

PART III

Administrative, Procedural, and Miscellaneous

[26 CFR 601.106]: [Appeals Functions]

(Also: §§ 601.202, 601.203; and Part I, § 7123(b)(1))

Rev. Proc. 2009-44

SECTION 1. PURPOSE

This revenue procedure updates Revenue Procedure 2002-44, which formally established a mediation procedure for cases in the Appeals administrative process. This revenue procedure expands and clarifies the types of cases that may be mediated in Appeals. Generally, this program is available for cases in which a limited number of legal and factual issues remain unresolved following settlement discussions in Appeals.

SECTION 2. BACKGROUND

Section 7123(b)(1) of the Internal Revenue Code, as enacted by section 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, provides the statutory authority for the Appeals mediation program. On July 1, 2002, Revenue Procedure 2002-44, 2002-2 C.B. 10, formally established the Appeals mediation procedure. Rev. Proc. 2002-44 modified and expanded the availability of mediation for cases that are already in the Appeals administrative process. This revenue procedure supersedes Rev. Proc. 2002-44.

SECTION 3. SIGNIFICANT CHANGES

This revenue procedure modifies the Appeals mediation program to expand the types of cases that are eligible for mediation while also clarifying the types of cases that are ineligible. Significant changes from Rev. Proc. 2002-44 in this revenue procedure include:

.01 Section 4.02 provides that mediation does not create any special settlement authority for Appeals.

.02 Section 4.03(7) provides that mediation may be available for certain offer in compromise and Trust Fund Recovery Penalty cases as provided for in Announcement 2008-111, 2008-48 I.R.B. 1224, or any subsequent guidance issued by the IRS;

.03 Section 9.02 provides that, for offer in compromise cases with liabilities of \$50,000 or more, any settlement or agreement reached must be reviewed by the Office of Chief Counsel pursuant to section 7122(b).

SECTION 4. SCOPE OF MEDIATION

.01 *In general.* Mediation may be used to resolve issues in cases that qualify under this revenue procedure while they are under consideration by Appeals. This procedure may be used only after Appeals settlement discussions are unsuccessful and, generally, when all other issues are resolved but for the issue(s) for which mediation is being requested.

.02 *Authority.* The mediation procedure does not create any special authority for settlement by Appeals. During the mediation process, Appeals is still subject to the procedures that would be applicable if the issue were being considered via the standard Appeals process, including procedures in the Internal Revenue Manual and existing published guidance.

.03 *Applicability.* Mediation is available for:

(1) Legal issues;

(2) Factual issues;

(3) A Compliance Coordinated Issue (CCI) or an Appeals Coordinated Issue (ACI). (CCI and ACI issues are listed online at www.irs.gov/appeals.) However, a CCI or ACI issue will not be eligible for mediation when the taxpayer has declined the opportunity to discuss the CCI or ACI issue with the Appeals CCI or ACI coordinator during the course of regular Appeals settlement discussions;

(4) An early referral issue when an agreement is not reached, provided the early referral issue meets the requirements for mediation (see section 2.16 of Rev. Proc. 99-28, 1999-2 C.B. 109, or any subsequent revenue procedure);

(5) Issues for which a request for competent authority assistance has not yet been filed. Taxpayers are cautioned that if they enter into a settlement with Appeals (including an Appeals settlement through the mediation process) and then request competent authority assistance, the competent authority will endeavor only to obtain a correlative adjustment with the treaty country and will not take any actions that would otherwise change the settlement. See section 7.05 of Rev. Proc. 2006-54, 2006-2 C.B. 1035, or the corresponding provision of any successor guidance. If a taxpayer enters into the Appeals mediation program, the taxpayer may not request competent authority assistance until the mediation process is

complete unless the taxpayer demonstrates that a request for competent authority assistance is necessary to keep open a period of limitations in the treaty country. If so, competent authority assistance may be requested while mediation is pending and the U.S. competent authority will suspend action on the case until mediation is completed;

(6) Unsuccessful attempts to enter into a closing agreement under section 7121; and

(7) Offer in compromise and Trust Fund Recovery Penalty cases as provided for in Announcement 2008-111, or any subsequent guidance issued by the IRS.

.04 Inapplicability. Mediation will not be available for:

(1) Cases in which mediation is not appropriate under either 5 U.S.C. § 572 or 5 U.S.C. § 575, which provide the general authority and guidelines for use of alternative dispute resolution in the administrative process;

(2) Issues designated for litigation;

(3) Issues docketed in any court (for the Chief Counsel mediation program involving issues in docketed cases, see Chief Counsel Directives Manual (CCDM 35.5.5.4));

(4) Collection cases, except for certain offer in compromise and Trust Fund Recovery Penalty cases as provided for in Announcement 2008-111 or any subsequent guidance issued by the IRS;

(5) Issues for which mediation would not be consistent with sound tax administration, such as, but not limited to, issues governed by closing agreements, by res judicata, or by controlling Supreme Court precedent;

(6) Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2009-2, 2009-1 I.R.B. 87, or any subsequent revenue procedure;

(7) “Whipsaw” issues, such as, but not limited to, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of participation of another party;

(8) Cases in which the taxpayer did not act in good faith during settlement negotiations, such as, but not limited to, cases in which the taxpayer failed to timely respond to document requests or offers to settle, or failed to address arguments and precedents raised by Appeals; and

- (9) Issues that have been otherwise identified in subsequent guidance issued by the IRS as excluded from the mediation program.

SECTION 5. APPLICATION PROCESS

.01 *Mediation is optional.* A taxpayer and Appeals may request mediation after consultation with each other.

.02 *Filing requirements.*

- (1) *Where to file.* To request mediation, the taxpayer should send a written request to the appropriate Appeals Team Manager. The taxpayer should also send copies of the written request to the appropriate Appeals Area Director and to the Chief Appeals, 1099 14th Street, NW, Suite 4200E – East, Washington, DC 20005, Attn: AP:TS:TPP. (See Exhibit 1 of this revenue procedure for a listing of the addresses for each Appeals Area Director.)

(2) *Required information.* The mediation request should include:

(a) The taxpayer's name, taxpayer identification number, and address (and the name, title, address, and telephone number of a person to contact);

(b) The name of the Team Case Leader, Appeals Officer, or Settlement Officer;

(c) The taxable period(s) involved;

(d) A description of the issue for which mediation is being requested, including the dollar amount of the adjustment in dispute; and

(e) A representation that the issue is not an excluded issue listed in the "Scope of Mediation" section above.

.03 *Review of Mediation Request.* The Appeals Team Manager will confer with the Appeals Office of Tax Policy and Procedure before deciding to approve or deny a mediation request. Generally, the Appeals Team Manager will respond to the taxpayer and the Team Case Leader or Appeals Officer within two weeks after the Appeals Team Manager receives the request for mediation.

(1) *Request approved.* If Appeals approves the mediation request, the Appeals Team Manager will inform the taxpayer and the Team Case Leader or

Appeals Officer and will schedule a conference or conference call that may include a representative from Appeals Tax Policy and Procedure Headquarters to discuss the mediation process.

(2) *Request denied.* If Appeals denies the mediation request, the Appeals Team Manager will promptly inform the taxpayer and the Team Case Leader or Appeals Officer. Although no formal appeal procedure exists for the denial of a mediation request, a taxpayer may request a conference with the Appeals Team Manager to discuss the denial. The denial of a mediation request is not subject to judicial review.

SECTION 6. AGREEMENT TO MEDIATE

.01 *Written agreement.* Upon approval of the request to mediate, the taxpayer and Appeals will enter into a written agreement to mediate. See Exhibit 2 of this revenue procedure for a model agreement to mediate. This agreement will be negotiated via a conference or conference call. A representative from the Appeals Office of Tax Policy and Procedure may participate in the negotiation. The agreement to mediate should:

- (a) Be as concise as possible;
- (b) Specify the issue(s) that the parties have agreed to mediate;
- (c) Contain an initial list of witnesses, attorneys, representatives, and observers for each party;
- (d) Identify the location and the proposed date of the mediation session; and
- (e) Prohibit *ex parte* contacts between the mediator and the parties.

The Appeals Team Manager, in consultation with the Team Case Leader or Appeals Officer, will sign the agreement to mediate on behalf of Appeals.

Generally, it is expected that the parties will complete and execute the agreement to mediate within three weeks after being notified that Appeals approved the mediation request and will proceed to mediation within 60 days after signing the agreement to mediate. A taxpayer's inability to adhere to these timeframes, without reasonable cause, may result in Appeals' withdrawal from the mediation process.

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

of such participants. In general, the parties are encouraged to include, in addition to the required decision-makers, those persons with information and expertise that will be useful to the decision-makers and the mediator. In this regard, Appeals has the discretion to communicate *ex parte* with the IRS Office of Chief Counsel, the originating function, e.g., Compliance, or both, in preparation for or during the mediation session. Appeals also has the discretion to have Counsel, the originating function, or both, participate in the mediation proceeding to present the position and views of the IRS, and to rebut representations and arguments made by the taxpayer. Counsel's participation in this regard is separate from the review function outlined in Section 9.02 of this revenue procedure. To minimize the possibility of a last minute disqualification of the mediator, each party must notify the mediator and the other party of the participants on the party's mediation team no later than two weeks before the mediation. See Exhibit 3 of this revenue procedure for a model participants list.

.03 *Disclosure*. To participate in mediation under this revenue procedure, the taxpayer must consent under section 6103(c) to the disclosure by the IRS of the taxpayer's returns and return information incident to the mediation to the mediator and any participant or observer identified in the initial list of participants and observers and to any subsequent participants and observers identified in writing by the parties. The taxpayer must execute a separate consent to disclose tax information. See Exhibit 4 of this revenue procedure for a model consent to disclose tax information. If the agreement to mediate and consent are executed by a person pursuant to a power of attorney executed by the taxpayer, that power of attorney must clearly express the taxpayer's grant of authority to consent to disclose the taxpayer's returns and return information by the IRS to third parties, and a copy of that power of attorney must be attached to the agreement.

SECTION 7. MEDIATION PROCESS

.01 *Selection of mediator and expenses*. An Appeals employee trained as a mediator will serve as the mediator under this revenue procedure. Appeals will pay all expenses associated with the use of an Appeals mediator. The taxpayer and the Appeals Team Manager will select the Appeals mediator from a list of trained employees who, generally, will be located in the same Appeals office or geographical area as the taxpayer, but will not be a member of the same team that was assigned to the case.

Additionally, at the taxpayer's expense, the taxpayer may elect to use a co-mediator who is not employed by the IRS. The taxpayer and the Appeals Team Manager will select the non-IRS co-mediator from any local or national organization that provides a roster of neutrals. A representative from the Appeals Office of Tax Policy and Procedure may participate in the negotiations to select a non-IRS co-mediator. Criteria for selecting a non-IRS co-mediator may include: completion of mediation training; previous mediation experience; substantive knowledge of tax law; or knowledge of industry practices. A mediator shall have no official, financial, or personal

conflict of interest with respect to the parties, unless such interest is fully disclosed in writing to the taxpayer and the Appeals Team Manager and they agree that the mediator may serve. See 5 U.S.C. § 573.

.02 *Appeals personnel as mediators and conflict statement.* To address the inherent conflict arising from the Appeals mediator's status as an employee of the IRS, the Appeals mediator will provide to the taxpayer a statement confirming his or her proposed service as a mediator and stating that (i) he or she is a current employee of the IRS, (ii) a conflict results from his or her continued status as an IRS employee, and (iii) this conflict will not interfere in the mediator's ability to facilitate the case impartially. This statement will also be included in the written agreement to mediate.

SECTION 8. MEDIATION SESSION

.01 *Discussion summaries.* Each party will prepare a discussion summary of the issues (including the party's arguments in favor of the party's position) for consideration by the mediator. The discussion summaries should be submitted to the mediator and the other party no later than two weeks before the mediation session is scheduled to occur.

.02 *Confidentiality.* The mediation process is confidential. Therefore, all information concerning any dispute resolution communication is confidential and may not be disclosed by any party, participant, observer or mediator except as provided by statute, such as in section 6103 of the Internal Revenue Code and 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for the purposes of a dispute resolution proceeding. See 5 U.S.C. § 571(5).

.03 *Ex Parte Contacts Prohibited.* To ensure that one party is not in a position to exert undue influence on the mediator, there will be no *ex parte* contacts with the mediator outside the mediation session.

The prohibition against *ex parte* communications is intended to apply only to unsolicited contacts from one of the parties outside the mediation session. It ensures the mediator does not receive information or evidence the other party is unaware of and is unable to respond to or rebut. This provision does not prevent the mediator from contacting a party, or a party from answering a question or request posed by the mediator.

.04 *Withdrawal.* Either party may withdraw from the process anytime before reaching a settlement of the issue(s) being mediated by notifying the other party and the mediator in writing.

SECTION 9. POST-SESSION PROCEDURES

.01 *Mediator's report.* At the conclusion of the mediation process, the mediator will prepare a brief written report and submit a copy to each party. See Exhibit 5 of this revenue procedure for a model mediator's report.

.02 *Closing procedures.* If the parties reach an agreement on all or some issues through the mediation process, Appeals will use established procedures, including preparation of a Form 906, Closing Agreement on Final Determination Covering Specific Matters. See Statement of Procedural Rules, 26 C.F.R. § 601.106. Delegation Order 236 (Rev. 3) (addressing settlement authority for issues in a Coordinated Examination Program) may apply to settlements.

For offer in compromise cases with liabilities of \$50,000 or more, any settlement or agreement reached through mediation must be reviewed by the Office of Chief Counsel pursuant to section 7122(b) before being finalized. When review is required, Appeals will forward the case to Area Counsel for an opinion concerning whether the case is subject to compromise. See IRM 5.8.8.5 and 8.23.4.2.2.

If the parties do not reach an agreement on an issue being mediated, they may request arbitration for the issue, provided the mediation issue meets the requirements for arbitration. See Rev. Proc. 2006-44, 2006-2 C.B. 800, or any subsequent procedure. If arbitration is not requested or approved, Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues (or the case will be processed using established closing procedures if there is no deficiency).

SECTION 10. GENERAL PROVISIONS

.01 *Employees.* IRS and Treasury employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to section 6103(n) that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213, and 7431.

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

.03 *Disqualification of the non-IRS co-mediator.* The non-IRS co-mediator will be disqualified from representing the taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the mediation. This disqualification extends to representing any other parties involved in the transactions or issues that are the particular subject matter of the mediation. Moreover, the co-mediator's firm will be disqualified from representing the taxpayer or any other parties involved in the transactions or issues that are the particular subject

matter of the mediation in any action that involves the transactions or issues that are the particular subject matter of the mediation.

The co-mediator's firm will not be disqualified from representing the taxpayer or any other parties in any future action that involves the same transactions or issues that are the particular subject matter of the mediation, provided that (i) the co-mediator disclosed the potential of such representation to the parties to the mediation conducted by the co-mediator prior to the parties' acceptance of the co-mediator, (ii) such action relates to a taxable year that is different from the taxable year that is the subject matter of the mediation, (iii) the firm's internal controls preclude the co-mediator from any form of participation in the matter, and (iv) the firm does not apportion to the co-mediator any part of the fee therefrom. In the event the co-mediator has been selected prior to the co-mediator learning of the identity of one or more of the parties involved in the mediation, requirement (i) will be deemed satisfied if the co-mediator promptly notifies the parties of the potential representation.

Although the co-mediator is prohibited from receiving a direct allocation of the fee from the taxpayer (or other party) in the matter for which the internal controls are in effect, the co-mediator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The co-mediator and his or her firm are not disqualified from representing the taxpayer or any other parties involved in the mediation in any matters unrelated to the transactions or issues that are the particular subject matter of the mediation.

This paragraph 3 only applies to representations on matters before the IRS.

The provisions of this paragraph 3 are in addition to any other applicable disqualification provisions, including, for example, the rules of the United States Tax Court and applicable canons of ethics.

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

SECTION 11. EFFECTIVE DATE

This procedure is effective October 5, 2009, the date this revenue procedure is published in the Internal Revenue Bulletin.

SECTION 12. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2002-44 is superseded. This revenue procedure is subject to the requirements in Announcement 2008-111 for offer in compromise and Trust Fund Recovery Penalty cases.

DRAFTING INFORMATION

The principal author of this revenue procedure is Sarah Sheldon, Office of Chief Counsel, Procedure and Administration. For further information regarding this revenue procedure, contact Ms. Sheldon at (202) 622-7950 (not a toll-free call).

Exhibit 1:

Addresses for Appeals Area Directors

Director, Area 1
IRS Appeals
290 Broadway, 11th Floor
New York, NY 10007

Director, Area 2 – Collection
IRS Appeals
1099 14th Street, N.W.
Washington, DC 20005

Director, Area 3
IRS Appeals
810 Broadway, Suite 300
Nashville, TN 37203

Director, Area 4
IRS Appeals
701 Market St., Suite 2200
Philadelphia, PA 19106

Director, Area 7
IRS Appeals
4050 Alpha Road
Farmers Branch, TX 75244

Director, Area 8
IRS Appeals
160 Spear St. Suite 800
San Francisco, CA 94105

Director, Area 9
IRS Appeals
330 North Brand Blvd, Suite 600
Glendale, CA 91203

Director, Appeals Team Case Leaders
300 North Los Angeles Street, Federal Building
Los Angeles, CA 90012

Exhibit 2:

Model Agreement to Mediate

1. The Mediation Process.

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

2. Nature of Process, Participants, Withdrawal.

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

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

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

3. Selection of Mediator and Costs.

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

4. Issues to be Mediated.

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

- (a) Issue #1
- (b) Issue #2

5. Submission of Materials.

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

6. Place of Mediation.

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

7. Proposed Schedule.

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

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

Mediation Session: **By MONTH DAY, YEAR and TIME**

8. Confidentiality.

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

9. Ex Parte Contacts Prohibited.

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

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

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

11. No Record.

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

12. Report by Mediator.

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

13. Appeals Procedures Apply.

If the mediation process enables the PARTIES to reach agreement on the issues, Appeals will use established procedures to close the case. Delegation Order 236 (Rev. 3) (addressing settlement authority for issues in a Coordinated Examination Program) or § 7122(b) (regarding offer in compromise cases) may apply to settlements resulting from the mediation process. If the PARTIES do not reach an agreement on an issue being mediated, the PARTIES may request arbitration for the issue provided the issue meets the requirements for arbitration. See Rev. Proc. 2006-44, 2006-2 C.B. 800, or any subsequent procedure. If arbitration is not requested or approved, Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues (or the case will be processed using established closing procedures if there is no deficiency).

14. Precedential Use.

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

INTERNAL REVENUE SERVICE,
APPEALS

NAME OF TAXPAYER

By: _____
NAME
Appeals Team Manager

By: _____
NAME
TITLE

Date: _____

Date: _____

Exhibit 3:

Model Mediation Participants List

Case Name: _____

Submitted By: _____

Date: _____

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

NAME

**POSITION OR
AFFILIATION**

ADDRESS

**TELEPHONE &
FAX NUMBER**

Exhibit 4:

Consent to Disclose Tax Information

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

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

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

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

Taxpayer Name: _____

Taxpayer Identification Number: _____

Taxpayer Address: _____

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

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

Signature: _____

Date: _____

Exhibit 5:

Model Mediator's Report

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

ISSUE:

SETTLEMENT: Yes
 No
 Partial

Proposed Adjustment Amount:

Amount Sustained:

ISSUE:

SETTLEMENT: Yes
 No
 Partial

Proposed Adjustment Amount:

Amount Sustained:

Settlement documents will be prepared under established Appeals procedures.

DATED this _____ day of _____

/s/ Mediator

/s/ Party

/s/ Party