

[26 CFR 601.106]: [Appeals Functions]

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

Rev. Proc. 2014-63

SECTION 1. PURPOSE

This revenue procedure updates Revenue Procedure 2009-44, 2009-2 C.B. 462, incorporating provisions of Announcements 2008-111 and 2011-6 relating to mediation, to expand and clarify the types of examination and collection cases and issues in the Appeals administrative process that are eligible for mediation pursuant to section 7123(b)(1) of the Internal Revenue Code (Code).¹ Generally, mediation is available for examination cases and certain collection 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 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. Section 7123(b)(1)(A) provides that mediation will be available on any issue unresolved at the conclusion of Appeals procedures. Section 7123(b)(1)(B) provides that mediation will be available on any issue unresolved at the conclusion of unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

In announcements issued in 1995 and 1997, the IRS established procedures for taxpayers to request mediation in Coordination Examination Program cases assigned to Appeals Team Chiefs. See Announcement 95-86, 1995-44 I.R.B. 27, and Announcement 97-1, 1997-2 I.R.B. 62. In 1998, the IRS announced that it would begin a two-year pilot of an expanded mediation program that would encompass factual issues arising from examination, involving adjustments of \$1 million or more. See Announcement 98-99, 1998-2 C.B. 652. In 2001, that pilot program was extended for an additional year. See Announcement 2001-9, 2001-1 C.B. 357. On July 1, 2002, the IRS published Rev. Proc. 2002-44, 2002-2 C.B. 10, which superseded Announcement 98-99 and Announcement 2001-9, formally established the Appeals mediation program, and further expanded the types of cases for which mediation would be available, including cases where there was an unsuccessful attempt to enter into a closing agreement.

Under these programs, mediation was not available for any collection case or issue. In Announcement 2008-111, 2008-48 I.R.B. 1224, published December 1, 2008, Appeals established a two-year pilot program to extend mediation and arbitration to certain collection cases. Under the pilot program, certain offer-in-compromise (OIC) and Trust Fund Recovery Penalty (TFRP) cases in Appeals offices in select cities were eligible for mediation.

¹ For purposes of this revenue procedure, the term “mediation” refers only to “non-binding mediation” as set forth in section 7123(b)(1).

Rev. Proc. 2009-44 updated and superseded Rev. Proc. 2002-44 to again expand and clarify the types of cases that may be mediated in Appeals. In addition, Rev. Proc. 2009-44 provided that mediation may be available for OIC and TFRP cases described in Announcement 2008-111. Announcement 2011-6, 2011-4 I.R.B. 433, published January 24, 2011, extended, without change, the mediation pilot for collection cases, through December 31, 2012.

This revenue procedure consolidates the procedures for mediation of examination cases and issues and collection cases and issues into a single revenue procedure. This revenue procedure also makes other changes to Rev. Proc. 2009-44, set forth in Section 3. Accordingly, this revenue procedure supersedes Rev. Proc. 2009-44 and Announcements 2008-111 and 2011-6.

SECTION 3. SIGNIFICANT CHANGES TO REV. PROC. 2009-44 AND ANNOUNCEMENTS 2008-111 AND 2011-6

Significant changes to Rev. Proc. 2009-44 and Announcements 2008-111 and 2011-6 in this revenue procedure include:

.01 Section 4.04(7) clarifies that “whipsaw” issues include issues on a joint return where both spouses do not agree to participate in the same mediation proceeding or where a spouse is claiming innocent spouse treatment under section 6015.

.02 The mediation process for OIC and TFRP cases is no longer limited to taxpayers in selected cities.

.03 Section 5.01 incorporates from Announcement 2008-11 and Announcement 2011-6 the scope of OIC cases and issues for which mediation is available.

.04 Section 5.02 incorporates from Announcement 2008-11 and Announcement 2011-6 the scope of OIC cases and issues for which mediation is not available.

.05 Section 5.02(6) reflects that mediation is not available at this time for OIC cases that are worked solely at Appeals Campuses/Service Center sites.

.06 Section 6.01 incorporates from Announcement 2008-11 and Announcement 2011-6 the scope of TFRP cases and issues where mediation is available.

.07 Section 6.02 clarifies a circumstance in which mediation is not available in TFRP cases. Under this provision, mediation is not available to resolve issues concerning whether a TFRP is collectible. Announcement 2008-11 and Announcement 2011-6 did not expressly exclude this issue from the list of TFRP issues where mediation would be available.

.08 Section 9.01 clarifies that a representative from the Appeals Office of Tax Policy and Procedure may participate in the negotiations to select an Appeals mediator.

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. The mediator does not have settlement authority and cannot render a decision regarding any issue in dispute.

.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. For more information on early referrals, see section 2.16 of Rev. Proc. 99-28, 1999-2 C.B. 109, or the corresponding provision of any successor guidance;

(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 cannot 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. Where the requirements of this section have been satisfied and competent authority has been requested, and the taxpayer must notify the U.S. competent authority that the case is in mediation in Appeals, the taxpayer must notify the mediator that competent authority assistance has been requested and that the provisions of this section have been satisfied. 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;

(7) OIC issues, as provided in Section 5 of this revenue procedure; and

(8) TFRP issues, as provided in Section 6 of this revenue procedure.

.04 Inapplicability. Mediation is not 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 OIC and TFRP cases as detailed in this revenue procedure;
- (5) Issues for which mediation would not be consistent with sound tax administration, such as, but not limited to, issues governed by closing agreements, res judicata, or controlling Supreme Court precedent;
- (6) Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2012-2, 2012-1 I.R.B. 92, or any subsequent revenue procedure;
- (7) “Whipsaw” issues, or issues for which resolution with respect to one party might result in inconsistent treatment in the absence of participation of another party, such as, but not limited to, issues on a joint return where both spouses do not agree to participate in the same mediation proceeding or where one spouse is claiming innocent spouse treatment under section 6015;
- (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;
- (9) Cases that were previously mediated through a different alternative dispute resolution program within Appeals, such as Fast Track Settlement or Fast Track Mediation; and
- (10) Issues that have been otherwise identified in subsequent guidance issued by the IRS as excluded from the mediation program.

SECTION 5. OFFER-IN-COMPROMISE CASES

.01 *In general.* Provided all facts are known by both parties, mediation in OIC cases is available for the following issues:

- (1) The value of assets, including those held by a third party;
- (2) The value of dissipated assets and what amount should be included in the overall determination of reasonable collection potential;
- (3) A taxpayer’s proportionate interest in jointly held assets;
- (4) Projections of future income based on calculations that do not involve current income;
- (5) The calculations of a taxpayer’s future ability to pay when living expenses are shared with a non-liable person;
- (6) Whether the taxpayer meets the criteria for deviating from national and/or local expense standards described in Internal Revenue Manual 5.15.1 and as set forth at

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/National-Standards-Food-Clothing-and-Other-Items>;

(7) Other factual determinations, such as whether a taxpayer's contributions into a retirement savings account are discretionary or mandatory as a condition of employment.

.02 *Exclusions*. Mediation is not available for OIC cases in which:

(1) The taxpayer has the ability to pay in full based on the unadjusted financial information submitted by the taxpayer, except when economic hardship exists;

(2) The taxpayer declines to amend or increase the offer without stating any specific disagreement with the valuations, figures, or methodology used by Appeals in determining reasonable collection potential;

(3) The disputed issue is explicitly addressed by IRS guidance or authority, including but not limited to regulations, published guidance, the Internal Revenue Manual, forms or instructions. For example, the instructions for Form 656 explicitly state that the IRS will not consider expenses for tuition for private schools, college expenses, charitable contributions, and other unsecured debt payments as part of the OIC expense calculation. Therefore, mediation is not available with respect to whether any of these expenses will be considered in evaluating the taxpayer's offer;

(4) An OIC is submitted as an alternative to collection in a Collection Due Process or equivalent hearing case;

(5) The issue of liability was previously determined by Appeals;

(6) The case was worked solely at an Appeals Campus/Service Center site; or

(7) Delegation Order 5-1 requires a level of approval higher than that of the Appeals Team Manager, such as certain Effective Tax Administration offers or those in which a determination is made by Appeals that acceptance is not in the best interest of the government (see Policy Statement P-5-100 and IRM 5.8.7, *Return, Terminate, Withdraw, and Reject Processing*).

SECTION 6. TRUST FUND RECOVERY PENALTY CASES

.01 *In general*. Mediation is available in TFRP cases for the following issues:

(1) Whether the person was required to collect, truthfully account for, and pay over income, employment, or excise taxes;

(2) Whether a responsible person willfully failed to collect or truthfully account for and pay over income, employment, or excise taxes, or willfully attempted in any manner to evade or defeat the payment of such tax;

(3) Whether a taxpayer sufficiently designated a payment to the trust fund portion of the unpaid tax; and

(4) Whether the taxpayer provided sufficient corporate payroll tax records to establish that a corporate tax deposit was in the amount required by Treas. Reg. § 31.6302-1(c) and, therefore,

was considered a designated payment to be applied to both the trust fund and non-trust fund portions of the employment taxes associated with that specific payroll. See IRM 5.7.4.3, *Investigation and Recommendation of the Trust Fund Recovery Penalty, Calculating the TFRP*.

.02 *Exclusions*. Mediation is not available to resolve issues concerning whether the penalty is collectible (see IRM 5.7.5, *Trust Fund Compliance, Collectibility Determination*).

SECTION 7. APPLICATION PROCESS

.01 *Mediation is optional*. A taxpayer and Appeals may request mediation after consultation with each other. Mediation will not occur unless both parties agree to participate in the process.

.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. (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 different contact person, if applicable);

(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 or, if applicable, the OIC in dispute; and

(e) A representation that the issue is not an excluded issue listed in Section 4, Section 5, or Section 6 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, Appeals Officer, or Settlement Officer and will schedule a conference or conference call at a mutually agreeable time that may include a representative from the Appeals Office of Tax Policy and Procedure 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, Appeals Officer, or Settlement 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 8. 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. 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 has approved the mediation request, and will proceed to mediation within 60 days after signing the written 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 written 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. 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. 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 the taxpayer's return and return information. See Exhibit 4 of this revenue procedure for a model consent. 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 9. 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. A representative from the Appeals Office of Tax Policy and Procedure may participate in the negotiations to select an Appeals mediator. Pursuant to IRM 8.26.5.4.4, 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. Other criteria for selecting a mediator from Appeals may include previous mediation experience or knowledge of industry practices.

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

All mediators must be neutral. Mediators serve as facilitators, assist in defining the issues, and promote settlement negotiations between the parties. Mediators will inform and discuss with the parties the rules and procedures pertaining to the mediation process. Mediators do not have settlement authority and cannot render a decision regarding any issue in dispute. The parties will continue to have settlement authority for all issues considered under the mediation process.

.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 their proposed service as a mediator and stating that (i) they are a current employee of the IRS, (ii) a conflict results from the 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 10. 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, relating to confidentiality of taxpayer information, and 5 U.S.C. § 574, relating to confidentiality in federal administrative alternative dispute resolution proceedings. 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 With Mediator Prohibited.* To ensure that one party is not in a position to exert undue influence on the mediator, *ex parte* contacts with the mediator outside the mediation session are prohibited.

The prohibition against *ex parte* communications with the mediator is intended to apply only to unsolicited contacts from one of the parties with the mediator that occur outside the mediation session. The prohibition prevents the mediator from receiving information or evidence from one party that 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 outside the mediation session, or a party from answering a question or request posed by the mediator outside of the mediation session provided that the information furnished to the mediator is made available to both parties so that no party is unaware of or unable to respond to or rebut the information.

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

SECTION 11. 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 of the issues through the mediation process, Appeals will use established procedures to close the case, 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), or § 7122(b) (regarding OIC cases).

If the parties do not reach an agreement on an issue being mediated, Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues, or the case will be processed using established closing procedures if there is no deficiency.

.03 *Special closing procedures for certain offer-in-compromise cases.* For OIC 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 as to the legal sufficiency of the offer. See IRM 5.8.8, *Offer in Compromise, Acceptance Processing*, and IRM 8.23.4, *Appeals Function, Offer in Compromise, Acceptance, Rejection Sustention, and Withdrawal Procedures for non-Collection Due Process (CDP) Offers*.

SECTION 12. GENERAL PROVISIONS

01. *Communication with IRS and Counsel Permitted.* Except as described in Section 10.03 with respect to mediators, Appeals has the discretion to communicate with the IRS Office of Chief Counsel, the originating IRS function, or both, in preparation for or during the mediation session. See Rev. Proc. 2012-18, 2012-10 I.R.B. 455. Appeals also has the discretion to have Counsel, the originating IRS 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 11.03 of this revenue procedure.

.02 Employees. IRS employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to section 6103(n) 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.

.03 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.

.04 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.

(a) Disqualification of co-mediator's firm. Moreover, except as provided in section 12.04(b), 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.

(b) Exception to disqualification of co-mediator's firm. 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 section 12.04 only applies to representations on matters before the IRS.

The provisions of this section 12.04 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.

.05. *Recording of mediation session.* The parties to the mediation may not make a stenographic record, audio or video tape recording, or other transcript of the mediation session.

.06 *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 13. EFFECTIVE DATE

This procedure is effective Month DD, 2014, the date this revenue procedure is published in the Internal Revenue Bulletin.

SECTION 14. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2009-44 and Announcements 2008-111 and 2011-6 are superseded.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Debra Kohn, Office of Chief Counsel, Procedure and Administration, Charmaine Osbin, Office of Appeals, Tax Policy and Procedure for non-collection cases, and Dale Veer, Office of Appeals, Tax Policy and Procedure for OIC and TFRP cases. For further information regarding this revenue procedure, contact Ms. Kohn at (202) 317-3600, Ms. Osbin at (281) 721-7275, or Mr. Veer at (651) 726-7430 (not toll-free calls).

Exhibit 1:

Addresses for Appeals Area Directors

Director, Area 1 IRS Appeals 701 Market Street, Suite 2200 Philadelphia, PA 19106-1538
Director, Area 2 – Collection IRS Appeals 10715 David Taylor Drive Charlotte, NC 28262
Director, Area 3 IRS Appeals 810 Broadway, Suite 300 Nashville, TN 37203-3810
Director, Area 4 IRS Appeals 701 Market St., Suite 2200 Philadelphia, PA 19106-1538
Director, Area 5 – Campus IRS Appeals 5000 Corporate Drive Holtsville, NY 11742-2002
Director, Area 6 – Campus IRS Appeals 3333 Getwell Road, Stop 86E Memphis, TN 38118-7733
Director, Area 7 IRS Appeals 55 North Robinson Oklahoma City, OK 73102
Director, Area 8 IRS Appeals 100 First Street, Suite 2000 San Francisco, CA 94105
Director, Area 9 IRS Appeals 6377 Riverside Avenue Riverside, CA 92506-3124
Director, Area 10 – Campus IRS Appeals 7125 Industrial Road Florence, KY 41042-2907
Director, Area 11 – Collection IRS Appeals 100 First Street, Suite 2000 San Francisco, CA 94105

Director, Area 12 – Campus IRS Appeals 2525 Capitol Street Fresno, CA 93721-2227
Director, Area 13 – Collection IRS Appeals 810 Broadway, Suite 300 Nashville, TN 37203-3810
Director, Appeals Team Case Leaders IRS Appeals 300 North Los Angeles Street, Federal Building Los Angeles, CA 90012-3308
Director, Specialty Operations – Domestic IRS Appeals 290 Broadway, 11th Floor New York, NY 10007
Director, Specialty Operations – International IRS Appeals 300 Pearl Street Buffalo, NY 14202

Exhibit 2: **Model Agreement to Mediate**

1. The Mediation² 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, [optional: 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) IRS 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 with 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)_____:

² For purposes of this agreement, the term "mediation" refers only to "non-binding mediation" as set forth in section 7123(b)(1).

(a) Issue #1

(b) Issue #2

5. Submission of Materials.

Each PARTY will present to the mediator a separate written summation not to exceed XX 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 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 4-24, IRM 1.2.43.22 (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. Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues (or the case will be processed using established closing procedures if there is no deficiency).

14. Precedential Use.

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

INTERNAL REVENUE SERVICE, APPEALS

By: _____
Name
Appeals Team Manager

Date: _____

NAME OF TAXPAYER

By: _____
Name
Title

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 AND ADDRESS
(TELEPHONE OR FAX NUMBER OPTIONAL)**

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