



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.30.1

AUGUST 25, 2020

EFFECTIVE DATE

(08-25-2020)

PURPOSE

- (1) This transmits revised IRM 4.30.1, LB&I General Procedures, Pre-Filing Agreement Program.

BACKGROUND

- (1) The Pre-Filing Agreement (PFA) program allows taxpayers to file more compliant returns, decrease the burden on IRS and taxpayer, and conserve resources.

MATERIAL CHANGES

- (1) Organizational titles, citations and minor editorial corrections.

EFFECT ON OTHER DOCUMENTS

IRM 4.30.1 dated March 28, 2018 is superseded.

AUDIENCE

LB&I Division personnel

John V. Cardone
Assistant Deputy Commissioner Compliance Integration
Large Business and International Division

4.30.1

Pre-Filing Agreement Program

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4.30.1.1
(08-25-2020)
Program Scope and Objectives

- (1) A taxpayer under the jurisdiction of LB&I may request that the Service examine specific tax issues before its tax return is filed. If the taxpayer and the Service can resolve the issue before the tax return is filed, the taxpayer and the Service may execute a Pre-Filing Agreement (PFA).
- (2) All taxpayers under the jurisdiction of LB&I are eligible to apply for a PFA.
- (3) Eligible tax issues generally include those that are factual in nature and governed by well-established law. Not all examination issues will qualify for PFA resolution. PFAs are not the vehicle for issues involving questions of law that are more appropriately resolved through the private letter ruling process.
- (4) A taxpayer may request a PFA for a completed transaction where the tax return has not yet been filed and may request a methodology agreement for up to four additional years.
- (5) **Audience:** Procedures in this manual may affect any or all revenue agents in LB&I since any LB&I taxpayer may apply for a PFA. The term “IRS Examination Team” or “Team” as used in this manual is intended to include all revenue agents, team members and team coordinators that may work on the issue. The “Team” may include only one agent or may include several agents depending on the size and nature of the taxpayer and the issue.
- (6) **Policy Owner:** The PFA Program is taxpayer initiated and LB&I oversight is provided by the Assistant Deputy Commissioner Compliance Integration (ADCCI).
- (7) **Program Owner:** Strategy, Policy and Governance (SPG) in ADCCI is responsible for program implementation and guidance.
- (8) Be aware of our responsibility to ensure fairness and integrity in administering this program. See Policy Statement 1-236 in IRM 1.2.1.2.36 for additional information.

4.30.1.1.1
(03-28-2018)
Background

- (1) Traditional post-filing approaches often create a burden for both the taxpayer and the Service. To improve business practices, the IRS moved toward addressing taxpayer concerns as early as possible and resolving differences before tax returns are filed. The Large and Mid-Size Business Division (now Large Business and International Division (LB&I)) piloted the Pre-Filing Agreement (PFA) Program in 2000. The pilot demonstrated that PFAs were cost efficient, they allowed taxpayers to file more compliant tax returns within prescribed time frames, taxpayer burden decreased and both the IRS and taxpayers conserved resources. As the result of the pilot, the PFA Program became permanent.

4.30.1.1.2
(03-28-2018)
Authority

- (1) Revenue Procedure 2016-30 provides the guidelines that permit a taxpayer to request the examination of specific issues relating to a tax year before a timely filed return is submitted.

4.30.1.1.3
(03-28-2018)

Related Resources

- (1) Additional PFA program information can be found at the following web sites:

Internal- LB&I Website
<https://irssource.web.irs.gov/LBI/Lists/ADCCIPMO/DispItemForm.aspx?ID=36>

External- IRS.gov
<https://www.irs.gov/businesses/pre-filing-agreement-program>

4.30.1.2
(03-28-2018)

Pre-Filing Agreement Application Process

- (1) Revenue Procedure 2016-30 contains information to be used by the taxpayer in completing a PFA application.
- (2) There is no prescribed format for a PFA request. However, a request for a PFA must contain the information outlined in Rev. Proc. 2016-30.
- (3) Submission of a PFA should be made to the LB&I team manager if a current examination is being conducted or a team is on site. Otherwise, requests can be mailed, emailed or faxed by the taxpayer to the PFA analyst (see specific instructions in Rev. Proc. 2016-30).

4.30.1.3
(03-28-2018)

Screening of PFA Applications

- (1) The criteria for selecting taxpayers to participate in the PFA program includes but is not limited to the following:
- The suitability of the issue presented; i.e., to resolve issues involving factual questions under well-established law
 - The direct or indirect impact of the PFA upon other years, issues, taxpayers or related cases
 - The availability of Service resources
 - The ability and willingness of the taxpayer to dedicate sufficient resources to the process
 - The likelihood that the PFA may result in contrary positions with respect to an item or transaction (“whipsaw”)
 - The time remaining until the due date of the return
 - Overall probability of completing the process by the date for filing the taxpayer’s return
 - Whether the issue is the subject to administrative or judicial proceedings
- (2) For a taxpayer currently under examination, the team manager completes an initial analysis of the PFA application and provides a recommendation for acceptance in accordance with the team manager’s PFA template available at <https://irssource.web.irs.gov/LBI/Lists/ADCCIPMO/DispItemForm.aspx?ID=36>.
- (3) The PFA analyst gathers information on issue suitability and the technical aspects of the issue from subject matter experts, Counsel and others. This information is transmitted to the appropriate practice area director generally within two weeks of receipt.
- (4) The practice area director will make the decision whether to accept or decline a taxpayer’s request for a PFA. See *Delegation Order 4-29* (or successor). A taxpayer is not entitled to a conference to appeal a decision not to go forward with the PFA process.
- (5) After a decision is made, a letter from the practice area director to the taxpayer will specify the reason(s) for acceptance or non-acceptance, and if accepted, the amount of the user fee and the remittance procedures.

- (6) A taxpayer not selected for the PFA program, or where no PFA Agreement is reached, remains eligible for other early issue resolution procedures.
- (7) A user fee is imposed on taxpayers who are selected to participate in the PFA program.
 - a. The user fee is charged on a per issue basis. If the taxpayer requests a PFA that contains more than one distinct issue, the taxpayer will be subject to a user fee on each issue selected for the PFA program.
 - b. The taxpayer must submit payment within 15 business days of written notification that they have been selected to participate in the PFA program. Payment must be made via Pay.Gov. User fees are generally not refundable in the event of a withdrawal of the PFA by either the taxpayer or the Service.
 - c. The user fee is \$181,500 for requests received after February 1, 2020. When necessary, the amount is updated in the first Revenue Procedure each year (i.e. 20xx-1).
- (8) For PFAs in which a taxpayer seeks a closing agreement involving deductibility and/or valuation of a charitable contribution (including a contribution of conservation easements and other real property, patents, or other property) a statement that the agreement will also address issues of valuation as well as all legal issues involving deductibility under IRC 170 is required in the acceptance letter. This statement should include one of the paragraphs below, as applicable:
 - a. **Patent Donation.** The PFA will address both the issue of deductibility and the issue of valuation. Please provide copies of the donation agreement, assignment document, appraisal, the IRC 170(f)(8) statement (contemporaneous written acknowledgment), other documents mentioned in or related to these documents, and other items requested by the team.
 - b. **Conservation Easement Donation.** The PFA will address both the issue of deductibility and the issue of valuation. Please provide copies of the property description, deed, easement documents, appraisal, documents describing the donee organization, documents showing the donation is a qualified conservation easement within the meaning of IRC 170(h), the IRC 170(f)(8) statement (contemporaneous written acknowledgment), other documents mentioned in or related to these documents, and other items requested by the team.
 - c. **Land Donation.** The PFA will address both the issue of deductibility and the issue of valuation. Please provide copies of the property description, deed, transfer documents, appraisal, the IRC 170(f)(8) statement (contemporaneous written acknowledgment), other documents mentioned in or related to these documents, and other items requested by the team.

4.30.1.4
(03-28-2018)
**Pre-Filing Agreement
Development**

- (1) When a PFA application is accepted into the program, a Pre-Filing Agreement Team (PFA Team) is formed including, the IRS Examination Team, representatives of the taxpayer, Field Counsel, and other appropriate personnel to develop the issue(s) and reach an agreement.
- (2) An orientation meeting is held with the entire PFA team as soon as possible after the acceptance of the PFA application.
 - a. A representative, generally the practice area analyst, of the practice area that accepted the PFA will conduct the orientation meeting. The orienta-

- tion session will cover the procedural aspects of the PFA process for both the taxpayer and the IRS participants.
- b. Additional topics may include the degree of commitment and cooperation needed during the process, pre-planning efforts, developing a time line, fact finding and timely information sharing, monitoring reports required, coordination with concurrent administrative or judicial procedures such as APAs, issue resolution, preparation of the PFA closing agreement, evaluation of the process and the role and responsibility of each of the participants.
- (3) Training — The Letter of Understanding (LOU) between IRS and the National Treasury Employee's Union (NTEU), dated 3/12/01, see Exhibit 4.30.1-1, referencing the Pre-Filing Agreement Initiative, provides guidelines for training for employees assigned to PFA teams. If training has not occurred, the employee's manager or another GS-13 or 14 employee will be available to assist that employee.
- (4) Time Reporting — Examination time expended on this PFA activity will be charged to code 525000 for purposes of the Form 4502. Additionally, a monthly report specifying the time charged by position and containing status comments will be provided simultaneously by the team manager to the PFA analyst and the practice area analyst.
- (5) Issue Development — The PFA team will work together to obtain the necessary information, fully develop the issue(s), and provide the basis for a Pre-Filing agreement.
- a. The PFA team will develop a time line and work plan identifying the information and steps needed to develop the issue.
 - b. The PFA team will use auditing standards and procedures to develop the issue(s).
 - c. The practice area director will assure that the appropriate technical expertise and needed resources are made available to the PFA team.
- (6) Section 6.02 of Rev. Proc. 2016-30 requires that the Associate Chief Counsel having subject matter jurisdiction over the issue proposed to be determined by the PFA be notified of any significant change in the facts submitted with the application. The team will notify local Counsel (with a copy to the PFA analyst) of a change. Local Counsel will notify the appropriate Associate Chief Counsel when necessary.
- (7) Withdrawal — At any time prior to the execution of the PFA, either the taxpayer or the Service may withdraw from consideration all or part of the request for a PFA.
- a. The withdrawal must be in writing and signed by the party initiating the withdrawal action, i.e., the taxpayer or his authorized representative or the practice area director. The team coordinator will comment in the work papers regarding the withdrawal of the PFA and the issue and circumstances involved. A copy of the withdrawal notification must be submitted to the PFA analyst.
 - b. In the event the practice area director and the taxpayer cannot reach agreement and/or a closing agreement cannot be executed, the practice area director will notify the taxpayer in writing of the Service's decision to withdraw from the PFA process. The notification should include the reason for such action.

4.30.1.5

(03-28-2018)

**Closing Agreement and
Filing of Tax Return**

- (1) The PFA agreement is the culmination of the PFA team's efforts and is a binding agreement as to the treatment of a particular issue.
- (2) Where appropriate, subject matter experts, Counsel and other interested parties will provide guidance in fashioning a PFA agreement with the taxpayer.
- (3) If a PFA agreement is executed prior to the filing of the return, the taxpayer must file such return according to the terms and conditions set forth in the PFA closing agreement. A copy of the PFA agreement must be attached to the return.
- (4) If a PFA agreement is not reached prior to the filing of the return, the Service and the taxpayer may continue to attempt to resolve the issue and enter into a PFA closing agreement. If the return is filed, the taxpayer is expected to file an amended return consistent with the terms and conditions of the PFA agreement. A copy of the PFA agreement must be attached to the amended return.
- (5) PFA agreements, including PFA closing agreements (Forms 906, Closing Agreement on Final Determination Covering Specific Matters) and any associated PFA non-statutory agreements (for prospective matters), will be executed in duplicate and distributed as follows:
 - a. One original PFA agreement will be provided to the taxpayer.
 - b. The second original will be maintained in the PFA workpapers.
 - c. A copy of the executed PFA agreement will be provided to the PFA analyst and the practice area analyst.
- (6) For team on-site cases a copy of the PFA agreement with associated workpapers is maintained in the PFA year planning file. The return, at a minimum, will be reviewed to ensure compliance with the terms of the PFA agreement.
- (7) For those cases where there is no on-going examination, a Form 5346, Examination Information Report, will be generated to ensure the return is reviewed for compliance with the PFA agreement. The information report will contain the PFA workpapers and a copy of the PFA agreement.

4.30.1.6

(03-28-2018)

Additional Information

- (1) Questions may be directed to the PFA analyst at *pfa.info@irs.gov*.

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Exhibit 4.30.1-1 (03-28-2018)
PFA Letter of Understanding

March 12, 2001
Ms. Katherine T. Lane
National Negotiator
National Treasury Employees Union
901 E Street, N.W. Suite 600
Washington, D.C. 20004-2037

RE: Pre-Filing Agreement Initiative

Dear Ms. Lane:

This is to confirm conversations that have occurred between representatives of the Commissioner, Large and Mid-Size Business Division (LMSB), the Office of Workforce Relations, and yourself concerning the Internal Revenue Service's decision to implement the Pre-Filing Agreement initiative. Revenue Procedure 2001-22, dated January 19, 2001, permits a taxpayer subject to the jurisdiction of the Large and Mid-Size Business Division to request the examination of specific issues relating to a tax return before the return is filed. This revenue procedure also establishes a framework within which the taxpayer and the Service can work together in a cooperative environment to resolve the examined issues. If the taxpayer and the Service are able to resolve the examined issue prior to the filing of the return, the revenue procedure authorizes the parties to finalize their resolution by executing an LMSB Pre-Filing Agreement (LMSB PFA).

The purpose of the revenue procedure is to facilitate and encourage the use of pre-filing examinations to resolve issues involving factual questions and well settled principles of law. A pre-filing examination can often resolve such issues more efficiently and effectively than a post-filing examination because the taxpayer and the Service have more timely access to the records and personnel relevant to the issue. It also provides the taxpayer with a greater level of certainty regarding the examined issues at an earlier point in the examination process.

A pilot of the Pre-Filing Agreement process was conducted during which time (19) applications were received, (12) of which were accepted. Seven pre-filing agreements were signed, one taxpayer withdrew from the PFA process, and (4) are still in process. An analysis of the pilot indicated that both the taxpayer and the Service benefited. The Pre-Filing process resulted in less time being expended and cost less than it would have if the same issue were examined in a post-filing scenario.

As a result of the discussions between the parties named above, the Employer has decided to take the actions listed in the following paragraphs relative to the implementation of the Pre-Filing Agreement initiative.

1. The Employer will notify all impacted chapters and employees of the implementation of this initiative at formal meetings governed by applicable NORD V provisions. Impacted employees are all LMSB revenue agents, specialists and audit accounting aides. The meetings will be held during work hours and shall be conducted at all sites where impacted bargaining unit employees are located. A question and answer period will be included in the meetings. Questions left unanswered during the meeting will be responded to as soon as possible. Answers to questions raised by or of interest to the group will be communicated to the group in writing. At the conclusion of the meeting the Employer will provided the Union with up to thirty (30) minutes to meet with employees without managers present.
2. Impacted employees will be provided appropriate training and materials necessary for their successful performance of their duties related to this initiative. For those employees who will be provided with Audit Techniques classroom training in accordance with the provisions of the IRS/NTEU Large and Mid-Size Business Standardized Examination Procedures LOU dated September 12, 2000, the Employer will make a reasonable effort to provide the training before the employee is assigned to work a Pre-Filing Agreement. If the training has not occurred when an employee receives such an assignment, the employee's manager or another GS-13 or 14 employee will be available to assist

Exhibit 4.30.1-1 (Cont. 1) (03-28-2018)**PFA Letter of Understanding**

that employee. Employees will not be required to apply the new auditing standards to Pre-Filing Agreements until they have received the Auditing Techniques classroom training.

3. Consistent with NORD V, Article 25, the Employer recognizes that the workload that employees can manage is dependent on such factors as geographic area covered, the type of work assigned, the grade level of work, the volume of work, priority programs, and other assigned duties. If as a result of being assigned to participate in the development of a Pre-Filing Agreement an employee believes that an adjustment in their case inventory may be required, the employee will discuss this issue with their manager. Necessary adjustments may be made on a case by case basis.
4. The Employer will provide a copy of this LOU to all impacted employees.

If the above reflects your understanding of the actions the Employer will be taking relative to the implementation of the Pre-Filing Agreement initiative, please indicate that understanding below and return the original of this letter to Bridget Rasmussen. Please contact Bridget on (202) 622-8644 if you have any questions

Sincerely,

/s/ Lucy G. Vargas

Director, Office of Workforce Relations.

Concurrence:

Katherine T. Lane 3/12/01

Katherine T. Lane Date
NTEU National Negotiator