



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.7.7

DECEMBER 17, 2019

## EFFECTIVE DATE

(12-17-2019)

## PURPOSE

- (1) This transmits revised IRM 8.7.7, *Technical and Procedural Guidelines, Claim and Overassessment Cases*.

## MATERIAL CHANGES

- (1) This IRM section was reorganized and revised, and new information was added for clarity. Also, IRM references and editorial changes were made throughout. Some of the changes are identified in the following paragraphs.

Subsection	Description of Change
IRM 8.7.7.1	Added new IRM 8.7.7.1, <i>Program Scope and Objectives</i> , and related sections to address internal controls as required by IRM 1.11.2.2.5, <i>Address Management and Internal Controls</i> . Moved former IRM 8.7.7.1, <i>Introduction to Appeals Consideration of Claim and Overassessment Cases</i> , to IRM 8.7.7.1.1, <i>Background</i> , and IRM 8.7.7.1.2, <i>Authority</i> .
IRM 8.7.7.2	Moved old IRM 8.7.7.2.1, <i>Statutory Period for Assessment Remaining - Claims and Overassessments</i> , and IRM 8.7.7.2.2, <i>Claim and Overassesssment Cases Involving Expiring Statute of Limitations</i> , to new IRM 8.7.7.2, <i>Receipt of Newly Assigned Case</i> .
IRM 8.7.7.2 IRM 8.7.7.17	Incorporated general information from Interim Guidance Memorandum AP-08-0719-0011, <i>Reissuance of Interim Guidance on Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases</i> , issued July 9, 2019, into IRM 8.7.7.2, <i>Receipt of Newly Assigned Case</i> , and IRM 8.7.7.17, <i>Audit Reconsideration Cases</i> .
IRM 8.7.7.2.1	Renumbered IRM 8.7.7.1.1, <i>Claims in Docketed Cases or Requests for Abatement</i> , as IRM 8.7.7.2.1 and included reference to IRM 8.7.7.5.3.1(3) regarding IRC 6512(a), <i>Effect of Petition to Tax Court</i> .
IRM 8.7.7.2.2	Added new IRM 8.7.7.2.2, <i>Liability Issues Previously Closed with Finality</i> , and included information from old IRM 8.7.7.11.2(3) for determining if an issue is considered closed with finality.
IRM 8.7.7.2.3	Renumbered old IRM 8.7.7.3, <i>General Information About Refund Claims and Overassessment Cases</i> , as IRM 8.7.7.2.3.
IRM 8.7.7.2.3.1	Added new IRM 8.7.7.2.3.1, <i>26 CFR 301.6402-2, Claims for Credit or Refund</i> , on the Treasury Regulation requirements for filing a claim.
IRM 8.7.7.2.3.1.1	Added new IRM 8.7.7.2.3.1.1, <i>Employment Tax Refund Claims</i> , on the Treasury Regulation requirements.
IRM 8.7.7.2.3.2	Added new IRM 8.7.7.2.3.2, <i>Joint Liability, but Separate Taxpayers</i> , and included information from IRM 25.6.1.10.2.10.2, <i>Joint Returns</i> .

Subsection	Description of Change
IRM 8.7.7.2.3.3	Added new IRM 8.7.7.2.3.2, <i>Claims for Refund on Deceased Taxpayers</i> , and included information from IRM 21.6.6.4.22.2, <i>Processing Decedent Account Refunds</i> , and IRM 3.11.3.10.3, <i>Documentary Evidence</i> .
IRM 8.7.7.2.4	Added new IRM 8.7.7.2.4, <i>Tentative Carryback Adjustments</i> .
IRM 8.7.7.3	Moved information from old IRM 8.7.7.2.4, <i>Limitations on Refunds or Credits of Overpayments</i> , to new IRM 8.7.7.3, <i>Periods of Limitation in Claim and Overpayment Cases</i> .
IRM 8.7.7.3.1	Moved information from old IRM 8.7.7.2(3), regarding the statute of limitations for filing a refund claim under IRC Section 6511(h), to new IRM 8.7.7.3.1, <i>Suspension Period for Filing Refund Claim for a Financially Disabled Individual</i> .
IRM 8.7.7.3.2	Renumbered IRM 8.7.7.2.3, <i>Securing Statute Consents in Claim and Over-assessment Cases</i> , as IRM 8.7.7.3.2.
IRM 8.7.7.3.3	Renumbered IRM 8.7.7.2.5, <i>Extension of Period of Limitations for Filing Suit on Form 907</i> , as IRM 8.7.7.3.3 and changed title to "Form 907, Agreement to Extend the Time to Bring Suit."
IRM 8.7.7.4	Renumbered IRM 8.7.7.2.6, <i>New Issue Raised by Taxpayer in Appeals for Refund Claim Case</i> , as IRM 8.7.7.4.
IRM 8.7.7.5	Combined information from several subsections and added more detailed closing procedures now included in new IRM 8.7.7.5, <i>Closing Refund Claim Cases (No Additional Tax)</i> , and its related subsections. The old IRM sections are as follows: a. IRM 8.7.7.10, <i>Disposition of Claims for Refund or Credit</i> b. IRM 8.7.7.10.1, <i>Closing Letters for Disposition of Claims</i> c. IRM 8.7.7.10.6, <i>Procedures for Closing Claim Cases</i> d. IRM 8.7.7.11, <i>General Guidelines for Appeals Consideration after the Mailing of a Statutory Claim Disallowance Letter</i> e. IRM 8.7.7.11.1, <i>Reconsideration of Claim Disallowed by Compliance Field Operations or Compliance Campus Operations</i>
IRM 8.7.7.6	Renumbered IRM 8.7.7.9, <i>Settlement Computations for Claims and Over-assessment Cases</i> , as IRM 8.7.7.6.
IRM 8.7.7.6.1	Renumbered IRM 8.7.7.9.1, <i>Statements Regarding Final Disposition of Refund Claims</i> , as IRM 8.7.7.6.1.
IRM 8.7.7.7	Renumbered IRM 8.7.7.6, <i>Form 2297, Waiver of Statutory Notification of Claim Disallowance</i> , as IRM 8.7.7.7 and included IRM reference for Form 2297 instructions.
IRM 8.7.7.7.1	Renumbered IRM 8.7.7.6.1, <i>When a Statutory Notice of Claim Disallowance is Not to be Mailed and Form 2297 is Not to be Secured</i> , as IRM 8.7.7.7.1 and removed "Claim not timely filed" from the list.
IRM 8.7.7.7.2	Renumbered IRM 8.7.7.6.2, <i>Form 2297 Not to be Secured - Decision Within 6 Months</i> , as IRM 8.7.7.7.2 and modified language regarding the 6-month waiting period (after filing the claim) and distinguished "Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit" as Compliance's form.

Subsection	Description of Change
IRM 8.7.7.7.3	Renumbered IRM 8.7.7.6.3, <i>Form 2297 Requests in Joint Committee Cases</i> , as IRM 8.7.7.7.3.
IRM 8.7.7.7.4	Renumbered IRM 8.7.7.6.4, <i>Form 2297 Not Secured in Pre-Refund Cases</i> , as IRM 8.7.7.7.4.
IRM 8.7.7.7.5	Renumbered IRM 8.7.7.6.5, <i>More Than One Overassessment Obtained - Form 2297</i> , as IRM 8.7.7.7.5.
IRM 8.7.7.8	Moved information from old IRM 8.7.7.10.4, <i>Unagreed Deficiency Cases With Overassessments</i> , to new IRM 8.7.7.8, <i>Closing of Overassessment Case to be Withheld Until Related Taxpayer's Deficiency is Established</i> , with revisions consistent with IRM 1.2.1.5.13, <i>Policy Statement 4-34</i> .
IRM 8.7.7.9	Renumbered IRM 8.7.7.7, <i>Partial Allowance of Refunds or Credits on Overassessments</i> , as IRM 8.7.7.9 and changed title to "Partial Overassessments May be Allowed in Certain Contested Cases."
IRM 8.7.7.10	Renumbered IRM 8.7.7.8, <i>Processing Partial Allowances of Refunds or Credits</i> , as IRM 8.7.7.10.
IRM 8.7.7.11	Renumbered IRM 8.7.7.5, <i>Securing an Agreement Form</i> , as IRM 8.7.7.11 and changed title to "Securing an Agreement Form for an Overassessment (No Refund Claim Filed)."
IRM 8.7.7.12	Added new IRM 8.7.7.12, <i>Applying an Overassessment to a Deficiency in a Related Case</i> , and included instructions from IRM 8.6.4, <i>Reaching Settlement and Securing an Appeals Agreement Form</i> .
IRM 8.7.7.13	Added new IRM 8.7.7.13, <i>Refund Suit for an Open Liability Case</i> , and included information from IRM 8.7.1.8, <i>Appeals Procedures on Refund Suits</i> , and its related subsections.
IRM 8.7.7.14	Renumbered IRM 8.7.7.10.5, <i>Expedite Closing of Large Dollar Examination-Sourced Overpayment Cases</i> , as IRM 8.7.7.14.
IRM 8.7.7.15 IRM 8.7.7.15.1	Renumbered IRM 8.7.7.11.3, <i>Claims Disallowed by Compliance Based on Timeliness Determinations</i> , as IRM 8.7.7.15 and included the procedures in new IRM 8.7.7.15 and IRM 8.7.7.15.1, <i>Refund Disallowed as Time Barred During Original Return Processing</i> .
IRM 8.7.7.16	Renumbered IRM 8.7.7.11.2, <i>Reconsideration of Claim Previously Disallowed and Previously Considered by Appeals</i> , as IRM 8.7.7.16, <i>Reconsideration of Claims for Liabilities Previously Considered by Appeals</i> , and revised for clarity.
IRM 8.7.7.17 IRM 8.7.7.17.1	Renumbered IRM 8.7.7.12, <i>Audit Reconsideration Cases</i> , as IRM 8.7.7.17, and included these procedures, with additional case closing instructions, in new IRM 8.7.7.17 and IRM 8.7.7.17.1, <i>Audit Reconsideration Case Closing Procedures</i> .
IRM 8.7.7.18	Renumbered IRM 8.7.7.13, <i>Abatement of Interest Claims</i> , and its related subsections as IRM 8.7.7.18.
IRM 8.7.7.18.1	Added new IRM 8.7.7.18.1, <i>IRC Section 6404(e)(1) Criteria and Examples</i> , taken from IRM 20.2.7.5.1, <i>IRC 6404(e)(1) Criteria and Examples</i>

Subsection	Description of Change
IRM 8.7.7.18.3	Revised IRM 8.7.7.18.3, <i>Appeals Level of Authority for Abating Interest Under IRC Section 6404(e)</i> , to remove “Technical Advisor” (for consistency with D.O. 20-1) as an Appeals official authorized to abate interest on erroneous refunds.
IRM 8.7.7.18.4	Added to new IRM 8.7.7.18.4, <i>Receipt of Abatement of Interest Claims</i> , that the taxpayer can petition the Tax Court for a review at any time after the earlier of the Service’s final determination not to abate or 180 days after the claim is filed.
IRM 8.7.7.19	Added new IRM 8.7.7.19, <i>Six-Year Period of Limitations for Allowing Interest on an Overpayment</i> , and added information from IRM 25.6.1.10.2.12.1, <i>Claim for Overpayment Interest under IRC 6611</i> , IRM 20.2.4.11.4, <i>Insufficient Interest Paid</i> .

**EFFECT ON OTHER DOCUMENTS**

This IRM supersedes IRM 8.7.7, *Technical and Procedural Guidelines, Claim and Overassessment Cases*, dated June 2, 2015. Interim Guidance Memorandum AP-08-0719-0011, *Reissuance of Interim Guidance on Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases*, dated July 9, 2019, is incorporated into this IRM revision.

**AUDIENCE**

Appeals

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8.7.7

Claim and Overassessment Cases

## Table of Contents

8.7.7.1 Program Scope and Objectives

8.7.7.1.1 Background

8.7.7.1.2 Authority

8.7.7.1.3 Responsibilities

8.7.7.1.4 Program Reports

8.7.7.1.5 Terms and Acronyms

8.7.7.1.6 Related Resources

8.7.7.2 Receipt of Newly Assigned Case

8.7.7.2.1 Claims in Docketed Cases or Requests for Abatement

8.7.7.2.2 Liability Issues Previously Closed With Finality

8.7.7.2.3 General Information About Refund Claims and Overassessment Cases

8.7.7.2.3.1 26 CFR 301.6402-2, Claims for Credit or Refund

8.7.7.2.3.1.1 Employment Tax Refund Claims

8.7.7.2.3.2 Joint Liability, but Separate Taxpayers

8.7.7.2.3.3 Claims for Refund on Deceased Taxpayers

8.7.7.2.4 Tentative Carryback Adjustments

8.7.7.3 Periods of Limitation in Claim and Overpayment Cases

8.7.7.3.1 Suspension Period for Filing Refund Claim for a Financially Disabled Individual

8.7.7.3.2 Securing Statute Consents in Claim and Overassessment Cases

8.7.7.3.3 Form 907, Agreement to Extend the Time to Bring Suit

8.7.7.4 New Issue Raised by Taxpayer in Appeals for Refund Claim Case

8.7.7.5 Closing Refund Claim Cases (No Additional Tax)

8.7.7.5.1 Reaching Agreement for Liability Issues

8.7.7.5.1.1 Claim Disallowance Not Sustained

8.7.7.5.1.2 Claim Disallowance Partially Sustained (2-Year Period Previously Began)

8.7.7.5.1.3 Claim Disallowance Partially Sustained (2-Year Period Not Started)

8.7.7.5.2 Unagreed Refund Claim (No Additional Tax)

8.7.7.5.2.1 Claim Disallowance Fully Sustained (2-Year Period Previously Started)

8.7.7.5.2.2 Claim Disallowance Fully Sustained (2-Year Period Not Started)

8.7.7.5.2.3 Claim Disallowance Partially Sustained (2-Year Period Previously Started)

8.7.7.5.2.4 Claim Disallowance Partially Sustained (2-Year Period Not Started)

8.7.7.5.3 Closing Deficiency Cases Involving Claims

8.7.7.5.3.1 Unagreed Deficiency Cases Involving Claims - Language Required in Notice of Deficiency

8.7.7.5.3.2 Unagreed Deficiency Cases With Overassessment Year(s)

8.7.7.6 Settlement Computations for Claims and Overassessment Cases

- 8.7.7.6.1 Statements Regarding Final Disposition of Refund Claims
- 8.7.7.7 Form 2297, Waiver of Statutory Notification of Claim Disallowance
  - 8.7.7.7.1 When a Statutory Notice of Claim Disallowance is Not to be Mailed and Form 2297 is Not to be Secured
  - 8.7.7.7.2 Form 2297 Not to be Secured—Decision Within 6 Months
  - 8.7.7.7.3 Form 2297 Requests in Joint Committee Cases
  - 8.7.7.7.4 Form 2297 Not Secured in Pre-Refund Cases
  - 8.7.7.7.5 More Than One Overassessment Agreement Obtained—Form 2297
- 8.7.7.8 Closing of Overassessment Case to be Withheld Until Related Taxpayer's Deficiency is Established
- 8.7.7.9 Partial Overassessments May be Allowed in Certain Contested Cases
- 8.7.7.10 Processing Partial Allowances of Refunds or Credits
- 8.7.7.11 Securing an Agreement Form for an Overassessment (No Refund Claim Filed)
- 8.7.7.12 Applying an Overassessment to a Deficiency in a Related Case
- 8.7.7.13 Refund Suit for an Open Appeals Liability Case
- 8.7.7.14 Expedite Closing of Large Dollar Examination-Sourced Overpayment Cases
- 8.7.7.15 Claims Disallowed by Compliance Based on Timeliness Determinations
  - 8.7.7.15.1 Refund Disallowed as Time Barred During Original Return Processing
- 8.7.7.16 Reconsideration of Claims for Liabilities Previously Considered by Appeals
- 8.7.7.17 Audit Reconsideration Cases
  - 8.7.7.17.1 Audit Reconsideration Case Closing Procedures
- 8.7.7.18 Abatement of Interest Claims
  - 8.7.7.18.1 IRC Section 6404(e)(1) Criteria and Examples
  - 8.7.7.18.2 Appeals Technical Employees' Responsibilities for Abatement of Interest Cases
  - 8.7.7.18.3 Appeals Level of Authority for Abating Interest Under IRC Section 6404(e)
  - 8.7.7.18.4 Receipt of Abatement of Interest Cases
  - 8.7.7.18.5 Procedures and Methods of Resolution
  - 8.7.7.18.6 Closing Procedures for Abatement of Interest Cases
- 8.7.7.19 Six-Year Period of Limitations for Allowing Interest on an Overpayment

Exhibits

- 8.7.7-1 IRS Claim Disallowance Letters that Begin the 2-Year Period for Filing a Refund Suit



8.7.7.1  
(12-17-2019)  
**Program Scope and Objectives**

- (1) *Purpose* - This section covers processes and procedures for handling appeals of Compliance's decision to disallow a taxpayer's claim for refund of an overpayment related to a liability imposed under the Internal Revenue Code (U.S. Code Title 26), requests for audit reconsideration, and requests for abatement of interest due to the Service's unreasonable delay in performing a ministerial or managerial act. This is a supplement to general guidance contained in IRM 25.6.1.10, *Claims, Abatements and Refunds*.
- (2) *Audience* - Appeals Technical Employees (ATEs)
- (3) *Policy Owner*- Policy, Planning, Quality, and Analysis is under the Director of Case and Operations Support.
- (4) *Program Owner* - Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization and is under the Director of Policy, Planning, Quality and Analysis.
- (5) *Contact Information* - Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.7.7.1.1  
(12-17-2019)  
**Background**

- (1) Appeals' mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. Appeals accomplishes this mission by considering protested and Tax Court cases and negotiating settlements in a manner which ensures Appeals employees act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. See IRC Section 7803(a)(3), *Execution of Duties in Accord with Taxpayer Rights*, Pub 5170, *Taxpayer Bill of Rights*, and IRM 8.1.1.1, *Accomplishing the Appeals Mission*.
- (2) Claims or Overassessments can be:
  - a. Part of a case file received by Appeals,
  - b. Filed by the taxpayer during Appeals consideration, and/or
  - c. Pursued by the taxpayer for the same period for which Compliance proposed a deficiency.

**Note:** The term "Compliance" refers to the "originating function", as defined in IRM 8.1.10.1.5, *Terms and Definitions*.

- (3) An overassessment case becomes an overpayment case when there is a refund indicated. If an overpayment exists for a tax period, the time limits prescribed by law apply for making a refund or credit of an overpayment.

8.7.7.1.2  
(12-17-2019)  
**Authority**

- (1) IRC Section 6402, *Authority to Make Credits or Refunds*, authorizes the Service to issue refunds or credits of overpayments within the applicable period of limitations. See IRM 8.7.7.3, *Periods of Limitation in Claim and Overpayment Cases*.
- (2) The Service may abate an unpaid portion of an assessment of any tax which is excessive in amount, assessed after the Assessment Expiration Date (ASED), or is erroneously or illegally assessed. IRC Section 6404(b) provides that taxpayers have no right to file a claim for abatement of income, estate, or

gift tax. See IRM 1.2.1.4.15, *Policy Statement 3-15 (Formerly P-2-89)*, for the Service's policy for reconsideration of an unpaid assessment under certain situations.

- (3) IRC Section 6404(e), *Abatement of Interest Attributable to Unreasonable Errors and Delays by IRS*, authorizes the Service to abate interest on deficiencies or payments attributable to errors or delays in the performance of a ministerial or managerial act. IRM 1.2.2.13.1, *Delegation Order 20-1 (Rev. 2, formerly DO 228, Rev. 3)*, delegates this abatement authority to Appeals Team Managers and Appeals Team Case Leaders and also the authority to issue a notice of final determination not to abate. For abatement of interest requests concerning an employee's actions, Appeals established a policy requiring the Area Director's approval.
- (4) IRC Section 6404(e)(2), *Interest Abated With Respect to Erroneous Refund Check*, and Delegation Order 20-1 (Rev. 2) authorize the Appeals Area Director to abate the assessment of interest on an erroneous refund until the date demand for repayment is made, unless the taxpayer caused the erroneous refund or the erroneous refund exceeds \$50,000.
- (5) The authority to settle protested and Tax Court cases is delegated to Appeals Team Managers (ATMs) and Appeals Team Case Leaders (ATCLs) as to their respective cases. This does not include the authority to set aside a closing agreement. For details, see IRM 1.2.2.9.8, *Delegation Order 8-8 (Rev. 1)*, and IRM 1.2.2.9.1 (2)b for Delegation Order 8-1.

8.7.7.1.3  
(12-17-2019)  
**Responsibilities**

- (1) The Director, Case and Operations Support (COS), is responsible for Appeals' policy and procedural guidance.
- (2) The Director, Policy, Planning, Quality & Analysis (PPQ&A) is the program manager responsible for program oversight.

8.7.7.1.4  
(12-17-2019)  
**Program Reports**

- (1) PPQ&A provides trends and data analyses and detailed summary reports for Appeals.

8.7.7.1.5  
(12-17-2019)  
**Terms and Acronyms**

Term or Acronym	Description
ACDS	Appeals Centralized Database System (IRM 8.20.3)
ACM	Appeals Case Memo (IRM 8.6.2)
AIMS	Audit Information Management System (IRM 4.4.1.2)
APGOLF	Appeals Generator of Letters and Forms, a sub-system of ACDS, generates forms and letters using taxpayer data contained in ACDS (IRM 8.20.3)
APS	Account and Processing Support (IRM 8.20)
APS CIT	Account and Processing Support Complex Interest Team (IRM 8.20.7.5)



Term or Acronym	Description
ASED	Assessment Statute Expiration Date (IRM 25.6.1)
ATE	Appeals Technical Employee
FICA	Federal Insurance Contributions Act
FUTA	Federal Unemployment Tax
PEAS	Appeals Processing Employee Automated System (IRM 8.20.10)
RRTA	Railroad Retirement Tax Act
RSED	Refund Statute Expiration Date
TCS	Tax Computation Specialist

(2) Also, see Exhibit 8.1.1-1, *Common Terms Used in Appeals*.

8.7.7.1.6  
(12-17-2019)

(1) The Internal Revenue Manual contains servicewide guidance on issues related to requests for refunds or abatements, including the following:

#### Related Resources

IRM Section	Title
IRM 8.7.9	Joint Committee (JC) Cases
IRM 20.2.7	Abatement and Suspension of Debit Interest
IRM 25.6.1.7.2	Time When Payments and Credits are Considered to be Made
IRM 25.6.1.9.4.2	Amended Return (with additional tax)
IRM 25.6.1.10.1	Requests for Abatement
IRM 25.6.1.10.2 (and related sections)	Erroneous Abatement
IRM 25.6.1.10.2.3.1	Recovery of Assessable Erroneous Refunds
IRM 25.6.1.10.2.3.2	Recovery of Unassessable Erroneous Refunds
IRM 25.6.1.10.2.5.1	Appeals Determinations (involving refunds previously determined barred by statute)
IRM 25.6.1.10.2.5.6.1	Claim for an Amount Paid Before the ASED for Tax Determined by the ASED
IRM 25.6.1.10.2.5.6.2	Claim for an Amount Paid After the ASED or Paid for Tax Determined After the ASED
IRM 25.6.1.10.2.5.7	Offsetting the Amount of a Refund With a Timely Refund Claim with a Time-Barred Adjustment
IRM 25.6.1.10.2.6 (and related sections)	Claims for Credit or Refund - Form and Content

IRM Section	Title
IRM 25.6.1.10.2.6.2.2	Prescribed Forms for Amending an Original Tax Return or Abating a Penalty Already Paid
IRM 25.6.1.10.2.6.3	Informal Claims
IRM 25.6.1.10.2.6.4	Supplemental Claims
IRM 25.6.1.20.2.6.5	Protective Claims
IRM 25.6.1.10.2.7 (and related sections)	Claims for Credit or Refund - General Time Period for Submitting a Claim
IRM 25.6.10.2.7.3	Extension of Time by Agreement
IRM 25.6.1.10.2.8 (and related sections)	Claims for Credit or Refund - Special Items of Income, Deduction, Loss, or Credit [involving carrybacks (i.e. NOLs, Capital Loss, Business Credit), Bad debts, Worthless securities, and Foreign Tax Credit]
IRM 25.6.1.10.2.9.1	Financial Disability
IRM 25.6.10.2.9.2	Presidentially Declared Disaster Area
IRM 25.6.1.10.2.9.5	Claims for Refund and Identity Theft
IRM 25.6.1.10.2.9.6	Combat Zone
IRM 25.6.1.10.2.10.1	Partnerships
IRM 25.6.1.10.2.10.2	Joint Returns
IRM 25.6.1.10.2.11	Exceptions to the Period of Limitations
IRM 25.6.1.10.2.12	Claims Against the Government Processed by the Service under Title 28 (6 years)
IRC 25.6.1.10.2.12.7	Deposits Made Under IRC Section 6603
IRM 25.6.1.10.2.12.8	Claim for IRC Section 7519 Payment Made in Connection with an IRC Section 444 Election

- (2) Appeals maintains the following program web pages related to this IRM section:

- *Claims, Overassessments, Audit Reconsiderations*
- *Abatement of Interest*

8.7.7.2  
(12-17-2019)  
**Receipt of Newly  
Assigned Case**

- (1) The following table reflects Appeals' policy on accepting claim and overassessment cases that involve expiring statutes of limitations:

If...	Then...
Compliance has proposed a deficiency for the claim period and less than 365 days (270 days in estate cases or IRC 6206 cases) remain on the ASER for a new receipt	Appeals will not accept the case. See IRM 8.21.3.2.1, <i>Receipts and Transfers</i> , and IRM 8.20.5.3.1.3, <i>Cases Not Accepted by Appeals</i> .
Compliance has proposed a deficiency for the claim period and less than 180 days remain on the ASER for a "returned case"	Appeals will not accept the case. See IRM 8.21.3.2.1, <i>Receipts and Transfers</i> , and IRM 8.20.5.3.1.2, <i>Verifying Administrative File Contents</i> .
The taxpayer appealed the denial of a request for refund or credit of an overpayment (where a claim has not been filed) and less than 180 days remain for filing a claim (RSED)	Appeals can accept the request, but if Appeals decides to allow the claim, the refund or credit <b>must be made</b> before the RSED expires. See IRC 6514(a)(1). <b>Reminder:</b> The taxpayer is responsible for protecting his or her interest by timely filing a claim before the refund statute expires. See IRM 8.7.7.2 (3) and IRM 8.7.7.11.
The taxpayer appealed the denial of a claim for refund or credit of an overpayment and less than 180 days remain for filing suit	Appeals can accept the "previously disallowed claim", but if Appeals decides to allow the claim, the refund or credit of an overpayment <b>must be made</b> before the time for filing a refund suit expires unless the taxpayer timely files a refund suit. See IRC 6514(a)(2). <b>Reminder:</b> The taxpayer is responsible for protecting his or her interest by timely filing a refund suit within the time allowed under IRC 6532. Alert the taxpayer that a refund or credit of an overpayment is barred after the time for filing suit expires, if a timely refund suit is not filed.

**Note:** Per IRM 1.2.1.5.22, *Policy Statement 4-76- Disallowed Claims May be Reconsidered on the Merits*, Compliance's previously-disallowed claims may be reconsidered in appropriate cases, unless insufficient time remains on the statutory period for filing suit to permit reconsideration. Where Compliance partially or fully disallows the claim after reconsideration, Policy Statement 4-76 provides that the taxpayer will have the opportunity for consideration by Appeals.

- (2) Verify the case is correctly carded-in on ACDS following procedures in IRM 8.20.5, *Carding New Receipts*, and validate all critical data fields on ACDS. Make necessary changes following procedures in IRM 8.20.3, *Appeals Centralized Database System (ACDS)*. In addition, verify the amount in the following ACDS field:

- DDAMTCL (Amount disallowed by Compliance) - See IRM 8.20.3.3.62.12.1, *DDAMTCL*.

**Note:** Also, see IRM 8.20.3.3.62.12.3, *APPEALS AMTCLAIM*.

- (3) Follow the procedures in IRM 8.2.1.4, *Receipt of New Assignment by an Appeals Technical Employee (ATE)*, requiring statute verification within 45 days, mailing of the appropriate initial contact letter, guidance on returning a case to Examination, and closing actions for a premature referral. Determine whether the time for making a refund is still open.

**Caution:** IRC Section 6514, *Credits or Refunds After Period of Limitation*, prohibits the refund or credit of an overpayment after the time for filing a refund has expired (where no refund claim has been timely filed) or after the time for bringing suit for the refund has expired (where no refund suit has been timely filed.)

- (4) Check for a related IRC 6676 penalty case. In accordance with IRC Section 6676, *Erroneous Claim for Refund or Credit*, if a claim for refund or credit with respect to income tax is made for an excessive amount, unless it is shown that the claim for such excessive amount is due to a reasonable cause, the person making such claim shall be liable for a penalty amount equal to 20 percent of the excessive amount. Verify the case meets the acceptance criteria and that this IRC 6676 work unit is correctly carded in on ACDS. See IRM 8.11.1.3.7, *IRC 6676*, for more information.
- (5) If no statute protection is needed, determine the need to complete Form 10495, *Memorandum Re: Statute Paragraph*. For most refund claim cases, Appeals employees use **CLAIM** as the ACDS statute code where an assessment was not proposed. See Exhibit 8.21.2-1, *ACDS Statute Codes*.
- (6) Determine whether the case was previously closed with finality and not subject to reopening. See IRM 8.7.7.2.2, *Liability Issues Previously Closed With Finality*.
- (7) Review the administrative file contents and determine if the case is ready for Appeals' consideration. See IRM 8.2.1.5, *Returning a Case to Examination - ATE*. If not previously closed with finality, Appeals' reconsideration will be limited to new issues and/or new information but only after Compliance has considered it.
- (8) Conduct the conference as described in IRM 8.1, *Appeals Function*, and IRM 8.6, *Conference and Settlement Practices*.

#### 8.7.7.2.1 (12-17-2019)

##### **Claims in Docketed Cases or Requests for Abatement**

- (1) Neither a claim for refund or credit nor a request for abatement filed on a docketed deficiency case will protect the petitioner, unless the claim or abatement issue is included in the U. S. Tax Court petition. See IRM 8.7.7.5.3.1(3).
- (2) See IRM 8.4.1.22.4, *Docketed Cases with Claims*, for details on working and closing docketed cases with claims.

#### 8.7.7.2.2 (12-17-2019)

##### **Liability Issues Previously Closed With Finality**

- (1) Upon receipt, determine if the case was previously "closed with finality." An issue is considered "closed with finality" if the issue was previously closed under the following circumstances:
  - a. Agreement reached using an Appeals Special Agreement Form (e.g. Form 870-AD, Form 890-AD, or Form 2504-AD) identified in IRM 8.6.4, *Reaching Settlement and Securing an Appeals Agreement Form*. See IRM 8.7.7.2.2 (2).

- b. Closing agreement under IRC Section 7121 - See IRM 8.6.4 and IRM 8.13.1, *Processing Closing Agreements in Appeals*, or compromise under IRC Section 7122;
- c. Decision document;
- d. Dismissal for lack of prosecution;
- e. Tried case;
- f. The appealed issue would result in a refund or credit of an overpayment that is considered erroneous under IRC Section 6514; or
- g. Any other closing process described under tax law and/or other IRM guidance as a closure not subject to reopening.

**Note:** See Chief Counsel Directives Manual (CCDM) Part 35, Tax Court Litigation for information on trials, decision documents, and dismissals.

- (2) Appeals Special Agreement Forms - While not having the effect of a final closing agreement (per IRC Section 7121, *Closing Agreements*), an “AD” type agreement form precludes the Service’s reopening of the case except for fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculation of the tax. See IRM 1.2.9.3, *Policy Statement 8-3 (Formerly P-8-50)*. In addition, the terms (on the “AD” type agreement forms) include the taxpayer’s agreement that no claim for refund or credit will be filed or prosecuted by the taxpayer for the years stated on the form, other than amounts attributed to carrybacks provided by law.

**Note:** Policy Statement 8-3 (Formerly P-8-50) provides that under certain **unusual circumstances** favorable to the taxpayer, such as retroactive legislation, a case closed by Appeals on the basis of concessions made by both Appeals and the taxpayer may be reopened upon written application from the taxpayer, and **only with the approval of the Appeals Director**. The Chief of Appeals may authorize, in advance, the reopening of similar classes of cases where legislative enactments or compelling administrative reasons require such advance approval.

8.7.7.2.3  
(12-17-2019)  
**General Information  
About Refund Claims  
and Overassessment  
Cases**

- (1) Taxpayers can file a claim for refund and/or request for abatement for a redetermination of certain liabilities that have not been closed with finality. The type of form used depends on the circumstances. Also, correspondence from the taxpayer can be determined to be an “informal” claim by the Appeals technical employee, or Compliance could have made an earlier determination regarding an informal claim. Also, the consideration of the issue might constitute the filing of an informal claim. See IRM 25.6.1.10.2.6.3, *Informal Claims*. The following are some of the claim forms that taxpayers might file to pursue a claim and/or abatement issue:
- a. Form 843, *Claim for Refund and Request for Abatement*
  - b. Form 1040X, *Amended U.S. Individual Income Tax Return*
  - c. Form 1120X, *Amended U.S. Corporation Income Tax Return*
  - d. Form 941-X, *Adjusted Employer’s QUARTERLY Federal Tax Return or Claim for Refund*
  - e. Form 945-X, *Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund*.

**Caution:** An application for a tentative carryback adjustment does not constitute a claim for credit or refund. See IRM 8.7.7.2.4, *Tentative Carryback Adjustments*.

- (2) Appeals receives claims from Area Compliance (Exam) and Compliance Campuses. Claims received from Area Compliance (Exam) are usually controlled on AIMS. Campus Claims are not controlled on AIMS.
- (3) APS will establish a claim or overassessment case on ACDS, based on procedures in IRM 8.20.5, *Carding New Receipts*. APS will send the case to the ATM for assignment. Refer to IRM 8.20.5 to determine the need to update the case information on ACDS. For Trust Fund Recovery Penalty (TFRP) cases, see IRM 8.20.5.36.2.3, *TFRP Cases - Assessment or Collection Statute Date*, to determine the appropriate statute date shown on ACDS.
- (4) Analyze account transcripts and verify that the beginning amounts are properly shown on the amended return (i.e. the "Per Return Amounts" or "Previously Adjusted Amounts" match information on IDRS). See IRM 21.5.3.4.5(2), *Math and MasterFile Verification of Claims and Amended Returns*.

8.7.7.2.3.1  
(12-17-2019)  
**26 CFR 301.6402-2,  
Claims for Credit or  
Refund**

- (1) Requirement that Claim be Filed - Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim has been filed by the taxpayer. Furthermore, under IRC Section 7422, *Civil Actions for Refund*, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation. [26 CFR 301.6402-2(a)]
- (2) Grounds Set Forth in Claim - The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Service of the exact basis for the claim. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. The IRS does not have the authority to refund on equitable grounds penalties or other amounts legally collected. [26 CFR 301.6402-2(b)] For additional information on the acceptability of claims, see IRM 25.6.1.10.2.6.1, *Background on the Acceptability of Claims Failing to Comply with Prescribed Requirements for the Content and Form*.
- (3) In the case of income and gift taxes, income tax withheld, FICA taxes, RRTA taxes, and FUTA taxes, a separate claim must be made for each return for each taxable period. [26 CFR 301.6402-2(d)]

8.7.7.2.3.1.1  
(12-17-2019)  
**Employment Tax Refund  
Claims**

- (1) For FICA and RRTA Tax Refund Claims, see 26 CFR 31.6402(a)-2, *Credit or Refund of Tax under Federal Contributions Act or Railroad Retirement Act*. This regulation section includes guidance for the following:
  - a. Claim by Person Who Paid Tax to IRS
  - b. Claim by Employee

Also, see instructions for Form 941X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*.
- (2) Rev. Proc. 2017-28, *Employee Consents*, provides guidance to employers on the requirements for employee consents used by an employer to support a claim for credit or refund of overpaid taxes under FICA and RRTA. This includes guidance on what constitutes "reasonable efforts" if employee consent is not secured.
- (3) For FUTA Tax Refund Claims, see 26 CFR 31.6402(a)-3, *Refund of Federal Unemployment Tax*.



8.7.7.2.3.2  
(12-17-2019)  
**Joint Liability, but  
Separate Taxpayers**

- (1) Each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment. Rev. Rul. 74-611, 1974-2 C.B. 399. Each spouse's share of an overpayment claimed on a joint return is determined under Rev. Rul. 80-7, 1980-1 C.B. 296, and only that share may be credited to one spouse's unpaid separate tax liability. In a community property state each spouse is considered to own one-half of the total wages and the income from community property. Rev. Rul. 85-70, 1985-1 C.B. 361.
- (2) Changing from separate to joint status and the date the joint return is considered filed. If the conditions set by IRC Section 6013(b)(1) for changing from separate to joint status are satisfied, a joint return may be filed within three years from the due date (without extensions) for filing returns for such tax year. For purposes of filing a claim for credit or refund, the joint return is deemed filed on the last day prescribed for filing the return for that taxpayer (determined without regard to any extension of time granted to either spouse).

8.7.7.2.3.3  
(12-17-2019)  
**Claims for Refund on  
Deceased Taxpayers**

- (1) Decedent overpayment returns filed by anyone other than the surviving spouse must be filed with Form 1310, *Statement of Person Claiming Refund Due a Deceased Taxpayer*, or a certificate showing court appointment. See IRM 21.6.6.4.22.2, *Processing Decedent Account Refunds*, and IRM 3.11.3.10.3, *Documentary Evidence*.

8.7.7.2.4  
(12-17-2019)  
**Tentative Carryback  
Adjustments**

- (1) For tentative carryback adjustments, non-corporate taxpayers use Form 1045, *Application for Tentative Refund*, and corporate taxpayers use Form 1139, *Corporation Application for Tentative Refund*, to apply for a quick refund of taxes.
- (2) An application for a tentative carryback adjustment does not constitute a claim for credit or refund and does not meet the requirement under IRC Section 6511 for determining whether a claim for credit or refund was filed prior to the expiration of the refund statute. In addition, an application for a tentative carryback adjustment does not meet the requirement for filing an administrative claim before filing a refund suit.
- (3) See IRC Section 6411, *Tentative Carryback and Refund Adjustments*, Treasury Regulation Section 1.6411-1, *Tentative Carryback Adjustments*, and IRM 8.17.5.3, *Tentative Allowances and Other Carryback Claims*.

8.7.7.3  
(12-17-2019)  
**Periods of Limitation in  
Claim and Overpayment  
Cases**

- (1) For relevant code and regulation sections on limitations for allowing refunds or credits of overpayments, see the following:

Reference	Description
IRC 6511	<b>Limitations on Credit or Refund</b> Imposes the following limits for making a refund or credit of an overpayment: (1) Time period for "filing" a claim; <b>and</b> (2) "Dollar amount", depending on payment dates Credits or refunds after these periods of limitation are not allowable, per IRC 6514
IRC 6512	<b>Limitations in Case of Petition to Tax Court</b> As a result of a timely petition for a deficiency case, the Tax Court will determine as part of its decision whether there's an overpayment

Reference	Description
IRC 6513	<b>Time Return Deemed Filed and Tax Considered Paid</b> Covers deemed filing dates for early returns and early payments, taxes withheld at the source, and overpayments of income tax credited to estimated tax
IRC 6514	<b>Credits or Refunds after Period of Limitation</b> Designates a refund as “erroneous” or credit of an overpayment as “void” if made after the periods of limitation in IRC 6511 or IRC 6532 has expired
IRC 6532	<b>Periods of Limitation on Suits</b> Imposes a time limit for filing a refund suit after IRS disallows a claim. After the time for filing suit has expired, IRC 6514 applies
26 CFR 301.6402-2	<b>Requirement that Claim be Filed</b> Credit or refund of overpayments may not be allowed or made after the applicable statutory period of expiration, unless a claim is filed before such period expires

- (2) A claim for refund or credit of an overpayment must be filed within three years after the filing of the original return or within two years after payment, whichever is later. If the overpayment is shown on a delinquent original return, the refund claim is timely filed but the amount is limited to the amount paid within the three year period prior to the filing of the return (plus the period of any extension of time to file).

**Limitation on Allowance of Credits and Refund** - A timely filed claim could result in no refund or overpayment allowable, if the payments fall outside the “look-back period” described under IRC Section 6511(b)(2). Look-back periods limit how far into the past payments can be available for refund. Consideration is given to the filing extension period for determining the look-back period. See IRC Section 6511(d) for other filing time limits that might apply. Also, refer to the following:

- a. IRM 25.6.1.10.2.7, *Claims for Credit or Refund - General Time Period for Submitting a Claim*
  - b. IRM 25.6.1.10.2.7.2.1, *Three-year Rule*
  - c. IRM 25.6.1.10.2.7.2.2, *Two-year Rule*
  - d. IRM 25.6.1.10.2.8, *Claims for Credit or Refund - Special Items of Income, Deduction, Loss or Credit*
- (3) IRC Section 7502 (the “timely mailing” equals “timely filing” rule) applies to a refund claim postmarked within the three-year period after the original return’s filing date. See IRM 25.6.1.10.2.7.1.4 , *Examples for the Three-Year Period*. A claim filed on a delinquent original income tax return that is postmarked on the last day of the three year period is deemed to be filed on the postmark date. See AOD 2000–09, *Weisbart v. U. S. Dep’t of Treasury*, 222 F.3d 93 (2d Cir. 2000), action on dec., 2000-09 (November 13, 2000). See also **Treasury Regulation Section 301.7502-1(f)**.
- (4) Per IRC Section 6513 , *Time Return Deemed Filed and Tax Considered Paid*, advance payments are deemed to be paid on the last day prescribed for paying the tax. Estimated income tax payments are deemed paid on the last day prescribed for filing the return. These deemed payment dates are determined without considering a filing extension. See IRM 25.6.1.7.2 , *Time When Payments and Credits are Considered to be Made*.

## 8.7.7.3.1

(12-17-2019)

**Suspension Period for Filing Refund Claim for a Financially Disabled Individual**

- (1) Financial Disability - The statute of limitations **for filing** a claim for refund or credit of an overpayment may be suspended during the time an individual taxpayer is “financially disabled.” See IRC Section 6511(h), *Running of Periods of Limitation Suspended While Taxpayer is Unable to Manage Financial Affairs*, Rev. Proc. 99-21, 1999-1 C.B. 960, and IRM 25.6.1.10.2.9.1, *Financial Disability*.
- (2) For Appeals determinations under IRC Section 6511(h) that require the movement of a taxpayer’s payment from the “Excess Collection File”, include in the closing documents information that meets the requirements in IRM 25.6.1.10.2.5.1.1, *Appeals Determinations*, to allow the Statute team to clear the payment for issuing a refund or credit of an overpayment.

**Note:** See IRM 3.17.220.2, *Excess Collections File*.

## 8.7.7.3.2

(10-16-2014)

**Securing Statute Consents in Claim and Overassessment Cases**

- (1) The Service does not secure consents to **extend the period for assessment (ASED)** in cases involving claims or overassessments, unless Compliance has proposed a deficiency and final disposition could result in a deficiency or additional tax.
- (2) The exceptions to this rule are:
  - a. Joint Committee cases; and
  - b. Closing Agreement cases.

**Note:** Both the Form 872, *Consent to Extend the Time to Assess Tax*, and Form 872-A, *Special Consent to Extend the Time to Assess Tax*, provide that a taxpayer may file a claim for credit or refund and the Service may credit or refund the tax within six (6) months after the respective agreement ends. See IRC Section 6511(c), *Special Rules Applicable in Case of Extension of Time by Agreement*. As to any claim filed within this extended period, the amount of the credit or refund is limited to: (1) the portion of the tax paid after the execution of the extension agreement **and** before the filing of the claim **plus** (2) the portion of the tax recoverable under the rules pursuant to IRC Section 6511(b)(2), if the claim had been filed on the date the agreement was executed.

- (3) If there is no possibility of a deficiency and an overpayment might exist, advise the taxpayer in writing about protecting his or her interest by filing a claim for refund. If a claim has not been filed, the “timely filing requirement” could be met if an agreement form is secured before the “time for filing a claim” has expired. See IRM 8.7.7.11, *Securing an Agreement Form for an Overassessment (No Refund Claim Filed)*.

**Example:** An Appeals technical employee is considering a deficiency case for a taxpayer who requested (during the examination process) additional deductions and/or credits, but did not provide sufficient information to constitute an informal claim for refund. The examiner previously considered and denied the request. If Appeals’ settlement results in an overpayment and a refund claim was not filed, a refund or credit of an overpayment is barred if the time for filing a refund claim expires before the refund or credit is made. See IRC Section 6514(a)(1).

- (4) Complete Form 10495, *Memorandum Re: Statute Paragraph*, when no less than 120 days remain on the ASED, if no ASED protection is needed. Form 10495 is not required if the ACDS **STATUTE DATE** field is blank and the word "**CLAIM**" is shown in the ACDS **STATCODE** field. If Form 10495 is prepared, the ATM countersigns the form, and a copy is retained in the administrative case file. See IRM 8.21.3.2.3, *Protecting the Statute*, and IRM 8.21.3.2.3.7, *Cases Where a Consent is Not Necessary*.

8.7.7.3.3  
(12-17-2019)  
**Form 907, Agreement to  
Extend the Time to  
Bring Suit**

- (1) Under IRC Section 6532(a)(2), the period of limitations for filing suit on a disallowed claim may be extended. Carefully consider the need to extend the time for filing suit. The following are examples of satisfactory reasons for extending the time for filing suit under IRC Section 6532:
  - a. If the disposition of a request for reconsideration of a disallowed claim is contingent on a pending court decision, the taxpayer should be given the opportunity of submitting a properly executed Form 907.
  - b. The Service had under consideration a change in position requiring the suspension of action in all similar cases.
  - c. When an extension will prevent possible inequities to taxpayers.
- (2) Form 907 contains a statement that claims for the amounts shown (on Form 907) have been timely filed by the taxpayer(s).

**Caution: Do not execute Form 907 if the decision has not been made that the claim is timely filed.**

- (3) For a timely filed claim, the taxpayer and the Service may extend the time for filing suit by executing Form 907, *Agreement to Extend the Time to Bring Suit*, as long as the parties execute Form 907 before the 2-year period expires.
- (4) Multiple Forms 907 may be executed by the Service and the taxpayer to extend the period for filing a refund suit under IRC Section 6532(a)(2), as long as each extension is executed before the period previously agreed upon has expired.
- (5) Form 907 must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary acting on the taxpayer's behalf pursuant to Form 2848, *Power of Attorney*. Rev. Rul. 76-60 requires the inclusion of special language on Form 2848 for authorizing an individual to sign Form 907 on the taxpayer's behalf.
- (6) Appeals Area Directors are authorized to execute Form 907 to extend the time for filing suit. See IRM 1.2.2.9.4, *Delegation Order 8-4 (formerly DO 171, Rev. 2)*.

8.7.7.4  
(12-17-2019)  
**New Issue Raised by  
Taxpayer in Appeals for  
Refund Claim Case**

- (1) A claim must be timely filed and must set forth in detail each ground upon which a refund or credit of an overpayment is claimed. See 26 CFR 301.6402-2 and IRM 25.6.1.10.2.6.1, *Background on the Acceptability of Claims Failing to Comply with Prescribed Requirements for the Content and Form*.
- (2) IRM 8.6.1.7.4, *Taxpayer Raises New Issue*, contains guidance for Appeals' consideration of new issues raised by the taxpayer for a case under Appeals jurisdiction. Don't consider a new issue raised in Appeals for a refund claim case if the time for filing a refund claim has expired.

- (3) If the taxpayer requests Appeals consideration of an issue not included in the refund claim or not raised during Compliance's consideration, consider the following:

If the...	Then...
Time for filing a refund claim has expired	Don't consider the new issue or send it to Compliance for consideration.
Time for filing a refund claim hasn't expired and conditions in IRM 8.6.1.7.4 apply for returning the case	Ask the taxpayer to file another amended return to include the new issue before sending the case to Compliance. <b>Note:</b> The Appeals employee can make a determination (in lieu of requesting another amended return) that the taxpayer's submission is sufficient to meet the requirements of an "informal claim."
Time for filing a refund claim hasn't expired and the conditions in IRM 8.6.1.7.4 don't apply for returning the case	Ask the taxpayer to file an amended return to include the new issue, unless Appeals can complete the consideration and process a refund or credit of an overpayment before the "claim filing date expires." See IRM 8.7.7.11.

- (4) An "informal claim" must have a written component apprising the Service that a refund is sought and describe the legal and factual basis for the refund so that the Service may investigate the claim. See IRM 25.6.1.10.2.6.3, *Informal Claims*.
- (5) See IRM 25.6.1.10.2.6.4, *Supplemental Claims*, for information on supplementing a pending claim, submitting a new claim, and perfecting an informal claim.
- (6) If Appeals returns the case to Compliance to consider the new claim issue, follow the guidance in IRM 8.6.1.7.7, *Jurisdiction Released*. Include on Form 5402, *Appeals Transmittal and Case Memo*, information about the refund statute for the new issue. See the following sample language:
- On MM/DD/YYYY, the taxpayer timely submitted another amended return to include a new issue before the time for filing a refund expires on MM/DD/YYYY; or
  - On MM/DD/YYYY, the taxpayer timely submitted an informal claim to include a new issue before the time for filing a refund claim expires on MM/DD/YYYY.

8.7.7.5  
(12-17-2019)  
**Closing Refund Claim Cases (No Additional Tax)**

- (1) This section provides information on documents needed for closing refund claim cases. An Appeals Case Memo (ACM) and Form 5402, *Appeals Transmittal Case Memo*, are required for each work unit. APGOLF will generate a specific customized Form 5402 based on the ACDS Type (e.g. Type "I" for Income Tax, Type "ES" for Estate & Gift, Type "EMPL" for Employment Tax, Type "EX" for Excise Tax, etc.) For key and related cases, prepare consolidated ACMs to avoid duplication of information. The ACM must adequately explain and support the basis of the settlement. See IRM 8.6.2, *Appeals Case Memo Procedures*, and IRM 8.6.4, *Reaching Settlement and Securing an Appeals Agreement Form*. Sometimes all ACM comments and rationale about the case could fit in the "Remarks" section of the Form 5402. In these



instances, the Form 5402 serves as the entire ACM. See IRM 8.6.2.3.2, *Using Form 5402 as the Appeals Case Memo (ACM)*.

- (2) If Appeals determination is to fully or partially sustain Compliance's decision to disallow the claim, determine whether the Service previously mailed the taxpayer a Notice of Claim Disallowance or received Form 2297, *Waiver of Statutory Notice of Claim Disallowance*, to start the running of the 2-year period for filing a refund suit. After the period of limitation expires for filing a refund suit, a refund or credit of an overpayment is not allowable for the issues covered in the Notice of Disallowance. See IRM 8.7.7.3, *Periods of Limitation in Claim and Overpayment Cases*.
- (3) For frequently-issued Notices of Claims Disallowance, see Exhibit 8.7.7-1, *IRS Claim Disallowance Letters that Begin the 2-Year Period for Filing a Refund Suit*. Campus-sourced letters (e.g. Letter 105-C or Letter 106-C) can usually be identified on IDRS, using the following IDRS commands:
  - ENMODA (IRM 2.3.15)
  - IMFOLE for IMF (IRM 2.3.51)
  - BMFOLE for BMF (IRM 2.3.59)
  - TXMODA for specific period (IRM 2.3.11)
- (4) If the taxpayer filed a second amended return (timely filed under IRC Section 6511) for the same issues included in the first claim, after the Service has issued a claim disallowance letter or received Form 2297 that started the 2-year period for filing a refund suit, do not issue a second claim disallowance letter for these duplicate issues or secure Form 2297. See IRM 8.7.7.7, *Form 2297, Waiver of Statutory Notification of Claim Disallowance*. Issue another claim disallowance letter or secure Form 2297 only for the disallowed portion of the claim in respect to issues not included in the first claim disallowance.
- (5) **AIMS Control** - For each claim period controlled on AIMS, prepare Form 5403 Instructions. The assigned APS Tax Examiner will use these instructions to prepare Form 5403, *Appeals Closing Record*, for processing account adjustments and closing the AIMS module. See IRM 4.4.1.2, *Description of AIMS*. Use IDRS command code **AMDIS** to determine if the account module is on AIMS. See IRM 2.8.3, *AIMS Command Code AMDIS*. Campus-sourced claims are generally not controlled on AIMS.
- (6) **No AIMS Control** - For each claim period not controlled on AIMS, prepare Form 3870, *Request for Adjustment*, for processing a partial allowance or full allowance. For a no-change / non-AIMS module, Form 3870 is acceptable, but not needed. In this instance, the ATE can include instructions to APS (on Form 5402) similar to the following: "**Input TC 290 \$0.00 for all periods**" (e.g. where the claim disallowance was fully sustained for all claim periods).
- (7) For an Appeals Notice of Claim Disallowance that starts the 2-year period for filing a refund suit, the ATM is the lowest signature level for signing these letters that include the following:
  - Letter 1363, *Appeals Partial Disallowance of Refund Claim - Certified Letter*
  - Letter 1364, *Appeals Full Disallowance of Refund Claim - Certified Letter*

Appeals will send these letters by certified mail to taxpayers within the United States or by registered mail to taxpayers outside the United States. See IRM



1.22.2.4, *International Mail*, and IRM 1.22.3, *Addressing and Packaging*. Letter 1363 and Letter 1364 automatically display “Certified Mail” as the mailing option and allow the user to change the mailing option to “Registered Mail”, when applicable. As required by IRC Section 6402(l), *Explanation of Reason for Refund Disallowance*, the ATE must add to Letter 1363 and Letter 1364 an explanation for fully or partially disallowing the refund claim.

- (8) For an Appeals closing letter sustaining the Service’s earlier Notice of Claim Disallowance (i.e. the 2-year period for filing suit has already begun), the ATE can sign the closing letter (to be sent by regular mail). They include the following:
  - Letter 2681, *Appeals Full Disallowance After Previous Claim Disallowance*
  - Letter 2683, *Appeals Partial Disallowance After Previous Claim Disallowance*
- (9) To notify the taxpayer of the full claim allowance, not involving an additional tax, use closing Letter 2682, *Appeals Full Claim Allowance*. The ATE can sign this closing letter (to be sent by regular mail).
- (10) For specific closing instructions, see the following and its related subsections:
  - a. IRM 8.7.7.5.1, *Reaching Agreement for Liability Issues*
  - b. IRM 8.7.7.5.2, *Unagreed Refund Claim (No Additional Tax)*
  - c. IRM 8.7.7.5.3, *Closing Deficiency Cases Involving Claims*
  - d. IRM 8.7.7.6, *Settlement Computations for Claims and Overassessments Cases*
  - e. IRM 8.7.7.8, *Closing of Overassessment Case to be Withheld Until Related Taxpayer Deficiency is Established*
  - f. IRM 8.7.7.9, *Partial Overassessments May Be Allowed in Certain Contested Cases*
  - g. IRM 8.7.7.10, *Processing Partial Allowances of Refunds or Credits*
  - h. IRM 8.7.7.11, *Securing an Agreement Form for an Overassessment (No Refund Claim Filed)*
  - i. IRM 8.7.7.12, *Applying an Overassessment to a Deficiency in a Related Case*
  - j. IRM 8.7.7.13, *Refund Suit for an Open Appeals Liability Case*
  - k. IRM 8.7.7.14, *Expedite Closing of Large Dollar Examination-Sourced Overpayment Cases*

8.7.7.5.1  
(12-17-2019)  
**Reaching Agreement for  
Liability Issues**

- (1) IRM 8.6.4, *Reaching Settlement and Securing an Appeals Agreement Form*, contains guidance on Appeals’ settlement policies and procedures. A fair and impartial resolution is one which reflects on an issue-by-issue basis the probable result in the event of litigation or one which reflects mutual concessions for the purpose of settlement based on relative strength of the opposing positions where there is substantial uncertainty of the result in event of litigation.
- (2) Case dispositions involving concessions by both the Government and the taxpayer for the purpose of settlement where there is substantial uncertainty in the event of litigation as to how the courts would interpret and apply the law or as to what facts the courts would find are designated as mutual concessions settlements.

- (3) For cases resolved by considering “hazards of litigation settlements”, IRM 8.6.4 contains guidance on waiver forms used by Appeals for reaching agreements to the assessment and collection of additional taxes and for “accepting over-assessments as correct”, subject to any terms and conditions contained on the form. IRM 8.6.4 distinguishes special agreement forms, that pledge no reopening and become effective upon acceptance on behalf of the Commissioner, from general agreement forms, that become effective upon receipt with no pledge. These special agreement forms, ending in “AD” (for Appeals Division) are only used by Appeals.
- (4) Per IRM 8.6.4, use a special Appeals agreement form when material mutual concessions are made. Use a general IRS agreement form where a mutual concession settlement is not involved or in a situation where the amount of tax involved in a mutual concession settlement is not material enough to require the finality of an “AD” type agreement/waiver form.

8.7.7.5.1.1  
(12-17-2019)

**Claim Disallowance Not Sustained**

- (1) Prepare the following closing documents:
  - a. Form 5402
  - b. ACM, unless Form 5402 is used as ACM
  - c. Settlement computations, as needed
  - d. Form 5403 Instructions for AIMS module or Form 3870 for non-AIMS module
  - e. Letter 2682, *Appeals Full Claim Allowance* (for APS to send by regular mail)
- (2) The following are some of the APGOLF entries required on Form 5402:
  - a. ARDI Code - 7 (not tracked, but needed to generate Form 5402)
  - b. Revised Tax - Enter the negative amount for abatement/refund (if applicable).
  - c. Revised Penalty - Enter the negative for abatement/refund (if applicable).
  - d. Claim - Enter claim amount
  - e. Disallowed - Enter claim amount disallowed (\$0.00 - for Fully allowed claim)
  - f. Closing code 15 - Full Allowance (Not Sustained)

**Note:** The claim could be for (i) tax and penalty, (ii) tax only, or (iii) penalty only.

- (3) Also, consider the following guidance:
  - IRM 8.7.7.8, *Closing of Overassessment Case to be Withheld Until related Taxpayer’s Deficiency is Established*
  - IRM 8.7.7.12, *Applying an Overassessment to a Deficiency in a Related Case*

8.7.7.5.1.2  
(12-17-2019)

**Claim Disallowance Partially Sustained (2-Year Period Previously Began)**

- (1) Use Letter 969, *Agreement Form Transmittal - Non-Docketed Case*, to solicit the taxpayer’s agreement (on an appropriate form described in IRM 8.6.4) to the overassessment amount.
- (2) Prepare the following closing documents:
  - a. Form 5402
  - b. ACM, unless Form 5402 is used as ACM
  - c. Settlement computations, as needed

- d. Appropriate form described in IRM 8.6.4 (secure signature approval)
- e. Form 5403 Instructions for AIMS module or Form 3870 for non-AIMS module
- f. Letter 2683, *Appeals Partial Disallowance After Previous Claim Disallowance* (for APS to send by regular mail)

**Note:** It is recommended that the settlement computation contain a brief statement regarding the final disposition of a claim for refund or credit of overpayment. See IRM 8.7.7.6.1, *Statements Regarding Final Disposition of Refund Claims*.

(3) The following are some of the APGOLF entries required on Form 5402:

- a. ARDI Code - 7
- b. Revised Tax - Enter the negative amount for abatement/refund (if applicable).
- c. Revised Penalty - Enter the negative amount for abatement/refund (if applicable).
- d. Claim - Enter claim amount
- e. Disallowed - Enter claim amount disallowed
- f. Closing code 16 - Partial Allowance (Partially Sustained)

(4) Also, consider the following guidance:

- IRM 8.7.7.8, *Closing of Overassessment Case to be Withheld Until related Taxpayer's Deficiency is Established*
- IRM 8.7.7.9, *Partial Overassessments May Be Allowed in Certain Contested Cases*
- IRM 8.7.7.12, *Applying an Overassessment to a Deficiency in a Related Case*

8.7.7.5.1.3  
(12-17-2019)  
**Claim Disallowance  
Partially Sustained  
(2-Year Period Not  
Started)**

(1) Use Letter 969, *Agreement Form Transmittal - Non-Docketed Case*, to solicit the taxpayer's agreement (on an appropriate form described in IRM 8.6.4) to the overassessment amount and to the waiver of the statutory requirement for the mailing of a Notice of Claim Disallowance.

(2) Prepare the following closing documents:

- a. Form 5402
- b. ACM, unless Form 5402 is used as ACM
- c. Settlement computations, as needed
- d. Appropriate form described in IRM 8.6.4 (secure signature approval)
- e. Form 2297 (secure signature approval)
- f. Form 5403 Instructions for AIMS module or Form 3870 for non-AIMS module
- g. Letter 1363, *Appeals Partial Disallowance of Refund Claim - Certified Letter* (for APS to send by Certified or Registered mail) - only if signed Form 2297 is not received

**Note:** It is recommended that the settlement computation contain a brief statement regarding the final disposition of a claim for refund or credit of overpayment. See IRM 8.7.7.6.1, *Statements Regarding Final Disposition of Refund Claims*.

- (3) If Appeals receives a signed agreement form **and** Form 2297, use closing Letter 913, *Agreed Cases - Closing Letter*, instead of Letter 1363, and select the paragraph with the following language:

"We won't send you any other notice disallowing your claim for refund since you signed Form 2297, *Waiver of Statutory Notification of Claim Disallowance*."

- (4) The following are some of the APGOLF entries required on Form 5402:

- a. ARDI Code - 7
- b. Revised Tax - Enter the negative amount for abatement/refund (if applicable).
- c. Revised Penalty - Enter the negative amount for abatement/refund (if applicable).
- d. Claim - Enter claim amount
- e. Disallowed - Enter claim amount disallowed
- f. Closing code 16 - Partial Allowance (Partially Sustained)

- (5) Also, consider the following guidance:

- IRM 8.7.7.8, *Closing of Overassessment Case to be Withheld Until Related Taxpayer's Deficiency is Established*
- IRM 8.7.7.9, *Partial Overassessments May Be Allowed in Certain Contested Cases*
- IRM 8.7.7.12, *Applying an Overassessment to a Deficiency in a Related Case*

8.7.7.5.2  
(12-17-2019)  
**Unagreed Refund Claim  
(No Additional Tax)**

- (1) IRM 8.7.7.5.1, *Reaching Agreement for Liability Issues*, contains information on Appeals' settlement policies and procedures, including reaching agreements for mutual concession settlements. To the extent that a disallowed claim issue is determined to be fully supported by the taxpayer, and does not require a mutual concession settlement, determine the allowable amount. If not fully supported, fully sustain the claim disallowance.

8.7.7.5.2.1  
(12-17-2019)  
**Claim Disallowance  
Fully Sustained (2-Year  
Period Previously  
Started)**

- (1) Prepare the following closing documents:
- a. Form 5402
  - b. ACM, unless Form 5402 is used as ACM
  - c. Settlement computations, as needed
  - d. Form 5403 Instructions for AIMS module or Form 3870 for non-AIMS module
  - e. Letter 2681, *Appeals Full Disallowance After Previous Claim Disallowance* (for APS to send by regular mail)
- (2) The following are some of the APGOLF entries required on Form 5402:
- a. ARDI Code - 7
  - b. Revised Tax - Enter the amount for abatement/refund (e.g. \$0 for full disallowance).
  - c. Revised Penalty - Enter the amount for abatement/refund (e.g. \$0 for full disallowance).
  - d. Claim - Enter claim amount
  - e. Disallowed - Enter claim amount disallowed
  - f. Closing code 14 - Full Disallowance (Fully Sustained)

8.7.7.5.2.2  
(12-17-2019)  
**Claim Disallowance  
Fully Sustained (2-Year  
Period Not Started)**

- (1) Prepare the following closing documents:
  - a. Form 5402
  - b. ACM, unless Form 5402 is used as ACM
  - c. Settlement computations, as needed
  - d. Form 5403 Instructions for AIMS module or Form 3870 for non-AIMS module
  - e. Letter 1364, *Appeals Full Disallowance of Refund Claim - Certified Letter* (for APS to send by Certified or Registered mail)
- (2) The following are some of the APGOLF entries required on Form 5402:
  - a. ARDI Code - 7
  - b. Revised Tax - Enter the amount for abatement/refund (e.g. \$0 for full disallowance).
  - c. Revised Penalty - Enter the amount for abatement/refund (e.g. \$0 for full disallowance).
  - d. Claim - Enter claim amount
  - e. Disallowed - Enter claim amount disallowed
  - f. Closing code 14 - Full Disallowance (Fully Sustained)

8.7.7.5.2.3  
(12-17-2019)  
**Claim Disallowance  
Partially Sustained  
(2-Year Period  
Previously Started)**

- (1) Prepare the following closing documents:
  - a. Form 5402
  - b. ACM, unless Form 5402 is used as ACM
  - c. Settlement computations, as needed
  - d. Form 5403 Instructions for AIMS module or Form 3870 for non-AIMS module
  - e. Letter 2683, *Appeals Partial Disallowance After Previous Claim Disallowance* (for APS to send by regular mail)

**Note:** It is recommended that the settlement computation contain a brief statement regarding the final disposition of a claim for refund or credit of overpayment. See IRM 8.7.7.6.1, *Statements Regarding Final Disposition of Refund Claims*.

- (2) The following are some of the APGOLF entries required on Form 5402:
  - a. ARDI Code - 7
  - b. Revised Tax - Enter the negative amount for abatement/refund (if applicable).
  - c. Revised Penalty - Enter the negative amount for abatement/refund (if applicable).
  - d. Claim - Enter claim amount
  - e. Disallowed - Enter claim amount disallowed
  - f. Closing code 16 - Partial Allowance (Partially Sustained)
- (3) Also, consider the following guidance:
  - IRM 8.7.7.8, *Closing of Overassessment Case to be Withheld Until related Taxpayer's Deficiency is Established*
  - IRM 8.7.7.9, *Partial Overassessments May Be Allowed in Certain Contested Cases*
  - IRM 8.7.7.12, *Applying an Overassessment to a Deficiency in a Related Case*

8.7.7.5.2.4  
(12-17-2019)  
**Claim Disallowance  
Partially Sustained  
(2-Year Period Not  
Started)**

- (1) Prepare the following closing documents:
  - a. Form 5402
  - b. ACM, unless Form 5402 is used as ACM
  - c. Settlement computations, as needed
  - d. Appropriate form (described in IRM 8.6.4)
  - e. Form 5403 Instructions for AIMS module or Form 3870 for non-AIMS module
  - f. Letter 1363, *Appeals Partial Disallowance of Refund Claim - Certified Letter* (for APS to send by Certified or Registered mail)
- (2) The following are some of the APGOLF entries required on Form 5402:
  - a. ARDI Code - 7
  - b. Revised Tax - Enter the negative amount for abatement/refund (if applicable).
  - c. Revised Penalty - Enter the negative amount for abatement/refund (if applicable).
  - d. Claim - Enter claim amount
  - e. Disallowed - Enter claim amount disallowed
  - f. Closing code 16 - Partial Allowance (Partially Sustained)
- (3) Also, consider the following guidance:
  - IRM 8.7.7.8, *Closing of Overassessment Case To Be Withheld Until related Taxpayer's Deficiency is Established*
  - IRM 8.7.7.9, *Partial Overassessments May Be Allowed in Certain Contested Cases*

8.7.7.5.3  
(12-17-2019)  
**Closing Deficiency  
Cases Involving Claims**

- (1) For agreed deficiency cases involving refund claims, see the following:
  - a. IRM 8.2.1.9, *Reaching a Conclusion in the Case*
  - b. IRM 8.2.1.10.1, *Expedite Processing for Certain Large Dollar Cases*
  - c. IRM 8.4.1, *Procedures for Processing and Settling Docketed Cases*
  - d. IRM 8.6.2, *Appeals Case Memo Procedures*
  - e. IRM 8.6.4, *Reaching Settlement and Securing an Appeals Agreement Form*
- (2) For agreed docketed cases involving an overpayment, consult with Area Counsel for the language includible in the Decision Document. For nondocketed cases, it is recommended that the settlement computation contain a brief statement regarding the final disposition of a claim for refund or credit of overpayment. See IRM 8.7.7.6.1, *Statements Regarding Final Disposition of Refund Claims*.
- (3) For unagreed deficiency cases involving refund claims, see the following:
  - a. IRM 8.6.2, *Appeals Case Memo Procedures*
  - b. IRM 8.17.4, *Notices of Deficiency* - See IRM 8.7.7.5.3.1 for claim-related language includible in the *Notice of Deficiency*.
  - c. IRM 8.7.7.5.3.2, *Unagreed Deficiency Cases with Overassessment Year(s)*



8.7.7.5.3.1  
(12-17-2019)  
**Unagreed Deficiency  
Cases Involving Claims -  
Language Required in  
Notice of Deficiency**

- (1) If a notice of deficiency is issued and there is a claim for refund for the same tax period, an additional paragraph is needed about the claim in the statement attached to the notice of deficiency (i.e. Letter 894, *Notice of Deficiency*, or Letter 901, *Statutory Notice*). For sample paragraphs includible in the notice of deficiency, see paragraph (2) below. When submitting Form 3608, *Request for TCS Service*, the ATE must inform the Tax Computation Specialist (TCS) when a refund claim is filed and what action to take with respect to the claim.
  - a. It is the responsibility of the TCS to insert the proper paragraph in the statement.
  - b. However, the ATE must provide the TCS with the “claim filing date”, whether the issue was allowed or disallowed, and the reason for any disallowance, so that the correct and complete paragraph(s) can be included in the attachment to the notice of deficiency.
- (2) Notify the TCS to include on the notice of deficiency face sheet the following paragraphs, whenever applicable. Show the explanatory paragraphs on Form 4089, *Notice of Deficiency - Waiver*, Form 4089-A, *Notice of Deficiency Statement*, or on a continuation sheet attached to these forms.

a. **Issue in claim not conceded:**

“In making this determination of your income tax liability, consideration has been given to your claim for refund filed on **MM/DD/YYYY**. It is determined that the issue raised in your claim (**identify the subject matter**) is not allowable because (**state reason**). If a petition to the United States Tax Court is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by the Tax Court in any redetermination of your tax liability. This is your notice of claim disallowance. If you choose not to petition to the United States Tax Court, but still want to contest the disallowance, you may do so by filing such a suit with the United States District Court having jurisdiction or the United States Court of Federal Claims. The law permits you to do this within two years from the date of this letter.”

b. **Multiple issues in claim not conceded:**

“In making this determination of your income tax liability, consideration has been given to your claim for refund filed on **MM/DD/YYYY**. It is determined that the issues raised in your claim are not allowable as discussed below: (**list each issue and the reason for disallowance**). If a petition to the United States Tax Court is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by the Tax Court in any redetermination of your tax liability. This is your notice of claim disallowance. If you choose not to petition the Tax Court, but still want to contest the disallowance, you may do so by filing such a suit with the United States District Court having jurisdiction or the United States Court of Federal Claims. The law permits you to do this within two years from the date of this letter.”

c. **All Issues in claim(s) conceded:**

“In making this determination of your income tax liability, consideration has been given to your claim(s) for refund filed on **MM/DD/YYYY**. The issue raised in your claim for refund with respect to (**identify the subject matter**) has been allowed and taken into account in the computation of tax in the notice of deficiency. However, other adjustments result in a deficiency.”

d. **If the issue in a claim is partially conceded:**

**Example:** The taxpayer files a claim requesting that Schedule E income reported on the return of \$15,000 be reduced to \$1,000. It is determined in Appeals that \$10,000 of the income is still reportable on the tax return. See suggested format below:

"In making this determination of your income tax liability, consideration has been given to your claim for refund filed on **MM/DD/YYYY**. It is determined that Schedule E income of \$10,000 must be reported on your return rather than the amount shown in your claim of \$1,000. The notice of deficiency adjusts the Schedule E income. Other adjustments to your return result in a deficiency. If a petition to the United States Tax Court is filed against the deficiency proposed herein, the disallowed issue set forth in your claim for refund should be made a part of the petition to be considered by the Tax Court in any redetermination of your tax liability. This is your notice of claim disallowance. If you choose not to petition the Tax Court, but still want to contest the partial disallowance, you may do so by filing such a suit with the United States District Court having jurisdiction or the United States Court of Federal Claims. The law permits you to do this within two years from the date of this letter."

**e. If the claim contains multiple issues and some are conceded:**

"In making this determination of your income tax liability, consideration has been given to your claim for refund filed on **MM/DD/YYYY**. The issue raised in your claim for refund with respect to (***identify the subject matter of the first issue***) has been allowed herein. However, it is determined that the issue raised in your claim with respect to (***identify the subject matter of the second issue***) is not allowable because (***state reason***). Other adjustments to your return result in a deficiency. If a petition to the United States Tax Court is filed against the deficiency proposed herein, the disallowed issue(s) set forth in your claim for refund should be made a part of the petition to be considered by the Tax Court in any redetermination of your tax liability. This is your notice of claim disallowance. If you choose not to petition the Tax Court, but still want to contest the partial disallowance, you may do so by filing such a suit with the United States District Court having jurisdiction or the United States Court of Federal Claims. The law permits you to do this within two years from the date of this letter."

- (3) The language disallowing the claim (in full or in part) will become the taxpayer's legal notice of claim disallowance. If the notice of deficiency defaults, the tax law permits the taxpayer to file a refund suit within 2 years from the date of the notice of deficiency with the United States District Court having jurisdiction or the United States Court of Federal Claims.

**8.7.7.5.3.2**  
(12-17-2019)  
**Unagreed Deficiency**  
**Cases With**  
**Overassessment Year(s)**

- (1) Where a pre-If the taxpayer timely petitions the U.S. Tax Court for a redetermination of the deficiency, the taxpayer is precluded from bringing a refund suit at a later date in the courts on a claim for refund filed for the same kind of tax for the same taxable year. See IRC Section 6512 (a), *Effect of Petition to Tax Court*. 90 day case includes years with proposed overassessments **and** years with proposed deficiencies, don't include the overassessment years in the notice of deficiency. See IRM 8.17.4.16, *Overassessment Years in the Case*. For exceptions, see IRM 8.17.4.14, *Tentative Allowances and Other Carryback Claims in Notice of Deficiency Statement*.
- (2) Generally, if the adjustments are related, the Service will not process the over-assessment until the deficiency can be assessed. See IRM 8.17.4.16.1,

*Preparing a Claim Invitation Letter*, for information on claim invitation letters. Send claim invitation letters to taxpayers who have not submitted protective claims. If the issue generating the overassessment is not related to, or is not the result of, the deficiency proposed in the other year(s), then the overassessment may be processed.

- (3) For an overassessment involving a whipsaw situation, see IRM 8.2.3.12, *Overassessment Resulting from Adjustment to a Related Return* and IRM 1.2.1.5.13, *Policy Statement 4-34*.

8.7.7.6  
(12-17-2019)  
**Settlement  
Computations for Claims  
and Overassessment  
Cases**

- (1) This section provides guidance on the preparation of settlement computations on cases involving claims and overassessment cases. It is intended for Appeals employees who prepare settlement computations.
- (2) A current transcript of account is required for all cases. Analyze the transcript of account if there is a question about the timeliness of a claim for refund or payments, etc. *Statements of accounts* are required in docketed cases involving overpayments. See IRM 8.17.3.2, *Explanation of the Statement of Account*.

8.7.7.6.1  
(12-11-2013)  
**Statements Regarding  
Final Disposition of  
Refund Claims**

- (1) It is recommended that the settlement computation contain a brief statement regarding the final disposition of a **claim for refund or credit of an overpayment**. One of the following statements could be included in the settlement document, depending on the disposition:

a. **Claim is Allowed in Full (with no Offset)**

*"Your claim for refund totaling \$(amount) for (tax year ended) has been considered and allowed in full by Appeals in the preparation of this settlement computation."*

b. **Claim is Disallowed in Full (and No Other Adjustments)**

*"Your claim for refund totaling \$(amount) for (tax year ended) has been considered and disallowed in full by Appeals in the preparation of this settlement computation."*

c. **Claim is Allowed in Full or Part (but Offset by Other Adjustments)**

*"Your claim for refund totaling \$(amount) for (tax year ended) has been considered and allowed in full ( or in part) by Appeals. However, the total amount of refund is increased (or decreased) by other adjustments shown in this settlement computation."*

d. **Claim is Allowed in Part (with no Offset)**

*"Your claim for refund totaling \$(amount) for (tax year ended) has been considered and allowed in part by Appeals in the preparation of this settlement computation."*

8.7.7.7  
(12-17-2019)  
**Form 2297, Waiver of  
Statutory Notification of  
Claim Disallowance**

- (1) In cases where a claim for refund is disallowed in whole or in part, you may request that the taxpayer execute Form 2297, *Waiver of Statutory Notification of Claim Disallowance*, especially when mailing an agreement form for the taxpayer's approval. See IRM 4.10.8.10.4.1, *Instructions for Completing Form 2297*.
- (2) Follow these procedures when securing a Form 2297:

- a. Prepare three copies, including a copy for the taxpayer. If appropriate, send a copy to the authorized representative;
- b. Attach an original to the claim; and
- c. Retain a copy in the administrative file.

**Caution:** Do not follow these procedures if a claim disallowance letter was previously issued or a Form 2297 was previously filed.

- (3) If the taxpayer chooses not to sign Form 2297, issue a notice of claim disallowance using Letter 1363 or Letter 1364, even if an agreement form (Form 870 type, etc.) is submitted.
- (4) When a claim issue is allowed - but offsetting adjustments reduce or eliminate the overpayment, secure a Form 2297 or issue a notice of claim disallowance (Letter 1363 or 1364).
- (5) There are many exceptions to the use of this form, most of which are listed in the following subsections.

#### 8.7.7.7.1 (12-17-2019)

##### **When a Statutory Notice of Claim Disallowance is Not to be Mailed and Form 2297 is Not to be Secured**

- (1) Do not secure Form 2297 or issue a notice of claim disallowance for:
  - a. Claim for abatement;
  - b. Claim for abatement of interest; - See IRM 8.7.7.18, *Abatement of Interest Claims*
  - c. Claim for a year docketed before the United States Tax Court; **except** if the issue raised in a claim pertains to a carryback which is not an issue before the Tax Court. In this case, secure a Form 2297 or issue a notice of claim disallowance (Letter 1363 or Letter 1364);
  - d. Claim with an issue allowed in full - with no offsetting adjustments, but the taxpayer overstated the amount of the claim;
  - e. Informal claim;
  - f. Claim previously disallowed in whole or in part by a notice of claim disallowance; or
  - g. Claim previously disallowed in whole or in part and signed Form 2297 was obtained.

#### 8.7.7.7.2 (12-17-2019)

##### **Form 2297 Not to be Secured—Decision Within 6 Months**

- (1) A statutory notice of claim disallowance is the only form issued during the initial six (6) month period after the filing of the claim. The 6-month waiting period, required before filing suit, can only be shortened to less than six (6) months if a **decision of the IRS** is reached before the six (6) month period expires.
- (2) Waiver Form 2297, *Waiver of Statutory Notification of Claim Disallowance*, and/or Compliance's Form 3363, *Acceptance of Proposed Disallowance of Claim for Refund or Credit*, do not constitute a "decision of the IRS."

#### 8.7.7.7.3 (10-26-2007)

##### **Form 2297 Requests in Joint Committee Cases**

- (1) Do not request Form 2297 in cases requiring Joint Committee review until the Joint Committee has released the case, unless the Form 2297 is modified as follows: "This waiver takes effect on the same date the Agreement Form (***fill in appropriate form number***) used in this case becomes effective."
- (2) For information on Joint Committee Cases, see IRM 8.7.9, *Joint Committee (JC) Cases*.

8.7.7.7.4  
(10-26-2007)  
**Form 2297 Not Secured  
in Pre-Refund Cases**

- (1) In agreed cases under the pre-refund examination program, an original return showing an overpayment of tax may represent a claim for refund or credit. See IRM 21.5.10.3.2, *Pre-Refund Audits*.
  - a. Consider this claim “allowed in full” when all or part of the amount is applied against a deficiency determined upon examination; and
  - b. The remainder, if any, is refunded.
- (2) Under this procedure, do not secure a Form 2297 or issue a notice of claim disallowance.

8.7.7.7.5  
(05-05-2012)  
**More Than One  
Overassessment  
Agreement  
Obtained—Form 2297**

- (1) Occasionally, an agreement form is received in an overassessment and/or overpayment case and it becomes necessary to secure another agreement for a lesser refund.
- (2) The first agreement constitutes a claim for refund or credit. Secure a Form 2297, or issue a statutory notice of claim disallowance. See IRM 8.7.7.11, *Securing an Agreement Form for an Overassessment (No Refund Claim Filed)*.

8.7.7.8  
(12-17-2019)  
**Closing of  
Overassessment Case to  
be Withheld Until  
Related Taxpayer’s  
Deficiency is  
Established**

- (1) When adjustments are made which increase the tax liability of one taxpayer and the position taken in support of the adjustments requires as a matter of consistency a reduction in the tax liability of another taxpayer, the case closing will be withheld of the taxpayer whose tax liability will be reduced until the taxpayer whose liability has been increased agrees to the adjustments proposed and consents to the closing of the case on that basis, or until action by the United States Tax Court or other court establishes the correctness of the adjustments. See IRM 1.2.1.5.13, *Policy Statement 4-34*.

**Note:** If the period of limitation for filing a claim is about to expire, give the taxpayer with the proposed overassessment written advice to file a protective claim.

8.7.7.9  
(12-17-2019)  
**Partial Overassessments  
May be Allowed in  
Certain Contested Cases**

- (1) The Service’s policy on partial allowance of refunds or credits of overassessments in certain contested cases is found in IRM 1.2.1.5.17, Policy Statement P-4-41, and Rev. Rul. 54-378, 1954-2 C.B. 246. Generally, partial allowances will be made only in cases falling within the following categories:
  - a. Cases for a specific year involving two or more tax-reducing issues;
  - b. Cases for a specific year involving several issues, both tax-reducing and tax-increasing, where the overall result after giving effect to the tax-increasing issues is a net overassessment; and
  - c. Cases involving more than 1 year where the net result is an overassessment.

**Note:** See Revenue Ruling 54-378 for more information, including examples illustrating these categories. Care should be exercised to identify the existence of any pending or proposed liabilities concerning the taxpayer.

- (2) Refunds of partial overassessments are only recommended in those cases where there is agreement on the issue or issues resulting in the partial overassessment. See IRM 8.6.4, for guidance on “Modification of Agreement for Partial Agreement”.



- (3) Rev. Rul. 2007-51 2007-2 C.B. 573, clarifies that Rev. Rul. 54-378 does not limit the Service to crediting overpayments only against assessed tax liabilities. It holds that the Service may credit an overpayment against unassessed internal revenue tax liabilities that have been determined in a statutory notice of deficiency sent to the taxpayer. The Service may also set off a liability identified in a proof of claim filed in a bankruptcy case even though the liability has not been assessed or included in a notice of deficiency. See Rev. Rul. 2007-52.
- (4) Partial overassessments are not recommended in potential Joint Committee cases, except as provided in IRM 8.7.9, *Joint Committee (JC) Cases*.

8.7.7.10  
(12-17-2019)  
**Processing Partial Allowances of Refunds or Credits**

- (1) When the taxpayer agrees to the allowance of a partial overassessment, secure an appropriate agreement form before the “time for filing a refund claim” has expired (if no refund claim has been filed). See IRM 8.7.7.11, *Securing an Agreement Form for an Overassessment (No Refund Claim Filed)*.
- (2) If the case is on AIMS, include instructions for Form 5403, *Appeals Closing Record*, showing the agreed overassessment. See IRM 8.2.1.10, *Closing the Case to APS*, (and its related subsections) and IRM 8.2.1.11, *Preparing the Case to Close to APS*. Also, see IRM 8.20.3.3.62.1, *AIMS*, to assist in determining whether a case is on AIMS.
- (3) If the case is not on AIMS, prepare Form 3870, *Request for Adjustment*.
- (4) Prepare Form 5402, *Appeals Transmittal and Case Memo*, which discusses the agreed issues as part of the final closing package.

8.7.7.11  
(12-17-2019)  
**Securing an Agreement Form for an Overassessment (No Refund Claim Filed)**

- (1) If an agreement is reached on an overassessment (“without a claim filed”), secure an agreement form using the standards for agreement in a pre-90 day case (i.e. Form 870 or Form 870-AD ). If Form 870 or Form 870-AD is not appropriate, consider the case type to identify the appropriate form for securing an agreement.
- (2) Under *Rev. Rul. 68-65*, 1968–1 C.B. 555, a signed agreement Form 870 or Form 890 series is a claim for refund to the extent that any *Service determined overassessment* shown is an overpayment, provided the form is executed and filed within the period of limitations for filing a claim for credit or refund.
- (3) The “date of the claim for refund” is the date of receipt of the signed agreement form, or the date it is postmarked, if mailed before the due date and received after that due date.

8.7.7.12  
(12-17-2019)  
**Applying an Overassessment to a Deficiency in a Related Case**

- (1) Overassessments may be applied against deficiencies determined in an inter-related case. Add to the agreement form language for the taxpayer to consent to application of the overpayment to the interrelated deficiency. See IRM 8.6.4, *Reaching Settlement and Securing an Appeals Agreement Form*, for a suggested paragraph when modification of agreement is needed to apply an overpayment against an interrelated deficiency.

**Note:** IRM 8.6.4 also requires an appropriate notation in the “Remarks” section on form 5402, *Appeals Transmittal and Case Memo*, and Form 5403, *Appeals Closing Record*.



8.7.7.13  
(12-17-2019)  
**Refund Suit for an Open Appeals Liability Case**

- (1) IRC Section 6532, *Suits by Taxpayers for Refund*, prohibits a refund suit before the expiration of 6 months from the date of filing the refund claim, unless the Service makes a determination within that time. If notified that a suit has been filed for an open Appeals case or related case, follow procedures in IRM 8.7.1, *Guidelines for Cases With Special Issues*, as applicable:
  - a. IRM 8.7.1.7, *Civil Cases Involving Department of Justice*
  - b. IRM 8.7.1.8.1, *Refund Suits with No Deficiency in Appeals Cases*
  - c. IRM 8.7.1.8.2, *Refund Suits with Disposition of Pending Claims*
  - d. IRM 8.7.1.8.3, *Refund Suits with Statutory Notice of Deficiency Issued*
  - e. IRM 8.7.1.8.4, *Refund Suits with Deficiency in Appeals Cases*
  - f. IRM 8.7.1.8.5, *Refund Suits When Petition is Filed with US Tax Court*
  - g. IRM 8.7.1.8.6, *Refund Suits Affecting Related Appeals Cases*
  - h. IRM 8.7.1.8.7, *Settlements by Department of Justice (DOJ)*

8.7.7.14  
(12-11-2013)  
**Expedite Closing of Large Dollar Examination-Sourced Overpayment Cases**

- (1) The tax law provides for interest on overpayments in respect to any internal revenue tax, in accordance with IRC Section 6611. For an examination-sourced case, Appeals will expedite the closing of an overpayment case that meets the “large dollar criteria” - described in IRM 4.4.18, *AIMS Procedures and Processing Instructions, Large Dollar Cases*, and as shown on Exam’s Form 3198, *Special Handling Notice for Examination Case Processing*. An overpayment case meets the “large dollar criteria” if the total amount of a period’s tax overpayment plus penalties exceeds \$100,000.

**Note:** These procedures don’t apply to cases requiring Joint Committee, except that APS will assign the case on PEAS as a **high priority** case - requiring expedite processing. See IRM 8.7.9.6, *Appeals Responsibility in Joint Committee (JC) Cases*.

The expedite procedures apply to the following Appeals employees:

- a. Appeals Officer (AO)
  - b. Appeals Team Case Leader (ATCL)
  - c. Appeals Team Manager (ATM)
  - d. Account and Processing Support (APS)
- 
- (2) Appeals Officer (AO) - The AO will “flag” the “large dollar” overpayment case - by attaching any **EXPEDITE** “sticker”, “note”, or “tag” to the case file and - by including a notation similar to the following: **\$100,000 overpayment**. The AO will include a similar notation in the remarks section of Form 5402, *Appeals Transmittal and Case Memo* and close the case within five (5) calendar days of receipt of the agreement form. The AO will document the reason for the delay (if any) in the *Case Activity Record and Timesheet* (CARAT).
  - (3) Appeals Team Case Leader (ATCL) - The ATCL will “flag” the “large dollar” overpayment case - by attaching any **EXPEDITE** “sticker”, “note”, or “tag” to the case file and - by including a notation similar to the following: **\$100,000 overpayment**. The ATCL will include a similar notation in the remarks section of Form 5402, *Appeals Transmittal and Case Memo* and close the case within ten (10) calendar days of receipt of the agreement form. The ATCL will document the reason for the delay (if any) in the CARAT.
  - (4) Appeals Team Manager (ATM) - The ATM will properly “flag” the case, if not properly “flagged” by the AO (as described above). The ATM will close the

case within ten (10) calendar days of the AO's receipt of the agreement form. The ATM will document the reason for the delay (if any) in the CARAT.

- (5) Account and Processing Support (APS) - APS will expedite the closing of a "large dollar" overpayment case, as "flagged" by the Appeals employee. APS will assign the case on *Appeals' Processing Employee Automated System (PEAS)* and identify the case as a **high priority** - requiring **expedite processing**. APS will make every effort to process a large dollar overpayment within 30 days of Appeals' receipt of a waiver form and/or closing agreement.

8.7.7.15  
(12-17-2019)  
**Claims Disallowed by  
Compliance Based on  
Timeliness  
Determinations**

- (1) IRM 21.5.3, *General Claims Procedures*, contains guidance for identifying and processing claims. Once the claim is determined to be complete and processible, a determination is made whether the statute is open. See IRM 21.5.3.4, *General Claim Procedures*. If the claim is determined to be untimely, IRM 21.5.3.4.6, *No Consideration and Disallowance of Claims and Amended Returns*, require IRS campuses to disallow the claim following procedures in IRM 21.5.3.4.6.1, *Disallowance and Partial Disallowance Procedures*.
- (2) If the taxpayer appeals the decision to disallow the claim for untimeliness, as required by IRM 21.5.3.4.6.1 to disallow the claim with no consideration, and if Appeals concludes that the claim was timely filed, Appeals will also determine the following:
  - a. If the issue was previously "closed with finality", as described in IRM 8.7.7.2.2, *Liability Issues Previously Closed With Finality*
  - b. Whether Compliance considered the merits of the claim
- (3) If Appeals determines the claim was timely filed and the merits were previously considered and accepted by Compliance, allow the claim with no further consideration if the issue(s) was not previously "closed with finality."
- (4) If Appeals determines the claim was timely filed and Compliance did not previously consider the merits, return the case to Compliance to consider the merits if the issue(s) was not previously "closed with finality."
- (5) To return a claim for consideration of the merits, prepare Letter 5209, *Appeals Referral to Examination*, advising the taxpayer that Appeals determined the claim was timely filed and will return it to the originating function for consideration of the merits of the claim. Prepare Form 5402 to return the case. The Form 5402 must include the following:
  - "Claim submitted timely. Jurisdiction released for consideration of underlying issue. Return to originator."
  - Closing Code 20
  - Feature Code "TC"
  - Indicate where the case is being sent.
  - Include in remarks section: "Time remaining for filing suit MM/DD/YYYY"
- (6) Refer to the **Case Routing** tab on the Appeals Home Page at <http://appeals.web.irs.gov/APS/caserouting.htm> for "RETURNING CASES TO ORIGINATING FUNCTION (JURISDICTION RELEASED)."
- (7) For an exception to the requirement for returning claims disallowed by Compliance based solely on timeliness, see IRM 8.7.7.15.1, *Refund Disallowed as Time Barred During Original Return Processing*.

- (8) If Appeals determines the claim was previously closed with finality, follow the closing procedures in IRM 8.7.7.5, *Closing refund Claim Cases (No Additional Tax)* to sustain the disallowance.

8.7.7.15.1  
(12-17-2019)  
**Refund Disallowed as  
Time Barred During  
Original Return  
Processing**

- (1) The procedures in IRM 8.7.7.15, *Claims Disallowed by Compliance Based on Timeliness Determinations*, don't apply to appeals of the Service's refund disallowance that occurred during the processing of an original return where Compliance did the following:
- Processed an original delinquent return using Transaction Code (TC) 150;
  - Moved an overpayment to "excess collections"; and
  - Issued a statutory claim disallowance letter (i.e. Letter 105-C) to disallow a refund or credit of an overpayment.

**Note:** A claim on an original delinquent return is generally disallowed as to withholdings and estimated tax payments based on the lookback rule of IRC Section 6511(b)(2). But if the return was on extension or if amount in addition to the prepaid credits were paid, all or a portion of the claim may be allowed. In such a case, process the refund. See IRM 8.7.7.3, *Periods of Limitation in Claim and Overpayment Cases*. Include closing instructions to move the overpayment from "excess collections", and follow the procedures in IRM 8.7.7.5.1, *Reaching Agreement for Liability Issues*.

8.7.7.16  
(12-17-2019)  
**Reconsideration of  
Claims for Liabilities  
Previously Considered  
by Appeals**

- (1) The service will not reopen liability issues previously closed with finality, as discussed in the following guidance:
- IRM 8.7.7.2.2, *Liability Issues Previously Closed With Finality*
  - IRM 4.13.1.8, *Non-Acceptance of Request*
  - IRM 4.13.3.1.3, *Cases Closed in Appeals*
- (2) If the liability issues were not "previously closed with finality" and new information is provided requiring Compliance's consideration, return the case to Compliance to consider the new information. See IRM 8.6.1.7.5, *Taxpayer Provides New Information* and IRM 8.6.1.7.7, *Jurisdiction Released*, for instructions on returning a case. Notify Compliance when the two-year period for filing a refund suit will expire. The taxpayer can appeal the unresolved issue. An unresolved issue is not appealable if the allowance of the claim would be time-barred. See IRM 8.7.7.3, *Periods of Limitation in Claim and Overpayment Cases*.
- (3) Also, see IRM 1.2.1.5.21, *Policy Statement 4-75, Usual Principles Applicable in the Examination of Claims on Their Merits*, that provides that a conclusion previously reached by an Appeals official on a specific issue in a case will not be modified by Compliance as a result of the reconsideration of a claim, without concurrence of the Regional Director of Appeals (currently known as Appeals Operations Directors, as described in IRM 1.4.28.1.3, *Appeals Managers Procedures, Responsibilities*.)

8.7.7.17  
(12-17-2019)  
**Audit Reconsideration  
Cases**

- (1) An “audit reconsideration” case is the reevaluation of the results of a prior audit when a taxpayer disagrees with the original determination. However, the Service will not reconsider issues previously “closed with finality.” See the following:
  - a. IRM 8.7.7.2.2, *Liability Issues Previously Closed With Finality*
  - b. IRM 4.13.1.4, *Criteria for Reconsideration*
  - c. IRM 4.13.1.7, *Acceptance of Request*
  - d. IRM 4.13.1.8, *Non-Acceptance Request*
  - e. Exhibit 4.13.7-13, *Audit Reconsideration of Assessments Made by Appeals Processing Unit*
  - f. Pub 3598, *What you Should Know About the Audit Reconsideration Process*

**Note:** Audit reconsiderations are not claims for refund or credit of an overpayment since the tax liability in dispute has not been paid.

- (2) The taxpayer should provide information “not previously considered during the original examination.” Also, “audit reconsideration” is the process the IRS uses when the taxpayer contests an *Automated Substitute for Return* (ASFR) or *Substitute for Return* (SFR) determination by filing an original delinquent return, and the assessment remains unpaid - or, as a result of the assessment, the tax credit is reversed.
- (3) For audit reconsiderations on cases closed by Appeals as “dismissed for lack of jurisdiction”, Compliance will route these cases in accordance with IRM 4.13.2.2, *Function Responsible & Routing Instructions*. The taxpayer can appeal the result of the audit reconsideration.
- (4) When the taxpayer requests Appeals’ consideration, the full administrative file should accompany the taxpayer’s request. See IRM 4.13.3.16, *Request for Appeal*. Compliance will follow the guidance in IRM 4.13.3.1.3, *Cases Closed in Appeals*, and Exhibit 4.13.7-13 , *Audit Reconsideration of Assessments Made by Appeals Processing Unit*, to determine whether to route the case directly to Appeals without further action.
- (5) Follow procedures in IRM 8.2.1.4, *Receipt of New Assignment by an Appeals Technical Employee (ATE)*, requiring statute verification with 45 days, mailing of the appropriate initial contact letter, guidance on returning a case to Examination, and closing actions for a premature referral. Verify the case is correctly carded in on ACDS following procedures in IRM 8.20.5.9, *Audit Reconsideration Case Carding*.
- (6) If the disputed issue was not previously “closed with finality” and the case was sent directly to Appeals without consideration of the new information (or the taxpayer provides Appeals with new information, requiring Compliance’s consideration), return the case to Compliance for consideration, with appeal rights. See IRM 8.6.1.7.5 , *Taxpayer Provides New Information*.
- (7) If IRS previously closed the disputed issue with finality or the information provided was previously considered, follow the procedures in IRM 8.7.7.17.1, *Audit Reconsideration Case Closing Procedures*, to close the case with no change to the taxpayer’s account.

8.7.7.17.1  
(12-17-2019)  
**Audit Reconsideration  
Case Closing  
Procedures**

- (1) Follow guidance in, IRM 8.7.7.5, *Closing Refund Claims Cases (No Additional Tax)*, on preparing Form 5402, an ACM, reaching settlement, and securing an agreement. Use Letter 969, *Agreement Form Transmittal - Non Docketed Case*, to solicit an agreement to partially allow the abatement request for settlements based on hazards of litigation. To the extent that the decision is made to partially abate for an issue fully supported by the taxpayer, not requiring a mutual concession settlement, an agreement form isn't needed. Also, an agreement form isn't needed if the decision is to fully sustain or fully deny the request. Prepare the following closing documents:
  - a. Form 5402
  - b. ACM, unless Form 5402 is used as ACM
  - c. Settlement computations, as needed
  - d. Appropriate form described in IRM 8.6.4 (secure signature approval)
  - e. Form 5403 Instructions for AIMS module or Form 3870 for non-AIMS module
  - f. Letter 5841, *Audit Reconsideration Closing Letter* (for APS to send by regular mail)
- (2) If IRS previously closed an issue with finality or the information provided was previously considered, use Letter 5841 selectable paragraph 4) to explain why the issue doesn't qualify for reconsideration.
- (3) The following are some of the APGOLF entries required (if applicable) on Form 5402:
  - a. ARDI Code - 7
  - b. Revised Tax - Enter the negative amount for abatement/refund
  - c. Revised Penalty - Enter the negative amount for abatement/refund
  - d. Closing Code 14 - Fully Sustained
  - e. Closing Code 15 - Not Sustained
  - f. Closing Code 16 - Partially Sustained

8.7.7.18  
(12-17-2019)  
**Abatement of Interest  
Claims**

- (1) IRC Section 6404(e)(1) was added by the **Tax Reform Act of 1986** to provide for abatement of interest on deficiencies or payments attributable to errors or delays in the performance of ministerial acts by the Service. On July 30, 1996, the **Taxpayer Bill of Rights 2 (TBOR 2)** revised IRC Section 6404(e)(1) to allow the Service to abate interest attributable to **unreasonable** errors or delays by the Service in the performance of ministerial or managerial acts. This **TBOR 2** amendment applies to interest accruing with respect to deficiencies or payments for taxable years beginning after 7/30/1996.
- (2) Delegation Order 20-1 (formerly DO 228, Rev. 3), *Delegation of Authorities for Penalty and Interest Activities*, identifies the individuals authorized to abate interest under IRC Section 6404(e)(1). See IRM 1.2.2.13.1.
- (3) An error or delay in performing a ministerial or managerial act will be taken into account only if it occurs after the IRS has contacted the taxpayer in writing with respect to the deficiency or payment. If the conditions of IRC Section 6404(e)(1) are met, IRS is authorized to abate interest assessed on a deficiency of income tax, estate tax, gift tax and/or certain excise taxes. See IRC Section 6211, *Definition of a Deficiency*.

**Caution:** No significant aspect of the error or delay can be attributed to the taxpayer or authorized representative.



- (4) **Ministerial act** means a procedural or mechanical act that does not involve the exercise of judgment or discretion **and** that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.
- (5) **Managerial act** means an **administrative act** that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act.

**Note:** A general administrative decision, such as the Service's decision on how to organize the processing of tax returns or delay in implementing an improved computer system, is not a managerial act for which interest can be abated. Do not abate interest based on "reasonable cause criteria."

- (6) The Service has the authority to abate only the amount of interest that accrued *during the period attributable to an error or delay* in performing the ministerial or managerial act. IRC Section 6404(e)(1) applies only to an error or delay that occurs after the date the Service contacts the taxpayer in writing with respect to the deficiency or payment. For additional information, see IRM 20.2.7.5, *IRC 6404(e)(1), Unreasonable Error or Delay in Performing a Ministerial or Managerial Act*.
- (7) Interest abatement claims (Form 843, *Claim for Refund and Request for Abatement*) are generally filed with the Campus where the taxpayer would be required to file a current tax return for which the claim or request relates. Compliance will consider the claim after the tax and/or penalty issues have been resolved. After Compliance considers the claim, the taxpayer will have full appeal rights.
- (8) **TBOR2** granted the Tax Court jurisdiction to determine whether the Service's failure to abate interest was an abuse of discretion and to order an abatement. To bring an action under IRC Section 6404(h), the taxpayer must file a petition for review with the Tax Court within 180 days after the date of the mailing of the Service's **final determination** not to abate. See IRM 8.7.7.18.5 (10) to determine the appropriate document for Appeals to close a non-docketed **abatement of interest** case.
- (9) The "abatement of interest" provision is applicable in the context of a TEFRA partnership audit.
- (10) Interest on employment, excise, and other taxes that are not subject to deficiency procedures don't qualify for abatement of interest under IRC Section 6404(e). However, the IRS has authority to abate interest under IRC Section 6404(a) if the interest is:
- excessive in amount;
  - assessed after the expiration of the applicable period of limitations; or
  - erroneously or illegally assessed.
- (11) IRC Section 6404(e)(2) imposes a requirement for the Secretary to abate interest assessed on an erroneous refund under IRC Section 6602, accrued to the date that **demand for repayment** is made. For Appeals authority to abate



interest under IRC Section 6404(e)(2), see IRM 8.7.7.18.3, *Appeals Level of Authority for Abating Interest Under IRC Section 6404(e)*. Interest **must be abated** on an erroneous refund under IRC Section 6602, unless --

- The taxpayer or related party caused the erroneous refund; or
- The erroneous refund exceeds \$50,000.

**Note:** For erroneous refunds greater than \$50,000, the abatement of interest under IRC Section 6404(e)(2) is not required, but may be allowed on a case by case basis. See IRM 20.2.7.7, *IRC 6404(e)(2) Erroneous Refunds*, for additional information.

8.7.7.18.1  
(12-17-2019)  
**IRC Section 6404(e)(1)  
Criteria and Examples**

- (1) The following chart is a summary of the examples in 26 CFR 301.6404-2(c) to further define a ministerial act, managerial act, or general administrative decision. Unless otherwise stated, for purposes of the examples, no significant aspect of any error or delay is attributable to the taxpayer, and the IRS has contacted the taxpayer in writing with respect to the deficiency or payment.

**26 CFR 301.6404-2 (Abatement of Interest) Examples**

Examples	Is this a Ministerial act?	Is this a Managerial act?	General Administrative Decision	Decision Involving Application of Law	Relief Available for Undue Delay
1. Transfer of case after administrative approval of taxpayer's transfer request	Yes	No	No	No	Yes
2. Issuance of deficiency notice after all administrative reviews have been completed.	Yes	No	No	No	Yes
3. Decision to send examining agent to extended training without reassignment of case.	No	Yes	No	No	Yes
4. Reassignment of auditor without reassignment of case for an extended period.	No	Yes	No	No	Yes
5. Granting sick leave to examiner for extended period without reassignment of case.	No	Yes	No	No	Yes

<b>Examples</b>	<b>Is this a Ministerial act?</b>	<b>Is this a Managerial act?</b>	<b>General Administrative Decision</b>	<b>Decision Involving Application of Law</b>	<b>Relief Available for Undue Delay</b>
6. Misplacing taxpayer's file after completing exam with unagreed issues before Notice of Deficiency is prepared.	No	Yes	No	No	Yes
7. Decision to delay processing of taxpayer's case in order to examine a tax shelter in which the taxpayer invested.	No	No	Yes	No	No
8. Decision to delay processing of taxpayer's case to permit processing of another return on which period of limitation is about to expire.	No	No	Yes	No	No
9. Timely submission of request for Technical Advice to National Office.	No	No	No	Yes	No
10. Granting sick leave to IRS attorney assigned to technical advice request without reassignment of case.	No	Yes	No	No	Yes
11. Giving taxpayer erroneous, routine balance due information, based on failure to access most recent account data.	Yes	No	No	No	Yes
12. Giving taxpayer erroneous balance due information where determination of balance due involves interpretation of complex provisions of federal tax law (i.e. application of carryback rules)	No	No	No	Yes	No

Examples	Is this a Ministerial act?	Is this a Managerial act?	General Administrative Decision	Decision Involving Application of Law	Relief Available for Undue Delay
13. Taxpayer requests multiple transfers of case, which are granted but result in delay, also, group manager grants extended sick leave to examiner without reassignment of case.	No	Yes	No	No	Yes, but only to extent delay is due to granting leave without re-assignment.

8.7.7.18.2  
(12-17-2019)  
**Appeals Technical  
Employees’  
Responsibilities for  
Abatement of Interest  
Cases**

- (1) Appeals of “disallowed abatement of interest claims” may be received from the Campus or area Compliance functions.
- (2) Appeals technical employees charged with making decisions regarding errors or delays on the part of IRS employees from functions outside of Appeals should consider the relevant function’s procedures, time frames, and case-specific unusual circumstances not clear from the case file.
- (3) IRC Section 6404(e)(1) applies only in respect to “interest on a deficiency” in income tax, estate tax, gift tax, and/or certain excise taxes. See IRC Section 6211 for the definition of a deficiency. Carefully consider whether the taxpayer’s request is for an abatement of interest assessed or accrued on the type of tax for which an abatement is allowable under IRC Section 6404(e)(1). In addition, review 26 CFR 301.6404-2(a) to assist in determining whether the conditions exist for allowing an interest abatement due to an **unreasonable** error or delay in performing a **ministerial or managerial act**.
- (4) If a disallowed abatement of interest claim “concerning an Appeals employee’s actions” is appealed, notify the “Appeals Area Director” having jurisdiction over that employee. The actual review of the claim may be done by another Appeals office at the request of the Area Director, and the Area Director must sign all closing documents.
- (5) In cases where the interest was assessed and/or the “**assessed underlying tax and/or penalty case**” is also in Appeals for consideration, work both issues (if Compliance has already considered the issues). However, Appeals employees should consider the issues as separate and independent, so the resolution of either doesn’t affect the outcome of the other. Appeals area offices have the option of having a designated Appeals employee handle all abatement of interest cases to avoid this problem.
- (6) If the underlying tax and/or penalty matter is unresolved and the taxpayer requests an abatement of interest, inform the taxpayer that the abatement request is premature. Suggest the taxpayer submit a Form 843, *Claim For Refund and Request for Abatement*, after the underlying tax and/or penalty matter is resolved.

- (7) To ensure uniformity and consistency within Appeals, assignment of **abatement of interest issues** is centralized to the maximum extent possible.

8.7.7.18.3  
(12-17-2019)  
**Appeals Level of  
Authority for Abating  
Interest Under IRC  
Section 6404(e)**

- (1) Determine Appeals level of authority for abating interest when the statutory conditions apply. See the following for determining who can abate and/or issue a notice of final determination under Delegation Order 20-1:

IRC Section	Authority	Delegated Appeals Officials	IRM Section
6404(e)(1)	- To abate assessed and un-assessed interest attributable to an <i>unreasonable error or delay</i> by IRS - To issue notice of final determination not to abate interest	- Appeals Team Manager - Appeals Team Case Leader - Higher Level of Authority	IRM 1.2.2.13.1 (2) and (8)
6404(e)(2)	- To abate interest on erroneous refunds	- Appeals Area Director - Higher Level of Authority	IRM 1.2.2.13.1(14)

8.7.7.18.4  
(12-17-2019)  
**Receipt of Abatement of  
Interest Cases**

- (1) APS will establish an abatement of interest claim as a separate work unit - even if received with another type of case, i.e. income tax. See IRM 8.20.5.6, *Abatement of Interest (ABINT) Case Carding*, for assistance in verifying information on ACDS.
- (2) To determine whether the Service's failure to abate interest under IRC Section 6404, *Abatements*, was an abuse of discretion, the taxpayer may petition the Tax Court at any time after the earlier of
- The Service's final determination not to abate such interest, or
  - 180 days after the taxpayer's filing of the claim for abatement
- (3) Generally, these cases come to Appeals in non-docketed status after the preliminary determination. However, the "interest abatement case" could arrive in Appeals as a docketed case before or after Compliance's consideration. If Appeals receives a docketed abatement of interest claim case prior to Compliance's consideration, follow the procedures in IRM 8.4.4, *Examination Assistance Requests*, while retaining jurisdiction.
- (4) The Collection Statute Expiration Date (CSED) is not suspended as a result of the taxpayer's claim for interest abatement under IRC Section 6404(e)(1). Likewise, the CSED is not suspended (solely) as a result of the taxpayer's petition under IRC Section 6404(h). In the case of a timely petition, IRC Section 6404(h) allows the Tax Court to review the denial of the taxpayer's request for an abatement of interest. However, the Internal Revenue Code does not provide for a CSED suspension as a result of such a petition. If the interest abatement case is docketed, consult with Area Counsel. The CSED could expire during the Tax Court's jurisdiction - that does not involve Collection Due Process (CDP).

**Note:** A taxpayer could request an interest abatement for a Collection Due Process (CDP) case, so it is possible for the CSED to be suspended for an interest abatement request under CDP. See IRM 8.22.8, *Liability Issues and Relief from Liability* for procedures involving interest abatement requests under CDP.

8.7.7.18.5  
(06-02-2015)  
**Procedures and  
Methods of Resolution**

- (1) Guidelines for abating interest under IRC Section 6404(e)(1) are in 26 CFR 301.6404-2 for tax years beginning after July 30, 1996. Determinations are made on a factual basis. If the case file contains insufficient information to fully consider the abatement of interest issue, either:
  - a. Return the case file to the originating function as a premature referral as outlined in IRM 8.2.1, *Agreed Pre-90-Day Income Tax Cases*, or
  - b. If the information needed can be expeditiously provided, request the information by telephone before returning the case.
- (2) Resolve an abatement of interest issue by sustaining in full, abating in full, or partially abating. Interest abatement requests must be specific concerning the alleged time frame(s) in which the unreasonable error(s) or delay(s) underlying the basis of the taxpayer's claim. Identify the "principal amount" on which the interest accrued, and abate only the interest attributable to the specific time frame(s) [i.e. "from date(s)" through "to date(s)"] in which the unreasonable error or delay occurred. See also IRM 20.2.7.14, *Request for Interest Abatement*.
- (3) Request abatements on Form 3870, *Request for Adjustment*. Use a separate Form 3870 for each period. If a "decision is made to abate interest", also decide whether to take one of the following actions:
  - a. Submit an interim request for **APS-CIT** (APS-Complex Interest Team) to compute an **interest abatement amount**, or
  - b. Prepare a final Form 3870 with a request for **APS** (during the closing process) to compute the abatement amount.
- (4) When submitting an interim request or a final Form 3870 for APS to compute the interest abatement amount, include the following on Form 3870:
  - a. the principal amount(s) on which the interest abatement will be considered; and
  - b. the interest suspension period(s), by listing the "from date" and "to date."

**Note:** An Appeals technical employee might submit an **interim request** to determine the interest abatement amount for settlement purposes and/or at the taxpayer's request. If the actual interest abatement amount is not needed prior to the case closure, prepare a final Form 3870 to allow the computer to generate the interest abatement amount. If the interest abatement amount was not previously determined (during the interim), APS will input the "from and to dates" and the "principal amount" - based on information provided on Form 3870.

- (5) Identify the "principal amount" on which the interest abatement amount will be determined. The "principal amount" will be considered based on the criteria for abating the tax under IRC Section 6404(e)(1) or IRC Section 6404(e)(2).

**Example:** If Appeals' conclusion is that there was an *unreasonable IRS error or delay* in performing a *ministerial or managerial act* in respect to a taxpayer's \$25,000 income tax deficiency (i.e. TC 300 or TC 290 assessment), identify the \$25,000 as the "principal amount."

**Example:** If Appeals' conclusion is that the taxpayer is entitled to interest on an *erroneous refund* of \$40,000, identify the erroneous refund amount as the "principal amount." As in the case for abatements under IRC Section 6404(e)(1), identify the "interest abatement period" to allow for the computation of the interest abatement amount under IRC Section 6404(e)(2) in respect to the erroneous refund.

- (6) The final Form 3870 must be approved by the ATM or ATCL, unless a higher level of approval is needed. ATM approval is not needed to obtain an interim computation. See IRM 8.7.7.18.2 (4) and IRM 8.7.7.18.3 for conditions that require the Area Director's approval.
- (7) Use the following procedures to request an interest computation, if needed prior to the case closure:
  - a. Submit an **APS-CIT Referral Form** (as an e-mail attachment) to **\*AP Complex Interest Mailbox**, requesting an *Interim Interest Computation*. Include the following in the Remarks Section: dollar amount (i.e. the "principal amount") on which interest must be suspended, as well as the "start date" and "end date" of the "interest abatement period." You can get an **APS-CIT Referral Form** from the Appeals website.
- (8) If you reach a settlement on the interest abatement amount, enter this amount on Form 3870 for closure. Don't enter the interest abatement period. APS will process the abatement for the "agreed amount."
- (9) Prepare Form 3870 for each interest abatement year, regardless of the decision. Enter one of the following Reason Codes (RC) in red (if possible) and include the appropriate Transaction Code (TC) and interest abatement amount or interest abatement period (if applicable):

If the interest abatement claim is...	then, enter on Form 3870..	and enter on Form 3870..
Fully allowed	RC 82	TC 290 \$0.00 and TC 341 with the "abatement amount", if computed (or enter principal amount with the <i>interest abatement period</i> )
Disallowed in part	RC 81	TC 290 \$0.00 and TC 341 with the "abatement amount",
Fully disallowed	RC 80	Include TC 290 \$0.00.

- (10) APGolf (a sub-system of ACDS) contains closing letters for abatement of interest cases. Prepare one of the following letters for APS to mail to the taxpayer(s) at closing:



If Abatement of Interest Claim is ...	Then prepare...
Fully allowed	Letter 2393, <i>Full Allowance - Abatement of Interest</i>
Disallowed in part (with Tax Court rights)	Letter 2391, <i>Partial Disallowance for Abatement of Interest - Final Determination</i>
Fully disallowed (with Tax Court rights)	Letter 2392, <i>Full Disallowance for Abatement of Interest - Final Determination</i>
Agreed closure, using Form 906, <i>Closing Agreement on Final Determination Covering Specific Matters</i> . - See IRM 8.7.7.18.5 (12)	Letter 913, <i>Closing Letter - Agreed Cases</i>

**Caution:** Don't use Form 2297, *Waiver of Statutory Notification of Claim Disallowance*, in connection with abatement of interest claims. Also, don't use any form of notice of claim disallowance letter that mentions a 2 year period for filing suit.

- (11) Appeals settles these claims, when appropriate. If there are related tax issues, don't consider the abatement of interest issue settlement in any evaluations of the hazards of litigation affecting the tax issues. Don't interrelate tax issues and abatement of interest issues through mutual concessions, offsetting consideration, split issue settlements, etc.
- (12) In some settled cases, you might decide obtaining a Form 906, *Closing Agreement on Final Determination Covering Specific Matters* is appropriate. See IRM 8.13.1, *Processing Closing Agreements in Appeals*, for language to use in this situation. Don't issue the final determination notice (Letter 2391 or 2392), when executing a closing agreement.

8.7.7.18.6  
(12-17-2019)

#### Closing Procedures for Abatement of Interest Cases

- (1) Use the ACDS Form 5402, *Appeals Transmittal and Case Memo* for all abatement of interest claims. Include the following information on Form 5402.
  - a. Closing code information, based on the method of resolution:

Closing Code	Method of Resolution
03	Agreed <b>fully allowed</b> abatement of interest non-docketed case - with closing Letter 2393
08	Agreed - Docketed
13	Unagreed - Nondocketed
20	Premature Referral

**Note:** For unagreed closures requiring the mailing of a Final Determination Letter (Letter 2391 or Letter 2392), where such determination is reviewable by the U.S. Tax Court, the ATE will input closing code 13 for generating Form 5402,

*Appeals Transmittal and Case Memo.* However, APS will determine the closing code to input on IDRS after determining whether the taxpayer timely petitions Tax Court to review the determination or the taxpayer defaults (requiring closing code 05 - Defaulted Notice of Deficiency).

- b. RevsdTAX - Enter the negative amount approved for abatement. (Fully sustained would have \$-0-.)
- c. DD AMTDIS - Enter only the amount Disallowed.  
Full disallowance reflects the full amount of the claim  
Full allowance reflects \$-0-.  
Partial allowance reflects the difference between the DDAMTCL and the RevsdTAX.

(2) "Form 5402-ABINT Instructions" are accessible on the **ACDS Utilities Menu**. Prepare the following closing documents:

- a. Form 5402
- b. ACM, unless Form 5402 is used as ACM
- c. Interest computations, as needed
- d. Form 3870 for each period
- e. Final Determination Letter 2392 or Letter 2393 (if disallowed and unagreed) - for APS to send by certified or regular mail
- f. Executed Form 906 closing agreement (see IRM 8.7.7.18.5 (12)) with Letter 913 - for APS to send by regular mail

(3) The Appeals Area Director (and not the ATM) must approve and sign any documents concerning claims for abatement of interest for actions involving Appeals employees. In addition, the Appeals Area Director must approve any abatements involving erroneous refunds.

**Note:** See IRM 8.22.8 for procedures that involve an interest abatement claim under Collection Due Process (CDP).

8.7.7.19  
(12-17-2019)  
**Six-Year Period of  
Limitations for Allowing  
Interest on an  
Overpayment**

(1) The Internal Revenue Code (Title 26) does not provide a period of limitations for the allowance and payment of interest on an overpayment of tax. However, 28 U.S.C. Section 2401, *Time for Commencing Action Against the United States*, and 28 U.S.C. Section 2501, *Time for Filing Suit*, provide a six-year period within which a suit must be filed for the allowance of additional interest on an overpayment. An administrative claim may be allowed and paid upon request at any time before the six-year period for filing suit expires. No allowance of interest on a refund or credit of an overpayment of tax may be made after the expiration of six years from the date of allowance of the refund or credit unless the taxpayer has filed a civil action against the United States within such period. See Rev. Rul. 56-506, 1956-2 C.B. 959, and Rev. Rul. 57-242, 1957-1 C.B. 452.

**Note:** The six year period of limitation also applies to the allowance of additional interest on an overpayment of tax when the Service discovers the error, whether or not the error was made by the Service.

(2) The date of the allowance of the tax overpayment (that begins the six year period for filing suit for additional overpayment interest) is the date the Commissioner or his delegate signs the "schedule" on which the tax overpayment is listed as provided under IRC Section 6407, *Date of Allowance of Refund or Credit*. The allowance of interest under IRC Section 6611, *Interest on Overpay-*

ments, is usually made at the *time the overpayment is scheduled*. See IRM 20.2.4.7.1, *Refund Schedule Dates*. The “schedule date” of the overpayment is the “starting event for the six-year period” for filing suit. Per IRM 20.2.14.6.2, *Applicable Periods of Limitation for Post-Enactment Periods*, the “schedule date” is shown on Form 2188, *Voucher and Schedule of Overpayment and Overassessments*. If a Form 2188 is not available, for administrative purposes, the “23C date of the refund or cycle date of the offset” will be considered the “schedule date of the overpayment.” See IRM 4.4.25.11.1.1, *23C Date*.

- (3) In cases where interest on refunds or credits was insufficient and is legally allowable, an informal claim or claim filed on Form 843, *Claim for Refund and Request for Abatement*, is sufficient notice to consider and allow additional overpayment interest. Overpayment interest accrues from the date of overpayment of the tax to a date not more than 30 days prior to the date of the refund under IRC Section 6611, *Interest on Overpayments*.

**Reminder:** An administrative claim submitted on Form 843 does not stop the running of the six-year statute of limitations. The only manner in which a taxpayer can fully protect the taxpayer’s rights is by filing suit before the expiration of the six-year period. See Rev. Rul. 57-242.

- (4) See IRM 8.7.7.5, *Closing Refund Claim Cases (No Additional Tax)*. The refund claim disallowance letters include information on the 6 year time period for filing suit for overpayment interest. The language in these letters regarding a two year period for filing a refund suit does not apply to the overpayment interest.
- (5) See IRM 20.2.4, *Overpayment Interest*, for information on IDRS Transaction Code 770 (Credit Interest due Taxpayer) and Transaction Code 776 (Generated Interest Due on Overpayment) to assist in identifying overpayment interest on account transcripts.
- (6) For information on net rate netting procedures, see IRM 8.7.19, *Net Rate Netting Procedures for Appeals*.

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## Exhibit 8.7.7-1 (12-17-2019)

### IRS Claim Disallowance Letters that Begin the 2-Year Period for Filing a Refund Suit

Letter Number	Letter Description	Issuer
Letter 105-C	Claim Disallowed	Compliance
Letter 106-C	Claim Partially Disallowed	Compliance
Letter 905	Final Partial Claim Disallowance	Compliance
Letter 906	Final Full Claim Disallowance	Compliance
Letter 1363	Appeals Partial Disallowance of Refund Claim	Appeals
Letter 1364	Appeals Full Disallowance of Refund Claim	Appeals

