

## Part IV- Items of General Interest

### Extension of Fast Track Settlement for SB/SE Taxpayers Pilot Program

#### Announcement 2011-5

This announcement provides an opportunity for small business/self employed taxpayers to use Fast Track Settlement (FTS) to expedite case resolution within the IRS's Small Business/Self Employed (SB/SE) organization in the following locations: Chicago, IL; Houston, TX; St. Paul, MN; Philadelphia, PA; central New Jersey; and San Diego, Laguna Niguel, and Riverside, CA. Additional locations may be identified and added to this program by mutual agreement between SB/SE and the Office of Appeals.

The SB/SE FTS will enable SB/SE taxpayers that currently have unagreed issues in at least one open year under examination to work together with SB/SE and the Office of Appeals to resolve outstanding disputed issues while the case is still in SB/SE jurisdiction.

#### DESCRIPTION OF SB/SE FAST TRACK SETTLEMENT

This announcement provides an opportunity for small business/self employed taxpayers to use Fast Track Settlement (FTS) to expedite case resolution at the earliest opportunity within the IRS's Small Business/Self Employed organization (SB/SE). The purpose of SB/SE FTS is to enable SB/SE taxpayers that currently have unagreed issues in at least one open year under examination to work together with SB/SE and the Office of Appeals (Appeals) to resolve outstanding disputed issues while the case is still

in SB/SE jurisdiction. SB/SE and Appeals will jointly administer the SB/SE FTS process. SB/SE FTS will be used to resolve factual and legal issues and may be initiated at any time after an issue has been fully developed, preferably before the issuance of a 30-day letter or equivalent notice.

SB/SE FTS will be available to taxpayers in the pilot locations until further notice and may be made available to taxpayers nationwide, as determined by SB/SE and Appeals.

#### RELIANCE ON AND DIFFERENCES FROM LMSB FAST TRACK SETTLEMENT

The procedures for using FTS for SB/SE taxpayers rely on the provisions of Revenue Procedure 2003-40, 2003-1 C.B. 1044, which implemented a Large and Mid-Size Business Fast Track Settlement Dispute Resolution Program and allows the use of Appeals settlement authority in SB/SE cases. See section 3.02 of Rev. Proc. 2003-40.

SB/SE FTS extends the provisions of the LMSB Fast Track program to SB/SE cases and provides for direct oversight of the program by SB/SE and Appeals. SB/SE FTS therefore involves procedures almost identical to the LMSB FTS procedures described in Rev. Proc. 2003-40. The key differences between the LMSB and SB/SE FTS procedures are as follows:

- The SB/SE Group Manager or designee fulfills the duties of the LMSB Team manager, as described in Rev. Proc. 2003-40;
- SB/SE Group Managers and Appeals Team Managers select and manage cases eligible for SB/SE FTS; and
- The SB/SE FTS process is designed to be completed within 60 days of acceptance of the SB/SE-Appeals FTS Application.

## CASE ELIGIBILITY AND EXCLUSIONS

Subject to the limitations set forth below, SB/SE FTS is generally available for cases under the jurisdiction of the SB/SE Division if:

- Issues are fully developed;
- The taxpayer has stated a position in writing (or filed a small case request for cases in which the total amount for any tax period is less than \$25,000, as described in Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*); and
- There are a limited number of unagreed issues.

SB/SE FTS is *not* available for:

- Collection Appeals Program, Collection Due Process, Offer-In-Compromise and Trust Fund Recovery cases, except as provided in any guidance issued by the Service;
- Correspondence examination cases worked solely in a Campus/Service Center site;
- Cases in which the taxpayer has failed to respond to Service communications and no documentation has been previously submitted for consideration by Compliance;
- Tax Equity & Fiscal Responsibility Act (TEFRA) partnership cases;
- Issues outside SB/SE jurisdiction, except as provided below;
- Issues designated for litigation;
- Issues under consideration for designation for litigation;
- Issues for which the taxpayer has submitted a request for competent authority assistance;

- Issues for which the taxpayer has requested the simultaneous Appeal/Competent Authority procedure described in section 8 of Rev. Proc. 2002-52, 2002-2 C.B. 242, or the corresponding provision of any successor guidance;
  - Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2006-2, 2006-1 I.R.B. 89, or any successor guidance;
  - “Whipsaw” issues, *i.e.*, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party;
- or
- Issues that have been identified in a Chief Counsel Notice, or equivalent publication, as excluded from the SB/SE FTS process.

If an issue is determined not to be eligible for the SB/SE FTS program, all issues in the case shall not be eligible for the SB/SE FTS program.

SB/SE FTS may not be the appropriate dispute resolution process for all cases involving SB/SE taxpayers. The SB/SE Group Manager or designee and the taxpayer will evaluate their individual circumstances to determine if this process meets their needs.

SB/SE FTS may also be available for cases under the jurisdiction of the Tax Exempt and Government Entities (TE/GE) Division, depending on the circumstances and operational needs of the case. The use of SB/SE FTS procedures for such cases will require the consent of the taxpayer, the local Appeals Team Manager and the TE/GE Field Manager, or equivalent. For TE/GE cases approved for SB/SE FTS, the appropriate TE/GE Field Manager, or equivalent, will carry out the responsibilities of the SB/SE Group Manager as set forth in this announcement. The application process for

TE/GE taxpayers wishing to use SB/SE FTS procedures may be modified by subsequent published guidance.

## APPLICATION PROCESS

A taxpayer that is interested in participating in SB/SE FTS, or that has questions about the program and its suitability for the taxpayer's case, may contact the SB/SE Group Manager for the year currently under examination. Either the taxpayer, Examining Agent or the SB/SE Group Manager can initiate the process to take part in the SB/SE FTS program at any time after an issue has been fully developed but preferably before a 30-day or equivalent letter is issued.

To apply for the SB/SE FTS program, the taxpayer and the SB/SE Group Manager should submit a SB/SE-Appeals FTS Application, available at <http://www.irs.gov/individuals/article/0,,id=96779,00.html> to the local Appeals Team Manager. A Summary of Issues or Examination Re-engineering Lead sheets (the equivalent to a Form 5701, *Notice of Proposed Adjustment*) will be prepared by the SB/SE Compliance team, and a written response from the taxpayer should be included with the SB/SE-Appeals FTS Application to complete the package for the parties to understand opposing views.

If the case is not accepted for inclusion in SB/SE FTS, the SB/SE or Appeals representative will inform the taxpayer of the basis for this decision and discuss other dispute resolution opportunities with the taxpayer, including 30-day letter procedures contained in IRS Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*. The decision not to accept a case into the SB/SE FTS program is not subject to administrative appeal or judicial review.

## SETTLEMENT PROCESS

SB/SE FTS employs various alternative dispute resolution techniques to promote case resolution. An Appeals Officer, trained in mediation, will serve as a neutral party (the FTS Appeals Official). The FTS Appeals Official will not perform in a traditional Appeals role, but will use dispute resolution techniques to facilitate settlement between the parties.

During SB/SE FTS, the taxpayer and SB/SE representatives hold a conference with the FTS Appeals Official (the FTS Session). The taxpayer and SB/SE representatives at the FTS Session should include individuals with decision-making authority and the information and expertise necessary to assist the parties and the FTS Appeals Official during the settlement process. The FTS Appeals Official may ask the parties to limit the number of participants at the FTS Session to facilitate the process. A taxpayer is not required to have a representative to participate in SB/SE FTS. If the taxpayer is represented by a person engaged in practice before the Service, however, this individual must have a power of attorney from the taxpayer (Form 2848, *Power of Attorney and Declaration of Representative*) in addition to the FTS Agreement.

The FTS Appeals Official will hold the FTS Session at the date and location agreed to by both parties. Prior to the FTS Session, the FTS Appeals Official will advise the participants of the procedures and establish ground rules. The FTS Appeals Official may modify the rules and procedures during the session to adapt to changes in circumstances. The FTS Session may include conferences attended by all of the parties, separate meetings with each party, or both as determined appropriate in the sole judgment of the FTS Appeals Official.

The FTS Appeals Official will use a FTS Session Report to assist in planning the FTS Session and to report on developments during the FTS Session. The FTS Session Report will include a list of all issues approved for the FTS program, a description of the issues, the amounts in dispute, conference dates, a plan of action for the FTS Session and other information useful to the process as determined by the parties and the FTS Appeals Official. The FTS Appeals Official may also prepare and update an Agenda, which guides the communication, sets the order of issue discussion, poses questions to clarify the issues and guides the meetings. During the FTS Session, the FTS Appeals Official will provide decision makers from both parties with copies of the Agenda and the FTS Session Report.

Generally, the FTS Appeals Official will consider only those issues outlined in the FTS Session Report, except by mutual agreement of the parties. If the taxpayer presents information during the FTS Session that the taxpayer had not previously presented during the audit, the FTS Appeals Official will adjust the targeted completion date to give the appropriate Service officials time to evaluate the information/documentation.

During the FTS Session, the FTS Appeals Official may propose settlement terms for any or all issues and may consider settlement terms proposed by either party. If the taxpayer accepts the FTS Appeals Official's settlement proposal, but the SB/SE Group Manager rejects it, the SB/SE Territory Manager must review SB/SE's rejection of the settlement proposal and either concur in writing, or accept the settlement proposal on behalf of SB/SE. If the SB/SE Territory Manager concurs with the Group Manager's rejection of the settlement proposal, and an acceptable alternative settlement cannot be

reached, the issue will be closed out of the FTS program as unagreed.

If the parties resolve any of the disputed issues at the conclusion of the FTS Session, the parties and the FTS Appeals Official shall sign the FTS Session Report acknowledging acceptance of the terms of settlement for purposes of preparing computations. The signature of the parties on the FTS Session Report does not constitute a final settlement, nor does it waive restrictions on assessment, terminate consents to extend periods of limitation, start the running of any periods of limitation, or constitute agreement to close the case.

The SB/SE FTS process is confidential. IRS employees involved in any way with the SB/SE FTS process are subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including section 6103. To participate in SB/SE FTS, the taxpayer must consent under section 6103(c) to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the SB/SE FTS process to those persons named on the Agreement as participants in the process. IRS employees, the taxpayer and persons invited to participate by the IRS or the taxpayer shall not voluntarily disclose information regarding any communication made during the SB/SE FTS Session, except as provided by statute.

The prohibition against *ex parte* communications between Appeals Officers and other IRS employees provided by section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in the SB/SE FTS process because the Appeals personnel are facilitating an agreement between the taxpayer and SB/SE and are not acting in their traditional Appeals settlement role.

Any recommended settlement by the FTS Appeals Official of an issue in FTS shall be subject to the procedures that would be applicable if the issue were being considered by Appeals, including procedures in the Internal Revenue Manual and existing published guidance. FTS therefore creates no special authority for settlement by the FTS Appeals Official. For example, if the FTS issue is coordinated in either the Technical Advisor Program or the Appeals Technical Guidance program, the proposed settlement of that issue is subject to established procedures, including submission of the proposed settlement to the Appeals Coordinator for review and concurrence.

If the parties fail to resolve any issue in FTS, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

Except as specifically provided above, both parties retain the right to withdraw throughout the entire SB/SE FTS process. A party wishing to withdraw should provide written notice to the FTS Appeals Official and the other party.

#### POST-SETTLEMENT PROCEDURE

If the parties reach an agreement on all or some issues through the SB/SE FTS process, the SB/SE representative or FTS Appeals Official, as appropriate, will use established issue or case closing procedures and applicable agreement forms, including preparation of a Form 906 specific matters closing agreement, if appropriate.

If applicable, the Service will report a proposed resolution reached as a result of SB/SE FTS to the Joint Committee on Taxation in accordance with section 6405. The taxpayer acknowledges that the Service may reconsider a proposed settlement, as reflected in a signed FTS Session Report, upon receipt of comments on the proposed settlement from the Joint Committee on Taxation. If the taxpayer declines to agree with

any changes by the Service upon reconsideration, SB/SE will close the case unagreed and the taxpayer will retain all the usual rights to request Appeals consideration of any unagreed issues.

#### GENERAL PROVISIONS

A resolution reached by the parties through the SB/SE FTS process will not bind the parties for taxable years or issues not covered by the SB/SE-Appeals FTS agreement, unless such taxable years or issues are expressly addressed in a formal closing agreement reached as part of the SB/SE FTS process.

For SB/SE FTS cases that are returned for traditional Appeals consideration for any reason, *ex parte* restrictions will not be imposed on intra-Appeals communications. Appeals management will take appropriate measures to ensure these cases are handled impartially.

#### DELEGATION OF AUTHORITY

This announcement constitutes a delegation by the Commissioner of Internal Revenue of settlement authority to Grade 14, 13, and 12 Appeals Officers who are assigned to be Appeals FTS Officials for SB/SE FTS cases described in this announcement. This delegation of settlement authority includes the responsibility for arriving at the final disposition from the Government's perspective, approving the final settlement in accordance with the delegated authority, and executing the appropriate closing documents. This authority may not be redelegated.

#### EFFECTIVE DATE

SB/SE FTS is effective beginning December 1, 2010, in the pilot locations.

#### FURTHER INFORMATION

For further information regarding this announcement, contact Nancy J. Taljkowski, Appeals, Tax Policy & Valuation at (415) 227-5007 (not a toll-free number) or by e-mail at [Nancy.J.Talajkowski@irs.gov](mailto:Nancy.J.Talajkowski@irs.gov).