

# Frequently Asked Questions

## Announcement 2005-80 Settlement Initiative

(These FAQs are grouped and numbered by the sections of Announcement 2005-80 to which they refer).

### **Section 2 – Eligible Taxpayers**

#### **Q.2.1. What if a taxpayer has already resolved the case and paid in full. Can a taxpayer now deduct transaction costs if the period of limitations has not expired?**

A.2.1. Yes, if the taxpayer did not otherwise enter into a closing agreement or a Form 870-AD that was executed by the Service on this transaction, and no decision or judgment has been entered by a court with respect to the year(s) at issue. If the taxpayer is now asking for a refund – for example, because of the deduction for transaction costs or the partial refund of an accuracy-related penalty – the payment of that refund may be subject to Joint Committee review pursuant to IRC Section 6405(a). The taxpayer should prepare and submit Form 13750, and attach a copy of an appropriate claim for refund (e.g. 1040X, 1120X). Taxpayers should be aware, however, that merely submitting the Form 13750 without filing an additional claim for refund attributable to the transaction costs will not suspend the period of limitations for claiming a refund of the transaction costs. If the taxpayer fails to submit a claim for refund in this situation, and the period of limitations expires, the Service will not be able to provide a refund to the taxpayer. See IRC Section 6514.

#### **Q.2.2 A taxpayer entered into an abusive tax transaction included in the Announcement and reflected the transaction on his or her return, but received no current benefit due to a net operating loss (NOL). Is the taxpayer eligible for the settlement?**

A-2.2 Yes, even though the taxpayer received a tax benefit of only an increased NOL, the taxpayer may still elect to participate and claim transaction costs under the terms of the settlement initiative. The NOL will be adjusted in the closing agreement to account for the disallowance of any losses from the abusive tax transaction.

#### **Q.2.3 Does Section 2.3 of Announcement 2005-80 preclude a partner from participating in this initiative if any other partners in the partnership are described in Section 2.1?**

A.2.3 Under Section 2.1, any person who organized or participated directly or indirectly in the sale of an eligible transaction or received fees for organizing, selling, or managing (a promoter) such transaction is not eligible for the settlement initiative. Under Section 2.2, if a person who engaged in such a transaction was a partner in a partnership that was a promoter of an abusive tax transaction, that person is not eligible for the settlement initiative.

If an ineligible person (a promoter, as described in Section 2.1, or a person related to a promoter, as described in Section 2.2) is a partner in partnership as defined in IRC Section 6231(a) ("TEFRA partnership") and that person directly or indirectly claimed tax benefits in a manner described in Announcement 2005-80 with respect to that TEFRA partnership, then no partners in the partnership are eligible for the settlement initiative under section 2.3, **except as described in Q&A-2.4 and Q&A-2.5.**

**Q.2.4 What are the circumstances under which a partner in a TEFRA partnership, who is neither a promoter nor a partner in a promoter partnership, may participate in the settlement initiative despite that partner's participation in a partnership that has an ineligible partner as described in Section 2.1 or 2.2?**

A.2.4 In either of the following situations, partners (other than ineligible partners) may participate in the settlement initiative:

(1) No ineligible person claimed more than two percent of the improper tax benefits from the transaction with respect to the partnership and the total improper tax benefits claimed by all ineligible partners in the partnership were less than five percent of the tax benefits.

A partner that believes that these conditions are satisfied should include with the Election: (i) a statement that the taxpayer was a partner in a partnership in which one or more ineligible partner held an interest; (ii) a statement that, to the best of the taxpayer's knowledge, no ineligible partner claimed more than two percent of the improper tax benefits with respect to the partnership and all ineligible partners collectively claimed less than five percent of the improper tax benefits; and (iii) as much of the following information for each ineligible partner that is known to the taxpayer: name, taxpayer identification number (TIN), current address, daytime telephone number, and claimed percentage of the improper tax benefits.

(2) All ineligible partners waive their right to a consistent settlement under § 6224(c)(2). The § 6224(c)(2) waiver must be executed in the manner prescribed under Treas. Reg. § 301.6224(b)-1. However, instead of filing the waiver with the Service Center where the partnership return is filed (as provided by Treas. Reg. § 301.6224(b)-1(b)(5)), the waiver must be sent to: INTERNAL REVENUE SERVICE, Attn: Announcement 2005-80, MS1505, 24000 Avila Road, Laguna Niguel, CA 92677. The Service must **receive** the waiver on or before January 23, 2006.

**Q.2.5 If a partner in a TEFRA partnership is excluded from the settlement initiative under Section 2.2 of Announcement 2005-80, are there any other circumstances in which such partner may participate in the settlement initiative?**

A.2.5 Yes. The Service will review requests to participate by partners and may allow participation on a case-by-case basis. Furthermore, the Service will take steps to prevent ineligible partners from benefiting from this settlement initiative where it would not be appropriate to allow them to do so.

Partners desiring to participate in the settlement initiative must file the Election in a timely manner to be considered under this Q&A-2.5. In the Election, the partner should include: (i) a statement as to why the partner believes that participation in the settlement initiative is appropriate, and (ii) as much of the following information concerning each ineligible person as is known to the taxpayer: name, taxpayer identification number (TIN), current address, daytime telephone number, and percentage interest held in the partnership. To ensure consistent treatment of such elections, the Service will centralize the evaluation of requests to participate filed under this Q&A-2.5.

**Q.2.6 If the taxpayer already filed an amended return reversing the transaction, can the taxpayer now claim transaction costs under the provisions of this Announcement?**

A.2.6 Yes, as long as the refund period of limitations for the affected year remains open. See Q&A 2.1, above.

**Q.2.7 Can a partner in a TEFRA partnership participate in the settlement initiative independently of any other partners in the partnership?**

A.2.7 Yes, a partner in a TEFRA partnership can enter into a closing agreement independently of the other partners. But see Q&A 2.3, 2.4, and 2.5.

**Q.2.8 Can a partner in a TEFRA partnership that has received a Notice of Final Partnership Administrative Adjustment on or before January 23, 2006, participate in the settlement initiative?**

A.2.8 Partners in a partnership that has received a Notice of Final Partnership Administrative Adjustment (FPAA) on or before January 23, 2006, may participate in the settlement initiative so long as no partner has petitioned the FPAA in court at the time the partner elects to participate in the settlement and the petition period has not already expired. Partners that decide to elect must follow the election procedures in Announcement 2005-80. In the Election, they should indicate that they have received an FPAA. If the period for obtaining

judicial review of the FPAA will expire before the execution of the closing agreement is completed, the partner may preserve the right to judicial review by petitioning a court. In cases in which the taxpayer filed an election to participate before any partner filed a petition (and so long as the partner is otherwise eligible for the settlement initiative), the petition should be filed in the Tax Court. In this situation, Chief Counsel will accept a settlement offer consistent with the terms of this initiative. If the petition is brought in a court other than the Tax Court, Chief Counsel can only recommend that the Department of Justice accept a settlement offer consistent with the terms of this initiative.

**Q.2.9 Can a taxpayer who has received a Statutory Notice of Deficiency on or before January 23, 2006, participate in this initiative?**

A.2.9 A taxpayer that has received a Statutory Notice of Deficiency (SND) on or before January 23, 2006, may participate in the settlement initiative if the taxpayer has not yet filed a petition in the United States Tax Court and has not filed a suit for refund in any other court. The taxpayer must follow the election procedures in Announcement 2005-80. In the Election, the taxpayer should indicate that the taxpayer has received a SND. If the taxpayer is within the 90-day (or 120-day, if applicable) period for filing a petition in Tax Court and there is sufficient time remaining on the period of limitations on assessment (taking extensions into account), the revenue agent will consider withdrawing the SND in accordance with Rev. Proc. 98-54, 1998-2 C.B. 531.

**Q.2.10 May the taxpayer in a docketed court case elect to participate in the settlement initiative?**

A.2.10 Under Section 2.5, a taxpayer who is a party to a court proceeding to determine the tax treatment of the transaction is not eligible to participate in the initiative. However, the taxpayer may propose a settlement on the same terms as in Announcement 2005-80, and the Office of Chief Counsel will consider that offer.

**Section 3 - Eligible Transactions**

**Q.3.1 If the taxpayer's transaction is not the same as one described in the Announcement, and is not one otherwise excluded from the settlement initiative, is the taxpayer still eligible to participate?**

A.3.1 The initiative is designed to be taxpayer-friendly, all-inclusive and to reach out to as many taxpayers as possible. Therefore, the transaction need only be substantially similar to one described in the notice and can include one that is expected to obtain similar tax consequences and is either factually similar or based on a similar tax strategy. Just as

taxpayers are advised to construe the term “substantially similar” broadly in favor of disclosure, the Service will construe this term broadly in favor of eligibility. Any filed election to participate will carry a strong presumption that the selected transaction is an eligible one.

#### **Section 4 – Settlement Terms**

##### **Q.4.1 How should a taxpayer that received a refund or reimbursement of the fees paid to the accounting firm or other party (or reduction of previously accrued but unpaid fees) relating to the transaction treat the refund?**

A.4.1 If the refund (which, for purposes of these FAQs, includes any reimbursement or reduction) was received before the taxpayer and the Service execute the closing agreement, the refund reduces the amount of fees paid or accrued. The closing agreement will provide that, if the refund is received after the taxpayer and Service execute the closing agreement, the taxpayer must recognize income from the refund in the tax year the amount was received.

##### **Q.4.2 If a taxpayer made a proper and timely disclosure under Announcement 2002-2, will the Service assert that the taxpayer is subject to penalties if the taxpayer does not elect to participate in the settlement initiative?**

A.4.2 A taxpayer that made a proper and timely disclosure (for which the taxpayer was eligible) under Announcement 2002-2 will not be subject to the accuracy-related penalty as provided in that announcement, regardless of whether the taxpayer elects to participate in the settlement initiative.

##### **Q.4.3 Does the fact that a tax shelter registration number was shown on the return provide the taxpayer with a penalty waiver?**

A.4.3 No. Reporting a tax shelter registration number on the return does not affect the applicability of the accuracy-related penalty.

##### **Q.4.4 Are amended returns filed after the release of Announcement 2005-80 eligible to be “qualified amended returns” within the meaning of Treas. Reg. § 1.6664-2(c), if they otherwise satisfy the conditions of a qualified amended return?**

A.4.4 Amended returns for years reflecting a listed transaction within the scope of Announcement 2005-80, or within the scope of another settlement initiative, may not be qualified amended returns. See Temp. Treas. Reg. § 1.6664-2T(c)(e)(i)(E), which applies to amended returns and requests for administrative adjustment filed on or after March 2, 2005. That provision does not allow an amended return to be qualified if it is filed on or after the

date on which the Commissioner announces a settlement initiative to compromise or waive penalties with respect to a listed transaction. Announcement 2005-80 is a settlement initiative that triggers that rule, and the announcement does not waive this rule for any period of time after the date of its publication.

**Q.4.5 Can a taxpayer participate in the settlement initiative if the taxpayer offers to pay the underpayment from the transaction, but does not want to pay the penalties?**

A.4.5 No. The terms of the initiative include a concession of the reduced accuracy-related penalty amount and all other applicable penalties relating to the transaction. The taxpayer may be entitled to a waiver of the accuracy-related penalty in certain situations. If the Service does not agree that the taxpayer is entitled to a waiver of the accuracy-related penalty, however, the taxpayer must accept the terms of the settlement in their entirety in order to participate in the initiative.

**Q.4.6 If the taxpayer participates in the initiative but does not agree with the penalty, can the taxpayer appeal the penalty?**

A.4.6 No. The settlement initiative is offered as an alternative to conventional Service resolution procedures. This is an administrative settlement intended to reduce the burden on both taxpayers and the Service, and completely resolve all aspects of the issues covered in the announcement.

**Q.4.7 If the taxpayer attempts to work out alternative payment arrangements and is unsuccessful, may the taxpayer appeal the alternative payment arrangement decision?**

A.4.7 No. A taxpayer that wishes to participate in the settlement initiative must fully pay all tax, interest, and penalties. Any person unable to fully pay must make payment arrangements acceptable to the Service prior to execution of the closing agreement prescribed by this announcement. The Collection Officer's determination of taxpayer's eligibility for other payment arrangements may not be reviewed by Appeals. If no agreement for alternative payment arrangements can be reached, the taxpayer cannot participate in this initiative.

**Q.4.8 If the taxpayer does not elect the settlement initiative, can the taxpayer use the Fast Track Settlement Appeals Process?**

A.4.8 Yes. If a taxpayer does not elect the settlement initiative, Fast Track Settlement is one of the alternative dispute resolution options available as a part of the administrative appeals process. However, all of the terms of Revenue Procedure 2003-40 will apply. For example, the taxpayer must elect fast track under Revenue Procedure 2003-40 and LMSB must agree to accept the case or issue for Fast Track consideration.

**Q.4.9 If a taxpayer's case is already in Appeals, can the taxpayer participate in this settlement initiative? Whom does the taxpayer notify?**

A.4.9 Yes. A taxpayer who otherwise meets the eligibility requirements may participate in this settlement initiative. The taxpayer must notify the Appeals Officer assigned to the case, and complete the election form and provide the requested information. See Section 5 of Announcement 2005-80.

**Q.4.10 If the taxpayer and the Service cannot agree to the terms of the closing agreement, will mediation with Appeals be an option?**

A.4.10 No.

**Q.4.11 A taxpayer is currently under examination and is unsure whether to take advantage of the settlement. May the taxpayer request a suspension of the examination until the taxpayer determines whether to participate? If so, for how long may the taxpayer request a suspension of the examination?**

A.4.11 Examination of transactions will not be suspended while the settlement offer time frame is open for consideration. However, cases involving transactions covered by Announcement 2005-80, and where the statutory period of limitations will not expire, will remain open until at least January 23, 2006, when the election is otherwise required to be filed and will have those eligible transactions addressed accordingly thereafter.

**Section 5 - Application Process**

**Q.5.1 How does a taxpayer make the election? What formats are acceptable and what is required?**

A.5.1 Form 13750 (Election to Participate in Announcement 2005-80 Settlement Initiative) has been created for this announcement and may be found on the IRS Web site at <http://www.irs.gov>. Revenue agents will also have copies of this form. The forms must contain original signatures and must be sent to **both** the examining agent (if the taxpayer is currently under examination or any TEFRA partnership in which the taxpayer is (or was) a partner is under examination) and to the address listed in the announcement. If the taxpayer is not currently under examination, the taxpayer only has to send the Election to the address listed in the announcement. The Election should be sent to the Service via certified mail or designated delivery service (within the meaning of § 7502(f)). The Election must be complete (as required by Announcement 2005-80) and submitted on or before January 23, 2006. Incomplete forms will be rejected and must be re-submitted on or before January 23, 2006, to be considered. The Election must be signed under penalties of perjury.

**Q.5.2 For purposes of Form 13750, what is considered a 'relevant tax return'?**

A.5.2 A 'relevant tax return' is generally any return open under the statute of limitations where a tax benefit was claimed.

**Q.5.3 Does a taxpayer that is currently under examination need to submit copies of tax returns required under this initiative?**

A.5.3 No.

**Q.5.4 Does the power of attorney for a partner in a TEFRA partnership need any special language?**

A.5.4 Yes. In the case of taxpayers that engaged in a transaction through a TEFRA partnership, the power of attorney must contain the following language under Number 3 or Number 5 of Form 2848 to qualify under IRC Section 6223:

"The acts authorized by this power of attorney include representation for the purposes of Subchapter C of Chapter 63 of the Internal Revenue Code."

**Q.5.5 Does the Election require the taxpayer to settle the transaction?**

A.5.5 No. The terms of the settlement are not binding on either the Service or the taxpayer until execution of the closing agreement. The filing of the Election does not obligate or bind the taxpayer to enter into the closing agreement.

**Q.5.6 What information is requested regarding out-of-pocket expenses?**

A.5.6 Taxpayers will use Form 13750 to attest, under penalties of perjury, to the total transaction costs paid by the taxpayer. Taxpayers will be asked to provide the amount of costs related to the transaction, the tax year in which the taxpayer paid those costs, and the manner and year in which the taxpayer claimed those costs for tax purposes. They will be asked to provide specific information regarding fees paid to financial advisors, accountants, attorneys, and others, the identity of parties to whom the fees were paid, and any refund or reimbursement of fees. In addition, the Service may request specific documentation to support the fees paid, including promotional materials in the taxpayer's possession, if not previously provided.

**Q.5.7 What is the period for providing additional information and documentation? Under what circumstances will an extension of this period be granted to the taxpayer to submit requested information and documentation under Section 5.B of Announcement 2005-80?**

A.5.7 Announcement 2005-80 allows the taxpayer 30 days to submit additional materials after the Service has requested them. To obtain an extension of this 30-day period, the taxpayer must show, to the satisfaction of the Service, that there is good cause for the need for an extension. The Service has the discretion to grant or to refuse an extension.

**Q.5.8 What if the taxpayer has unfiled tax returns?**

A.5.8 The taxpayer will not be able to reach an acceptable arrangement with Collection unless all delinquent returns have been filed. Any liability in the years with unfiled returns will need to be paid or included in the arrangement to resolve the account.

**Q.5.9 If the taxpayer is unable to fully pay immediately and requests additional time to pay the account, will the Service charge the taxpayer interest?**

A.5.9 Yes. Interest will continue to accrue on the account until it is fully paid. Interest is calculated on the entire unpaid liability. In addition, any failure to pay penalty may continue to accrue on the unpaid tax portion of the account. Depending on the circumstances, other penalties may also apply.

**Q.5.10 When will the interest suspension period under IRC Section 6404(g) end for taxpayers who participate in the settlement initiative?**

A.5.10 Section 903 of the American Jobs Creation Act of 2004 removed listed transactions from eligibility for interest suspension effective for interest accruing after October 3, 2004. Interest on listed transactions, to the extent IRC Section 6404(g) had suspended interest, began to accrue again on October 4, 2004.

**Q.5.11 Will a Notice of Federal Tax Lien be filed if full payment is not returned with signed closing agreement?**

A.5.11 Generally, a Notice of Federal Tax Lien will be filed if the liability is not fully paid. An extension of time to fully pay the liability can be granted for up to 120 days. Under these circumstances, the filing of a Notice of Federal Tax Lien can be withheld. The Service will not grant an extension of time if the taxpayer has not provided complete financial information. The filing of a Notice of Federal Tax Lien can be withheld if the taxpayer posts a bond or other acceptable collateral security.

**Q.5.12 The announcement requires the electing taxpayer to either fully pay at the time of signing the closing agreement or to make other arrangements. How does a taxpayer who cannot fully pay make other arrangements?**

A.5.12 At the time a taxpayer submits the signed closing agreement, if the taxpayer does not pay in full all tax, interest, and penalties due under the terms of the settlement, the taxpayer must submit complete financial statements within 30 days. The taxpayer will then be referred to a Collection Revenue Officer who will determine, within 30 days of receipt of all necessary financial information, the taxpayer's eligibility for other payment arrangements. Once the alternative payment arrangements are finalized, the closing agreement will be executed by the Service and assessment will be made. Failure to reach acceptable financial arrangements will make the taxpayer ineligible to participate in this settlement initiative.

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