

Part III

Administrative, Procedural, and Miscellaneous

26 CFR § 601.106: Appeals functions.
(Also: 601.105.)

Rev. Proc. 2017-25

SECTION 1. PURPOSE

This revenue procedure formally establishes the Small Business/Self Employed Fast Track Settlement program (SB/SE FTS) to provide an expedited format for resolving disputes with SB/SE taxpayers.

Announcement 2011-5, 2011-4 I.R.B. 430, is modified and superseded.

SECTION 2. BACKGROUND

01. Revenue Procedure 2003-40, 2003-1 C.B. 1044, implemented a fast track settlement program for taxpayers in the Large and Mid-Sized Business Division (now the Large Business and International Division). In Announcement 2006-61, 2006-36 I.R.B. 390, the Internal Revenue Service (IRS) implemented a pilot program for fast track settlement for SB/SE taxpayers, relying on the provisions set forth in Rev. Proc. 2003-40. Announcement 2008-110, 2008-48 I.R.B. 1224, and Announcement 2011-5, 2011-4 I.R.B. 430, extended this pilot program and News Release IR-2013-88

announced the nationwide rollout of fast track settlement for SB/SE taxpayers.

02. SB/SE and Appeals jointly administer SB/SE FTS. SB/SE FTS is available to expedite case resolution at the earliest opportunity within the SB/SE Field and Specialty Examination functions. See IRM 1.1.16.3.1, *Examination-Field Areas*, and IRM 1.1.16.3.3, *Specialty-Examination*. SB/SE taxpayers that currently have unagreed issues in at least one open year under examination can work together with SB/SE and Appeals to resolve outstanding disputed issues while the case is still in SB/SE jurisdiction and preserve the taxpayer's ability to request an Appeals hearing. SB/SE FTS can be used to resolve both factual and legal issues, and may be initiated at any time after an issue is fully developed. An issue cannot be fully developed prior to the receipt of all necessary referrals, technical advice, Counsel advice, valuation reports, or other relevant documentation. It is a goal of SB/SE FTS that the entire process be completed within 60 days after acceptance into the program.

SECTION 3. SIGNIFICANT CHANGES TO ANNOUNCEMENT 2011-5

01. SB/SE FTS is now available to taxpayers nationwide. See News Release IR-2013-88.

02. SB/SE FTS is no longer available for cases under the jurisdiction of the Tax Exempt and Government Entities (TE/GE) Division as a result of the establishment of a permanent, separate fast track settlement program for TE/GE taxpayers. See Announcement 2012-34, 2012-36 I.R.B. 334, *Fast Track Settlement for TE/GE Taxpayers*.

03. Section 4.01(3) modifies the case eligibility criteria by requiring that the

issues remain unresolved after the involvement of the Group Manager.

04. Section 4.02 modifies the criteria for cases excluded from SB/SE FTS by:

- (1) Providing in section 4.02(1) that SB/SE FTS is generally not available for cases in which SB/SE FTS is not appropriate under either 5 U.S.C. § 572 or 5 U.S.C. § 575.
- (2) Adding a good faith requirement in section 4.02(2) that incorporates the failure to respond or provide documentation provision in Announcement 2011-5.
- (3) Removing the reference to issues under consideration for designation for litigation and, in section 4.02(7), providing that SB/SE FTS is not available for issues docketed in any court.
- (4) Providing in section 4.02(8) that SB/SE FTS is not available for issues precluded from settlement by previous closing agreements, res judicata, or controlling Supreme Court precedent.
- (5) Providing in section 4.02(9) that SB/SE FTS is not available for issues for which SB/SE FTS would not be in the interest of sound tax administration.
- (6) In section 4.02(12), updating the provision relating to issues for which the taxpayer has submitted a request for competent authority assistance.
- (7) Clarifying in section 4.02(11) that “whipsaw” issues include issues on a joint return where both spouses do not agree to participate in the same FTS Session or where a spouse is claiming innocent spouse treatment under section 6015.

05. Consistent with Rev. Proc. 2014-63, 2014-53 I.R.B. 1014, sections 6.06 and 6.07 indicate that taxpayers availing themselves of SB/SE FTS are ineligible to use post-appeals mediation for any issue considered during the SB/SE FTS process if the parties fail to resolve the issue or if either party withdraws after the start of the SB/SE FTS Session.

SECTION 4. CASE ELIGIBILITY AND EXCLUSIONS

01. Subject to the limitations set forth below, SB/SE FTS is available for cases in SB/SE jurisdiction if:

- (1) The case contains disputed factual or legal issues;
- (2) Issues are fully developed; and
- (3) The issues remain unresolved after the involvement of the Group Manager.

02. SB/SE FTS is not available for:

- (1) Cases in which SB/SE FTS 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) Cases in which the taxpayer did not act in good faith during the audit process, such as, but not limited to, cases in which the taxpayer failed to cooperate or unduly delayed the audit process;
- (3) Correspondence examination cases worked solely in a Campus/Service Center site;
- (4) Partnership cases under the Tax Equity & Fiscal Responsibility Act (TEFRA);
- (5) Collection cases. Examples include, but are not limited to, Collection Due Process, Collection Appeals Program, Offer-In-Compromise and Trust Fund Recovery Penalty cases;
- (6) Issues designated for litigation;
- (7) Issues docketed in any court;
- (8) Issues precluded from settlement by previous closing agreements, res judicata, or controlling Supreme Court precedent;
- (9) Issues for which SB/SE FTS would not be in the interest of sound tax administration. For example, issues common to issues in litigation for

which it is important that the IRS maintain a consistent position, or issues common to issues in litigation over which the Department of Justice has jurisdiction;

- (10) Frivolous issues, such as, but not limited to, those identified in section 6.10 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, or the corresponding provision of any successor guidance;
- (11) “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. Examples include, but are not limited to, issues on a joint return where both spouses do not agree to participate in the same FTS Session (see section 6.02 of this revenue procedure) or where one spouse is claiming innocent spouse treatment under section 6015;
- (12) Issues for which the taxpayer has submitted a request for competent authority assistance. See section 6.03 of Rev. Proc. 2015-40, 2015-35 I.R.B. 236, or the corresponding provision of any successor guidance, which describes the procedures of the U.S. competent authority for coordination with IRS examination proceedings. Under section 6.03(3) of Rev. Proc. 2015-40, the taxpayer's access to U.S. competent authority assistance is generally not affected by the taxpayer's pursuit of alternative dispute resolution programs under the jurisdiction of IRS Examination, including SB/SE FTS. Taxpayers are cautioned that if resolution of the taxpayer's competent authority issue (as defined in Rev. Proc. 2015-40) is reached through the SB/SE FTS process, the taxpayer's access to U.S. competent authority assistance will be determined in accordance with sections 6.03(1) and 6.03(2) of Rev. Proc. 2015-40. If a taxpayer enters into a closing agreement (including settlement through the SB/SE FTS process) and then requests competent authority assistance, the U.S. competent authority will endeavor only to obtain a correlative adjustment from the treaty country and will not take any actions that would otherwise change the settlement. See section 6.03(2) of Rev. Proc. 2015-40. If a taxpayer enters into SB/SE FTS, the taxpayer generally may not request competent authority assistance until the SB/SE FTS process is complete. However, the taxpayer may file a protective claim with the competent authority in the form of a competent authority request or a letter while SB/SE FTS is pending if a protective claim is necessary to keep open the period of limitations in a foreign country. See section 11.03 of Rev. Proc. 2015-40. If the requirements of this section 4.02(12) have been satisfied and a protective claim has been filed, the

taxpayer must notify the U.S. competent authority that the case is in alternative dispute resolution in SB/SE FTS. In addition, the taxpayer must notify the FTS Appeals Official (as defined in section 6.01 of this revenue procedure) that a protective claim has been filed and that the provisions of this section 4.02(12) have been satisfied. The U.S. competent authority will suspend action on the case until SB/SE FTS is completed;

- (13) Issues outside SB/SE jurisdiction; or
- (14) Issues that have been otherwise identified in subsequent guidance issued by the IRS as excluded from the SB/SE FTS process.

03. If any one issue is determined not to be eligible for SB/SE FTS, no issues in the case shall be eligible for SB/SE FTS.

SECTION 5. APPLICATION PROCESS

01. *In General.* A taxpayer that is interested in participating in SB/SE FTS, or who has questions about the program and its suitability for the taxpayer's case, should contact the SB/SE Examiner (Examiner) or SB/SE Group Manager (Group Manager) for the year currently under examination. SB/SE FTS may not be the appropriate dispute resolution process for all cases involving SB/SE taxpayers.

02. *Initiating SB/SE FTS.* Either the taxpayer, Examiner, or the Group Manager can suggest participation, or initiate the process to take part, in SB/SE FTS. SB/SE FTS can be initiated at any time after an issue is fully developed.

03. *Application for SB/SE FTS and Initial Eligibility Determination by Group Manager.* Both parties must affirmatively consent to participate in SB/SE FTS. When the parties agree that SB/SE FTS is appropriate, the taxpayer and the Examiner must jointly complete and sign Form 14017, *Application for Fast Track Settlement*, and

prepare the Application Package, which must include the Form 14017, properly documented work papers supporting the Examiner's position, and the taxpayer's written response. The Examiner will submit the Application Package to the Group Manager, who will determine if it is complete and whether the case is eligible for SB/SE FTS. If the Group Manager determines that the Application Package is incomplete, or that the taxpayer does not meet the eligibility requirements or otherwise does not qualify for SB/SE FTS, the Group Manager will deny the Application. The Group Manager will forward an approved Application Package to the local Appeals Team Manager.

04. *Review by Appeals Team Manager.* Upon receipt of the Application Package, the Appeals Team Manager will review the documents, confirm the initial eligibility determination made by the Group Manager, and make the decision whether to accept the case into SB/SE FTS. If the Appeals Team Manager determines that the eligibility requirements are not met or that the case is specifically excluded from SB/SE FTS, the Appeals Team Manager will deny the Application, inform SB/SE of the decision to deny the Application, and return the Application Package to SB/SE.

05. *Case Not Accepted for SB/SE FTS.* 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.

SECTION 6. SETTLEMENT PROCESS

01. *In General.* SB/SE FTS employs various alternative dispute resolution techniques to promote case resolution. An Appeals Officer trained in mediation (FTS Appeals Official) will serve as a neutral party, acting as a mediator and using dispute resolution techniques to facilitate agreement between the parties. The impartiality of the FTS Appeals Official and the willingness of all parties to cooperate are vital to the success of the SB/SE FTS process.

02. *FTS Session*

(1) During SB/SE FTS, the taxpayer and SB/SE representatives participate in a conference (FTS Session) with the FTS Appeals Official. The taxpayer and the 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 IRS, however, this individual must have a power of attorney (Form 2848, *Power of Attorney and Declaration of Representative*) from the taxpayer. See section 8.02(3) of this revenue procedure.

(2) The FTS Appeals Official will coordinate the scheduling of the FTS Session for a date and location agreed to by both parties and the FTS Appeals Official. All parties are encouraged to be flexible when setting the meeting date and location.

(3) Prior to the FTS Session, the FTS Appeals Official will advise the participants of the procedures and establish rules for the FTS Session. The FTS Session may include conferences attended by all of the parties, or separate meetings with each party, as determined appropriate in the sole judgment of the FTS Appeals Official.

03. *Fast Track Session Report.* The FTS Appeals Official will prepare and use a Form 14000, *Fast Track Session Report*, (Session Report) to assist in planning the FTS Session, to report on developments during the session, and to record and finalize the disposition of issues. The Session Report will include a list of all issues to be considered during SB/SE FTS, a description of the issues, and the amounts in dispute.

04. *New Information.* Generally, the FTS Appeals Official will consider only those issues outlined in the Session Report, except by mutual agreement of the parties. If either party presents new information during the FTS Session and the parties agree that the process will not be delayed beyond the goal of 60 days, the SB/SE FTS process can and should continue. If the parties determine that the process will be delayed beyond the goal of 60 days, the FTS Appeals Official will consider either terminating the session or postponing until both parties have had adequate time to review and evaluate the new information. If the FTS Session is terminated, the case is removed from SB/SE FTS and the taxpayer would have to reapply to participate in SB/SE FTS.

05. *Settlement*

(1) *In General.* During the FTS Session, the FTS Appeals Official has the authority to offer settlement terms for any or all issues and may consider settlement

terms proposed by either party. See Delegation Order 8-9, *Authority of Appeals to Administer Alternative Dispute Resolution Procedures*. If the taxpayer accepts the FTS Appeals Official's settlement proposal, but the Group Manager rejects it, the SB/SE Territory Manager must review the Group Manager's rejection 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 as unagreed. At any time, SB/SE and the taxpayer may agree to resolve the issues independent of SB/SE FTS and close the case on those terms.

(2) *No Special Settlement Authority in SB/SE FTS*. SB/SE FTS creates no special authority for settlement by the FTS Appeals Official. Any recommended settlement by the FTS Appeals Official of an issue in SB/SE 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. For example, if the SB/SE 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.

(3) *Resolution of Disputed Issues*. If the parties resolve any of the disputed issues by the conclusion of the FTS Session, the parties and the FTS Appeals Official shall sign the Session Report acknowledging acceptance of the terms of settlement. Although the signature of the parties on the Session Report does not constitute a final

settlement and is not binding on either party, the signed Session Report represents the parties' good faith intention to settle the issues addressed in the Session Report in accordance with the terms of the agreed upon settlement. The signed Session Report does not 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. Issues settled through the SB/SE FTS process shall be closed out in accordance with section 7 of this revenue procedure.

06. *Failure to Resolve Disputed Issues.* If the parties fail to resolve any issue in SB/SE FTS, the taxpayer may request that the issue be heard through the traditional Appeals process. Post-appeals mediation, however, is not available for any issue considered during the SB/SE FTS process. See section 4.04(9) of Rev. Proc. 2014-63 and section 6.07 of this revenue procedure.

07. *Withdrawal.* Except as specifically provided above, either party may withdraw from the process at any time before reaching a settlement of any issue under consideration by notifying the other party and the FTS Appeals Official. Withdrawal with respect to any one issue under consideration has the effect of withdrawing all issues under consideration at the time of withdrawal. If either party withdraws from SB/SE FTS prior to the start of the FTS Session, the taxpayer will not be treated as having participated in SB/SE FTS for purposes of determining eligibility for post-appeals mediation. See section 4.04(9) of Rev. Proc. 2014-63 and section 6.06 of this revenue procedure.

SECTION 7. COMPLETING THE SB/SE FTS PROCESS

01. If the parties reach a basis of settlement for any issue through the SB/SE FTS process, the SB/SE representative or FTS Appeals Official will use established issue or case closing procedures and applicable agreement forms, including preparation of a Form 906, *Closing Agreement on Final Determination Covering Specific Tax Matters*, if appropriate.

02. If applicable, the IRS will report a proposed resolution reached as a result of SB/SE FTS (as reflected in a signed FTS Session Report) to the Joint Committee on Taxation in accordance with section 6405. The taxpayer acknowledges that the IRS reserves the right to reconsider an SB/SE FTS proposed settlement upon receipt of comments on the proposed settlement from the Joint Committee on Taxation. If the taxpayer and the IRS do not reach agreement with respect to any changes by the IRS upon reconsideration, SB/SE will close the case unagreed and the taxpayer will retain the usual rights to request Appeals consideration of any unagreed issues.

SECTION 8. GENERAL PROVISIONS

01. *Ex Parte Communications*

(1) *In General.* The prohibition against *ex parte* communications between Appeals employees and other IRS employees provided by section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, does not apply to the communications taking place as part of the SB/SE FTS process because the Appeals employees are not acting in their traditional Appeals settlement role. See Rev. Proc. 2012-18, 2012-10 I.R.B. 455.

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

02. *Confidentiality and Disclosure*

(1) *In general.* The SB/SE FTS process is confidential and all information and communications made during the SB/SE FTS process (both oral and written) are both taxpayer return information and dispute resolution communications subject to restrictions on disclosure. See section 6103 and 5 U.S.C. §§ 571(5) and 574.

Therefore, no information or communications made during the SB/SE FTS process may be disclosed by any party, participant, or observer except as provided by statute, including sections 6103 and 7214(a)(8) and 5 U.S.C. § 574.

(2) *Employees.* IRS employees who participate in or observe the SB/SE FTS process in any way, and any person under contract to the IRS pursuant to section 6103(n) who participates in or observes the SB/SE FTS process, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213, and 7431 and 5 U.S.C. § 574.

(3) *Taxpayer consent.* To participate in SB/SE FTS, the taxpayer must consent under section 6103(c) to the disclosure by the IRS of the taxpayer's returns and return information incident to SB/SE FTS to any participant identified in the initial list of participants and to any participants subsequently identified in writing by the parties. The

consent to disclose and the list of participants must be set forth on the Form 14017. If the Form 14017 is signed 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 the representative to sign the Form 14017 and to consent to the disclosure of the taxpayer's returns and return information by the IRS to third parties. The presence of any observer for the taxpayer or the government may require the taxpayer (or the taxpayer's representative) to sign a separate disclosure consent form.

03. *Use as precedent.* Any final agreement, case closing or closing agreement based on a settlement reached by the parties through the SB/SE FTS process will not be binding on the parties for taxable years or issues not covered by the SB/SE FTS agreement, unless such taxable years or issues are expressly addressed in a formal closing agreement. Except as expressly provided in the SB/SE FTS agreement or in a formal closing agreement, no party may use the settlement as precedent.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Announcement 2011-5, 2011-4 I.R.B. 430, is modified and superseded.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective March 20, 2017, the date this revenue procedure was released.

SECTION 11. DRAFTING INFORMATION AND FURTHER INFORMATION

The principal author of this revenue procedure is Mark A. Bond of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure contact Mr. Bond at (202) 317-6844 (not a toll-free

call).