership(s) or organization(s) treated as partnership(s) on the taxpayer's return to be excepted); (b) the tax basis of the taxpayer's interest(s) in such partnership(s) or organization(s) treated by the taxpayer as a partnership; and, (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer's interest in such partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

**Note:** As stated in IRM 25.6.22.8.8, approval of Area Counsel is not required if the above wording in IRM 25.6.22.8.15 (7), Examples, (a), (b) or (c) is suitable for use under the circumstances without modification except to add the statement pertaining to the IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples, or the continuing tax effects of adjustments to prior years. As discussed in IRM 25.6.22.8.7, Restricted Consents Prepared by Coordinating Areas/Divisions, Area Counsel approval is not required for the addition of the restrictive statement regarding items affected by continuing tax effects caused by adjustments to a prior tax return.

- (8) **Tiered S Corporations/Partnerships (ILSC Tiers)** — Problems can be encountered when a partner of a partnership is another partnership (a tier partnership) or an S corporation. Care must be taken to assure that consents are secured from the right parties and the restricted consent properly identifies the entity from which an adjustment will pass.

**Caution:** Consult Area Counsel for restrictive wording if this situation arises.

Assume an examination of the TEFRA XYZ Partnership is in process and it becomes necessary to extend the statutory period for assessment. Eighteen partners are individuals, one partner is the AB Partnership (an ILSC partnership), and one partner is the CD Corporation, an S corporation. It was determined it is appropriate to secure restricted consents from each affected taxpayer except the XYZ and AB partnerships. If consents from the partnerships are necessary, general consents must be secured (see below).

- a. IRC 6501(g) holds that if a partnership return is filed in good faith, and it is later determined that the partnership is an association taxable as a corporation, the filing of the partnership return will start the running of the statutory period for assessment. Therefore, if it appears possible that the XYZ Partnership could be held to be an association taxable as a corporation, or if sufficient facts have not been developed to make the determination, a general consent must be secured from the “partnership.” In such a situation, Area Counsel will be consulted as to who must sign the Form 872 for the partnership.
- b. A restricted consent must be secured from each of the eighteen individual partners of the XYZ Partnership. The restrictive statement with the description of the areas of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the partner’s distributive share of any item of income, gain, loss, deduction, or credit of, or distributions from the XYZ Partnership; (b) the tax basis of the partner’s interest in the aforementioned partnership; and, (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer’s interest in such partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment.”

- c. The AB Partnership is a tier (pass-through) partnership which has two individual partners. Any adjustment to the XYZ Partnership will pass through the tier partnership to the partners of the AB Partnership. Since the two individuals are the eventual taxpayers, restricted consents must be secured from each of them with their partnership, the AB Partnership, identified in the consent. Therefore, the restrictive statement with the description of the areas of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the partner’s distributive share of any item of income, gain, loss, deduction or credit of, or distributions from the AB Partnership; (b) the tax basis of the partner’s interest in the aforementioned partnership; and, (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer’s interest in such partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment.”



**Note:** (See discussion in a), above, relative to the possibility of holding a partnership to be an association taxable as a corporation. If it appears necessary to secure a consent from the AB Partnership, a general consent must be secured.

- d. A restricted consent must be secured from the CD Corporation. The restrictive statement with the description of the areas of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the partner’s distributive share of any item of income, gain, loss, deduction, or credit of, or distributions from the XYZ Partnership; (b) the tax basis of the partner’s interest in the aforementioned partnership; and, (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer’s interest in such partnership(s) or organization(s) treated by the taxpayer as a partnership; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment.”

- e. In addition, restricted consents must be secured from each shareholder of the CD Corporation since they may be the eventual taxpayers of the adjustment which passes from the XYZ Partnership through the CD Corporation. The S corporation must be identified on these consents. Therefore, the restrictive statement with the description of the areas of consideration is as follows (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** “The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the shareholder’s distributive share of any item of income, gain, loss, deduction, or credit of the CD Corporation; (b) the tax basis of the shareholder’s interest in the aforementioned corporation; and, (c) any or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer’s interest in corporation; any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment.”

- (9) **Partner Consent (Investor in TEFRA Partnership)** — Consents at the partner level to extend the time to assess tax attributable to items of a TEFRA partnership will contain specific wording.

- a. The following wording will be used when drafting the restrictive statement in a consent extending the statute to a fixed date for an individual partner. This wording may be limited to a specific partnership(s) or S corporation(s) (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** “This agreement is limited to items, as provided for in paragraph (4) of this agreement, related to [specify TEFRA entity(s)].”

- b. The following wording will be used when drafting the restrictive statement in an open-ended consent for an individual partner. This wording may be limited to a specific partnership(s) or S corporation(s) (also see NOTE pertaining to IRC 6511(c) restriction at IRM 25.6.22.8.15 (1), Examples):

**Example:** “This agreement is limited to items, as provided for in paragraph (7) of this agreement, related to [specify TEFRA entity(s)].”



**Caution:** The restrictive wording in consents extending a TEFRA partnership or restrictive wording extending the statute at the investor level for adjustments passing from TEFRA entities, requires the approval of **Area Counsel**. If a partnership return is filed by an entity for a taxable year but it is determined that the entity is a C corporation for that year, the TEFRA provisions including the extension provisions under IRC 6229, are extended with respect to that year, that entity, and its purported partners. IRC 6233 and 26 CFR 301.6233-1. For a partnership to which IRC 6233 does not apply, see IRC 6501(g). Consents from such entities may have to be secured from both the entities as if they were C corporations and individually from the purported partners. **Consult your Area Counsel if this situation arises.**

