



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.10.7

JULY 18, 2025

EFFECTIVE DATE

(07-18-2025)

PURPOSE

- (1) This transmits a revision of IRM 4.10.7, Examination of Returns, Issue Resolution.

MATERIAL CHANGES

- (1) The IRM subsection entitled “FTS Data Collection Sheet” has been removed due to obsolete procedures. This change incorporates Interim Guidance Memorandum SBSE-04-0524-0029, Interim Guidance for the Elimination of the Fast Track Settlement Data Collection Sheet.
- (2) Minor editorial changes have been made throughout this IRM. In addition, website addresses, legal references, and IRM references were reviewed and updated, and subsections were renumbered as necessary.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 4.10.7, September 12, 2022. This IRM incorporates Interim Guidance Memorandum SBSE-04-0524-0029, Interim Guidance for the Elimination of the Fast Track Settlement Data Collection Sheet, dated May 8, 2024.

AUDIENCE

Small Business/Self-Employed (SB/SE) Field Examination.

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4.10.7

Issue Resolution

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4.10.7.1
(07-18-2025)
Program Scope and Objectives

- (1) **Purpose.** This IRM section describes basic responsibilities of examiners in determining the correct tax liability as prescribed by the Internal Revenue Code (IRC). It is imperative that examiners can identify the applicable law, correctly interpret its meaning in light of congressional intent, and, in a fair and impartial manner, correctly apply the law based on the facts and circumstances of the case. IRM 4.10.7 addresses the following areas:
 - a. Researching tax law, IRM 4.10.7.2,
 - b. Evaluating evidence, IRM 4.10.7.3,
 - c. Arriving at conclusions, IRM 4.10.7.4,
 - d. Proposing adjustments to taxpayers and/or representatives, IRM 4.10.7.5,
 - e. Shift in burden of proof, IRM 4.10.7.6.
- (2) **Audience.** These procedures apply to examiners in Small Business/Self-Employed (SB/SE) Field Examination.
- (3) **Policy Owner.** The Director, Examination Field and Campus Policy, who reports to the Director, Examination Headquarters.
- (4) **Program Owner.** Field Examination General Processes (FEGP), which is under the Director, Examination Field and Campus Policy.
- (5) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance.

4.10.7.1.1
(01-10-2018)
Background

- (1) This IRM provides guidance for the proper application of tax law to resolve issues and determine the correct tax liability.

4.10.7.1.2
(09-12-2022)
Authority

- (1) By law, the IRS has the authority to conduct examinations to determine the correct tax liability under Title 26, Internal Revenue Code, Subtitle F – Procedure and Administration, Chapter 78, Discovery of Liability and Enforcement of Title, Subchapter A, Examination and Inspection, which includes, but is not limited to, the following IRC sections:
 - IRC 7602, Examination of books and witnesses
 - IRC 7605, Time and place of examination

Note: Procedures for exercising examination authority are contained in 26 CFR 601.105.

- (2) The authorities for this IRM include:
 - IRC 6103, Confidentiality and disclosure of returns and return information
 - IRC 6751, Procedural requirements
 - IRC 7491, Burden of proof
 - IRC 7805, Rules and regulations

4.10.7.1.3
(01-10-2018)
Responsibilities

- (1) The Director, Examination Headquarters, is the executive responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.5.5, Examination Headquarters, for additional information.

- (2) The Director, Examination Field and Campus Policy, reports to the Director, Examination Headquarters, and is responsible for the delivery of policy and guidance that impacts the field examination process. See IRM 1.1.16.5.5.1, Examination Field and Campus Policy, for additional information.
- (3) Field Examination General Processes (FEGP), which is under the Director, Examination Field and Campus Policy, is the group responsible for providing policy and procedural guidance on standard examination processes to field employees. See IRM 1.1.16.5.5.1.1, Field Examination General Processes, for additional information.
- (4) All examiners must perform their professional responsibilities in a way that supports the *IRS Mission*. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (5) Examiners and their managers should thoroughly acquaint themselves with the examination procedures and information contained in this IRM, as well as other resources, such as those listed in IRM 4.10.1.1.7, Related Resources.

4.10.7.1.4
(01-10-2018)
Terms

- (1) This IRM defines various legal terms in each section. For other commonly used terms related to the examination process, see IRM 4.10.1.1.5, Terms.

4.10.7.1.5
(09-12-2022)
Acronyms

- (1) The following table lists commonly used acronyms and their definitions used throughout this IRM:

Acronym	Definition
A-CIS	AIMS - Centralized Information System
ACM	Appeals Case Memorandum
AM	Advisory Memorandum
AOD	Action on Decision
ARC	Aging Reason Code
ATG	Audit Technique Guide
BBA	Bipartisan Budget Act
BLS	Bureau of Labor Statistics
BTA	US Board of Tax Appeals
CB	Cumulative Bulletin
CCDM	Chief Counsel Directives Manual
CFR	Code of Federal Regulations
CPI	Consumer Price Index
CUR	Confidential Unpublished Ruling
DDC	Decision of District Court
ECF	Electronic Case File

Acronym	Definition
ELP	Electing Large Partnership
EQMS	Examination Quality Measurement System
EQTS	Exam Quality and Technical Support
FAQs	Frequently Asked Questions
FR	Federal Register
FTS	Fast Track Settlement
GCM	General Counsel Memorandum
IDR	Information Document Request
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
LB&I	Large Business and International
NPRM	Notice of Proposed Rulemaking
PLR	Private Letter Ruling
POD	Post of Duty
SB/SE	Small Business/Self-Employed
SFR	Substitute for Return
SME	Subject Matter Expert
SPDER	Office of Servicewide Policy, Directives and Electronic Research
TAM	Technical Advice Memorandum
TC	Tax Court
TD	Treasury Decision
TEFRA	Tax Equity and Fiscal Responsibility Act
TIN	Taxpayer Identification Number
TM	Technical Memorandum
USC	United States Code
USTC	United States Tax Court

4.10.7.1.6
(01-10-2018)
Related Resources

- (1) The IRM sections in Part 4, Chapter 10, Examination of Returns, contain many of the procedures and guidelines examiners will use. See IRM 4.10.1.1.7, Related Resources, for a list of related IRM sections and websites.

4.10.7.2
(01-01-2006)
Researching Tax Law

- (1) Conclusions reached by examiners must reflect correct application of the law, regulations, court cases, revenue rulings, etc. Examiners must correctly determine the meaning of statutory provisions and not adopt strained interpretations.

- (2) The federal tax system is constantly changing. Examiners must keep well informed about the ever-growing body of tax authorities and advances in the management and storage of information.
- (3) Income tax law is too complex for examiners to immediately perceive its ramifications and provisions in all examinations. In the words of Supreme Court Justice Jackson, "No other branch of the law touches human activities at so many points. It can never be made simple."
- (4) This section focuses on researching federal tax law, evaluating the significance of various authorities, and supporting conclusions reached with appropriate citations. The profiles of various tax authorities in this chapter are intended to help examiners become familiar with the most common, but by no means all, sources or available research techniques.

4.10.7.2.1
(09-12-2022)

Internal Revenue Code

- (1) The IRC of 1986 is the primary source of federal tax law. It imposes income, estate, gift, employment, miscellaneous excise taxes, and provisions controlling the administration of federal taxation. The IRC is found at Title 26 of the United States Code (USC). The USC consists of fifty-three titles.
- (2) For ease of use, the IRC is divided into different units: subtitles, chapters, sub-chapters, parts, and sections. Listed below are the chapters which fall within the eleven subtitles of the current IRC.

Subtitle	Chapters
A - Income Taxes	1–1564
B - Estate and Gift Taxes	2001–2801
C - Employment Taxes	3101–3512
D - Miscellaneous Excise Taxes	4041–5000C
E - Alcohol, Tobacco, and Certain Other Excise Taxes	5001–5891
F - Procedure and Administration	6001–7874
G - The Joint Committee on Taxation	8001–8023
H - Financing of Presidential Election Campaigns	9001–9042
I - Trust Fund Code	9500–9602
J - Coal Industry Health Benefits	9701–9722
K - Group Health Plan Requirements	9801–9834

Figure 4.10.7-1

- (3) Sections are usually arranged in numerical order. This sometimes leads to the need to show an IRC section number followed by a capital letter not in parentheses. An example is IRC 280A. This designation is used because subsequent legislation created additional IRC sections in Part IX, requiring the addition of new sections after section 280. Since section 281 already existed, new sections were added by creating sections 280A, 280B, 280C, etc.

- 4.10.7.2.1.1
(01-01-2006)
Authority of the Internal Revenue Code
- (1) The courts give great importance to the literal language of the IRC, but not every tax controversy can be resolved by the language in the IRC. In cases where the literal language of the IRC is ambiguous, the courts will consider the history of a particular section, including committee reports and other legislative history, Treasury Regulations (Treas. Reg.) and other IRS published guidance interpreting the IRC section, and the relationship of the particular IRC section to other IRC sections.
- 4.10.7.2.1.2
(01-01-2006)
Citing the Internal Revenue Code
- (1) It is often necessary to cite IRC sections in reports and to taxpayers in support of a position regarding an issue. For convenience, the Internal Revenue Code is abbreviated IRC and the symbols § or §§ are often used in place of section and sections, respectively.
- (2) When making reference to an IRC section, usually no reference is made to the title, subtitle, chapter, subchapter, or part. IRC sections are divided into subsections, paragraphs, subparagraphs, and clauses. For example, IRC 170(b)(1)(A)(i) is subdivided as follows:
- a. IRC 170 - Code section, Arabic numbers;
 - b. Subsection (b) - lower case letter in parentheses;
 - c. Paragraph (1) - Arabic number in parentheses;
 - d. Subparagraph (A) - capital letter in parentheses; and
 - e. Clause (i) - lower case Roman numerals in parentheses.
- 4.10.7.2.1.3
(01-01-2006)
Prior Tax Law
- (1) The IRC is continually changing. It is important that examiners determine the law applicable to the year under examination. To do so, determine whether the applicable law has been modified, and if so, the date on which the changes became effective. Many publishers provide this information in small print immediately following the current IRC section.
- 4.10.7.2.2
(01-01-2006)
Committee Reports
- (1) Federal tax legislation originates in the House of Representatives. Hearings are held by the House Ways and Means Committee. When a bill is introduced in the House, a Committee Report is published which often states the reason the bill is being proposed. This reasoning establishes the legislative intent behind the enacted law.
- (2) After the bill clears the House, it is considered by the Senate. The Senate Finance Committee holds hearings and prepares a report explaining any changes made to the House bill. A Conference Committee later resolves any differences between the House and Senate versions of the bill and issues its own report.
- (3) When the bill passes both the House and Senate, it is sent to the President to be signed. Once signed, the bill becomes law and a new or amended section of the IRC is enacted. Committee Reports are useful tools to determine Congressional intent behind certain tax laws. They can help assist examiners in correctly applying the law.
- 4.10.7.2.2.1
(09-12-2022)
Publication of Committee Reports
- (1) Committee Reports are published in full in the Congressional Record and in part in the *Internal Revenue Bulletin (IRB)*. Selected reports are found in many commercial tax services.
- (2) Announcement 2013-12, 2013-11 IRB 651 announced the elimination of printing paper copies of the IRB. The IRB is available electronically on *IRS*.

gov. In addition, the creation of the Cumulative Bulletin (CB) would be eliminated. The final edition of the CB is the 2008-2 edition.

4.10.7.2.2.2
(01-01-2006)

Citing Committee Reports

- (1) Committee Reports are identified by a number representing the session of Congress and a sequence number. For example, the Tax Reform Act of 1986 was enacted by Public Law 99–514. House, Senate, and Conference reports accompanying that legislation are cited as follows:
 - a. House Report 99–426, 1986–3 CB Vol. 2;
 - b. Senate Report 99–313, 1986–3 CB Vol. 3; and
 - c. Conference Report 99–841, 1986–3 CB Vol. 4.
- (2) The reports were published in the CB prior to the 2008-2 edition. See IRM 4.10.7.2.5, Cumulative Bulletin. In each citation, “99” refers to the 99th Congress. Some publishers refer to the reports collectively as “Committee Reports, PL 99–514.”

4.10.7.2.3
(01-01-2006)

Code of Federal Regulations

- (1) The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the Federal Register (FR) by the Executive departments and agencies of the Federal Government. It is divided into fifty titles which represent broad areas subject to Federal regulation. Each title is divided into chapters usually bearing the name of the issuing agency. Each chapter is subdivided into parts covering specific regulatory areas. Title 26 comprises the Internal Revenue Regulations and is cited 26 CFR.

4.10.7.2.3.1
(09-12-2022)

Income Tax Regulations

- (1) Treasury Regulations (Treas. Regs.), sometimes referred to as Federal Income Tax Regulations, are the official Treasury Department interpretation of the IRC and follow the numbering sequence of IRC sections. Regulations are the most authoritative form of published guidance. Only regulations may be used to affect existing regulations. Other forms of published guidance may be used to announce how the IRS may address an issue in regulations, but they do not have the force and effect of regulations.

4.10.7.2.3.2
(01-01-2006)

Types of Regulations

- (1) Legislative and interpretative regulations are issued by the Secretary of the Treasury. If the IRC states “The Secretary shall provide such regulations . . .”, then the regulations issued are legislative. Interpretative regulations are issued under the general authority of IRC 7805(a), which allows regulations to be written when the Secretary determines they are needed to clarify an IRC section.
- (2) The courts consider the merit of both interpretative and legislative regulations. However, more weight is given to legislative regulations than to interpretative regulations.

4.10.7.2.3.3
(09-12-2022)

Classes of Regulations

- (1) Regulations are written by the Office of Chief Counsel, Internal Revenue Service, and are approved by the Department of the Treasury. There are three classes of regulations: proposed regulations, temporary regulations, and final regulations.
- (2) **Proposed Regulations** — Proposed regulations provide guidance concerning Treasury’s interpretation of an IRC section. They are announced to the public by a Notice of Proposed Rulemaking (NPRM). See *CCDM 32.1.1.2.2*, Notice of Proposed Rulemaking, for additional information. Taxpayers generally may not

rely on proposed regulations for planning purposes, except if there are no applicable final or temporary regulations in force and there is an express statement in the preamble to the proposed regulations that taxpayers may rely on them currently. If there are applicable final or temporary regulations in force, taxpayers may only rely on proposed regulations for planning purposes in the limited circumstance if the preamble to the proposed regulations contain an express statement permitting taxpayers to rely on them currently, notwithstanding the existence of the final or temporary regulations. Examiners, however, should follow proposed regulations, unless the proposed regulation is in conflict with an existing final or temporary regulation.

- (3) **Temporary Regulations** — Temporary regulations are issued to provide immediate guidance to the public and IRS and Counsel employees prior to publishing final regulations. Temporary regulations are effective when published by the Office of the Federal Register.
- (4) **Final Regulations** — Final regulations are issued after considering the public comments on the proposed regulations. The preamble of a final rule also cites to the underlying NPRM and other rulemaking history, discusses and analyzes public comments received and explains the IRS's final decision. A final regulation is almost always preceded by an NPRM.

4.10.7.2.3.4
(01-01-2006)
**Authority of the
Regulations**

- (1) The IRS is bound by the regulations. The courts are not.
- (2) If both temporary and proposed regulations have been issued for the same IRC section and the text of both are similar, examiners' positions should be based on the temporary regulations because it can be cited as an authority for proposing an adjustment.
- (3) When no temporary or final regulations have been issued, examiners may use a proposed regulation to support a position. Indicate that the proposed regulation is the best interpretation of the IRC section available.

4.10.7.2.3.5
(01-01-2006)
**Publication of the
Regulations**

- (1) Regulations are printed in the following publications:
 - a. Federal Register,
 - b. Code of Federal Regulations (CFR),
 - c. Under the heading "Treasury Decisions" (TD) in the Internal Revenue Bulletins (IRB),
 - d. Under the heading "Treasury Decisions" (TD) in the Cumulative Bulletin (CB)(2008-2 edition and prior), and
 - e. Tax services of commercial publishers.

4.10.7.2.3.6
(01-01-2006)
Citing the Regulations

- (1) The citation for a regulation contains three basic organizational units:
 - a. The part number,
 - b. The IRC section number, and
 - c. The regulation section number.
- (2) Treas. Reg. 1.61–9(c) is illustrated below:

a) Part Number of CFR	b) IRC Section	c) Regulation Section and Subsection
1	61	9(c)

- a. The first division is the CFR part number and indicates the subject of the regulation. The part number appears before the decimal point in a citation. In the citation Treas. Reg. 1.61–9(c), the number 1 refers to Part 1 of the CFR, which is income tax. If the regulation were on employment taxes, the number 31 would precede the decimal point. Frequently used part numbers are as follows:

Frequently Used Part Numbers
Part 1 - Income Taxes
Part 20 - Estate Tax
Part 25 - Gift Tax
Part 31 - Employment Taxes and Collection of Income Tax at Source
Part 301 - Procedure and Administration
Part 601 - Statement of Procedural Rules

- b. The numbers immediately after the decimal point refer to the IRC section to which the regulations apply. In the citation Treas. Reg. 1.61–9(c), the number 61 refers to IRC 61. The regulations are sequenced by IRC section numbers. For example, Treas. Reg. 31.6051 comes before 31.6052 but after 301.6047.
- c. The section number of the regulation is separated from the IRC section by a hyphen. Again, using the citation Treas. Reg. 1.61–9(c), the number 9 is the regulation section number and (c) is the subsection.
- (3) Generally, there is no direct correlation between the sequence designation of the IRC and the organization of a Treas. Reg. IRC 1245(c) discusses “Adjustment to Basis,” while the interpretive discussion of the same topic is found in Treas. Reg. 1.1245-5.

4.10.7.2.3.7
(01-01-2006)

Outdated Regulations

- (1) Regulations may only apply to a particular time period. This fact is sometimes reflected by the publisher in the paragraph heading or symbols when accessed via electronic tax law research. Look for disclaimers and cautions regarding time frames.
- (2) Regulations do not always reflect recent changes in the law and may not be applicable to years following a change in the law. An example would be when IRC 179 changed from additional first year depreciation to IRC 179 expensing. Occasionally, when a major change of a particular IRC section has been enacted and the Commissioner issues new regulations, two sets of regulations will appear covering the same IRC section. Generally the new regulation is distinguished from the old regulation by adding a letter after the IRC section part of the citation, e.g., Treas. Reg. 1.170A-1.

4.10.7.2.3.8
(01-01-2006)
**Financial
Record-Keeping
Regulations**

- (1) Financial Record keeping Regulations are issued by the Treasury Department under authority of the Federal Deposit Insurance Act, 12 USC 1829b, 1951–1959, and the Currency and Foreign Transactions Reporting Act, 31 USC 5311 et seq. The regulations specify the financial reports and records to be kept and/or filed by those engaged in domestic and foreign currency transactions. See 31 CFR 1010.100 et seq.

4.10.7.2.4
(01-10-2018)
**Internal Revenue
Bulletin**

- (1) The *Internal Revenue Bulletin* (IRB) is the authoritative instrument of the Commissioner of Internal Revenue for announcing official IRS rulings and procedures and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published on a weekly basis by the Government Printing Office.
- (2) It is the policy of the IRS to publish in the IRB all substantive rulings necessary to promote a uniform application of the tax laws, including rulings that supersede, revoke, modify, or amend any of those previously published in the IRB. All published rulings apply retroactively unless otherwise indicated.

Caution: IRS employees must follow items published in the IRB and taxpayers may rely on them. Some items, such as frequently asked questions (FAQs), can be found on *IRS.gov* but have not been published in the IRB. FAQs that appear on *IRS.gov* but that have not been published in the IRB are not legal authority and should not be used to sustain a position unless the items (e.g., FAQs) explicitly indicate otherwise or the IRS indicates otherwise by press release or by notice or announcement published in the IRB.

4.10.7.2.4.1
(09-12-2022)
**Other Documents
Published in the Internal
Revenue Bulletin**

- (1) In addition to Revenue Rulings and Revenue Procedures, a number of miscellaneous documents having application to tax law interpretation and administration are published in the IRB.
 - a. **Announcements** — Announcements are public pronouncements on matters of general interest, such as effective dates of temporary regulations, clarification of rulings and form instructions. They are issued when guidance of a substantive or procedural nature is needed quickly. Announcements can be relied on to the same extent as revenue rulings and revenue procedures. Announcements are identified by a two digit number representing the year and a sequence number.

Example: Announcement 96-124, 1996-49 IRB 22. This announcement is found in *Internal Revenue Bulletin* No. 1996-49, issued December 2, 1996, at page 22.
 - b. **Notices** — A notice is a public pronouncement by the IRS that may contain guidance that involves substantive interpretations of the IRC or other provisions of the law. Notices may be used in circumstances in which a revenue ruling or revenue procedure would not be appropriate. In addition, notices may be used to solicit public comments on issues under consideration, in connection with non-regulatory guidance, such as a proposed revenue procedure. A notice also can be used to relate what regulations will say in situations in which the regulations may not be published in the immediate future.

Example: Notice 95-67 is cited as Notice 95-67, 1995-2 CB 343.

- c. **Delegation Orders** — Delegation Orders formally delegate authority to perform certain tasks or make certain decisions to specified IRS employees. There are two types of delegation orders: Servicewide Delegation Orders and Division/Function Delegation Orders. See IRM 1.11.4.1.5, Terms and Acronyms for definitions. Delegation orders are derived from authoritative documents (e.g., statute, regulations, Treasury decisions). See IRM 1.11.4.5, Purpose and Contents of Delegation Orders. Delegation orders are identified by number. Servicewide delegation orders are found in IRM 1.2.2, Servicewide Delegations of Authority. Division/function delegation orders are found in IRM 1.2.61 through IRM 1.2.65. SB/SE Division delegation orders are found in IRM 1.2.65, Small Business/Self-Employed Division Delegations of Authority. Any delegation order approved between IRM updates can be found on *IRS.gov*. Some delegation orders are selected for publication and appear in the *Internal Revenue Bulletin* and were included in the CB (2008-2 edition and prior). Instructions for preparing, clearing and issuing delegation orders can be found in IRM 1.11.4, Servicewide Delegation Order Process.

4.10.7.2.4.2
(01-01-2006)
**Citing the Internal
Revenue Bulletin**

- (1) Items appearing in the *Internal Revenue Bulletin* that have not appeared in the CB (2008-2 edition and prior) should be cited to the weekly Bulletin as follows, Rev. Rul. 96–55, 1996–49 IRB 4. *Internal Revenue Bulletin* No. 1996–49 was issued December 2, 1996. Revenue Ruling 96–55 is found at page 4.

4.10.7.2.5
(09-12-2022)
Cumulative Bulletin

- (1) The CB is a consolidation of items published in the weekly *Internal Revenue Bulletin*. The CB was issued on a semi-annual basis. The CB is numbered 1 to 5, inclusive (April 1919 to December 31, 1921); and I–1 and I–2 to XV–1 and XV–2, inclusive (January 1, 1922, to December 31, 1936). Each CB number thereafter bears the particular year covered, for example, 1963–1 (January 1 to June 30, 1963).

Note: The creation of the CB was eliminated as announced in Announcement 2013-12, 2013-11 IRB 651. The final edition of the CB is the 2008-2 edition.

- (2) The CB is divided into four parts:
 - a. Part I, 1986 Code: This part is divided into two subparts based on provisions of the IRC of 1986. Arrangement is sequential according to IRC and regulations sections. The IRC section is shown at the top of each page.
 - b. Part II, Treaties and Tax Legislation: This part is divided into two subparts as follows: (1) Subpart A, Tax Conventions, and (2) Subpart B, Legislation and Related Committee Reports.
 - c. Part III, Administrative, Procedural, and Miscellaneous: To the extent practical, pertinent cross references to these subjects are contained in the other parts and subparts.
 - d. Part IV, Notice of Proposed Rule Making: The preambles and text of Proposed Regulations that were published in the Federal Register during this six month period are printed in this section. Included in this section is a list of persons disbarred or suspended from practice before the IRS.

4.10.7.2.5.1
(01-01-2006)
**Citing the Cumulative
Bulletin**

- (1) The title of Cumulative Bulletins issued before 1937 does not reflect the year of issuance. A citation to the CB must include the year in parentheses at the end of the citation, as follows: SST 31, XV-2 CB 400 (1936).
- (2) After 1936, a citation to the Bulletin is as follows: Rev. Proc. 71-4, 1971-1 C.B. 662. Revenue Procedure 71-4 is found at page 662, volume one of the 1971 Cumulative Bulletins (January – June, 1971).
- (3) To call attention to a certain page of a document, such as the Bulletin, show first the page on which the document begins followed by the page to which attention is directed. Thus, the citation Rev. Rul. 63-107, 1963-1 C.B. 71, 74, directs the reader's attention to page 74 of Rev. Rul. 63-107 found in volume 63-1 of the Cumulative Bulletin, starting on page 71.

4.10.7.2.6
(01-01-2006)
**Revenue Rulings and
Procedures**

- (1) A revenue ruling (Rev. Rul.) is an official interpretation by the IRS of the IRC, related statutes, tax treaties, and regulations. It is the conclusion of the IRS on how the law is applied to a specific set of facts.
- (2) A revenue procedure (Rev. Proc.) is an official statement of a procedure by the IRS that affects the rights or duties of taxpayers or other members of the public under the IRC; related statutes, tax treaties, and regulations; or information that, although not necessarily affecting the rights and duties of the public, should be a matter of public knowledge.
- (3) The purpose of revenue rulings and revenue procedures is to promote uniform application of the tax laws. IRS employees must follow revenue rulings and revenue procedures. Taxpayers may rely on them or appeal their position to the Tax Court or other federal court.
- (4) Revenue Rulings and Revenue Procedures that have an effect on previous rulings use the following defined terms to describe the effect:
 - a. **Amplified** describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the original fact situation.
 - b. **Clarified** is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, confusion. It is not used where a position in a prior ruling is being changed.
 - c. **Distinguished** describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.
 - d. **Modified** is used where the substance of a previously published position is being changed.
 - e. **Obsoleted** describes a previously published ruling that is not considered determinative with respect to future transactions. The term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.
 - f. **Revoked** describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.
 - g. **Superseded** describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986

IRC and regulations the same position published under the 1939 IRC and regulations. The term is also used when it is desirable to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and superseded describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

- h. **Supplemented** is used in situations in which a list, such as a list of the name of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.
- i. **Suspended** is used in rare situations to show that the previously published ruling will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a IRS study.

4.10.7.2.6.1
(01-01-2006)
Authority of Rulings and Procedures

- (1) Rulings do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings, the effects of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Caution is urged against reaching the same conclusion in other cases, unless the facts and circumstances are substantially the same.

4.10.7.2.6.2
(01-01-2006)
Publication of Rulings and Procedures

- (1) Revenue Rulings and Procedures are published by the IRS in the *Internal Revenue Bulletin*.

4.10.7.2.6.3
(01-01-2006)
Citing Rulings and Procedures

- (1) Locating a ruling or procedure requires the following information from the citation:
 - a. The year the ruling or procedure was issued,
 - b. The ruling or procedure number,
 - c. The volume number of the IRB or CB,
 - d. The page number of the Ruling or Procedure.
- (2) Rev. Rul. 76–12, 1976–2 CB 88, is illustrated below:

Ruling Number Showing Year of Issue	Volume Number	Name of Publication	Page Number
76-12	1976-2	CB	88

4.10.7.2.7
(01-01-2006)
IRS Publications

- (1) IRS Publications explain the law in plain language for taxpayers and their advisors. They typically highlight changes in the law, provide examples illustrating IRS positions, and include worksheets. Publications are nonbinding on the IRS and do not necessarily cover all positions for a given issue. While a good source of general information, publications should not be cited to sustain a position.

4.10.7.2.8
(01-01-2006)
Court Decisions and Case Law

- (1) This section focuses on the federal courts (and their predecessors) that interpret federal tax law, and the role of case law in tax research and decision making. This section includes the following:

IRM Reference	IRM Title
IRM 4.10.7.2.8.1	US Board of Tax Appeals
IRM 4.10.7.2.8.2	Tax Court of the United States
IRM 4.10.7.2.8.3	US District Court and US Court of Federal Claims
IRM 4.10.7.2.8.4	Courts of Appeals
IRM 4.10.7.2.8.5	US Court of Appeals for the Federal Circuit
IRM 4.10.7.2.8.6	Supreme Court
IRM 4.10.7.2.8.7	Citators: Researching Case History
IRM 4.10.7.2.8.8	Importance of Court Decisions

4.10.7.2.8.1
(01-01-2006)
US Board of Tax Appeals

- (1) The US Board of Tax Appeals (BTA) is the predecessor of the United States Tax Court (USTC). Prior to 1942, the BTA was the prepayment forum for taxpayers who wanted judicial review of the IRS' determination of deficiencies in income, excess profits, and estate and gift taxes.
- (2) Although these decisions are old, many retain precedential value because they address issues of continuing significance or state principles that are still valid. However, a BTA decision may be based upon an authority that is obsolete and all references to the IRC are to a pre-1954 IRC. Therefore, caution must be exercised in citing BTA decisions.
- (3) BTA decisions are cited as follows: *Simons Brick Co. v. Commissioner* is cited 14 BTA 878 where "14" is the volume number, "BTA" is the publication title, and "878" is the page number. These decisions are available from commercial publishers.

4.10.7.2.8.2
(01-01-2006)
Tax Court of the United States

- (1) When taxpayers disagree with a determination and the case is not settled through the Appeals process, taxpayers may petition the USTC for a judicial determination of tax liability before paying the tax. Tax Court offers taxpayers a forum for disputing deficiencies asserted by the IRS under income, estate and gift tax, and certain (not all) employment tax and excise tax provisions.

4.10.7.2.8.2.1
(01-01-2006)
**Small Tax Case
Procedures**

- (1) Taxpayers can elect to have their Tax Court cases involving not more than \$50,000 for any one year handled under the court's "small tax case procedures." These procedures are authorized to allow the court to handle cases involving small sums of money in a more expeditious and informal manner. The decision of the Tax Court in a case handled under the "small tax case procedures" is final and may not be appealed by either party. These decisions have no precedential value.

4.10.7.2.8.2.2
(01-01-2006)
Regular Opinions

- (1) Tax Court regular opinions are decisions of the Court that involve more than mere factual determinations or applications of well established legal principles. They generally involve new decisions on points of law that set precedents. Regular opinions are published in "Reports of the United States Tax Court" by the Government Printing Office. Commercial publishers also print these decisions.

4.10.7.2.8.2.3
(01-01-2006)
Memorandum Decisions

- (1) Memorandum decisions primarily involve factual determinations and the application of well-established legal rules. Memorandum decisions do not warrant publication in bound volumes in the opinion of the Court. They are published in pamphlets by the Government and in bound volumes by commercial publishers.

4.10.7.2.8.2.4
(01-01-2006)
**Citing Tax Court
Decisions**

- (1) In citing a regular decision of the USTC, examiners should name the case, refer to the number of the volume in which it is published, and the page in the volume on which the ruling begins. For example: Richard A. Sutter, 21 TC 170.
- (2) Examiners should be careful not to cite a Tax Court case in which the decision was against the Government unless that decision has been **acquiesced** by the Commissioner (see IRM 4.10.7.2.8.8.1 (4), Action on Decision). If the decision was against the Commissioner and **acquiescence** followed, the decision must be noted as "**acq.**" A decision against the Government which has been **nonacquiesced** in should be noted as "**nonacq.**"
- (3) Memorandum decisions are usually cited with reference to one or both of two commercial publications. For example: R.L. Taylor v. Commissioner may be cited as follows:
 - a. CCH, Incorporated: Taylor, R.L. 40 TCM 1206 1980-376 Dec. 37,228(M)
 - b. Research Institute of America: Taylor, R.L. 1980 TC Memo 80376
- (4) Some of the information is the same in each citation, such as the case name and decision number (1980-376 and 80376, respectively). However, reference to where the decision is found is different and the CCH citation includes a CCH decision number, Dec. 37,228(M).
- (5) The term "v. Commissioner" is not used in citing USTC cases.

4.10.7.2.8.3
(01-01-2006)
**US District Court and US
Court of Federal Claims**

- (1) Generally, the United States District Court and the United States Court of Federal Claims hear tax cases after the taxpayer has paid the tax and filed a claim for refund or credit. If the claim is denied by the IRS, the taxpayer may file a suit for refund or credit either with the District Court or the Court of Federal Claims. District Court decisions may be appealed to the Courts of Appeals for the appropriate circuit and decisions of the court of Federal Claims

may be appealed to the Court of Appeals for the Federal Circuit. The Supreme Court of the United States may, at its discretion, review decisions of a Court of Appeals.

4.10.7.2.8.3.1
(01-01-2006)
District Courts

- (1) United States District Courts are the primary federal courts of original jurisdiction and are located across the United States and its possessions. This is the only court where taxpayers can request a jury trial.
 - (2) Decisions of District Courts are published by commercial publishing houses. Examples are:
 - a. CCH Incorporated: "United States Tax Cases" (cited USTC)
 - b. Research Institute of America: "American Federal Tax Report" (cited AFTR)
 - c. West publishing Company: "Federal Reports"(cited F.3d)
- Note:** West Publishing Company publishes all decisions; CCH and Research Institute publish only federal tax decisions.
- (3) Citing District Court decisions is demonstrated below for the case of Ruby Smith Stahl v. United States.
 - a. CCH Incorporated: 69–1 USTC 9179
 - b. Research Institute: 23 AFTR 2d 69–563
 - c. West Publishing: 294 F. Supp. 243 (DDC 1969)
 - (4) If a case has been decided but not published, cite as follows: Gifford Corp. v. United States, Civil No. 73–1250 (D. Mass., Jan. 10, 1973).
 - (5) If a case has not been decided, cite as follows: Cowden Mfg. Co. v. United States, Docket No. 2227 (ED Ky., filed April 17, 1972).

4.10.7.2.8.3.2
(01-01-2006)
US Court of Federal Claims

- (1) The decisions of the United States Court of Federal Claims, previously known as the United States Claims Court, are published by the following commercial publishers:
 - a. CCH Incorporated: United States Tax Cases (cited USTC)
 - b. Research Institute of America: American Federal Tax Report (cited AFTR)
 - c. West Publishing Company: Federal Reports (cited F.2d, F.3d, F.4th, etc.) and beginning October 1982, Court of Federal Claims Reporter (cited Fed. Cl. or Cl. Ct.).
- (2) Citing United States Court of Claims is demonstrated below for the case of Uptown Club of Manhattan, Inc. v. United States.
 - a. CCH Incorporated: 49–1 USTC 9261
 - b. Research Institute: 37 AFTR 1316
 - c. West Publishing: 83 F. Supp. 823 (Cl. Ct. 1949)
- (3) Citing a Claims Court decision is demonstrated below for the case of Recchie v. United States.
 - a. CCH Incorporated: 83–1 USTC 9312
 - b. Research Institute: 51 AFTR 2d 83–1010
 - c. West Publishing: 1 Cl. Ct. 726

4.10.7.2.8.4
(01-01-2006)

Court of Appeals

- (1) Either the taxpayer or the government may appeal decisions of the Tax Court (except for cases handled under the “small tax case procedures”), district courts, and the Court of Federal Claims to the United States Circuit Courts of Appeals. There are 13 courts of appeals.
- (2) District courts must follow the decisions of the court of appeals for the circuit in which they are located. For example, the District Court for the Eastern District of Missouri must follow decisions of the Court of Appeals for the Eighth Circuit. If the eighth circuit has not rendered a decision on a particular issue, the district court may reach its own conclusion on the issue or follow the decision of another circuit or district court that has reviewed the issue. Because the courts in one circuit are not bound by the decision of the appellate court in another circuit, examiners should cite to cases supporting their position from the circuit where the taxpayer resides. If the appellate court for that circuit has not taken a position on the issue, the examiner may cite to the decisions of other appellate courts or district courts to support their position.
- (3) Since one circuit court is not bound by the decision of a court from another circuit, it is important to find a case from the circuit that will hear the case when citing a case supporting the position taken on an issue. If a decision on a particular issue has not been rendered in the examiner’s circuit, cite a supporting decision rendered in another circuit.
- (4) Decisions of the Courts of Appeals are published by commercial publishers in the following volumes:
 - a. CCH Incorporated: United States Tax Cases (cited USTC)
 - b. Research Institute of America: American Federal Tax Report (cited AFTR)
 - c. West Publishing Company: Federal Reports, Second Series (cited F.2d)
- (5) Citing United States Courts of Appeals decisions:
 - a. Example: In the case of *Graham v. Commissioner*, the citation is 6 F.2d 878 (4th Cir. 1964).
 - b. If a case has not been reported in Federal Reports, cite an unofficial reporter, as follows: *Marwais Steel Co. v. Commissioner*, 17 AFTR 2d 11 (9th Cir. 1965), or *Marwais Steel Co. v. Commissioner*, 66–1 USTC 85, 126 (9th Cir. 1965).

4.10.7.2.8.5
(01-01-2006)

US Court of Appeals for the Federal Court

- (1) Before October 1, 1982, decisions of the US Court of Claims were appealed directly to the Supreme Court. A new appellate court, the United States Court of Appeals for the Federal Circuit was established in October 1982 to hear appeals of decisions of the United States Court of Federal Claims.
- (2) Exhibit 4.10.7-1 shows the jurisdiction of the circuits of the Court of Appeals.

4.10.7.2.8.6
(01-01-2006)

Supreme Court

- (1) Decisions of the US Courts of Appeal, including the Court of Appeals for the Federal Circuit, may be appealed to the United States Supreme Court. The Supreme Court of the United States is the highest court of the land. In general, Supreme Court review is discretionary, the Supreme Court accepts cases which it views as having national importance. Only a limited number of tax cases are heard.

- (2) Supreme Court review is by a petition for a “writ of certiorari.” If the Supreme Court accepts the petition, it will **grant** the writ, cited **cert. granted**. If the petition is denied, the case is cited **cert. denied**.
- (3) Supreme Court decisions are published by the IRS in the *Internal Revenue Bulletin*. Commercial publishers as well as the Government Printing Office print the Court’s decisions:
 - a. CCH Incorporated: United States Tax Cases (cited USTC)
 - b. Research Institute of America: American Federal Tax Report (cited AFTR)
 - c. West Publishing Company: Supreme Court Reporter (cited S. Ct.)
 - d. United States Law Week (cited USLW).
 - e. Government Printing Office: United States Reports (cited US)
- (4) Citing Supreme Court cases is demonstrated below for the case of Commissioner v. Neil Sullivan:
 - a. CCH Incorporated: 58–1 USTC 9368
 - b. Research Institute of America: 1 AFTR 2d 1158
 - c. West Publishing Company: 78 S. Ct. 512
 - d. United States Reports: 356 US 27 (1958)
 - e. Cumulative Bulletin: 1958–1 CB 506

4.10.7.2.8.7
(01-01-2006)
**Citators: Researching
Case History**

- (1) Knowledge of the judicial history of a tax case is important and research of case law is not complete until the history of a case is reviewed in a citator. For example, examiners should consider whether a case is current, whether there are other cases on the same point of law that should be considered, or whether a ruling is still valid. A citator lists court decisions alphabetically by case name and shows where the full text of the decisions may be found. The citator traces the case history from its original entry into the court system through the Supreme Court, if appealed.
- (2) Decisions reached in a lower court are sometimes reversed by the appellate or Supreme Court. When this happens, the lower case decision has no legal authority and may not be cited as precedent. A citator will show whether a higher court reversed, affirmed, modified or otherwise disposed of a lower court decision.
- (3) Revenue Rulings and Procedures may be revoked, modified, amplified, etc. A citator findings list will indicate whether or not this is the case.
- (4) A citator will also direct examiners to subsequent cases or rulings that deal with the same legal principle in the setting of other IRC sections or fact patterns. It lists everything that has been said about a case, ruling, or procedure.
- (5) Citators are published by commercial publishers of tax services such as Westlaw and Bloomberg Tax. While formats differ, commercial citators provide basically the same information.

4.10.7.2.8.7.1
(09-12-2022)

Citator Examples

(1) The following examples are taken from Bloomberg's law citator, BCITE. BCITE can be accessed through Bloomberg Tax on IRS Source ReferenceNet.

(2) Example 1: BCITE

- a. **Batman, Ray L.**
- b. **SCT**—Cert. denied, 342 US 877; 72 SCt 167
- c. **CA-5**—(aff'g TC), 51-1 USTC P9305; 189 F2d 107
- d. Cases citing Batman include:

Cases Citing the Batman Case
Miller, CA-10, 61-1 USTC 9156, 285 F2d 843
Finley, CA-10, 58-1 USTC 9517, 255 F2d 128
Batman, CA-5, 57-1 USTC 9247, 239 F2d 283
Christopher, CA-5, 55-1 USTC 9504, 223 F2d 124
West, CA-5, 54-2 USTC 9480, 214 F2d 300
Wofford, CA-5, 53-2 USTC 9637, 207 F2d 749
Mauritz, CA-5, 53-2 USTC 9495, 206 F2d 135
Tomlinson, CA-5, 52-2 USTC 9543, 199 F2d 674
Seabrook, CA-5, 52-1 USTC 9294, 196 F2d 322
Culbertson, Sr., CA-5, 52-1 USTC 9233, 194 F2d 581
Alexander, CA-5, 52-1 USTC 9232, 194 F2d 921
Tilden, Inc., CA-5, 51-2 USTC 9501, 192 F2d 704
Britt Est., CA-5, 51-2 USTC 9414, 190 F2d 946
Scott, DC—Ark, 53-1 USTC 9166, 110 FSupp 165
Lewis, TC, Dec. 20,733, 23 TC 538
West, TC, Dec. 19,435, 19 TC 808
Tomlinson, TC, Dec. 18,513(M), 10 TCM 828

- e. **TC**—Dec. 17,553(M); 9 TCM 210

(3) Explanations of the above citations are as follows:

- a. Case name (Batman, Ray L.).
- b. Batman was appealed to the Supreme Court; however, certiorari was denied.
- c. Fifth Circuit Court of Appeals heard Batman and affirmed the Tax Court Decision.
- d. These cases deal with the same legal principle or fact pattern and cite Batman.
- e. Tax Court heard Batman and case was appealed to Fifth Circuit Court of Appeals.

(4) Example 2: Rulings Finding List

- a. **Rev. Proc. 75–25, 1975–1 CB 720**
- b. **Amplified by:** Rev. Proc. 78–25
- c. **Cited in:** Jones, Dec. 49,862(M), 67 TCM 2997, TC Memo. 1994–230 Notice 91–4 TD 8408 Haynsworth, TC, Dec. 34,581, 68 TC 703 Rev. Rul. 76–247
- d. **Obsoleted by:** Rev. Proc. 92–29
- e. **Superseding:** Mim. 4027

4.10.7.2.8.8
(01-01-2006)
**Importance of Court
Decisions**

- (1) Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.
- (2) Certain court cases lend more weight to a position than others. A case decided by the US Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The IRS must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the IRC.
- (3) Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the IRS only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the IRS to alter its position for other taxpayers.

4.10.7.2.8.8.1
(01-01-2006)
Action on Decision

- (1) It is the policy of the IRS to announce at an early date whether it will follow the holdings of lower courts in certain cases. An Action on Decision (AOD) is the document making such an announcement. An AOD is issued at the discretion of the IRS only on unappealed issues, decided adverse to the government. Generally, an AOD is issued where guidance would be helpful to IRS personnel working with the same or similar issues. Unlike a Treas. Reg. or a Revenue Ruling, an AOD is not an affirmative statement of IRS position. It is not intended to serve as public guidance and may not be cited as precedent.
- (2) An AOD may be relied upon within the IRS only as the conclusion, applying the law to the facts in the particular case at the time the AOD was issued. Caution should be exercised in extending the recommendation of the AOD to similar cases where the facts are different. Moreover, the recommendation in the AOD may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.
- (3) Prior to 1991, the IRS published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The IRS expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the IRS may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District

Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any AOD will be published in the *Internal Revenue Bulletin*.

- (4) The recommendation in every AOD is summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the IRS accepts the holding of the court in a case and that the IRS will follow it in disposing of cases with the same controlling facts. The following differences are noted:
 - a. “Acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions.
 - b. “Acquiescence in result only” indicates disagreement or concern with some or all of those reasons.
 - c. Nonacquiescence signifies that, although no further review was sought, the IRS does not agree with the holding of the court and generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the IRS will not follow the holding on a nationwide basis. However, the IRS will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

4.10.7.2.8.8.2
(09-12-2022)

Publication of Action On Decisions

- (1) AODs are published in the weekly *Internal Revenue Bulletin*.

4.10.7.2.8.8.3
(01-01-2006)

Citing Actions on Decisions

- (1) If the Commissioner has published an acquiescence, acquiescence in result only, or nonacquiescence in a Tax Court or Board of Tax Appeals decision, it must be included in the citation, as in the following examples:
 - a. Merle P. Brooks, 36 TC 1128 (1961), acq., 1962–2 CB 4.
 - b. Rodney Horton, 13 TC 143 (1949), acq. in result, 1959–2 CB 5.
 - c. Forest Lawn Memorial Park Ass’n., 45 BTA 1091 (1941), nonacq. 1960–2 CB

4.10.7.2.9
(09-12-2022)

Private Letter Rulings and Technical Advice Memoranda

- (1) A Private Letter Ruling (PLR) represents the conclusion of the IRS for an individual taxpayer. The application of a private letter ruling is confined to the specific case for which it was issued, unless the issue involved was specifically covered by statute, regulations, ruling, opinion, or decision published in the *Internal Revenue Bulletin*.
- (2) Technical Advice Memoranda (TAM) are requested by IRS area offices after a return has been filed, often in conjunction with an ongoing examination. TAMs are binding on the IRS in relation to the taxpayer who is the subject of the ruling.
- (3) A private letter ruling to a taxpayer or a technical advice memorandum to an area director, which relates to a particular case, should not be applied or relied upon as a precedent in the disposition of other cases. However, they provide insight with regard to the IRS’ position on the law and serve as a guide.
- (4) Existing private letter rulings and memoranda (including Confidential Unpublished Rulings (CUR), Advisory Memoranda (AM), and General Counsel

Memoranda (GCM)) may not be used as precedents in the disposition of other cases but may be used as a guide with other research material in formulating an area office position on an issue.

- (5) Whenever an area office finds that a CUR, AM, or GCM represents the sole precedent or guide for determining the disposition of an issue and cannot to its own satisfaction find justification in the IRC, regulations, or published rulings to support the indicated position, technical advice should be requested. Instructions for requesting technical advice are contained in the second revenue procedure issued each year. See IRM 4.8.8.12.1.4, Requests for Technical Advice Memorandum.
- (6) Technical advice should be requested where taxpayers or their representatives take the position that the basis for the proposed action is not supported by statute, regulations, or published positions of the IRS. If it is believed that the position of the IRS should be published, the request for technical advice will contain a statement to that effect. Instructions for requesting technical advice are contained in the second revenue procedure issued each year. Questions regarding the procedures should be addressed to the functional contacts listed in the revenue procedure. See IRM 4.8.8.12.1.4, Requests for Technical Advice Memorandum.

4.10.7.2.9.1
(01-01-2006)
Publication of PLRs and TAMs

- (1) Letter rulings and TAMs are available at *IRS.gov* and from commercial publishers.

4.10.7.2.9.2
(01-01-2006)
Citing PLRs and TAMs

- (1) Letter rulings and technical advice memoranda are cited PLR or TAM, respectively, followed by a seven digit number. For example, PLR 8210019 or TAM 9643001. The first two digits indicate the year the ruling was published, for example, 1982 and 1996, respectively.

4.10.7.2.10
(01-01-2006)
General Counsel Memoranda

- (1) General Counsel Memoranda (GCM) are legal memoranda from the Office of Chief Counsel prepared in connection with the review of certain proposed rulings (Rev. Ruls., PLRs, TCMs). They contain legal analyses of substantive issues and can be helpful in understanding the reasoning behind a particular ruling and the IRS' response to similar issues in the future.

4.10.7.2.11
(01-01-2006)
Technical Memoranda

- (1) Technical Memoranda (TM) function as transmittal documents for Treasury Decisions or Notices of Proposed Rule Making (NPRMs). They generally summarize or explain proposed or adopted regulations, provide background information, state the issues involved, and identify any controversial legal or policy questions. Technical Memoranda are helpful in tracing the history and rationale behind a regulation or regulation proposal.

4.10.7.2.12
(01-01-2006)
Other Research Sources

- (1) A wide range of tax literature is available to IRS personnel. Monthly publications such as *The Journal of Taxation*, *Taxation for Accountants*, and *Taxation for Lawyers*, published by Warren, Gorham & Lamont.
- (2) Numerous books presenting detailed analyses of tax laws and issues are available and provide excellent sources of information. One of the better

known is Federal Income Taxation of Corporations and Shareholders by Bittker and Eustice, published by Warren, Gorham & Lamont, which has been cited by the Supreme Court.

- (3) A number of tax services are available from commercial publishers that provide explanations and annotations on a variety of tax issues. For example, CCH Incorporated's Standard Federal Tax Reporter, Bureau of National Affairs' Tax Management Portfolios, and Research Institute of America's American Federal Tax Reports.
- (4) There are numerous sources of information available through on-line research. IRS has electronic access to thousands of data bases. See IRM 4.10.7.2.13.1, Electronic Research Services, for more detail.

4.10.7.2.13
(09-12-2022)
Electronic Tax Research

- (1) Electronic tax research using online tax services is available. Information can be accessed quickly and all references to a given topic, obtained by searching, by specific words or word groups. Most of the documents discussed above are available from commercial vendors online.

4.10.7.2.13.1
(01-01-2006)
Electronic Research Services

- (1) Employees needing access to electronic research tools should consult with their manager and visit the SPDER Reference Net website at *Legal and Tax Research Services*. This site provides information on available services, training, and password access information.

4.10.7.2.13.2
(09-12-2022)
Exam Quality and Technical Support

- (1) Exam Quality and Technical Support (EQTS) facilitates the implementation of new tax legislation, develops compliance strategies, provides technical support for certain issues and industries, and performs quality review assessments for field, specialty and campus exam. EQTS is responsible for preparing issue guidance and audit technique guides (ATG) that provide auditing techniques, assist with issue identification and development, and tax law interpretation. ATGs are available to the public and can be accessed at *Audit Techniques Guides (ATGs)*. EQTS also maintains SB/SE-owned technical resources available on the *IRS Virtual Library* and publishes the quarterly *Technical Digest* newsletter. EQTS *subject matter experts* collaborate with other operating divisions to provide SB/SE examiners with the technical resources needed for issue resolution.

4.10.7.2.13.3
(09-12-2022)
LB&I Practice Networks and Subject Matter Experts

- (1) Practice Networks and Subject Matter Experts (SMEs) can assist SB/SE examiners with technical issues by providing the relevant law and application of the law to the facts provided by the examiner; and to provide resources that may assist the examiner in evaluating and developing the issue.
- (2) Examiners can ask SMEs specific questions by going to the *Industry Knowledge Base* and selecting the specific program area they need assistance with.

4.10.7.3
(01-01-2006)
Evaluating Evidence

- (1) Examiners gather facts to correctly determine a taxpayer's tax liability. This determination must be made on the basis of all available facts, including facts supporting the taxpayer's position. For this reason, examiners should determine **all** the facts supporting both sides of an issue.
- (2) Examiners should pursue an examination to a point where a reasonable determination of the correct tax liability can be made. In the daily application of this

responsibility, examiners must deal with problems of evidence and its evaluation. The following discussion is presented as a series of definitions and explanations to assist examiners in determining the nature and sustaining value of various types of evidence.

4.10.7.3.1
(01-01-2006)
Evidence Defined

- (1) Evidence is something which tends to prove a fact or point in question. Evidence is distinguished from proof, in that proof is the result or effect of evidence.

4.10.7.3.2
(01-01-2006)
Oral Testimony

- (1) The IRC requires all taxpayers to keep adequate records. There are times, due to unusual circumstances, when records do not exist. In such cases, oral testimony may be the only evidence available. Therefore, oral statements made by taxpayers to examiners represent direct evidence which must be thoroughly considered. Although self-serving, uncontradicted statements which are not improbable or unreasonable should not be disregarded. The degree of reliability placed on a taxpayer's oral statements must be based on the credibility of the taxpayer and surrounding circumstantial evidence (IRM 4.10.7.3.10, Circumstantial Evidence). The following general guidelines should also be considered:
 - a. Oral evidence should not be used in lieu of available documentary evidence.
 - b. If the issue involves specific record keeping required by law and regulations (e.g., IRC 274), then oral evidence (testimony) alone cannot be substituted for necessary written documentation.
 - c. Oral testimony need not be accepted without further inquiry. If in doubt, attempts should be made to verify the facts from other sources of evidence.
- (2) In some instances a summary of a conversation or statement made by a taxpayer or witness should be prepared as documentation of the oral testimony and the taxpayer (or third party) should be requested to sign the document. It should always be signed by the examiner or examiners party to the interview. If the taxpayer or third party does not sign the documentation, then it is considered a report of the interview. This summary document should always contain:
 - a. Date, time and place of contact,
 - b. Name of the parties present, and
 - c. Description of what transpired.
- (3) Sometimes a more formal written statement is needed when documentation is not available and oral testimony will significantly affect the outcome of the case. In these cases examiners should assume that the case may eventually be resolved through litigation and should use formal written statements such as affidavits to record taxpayer or third party statements. An affidavit is an attested statement and has great validity when properly prepared and voluntarily given. Affidavits should be completed using Form 2311, Affidavit. Affidavits may be used:
 - a. When other documentary evidence is unavailable,
 - b. When the examiner wants the taxpayer's statements to become part of the case file,
 - c. To help accumulate complete and accurate information,
 - d. To record the testimony of a witness, and
 - e. To prevent a taxpayer from changing testimony.

- (4) If oral testimony is accepted or where oral testimony is not allowed, the workpapers should reflect a full development of the facts, oral statements, corroborating evidence and conclusions, including an explanation of the factors supporting the conclusion. "Per oral testimony" or "as reasonable" are insufficient unless the amounts are both de minimis and reasonable.

4.10.7.3.3
(01-01-2006)
First Hand Knowledge

- (1) One of the basic rules of evidence is that witnesses (either taxpayers or third parties) can testify only about facts of which they have first hand knowledge. In other words, witnesses must be able to say the facts to which they testify are true.

4.10.7.3.4
(01-01-2006)
Expert Testimony

- (1) Some issues are so difficult that the ordinary person needs assistance from someone more familiar with the subject to understand and resolve the matter at hand. An expert opinion is made by someone with the education and experience to qualify as an expert. Thus, expert testimony is needed.

Note: An examiner is not compelled to accept expert testimony; expert testimony can be challenged.

4.10.7.3.5
(01-01-2006)
Hearsay

- (1) Hearsay is what a witness says another person was heard to say. It is a secondary source of information and generally the reliability and trustworthiness of the evidence rests upon the veracity and reliability of a person giving testimony.
- (2) A common example of hearsay evidence is testimony of taxpayers' representatives. It should therefore be recorded in the workpapers by examiners. Hearsay often leads to primary sources of information.

4.10.7.3.6
(01-01-2006)
Admission Against Interest

- (1) A statement that is harmful to the person making the statement is considered an "admission against interest." When an admission is made voluntarily and with deliberation, it represents substantial evidence that the fact admitted is probably true.

Example: If someone tells a friend that they shoot par golf, the friend may be skeptical. But if they said that they have trouble breaking 100, the friend might be inclined to believe them because it would be more likely.

4.10.7.3.7
(01-01-2006)
Opinions

- (1) An opinion is a belief not based on absolute certainty, or a judgment or evaluation of what seems to be true. Opinions are statements of personal feelings.
- (2) An opinion is not conclusive evidence of a fact. But opinions may be the only evidence available. Before accepting an opinion as evidence, the examiner should solicit other documentary evidence.
- (3) Opinions emphasize connotative meaning, that is, how someone feels about something; how they value it.
- (4) Opinions cannot be proven or verified. The only criterion for testing an opinion is whether it is acceptable or not, believed or not believed.
- (5) There are three primary types of opinions:

- a. **Unqualified Opinion:** An unqualified opinion is made by someone who is only guessing. The individual has neither the education or work experience to make an intelligent estimate.
- b. **Biased Opinion:** A biased opinion is made by someone whose relationship with the taxpayer influences the opinion. Suspect bias when a valuation or opinion is rendered by a family member or someone receiving a substantial benefit from the taxpayer.
- c. **Expert Opinion:** An expert opinion is made by someone with the education and experience to qualify as an expert, but biases, for example, family or employment relationships, should be considered. Any doubt about the validity of an expert's opinion should be resolved by seeking a second expert's opinion.

4.10.7.3.8
(01-01-2006)
Observations

- (1) Observations are statements, judgements, or inferences of fact based on something observed. It is the act of recognizing and noting a fact or occurrence.

4.10.7.3.9
(01-01-2006)
Documentary Evidence

- (1) Documents are another form of evidence. Documentary evidence is generally regarded as having great probative (providing proof or evidence) value. Writings made contemporaneously with the happening of an event generally reflect the actual facts and show what was in the minds of the parties to the event.
- (2) While documentary evidence has great value, it should not be relied on to the exclusion of other facts. Facts can also be established by oral testimony and there will be occasions when courts will give greater weight to oral testimony than to conflicting documentary evidence.

4.10.7.3.10
(01-01-2006)
Circumstantial Evidence

- (1) Circumstantial evidence is evidence from which more than one logical conclusion can be reached. To be useful, both the credibility of the evidence and the reasonableness of the conclusion should be evaluated.

4.10.7.3.11
(01-01-2006)
Best Evidence

- (1) The best evidence rule requires that, when possible, original evidence be used. Therefore, examiners should always ask to see original documents when there is reason to believe such documents are available.

4.10.7.3.12
(01-01-2006)
Secondary Evidence

- (1) Secondary evidence is used when original evidence is unavailable. Examples of acceptable secondary evidence are copies of original documents made by an examiner. In the absence of original documents, copies made by the examiner become the best evidence available.

4.10.7.3.13
(01-01-2006)
Inferences

- (1) The fact in dispute can, in some cases, be proved by showing other facts from which the fact can be inferred. In other words, as a matter of logic, an inference can be made from facts to decide a disputed fact.
- (2) An inference is a logical conclusion based on facts. Things beyond the range of what can be observed are inferences.

4.10.7.4
(01-01-2006)

Arriving at Conclusions

- (1) After all the facts have been gathered through taxpayer interviews; examination of the books, records and supporting documents; interviews with third parties; and, having researched questionable items, the examiner has all the information to be considered in resolving the issues. At this point the examiner will use their professional judgement in considering all the information to arrive at a conclusion.
- (2) Examiners are expected to arrive at a definite conclusion by a balanced and impartial evaluation of all of the evidence. Examiners are given the authority to recommend the proper disposition of all identified issues, as well as any issues raised by the taxpayer.
- (3) Once the examiner has reached a conclusion for an issue, the examiner should communicate their decision to the taxpayer and/or representative. Copies of the examiner's workpapers may be provided to the taxpayer and/or their representative. The examiner should attempt to resolve issues as the audit progresses.
- (4) Examiners will employ independent and objective judgment in reaching conclusions on issues being examined and in all aspects of their duties and will decide all matters on their merits, free from bias and conflicts of interest. Fairness will be demonstrated by:
 - a. Making decisions impartially and objectively based on consistent application of procedures and the applicable tax law,
 - b. Treating individuals equitably,
 - c. Being open-minded and willing to seek out and consider all relevant information, including opposing perspectives,
 - d. Voluntarily correcting mistakes and improprieties made by themselves or someone else in the IRS and refusing to take unfair advantage of mistakes or ignorance of citizens, and
 - e. Employing open, equitable, and impartial processes for gathering and evaluating information necessary to decisions.
- (5) Examiners will use their professional judgment in evaluating all evidence to reach a conclusion. Examiners seldom have all of the information they would like to have to definitively resolve an issue. Examiners, therefore, must decide when they have enough, or substantially enough, information to make a proper determination for all issues under consideration. The sooner this point is reached, the more timely the case can be completed and the less burden will be placed on the taxpayer.
- (6) IRC 274(d) specifies record keeping rules that are required in certain situations. It is permissible to allow a deduction without complete documentation if the taxpayer can show they have "substantially complied" with the adequate record keeping requirements (see 26 CFR 1.274-5T(c)(2)(v), Substantial compliance). The examiner will use their skill and judgement in developing the surrounding evidence when less than the required documentation is available, so that the taxpayer is treated fairly, but does not profit from failure to keep records.
- (7) To determine if the taxpayer has "substantially complied," the following factors should be considered:
 - a. Number and type of expenditures involved,
 - b. Elements of documentation missing,

- c. Reason(s) why deduction was not properly substantiated,
- d. Availability of other information to substantiate the expenditure,
- e. Materiality of unsubstantiated items, and
- f. Relative tax significance of the items.

4.10.7.4.1
(01-01-2006)
Taxpayer Credibility

- (1) A determination of taxpayer credibility is most often required in connection with evaluating oral evidence presented by taxpayers (see IRM 4.10.7.3.2, Oral Testimony, for additional guidance).
- (2) It is the responsibility of examiners to establish the taxpayer's or third party's credibility as part of the evaluation of oral evidence. Corroborative or contradictory details will have an important bearing on determining the reasonableness and probability of the statements.
- (3) If the statements of taxpayers, in the judgment of examiners, suggest some degree of unreliability, the decision to accept some, all or none of the oral statements as credible evidence should take this into account. However, unless taxpayers' statements are found to be wholly unreliable, they must be given some weight in the conclusion reached.

4.10.7.4.2
(01-01-2006)
**Reasonable
Determinations**

- (1) When deductions (such as exemptions for dependents) are based on a substantial number of small expenditures all of which cannot be substantiated by documentary evidence, examiner judgement will be used to reach a reasonable determination. This is provided when there is a basis for allowance under the law and regulations.
- (2) These instructions are not intended to relieve taxpayers of the burden of proof, nor to sanction their failure to comply with the record keeping requirements of the law and regulations. Rather, they are intended to give examiners flexibility in the evaluation of incomplete evidence that is often encountered in everyday administration of the tax laws.
- (3) Examiners will exercise sound judgment to make reasonable determinations. The examiner must be sure there is a basis for each allowance. This involves consideration of the following elements, which will vary according to the nature of the items involved and the circumstances of the case:
 - a. Considering the extent to which detailed documentation is required,
 - b. Examining all existing records essential to adequate substantiation, and
 - c. Determining the weight to be accorded oral statements and explanations.
- (4) Close approximations of items, not fully supported by documentary proof, can frequently be established through reliable secondary sources and collateral evidence. For example, in questionable exemption cases, the fact that taxpayers cannot furnish documentary evidence in support of some of the amounts contributed need not be fatal to allowance of the exemption. Taxpayers may be able to demonstrate the total cost of support with reasonable certainty and satisfy examiners, for example, by third-party affidavits, that only nominal amounts were contributed by others.
- (5) Due consideration should be given to:
 - a. Reasonableness of the taxpayers' stated expenditures in relation to the taxpayers' reported income,

- b. Reliability and accuracy of the taxpayers' records (determined by examining items on the return more readily lending themselves to detailed record keeping), and
 - c. General credibility of the taxpayers' statements in the light of the entire record in the case.
- (6) The practice of disallowing amounts claimed because there is no documentary evidence available, which will establish the precise amounts beyond any reasonable doubt (even though it is clear the taxpayer did incur some expense) ignores commonly recognized business practice, as well as the fact that proof may be established by credible oral testimony. However, an arbitrarily computed portion of deductions in this situation will not be allowed merely for the purpose of expediting the closing of the case.
- (7) For instance, if a taxpayer cannot precisely document amounts spent for expenses while away from home on business, examiners may establish reasonable amounts were spent for such items if taxpayers can clearly establish the following:
 - a. Time: Dates of departure and return for each trip away from home, and number of days away from home,
 - b. Place: Destinations or locality of travel, for example, name of city or town,
 - c. Business Purpose: business reason for travel or nature of business benefit derived or expected to be derived, and
 - d. Proof that Expenditures were incurred: a reasonable showing, based upon secondary evidence, including oral testimony, and out-of-pocket expenses were paid.
- (8) The extent of the allowance in (7) above should be governed by the principles stated in (4), (5) and (6) above. Allowances should be consistent with an appraisal of the facts and conservative to ensure taxpayers do not profit from failure to keep required records of all elements of travel expenses.

4.10.7.4.3
(01-01-2006)
Tolerances

- (1) The Internal Revenue Manuals (IRM) contain tolerances to be observed for deficiencies and various types of penalties (e.g. IRM 4.10.2.3.1, Large Unusual or Questionable (LUQ) Items Defined; IRM 20.1, Penalty Handbook; IRM 1.2.65.3.4, SB/SE 1-23-15, (Rev. 1), Error Tolerance Levels, etc.). Consult the applicable IRM as needed.

4.10.7.4.4
(01-01-2006)
Significant Items

- (1) The definition of "significant" or "material" depends on an examiner's evaluation of a return as a whole and the items that comprise the return. There are several factors, however, that examiners must consider when determining whether an item is significant. These factors include:
 - a. Comparative size of the item,
 - b. Absolute size of the item,
 - c. Inherent character of the item,
 - d. Evidence of intent to mislead,
 - e. Beneficial effect of the manner in which an item is reported, and
 - f. Relationship to/with other item(s) on a return.
- (2) Generally, automatic adjustments (obvious errors or omissions on the return) in excess of tolerances are to be considered significant items.

4.10.7.4.5
(01-01-2006)
Compliance

- (1) The impact on compliance within a segment of the population, sector of the economy, or similarly situated taxpayers will be considered when making a decision whether or not to raise an issue.

4.10.7.4.6
(09-12-2022)
Collectibility

- (1) Once an examination has begun and a decision is made to limit the scope of the audit based on collectibility, examiners will complete the examination at the earliest possible opportunity. IRM 4.20.1.2.1, Consider Collectibility, and IRM 4.20.1.2.3, Fact Finding, provide guidance the examiner should consider in determining to limit the scope.
- (2) If the examiner decides, based on information developed, the examination of remaining issues is no longer warranted, the examiner must document their determination in the workpapers. See IRM 4.20.1.2.4, Document Collectibility, for guidance.

Note: The scope of the examination may be limited on an employment tax audit. However, examiners should avoid taking any action that would give the taxpayer a safe haven. As an alternative, examiners should limit the number of returns examined. This approach minimizes the potential tax liability, while avoiding the likelihood of giving the taxpayer a safe haven. See IRM 4.23.5.3.3.5, Safe Haven - Prior Audit, for additional information.

4.10.7.4.7
(01-01-2006)
**Rollover vs. Tax
Deferrals**

- (1) In examinations conducted by examiners using field techniques, timing issues should be dealt with at the planning level. Generally, planning an examination to include short-term timing issues is not an effective use of resources. However, unplanned timing issues which are uncovered or arise as a correlative adjustment during an examination of non-timing issues should be made if cost effective to do so.
- (2) The pre-contact and/or examination plan should preclude the inclusion of timing issues, except those with long term, flagrant short term, indefinite, or permanent deferral features.

4.10.7.4.8
(09-12-2022)
**Cases Designated for
Litigation**

- (1) Certain cases present recurring, significant legal issues affecting large numbers of taxpayers. When there is a critical need for enforcement activity with respect to such issues, cases are designated for litigation in the interest of sound tax administration to establish judicial precedent, conserve resources, or reduce litigation costs for the IRS and taxpayers. For example, judicial precedent may provide guidance for the resolution of industry-wide, tax shelter or other issues, thereby serving early issue resolution and conserving IRS and taxpayer resources.
- (2) Examination personnel should request designation of an issue in a case in the limited circumstances where sound tax administration is best served by establishing a legal precedent on the issue and not merely to prevent review by the IRS Independent Office of Appeals (Appeals). See IRM 4.10.28, Designation of Cases for Litigation, for examination guidance.
- (3) When an issue under the jurisdiction of a Business Operating Division (BOD) is designated for litigation, a partial agreement may be secured for the nondesignated and agreed issues. The taxpayer will not receive a 30-day (or similar) letter with respect to the remaining unresolved issues in the case. Rather, the taxpayer will be issued a Statutory Notice of Deficiency (SNOD) for the unagreed issues. In general, the designation of an issue in a case will not

preclude the settlement of the remaining issues either before or after the case is docketed. Nor, in general, will designation preclude Appeals from considering and settling the same issue in other cases within its jurisdiction.

- (4) See *CCDM 33.3.6*, Designating a Case for Litigation, for additional information.

4.10.7.4.9
(01-01-2006)

**Whipsaw (a/k/a
correlative adjustments)**

- (1) The term whipsaw refers to situations where the government is subjected to conflicting claims by taxpayers. A potential whipsaw situation exists whenever there is a transaction between two parties and correct reporting of the transaction may benefit one and adversely impact the other for tax purposes.
- (2) A potential whipsaw situation could be present in almost any transaction; however, experience has shown the following issues to generate the majority of whipsaw cases:
 - a. Goodwill vs. covenant not to compete,
 - b. Alimony vs. child support,
 - c. Allocation of purchase price,
 - d. Buyer vs. seller,
 - e. Sale vs. rental/royalty,
 - f. Employee vs. independent contractor,
 - g. Payments to widows (gift vs. taxable income),
 - h. Dependency exemptions for children of divorced parents,
 - i. Husband and wife filing separate returns,
 - j. Grantor, trust, and beneficiaries,
 - k. Parent and child,
 - l. Decedent and decedent's estate,
 - m. Taxpayers in which the Commissioner has invoked the provisions of IRC 482, and
 - n. Parent and subsidiary corporations.
- (3) When whipsaw issues require (i.e. material tax consequence) an examination of both parties, examiners will secure the name, address, and the tax identification number (TIN) of the related party. A transcript will be requested to determine the related party's examination status.
 - a. If a related party is under examination, then the examiner assigned to the case will be notified.
 - b. If the related party is not under examination, then the examiner will determine if they can examine the return or if a referral is needed. If a collateral examination is warranted, then Form 6229, Collateral Examination, will be prepared. See *IRM 4.2.1.7*, Collateral Referrals, for additional information.
- (4) The primary objective of requiring support examinations of these returns is to assure consistent treatment of related taxpayers or taxpayers involved in the same transaction.

4.10.7.4.9
(09-12-2022)

**Proposing Adjustments
to the Taxpayer and/or
Representative**

- (1) Communication with the taxpayer or representative on an on-going and continuous basis is a critical part of the examination process. Generally, the taxpayer should feel more involved in the audit process and will be better informed of the status of the examination. The examiner should discuss the progress of the audit and issues proposed with the taxpayer and/or representative at frequent intervals as the examination continues.

- a. In office examinations, the examiner should discuss issues throughout the appointment and summarize issues (including penalties) at the conclusion of the appointment. If penalties requiring supervisory approval are proposed, do not issue a report until written approval is obtained. See IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments. To facilitate discussion, written communication (e.g., a list or Form 5278, Statement - Income Tax Changes) reflecting proposed adjustments (including penalties) can be shared during a face-to-face appointment.
- b. In field examinations, the examiner should discuss issues as they are concluded. This allows the resolution process to begin as the examination continues. Each issue is discussed as it is completed and resolved so that at the conclusion of field work the status of each issue is known. The examiner can then take the appropriate steps to close the case. If penalties requiring supervisory approval are proposed, do not issue a report until written approval is obtained. See IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments. To facilitate discussion, written communication (e.g., a list or Form 5278, Statement - Income Tax Changes) reflecting proposed adjustments (including penalties) can be shared during a face-to-face appointment.

4.10.7.5.1
(09-12-2022)
**Closing Phase of the
Examination**

- (1) This section focuses on techniques for conducting closing conferences, presenting examination findings, explaining proposed adjustments, and soliciting agreements. Each situation is unique and techniques vary widely, but there are basic procedures which should always be followed. See IRM 4.10.8, Report Writing, for report writing requirements.
- (2) Generally, substantive issues should be proposed and discussed with the taxpayer and/or the representative in a face-to-face meeting. In some circumstances, a telephone conference or call may suffice, but this would be the exception.
- (3) Generally, a report will not be mailed to the taxpayer prior to discussing findings and proposed issues with the taxpayer and/or the representative. Exceptions to this rule would be for the following:
 - a. No-show/ no-response appointments,
 - b. Uncooperative taxpayers, or
 - c. When additional records are provided for the examiner to consider.
- (4) A revised report may be mailed to the taxpayer rather than presented in a face-to face-meeting.
- (5) To facilitate discussion at closing conferences, the examiner may provide the taxpayer with a listing and brief description of proposed adjustments and penalties to be discussed. In lieu of a list, Form 5278 reflecting proposed adjustments (including penalties) can be shared during a face-to-face appointment.
 - a. Overassessment and no-change cases are generally not controversial and, in most instances, there is no need to hold a formal closing conference.
 - b. For agreed cases, a closing conference is generally not required as the issues were probably discussed and resolved throughout the audit. However, in some instances, a formal closing conference will be needed.

The examiner should discuss the report with the taxpayer and/or representative to ensure all questions are answered and that payment arrangements are made.

- c. For unagreed cases, a closing conference will generally be held.
- (6) The examiner should choose the order in which issues will be presented at the closing conference. The order can be modified during the conference. While there is no “right” order or order which is best for all occasions, it is generally easier to resolve factual issues or issues involving an established application of law. These issues should be discussed first. Less certain issues should be discussed last.
- (7) Closing conferences vary in the degree of formality, but generally the following areas are covered:
 - a. The examiner discusses their findings with the taxpayer and/or representative.

Note: The examiner should be prepared to converse knowledgeably and explain proposed adjustments and provide the taxpayer with copies of relevant court cases, lead sheets and workpapers showing computations.

- b. The examiner provides the taxpayer and/or representative with the authority for their findings (law, argument and conclusion).
- c. The examiner receives information from the taxpayer and/or representative and addresses any taxpayer concerns. It is very important the examiner listens to the taxpayer and gets a clear understanding from all persons present that there are no pertinent facts other than those of which the examiner is aware. This can be done in a positive manner by stating, “This is my understanding . . .,” and then detailing the facts as the examiner understands them. “Are we all in agreement on this? Are there any other material facts or circumstances of any consequence?”
- d. The examiner solicits an agreement from the taxpayer.

Caution: If penalties requiring supervisory approval under IRC 6751(b) are proposed, written approval must be obtained before a report is issued. See IRM 20.1.1.2.3.1, Timing of Supervisory Approval, for additional guidance.

Note: When a joint return is being examined and only one spouse is present at the interview, a copy of the examination report must be mailed to the other spouse. If the taxpayers are represented by a power of attorney and they sign the audit report, copies of the audit report will be sent separately to each spouse.

4.10.7.5.2 (09-12-2022) Office Examinations

- (1) This section provides additional information for the processing of office examination cases. See IRM 4.10.7.5, Proposing Adjustments to the Taxpayer and/or Representative, for general information.
- (2) Generally, examiners should issue a report at the conclusion of the initial face-to-face appointment, unless:
 - a. Income is an issue that needs further development;

- b. Additional information is needed to work a prior and/or subsequent return concurrently with the year under examination (a focused IDR, using Form 4564, Information Document Request, should be issued to request additional information);
- c. Penalties requiring supervisory approval under IRC 6751(b) are proposed and written approval has not yet been obtained; or,
- d. The manager is not available to sign the 30-day letter.

Reminder: The authority to sign and issue 30-day letters (e.g., Letter 915, Examination Report Transmittal) is delegated to group managers. See Delegation Order SBSE 1-23-55 (IRM 1.2.65.4.35), Authority to Sign Thirty Day Letters, for additional guidance.

Note: If the issuance of a report is delayed while the examiner secures the manager's signature on the 30-day letter and/or the penalty approval form, update the ERCS action code to 08, for follow-up in 5 days. Once the report is issued, update the ERCS action code to 04 for follow up (generally in 15 days).

- (3) If the taxpayer says they have additional information to consider at the end of the initial meeting, this should generally not delay the issuance of a report. A focused IDR should be issued to request additional information if the information was not previously requested on the initial or a subsequent IDR. The examiner and taxpayer should agree on a mutually acceptable date (generally 15 days) for submission of additional information.

Note: The taxpayer should be informed if relevant information is received, it will be considered and the report will be revised if appropriate.

4.10.7.5.3 (09-12-2022) Field Examinations

- (1) When the communication process between the examiner and the taxpayer is working well, the examiner will know at the end of field work which issues are agreed and which are unagreed.
- (2) If the desired level of communication and cooperation is not achieved, once the examination is complete, examiners will explain the basis of the proposed adjustments to taxpayer and/or representative. Examiners should be prepared to cite the law, regulations, rulings, and court decisions on which their conclusions are based and provide the taxpayer with copies of workpapers explaining the proposed adjustments.

Reminder: Do not issue a report if penalties requiring supervisory approval under IRC 6751(b)(1) are proposed until written supervisory approval is obtained. Form 5278 or a written list of proposed adjustments (including penalties) can be shared to facilitate discussion during a face-to-face appointment. The activity record should be contemporaneously documented to indicate the date and circumstances under which the Form 5278 or written list was provided.

- a. Overassessment and no-change cases are generally not controversial and, in most instances, there is no need to hold a formal closing conference.
- b. For agreed cases, a closing conference is generally not required as the issues were probably discussed and resolved throughout the audit. However, in some instances, a formal closing conference will be needed.

The examiner should discuss the audit report with the taxpayer and/or representative to ensure all questions are answered and payment arrangements are made.

- c. For unagreed cases, a closing conference will generally be held.

4.10.7.5.4
(09-12-2022)
Agreed Cases

- (1) When agreement is reached with the taxpayer and/or representative on the last of the disputed issues, examiners must calculate the deficiency or over-assessment.

Reminder: Office examiners generally issue a report at the conclusion of the initial face-to-face appointment, whether or not agreement has been reached on all issues. See IRM 4.10.7.5.2, Office Examinations.

- a. **Penalties requiring supervisory approval are proposed:** Do not issue a report until written approval is obtained. See IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments, for additional guidance.

Note: Prior to obtaining supervisory approval of penalties, Form 5278 or a written list of proposed adjustments (including penalties) can be shared to facilitate discussion during a face-to-face appointment. The activity record should be contemporaneously documented to indicate the date and circumstances under which the Form 5278 or written list was provided. If Form 5278 is provided to the taxpayer, issue a report after supervisory approval of penalties is obtained.

- b. **Penalties requiring supervisory approval are not proposed:** Issue a report if there is no reason for delay in execution of an agreement.
- (2) Examiners will solicit payment of the tax due including accrued interest and applicable penalties, unless the taxpayer is in bankruptcy, then refer to IRM 4.27.1.8.1.1, Agreed Closures.
- (3) If the taxpayer indicates an inability to pay the tax due at closing or within 120 days of the first notice, alternative payment methods should be discussed. An installment agreement should be offered if the taxpayers meet requirements. Form 9465, Installment Agreement Request, can be used to solicit an installment agreement.
- (4) If the taxpayer and/or representative agrees with the findings, but does not wish to pay the deficiency immediately, explain that a notice and demand for payment of the deficiency plus interest and penalties will be mailed. Secure appropriate waivers and close the case.
- (5) Examiners should inform taxpayers the IRS has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of their state income tax, they should amend their state return by filing the necessary forms.

4.10.7.5.5
(09-12-2022)
Unagreed Cases

- (1) The taxpayer's position will be solicited on all unagreed issues. If agreement can be reached on one or more, but not all issues or years, taxpayers should be encouraged to enter into a partial agreement by executing a waiver such as Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, covering the agreed issues or years.

When penalties requiring supervisory approval are proposed, do not solicit a partial agreement until after written approval is obtained.

Reminder: Office examiners generally issue a report at the conclusion of the initial face-to-face appointment, whether or not an agreement has been reached. See IRM 4.10.7.5.2, Office Examinations.

- (2) Managerial involvement is required in all unagreed cases and a managerial conference will be offered to the taxpayer and/or representative. The group manager should review the case file to ensure the taxpayer has submitted requested information and all issues are fully developed and documented. See IRM 1.4.40.4.11.5, Unagreed Closing Procedures, for additional guidance.
 - a. Office Examination group managers are required to make contact in person or by telephone with taxpayers and/or representatives to offer a group manager's conference on cases where the taxpayer has requested their case be sent to Appeals.
 - b. Field Examination group managers are required to make contact in person or by telephone with taxpayers and/or representatives on all unagreed cases.
- (3) During conferences the group manager should discuss disputed issues with the taxpayer in an attempt to resolve the issues, obtain agreement, and limit taxpayer burden.
- (4) If the issues cannot be resolved with the involvement of the group manager, the taxpayer should be informed of the following resolution options:
 - a. Fast Track Settlement (FTS) for eligible cases (see IRM 4.10.7.5.6, SB/SE Fast Track Settlement),
 - b. Formal appeal with Appeals,
 - c. Pay the deficiency and file a claim for refund, and
 - d. Receive a notice of deficiency and file a petition in the USTC.

4.10.7.5.6
(03-03-2015)
**SB/SE Fast Track
Settlement**

- (1) FTS provides taxpayers with an optional strategy to reach resolution when the SB/SE examiner and manager, and the taxpayer have exhausted established issue resolution strategies. For eligible cases, FTS allows taxpayers with unagreed examination issues to work with SB/SE Examination and Appeals to resolve the issues while the case remains in SB/SE's jurisdiction. FTS may be initiated any time after an issue has been fully developed.
- (2) The FTS process is estimated to be completed within 60 calendar days of Appeals' acceptance of the FTS application.
- (3) There are many benefits of the SB/SE FTS program, including:
 - Resolving issues at the lowest level possible by using the mediation skills and settlement authority of Appeals.
 - Reducing taxpayer burden.
 - Reducing overall case cycle time.
 - Reducing examiner burden in successful cases by eliminating the need for extensive write up, rebuttal memorandum, etc.
 - Reducing resource needs for the IRS.

4.10.7.5.6.1
(03-03-2015)

Determining Eligibility

- (1) Subject to the limitations below, FTS is generally available for non-docketed SB/SE Examination cases with **no** regard to a dollar amount if:
 - a. Disputed issues are fully developed and facts, procedures, audit techniques, management involvement, applicable law, conclusions and adjustments are documented,
 - b. All examination issue resolution strategies have been exhausted, including the group manager conference, and
 - c. The taxpayer has stated a position in writing (or filed a small case request for cases in which the total amount for any tax period is less than \$25,000, as described in Pub 5, Your Appeal Rights and How To Prepare a Protest If You Disagree).
- (2) Certain cases are excluded from the FTS program. The group manager and/or examiner will determine if the case meets the FTS eligibility requirements according to the "Case Eligibility and Exclusions" section of Rev. Proc. 2017-25, Appeals functions. FTS should **not** be offered if the taxpayer:
 - a. Failed to cooperate, respond or submit requested information during the audit process, or
 - b. Failed to provide a stated position in writing in response to the proposed issues.
- (3) Any questions about FTS eligibility should be discussed with the group manager.
- (4) The Appeals team manager is available to assist the parties in making the eligibility determination, if necessary.
- (5) The Appeals team manager and group manager may agree to consider issues or cases that otherwise are not eligible for FTS, depending on individual circumstances. If an issue is determined not eligible for FTS, all other issues in the case are not eligible for FTS.
- (6) The group manager will review the case file to ensure the issue(s) is fully developed. An issue is considered to be fully developed when:
 - a. The examiner has considered all requested information and the issue can be written up as unagreed with supporting explanations (IRM 4.10.8.12, Unagreed Case Procedures), and
 - b. The case contains properly documented lead sheets and workpapers supporting the examiner's position. The facts, applicable law, audit techniques used, management involvement and conclusions should be documented as described in IRM 4.10.9.8.5, Workpapers: Documenting Issues, or if applicable, IRM 20.1.7.5, Delinquent Information Return Procedures.

4.10.7.5.6.2
(03-03-2015)

When to Offer FTS

- (1) The examiner will explain FTS to the taxpayer at the initial interview when he/she is informing the taxpayer of the examination and appeals process.
- (2) If a case is eligible for FTS, Pub 5022, Fast Track Settlement –A Process for Prompt Resolution of Small Business Self Employed Tax Issues, should be provided as follows:
 - a. Field Examination—when there are unagreed issues,
 - b. Office Examination—when the 30-day letter is issued.

- (3) If the case is eligible for FTS and there are unagreed issues remaining after the group manager has contacted the taxpayer in an attempt to resolve all issues (see IRM 1.4.40.4.11.5, Unagreed Closing Procedures), the examiner or group manager will explain the benefits of the FTS program to the taxpayer. FTS should not be offered if the group manager has not spoken to the taxpayer/representative.
- (4) For eligible cases, FTS should be offered:
 - a. Field Examination - prior to issuance of a 30-day letter,
 - b. Office Examination - after the taxpayer has requested their case be sent to Appeals,
 - c. Civil Penalty Cases (both Field and Office Examination) where the taxpayer has not indicated agreement - prior to the case closing from the group.
- (5) If the case is eligible for FTS and the 30-day letter has been issued but the case has not closed from the group, applications for FTS should still be referred to Appeals for consideration.
- (6) The taxpayer, the examiner or the group manager may initiate the FTS process for eligible cases at any time after an issue is fully developed. Both parties must agree to the process.

4.10.7.5.6.3
(03-03-2015)
Application Process

- (1) The SB/SE FTS application package must contain the following:
 - a. Form 14017, Application for Fast Track Settlement, signed by the taxpayer(s), authorized representative, and group manager (the territory manager signature is not required in the Approving Operating Division Official section of the form) for the key case and any prior and/or subsequent tax periods.
 - b. Separate Form 14017 with required signatures for related tax returns and unagreed civil penalty cases (note "CVL PEN" in the "Type of Tax" block on Form 14017).
 - c. Summary of the unagreed issues and copies of pertinent examination lead sheets and workpapers.
 - d. The taxpayer's written response to the proposed issues.
- (2) The examiner will work with the taxpayer to prepare Form 14017 and provide the taxpayer with copies of pertinent workpapers in order for the taxpayer to prepare a written response to the disputed proposed issues.
- (3) The examiner will continue to work the case towards closure while waiting for the taxpayer's submission of the SB/SE FTS application.
- (4) Upon receipt of the taxpayer's signed SB/SE FTS application and written position, the examiner will ensure the SB/SE FTS application package is complete with pertinent workpapers attached. The examiner will, by the close of the next business day, forward the SB/SE FTS application package to the group manager for review, approval (signature) or denial, and processing.
- (5) Within **three business days** of the examiner's receipt of the completed SB/SE FTS application package, the group manager will:
 - a. Review the SB/SE FTS application package,

- b. If approved, sign the Form 14017, and make two copies of the signed SB/SE FTS application package; mail one to the taxpayer and retain a copy in the examination case file, and
- c. Forward the original SB/SE FTS application package to the nearest servicing *Appeals office*. The *My SB/SE Fast Track Settlement website* provides contact information and FAX numbers for where to send the completed application package. The group manager will coordinate with Appeals to determine the appropriate method (fax or secure email) to send the SB/SE FTS application package to Appeals.

Note: If the group manager does **not** approve the application, see IRM 4.10.7.5.6.3.1, Denied SB/SE FTS Application Package by Group Manager.

- (6) The full administrative case file will **not** be forwarded to Appeals. All documents submitted with the SB/SE FTS application package will be made available by Appeals to all parties present at the first FTS session, if needed.

4.10.7.5.6.3.1

(03-03-2015)

Denied SB/SE FTS Application Package by Group Manager

- (1) The group manager should deny an application for FTS if the case is not eligible. See IRM 4.10.7.5.6.1, Determining Eligibility. However, if the taxpayer was uncooperative, or did not respond to document requests or did not submit an adequate written response to the IRS' proposed issues, FTS **must** be denied.
- (2) Any FTS application denied by the group manager, for reasons other than those defined in Rev. Proc. 2017-25, requires review and concurrence by the SB/SE territory manager.
- (3) The group manager will provide the territory manager a copy of the SB/SE FTS application package and the group manager's written explanation for the denial within **three business days** of the examiner's receipt of the signed SB/SE FTS application package from the taxpayer.
- (4) The territory manager will respond to the group manager via email with their concurrence or non-concurrence. A decision by the territory manager not to accept a case into FTS is final.
- (5) The group manager will discuss the decision to deny the application with the taxpayer. The group manager must annotate the activity record to reflect the decision to deny the application and discussion with the taxpayer. The denied SB/SE FTS application package will remain in the case file.

4.10.7.5.6.3.2

(03-03-2015)

Appeals Receipt of the FTS Application Package

- (1) The Appeals team manger will call the group manager to confirm the group manager's eligibility determination within **three business days** of receipt of the SB/SE FTS application package.
- (2) If the SB/SE FTS application package is accepted, the Appeals team manager will assign the case to an Appeals Officer trained in mediation within **three business days** of receipt.

4.10.7.5.6.3.2.1
(03-03-2015)

**Denied SB/SE FTS
Application Package by
Appeals**

- (1) If Appeals determines the eligibility requirements are not met, or the case is specifically excluded from FTS, the Appeals team manager will contact the group manager within **three business days** of receipt, to explain the ineligibility determination, and return the SB/SE FTS application package to the group manager. The group manager will contact the taxpayer to inform the taxpayer of the reasons why the case is not eligible. The case file will be documented accordingly.
- (2) If Appeals denies the application for a reason other than a failure to meet an eligibility requirement or the defined excluded cases, Appeals will notify the group manager in writing within **three business days** to explain the reason for denial. Appeals will return the SB/SE FTS application package to the group manager. Appeals will notify the taxpayer of the reason for the denial in writing. Examples of cases that **might not qualify** for SB/SE FTS include:
 - a. Numerous issues requiring more than 60 days to resolve, and
 - b. Examination or taxpayer is unable to meet during the 60 day time frame.

4.10.7.5.6.3.3
(03-03-2015)

**Appeals Considerations
Prior to the SB/SE FTS
Session**

- (1) Within **five business days** of case assignment, the Appeals official will contact the taxpayer and Examination to start the FTS planning process.
- (2) The Appeals official will work with Examination and the taxpayer/representative to identify and confirm the participants to the FTS session and ensure that all decision-making parties are present during the session. **The SB/SE group manager will determine the SB/SE participants.** SB/SE participants may include the group manager, the examiner, and others who have knowledge and expertise that may contribute to issue resolution. To facilitate resolution, the Appeals official should encourage the taxpayer's participation even if the taxpayer is represented.
- (3) The Appeals official has the right to ask either party for additional information to have full understanding of the issues and will share any information received with all parties prior to the session.
- (4) The Appeals official will schedule the FTS session at the servicing Appeals office or at another neutral site agreeable to the parties. The Appeals official will consider holding the session at a location that has the least cost or impact to the IRS. In some instances, this could mean the Appeals official will travel to the examiner's post of duty (POD). The Appeals official should involve their manager and Examination in setting the location of the session. The parties should be **flexible** in setting the meeting location and should allow participation by phone if all parties agree and it meets the needs of the parties.

4.10.7.5.6.4
(03-03-2015)

**SB/SE's Roles and
Responsibilities during
FTS**

- (1) The case activity record must reflect all examination action taken by the examiner and group manager during the FTS process. If the examiner or group manager fails to meet any of the FTS time requirements, the reason(s) must be documented accordingly.
- (2) Examiners must update their case to **status 15** and **aging reason code (ARC) 23** when Appeals accepts the case into the FTS program. Upon completing the FTS session, the examiner should update the case back to status 12. The ARC 23 should remain on the case.

- (3) If the FTS session takes place at the Examination office, the examiner and group manager are responsible for reserving a conference room(s).
- (4) Examination brings tax law expertise and specific knowledge of the case issue(s) to the FTS session. The examiner and group manager are advocates for the government's position during the FTS session. Examination may invite Counsel to attend the session to assist Examination, if needed.
- (5) The examiner and group manager will clarify and supplement the government's position and provide information necessary to address arguments and information raised by the taxpayer.
- (6) All parties will be active participants during the FTS session.
- (7) The Appeals official has the ability to offer a settlement in both factual and legal issues in the event that the parties cannot reach settlement through mediation. Neither party is obligated to accept the settlement proposal offered by the Appeals official.
- (8) If the settlement proposal is accepted by Examination and the taxpayer, the case will be closed agreed by the examiner based on the Appeals settlement.
- (9) The examiner is expected to prepare a report (e.g., Form 4549), and the appropriate agreement forms at the conclusion of the session in order to secure agreement.

Note: FTS civil penalty cases require additional steps prior to closure. See IRM 4.10.7.5.6.8, FTS Agreed Civil Penalty Case Closures.

- (10) If the settlement proposal is rejected by either party, the examiner will close the case using regular unagreed procedures. (See IRM 4.10.7.5.6.4.3, SB/SE's Rejection of a Settlement Proposal, for additional guidance).

4.10.7.5.6.4.1
(03-03-2015)

**What the Examiner
should bring to the FTS
Session**

- (1) Case file containing workpapers
- (2) Copy of the SB/SE FTS application package
- (3) Laptop computer with Report Generation Software (RGS) to prepare an examination report
- (4) Portable printer, if available

4.10.7.5.6.4.2
(03-03-2015)

**New Information
Presented During FTS
Session**

- (1) It is expected that the examiner and taxpayer are aware of all issues and claims, and have presented all documentation before the FTS application package is submitted to Appeals.
- (2) If the taxpayer and/or Examination presents new information related to the issue(s) during the FTS session, and the parties agree that the process will not be delayed beyond the goal of 60 days, the FTS process can and should continue.
- (3) If the parties determine that the process will be delayed beyond the goal of 60 days, the Appeals official will consider terminating the session until both parties have had adequate time to review and evaluate the new information. If Appeals does terminate the FTS session, the case is removed from the FTS program, and the taxpayer would have to re-apply. The examiner would update

ERCS to status 12 but retain ARC 23 on ERCS. Once the new information is evaluated, the examiner should close the case agreed, if possible, or follow unagreed procedures, including offering FTS.

4.10.7.5.6.4.3
(03-03-2015)
**SB/SE's Rejection of a
Settlement Proposal**

- (1) If the group manager rejects the Appeals official's settlement proposal, which has been accepted by the taxpayer, by the close of the **next business day**, the group manager will notify the territory manager of the reasons for rejection of the settlement proposal in writing (e.g. memorandum, email). The territory manager must concur with the rejection in writing.
- (2) If the territory manager concurs with the group manager's rejection of the Appeals official's settlement proposal, and an acceptable alternative settlement cannot be reached, the FTS session will be terminated and the case file will be documented accordingly. The examiner will close the case using normal unagreed case closing procedures. (See IRM 4.10.8.12, Unagreed Case Procedures).
- (3) If the territory manager does not concur with the group manager's rejection of the Appeals official's settlement proposal and agrees with the Appeals official's settlement proposal, the examiner will prepare the report (e.g. Form 4549) based on that proposal, secure the taxpayer(s) signature and close the case using agreed closing procedures. (See IRM 4.10.8.4, Regular Agreed Cases).

4.10.7.5.6.4.4
(03-03-2015)
**Withdrawal from SB/SE
FTS**

- (1) Both Examination and the taxpayer retain the right to withdraw from FTS throughout the entire process.
- (2) If after assignment in Appeals it is determined that the case is not ready for FTS or there is a change in the status of the case, Appeals and Examination will discuss a withdrawal of the case from FTS.
- (3) In the event of either party withdrawing, the Appeals official will notify the taxpayer and Examination, and return the SB/SE FTS application package to Examination.

4.10.7.5.6.5
(03-03-2015)
FTS Closing Procedures

- (1) Examination is expected to prepare a report (e.g. agreed or excepted agreed) and compute the applicable deficiency/over assessment at the conclusion of the FTS session for all cases closing fully agreed.
- (2) If the Appeals official settles the issues based on **hazards of litigation**, they will secure the appropriate waivers or closing agreements and provide them to Examination. Examination will follow procedures as stated in IRM 4.10.8.5, Excepted Agreed Cases, to prepare the report to be associated with the waivers or closing documents provided by Appeals.
- (3) If the case is closing fully agreed, **without using hazards of litigation**, Examination will follow agreed closing procedures as stated in IRM 4.10.8.4, Regular Agreed Cases.
- (4) If the taxpayer indicates agreement to some issues but not all of the issues at the conclusion of the FTS session, the examiner should secure a partial agreement.

- (5) The taxpayer will retain all appeal rights for issues that remain unagreed at the conclusion of the FTS session and Examination will close the case as either partially agreed or unagreed.

4.10.7.5.6.5.1

(03-03-2015)

Form 14000, Fast Track Session Report

- (1) The Appeals official is required to complete Form 14000, Fast Track Session Report, which assists in planning the SB/SE FTS session and reports the progress of the issues in dispute. The report includes the issues, adjustment dollars in dispute, and the disposition of each issue.
- (2) The Appeals official will obtain signatures from the taxpayer, representative, if applicable, the examiner and group manager on the session report, and give all session participants a signed copy. The Appeals official will explain that the settlement is not final until the necessary closing documents or waivers are signed by all parties.
- (3) Form 14000 is not a waiver of restrictions on assessment; does not terminate consents to extend the statute of limitations; and does not start the running of any statute of limitations. The signature of an IRS official on the Session Report does not preclude the reopening of the case under IRM 1.2.1.5.1, Policy Statement 4-3, Cases closed by District Directors or Service Center Directors will not be reopened except under certain circumstances.

4.10.7.5.6.5.2

(09-12-2022)

SB/SE FTS Closing Package

- (1) When an SB/SE FTS case is closed (fully or partially resolved, not resolved, terminated or withdrawn) the Appeals official will prepare an "SB/SE FTS Closing Package" as stated in IRM 8.26.2.16.3, SB/SE FTS Closing Package, which will be routed to SB/SE. The package may include the following documents:
 - a. Form 5402, Appeals Transmittal and Case Memo (signed by the FTS appeals official),
 - b. Form 14000, Fast Track Session Report (signed by all parties)
 - c. Appeals Case Memorandum (ACM) (required **only** on hazards settlements),
 - d. Special Appeals agreement forms (e.g., 870-AD), or Form 906, Closing Agreement on Final Determination Covering Specific Matters, or Form 866, Agreement as to Final Determination of Tax Liability (required **only** on hazards settlements),
 - e. Correspondence received from and sent to the taxpayer/representative.
- (2) The examiner should retain the SB/SE FTS application package and/or closing package in the examination case file together with the related FTS documentation and all FTS correspondence.

Reminder: For electronic case files (ECF), the examiner will follow the file naming guidance found in the *RGS File Naming Conventions Job Aid*.

4.10.7.5.6.5.3

(03-03-2015)

Customer Satisfaction Survey

- (1) Appeals will provide a survey to all taxpayers/representatives after each FTS session.

4.10.7.5.6.6
(03-03-2015)
**Ex Parte
Communications**

- (1) The prohibition on ex parte communications between Appeals employees and other IRS employees does not apply to the communications arising in SB/SE FTS because Appeals employees are not acting in their traditional Appeals' settlement role. (See Rev. Proc. 2012-18, Ex Parte Communications Between Appeals and Other Internal Revenue Service Employees).
- (2) The FTS process is confidential with respect to all parties, pursuant to IRC 6103, Confidentiality and disclosure of returns and return information. All information concerning any dispute resolution communication is confidential and may not be disclosed by any party except as provided under 5 USC Section 574. See IRM 8.26.2.14, Confidentiality in FTS.

4.10.7.5.6.7
(03-03-2015)
**Other Administrative
Responsibilities**

- (1) Case controls, jurisdiction and statute of limitations responsibilities remain with the Examination group.

4.10.7.5.6.8
(03-03-2015)
**FTS Agreed Civil Penalty
Case Closures**

- (1) The examiner must manually issue Letter 5320, Fast Track Settlement – Civil Penalty, to the taxpayer, in accordance with IRC 6751, Procedural requirements, and IRC 6303, Notice and demand for tax.
- (2) The examiner must complete Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, for each civil penalty with the FTS agreed civil penalty amount(s). To suppress incorrect computer-generated notices, write in the "Remarks" section of each page of Form 8278, the following: **"INPUT HOLD CODE 3 TO SUPPRESS NOTICE. PENALTY CASE HAS BEEN THROUGH FAST TRACK SETTLEMENT PROCESS."**

Note: If the civil penalty case was not agreed or resolved in FTS, do not suppress the notice. However, do complete Form 8278 with the unagreed amount of the penalty.

- (3) Write **"Input hold code 3 to suppress civil penalty notice"**, in the Special Features section, "Other Instructions", of Form 3198, Special Handling Notice for Examination Case Processing.

4.10.7.5.7
(01-01-2006)
**Notice of Proposed
Adjustments**

- (1) In the examination of large, complex tax returns, numerous issues will likely be proposed. Adjustments need to be fully developed before they are presented to taxpayers for review. If adjustments are not adequately developed, the review process may take longer. Records should be maintained of proposed adjustments and every effort taken to secure taxpayers' responses in a timely manner.
- (2) Form 5701, Notice of Proposed Adjustment, may be used to present proposed adjustments to taxpayers. Form 5701 is a three part form designed to provide written record of proposed adjustments. It is distributed as follows:
 - a. Part I is kept by the taxpayers.
 - b. Part II is returned by the taxpayers with their response to the issue.
 - c. Part III is maintained by the examiners.
- (3) Use of Form 5701 is not mandatory. Any method which provides a record of what was presented to taxpayers may be used.

- (4) The issuance of Form 5701 is recorded on the Issue Control Sheet, Form 5700. Form 5700 is a log which provides a record of outstanding Form 5701, along with their current status.
- (5) Preparation of Form 5701 must be tailored to the peculiarities of the issue, the taxpayer, and the expected agreed or unagreed status of the proposed adjustment. Form 5701 may serve as a cover sheet for a Form 886-A, Explanation of Items. This facilitates incorporation of an explanation of the issue into the audit report.
- (6) The suggested format for preparation of an issue proposal is as follows:
 - a. Issue,
 - b. Facts,
 - c. Law,
 - d. Government's Position,
 - e. Taxpayer's Position, and
 - f. Conclusion.

4.10.7.5.8
(09-12-2022)
TEFRA/BBA Cases

- (1) The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) changed examination and administrative procedures for partnership examinations to allow examinations and statutes to be controlled at the partnership level. Under the 1982 Act, examinations, appeals, and judicial proceedings are, in general, conducted at the entity level. Closing conferences and issue proposals relating to TEFRA entities must by law follow rigid guidelines. See IRM 4.31.1, Introduction, and IRM 4.31.2, TEFRA Examinations - Field Office Procedures, for guidance.
- (2) Section 1101 of the Bipartisan Budget Act (BBA) of 2015 repealed TEFRA partnership and Electing Large Partnership (ELP) provisions beginning with tax years beginning 1/1/2018. BBA has replaced TEFRA and ELP with an entirely new centralized partnership audit regime. The new regime provides for determination, assessment and collection of underpayments at the partnership level unless certain elections are made by the partnership. Generally, all partnerships with tax years beginning 1/1/2018 will be subject to the BBA centralized partnership audit regime. Certain eligible partnerships may make an election out of the BBA regime. See IRM 4.31.9, Centralized Partnership Audit Regime (BBA) Field Examination Procedures, for additional guidance.
- (3) See *Partnerships Knowledge Base* for additional information on TEFRA and BBA.

4.10.7.5.9
(09-12-2022)
Payment Expectations

- (1) Examiners should solicit full payment for the audit deficiency (i.e., tax, penalties, and interest) and any outstanding balances due from all tax years during the closing conference or at the conclusion of scheduled office examination appointment. See IRM 4.20.1.3.1, Request Full Payment, for information and guidance and IRM 4.20.1.2.4, Document Collectibility, for guidance on documenting the case file.

Caution: When a taxpayer has filed or is preparing to file for bankruptcy, examiners must refer to IRM 4.27.1, Examiner Responsibilities and Procedures, for guidance on soliciting payment.

4.10.7.6

(01-01-2006)

Burden of Proof Shifts to the IRS

- (1) IRC 7491, Burden of Proof, provides that the burden of proof in a court proceeding will shift from the taxpayer to the IRS effective for court cases arising out of examinations started after July 22, 1998 in the following areas:
 - a. Income, estate, gift, and generation skipping taxes, if the taxpayer meets certain requirements described below.
 - b. Cases where any item of income is based solely on statistical information from unrelated taxpayers.
 - c. Shift burden of production only with respect to penalties.
- (2) The term examination includes an audit, the matching of amounts from information returns (IRP), and the review of a claim for refund prior to the issuance of the refund.
- (3) Congress reasoned that individual and business taxpayers were at a disadvantage in court against the IRS, and that there was fundamental unfairness in the process. With the burden of proof on the taxpayer, there was a presumption of “guilt, until proven innocent.” Congress believed that if a taxpayer is generally law abiding, then the IRS should prove that the position taken by the taxpayer is wrong.
- (4) IRC 7491 applies specifically to income, estate, gift, and generation-skipping transfer taxes. For this purpose, self-employment taxes are treated as income taxes. It should be noted that the Director, Compliance (Examination) has determined the policy of Examination is that the general burden of proof provisions should apply to all Examination determinations of federal tax liability. The proper identification, development, proposal and resolution of as many issues as possible is a good examination practice.

4.10.7.6.1

(01-01-2006)

General Burden of Proof

- (1) IRC 7491(a)(1) shifts the burden of proof in a court proceeding from the taxpayer to the IRS if the taxpayer produces credible evidence regarding the factual issues relevant to determining tax liability and also satisfies the criteria below.

4.10.7.6.1.1

(01-01-2006)

Criteria to Be Met

- (1) The legislation provides the criteria for shifting the burden of proof to the IRS. For the shift to apply, the taxpayer has the burden of proving the following:
 - a. Met all substantiation requirements of the IRC and regulations;
 - b. Maintained all records required by the IRC and regulations;
 - c. Cooperated with any reasonable request for information, documents, meetings, interviews and witnesses by the IRS;
 - d. Exhausted all its administrative remedies, including appeal rights; and,
 - e. Met certain net worth qualifications but only if the taxpayer is a partnership, corporation, or trust. Special rules apply to Qualified Revocable Trusts (see IRC 7491(a)). There is no net worth qualification for individuals (an estate is considered an individual).

4.10.7.6.1.2

(01-01-2006)

Relationship with IRC section 6201(d)

- (1) IRC 6201(d), Required reasonable verification of information returns, became effective in 1996 and applies without regard to IRC 7491. If the taxpayer meets the conditions of IRC 6201(d), the IRS has the burden of producing information to support income items reported on the information return.
- (2) IRC 6201(d) requires that the IRS produce “reasonable and probative information” in any court proceeding regarding a deficiency based on an information

return if: (1) the taxpayer raises a reasonable dispute and (2) the taxpayer has fully cooperated with the IRS. Full cooperation includes timely compliance with requests for information, including access to witnesses, information, and documents within the control of the taxpayer. If the taxpayer does not raise a "reasonable dispute," the IRS will not be required to produce any information beyond the information return.

- (3) The examiner should take the following actions when a taxpayer disputes receipt of income reported on an information return (IRP), or disputes the accuracy of the information return:
 - a. Contact the third party payer and request verification of the accuracy of the information document;
 - b. Document the examiner's activity record to show the date the letter was sent;
 - c. Retain a copy of the letter and third party payer's response in the case file;
 - d. If the third party payer does not respond to the verification letter, or responds that the records no longer exist, the adjustment may need to be conceded if the IRS cannot obtain reasonable and probative information from another source.

4.10.7.6.1.3 (01-01-2006)

Documentation of Case Files

- (1) It should be noted that relatively few audits result in litigation, the outcome of tax litigation rarely turns on who has the burden of proof, and those cases where the taxpayer refuses to provide documents and refuses to cooperate are not affected at all by IRC 7491(a). However, this does not mean examiners should not follow sound audit practices.
- (2) Even before the burden of proof provisions were enacted in 1998, the IRS sought to make sure that its technical positions were well thought out, the facts were appropriately developed, audit conclusions were well supported, and the case file was well documented.
- (3) If the examination ultimately reaches litigation, and it becomes necessary to determine whether examiner requests for information were made and were reasonable, the determination will depend upon the facts and circumstances of each case as documented in the case file.

4.10.7.6.1.3.1 (01-01-2006)

Use of Examiner Activity Reports

- (1) The use of Form 9984, Examining Officer's Activity Record, or the RGS equivalent, is required for:
 - a. Uniform case file documentation of examination activities,
 - b. Examination Quality Measurement System (EQMS) case reviews,
 - c. The possibility of having to respond to a taxpayer's claims for interest abatement under IRC 6404(e), and
 - d. Determining whether taxpayers fully cooperated with reasonable requests for information.
- (2) Examiners and any person (Group Manager, Group Secretary, Appointment Clerk, Audit Accounting Aid, Tax Examiner, Reviewers, etc.) are required to document each action taken on the case using the Form 9984 (or RGS equivalent). Documentation of activity begins on the date the taxpayer is notified in writing of the commencement of an examination. Actions after assessment (i.e., audit reconsiderations, collection referrals, etc.) must also be documented on Form 9984.

- (3) The following information will be accurately documented on Form 9984 for each action taken on a case:
 - a. Date of the activity,
 - b. Location of the activity,
 - c. Contact code,
 - d. Time charged, and
 - e. Remarks and/or actions taken.
- (4) In the Remarks, Notes, Actions Taken section of Form 9984 it is very important to record all activity, as well as inactivity (i.e., details, training, extended leave, etc.), including but not limited to:
 - a. All contacts with the taxpayer and/or representative, whether in writing or by telephone,
 - b. Appointments, conferences, meetings, etc. with the taxpayer and/or representative, group manager, or other persons,
 - c. Research conducted,
 - d. Report preparation and issue resolution,
 - e. Date the case is closed to the manager, as well as the date the case is closed from the group, and
 - f. Any other activity that assists in bringing the examination to a resolution.

4.10.7.6.1.3.2
(09-12-2022)

**Use of Lead Sheets,
Workpapers and Reports**

- (1) Examiners should utilize lead sheets, workpapers and audit reports to support audit adjustments and document the extent of taxpayer cooperation. Lead sheets and workpapers must document the audit activities including audit steps and techniques applied, tests performed, information obtained, and conclusions reached. They must include all the information necessary to support the audit results. This includes making complete copies of documents submitted by the taxpayer in appropriate cases.
- (2) Lead sheets and workpapers serve four basic purposes:
 - a. Provide a framework to plan the audit, including the analysis of internal documents, and set the scope of the exam;
 - b. Document the evidence gathered, audit steps and techniques applied, tests performed, and analyses conducted during the audit process;
 - c. Support the factual and technical conclusions, and;
 - d. Provide a basis for review by management and other stakeholders (e.g., Treasury Inspector General for Tax Administration (TIGTA) reviewers and Counsel). Well prepared workpapers facilitate review by numerous customers.
- (3) For guidance on lead sheets and workpapers, see IRM 4.10.9, Workpaper System and Case File Assembly, and IRM 4.10.8, Report Writing, for guidance on preparation of audit reports.

Reminder: For electronic case files (ECF), the examiner will follow the file naming guidance found in the *RGS File Naming Conventions Job Aid*.

- 4.10.7.6.2
(01-01-2006)
Use of Statistical Information—Burden of Proof
- (1) IRC 7491(b) places the burden of proof on the IRS in any court proceeding when the IRS reconstructs any item of the taxpayer's income using **solely** statistical information. See IRM 4.10.4.6.1.3, Use of Bureau of Labor Statistics Data or Other Statistical Information to Reconstruct Taxable Income, for more detailed discussion on the use of Bureau of Labor Statistics (BLS) data.
- 4.10.7.6.2.1
(09-12-2022)
Overview of Procedures
- (1) The use of BLS or Consumer Price Index (CPI) information is still appropriate in some situations. If the IRS has some direct or indirect evidence that links the taxpayer to unreported income generating activities, the burden of proof does not shift to the IRS under this specific burden of proof. When this supplemental evidence is present, then the general burden of proof rule applies.
- (2) Audit procedures for nonfiled tax returns are not affected by Burden of Proof legislation. See IRM 4.12.1, Nonfiled Returns, for guidance on substitute for returns (SFR) filed on behalf of a nonfiler under IRC 6020(b).
- (3) If an examiner determines that a taxpayer has unreported income, the use of statistical data must be supported by supplemental information that links the taxpayer to an income producing activity.
- 4.10.7.6.2.2
(01-01-2006)
Supplemental Information
- (1) When using statistical information provided by either BLS or CPI, an examiner must develop supplemental information to support the finding of unreported income. Such evidence could include proof of assets owned, verification of personal living expenses, and verification of the likely source of income.
- (2) Most importantly, the examiner should develop direct or indirect evidence that links the taxpayer to income generating activities. Some audits steps which would support such a determination could include:
- Checking for business listings in the local phone book;
 - Contacting any known employers;
 - Identifying any non-taxable sources of income;
 - Securing copies of financial statements from lending institutions who have made loans to the taxpayer;
- 4.10.7.6.3
(09-12-2022)
Assessment of Penalties Burden of Proof—Overview of Procedures
- (1) IRC 7491(c) states that the IRS has the burden of production in a court proceeding when the issue is a penalty, an addition to tax, or an additional amount imposed by the IRC. In any court proceeding, the IRS must first present evidence that imposition of the amount is appropriate. Only then must the taxpayer assume the burden of persuasion to raise appropriate defenses, such as reasonable cause, to the imposition of the penalty. IRC 7491(c) applies only to individuals.
- 4.10.7.6.3.1
(01-01-2006)
Definitions
- (1) The following definitions are related to the burden of proof requirements for assessment of penalties:
- Penalties** include all penalties assessed under this title. An example is IRC 6662 that imposes the accuracy related penalty.
 - Addition to Tax** is any amount computed by reference to the amount of tax. An example is the addition to tax imposed by IRC 6654 for failure by an individual to pay estimated income tax.
 - Additional Amount** refers to an amount that can be assessed by the IRS that is not an addition to tax or penalty. An example is the amount

imposed under IRC 6673 for the sanctions and costs awarded by a court when a taxpayer's position is frivolous.

Note: The definition of additional amounts under IRC 7491(c) does not include excise taxes imposed by chapters 42 and 43 of the IRC nor does it include interest under IRC 6601.

4.10.7.6.3.2
(01-01-2006)

Explanation & Example

- (1) The IRS must first present evidence that a penalty, addition to tax, or additional amount is appropriately applied to the taxpayer. It is then the taxpayer's responsibility to present evidence of reasonable cause, substantial authority, or other similar defense in showing that the amount should not be asserted.
- (2) For example, if a delinquency penalty is asserted under IRC 6651, Failure to File Tax Return or to Pay Tax, the IRS would meet its burden of production by showing that the filing date was after the due date for the tax return, and that there was no evidence the taxpayer filed for an extension.
- (3) Examiners should treat a penalty issue as any other issue by including the following information in the case file:
 - a. The facts surrounding the issue
 - b. Applicable law
 - c. Application of the facts to the law
 - d. Audit conclusion
 - e. Taxpayer's Position
- (4) Examiners should consult IRM 4.10.6, Penalty Considerations, and IRM 20.1, Penalties, for additional information when developing penalty issues.

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Exhibit 4.10.7-1 (01-01-2006)
Court of Appeals Jurisdictions

Court of Appeals	Jurisdiction
First Circuit	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
Second Circuit	Connecticut, New York, Vermont
Third Circuit	Delaware, New Jersey, Pennsylvania, Virgin Islands
Fourth Circuit	Maryland, North Carolina, South Carolina, Virginia, West Virginia
Fifth Circuit	Louisiana, Mississippi, Texas
Sixth Circuit	Kentucky, Michigan, Ohio, Tennessee
Seventh Circuit	Illinois, Indiana, Wisconsin
Eighth Circuit	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
Ninth Circuit	Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington
Tenth Circuit	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
Eleventh Circuit	Alabama, Florida, Georgia
District of Columbia	Washington, DC
Federal*	US Court of Federal Claims

* The Court of Appeals for the Federal Circuit was created to hear decisions appealed from the US Court of Federal Claims.

