



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.13.1

DECEMBER 16, 2015

## EFFECTIVE DATE

(12-16-2015)

## PURPOSE

- (1) This transmits revised 4.13.1 Audit Reconsideration, Introduction.

## MATERIAL CHANGES

- (1) IRM 4.13.1.2 - Added clarifying content.
- (2) IRM 4.13.1.3 - Added clarifying content.
- (3) IRM 4.13.1.4 - Added clarifying content.
- (4) IRM 4.13.1.5 - Added clarifying content.
- (5) IRM 4.13.1.6 - Minor grammatical change.
- (6) IRM 4.13.1.7 - Added clarifying content.
- (7) IRM 4.13.1.8 - Minor grammatical change.
- (8) IRM 4.13.1.9 - Changed IRM references.
- (9) IPU 100933 issued 06-14-2010 IRM 4.13.1.5 Revise note under new paragraph (2).
- (10) IPU 100933 issued 06-14-2010 IRM 4.13.1.5 Insert new paragraph (2) and renumber (3) through (5).
- (11) IPU 100284 issued 02-25-2010 IRM 4.13.1.5(2) revise paragraph, alpha list and note.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.13.1, dated 12-31-2009. The IPUs have been incorporated into the IRM.

## AUDIENCE

Small Business/Self Employed and Wage and Investment Campus Compliance, Customer Account Services Employees, Appeals, TAS

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4.13.1

Introduction

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4.13.1.1  
(10-01-2006)  
**Overview**

- (1) These procedures are directed at:
  - a. Ensuring the amount of assessed tax is correct.
  - b. Ensuring the collection process is suspended while the reconsideration request is being considered.
  - c. Ensuring that the procedures support the abatement of assessments in appropriate situations.
  - d. Ensuring that cases are handled in a consistent manner.

4.13.1.2  
(12-16-2015)  
**Definition of an Audit Reconsideration**

- (1) An audit reconsideration is the process the IRS uses to reevaluate the results of a prior audit where additional tax was assessed and remains unpaid, or a tax credit was reversed. If the taxpayer disagrees with the original determination he/she must provide new information for the audited issue(s) that was not previously considered during the original examination. It is also the process the IRS uses when the taxpayer contests a substitute for return (SFR) determination by filing an original delinquent return or when there is a n IRS computational or processing error in assessing the tax. Please see IRM 1.2.12.1.15 , *Policy Statement 3-15 (Formerly P-2-89)*.

4.13.1.3  
(12-16-2015)  
**Reasons for a Request**

- (1) Some reasons for an audit reconsideration request:
  - a. The taxpayer did not appear for the audit.
  - b. The taxpayer moved and did not receive the correspondence from the IRS.
  - c. The taxpayer has new documentation pertinent to audited issue(s) to present.
- (2) A taxpayer might request an audit reconsideration if:
  - a. The taxpayer disagrees with an audit assessment from an audit of his/her return.
  - b. The taxpayer disagrees with an assessment created under the authority of IRC 6020(b), Substitute for Return (SFR).
  - c. The taxpayer has been denied tax credits such as earned income credit (EITC) claimed, during prior examination.

4.13.1.4  
(12-16-2015)  
**Criteria for Reconsideration**

- (1) In order to request an audit reconsideration:
  - a. The taxpayer must have filed a tax return.
  - b. The assessment remains unpaid or the Service has reversed tax credits that the taxpayer is disputing.
  - c. The taxpayer must identify which adjustments he/she is disputing.
  - d. The taxpayer must provide new additional information for the audited issue(s) not considered during the original examination.
  - e. There was an IRS computational or processing error in assessing the tax.

4.13.1.5  
(12-16-2015)  
**Taxpayer Advocate Cases (TAS)**

- (1) Taxpayer Advocate Service (TAS) helps taxpayers whose problems with the IRS are causing financial difficulties; who have tried but haven't been able to resolve problems with the IRS; and those who believe an IRS system or procedure isn't working as it should. TAS accepts cases based on the specific TAS criteria outlined in IRM 13.1.7.2, *TAS Case Criteria*. In general, taxpayers suffering an economic burden (TAS criteria 1-4), immediate threat of adverse action, significant costs, irreparable injury, or a significant systematic delay (TAS criteria 5-7) meet TAS criteria. TAS criteria might exist at any point in the

Audit Reconsideration process. **If you receive a TAS case, every effort should be made to expedite the resolution.**

- (2) As part of the Identity Theft Program, the Accounts Management Identity Protection Specialized Unit (IPSU) will begin assisting taxpayers whose situations meet TAS criteria 5 - 7 AND involve identity theft. Applicable cases will now be considered IPSU criteria. See IRM 4.13.3.18, *Identity Theft*, for additional information.
- (3) TAS Audit Reconsideration Procedures for referring TAS cases. Supporting documentation attached to Form 12412 , *Operations Assistance Request (OAR)*, should include new information for the audited issue(s) that was not considered during the original examination. In addition, Form 12412 must also include the following information if it is not already available on RGS:
  - a. Any information received from the taxpayer pertinent to the examination issue,
  - b. Copies of letters and reports received by the taxpayer from the IRS, **if available**,
  - c. Copies of documents already submitted by the taxpayer, **if available**, and/or,
  - d. Amended returns, if applicable.

**Note:** On examinations conducted in an area office, the administrative files must be provided to resolve the audit reconsideration. If unable to obtain the administrative file, the Report Generating Software (RGS) information should be requested from the appropriate SBSE RGS Coordinator. On examinations conducted in a campus, examiners should attempt to resolve audit reconsideration requests by using Correspondence Examination Automation Support (CEAS) information, whenever possible. The administrative file may be requested by TAS, if RGS information is not available or is not sufficient to resolve the request.

- (4) Review the special instructions TAS has entered on Form 12412 . TAS will identify cases that require expedite processing. These cases must be assigned within one workday and completed in three days. Cases not identified as expedite must be assigned within three work days and completed within 14 days. The Tax Examiner Assistant has 3-5 days to renegotiate OAR completion dates.
- (5) All TAS cases must be worked in adherence with the Service Level Agreements and addenda between W&I, SB/SE, and TAS. See TAS web site for Service Level Agreements at <http://tas.web.irs.gov/policy/sla/default.aspx> or on the internet at [http://www.irs.gov/Advocate/Taxpayer-Advocate-Service-Level-Agreements-\(SLAs\)](http://www.irs.gov/Advocate/Taxpayer-Advocate-Service-Level-Agreements-(SLAs))

#### 4.13.1.6 (12-16-2015) **Authority**

- (1) The Internal Revenue Service has the discretionary authority to abate an assessment of any tax if it is excess of the taxpayer's liability per IRC 6404(a) and Treas. Reg 301.6404-1..

#### 4.13.1.7 (12-16-2015) **Acceptance of Request**

- (1) A request for reconsideration will be considered if:

- a. The taxpayer requests the abatement of an assessment based on new information for the audited issue(s) that was not previously considered which, if considered, would have resulted in a change to the assessment.
- b. An original delinquent return is filed by the taxpayer after an assessment was made as a result of a return executed by the IRS under IRC 6020(b) or other substitute for return procedures.
- c. There was an IRS computational or processing error in assessing the tax.

4.13.1.8  
(12-16-2015)  
**Non-Acceptance of Request**

- (1) A request for reconsideration will not be considered if:
- a. The taxpayer has already been afforded an audit reconsideration request and did not provide any additional information with his/her current request that would change the audit results.
  - b. The assessment was made as a result of a closing agreement entered into under IRC 7121 using Form 906 *Closing Agreements on Final Determination Covering Specific Matters* or Form 866 *Agreement as to Final Determination of Tax Liability*, or some combination of the two forms.
  - c. The assessment was made as a result of a compromise under IRC Section 7122. These agreements are final and conclusive. A final compromise determination can be identified on IDRS by the posting of a TC 788.
  - d. The assessment was made as the result of final TEFRA administrative proceedings.
  - e. The assessment was made as a result of the taxpayer entering into an agreement on Form 870-AD, *Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment*.
  - f. The United States Tax Court has entered a decision that has become final, or a District Court or the United States Court of Federal Claims has rendered a judgment on the merits that has become final.
  - g. The United States Tax Court has dismissed a case for lack of prosecution.

**Note:** Any request for reconsideration on cases that were settled by Tax Court, District Court, or Court of Federal Claims should be forwarded to the Office of the Associate Area Counsel for forwarding to the docket attorney.

**Note:** A case dismissed by a court for lack of jurisdiction can be reconsidered if the conditions for acceptance are met. When the Tax Court dismisses a case for lack of jurisdiction, it does not enter a decision and the case is not dismissed on the merits. See IRC Section 7459(d). Likewise, when a District Court or the United States Court of Federal Claims dismisses a case for lack of jurisdiction, the case has not been dismissed on the merits.

4.13.1.9  
(12-16-2015)  
**Special Circumstances**

- (1) Combat Zone Case
- a. If review of the taxpayer's account indicates the taxpayer was in a combat zone during the original audit (plus 180 days after leaving the combat zone), reverse all assessments made by Exam. Review of the taxpayer's account will show a TC 500 with closing codes 52, 54 and 56 that provides the entry and exit dates within the combat zone. The account will also have a -C freeze. Refer to IRM 5.19.10.6.3 , *Combat Zone Freeze Code* and IRM 4.4.1-9, *Combat Zone Procedures*, for further information.
  - b. Normal combat zone procedures IRM 4.19.13.20 , *Combat Zone*, do not apply to reconsideration cases, where the tax year(s) in question was not the same year(s) that the taxpayer was in a combat zone (plus 180 days after leaving the combat zone). For reconsideration requests other than

the year(s) that combat zone procedures apply, continue to work and correspond with the taxpayer to resolve the reconsideration request.

- (2) Disaster Case Special procedures apply to disaster situations. Refer to IRM 25.16.1, *Program Guidelines*, for guidance issued specific to the disaster.