



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.17.4

SEPTEMBER 9, 2025

EFFECTIVE DATE

(09-09-2025)

PURPOSE

- (1) This transmits a revised IRM 8.17.4, Settlement Computations and Statutory Notices of Deficiencies, Notices of Deficiency.

MATERIAL CHANGES

- (1) Significant changes to the IRM are listed below:

IRM 8.17.4.2, <i>Introduction to Notices of Deficiency Prepared in Appeals</i>	Deleted subchapter to avoid redundancy, and re-numbered subsequent subsections.
IRM 8.17.4.4, <i>How the ATE Requests Preparation of a Notice of Deficiency</i>	Modified paragraph (1) to clarify steps required in preparing the request for the statutory notice of deficiency.
IRM 8.17.4.6, <i>When Should TCS Prepare Duplicate Original Notices</i>	Modified paragraph (3) to update procedures for preparing duplicate original notices.
IRM 8.17.4.8.1, <i>Determining the Appropriate Letter to Use</i>	Updated the letter numbers in paragraph (1). Replaced Letter 1384(SC) with Letter 531, for bankruptcy cases, and replaced Letter 531-C with Letter 531-D for cases with open criminal aspects.
IRM 8.17.4.8.2, <i>Generating the Letter Using APGolf</i>	Revised paragraph (4) to clarify the procedures for including the local Taxpayer Advocate contact information on Letter 894 and Letter 901.
IRM 8.17.4.8.7, <i>Taxpayer's Last Known Address</i>	<ul style="list-style-type: none">• Revised to clarify procedures for sending the notice of deficiency to the taxpayer.• Revised to remove obsolete Integrated Data Retrieval System (IDRS) command codes.
IRM 8.17.4.8.7.1, <i>Incarcerated Taxpayers</i>	Revised to replace obsoleted Letter 894(cg) with Letter 894.
IRM 8.17.4.8.8, <i>Power of Attorney in Notices</i>	Added paragraph to advise need to review the revised Form 2848 instructions on the IRS publishing site.
IRM 8.17.4.8.9, <i>Unenrolled Return Preparer</i>	Deleted references to registered federal tax return preparers as this category of preparers no longer exists.
IRM 8.17.4.8.13, <i>Including Enclosures in the Notice of Deficiency</i>	Deleted envelopes from the list of enclosures because they are no longer being included.
IRM 8.17.4.11.7, <i>Interest Statements on Face Sheet</i>	Added information clarifying when a specialized explanatory paragraph is required on Form 4089/ Form 4089-A.

IRM 8.17.4.11.8, <i>Claims for Refund When Notice of Deficiency is Issued</i>	Revised to indicate instances when the statutory notice of deficiency also serves as the statutory notice of claim disallowance, for greater consistency with IRM 8.7.7.5.3.1, <i>Unagreed Deficiency Cases Involving Claims - Language Required in Notice of Deficiency</i> , IRM 4.8.9.15.2, <i>Disallowed Claims for Refund and Examination Results in Deficiency</i> , and IRM 4.8.9.17.3, <i>Claims and Petitions to the United States Tax Court</i> . Added related information and references to paragraphs (4) and (5).
IRM 8.17.4.12.1, <i>Starting Point for Notice of Deficiency</i>	Revised paragraph (1) to address TCS's actions when starting the notice of deficiency preparation.
IRM 8.17.4.14, <i>Tentative Allowances and Other Carryback Claims in Notice of Deficiency Statement</i>	Modified paragraph (2) to clarify when a tentative allowance may or may not be ignored for purposes of preparing a notice of deficiency. Corrected citation in paragraph (3).
IRM 8.17.4.13.1, <i>Available Sample Paragraphs</i>	Deleted paragraph (3) because this functionality no longer exists on the Appeals Centralized Database System (ACDS).
IRM 8.17.4.16, <i>Overassessment Years in the Case</i>	Modified paragraph (2) to refer the user to IRM 8.7.7.5.3.2, <i>Unagreed Deficiency Cases With Overassessment Year(s)</i> , and to avoid redundancy.
IRM 8.17.4.16.1, <i>Preparing a Claim Invitation Letter</i>	Revised paragraphs (2) and (3) to refer the user to IRM 8.7.7.5.3.2, <i>Unagreed Deficiency Cases With Overassessment Year(s)</i> , and to avoid redundancy.
IRM 8.17.4.17, <i>Including Penalties/Additions to Tax in the Notice of Deficiency</i>	<ul style="list-style-type: none"> Added note to (1) (d) to clarify that IRC 6676 is sometimes subject to deficiency procedures and sometimes not. Added paragraph (9) to address requirement for written supervisory approval of penalties, subject to exceptions.
IRM 8.17.4.18.2, <i>IRC 6651(f) Fraudulent Failure to File (FFTF) Penalty</i>	Added paragraph (5) to indicate Area Counsel's written approval of a notice of deficiency asserting fraud penalties is required prior to issuance.
IRM 8.17.4.18.1.1, <i>Nonfilers: Substitute for Return Procedures in Notices</i>	Modified Caution in paragraph (6)(b) to add information about ACT/DMI InterestNet program.
IRM 8.17.4.20, <i>Accuracy Related and Fraud Penalties</i>	Added reminder that Area Counsel's written approval of the notice of deficiency asserting fraud penalties is required prior to issuance.
IRM 8.17.4.20.3, <i>IRC 6662 Alternative to IRC 6663</i>	<ul style="list-style-type: none"> Revised paragraph (6) to add information on penalty explanatory paragraphs. Deleted paragraph (8) to remove unnecessary information.
IRM 8.17.4.22.1, <i>Addressing Interest on Substantial Underpayment (Tax Motivated Transactions)</i>	Obsoleted subsection because Appeals does not have any pre-1989 cases.

IRM 8.17.4.21.1, <i>Notices of Deficiency with Interest on Large Corporate Underpayments</i>	Revised paragraph (4) to clarify the procedures regarding annotating the tax computation form and steps to take when the 30/90-day letter, protest, or administrative file is missing. Revised paragraph (6) regarding notice date procedures.
IRM 8.17.4.23, <i>Notice of Deficiency on Jeopardy Assessment Case</i>	Revised procedures for use of Letter 531-J, <i>Statutory Notice of Deficiency - No Waiver Needed</i> , if used in lieu of Letter 894, and Letter 901. Revised Letter 3424 procedures for generating the letter. Updated the information on the letters used in the jeopardy assessment situations and the selectable paragraph options.
IRM 8.17.4.25, <i>Notices of Deficiency Involving Conversion of Form 1120-S to Form 1120</i>	Revised the information needed on Form 4089/4089-A in non-recognition of the Form 1120-S instances.
IRM 8.17.4.28.2, <i>Fiduciary Relationships/Deceased Taxpayer</i>	Revised the note in paragraph (3) regarding Form 56 fiduciary information.
IRM 8.17.4.28.5, <i>Issuing a Notice of Deficiency Involving Consolidated Returns (Affiliated Companies)</i>	Updated the Letter 901 selectable paragraph information.
IRM 8.17.4.28.6, <i>Tax Required to be Withheld at Source (Form 1042)</i>	Updated the Letter 901 selectable paragraph information. Deleted the "Tax Type" information as this field is no longer listed on Letter 901.
IRM 8.17.4.28.8, <i>Open Criminal Case</i>	Updated the information pertaining to the revision of Letter 894 selectable paragraph options. Revised the information on Letter 531-D, which replaced Letter 531-C, and which may be used in lieu of Letter 894. Deleted the need to enclose Notice 1214 as that information will populate.
IRM 8.17.4.30, <i>TCS Returns Notice to ATE</i>	Revised paragraph (1) to indicate that TCS must upload all final tax computations into ACDS.
IRM 8.17.4.31, <i>Counsel Review of Notices</i>	<ul style="list-style-type: none"> Modified (1) to remove cases involving tax shelter Litigation Vehicle Issues because they no longer exist and to add cases involving post-jeopardy assessment for completeness. Modified (3) and obsoleted (4) to incorporate Interim Guidance Memorandum AP-08-1223-0013, New SharePoint site for ACDS Update request.
IRM 8.17.4.31.1, <i>Cases Returned by Counsel - Concurrence Approved</i>	<ul style="list-style-type: none"> Revised note in (1) to indicate when electronic signatures are acceptable. Modified (2) and obsoleted (3) to incorporate Interim Guidance Memorandum AP-08-1223-0013, New SharePoint site for ACDS Update request.

IRM 8.17.4.31.2, <i>Cases Returned by Counsel - Without Concurrence</i>	Modified (2) and obsoleted (3) to incorporate Interim Guidance Memorandum AP-08-1223-0013, New SharePoint site for ACDS Update request.
IRM 8.17.4.32, <i>Statutory Notice Mailed to Invalid Address</i>	Added note to paragraph (1) regarding sending additional duplicate original notices of deficiency if there is any doubt as to the taxpayer's last known address.

IRM 8.17.4.1IRM 8.17.4.1

(2) Made editorial changes throughout this IRM.IRM 8.17.4.1.6IRM 8.17.4.1.6

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.17.4 dated 03/26/2025. This IRM incorporates Interim Guidance Memorandum AP-08-1223-0013, New SharePoint site for ACDS Update request, which is dated December 20, 2023.

AUDIENCE

Appeals employees who request or prepare statutory notices of deficiency.

Steven M. Martin
Director, Operations Support

8.17.4

Notices of Deficiency

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- 8.17.4-6 Affiliated Companies Statements, Computations, and Explanations

8.17.4.1
(03-26-2025)
Program Scope and Objectives

- (1) **Purpose:** The purpose of this IRM section is to provide guidance to Appeals Tax Computation Specialists (TCSs) for the accurate and efficient preparation of statutory notices of deficiency on cases worked in Appeals.
- (2) **Audience:** The primary users of this IRM section are Appeals TCSs and Appeals Technical Employees (ATEs).
- (3) **Policy Owner:** Policy, Planning, Quality and Analysis (PPQ&A) is under the Director, Operations Support (OS).
- (4) **Program Owner:** Appeals Policy is the program office responsible for technical and procedural guidance to the Appeals organization and is under the Director, PPQ&A.
- (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.

8.17.4.1.1
(03-26-2025)
Background

- (1) This section covers procedures for preparing settlement computations and statutory notices of deficiency on cases worked in Appeals.
- (2) As stated in IRC 7803(e)(3), the Appeals mission is to resolve Federal tax controversies without litigation on a basis that is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the IRS. Appeals accomplishes its 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 interactions with taxpayers.

8.17.4.1.2
(03-26-2025)
Authority

- (1) IRM 8.17.4, Notices of Deficiency, establishes the TCS policy framework for Appeals.
- (2) The Secretary of the Treasury is authorized to issue a notice of deficiency pursuant to IRC 6212(a), Notice of Deficiency.
- (3) For the officials delegated by the Commissioner of the Internal Revenue to sign and issue a notice of deficiency, see IRM 1.2.2.5.8, Delegation Order 4-8 (Rev. 2), Authority to Issue Notices of Deficiency or Execute Agreements to Rescind Notices of Deficiency.

8.17.4.1.3
(03-26-2025)
Responsibilities

- (1) The Director, OS, is responsible for Appeals' policy and procedural guidance.
- (2) The Director, PPQ&A, is the program manager responsible for program oversight.
- (3) The Policy analyst shown on the Product Catalog page as the originator is the assigned author of this IRM.

8.17.4.1.4
(03-26-2025)
Program Reports

- (1) The Director, PPQ&A, provides trend and data analyses and detailed summary reports for Appeals.

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8.17.4.1.5
(03-26-2025)

Terms and Acronyms

- (1) See IRM Exhibit 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8.

8.17.4.1.6
(03-26-2025)

Related Resources

- (1) This IRM is the primary source of guidance on this program for Appeals.
- (2) The TBOR lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with, and acting in accord with, taxpayer rights. See IRC 7803(a)(3), **Execution of Duties in Accord with Taxpayer Rights**. For more information, see <https://www.irs.gov/taxpayer-bill-of-rights>.
- (3) A primary companion to this IRM is IRM 4.8.9, Statutory Notices of Deficiency.
- (4) In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals will work collaboratively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience. For more information, see IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.

8.17.4.2
(09-27-2013)

Information to Know Before Preparing Notices of Deficiency

- (1) References to a penalty or penalties within this IRM section also apply to additions to tax.
- (2) A taxpayer must be formally notified by certified or registered mail when the IRS issues a notice of deficiency.
- (3) A notice of deficiency is not issued for employment tax cases (including cases with Form 945, **Annual Return of Withheld Federal Income Tax**, backup withholding adjustments). Unagreed employment tax cases may require immediate assessment of the tax, issuance of a notice of employment tax determination under IRC 7436, *Proceedings for Determination of Employment Status*, or transfer to Counsel for trial preparation, depending on the type of case. See IRM 8.7.16, *Appeals Employment Tax Procedures*, for further information.
- (4) The Appeals TCS is responsible for the preparation of the notice of deficiency except in the situation noted below.

Exception: For listed transaction cases not yet closed with a statute of limitations expiring **after** January 7, 2007, where the taxpayer and Appeals are unable to reach a satisfactory settlement, notices of deficiency are not issued by Appeals. Instead the case is returned to the appropriate Operating Division for further handling. See IRS Announcement 2006-100 for details.

- (5) Generally, the ATE provides the TCS with the explanatory paragraphs to be used in the notice. However, in some cases, the ATE may ask the TCS to prepare explanatory paragraphs when the available standard paragraphs (discussed in IRM 8.17.4.13.1) are appropriate. In such cases, the ATE must provide the TCS with a copy of the Appeals Case Memorandum (ACM). For guidelines on preparing explanatory paragraphs, see IRM 8.17.4.13, **Tentative Allowances and Other Carryback Claims in Notice of Deficiency Statement**.

- (6) When the case involves certain issues, or when the ATE determines it is necessary, the notice is referred to Counsel for consideration before issuance. See IRM 8.17.4.31, **Counsel Review of Notices**.
- (7) Notices of deficiency must contain current transcript information from Master File and/or Non-Master File. IRM 8.20.6 , **Interim Actions**, and IRM 8.20.7, *Closing Procedures*, contain detailed information on transcripts, including a discussion of MFT 31 accounts.
- (8) Original returns versus copies:
 - a. If it becomes necessary for Appeals to issue a notice of deficiency, the original return must be requisitioned through Shared Team of Administrative and Redaction Support (STARS) by utilizing *STARS SharePoint site*. The ATE is responsible for requesting that STARS order the original return. See IRM 8.17.4.29.1, **Notice of Deficiency When the Original Tax Return is not Available**, for further discussion of original returns when returns are filed electronically.
 - b. However, if a statute is imminent, it may be necessary to issue a notice of deficiency based on copies of returns or a BRTVU/RTVUE. See IRM 8.17.4.29.1, **Notice of Deficiency When the Original Tax Return is not Available**, for more information.

Note: Generally, an imminent statute is one in which there are fewer than 180 days remaining.

8.17.4.3 (09-27-2013) **Adjustments Requested by ATE Prior to Issuing Notice of Deficiency**

- (1) The Tax Court does not have jurisdiction over certain underpayments of tax/penalties and overstatements of payments/credits. Therefore, when these underpayments/overstatements exist in a case, the ATE requests that Account and Processing Support (APS) make the appropriate assessment or adjustment (which will not be reflected in the notice of deficiency).
 - a. Estimated tax payments and credits (IRC 6211(b)(1)).
 - b. Withholding tax (IRC 31 and IRC 6211(b)(1)).
 - c. Certain credits for tax withheld at source (IRC 33 and IRC 6211(b)(1)).
 - d. Federal Insurance Contributions Act (FICA) tax on tip income and penalty under IRC 6652(b). (See IRM 8.17.4.26, **Tip Income Cases, and FICA Tax Informational Notice**. This section includes the informational notice for tip income cases that can be mailed to the taxpayer with the notice of deficiency.)
 - e. Employee share of FICA taxes (IRC 3101).
 - f. IRC 6654 and IRC 6655 penalties, except where no return was filed.

Note: If no return was filed for the taxable year, include any applicable penalties under IRC 6654 and IRC 6655 in the notice. If a return was filed, then the ATE requests that APS assess the penalties prior to the expiration of the statute of limitations on assessment from the original return. These penalties are not included in the notice.
 - g. IRC 6651 addition (including the fraudulent failure to file (FFTF) penalty under IRC 6651(f)) where such addition applies only to tax shown on a filed return. If the addition is applicable to a deficiency, show it in the notice. (See IRM 4.8.9.18.2.3, *Fraudulent Failure to File (FFTF) Penalty*,

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and IRM 25.1.7.7.1, *Assessment Procedure for the Fraudulent Failure to File (FFTF) Penalty*, for further information.)

- h. Household employment taxes.
 - i. Underpayments resulting from non-rebate erroneous refunds not recoverable by issuance of a deficiency notice. (See IRM 21.4.5, *Erroneous Refunds*, for discussion of non-rebate erroneous refunds.)
- (2) Prior to issuing the notice of deficiency, the ATE requests that APS assess any partial agreements for increases in tax. The assessment should be made before requesting preparation of the notice of deficiency if the statute is not imminent.
- (3) Full payment by the taxpayer is considered an agreement to the deficiency (see Rev. Proc. 2005-18).
- a. Rev. Proc. 2005-18, section 4.03: **“Treatment of an undesignated remittance in the full amount of a proposed liability** - If an undesignated remittance is made in the full amount of a proposed liability, such as an amount proposed in a revenue agent’s or examiner’s report, the undesignated remittance will be treated as a payment of tax, a notice of deficiency will not be mailed and the taxpayer will not have the right to petition the Tax Court for a redetermination of the deficiency”.
 - b. However, remittances designated as a cash bond or an IRC 6603 deposit under Rev. Proc. 2005-18 do not result in an agreed case. Cash bond deposits and IRC 6603 deposits are not agreed payments because they are made to stop the accrual of interest. See Rev. Proc. 2005-18 , section 2.06. When an examination is complete, if a taxpayer who made a deposit does not execute a waiver, of restrictions on assessment and collection, the IRS will mail a notice of deficiency to the taxpayer. See Rev. Proc. 2005-18, section 4.02(2). If the taxpayer executes a waiver or otherwise agrees to the full amount of the deficiency, the tax will be assessed, and no notice of deficiency will be sent to the taxpayer. See Rev. Proc. 2005-18, section 4.02(1).

8.17.4.4
(09-09-2025)

How the ATE Requests Preparation of a Notice of Deficiency

- (1) Generate Form 3608, *Request for Tax Computation Specialist (TCS) Service*, from Appeals Generator of Letters and Forms (APGolf) and prepare as follows:
- a. Boxes 1 through 6 - Populated with information from ACDS, when available
 - b. Box 7 - Type of TCS Work Requested. Select primary item - Statutory Notice
 - c. Box 8 - The correct Statute of Limitations is a mandatory entry. If APGolf does not automatically populate the field, please check the box and enter a date using a MM/DD/YYYY format to allow Form 3608 to be submitted. The date must be after the current date. If other priority considerations exist, you may also check the applicable boxes.
 - d. Box 9 - Complete as applicable
 - e. Box 10 - Identify the disposition of the case/issue
 - f. Box 11 - The ATE may add the name of the prior TCS assigned to the case, if any
 - g. Box 12 - Check the appropriate box to assist the TCS in determining the starting point for the computations. Include additional remarks only if there are supplemental instructions to the Schedule of Adjustments. If the

additional remarks exceed the 256-character limit, please attach a Word document to ACDS with additional instructions or send an email to the TCS upon assignment.

- h. Box 13 - Select the Appeals Tax Computation Team Manager (ATCTM) using the drop down box "Select TCS Manager to send the request to" - Use the appropriate TCS assignment grid to select the TCS Manager: TCS Assignment Grids are located on the *TCS SharePoint*
- (2) After the Form 3608 is prepared, the ATE should select the "*Submit Request*" button, which automatically sends the request to the ATCTM and uploads the request into the ATE's Case Activity Record (CAR) on ACDS as a case attachment.
 - (3) Upload the Schedule of Adjustments to ACDS as a case attachment.
 - (4) ATCTM receives the case to assign in the ACDS notification screen and assigns the case to a TCS.
 - (5) Immediately upon TCS assignment, the TCS Appeals customer, assigned TCS and ATCTM will receive a system generated notification email with the contact information of the TCS assigned to the case.
 - (6) The ATE can upload any additional information needed by the TCS, (e.g., Revenue Agent Report (RAR) and tax returns) to ACDS, or as an alternate, may email or E-fax it to the assigned TCS.
 - (7) The ATE must provide the TCS with the following Information:
 - a. The explanatory paragraphs to be used in the statutory notice, or
 - b. A copy of the ACM and request that the TCS prepare the explanatory paragraphs when the available standard paragraphs (discussed in IRM 8.17.4.13.1) are appropriate. (See IRM 8.17.4.13, **Guidelines for Preparing Explanation of Adjustments (Explanatory Paragraphs)**, paragraph (2).)
 - c. The Power of Attorney (POA) information, if the information in ACDS is not current. Also, the ATE must notify the TCS if the taxpayers have different POAs, or a POA is applicable for only one spouse.

Note: Since the TCS usually does not have the complete administrative file, the TCS will generally use the POA information shown in ACDS when preparing the notice of deficiency. However, since the ATE will be aware of the most current POA information for the taxpayers, it is the responsibility of the ATE to provide this information to the TCS, and to ensure that the POA information on the notice of deficiency prepared by TCS is accurate.
 - d. The latest address of the taxpayer, if the information in ACDS is not current or the ATE is aware of a new address.
 - e. Documents needed to prepare the notice of deficiency - such as return information, amended returns, partial agreements, information from RAR, etc.
 - (8) If the TCS does not receive the documents needed to prepare the notice of deficiency within five business days from the date of assignment, the ATCTM has the discretion to close the case in ACDS as a premature request. The ATCTM should email the requestor when closing the case in ACDS, using encrypted email.

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- (9) If the notice of deficiency must be prepared immediately, the ATE should call to notify the ATCTM that the request should be expedited after submitting the work request and necessary documents using the procedures in the paragraphs above.
- (10) The ATE can locate the TCS to whom a case is assigned via ACDS (use the "Search" function, then select the TCS button at the bottom of the screen).

8.17.4.5 (09-27-2013)

General Instructions for TCS Preparing a Notice of Deficiency

- (1) Review and perform necessary technical/computational work on the case file and order current transcripts.
- (2) Prepare the notice in accordance with procedures outlined here.
- (3) Accuracy is very important in notices of deficiency. Errors or omissions can affect the legality of the notice. Although legal means are available to correct errors, the government's position can be undermined by having to bear the burden of proof.
- (4) Discuss any possible new issues with the ATE to ensure adherence to Policy Statement 8-2. See IRM 1.2.1.9.2, **Policy Statement 8-2 (Rev. 1) (Formerly P-8-49), New issues not to be raised by Appeals**, and IRM 8.6.1.7, *New Issues and Reopening Closed Issues*.
- (5) Since a copy of the notice of deficiency is attached to the petition filed with the Tax Court, notice letters and statements must be computer generated or typed. There can be no handwritten pages.

Note: It is acceptable to neatly print the page numbers on the notice.

- (6) Show the kind of tax, the tax years involved, amount of the deficiency, and the additions to the tax (penalties) in the notice. An interest amount is **not** shown in the notice.
- (7) IRM 4.8.9, *Statutory Notices of Deficiency*, may also be used as a reference.

8.17.4.6 (09-09-2025)

When Should TCS Prepare Duplicate Original Notices

- (1) Duplicate original notices, a term used throughout this text, describes when more than one notice is mailed to the same taxpayer, and each notice of deficiency letter contains an original signature. The following are some examples of situations where duplicate original notices are needed:
 - a. Taxpayer has more than one address.
 - b. Husband and wife, filing a joint return, have separate addresses.
- (2) If there is any doubt about the last known address, send duplicate original notices by certified mail to each address within the United States or by registered mail to each address outside the United States.
- (3) When duplicate notices are prepared, notate on the top of the letter "Duplicate Original" on each notice letter prepared.

8.17.4.7
(09-27-2013)
Separate Notices Sent to Joint Filers

- (1) Any notice relating to a joint return must be sent separately to each individual filing the joint return. This means that each spouse must be mailed a copy of the notice (even if they have the same address).
- (2) Duplicate original notices are not required if both spouses are at the same address. The original notice may be sent to one spouse and a copy of the signed notice of deficiency sent to the other spouse.
 - a. The name and address on the notice will be the joint name and the correct address for the taxpayers.
 - b. The original signed notice will be mailed to one spouse in one envelope, and a copy of the signed notice will be mailed to the other spouse in a separate envelope. Making a copy of the notice is the responsibility of APS.
 - c. The mailing envelope for each notice will be addressed solely to one spouse. (For example, one envelope would be addressed to John Maltese while the other is addressed to Mary Maltese.) Addressing the envelopes is the responsibility of APS.
 - d. Both notices should be sent by certified mail if the notice is mailed within the United States and registered mail if mailed outside the United States.

8.17.4.8
(11-09-2007)
TCS Preparation of the Notice of Deficiency Letter

- (1) The information contained in this subsection covers steps for the TCS to follow when generating the notice of deficiency letter:
 - Which letter to use.
 - How to generate the letter on APGolf.
 - What general guidelines must be followed.
 - How to address the letter.
 - What format to use for the taxpayer's name.
 - How to find the taxpayer's last known address.
 - What to do if there is a POA.
 - How to indicate enclosures.

8.17.4.8.1
(09-09-2025)
Determining the Appropriate Letter to Use

- (1) The notice letter is one of the following letters:

If the case involves...	Then use...	Other Information
Individual income tax liability	Letter 894, Notice of Deficiency - Deficiencies in Income Tax	Letter 894 may also be used for nonaffiliated corporate income tax liability and termination assessment cases.

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If the case involves...	Then use...	Other Information
Corporate income tax liability	Letter 901, Statutory Notice	1) May be used for corporate income tax liability. 2) Generally used for affiliated companies since a special opening paragraph can be selected for these entities in APGolf. See IRM 8.17.4.28.5 IRM 8.17.4.29.5. 3) May also be used for other cases such as: estate or gift tax cases, jeopardy assessment cases, certain excise tax cases, and withholding at the source cases.
Trust or decedent's estate (Form 1041)	Letter 894 or Letter 901	Generally, Letter 894 is used for Form 1041 notices, but Letter 901 may also be used.
Transferee liability	Letter 3424, Notice of Transferee or Fiduciary Liability	See IRM 8.7.5, <i>Transferee and Transferor Liabilities</i> .
Bankruptcy	Letter 531, Notice of Deficiency - 531	See IRM 8.7.6, <i>Appeals Bankruptcy Cases</i> , or IRM 4.27, <i>Bankruptcy</i> , for more information.
Excise tax	Letter 531-B, 90-Day Letter - Form 5330 Excise Tax, Form 990-T Tax or Form 5329 Tax , or Letter 901	See IRM 8.7.10.5, <i>Unagreed Excise Tax Cases</i> , for procedures.
Open criminal aspects	Modified Letter 894 or Letter 531-D, Notice of Deficiency for Open Criminal Cases	See IRM 8.17.4.28.8, Open Criminal Case , for procedures.

8.17.4.8.2
(09-09-2025)
**Generating the Letter
Using APGolf**

- (1) Most of these letters are available on ACDS through the APGolf. Use ACDS to generate the notice letter when possible because the letters are updated regularly with the latest language and Commissioner of Internal Revenue information.
- (2) APGolf generates the name and address in all capital letters, without punctuation, per the IRS Addressing Standards (Document 12019). It also generates the Social Security Number (SSN) or Employer Identification Number (EIN), and POA information. Ensure the information is correct.
- (3) When an error is found on the ACDS information, tell the ATE so corrections can be made.
- (4) The notice of deficiency must advise taxpayers of their right to contact the local Taxpayer Advocate office. Letter 894 and Letter 901 provide TAS website address and phone numbers for taxpayers to find the location and phone number of the respective local advocate.

8.17.4.8.3
(09-27-2013)
**General Guidelines for
Preparing the Letter**

- (1) Include the type of tax in the notice of deficiency letter, if the letter has an appropriate field. When the letter used has a heading that includes a line entitled "In Re", enter the type of tax in a format similar to "In Re: Income Tax".
- (2) If the notice of deficiency letter includes a field for "Form Number", complete it with the return form number - Form 1040, **U.S. Individual Income Tax Return**, Form 1120, **U.S. Corporation Income Tax Return**, Form 1042, **Annual Withholding Tax Return for U.S. Source Income of Foreign Persons**, etc.
- (3) Show the details of the tax period(s) and the deficiency for tax and penalties (or additions to the tax) above the salutation line on the notice letter. Insert the IRC section for each penalty or addition to tax.
- (4) Do not date the notice of deficiency letter. The date is added when the notice is issued.
- (5) Whoever issues the notice must enter the date on the "Last Date to File a Petition with the United States Tax Court" line.

8.17.4.8.4
(11-09-2007)
**ATE's Name, Phone
Number and Identifying
Number**

- (1) Include the ATE's name, telephone number, and unique identifying number. In Appeals, the unique identifying number is the ATE's badge number.

8.17.4.8.5
(09-27-2013)
**IRS Addressing
Standards for Notice
Letter**

- (1) It is recommended that notice letters use the guidelines outlined in the IRS Addressing Standards (Document 12019) when preparing the notice letter:
 - Capitalize all letters in the name and address.
 - Left-justify every line in the address block on the letter.
 - Use the U.S. Postal Service designated two-letter state abbreviations.
 - Use the U.S. Postal Service street designators ("AVE" for "Avenue," "BLVD" for "Boulevard," "APT" for "Apartment," etc). A list of the street designators can be found in the IRS Addressing Standards document.
 - Use the most complete Zip Code, which is a nine-digit number consisting of five digits, a hyphen, and four-digits, which the U.S. Postal

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Service refers to as the Zip + 4 Code. If unknown, use the five-digit Zip Code. Verify the Zip Code on the U.S. Postal Service's web site at <http://www.usps.com/>.

8.17.4.8.6

(09-27-2013)

Format to Use for Taxpayer's Name

- (1) Carefully check the name of the taxpayer.
- (2) For corporations, use the name of the corporation as shown on the tax return. If the name of the corporation has changed, address that corporation as follows on the letter: "ABC Corporation, formerly known as XYZ Corporation."
- (3) For married persons filing joint returns:
 - a. If both spouses use the same last name, the notice letter should reflect either "John and Mary Dove" or "John Dove and Mary Dove."
 - b. If the spouses use different last names, show both names on the notice letter as "John Dove and Mary Sparrow."
 - c. If the spouse remarries, the notice letter should reflect a new name, such as: "John Dove and Mary Sparrow, formerly known as Mary Dove." The name can also be shown as "John Dove and Mary Sparrow (formerly known as Dove)."
 - d. See IRM 8.17.4.28.2.1, **Deceased Taxpayer, Joint Return Filed**, for information on how to prepare the notice of deficiency if one spouse has died since the joint return was filed.
 - e. See IRM 8.17.4.28.3, **Divorced or Separated Taxpayers**, for information on how to prepare the notice of deficiency for divorced or separated taxpayers.
 - f. See IRM 8.17.4.28.4, **Notice Issued to Only One Spouse**, if a joint return was filed, and a notice of deficiency needs to be issued to only one spouse.
- (4) If it is determined that the taxpayer used more than one name, include both names on the notice letter with "also known as" or "AKA." For example, "John T. Swan, also known as J. Thomas Swan."

8.17.4.8.7

(09-09-2025)

Taxpayer's Last Known Address

- (1) The mailing address for a notice of deficiency must be the taxpayer's last known address.
- (2) Carefully check the address of the taxpayer. It is vitally important to ensure there are no typographical errors in the address and that the last known address of the taxpayer is used. Generally, 26 CFR 301.6212-2(a) defines the taxpayer's last known address as the address on the most recently filed, and properly processed, tax return unless the taxpayer clearly and concisely notifies the IRS that there is a change in address. There are exceptions for an address obtained from the U.S. Postal Service provided specific requirements are met. See 26 CFR 301.6212-2(b)(2).
- (3) The notice of deficiency can be considered invalid if it is not sent to the taxpayer's last known address. The Tax Court lacks jurisdiction over a case that is based upon an invalid notice.
 - a. Handle these situations on a case-by-case basis.
 - b. If the statute of limitations is still open, Appeals may reissue the notice of deficiency to the correct address.

- c. See IRM 8.17.4.32, Statutory Notice Mailed to Invalid Address, for additional information on invalid notices.
- (4) Use only one address on the letter, Form 4089, *Notice of Deficiency - Waiver* (or Form 4089-A, **Notice of Deficiency Statement**), etc. For example, if there are two alternative addresses for a taxpayer, prepare two Notices of Deficiency using one of the addresses on each. See IRM 8.17.4.6, **When Should TCS Prepare Duplicate Original Notices**, for information about duplicate original notices.
- (5) Address information must be obtained from IDRS by accessing the following command codes in the order listed:
 1. Check an ENMOD either with no definer or with an “A” definer. If “A” is entered with ENMOD and there is data available, ENMODA will give you the same result as ENMOD. If “A” is entered with ENMOD and there is no ENMOD data available, ENMODA will automatically default to AMDIS for further search for address information.

Note: If an ENMOD is not available, use command code IMFOLB or BMFOLB to obtain the ENMOD.
 2. If an ENMOD cannot be obtained, check INOLE (definer code “S”).
 3. If none of the above are available, check IRPTRO and IMFOLE.
- (6) Review the administrative case file for documentation to help determine if the taxpayer’s address has changed since the return was filed. (While some of this documentation does not officially update the taxpayer’s last known address, it puts the IRS on notice to research whether the taxpayer’s address was updated.) Examples of documentation include:
 - a. Addresses shown on correspondence in the file, especially any sent to the taxpayer by the Appeals Officer (AO), or any received after the latest return was filed.
 - b. New address on a return envelope.
 - c. New address on a POA form. If Form 2848, **Power of Attorney and Declaration of Representative**, is in the file, review the POA form for a different address. Compare the signed dates found on the POA form to those found on the most current filed return.
 - d. An address on the case summary card different than what is shown on the return or IDRS.

Note: Since the notice of deficiency request sent to the TCS often includes no administrative file (or an incomplete administrative file), it is the responsibility of the AO to review the administrative file and notify the TCS of any pertinent information concerning the last known address of the taxpayer. It is also the responsibility of the AO to review the statutory notice of deficiency prepared by the TCS to ensure that the address is correct.
- (7) For any case where the last known address is in doubt, review a transcript for any year that is within three years of the period(s) included in the notice of deficiency.
 - a. Review transcripts to determine if other IRS functions (Collections, Compliance, etc.) have had contact with the taxpayer.

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- b. If so, contact the function(s) to access their databases to research a current address. In each case where a database is accessed, keep evidence of the research in the case file.

8.17.4.8.7.1
(09-09-2025)

Incarcerated Taxpayers

- (1) For information on addressing notices of deficiency to incarcerated taxpayers, see IRM 4.8.9.9.2.8 , *Incarcerated Taxpayers*.
- (2) When referring to IRM 4.8.9.9.2.8, Appeals employees should substitute "Letter 894," when "Letter 531" is cited in the text.

8.17.4.8.7.2
(05-10-2017)

APO/FPO Addresses

- (1) Notices of deficiency sent to Army Post Office (APO) / Fleet Post Office (FPO) addresses must be mailed to such addresses by registered mail.
- (2) For information on addressing notices of deficiency to APO addresses, see IRM 4.8.9.9.2.9, *APO/FPO Addresses*.

8.17.4.8.8
(09-27-2013)

Power of Attorney in Notices

- (1) If a taxpayer is represented by a duly authorized POA and the Form 2848 is appropriately annotated, a copy of the notice mailed to the taxpayer(s) will be sent to the representative by regular mail.
- (2) Letter 937, *Transmittal for Power of Attorney*, is used as the cover letter to transmit the copy of the notice. Generally, the TCS will prepare the Letter 937 when preparing the notice, but local procedures may vary.
- (3) Effective with the March 2004 revision, Form 2848 no longer provides the taxpayer an option to have the representative receive the original of all correspondence (including notices of deficiency).
- (4) Effective with the October 2011 revision, Form 2848 requires an affirmative action by the taxpayer to check a box to indicate that a copy of notices and other written communications will be sent to the representative. The taxpayer may elect to have copies of notices and other written communications routinely sent to up to two representatives listed in section 2 of the Form 2848.
- (5) As necessary, review the revisions made to Form 2848 by checking the instructions for that specific form revision.
- (6) If the POA does not cover all years in the notice of deficiency, do not send a copy of the notice to the representative. It is recommended that the ATE obtain a new POA for any years not covered prior to issuing a notice of deficiency.
- (7) If a new POA is not obtained, do not send a copy of the notice to the representative. Instead, a copy of the notice of deficiency should be sent to the taxpayer with a separate letter explaining why the copy cannot be sent directly to the representative. Letter 4368, *Statutory Notice Not Sent to Representative - Tax Periods Not Specified*, may be used for this purpose.
 - a. Letter 4368 is available as a fillable Adobe Acrobat form on the Electronic Publishing Catalog website.
 - b. The ATE may prepare the Letter 4368, or request that the TCS prepare the letter.
- (8) The ATE should use Command Code CFINK to verify the name and address of the POA on the Centralized Authorization File (CAF) database. The ATE

must provide the TCS with the most current POA information when requesting preparation of the notice of deficiency.

8.17.4.8.9
(09-09-2025)
**Unenrolled Return
Preparer**

- (1) Unenrolled return preparers are authorized to represent taxpayers only before Revenue Agents (RAs), Customer Service Representatives (CSRs), or similar IRS employees, and only in connection with an examination of the taxable year or period covered by a return prepared and signed by the unenrolled return preparer. Therefore, a copy of a notice of deficiency will not be sent to an unenrolled return preparer.
 - Unenrolled return preparers are authorized to represent taxpayers only before RAs, CSRs or similar IRS employees, and only in connection with an examination of the taxable year or period covered by a return prepared and signed by the unenrolled return preparer. (See Treasury Department Circular 230, *Regulations Governing Practice before the Internal Revenue Service*, and *Special Rules and Requirements for Unenrolled Return Preparers*.)
- (2) Letter 4369, *Statutory Notice Not Sent to Representative - Limitations to Practice Before the IRS*, may be used to notify the taxpayer that a copy of the notice was not sent to the unenrolled return preparer.
 - Letter 4369 is available as a fillable Adobe Acrobat form on the Electronic Publishing Catalog website.
 - The ATE may prepare the Letter 4369, or request that the TCS prepare the letter.

8.17.4.8.10
(09-27-2013)
**Taxpayer Identification
Numbers on Notice of
Deficiency Letters**

- (1) Include the Taxpayer's Identification Number (TIN) on each notice of deficiency letter issued by Appeals.
- (2) Show the TIN (SSN, ITIN, or EIN), as appropriate, in the upper right portion of the letter.

Note: ITIN is the "Individual Taxpayer Identification Number."

8.17.4.8.11
(09-27-2013)
**Identifying the Tax Years
in the Notice**

- (1) Income tax cases:
 - Identify a calendar year as "Tax year ended December 31, _____".
 - Identify a fiscal year as "Tax year ended June 30, _____".
 - Identify a period of less than a year as "Tax year March 1, _____, to September 30, _____."
- (2) See Exhibit 8.17.4-1 for additional examples.

8.17.4.8.12
(11-09-2007)
**Salutation in Notice of
Deficiency**

- (1) Use the following salutations in the notice of deficiency letter:
 - a. For individual taxpayers, use names, such as "Dear Mr. and Mrs. Swan." ("Dear Taxpayer" may also be used.)
 - b. For all other entities (corporate, estate, gift, etc.) use "Dear Taxpayer."

8.17 Settlement Computations and Statutory Notices of Deficiency

8.17.4.8.13
(09-27-2013)

Including Enclosures in the Notice of Deficiency

- (1) Generally, enclosures listed on the last page of the notice of deficiency letter include the following:
 - Statement
 - Waiver
- (2) Because the notice of deficiency “Statement” consists of the Form 4089 or Form 4089-A, the tax computation, the explanation of adjustments, and any attachments, you may simply list “Statement” rather than individually listing the Form 4089/4089-A, tax computation form, such as Form 5278, **Statement - Income Tax Changes**, paragraphs, etc.
- (3) Do not list “Audit Statement” or “settlement computation” as an enclosure since an Audit Statement or settlement computation is NOT included as part of the notice of deficiency.

8.17.4.9
(09-27-2013)

Waiver (Agreement) Forms for Notices of Deficiency

- (1) Form 4089 includes a preprinted agreement form and may be used as the agreement form for most cases.
- (2) If Form 4089-A is used in the notice, also prepare Form 870, **Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment**, for inclusion with the notice.
- (3) IRM 8.17.4.11, **Face Sheet (Form 4089/4089A)**, explains how to prepare Form 4089 and Form 4089-A, including discussion of additional information that may be required on the forms. If Form 4089-A and Form 870 are prepared, additional information is only required to be shown on Form 870 when there is an adjustment to prepayment credits. See discussion in paragraph (4) below.
- (4) If Form 870 is prepared and there is an adjustment to prepayment credits, such as withholding on line 22 of Form 5278:
 - a. The amount to include on Form 870 is the full statutory deficiency (from line 21 of Form 5278) before any adjustments to the prepayment credits.
 - b. Then, insert a statement similar to the following on Form 870 showing net additional tax due or net overpayment resulting after a proposed deficiency is reduced by understatement of prepayment credits:

Statutory deficiency	\$13,000.00
Prepayment credit adjustment (Understatement)	<u>1,000.00</u>
Net Additional Tax	\$12,000.00 =====

Note: The above procedure only applies to refundable credit adjustments not included in the statutory deficiency, such as withholding credits. See IRM 8.17.5.18.1, *Adjustments to Refundable Credits Not Included in the Statutory Deficiency*, for a list of these credits. The above format is not used for adjustments to refundable credits, such as earned income credit, additional child tax credit, first time home buyer credit, etc. (credits shown on line 20 of Form 5278), since the statutory deficiency amount includes these adjustments.

- 8.17.4.10
(09-27-2013)
Parts of the Notice of Deficiency Statement
- (1) The notice of deficiency statement includes the parts listed below:
 - a. Face sheet (Form 4089 or Form 4089-A);
 - b. Adjustment to income, taxable gifts, etc.; and computation of tax (Form 5278);
 - c. Explanation of adjustments; and
 - d. Schedules and exhibits.
- 8.17.4.11
(09-27-2013)
Face Sheet (Form 4089/4089A)
- (1) Form 4089, is generally used as the first page of the notice of deficiency statement, but Form 4089-A, may also be used.
 - a. A separate agreement form is not necessary when a Form 4089 is used since it is a combination summary face sheet and agreement form.
 - b. If Form 4089-A is used in the notice instead of Form 4089, also prepare Form 870 for inclusion with the notice.
 - c. See IRM 8.17.4.23, **Notice of Deficiency on Jeopardy Assessment Case**, for discussion of Form 4089/4089-A procedures for jeopardy assessment cases.
 - (2) Form 4089 and Form 4089-A are available on APGolf.
- 8.17.4.11.1
(09-27-2013)
Name and Address of Taxpayer
- (1) Show the name and address of the taxpayer on Form 4089 (or Form 4089-A), exactly as it appears in the letter. There is an exception when preparing notices for transferee cases. See IRM 8.7.5, *Transferee and Transferor Liabilities*.
- 8.17.4.11.2
(09-27-2013)
Summary of Liabilities for Tax, Additions to Tax and Penalties
- (1) The captions on Form 4089 and Form 4089-A provide for the tax year and the deficiencies in tax.
 - (2) Enter any additions to the tax or penalties in columnar form under and to the right of the Deficiency block.
 - (3) Separately list each addition to the tax or penalty.
- 8.17.4.11.3
(11-09-2007)
Additional Information on Face Sheet
- (1) The following sections discuss additional information that may be required on the face sheet.
 - (2) Show the additional information after the summary of the tax liability on Form 4089 or Form 4089-A, or on a continuation sheet attached to these forms.
- 8.17.4.11.4
(09-27-2013)
Prepayment Credit (Refundable Credit) Adjustments on Face Sheet
- (1) The Tax Court generally does not have jurisdiction over prepayment/refundable credit adjustments that are not part of the statutory deficiency per IRC 6211(b)(4). The most common example of this type of credit is withholding credits. Adjustments to this type of credit may require a special format on the face sheet (Form 4089 or Form 4089-A) depending on whether the credit is understated or overstated.
 - a. "Understated" means the IRS has determined that the credit amount should be increased.
 - b. "Overstated" means the IRS has determined that the credit amount should be decreased.
 - (2) Refundable credits listed in IRC 6211(b)(4), such as earned income credit, first time homebuyer credit, etc. are included in the statutory deficiency, and so the

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Tax Court *does* have jurisdiction over these refundable credit adjustments. Special formats on the face sheet are not required for adjustments to these credits.

8.17.4.11.4.1
(09-27-2013)

Understated Prepayment Credits (Non-IRC 6211(b)(4) credits)

- (1) The Tax Court generally does not have jurisdiction over prepayment credit adjustments that aren't included in the statutory deficiency. These credit adjustments are found on line 22 of Form 5278. The most common example of this type of credit is withholding credits. See IRM 8.17.5.18.1 , *Adjustments to Refundable Credits Not Included in the Statutory Deficiency*, for a list of these prepayment credits.
- (2) If the Tax Court **does not** have jurisdiction, and the credit is **understated**, the adjustment to increase the credit is not made until the final disposition of the case. Insert the following explanation on the face sheet in the following format. (Show the explanatory paragraph on Form 4089, Form 4089-A, or on a continuation sheet attached to these forms).

Statutory deficiency	\$ 13,563.00
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Prepayment credit adjustment

Correct amount of prepayment credits:

Tax withheld	2,000.00	
Payments and credits on estimated tax	<u>600.00</u>	2,600.00
Prepayment credits claimed on return:		
Tax withheld	1,000.00	
Payments and credits on estimated tax	<u>600.00</u>	<u>1,600.00</u>
Understatement of prepayment credit		<u>1,000.00</u>
Net additional tax (net overpayment)		12,563.00 =====

Caution: The notice of deficiency letter and waiver must show the full statutory deficiency before adjustments to the prepayment credits. (The full statutory deficiency is the amount shown on line 21 of Form 5278.) So in the above example, \$13,563.00 will be reflected on the letter and waiver forms.

8.17.4.11.4.2

(09-27-2013)

Overstated Prepayment Credits (Non-IRC 6211(b)(4) credits)

- (1) The Tax Court generally does not have jurisdiction over prepayment credit adjustments that aren't included in the statutory deficiency. These credit adjustments are found on line 22 of Form 5278. The most common example of this type of credit is withholding credits. See IRM 8.17.5.18.1 , *Adjustments to Refundable Credits Not Included in the Statutory Deficiency*, for a list of these prepayment credits.
- (2) If the Tax Court **does not** have jurisdiction, and the credit is **overstated**, adjustments to decrease the credits are made prior to issuing the notice of deficiency. See IRM 8.17.4.3, **Adjustments Requested by ATE Prior to Issuing Notice of Deficiency**. The ATE must request that APS make this adjustment before issuing the notice of deficiency.
 - a. Do not reflect the prepayment credit adjustment on Form 4089 or Form 4089-A since under IRC 6201(a)(3) these adjustments are not subject to deficiency procedures.
 - b. Since the adjustment to decrease the credits should be made prior to issuing the notice of deficiency, the adjustment is not reflected in the notice of deficiency. Therefore, do not show the prepayment credit adjustment on line 22 of the Form 5278 included in the notice.

8.17.4.11.4.3

(09-27-2013)

Refundable Credits (IRC 6211(b)(4) credits)

- (1) Refundable credits, such as earned income credit, the refundable additional child tax credit, first time homebuyer credit, etc. are credits that the Tax Court **does** have jurisdiction over since these credits are included in the definition of a deficiency per IRC 6211(b)(4). See IRM 8.17.5.18.2, *Adjustments to Refundable Credits Included in the Statutory Deficiency*, for a list of IRC 6211(b)(4) refundable credits.
- (2) Any adjustments to these refundable credits are included on line 20 of Form 5278 and are **not** shown on Form 4089 or Form 4089-A.
- (3) Explanations for adjustments to these refundable credits should be included with the other explanatory paragraphs written for the notice.

8.17.4.11.5

(09-27-2013)

Overpayment Claimed in Deficiency Year not Refunded (Frozen Refund)

- (1) Insert an explanation on the face sheet if an overpayment claimed on the return has not been refunded. (The term "frozen refund" is often used to refer to a claimed overpayment that has not been refunded.)
- (2) The explanation can be shown on Form 4089, Form 4089-A, or on a continuation sheet attached to these forms. Use the following format:

Statutory deficiency	\$5,000.00
Less overpayment claimed (and not refunded)	<u>1,200.00</u>
Net underpayment /(Net overpayment)	\$3,800.00
	=====

- (3) The statutory deficiency is the amount shown on line 21 of Form 5278. This amount (\$5,000.00 in the above example) is used on Form 4089 (or Form 4089-A) and the notice of deficiency letter as the tax deficiency, **not** the underpayment amount (\$3,800.00 in the above example).

8.17 Settlement Computations and Statutory Notices of Deficiency

8.17.4.11.6
(09-27-2013)

Unassessed Payment

- (1) Include the following paragraph on the face sheet (Form 4089, Form 4089-A, or on a continuation sheet attached to these forms) if the taxpayer has made a partial payment that has not been assessed:

"The deficiency shown above does not take into account a payment of \$ _____ made on _____, which amount will be applied upon the final disposition of this case."

- (2) The above paragraph is not needed for the following types of payments:
 - a. A credit balance on the account that is not due to a partial payment.
 - b. A cash bond payment.
 - c. An IRC 6603 deposit.
 - d. A designated payment of interest (since interest amounts aren't included in the notice of deficiency).

8.17.4.11.7
(09-09-2025)

Interest Statements on Face Sheet

- (1) Include the following statement on Form 4089: "I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law."
- (2) The Form 4089 and Form 4089-A are generated by ACDS.
- (3) For information on how to show interest in the notice of deficiency, see IRM 8.17.4.21, **Interest Computations in Notices of Deficiency**. For further information on interest issues, see also IRM 8.17.6, **Interest Issues in Settlement Computations**. A specialized explanatory paragraph is required on Form 4089, Form 4089-A, or on a continuation sheet if the following interest applies: IRC 6621(c), IRC 6404(g), and restricted interest. See IRM 8.17.4.11.7.1, **Explaining IRC 6621(c)**, IRM 8.17.4.11.7.2, **IRC 6404(g) Interest Suspension**, and IRM 8.17.4.11.7.3, **Restricted Interest**.

8.17.4.11.7.1
(09-27-2013)

Explaining IRC 6621(c)

- (1) If IRC 6621(c) applies, include an explanatory paragraph after the summary of tax liability on the face sheet. As of January 1, 1991, IRC 6621(c) refers to interest on large corporate underpayments.
- (2) See suggested language for explanatory paragraph below:

It is determined that the deficiency for the taxable year(s) _____ is a large corporate underpayment under section 6621(c) of the Internal Revenue Code. Accordingly, the annual rate of interest payable on your income tax shall be 2 percentage points higher than the underpayment rate established under section 6621(a) of the Internal Revenue Code for the tax year(s) ended _____.

- (3) Show the explanatory paragraph on Form 4089, Form 4089-A, or on a continuation sheet attached to these forms.

8.17.4.11.7.2
(09-27-2013)

IRC 6404(g) Interest Suspension

- (1) If IRC 6404(g) applies, include an explanatory paragraph after the summary of tax liability on the face sheet.
- (2) Show the explanatory paragraph on Form 4089, Form 4089-A, or on a continuation sheet attached to these forms.
- (3) See suggested language for explanatory paragraph below:

It is determined that IRC section 6404(g) applies for the tax year ended _____, and notice was provided on _____(enter date of notice).

8.17.4.11.7.3
(09-27-2013)
Restricted Interest

- (1) When Form 2285, **Concurrent Determinations of Deficiencies**, is prepared, and restricted interest applies, include the following suggested language on the face sheet:
"Restricted Interest applies for ____ (enter tax year) ”.
- (2) The restricted interest Code sections are not required.
- (3) Show the explanatory paragraph on Form 4089, Form 4089-A, or on a continuation sheet attached to these forms.

8.17.4.11.8
(09-09-2025)
Claims for Refund When Notice of Deficiency is Issued

- (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 or Letter 901). For sample paragraphs includable in the notice of deficiency, see IRM 8.7.7.5.3.1, **Unagreed Deficiency Cases Involving Claims - Language Required in Notice of Deficiency**.
- (2) When submitting Form 3608, the ATE must inform the TCS when a refund claim is filed and what action to take with respect to the claim. Special language may be required on the face sheet. See IRM 8.7.7.5.3.1, **Unagreed Deficiency Cases Involving Claims - Language Required in Notice of Deficiency**, for more information.
 - 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 complete and correct paragraph(s) can be included in the attachment to the notice of deficiency.

8.17.4.11.9
(09-27-2013)
Additional Issues Raised by Taxpayer not Allowed

- (1) If the taxpayers say they are entitled to additional deductions not claimed on the return, or that income reported on the return should be excluded in whole, or in part, include the following paragraph on the face sheet:
"The issue raised (*in your protest*) (*at the hearing*) requesting a deduction in the amount of \$ _____ for _____ has been given careful consideration and it has been determined that no deduction is allowable (*follow with proper explanation of reason for non-allowance*)."
- (2) The ATE must notify the TCS that additional issues raised by the taxpayer were not allowed, and provide all required information so that the above paragraph can be completed and included on the face sheet.
- (3) Show the explanatory paragraph on Form 4089, Form 4089-A, or on a continuation sheet attached to these forms.

8.17.4.11.10
(09-27-2013)
Power of Attorney Annotation on Face Sheet

- (1) When Form 2848 authorizes the representative to receive copies, check the block "Copy to Authorized Representative" on Form 4089 (or Form 4089-A), and list the representative's name and address to the right of the block.

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- (2) If two representatives are authorized to receive copies, list both representatives on Form 4089 (or Form 4089-A). Generally, all the POAs are listed on one Form 4089 or Form 4089-A. If additional space is needed, a continuation sheet may be used.
- (3) Form 2848 requires that when a joint return is filed, each spouse, or former spouse, must submit a separate Form 2848. Any listed representative on the Form 2848 is permitted access to the tax information related to the joint tax return, but can only represent the authorizing spouse.
 - a. There is no disclosure violation if the Form 2848 POA information of one spouse is included on a Form 4089 (or Form 4089-A) sent to the other spouse.
 - b. There is also no disclosure violation if one spouse's POA receives a Form 4089 (or Form 4089-A) that includes the POA information of the other spouse.
- (4) Form 4089 (or Form 4089-A) procedures when spouses submit separate Form 2848s are shown below.
 - a. **Spouses at the same address - both have the same POA** - Follow normal notice procedures and just prepare one Form 4089 (or Form 4089-A) for the joint statutory notice with the POA address listed.
 - b. **Spouses at the same address - each spouse has different POA** - Prepare one Form 4089 (or Form 4089-A), addressed to both spouses. Generally, the POA information for each spouse should be entered on the one Form 4089 (or Form 4089-A).
 - c. **Spouses at the same address - only one spouse has POA** - Prepare one Form 4089 (or Form 4089-A), addressed to both spouses. Generally, the POA information for the one spouse should be entered on the Form 4089 (or Form 4089-A).
 - d. **Spouses at different addresses** - Since duplicate originals are required if the spouses have different addresses, prepare two Form 4089s (or Form 4089-As). Include the names of both spouses on each Form 4089 (or Form 4089-A). Each Form 4089 (or Form 4089-A) should include address information for only one spouse. The Form 4089 (or Form 4089-A) addressed to a particular spouse must show the POA information for that spouse.

8.17.4.12
(11-09-2007)

Notice of Deficiency Adjustment and Tax Computation Forms

- (1) Use Form 5278 as the notice of deficiency adjustment and tax computation form when preparing income tax notice of deficiency computations.
 - a. Generate an original tax computation Form 5278 to include in the notice of deficiency. Do not photocopy prior reports prepared by Compliance to use in the notice of deficiency.
 - b. Use Form 5278 on income tax cases. **Do not use** Form 4549 or Form 4549-A for a notice of deficiency since these forms include an interest field, and interest computations should not be sent to the taxpayer with the notice of deficiency. See IRM 8.17.4.21, Interest Computations in Notices of Deficiency.

8.17.4.12.1
(09-09-2025)

Starting Point for Notice of Deficiency

- (1) The starting point for taxable income is usually the return as filed, the latest processed amended return, or an assessed partial agreement.
 - a. TCS will verify the taxpayer's current account information in IDRS.
 - b. If the ATE has not addressed changes to the taxpayer's tax liability, such as an amended return or partial agreement, the TCS will contact the ATE to discuss the starting point for the notice of deficiency.
- (2) If the taxpayer did not file a return, Compliance should have followed substitute for return (SFR) procedures. The starting point for taxable income will be zero. Since no return was filed by the taxpayer, the notice of deficiency will be issued in an amount determined to be the correct tax liability for the year.
- (3) If a year was previously examined and there was a change in tax liability that was assessed, and now that year is open for recapture of a tentative allowance, the starting point is usually the taxable income shown on the previous examination report.
 - a. If a statute on a carryback year is held open only by the loss year's statute, the recapture cannot be more than the tentative allowance shown on Form 1045, **Application for Tentative Refund**, (Individual) or Form 1139, **Corporation Application for Tentative Refund**, (Corporation), or the carryback allowed in an amended return.
- (4) If a partial agreement has been secured and the tax assessed, then the starting point for taxable income in the notice of deficiency is either the taxable income from the partial agreement or the taxable income per the return:
 - a. **Starting point is the partial agreement:** Preferably the starting point for taxable income in the notice of deficiency is the taxable income from the partial agreement.
 - b. **Starting point is the original return:** The starting point for taxable income in the notice of deficiency may be the taxable income from the original return. Usually "Previously agreed adjustments" is entered on line 7 of Form 5278 along with the total of all previously agreed adjustments. (This procedure may need to be modified depending on the computer software program used. For example, if Report Generation Software (RGS) is used and itemized deductions are adjusted, then it may be difficult to follow this procedure and list the total of all previously agreed adjustments.)
- (5) If permitted by the computation software used, annotate the starting point regardless of whether it is the original return, a processed amended return, or an assessed partial agreement. Use a format, such as "Taxable Income per Amended return," "Taxable Income as Previously Determined," etc.

8.17.4.12.2
(09-27-2013)

Listing Adjustments and Computing Tax

- (1) Based on the schedule of adjustments provided by the ATE, list the adjustments to income on Form 5278. It is recommended that the adjustments should follow, as closely as possible, the sequence and the wording used in the return. Label each adjustment with a letter of the alphabet.

Note: Computer programs, such as RGS, may not allow the adjustments to follow the sequence and wording used on the return. It is not necessary to change the wording or order of adjustments used by a computer program.

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- (2) It is recommended that the notice include a computation of the amount shown on line 19 of Form 5278, "Total tax shown on return or as previously adjusted," if the liability per the return was adjusted.
 - a. This can be shown on the bottom of Form 5278 or on an attachment.
 - b. See IRM 8.17.2.10, *Completing the Adjustment and Tax Computation Schedule*, for an illustration of how this can be scheduled.
- (3) Rules and guidelines for computing tax set out in IRM 8.17.2, *General Settlement and Rule 155 Computations*, apply equally to tax computations in notice of deficiency statements.

8.17.4.13
(09-27-2013)

Guidelines for Preparing Explanation of Adjustments (Explanatory Paragraphs)

- (1) An explanatory paragraph in a notice of deficiency has a twofold purpose:
 - a. to inform the taxpayer in clear and concise language of the adjustments; and
 - b. to state the position or positions of the IRS with respect to the adjustments being made.
- (2) The ATE generally provides explanatory language for the notice of deficiency, which the TCS uses when preparing the notice. However, in some cases, the AO may ask the TCS to prepare explanatory paragraphs when the available standard paragraphs (discussed in IRM 8.17.4.13.1, **Available Sample Paragraphs**) are appropriate. If so, the ATE must provide the TCS with the ACM.
- (3) When the TCS prepares the explanatory paragraphs:
 - a. The TCS is responsible for the grammar, spelling and sentence structure.
 - b. The ATE is responsible for reviewing the paragraphs to ensure they are technically accurate before mailing the notice.
- (4) Identify each explanation of adjustment in the order shown on the Form 5278 to the extent possible. However, it is not necessary for items to be in order when it is not expedient to change them.
- (5) Identify explanations of adjustments to credits by subject matter, schedule number or exhibit, whichever method is most logical in the circumstances.
- (6) Explain each adjustment on a Form 886-A, **Explanation of Items**, or on a separate schedule, such as a blank Word or Excel document.
 - a. Form 886-A is available on ACDS or in the TCS spreadsheets located on the *TCS SharePoint*. Form 886-A is located in the "General" spreadsheets.)
 - b. Use separate exhibits or schedules to support the explanations, whenever appropriate.
- (7) Alternative positions are only shown in the explanation of adjustments and not the letter, the summary of tax and penalty liability on Form 4089 (or Form 4089-A), and the Form 5278.
- (8) In cases where a partial agreement has been secured, the format for the explanations of adjustment depends upon the starting point used for taxable income in the notice of deficiency. See further discussion in paragraphs (9) and (10) below.

- (9) **Starting point is the partial agreement:** Preferably the starting point for taxable income in the notice of deficiency is the taxable income from the partial agreement, and then no explanation of the previously agreed adjustments is required.
- (10) **Starting point is the original return:** If the starting point for taxable income in the notice of deficiency is the taxable income from the original return:
 - a. “Previously agreed adjustments” is entered on Form 5278 (or on Form 4549-B, **Report of Income Tax Examination Changes**, if used) along with the total of the previously agreed adjustments.
 - Note:** This procedure may need to be modified depending on the computer software program used. For example, if RGS is used and itemized deductions are adjusted, then it may be difficult to follow this procedure and list the total of all previously agreed adjustments.
 - b. Suggested language for the explanation of adjustments when the administrative file contains the signed waiver form is: “You have previously indicated your agreement to the following adjustments by signing the waiver form on (DATE).”
 - c. Another paragraph that may be used for the explanation of adjustments is: “The adjustments listed below were previously agreed and the tax assessed on (DATE).”
 - d. The issue and the agreed adjustment amounts should then be listed below the paragraph.
- (11) When adjustments to Non-Tax Equity and Fiscal Responsibility Act (TEFRA) partnerships, S corporations, or fiduciary income distributions are involved, include a brief explanation that the taxpayer’s share of income from the flow-through entity is adjusted. Also include explanations of adjustments made to the flow-through entity, as discussed below.
 - a. Include a separate exhibit or schedule with detailed explanations of the adjustments to the flow-through entity. See Exhibit 8.17.4-2 for a suggested format.
 - b. In the alternative, Form 4605, **Examination Changes - Partnerships, Fiduciaries, S Corps., & Interest Charge Domestic International Sales Corporations**, or Form 4605-A, **Examination Changes - Partnerships, Fiduciaries, S Corporations, and Interest Charge Domestic International Sales Corporations**, with explanations can be used as the exhibit providing the explanations of adjustments made to the flow-through entity are sufficiently detailed to allow the taxpayer to understand why the adjustments were made.

8.17.4.13.1
(09-09-2025)
Available Sample Paragraphs

- (1) Sample paragraphs used in explaining adjustments may be found, as outlined in this section. Modify these suggested or sample paragraphs to suit facts and circumstances.
- (2) **RGS paragraphs** - RGS may be used to generate paragraphs. TCSs may use the RGS paragraphs, when appropriate, in the statutory notice. If the RGS paragraphs are used, care should be taken to make certain that the paragraphs accurately and clearly explain the adjustments.

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- a. The Form 886-A paragraph schedule generated by RGS may be used in the statutory notice. No modification of this schedule is needed for any sort of Appeals format. No modification is needed to add wording, such as “It is determined,” “Accordingly taxable income is increased/decreased,” etc.
- b. The RGS paragraphs may also be found in IRM 4.10.10, *Standard Paragraphs and Explanation of Adjustments*. See IRM 4.10.10-1, *Index to Standard Explanations* and IRM 4.10.10-2, *Standard Explanations*. These paragraphs have been approved by Chief Counsel, and most of them may be used when preparing statutory notices.
- c. The RGS paragraphs may also be copied to another schedule (such as a Form 886-A, or a blank Word or Excel document).

Caution: Be careful when using the paragraphs shown in the RAR, since some paragraphs may not be suitable for statutory notices.

(3) Appeals paragraphs:

- a. **TCS SharePoint:** Paragraphs are available on *TCS SharePoint* on the **Procedures and Resources** link.

8.17.4.13.2
(09-27-2013)

Sentence Structure and Content

- (1) Generally, the present tense is used in wording paragraphs rather than the past tense. This presents the IRS’s position as of the issuance date and does not affirm a prior decision.
- (2) Use positive phrasing when possible. State that the “allowable amount is” rather than the “disallowance is.” However, the more basic principle that the position of the IRS should be clearly stated should govern.
- (3) Do not use qualifying phrases, such as “based on the information in our files,” since it implies the IRS is using information unknown to, and withheld, from the taxpayer.
 - a. Some of the RGS paragraphs use phrases, such as “From records and information available, we determined,” or “From records and information available, it has been determined.” It is acceptable to use this wording in the paragraphs.
- (4) Do not describe an item as a “deduction” and then disallow it because it does not qualify as an allowable deduction.

For example: Do not say, “It is determined that the deduction of \$1,000 claimed as rent expense is not deductible since the amount was not paid or accrued during the taxable year.” Instead say, “It is determined that the amount of \$1,000 claimed as rent expense is not deductible since the amount was not paid or accrued during the taxable year.”
- (5) Avoid so-called “net adjustments” since they tend to be difficult to follow and may present a question as to the actual amount at issue.
- (6) The following phrases may be used at the end of a paragraph to clarify how the adjustment affects the tax return:
 - a. Accordingly/Therefore, taxable income is increased/decreased _____.
 - b. Accordingly/Therefore, tax is increased/decreased _____.

- (7) The length of the paragraphs should be sufficient to clearly state the conclusions. Additional information may be needed to show the detail of certain determinations.
 - a. For example, an explanatory paragraph which determines that an unreported capital gains transaction results in \$10,000 of long-term capital gain may be supplemented with a computation setting forth the amount realized, adjusted basis, gain to be taken into account, and other pertinent figures, etc.
 - b. Use a separate exhibit or schedule to show voluminous details and reference this exhibit or schedule in the explanatory paragraph, such as "See Exhibit A attached."
 - c. Depreciation: Form 1914, **Computation of Allowable MACRS/ACRS/Depreciation Deduction**, may be included to show the depreciation computations. If the ATE wants the depreciation computations included in the notice, the ATE must provide information so that the TCS can prepare the computations.
 - d. Identify the source of unreported income in the explanatory paragraph.
 - e. Indirect Method: An exhibit generally is included to show the computation. The ATE must provide information so that the TCS can prepare the exhibit. IRM 4.10.4, *Examination of Income*, has detailed information on indirect methods. The following have sample formats:
 - Bank deposits method: IRM 4.10.4-9, *The Bank Deposits and Cash Expenditures Method: Example of Computation of Gross Receipts*.
 - Source and application of funds method: IRM 4.10.4-10, *Source and Application of Funds Method: Example of Computation for Cash and Accrual Based Taxpayer*.
 - Net worth method: IRM 9.5.9.5.4, *Overview of the Net Worth Method of Proof Formula*.
- (8) State the taxable year involved in each explanatory paragraph, except as discussed below:
 - a. It is not necessary to state the taxable year if only one year is involved in the statutory notice.
 - b. If the RGS generated Form 886-A paragraph schedule is used, the format includes a header for each paragraph where the year(s) is listed. Therefore, it is not necessary to also include the year in the explanatory paragraph.
- (9) In some situations, it may be necessary to include a copy of a document as part of the notice. If this happens, refer to the document in the explanatory paragraph by stating "See Exhibit A," "See Schedule 3," "See attached schedule," etc.
- (1) Cite applicable IRC sections only to the extent necessary to inform the taxpayer of the real nature of the adjustment. Use of IRC sections can unnecessarily limit or narrow the Commissioner of the Internal Revenue's position.
 - a. Never use IRC citations as the only explanations for disallowance.
 - b. Do not use references to regulations or decided court cases.

8.17.4.13.3
(11-09-2007)
**Citing Internal Revenue
Code Sections in the
Paragraphs**

8.17 Settlement Computations and Statutory Notices of Deficiency

- (2) As a general rule, it is preferable to use exact IRC language rather than attempt to paraphrase IRC language. For example, the statement, "Since it has not been established that your farm was operated with the intention of making a profit, the amounts deducted are not ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." should be used rather than "You have not shown that such claimed deductions were connected with a business activity during your taxable year."

8.17.4.13.4 (09-27-2013) Explanatory Paragraphs for Additions to Tax or Penalties

- (1) Include explanatory paragraphs for the additions to tax or penalties in the statutory notice of deficiency. See IRM 8.17.4.13.1, **Available Sample Paragraphs**, for available sample paragraphs.
- (2) The penalty paragraphs may be placed behind the paragraphs explaining the various adjustments to income, credits, etc. The penalty paragraphs may also be shown on Form 4089, Form 4089-A, or on a continuation sheet attached to these forms.

Reminder: In addition to explanatory paragraphs, include a computation of the penalty/addition to tax in the statutory notice.

- (3) Generally, the RGS penalty schedules or the TCS Excel penalty spreadsheets on the *TCS SharePoint* are used for the statutory notice:
- The RGS penalty schedules or the Excel penalty spreadsheets can be attached to Form 4089, Form 4089-A, or placed behind the explanations of adjustment.
 - If the RGS penalty schedules or the Excel penalty spreadsheets are included in the statutory notice, the explanatory paragraphs discussed in paragraphs (1) and (2) will most likely not be needed since the RGS penalty computation schedules and the Excel penalty spreadsheets include appropriate explanatory paragraphs.
 - If the explanatory paragraphs included on the RGS penalty schedules and the Excel penalty spreadsheets are not acceptable, then also include appropriate explanatory paragraphs with the statutory notice.

8.17.4.14 (09-09-2025) Tentative Allowances and Other Carryback Claims in Notice of Deficiency Statement

- (1) This section discusses cases where a notice of deficiency is being prepared, and the taxpayer claimed a tentative allowance on Form 1045 (individual) or Form 1139 (corporation), or a carryback claim on a Form 1040X, **Amended U.S. Individual Income Tax Return**, (individual) or a Form 1120X, **Amended U.S. Corporation Income Tax Return**, (corporation), for one or more of the years included in the notice of deficiency. These procedures apply when the tentative allowance or carryback claim has been processed and allowed.
- (2) The procedures for Form 1045/1139 and Form 1040X/1120X differ slightly:
- A tentative allowance on Form 1045/1139 may or may not be ignored for purposes of preparing a notice of deficiency, depending on whether the exam of the unused loss/credit year is complete/in Appeals (i.e., it is included in the notice of deficiency where both the tentative allowance year and the loss/unused credit year are under consideration in Appeals.) See also IRM 8.17.4.14.1, paragraph (2), and IRM 8.17.4.14.2, paragraph (1).

- b. A claim for credit or refund on Form 1040X/1120X may not be ignored in a notice of deficiency.
- (3) The following briefly describes Form 1045/1139:
 - a. It is used to apply for a quick tax refund resulting from the carryback of a net operating loss (NOL), unused credit, a net IRC 1256 contracts loss, or claim of right adjustment under IRC 1341(b)(1) . It is generally referred to as a tentative allowance or a tentative carryback.
 - b. It must be filed within one year after the end of the year in which an NOL, unused credit, a net IRC 1256 contracts loss, or claim of right adjustment arose.
 - c. Generally, the application is processed within 90 days. If the taxpayer's application on Form 1045 or Form 1139 is not allowed by the IRS during the initial processing, the taxpayer can't file suit in any court since the Form 1045/1139 is not treated as a claim for credit or refund.
- (4) The following briefly describes Form 1040X/1120X:
 - a. It is an amended return used to file a regular claim for credit or refund before the limitation period expires.
 - b. Generally, an amended return must be filed no later than three years after the due date of the return for the applicable tax year or two years after the tax was paid, whichever is later.
 - c. It is not required to be processed within 90 days. However, if it is not processed within six months, the taxpayer can file suit in court.
- (5) Prepare restricted interest Form 2285 when tentative allowances and other carryback claims are involved. See IRM 8.17.6.5, *Preparation of Form 2285*, for more information.

8.17.4.14.1
(11-09-2007)
**Tentative Allowance
When Loss/Unused
Credit Year Not in
Appeals**

- (1) A tentative allowance is filed on a Form 1045 (individual) or a Form 1139 (corporation) and is identified by the presence of a transaction code (TC) 295 on the account module.
- (2) If a notice of deficiency is being issued and the examination of the unused loss/credit year is not complete, or if it cannot be determined if the unused loss/credit year is under examination, completely ignore the tentative allowance in the notice of deficiency.

Note: This procedure only applies for tentative allowances resulting from the filing of a Form 1045 or Form 1139. It does **not** apply to carryback claims that were allowed due to the filing of a Form 1040-X or Form 1120-X.

- (3) Ignoring the tentative allowance means:
 - a. Do not use NOL and capital loss carrybacks giving rise to the tentative allowance to decrease taxable income or alternative minimum taxable income.
 - b. Do not use credit carrybacks to decrease tax liability.
 - c. Do not include the increase or decrease in tax attributable to a tentative allowance in "tax as previously adjusted."

8.17 Settlement Computations and Statutory Notices of Deficiency

- (4) If it can be determined that there is no examination activity on the year giving rise to the tentative allowance, and the statute of limitations has expired on that year, include the tentative allowance in the notice in the amount previously allowed.
 - a. Although Appeals adjustments may increase taxable income and tax liability in the allowance year, limit the amount of the tentative allowance to the amount originally allowed on Form 1045 (individual) or Form 1139 (corporation).
 - b. Increasing the amount of tentative allowance may result in a duplicate allowance to the taxpayer. Only allow an additional amount when it can be determined that the allowance does not result in duplication.
- (5) If it is determined that examination of the year giving rise to the tentative allowance has been completed, include the tentative allowance in the notice. Include the amount determined to be allowable based on the examination adjustments made to the loss/unused credit year.

8.17.4.14.2
(09-27-2013)

Tentative Allowance When Both Carryback and Loss/Unused Credit Year in Appeals

- (1) If the notice of deficiency is being issued and both the tentative allowance year and the loss/unused credit year are under consideration in Appeals, include both years in the notice of deficiency.
- (2) Adjust the year with the tentative allowance (the carryback year) based on adjustments made to the loss/unused credit year.
- (3) If adjustments to the loss/unused credit year do not result in a deficiency, then:
 - a. Do not include the loss/unused credit year in the notice letter.
 - b. Include the loss/unused credit year on Form 4089 (or, if prepared, Form 4089-A and Form 870).
 - c. Include the loss year on the Form 5278 with the carryback year.
- (4) Follow specific procedures if the adjustments to the loss/unused credit year result in an overassessment. See IRM 8.17.4.16, **Overassessment Years in the Case**.
- (5) Include explanations of adjustments for all adjustments to the loss/unused credit year as well as the carryback year.

8.17.4.14.3
(11-09-2007)

Claim for Credit or Refund When Loss/Unused Credit Year is Not in Appeals

- (1) This section discusses cases where a notice of deficiency is being prepared and a claim for credit or refund has been filed to carryback a loss/unused credit to one or more of the years included in the notice of deficiency. The claim is filed on an amended return Form 1040-X (individual) or a Form 1120-X (corporation).
- (2) An amended return is identified by the presence of a TC 291 or 299 on the account module.
- (3) If a notice of deficiency is being issued and the examination of the year of the loss/unused credit is not completed, or if it cannot be determined if the year is under examination, **do not** ignore the prior allowance of the claim for credit or refund in the notice. Discuss the case with the ATE since the case may have to be returned to Compliance to examine the loss/unused credit year.

- (4) If it can be determined that there is no examination activity on the year giving rise to the carrybacks, and the statute of limitations has expired on that year, include the previously allowed claim amount in the notice.
 - a. Although Appeals adjustments may increase taxable income and tax liability in the carryback year, limit the carryback claim to the amount originally allowed on Form 1040X/1120X.
 - b. Increasing the amount of a carryback claim may result in a duplicate allowance to the taxpayer. An additional amount should only be allowed when it can be determined that the allowance does not result in duplication.
- (5) If it is determined that examination of the loss/unused credit year has been completed, include the carryback claim in the notice. Include the amount determined to be allowable based on the examination adjustments made to the loss/unused credit year.

8.17.4.14.4

(09-27-2013)

Claim for Credit or Refund When Loss/Unused Credit Year Is in Appeals

- (1) If the notice of deficiency is being issued, and both the carryback claim year and the loss/unused credit year are under consideration in Appeals, include both years in the notice of deficiency.
- (2) The year with the carryback claim (the carryback year) should be adjusted based on adjustments made to the loss/unused credit year.
- (3) If adjustments to the loss/unused credit year do not result in a deficiency, then see below:
 - a. Do not include the loss/unused credit year in the notice letter.
 - b. Include the loss/unused credit year on Form 4089 (or, if prepared, Form 4089-A and Form 870).
 - c. Include the loss year on the Form 5278 with the carryback year.
- (4) Include explanations of adjustments in the notice for all adjustments to the loss/unused credit year as well as the carryback year.

8.17.4.15

(09-27-2013)

Years with Adjustments Resulting in No Deficiency

- (1) Generally, do not include years that have adjustments that result in no deficiency (commonly called a “no change with adjustments” or a “change/no change” year) in a notice letter, Form 4089 (or, if prepared, Form 4089-A and Form 870). However, if the no change with adjustments year is related to a deficiency year, then see procedures below.
- (2) If any adjustment in the year with no deficiency affects the tax liability in the deficiency year, it is determined to be a related year.
- (3) If the no change with adjustments year is *related* to a deficiency year, follow the procedures below:
 - a. Do not include the year in which the adjustments result in no deficiency in the notice letter, but include that year on the Form 4089 (or, if prepared, Form 4089-A and Form 870).
 - b. Include a computation of tax for the no change with adjustments year in the notice as part of the Form 5278.
 - c. Include explanations of adjustments for the no change with adjustments year.

8.17 Settlement Computations and Statutory Notices of Deficiency

- (4) An example of when a year is considered related is when the years containing a loss/unused credit are under consideration in Appeals along with the related carryback or carryover years that have deficiencies. If the year in which the adjustments result in zero tax is a loss (or unused credit) year, and both the loss/unused credit year and the carryback or carryover year are under consideration in Appeals, then see IRM 8.17.4.14.4, **Claim for Credit or Refund When Loss/Unused Credit Year Is in Appeals**, for procedures.

8.17.4.16 (09-09-2025) Overassessment Years in the Case

- (1) Multiple year examinations can result in a proposed deficiency for one or more years and a proposed overassessment for other years. When this occurs, the overassessments will not be included in the notice of deficiency.
- The overassessment year is not included on the letter, Form 4089 (or, if prepared, Form 4089-A and Form 870), or Form 5278.
 - However, if adjustments which result in an overassessment are related to deficiency adjustments, computations of any overassessment years plus explanations of adjustment may be included in the notice as a separate exhibit.
- (2) See IRM 8.7.7.5.3.2(2), **Unagreed Deficiency Cases With Overassessment Year(s)**, for procedures when overassessment and deficiency are present on related adjustments.

8.17.4.16.1 (09-09-2025) Preparing a Claim Invitation Letter

- (1) The Tax Court has no authority to review or redetermine an overassessment.
- (2) The issuance of a notice of deficiency (and any subsequent petition filed with the Tax Court) for the deficiency year does not extend the statute of limitations for the overassessment year. See IRM 8.7.7.5.3.2, **Unagreed Deficiency Cases With Overassessment Year(s)**.
- (3) The TCS is responsible for preparation of the Claim Invitation Letter.

8.17.4.17 (09-09-2025) Including Penalties/Additions to Tax in the Notice of Deficiency

- (1) The determination of whether a penalty will be subject to a statutory notice of deficiency procedure usually depends on whether the underlying tax is subject to deficiency procedures. For example, if the negligence penalty was asserted on an underpayment of income tax, the deficiency procedures would apply to the negligence penalty as well as the income tax deficiency. However, if the penalty was the result of an underpayment of employment tax, notice of deficiency procedures would not apply to the penalty.
- The taxes and related penalties subject to deficiency procedures include income tax, estate tax, gift tax, and certain excise taxes.
 - The taxes and related penalties not subject to deficiency procedures include employment taxes imposed by Subtitle C of the IRC, and certain excise taxes.
 - The penalty itself must also be subject to deficiency procedures. IRC 6654 and IRC 6655 penalties may only be included in the notice of deficiency if a return was not filed. The IRC 6651 failure to file (FTF), failure to pay (FTP) and FTF penalties are subject to deficiency procedures only to the extent that they related to a tax deficiency.
 - The assessable penalties shown in IRC Chapter 68, Subchapter B, Assessable Penalties, are not return related penalties and, therefore, notice of deficiency procedures do not apply. Some of these penalties are listed

as follows: IRC 6673, IRC 6676, IRC 6694, IRC 6695, IRC 6695A, IRC 6700, IRC 6701, IRC 6702, IRC 6707A, IRC 6709, IRC 6713, etc.

Note: IRC 6676 penalty is sometimes subject to deficiency procedures and sometimes not. See IRM 20.1.5.18.4, *Case Procedures WITH Deficiency Procedures*. See IRM 20.1.5.18(8), IRC 6676, Erroneous Claim for Refund or Credit Penalty, for more details.

- (2) See the following IRM sections for additional penalty information:
 - a. IRM 8.11.1, *Return Related Penalties in Appeals*
 - b. IRM 8.17.7, *Penalties/Additions to Tax in Computations*
 - c. IRM 20.1.1.4.2, *Deficiency Procedures*
- (3) The type and amount of each addition to the tax or penalty, and the applicable IRC section, must be shown separately for each year.
- (4) Each addition to tax or penalty should be distinguished. For example, the FTF penalty should be designated as IRC 6651(a)(1).
- (5) For any notice issued after December 31, 2000, that imposes a penalty or addition to tax, IRC 6751 requires that the notice include the name of the penalty and the section under which the penalty is imposed.
- (6) Penalties should have explanatory paragraphs included in the notice of deficiency. See IRM 8.17.4.13.4, **Explanatory Paragraphs for Additions to Tax or Penalties**, for more information.
- (7) Discussion of SFR cases, and the assertion of the IRC 6651(a)(2) addition to tax, is discussed in IRM 8.17.4.18.1.1, **Nonfilers: Substitute for Return Procedures in Notices**.
- (8) For procedures concerning repealed IRC 6653 penalties, refer to the historical IRM 8.17.4 archived on the Publishing web site.
- (9) The examiner's immediate supervisor (or designated higher level official) generally, must approve, in writing, an examiner's initial penalty determination per IRC 6751(b). See IRM 8.11.1.2.1, *Supervisory Approval of Penalties Before Appeals' Consideration*.

8.17.4.18
(09-27-2013)
Delinquency Penalties - Failure to File (FTF), Fraudulent Failure to File (FFTF) and Failure to Pay (FTP) Penalties

- (1) The following includes instructions for preparing notices of deficiency with delinquency penalties.
- (2) A notice of deficiency issued for a delinquent filed return should **not** include any penalty amounts attributable to the tax shown on the return as filed. The portion of the penalties attributable to the tax shown on the return as filed are not subject to deficiency procedures. If an examiner later determines additional tax is due on the delinquent tax return, that additional tax is subject to deficiency procedures, as are the associated delinquency penalties, if applicable.

Example: Taxpayer files a return one month late and reports and pays a tax of \$4,000. No penalties are assessed when the taxpayer files the return. During an audit, the IRS determines a tax deficiency of \$1,000. The FTF is five percent per month (for up to five months) of the amount of tax. The total FTF penalty is \$250 (five percent of \$5,000 for one month). If the taxpayer contests the deficiency, the taxpayer will be entitled to a notice of deficiency for \$1,050 (\$1,000 tax deficiency and \$50 FTF

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penalty (five percent of \$1,000). The remaining \$200 FTF penalty, which was attributable to the original tax assessment, is not part of the deficiency and is collectible by immediate assessment.

- (3) The IRC 6651(a)(2) FTP penalty does not apply to a deficiency unless the taxpayer is a nonfiler and SFR procedures apply. See IRM 8.17.4.18.1.1, **Nonfilers: Substitute for Return Procedures in Notices**, for additional information.

8.17.4.18.1 (09-27-2013) IRC 6651(a)(1) and IRC 6651(a)(2) when Return Filed

- (1) If a return is not timely filed, IRC 6651(a)(1) provides for a penalty of five percent if the failure is for not more than one month, with an additional five percent for each month or fraction thereof during which the failure continues, but not in excess of 25 percent. This penalty is computed on the net amount due, as defined in IRM 8.17.7.3, *Failure to File, IRC 6651(a)(1)*.
- (2) If the taxpayer files a late return, only the IRC 6651(a)(1) FTF penalty attributed to the amount of the deficiency should be asserted in the notice of deficiency. The amount used to compute the penalty is the tax required to be shown on the return that is not paid on or before the date prescribed for payment.
 - a. Absent an extension of time to pay affected by IRC 7508, *Time for Performing Certain Acts Postponed By Reason of Service in Combat Zone or Contingency Operation*, or IRC 7508A, *Authority to Postpone Certain Deadlines by Reason of Presidentially Declared Disaster or Terroristic or Military Actions*, the date prescribed for payment is generally the return due date without regard to extensions.
 - b. The amount used to compute the IRC 6651(a)(1) penalty is not decreased by late payments, even if those payments are made prior to the extended return due date.
- (3) The IRC 6651(a)(2) FTP penalty cannot be asserted in a notice of deficiency when the taxpayer has filed a return, because this penalty applies only to tax shown on a filed return, not to a deficiency.

Note: The IRC 6651(a)(2) FTP penalty does not apply to a deficiency unless the taxpayer is a nonfiler and SFR procedures apply. See IRM 8.17.4.18.1.1, *Nonfilers: Substitute for Return Procedures in Notices* .

- (4) IRC 6651(c)(1) provides that the penalty for filing late under IRC 6651(a)(1) must be reduced by the amount of any penalty for paying late imposed under IRC 6651(a)(2) for any month during which both penalties apply.
 - a. Therefore, if IRC 6651(a)(2) was assessed by the campus when the return was filed, the amount of the penalty imposed under IRC 6651(a)(1) must be reduced by the amount of the IRC 6651(a)(2) penalty assessed for any month, or part of a month, during which both penalties apply.
 - b. See IRM Exhibit 8.17.7-1, *Computation of Failure to File Penalty After Tax Adjustment, with Previously Assessed Failure to Pay Penalty*, for a sample computation.

8.17.4.18.1.1
(09-09-2025)

**Nonfilers: Substitute for
Return Procedures in
Notices**

- (1) If a taxpayer does ***not*** file a return, then the IRS can assert IRC 6651(a)(2) on the unpaid deficiency if a valid SFR under IRC 6020(b) has been prepared, but only for returns due after July 30, 1996.
- (2) A valid SFR ***must*** have been prepared under IRC 6020(b) in order to assert IRC 6651(a)(2) on a nonfiler.
 - a. The requirements of a valid IRC 6020(b) return are discussed in 26 CFR 301.6020-1 .
 - b. See IRM 8.17.7.5, *Nonfilers: Substitute for Return (SFR)*, IRC 6651(a)(1) and 6651(a)(2), and IRC 6651(g), for detailed discussion of SFR returns and IRC 6651.
 - c. The ATE is responsible for determining if a valid SFR has been prepared.
- (3) A notice of deficiency issued on a valid substitute for return, as described in IRC 6020(b) ,will include both a FTF penalty under IRC 6651(a)(1) and a FTP penalty under IRC 6651(a)(2).
- (4) On these cases, both the IRC 6651(a)(1) and IRC 6651(a)(2) penalties are shown on the letter, Form 4089 (or, if prepared, Form 4089-A and Form 870) and Form 5278.
- (5) The IRC 6651(a)(1) FTF penalty is computed at five percent per month for each month or part of a month that the return is late, not to exceed a total of 25 percent. The IRC 6651(a)(2) FTP penalty is computed at 0.5 percent a month (or fraction thereof) on the unpaid tax liability, not to exceed a total of 25 percent. The FTP penalty is imposed from the original due date of the return and may accrue for a period of up to 50 months.
- (6) Since the IRC 6651(a)(1) and IRC 6651(a)(2) penalties are asserted at the same time (concurrently) on SFRs, a special computation is necessary. The amount of IRC 6651(a)(1) FTF penalty must be reduced by the amount of the IRC 6651(a)(2) FTP penalty for any month, or part of a month, during which both penalties apply.
 - a. For simplicity purposes, RGS implements this reduction by reducing the five percent FTF penalty rate by the 0.5 percent penalty rate of the FTP penalty for any month during which both penalties apply. This results in an IRC 6651(a)(1) penalty rate of 4.5 percent a month (to a maximum of 22.5 percent) shown on the RGS IRC 6651 penalty computation schedule. The RGS IRC 6651 penalty computation schedule may be included in the notice of deficiency as long as the computations are accurate.
 - b. The TCS Excel IRC 6651 penalty spreadsheet on the *TCS SharePoint* correctly reduces the IRC 6651(a)(1) penalty amount by the concurrent IRC 6651(a)(2) penalty amount, and may be used in the notice of deficiency.

Caution: If the taxpayer made payments after the due date of the return, the RGS IRC 6651 penalty computation schedule and the TCS IRC 6651 penalty Excel spreadsheet won't be accurate. This is because these penalty schedules won't consider any late payments in the FTP penalty computation. When there are late payments, these penalty schedules must be corrected, or other schedules used in the notice of deficiency. TCS can use ACT/DMI InterestNet program to compute the correct penalty amounts.

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(7) IRC 6651(a)(2) penalty amount can be determined

- a. The FTP penalty is computed at 0.5 percent a month, not to exceed a total of 25 percent, and may accrue for a period of up to 50 months.
- b. If the notice of deficiency is issued after this 50-month period, or if the taxpayer has paid the deficiency in full, it will be possible to determine the full amount of the IRC 6651(a)(2) penalty.
- c. Compute this amount and include it in the notice of deficiency.

(8) IRC 6651(a)(2) penalty amount is still accruing

- a. If the amount of the IRC 6651(a)(2) penalty has not accrued for the full 50-month period, and the deficiency remains unpaid, then the notice of deficiency should not include a dollar amount for the IRC 6651(a)(2) penalty. Instead, the amount of the penalty should be shown in the notice letter as an asterisk (*), with an explanatory paragraph. See Exhibit 8.17.4-4, **Notice of Deficiency Letter 894 with IRC section 6651(a)(2)**, for an example of the format to use on the notice of deficiency letter.
- b. An asterisk should also be used instead of a penalty amount on the Form 4089 (or, if prepared, Form 4089-A and Form 870) and on Form 5278. A very brief explanation should be given, such as "IRC 6651(a)(2) amount to be determined."

(9) Explanations of the IRC 6651 penalty should also be included in the notice of deficiency.

- a. Generally, the RGS IRC 6651 penalty schedule or the TCS IRC 6651 Excel penalty spreadsheet on the Technical Support SharePoint site is used for the statutory notice. If the RGS or Excel IRC 6651 penalty schedules are included in the statutory notice, explanations of the IRC 6651 penalty, generally, will not be needed since the RGS and Excel penalty schedules include appropriate explanatory paragraphs.

Note: If the FTP penalty is still accruing, you don't need to delete the FTP amount from these penalty schedules and insert an asterisk, because there is a paragraph on the penalty schedule underneath the computation that tells the taxpayer that the penalty is still accruing.

- b. If the explanatory paragraphs included on the RGS penalty schedules and the Excel penalty spreadsheets are not acceptable, or the RGS or Excel IRC 6651 penalty schedules are not included in the notice, then also include appropriate explanatory paragraphs with the statutory notice. See IRM 8.17.4.13.1, **Available Sample Paragraphs**, for available sample paragraphs.

8.17.4.18.2 (09-09-2025) **IRC 6651(f) Fraudulent Failure to File (FFTF) Penalty**

- (1) If the FTF the tax return is due to fraud, the FFTF penalty imposed by IRC 6651(f) may be asserted rather than the regular FTF penalty under IRC 6651(a)(1).
- (2) For late filed returns, the FFTF penalty under IRC 6651(f) that is based on the tax per the return is **not** subject to deficiency procedures. The notice of deficiency will not reflect an IRC 6651(f) penalty on the portion of total corrected tax attributable to the return as filed (delinquent return).

Note: The IRC 6651(f) penalty that is based on the tax per the return must be assessed prior to the expiration of the normal statute.

- (3) The portion of the IRC 6651(f) penalty that is attributable to the tax deficiency is subject to deficiency procedures. Reflect this portion of the IRC 6651(f) penalty in the notice of deficiency.
- (4) When the IRC 6651(f) penalty is proposed on an SFR, the penalty is based on the total corrected tax per the examination. The IRC 6651(f) penalty asserted on an SFR is subject to deficiency procedures and **is** included in the notice of deficiency.
- (5) Area Counsel's written approval of the notice of deficiency asserting fraud penalties is required prior to issuance. See IRM 8.17.4.31, *Counsel Review of Notices*.
- (6) See IRM 20.1.2.3.7.5, *Fraudulent Failure to File - IRC 6651(f)*, for additional information.

8.17.4.18.3
(09-27-2013)
Alternative to FTF, IRC 6651(f)

- (1) When the FTF penalty under IRC 6651(f) is asserted, the ATE will instruct the TCS if the IRC 6651(a)(1) FTF penalty should be included in the notice of deficiency as an alternative issue.
- (2) If the ATE instructs that the FTF penalty should be included in the notice of deficiency as an alternative issue to the FTF penalty, then an explanation for the FTF penalty must be included in the notice following the explanation of the FTF penalty.
- (3) See below for sample format for the language to use for the alternative issue:

"In the event the fraudulent failure to file penalty under Internal Revenue Code section 6651(f) is not sustained, in the alternative it is determined that because your income tax return for the taxable year ended _____ was not filed within the time period required by law; and you have not shown that such failure to timely file your return was due to reasonable cause, _____ percent of the tax is added as provided by section 6651(a)(1) of the Internal Revenue Code for the taxable year ended _____."
- (4) If the RGS or Excel IRC 6651(a)(1) penalty schedules are used, the paragraph for the alternative issue shown above in paragraph (3) can be added to those schedules, or included on a separate schedule.
- (5) The IRC 6651(a)(1) FTF penalty is not shown on the letter, Form 4089 (or, if prepared, Form 4089-A and Form 870) or on Form 5278. The penalty is only mentioned in the paragraph for the alternative issue discussed above.

8.17.4.19
(09-27-2013)
Estimated Tax Penalties - IRC Sections 6654 and 6655

- (1) An estimated tax penalty cannot be asserted on a deficiency when the taxpayer has filed a return.
- (2) If a return was filed, the ATE requests that APS assess the penalties prior to the expiration of the statute of limitations on assessment from the original return. (See IRM 8.17.4.3, **Adjustments Requested by ATE Prior to Issuing Notice of Deficiency**.) These penalties are not included in the notice of deficiency.

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- (3) If no return was filed for the taxable year, include any applicable penalties under IRC 6654 and IRC 6655 in the notice of deficiency.
- (4) See IRM 8.17.7.8, *Estimated Tax Penalties, IRC 6654 and IRC 6655*, and IRM 20.1.3, *Estimated Tax Penalties*, for more information.

8.17.4.20
(09-09-2025)

Accuracy Related and Fraud Penalties

- (1) The following includes instructions for preparing notices of deficiency with accuracy related and fraud penalties.
Reminder: Area Counsel's written approval of the notice of deficiency asserting fraud penalties is required prior to issuance. See IRM 8.17.4.31, *Counsel Review of Notices*.

8.17.4.20.1
(09-27-2013)

Accuracy Related Penalties (IRC 6662 and IRC 6662A)

- (1) The IRC 6662 accuracy related penalty and IRC 6662A accuracy related penalty on reportable transactions:
 - a. Apply only if a return is filed.
 - b. Cannot be asserted on a SFR prepared by the IRS under IRC 6020(b).
 - c. Do not apply to any portion of an underpayment that is subject to a fraud penalty.
 - d. Either IRC 6662 or IRC 6662 with a subsection, such as 6662(a), may be used in the notice of deficiency.
 - e. Either IRC 6662A or IRC 6662A with a subsection, such as 6662A(a), may be used in the notice of deficiency.
- (2) See IRM 8.17.7.9, *Accuracy-Related Penalty, IRC 6662*, and IRM 20.1.5, *Return Related Penalties*, for more information.

8.17.4.20.2
(09-27-2013)

Civil Fraud Penalty (IRC Section 6663)

- (1) The IRC 6663 fraud penalty applies only if a return is filed. It cannot be asserted if the taxpayer did not file a return.
- (2) The IRC 6663 fraud penalty cannot be asserted on a SFR prepared by the IRS under IRC 6020(b).
- (3) The IRC 6663 fraud penalty cannot be asserted on the same underpayment (or portion of an underpayment) on which accuracy related penalties are asserted. Only one penalty can be applied to any portion of an underpayment of tax.
- (4) Either IRC 6663 or IRC 6663 with a subsection, such as 6663(a), may be used in the notice of deficiency.
- (5) The delinquency and fraud penalties can be asserted concurrently.
- (6) Although there is no specific prohibition against asserting penalties under both IRC 6651(f), FTF Penalty, and the IRC 6663 fraud penalty, the court is not likely to sustain the assertion of both penalties unless compelling facts support the IRS's position. Area Counsel should be consulted before asserting both IRC 6651(f) and IRC 6663 on the same return. (Also see IRM 20.1.5.9.2, *Penalty Assertions*, for additional information.)
- (7) See IRM 8.17.7.10, *Fraud Penalty, IRC 6663*, and IRM 20.1.5.16, *IRC 6663, Civil Fraud Penalty*, for more information.

8.17.4.20.2.1
(09-27-2013)
**Fraud Penalty - Joint
Return**

- (1) On a joint return, the IRC 6663 civil fraud penalty does not apply to a spouse unless some part of the underpayment is due to civil fraud on the part of that spouse. See IRC 6663(c).
- (2) If only one spouse is liable for the fraud penalty, separate notices of deficiency are issued. The fraud penalty will be included on the notice for the culpable spouse only.
 - a. See IRM 8.17.4.20.2.2, **Procedures - Spouse Liable for Fraud Penalty**, for procedures for the spouse liable for IRC 6663.
 - b. See IRM 8.17.4.20.2.3, **Procedures - Spouse Not Liable for Fraud Penalty**, for procedures for the spouse not liable for IRC 6663.

Note: The procedures in these two IRM sections may be altered, if necessary, to fit the facts and circumstances of a case, or on the advice of Counsel.

8.17.4.20.2.2
(09-27-2013)
**Procedures - Spouse
Liable for Fraud Penalty**

- (1) Letter 894 is prepared for the spouse liable for the IRC 6663 fraud penalty (culpable spouse) as discussed below:
 - a. Use the names of both spouses on the letter and the primary SSN.
 - b. Use the address of the culpable spouse.
 - c. Direct the salutation on the letter to the culpable spouse.
 - d. Include the IRC 6663 penalty on the letter. Add a footnote on the first page of the letter saying that the non-culpable spouse is not liable for the IRC 6663 civil fraud penalty due to the provisions of IRC 6663(c). See suggested language:

(Taxpayer name) is not liable for the IRC 6663 civil fraud penalty for tax year(s) _____ due to the provisions of IRC 6663(c).

Note: Generally, this footnote is placed on the letter below the listing of the years and amounts of tax and penalties, and above the salutation.

- (2) Form 4089 is prepared for the culpable spouse as discussed below:
 - a. Use only culpable spouse's name, address and SSN.
 - b. Include the IRC 6663 penalty on Form 4089.
- (3) One Form 5278 can be prepared and used for the notice of deficiency for each spouse as discussed below:
 - a. Prepare one Form 5278 using both names and primary SSN.
 - b. Include the IRC 6663 penalty on Form 5278. Put a footnote on Form 5278 saying that the non-culpable spouse is not liable for the IRC 6663 civil fraud penalty due to the provisions of IRC 6663(c).

Note: A separate Form 5278 can also be prepared for each spouse showing the adjustments, deficiency and penalties that are applicable to each.

- (4) Include appropriate explanations of adjustment and IRC 6663 penalty schedule, as outlined in IRM 8.17.4.13, **Guidelines for Preparing Explanation of Adjustments (Explanatory Paragraphs)**.

8.17 Settlement Computations and Statutory Notices of Deficiency

8.17.4.20.2.3
(09-27-2013)

Procedures - Spouse Not Liable for Fraud Penalty

- (1) Letter 894 is prepared for the spouse not liable for the IRC 6663 fraud penalty (non-culpable spouse) as discussed below:

- a. Use the names of both spouses on the letter and the primary SSN.
- b. Use the address of the non-culpable spouse.
- c. Direct the salutation on the letter to the non-culpable spouse.
- d. Do not include the IRC 6663 penalty on the letter. Add a footnote on the first page of the letter saying that the non-culpable spouse is not liable for the IRC 6663 civil fraud due to the provisions of IRC 6663(c). See suggested language:

(Taxpayer name) is not liable for the IRC 6663 civil fraud penalty for tax year(s) _____ due to the provisions of IRC 6663(c).

Note: Generally, this footnote is placed on the letter below the listing of the years and amounts of tax and penalties, and above the salutation.

- (2) Form 4089 is prepared for the non-culpable spouse as discussed below:

- a. Use only non-culpable spouse's name, address and SSN.
- b. Do not include the IRC 6663 penalty on Form 4089.
- c. Add a footnote on Form 4089 saying that the non-culpable spouse is not liable for the IRC 6663 civil fraud due to the provisions of IRC 6663(c).

- (3) One Form 5278 can be prepared and used for the notice of deficiency for each spouse as discussed below:

- a. Prepare Form 5278 using both names and primary SSN.
- b. Include the IRC 6663 penalty on Form 5278. Put a footnote on Form 5278 saying that the non-culpable spouse is not liable for the IRC 6663 civil fraud penalty due to the provisions of IRC 6663(c).

Note: A separate Form 5278 can also be prepared for each spouse showing the adjustments, deficiency and penalties that are applicable to each.

- (4) Include appropriate explanations of adjustment and IRC 6663 penalty schedule, as outlined in IRM 8.17.4.13, **Guidelines for Preparing Explanation of Adjustments (Explanatory Paragraphs)**.

8.17.4.20.3
(09-09-2025)

IRC 6662 Alternative to IRC 6663

- (1) It is recommended that the IRC 6662 accuracy-related penalty should be included in the explanation of adjustments as an **alternative** penalty to the civil fraud penalty under IRC 6663 except in the following situations:

- A criminal conviction under 26 USC 7201 collaterally estops the taxpayer from denying fraud, or
- The statute of limitation has expired in the absence of a finding of fraud.

- (2) Remember that IRC 6663 and IRC 6662 cannot be asserted if the taxpayer did not file a return.

- (3) When the fraud penalty is asserted, the ATE will instruct the TCS that the IRC 6662 penalty must be included in the notice of deficiency as an alternative issue.

- (4) If the ATE instructs that the IRC 6662 penalty should be included in the notice of deficiency as an alternative issue to the IRC 6663 civil fraud penalty, then

an explanation for the IRC 6662 penalty must be included in the notice following the explanation of the civil fraud penalty.

- (5) See below for sample format for the language to use for the alternative issue:
“Alternatively, to the extent that it is determined that fraud does not apply to any portion of the underpayment, you are liable for an accuracy-related penalty under section 6662(a) of the Internal Revenue Code for any portion of the underpayment which is relieved from liability for fraud because there was (1) a substantial understatement of income tax, (2) a valuation misstatement(s), or (3) you were negligent (or disregarded rules or regulations).”
- (6) If the RGS or Excel IRC 6663 penalty schedules are used, the alternative paragraph shown above can be added to those schedules, or included on a separate schedule. Counsel prefers the inclusion of explanatory paragraphs for both penalties on Form 886-A even if the RGS or Excel 6663 penalty schedules are used.
- (7) The IRC 6662 penalty is not shown on the letter, Form 4089 (or, if prepared, Form 4089-A and Form 870), or on Form 5278. The alternative issue is only shown in a paragraph that follows the explanation of the civil fraud penalty.

8.17.4.21
(05-10-2017)
**Interest Computations in
Notices of Deficiency**

- (1) An interest computation will not be sent to the taxpayer with the notice of deficiency.
- (2) Neither IRC 7522 nor IRC 6631 require that an interest computation must be included with the notice of deficiency.
- (3) Chief Counsel has determined that IRC 7522 does not require that an interest computation be included with notices of deficiency.
 - a. Counsel's IRM equivalent is called the Chief Counsel Directives Manual, or CCDM. Per *CCDM 33.1.2.8.10.1*, “A notice of deficiency is not required to inform the taxpayer that statutory interest at the legal rate will apply to any deficiency determined (or redetermined) by the Commissioner or the Tax Court. The reason is that a notice of deficiency relates exclusively to deficiencies. Generally, interest is not subject to deficiency procedures. (IRC 6601(e)(1).) The Service, however, includes a statement regarding the accrual of interest in each notice of deficiency.”
Note: See IRM 8.17.4.11.7, **Interest Statements on Face Sheet**. This is the required interest statement to include on Form 4089 or Form 4089-A.
 - b. Also see *CCDM 33.1.2.8.10.1(2)*, *Compliance with Section 7522 Notices to Taxpayers*, for further discussion.
- (4) IRC 6631 does not require the IRS to include interest on notices of deficiency it issues to taxpayers.
 - a. Rather, IRC 6631 merely provides that **if** the IRS includes interest on any notice sent to the taxpayer, then it must also show how that interest was computed.
 - b. Therefore, since the notice of deficiency should not include an interest amount, there is no requirement under IRC 6631 that an interest computation be included.

8.17 Settlement Computations and Statutory Notices of Deficiency

8.17.4.21.1
(09-09-2025)

Notices of Deficiency with Interest on Large Corporate Underpayments

(1) IRC 6621(c) provides for a two-percent increased interest rate on the underpayment of a tax by a “C” corporation if the underpayment exceeds \$100,000. For a complete discussion of large corporate underpayments, see IRM 8.17.6.7, *Large Corporation Underpayment Interest (LCU) under IRC 6621(c)*.

(2) If the requirements of IRC 6621(c) are met, interest accrues at the higher rate for all tax periods after December 31, 1990.

(3) If the taxpayer is subject to the increased rate of interest under this section, the notice of deficiency letter should include a paragraph similar to the following:

“If you are a C corporation, under Internal Revenue Code section 6621(c), large corporate underpayments may be subject to a higher rate of interest than the normal rate of interest for underpayments.”

- a. Letter 901 and Letter 894 available on APGolf include this language.
- b. Since some letters (such as Letter 3424) may not include this language, check the notice letters carefully to make sure this paragraph is included if IRC 6621(c) interest is applicable.

(4) Annotate the tax computation form using a paragraph suggested in IRM 8.17.6.7.2, *Annotating the Settlement Computation for Large Corporate Underpayment Rate*. If a TCS is preparing the computation and the 30/90-day letter or taxpayer’s protest is not in the file or the TCS does not have the administrative file, the ATE should provide a copy of the 30/90-day letter or protest. If the letter can’t be located or the notice date determined, the 30-day letter date notated in the taxpayer’s protest can be used as the notice date. (The date found on the RAR may or may not coincide with the 30-day letter date).

(5) The language should be modified if there are carrybacks allowed in the notice of deficiency.

- a. The language must be modified to inform the taxpayer that the deficiency subject to the increased rate of interest is computed without regard to loss and credit carrybacks.
- b. This is especially important if the deficiency in the notice of deficiency is less than \$100,000. The increased corporate interest under IRC 6621(c) could still apply if the deficiency before any carrybacks is more than \$100,000.
- c. See modification of paragraph, below:

“It is determined that the deficiency for the taxable year _____ is a large corporate underpayment under section 6621(c) of the Internal Revenue Code. Accordingly, the annual rate of interest payable on your income tax shall be two percentage points higher than the underpayment rate established under section 6621(a) of the Internal Revenue Code for the tax year ended _____. The amount of the large corporate underpayment is computed without regard to any net operating loss carryback, capital loss carryback or credit carryback, pursuant to IRC 6601(d).”

(6) Form 5403 Instructions to APS Spreadsheet:

- a. The TCS will enter the “Notice Date” on the Form 5403 Instructions to APS spreadsheet. The “Notice Date” is the date of the letter/notice that

activates the large corporate underpayment rate. It is the responsibility of the ATE to provide this date if the information is not otherwise available to the TCS.

- b. The Form 5403 Instructions to APS spreadsheet is available on the *TCS SharePoint*.
- c. See IRM 8.17.5.3.2, *Interest 6621(c) Notice Date*, for more information.

8.17.4.22
(09-27-2013)

**Prepayment
(Refundable) Credits**

- (1) The deficiency to be shown in the notice of deficiency is the statutory deficiency ***before*** considering prepayment credit adjustments that the Tax Court has no jurisdiction over, such as withholding credits. (Prepayment credits are also referred to as “refundable credits.”)
 - a. The notice of deficiency letter will show only the statutory deficiency (line 21 of Form 5278), and will not include any adjustment to prepayment credits that the Tax Court does not have jurisdiction over. These credit adjustments are found on line 22 of Form 5278.
 - b. See IRM 8.17.4.11.4.1, *Understated Prepayment Credits (Non-IRC 6211(b)(4) credits)*. This subsection covers procedures on how to include adjustments to these credits on the notice of deficiency face sheet (Form 4089 or Form 4089-A.)
 - c. See IRM 8.17.4.9, **Waiver (Agreement) Forms for Notices of Deficiency**. This subsection covers agreement forms in notices of deficiency. It includes procedures on how to include adjustments to these credits on Form 870, if prepared.
- (2) Adjustments to refundable credits, such as the earned income credit (EIC), additional child tax credit (ACTC), credit for federal tax paid on fuels, first-time homebuyer credit, etc. are included in the definition of a statutory deficiency (per IRC 6211). Therefore, any adjustments to these credits ***would*** be included in the statutory deficiency shown in the notice. The Tax Court has jurisdiction over adjustments to these credits.
 - a. The notice of deficiency letter and Form 4089, (or, if prepared, Form 4089-A and Form 870) will show the statutory deficiency amount from line 21 of Form 5278. This amount includes any adjustments to refundable credits, such as EIC, ACTC, credit for federal tax paid on fuels, first-time homebuyer credit, etc.
 - b. Explanations for adjustments to these refundable credits should be included with the other explanatory paragraphs written for the notice.
 - c. See IRM 8.17.4.11.4.3, **Refundable Credits (IRC 6211(b)(4) credits)**, for additional information.

8.17.4.23
(09-09-2025)

**Notice of Deficiency on
Jeopardy Assessment
Case**

- (1) Generally, the area Compliance function is responsible for issuing the notice of deficiency in jeopardy assessment cases. The taxpayer may protest the notice of deficiency to Appeals. See IRM 8.7.1.6.1, **Jeopardy Assessments**, for more information.
- (2) On occasion, Appeals receives the case prior to issuance of the notice of deficiency. In these instances, IRC 6861(b) states the notice of deficiency must be issued within 60 days after the jeopardy assessment is made. While the jeopardy assessment becomes invalid after that period if the notice has not been issued, a valid notice of deficiency may still be issued thereafter.

8.17 Settlement Computations and Statutory Notices of Deficiency

- (3) If Appeals issues the notice of deficiency, a copy of the notice is sent to the appropriate Compliance function.
- (4) The office having jurisdiction of the case must establish strict controls to ensure there is sufficient time for associate area Counsel to review the notice before issuance.
- (5) Generally, the TCS will verify tax computations when a jeopardy assessment is necessary on cases pending in Appeals.
- (6) Compliance function uses Letter 531-J, for notices in jeopardy cases. Letter 531-J is available on the IRS publishing catalog. Appeals can use Letter 531-J, Letter 901, and Letter 894. Letter 901 is used for jeopardy assessments involving affiliated companies, corporate income tax, estate and gift tax, excise tax, and withholding of income tax at the source. Letter 894 is used for jeopardy assessments involving individual income tax cases. However, for jeopardy assessment notices involving transferee liability, use Letter 3424. See IRM 8.7.5, **Transferee and Transferor Liabilities**, for further information on Letter 3424. Letter 3424 is available in APGolf on ACDS 2.0. Generally, Appeals will use Letter 901 for notices in jeopardy assessment cases, with the exception noted below:
 - a. Letter 894 may be used for a jeopardy assessment made to an individual income tax case as long as the following sentence is added to the opening paragraph:

“We have assessed the deficiency under the Internal Revenue laws that apply to jeopardy assessments.”
 - b. Letter 3424 will be used for jeopardy assessment notices involving transferee liability. Use the appropriate selectable paragraph for the letter, which is available in APGolf.
 - c. Letter 901 has two selectable paragraphs. The first is for liabilities involving affiliated companies, and the second selectable paragraph is for liabilities not involving affiliated companies.
- (7) If the amount of the jeopardy assessment equals the amount of the deficiency, follow the procedures discussed below:
 - a. Use Letter 901 (or Letter 894, Letter 3424, or Letter 531-J, if applicable) and select the appropriate opening paragraph.
 - b. No agreement forms are enclosed with the jeopardy assessment notice.
 - c. Letter 531-E , **Notice of Deficiency - Form 5330 or Form 990-T Tax (Appeals)**, contains waiver language for all cases except those under Department of Justice jurisdiction. To generate the proper letter, select opening paragraph 1a or 1b in combination with selectable paragraph 2. For Letter 3424, select paragraphs 4, 5, or 6 to generate the Notice of Transferee or Fiduciary Liability for jeopardy assessment situations in APGolf. Revisions to Letter 901 and Letter 894 removed the request for taxpayers to sign and return waiver forms for jeopardy situations.
 - d. Since no agreement forms are enclosed with the notice, Form 4089-A should be used as the summary page. On Form 4089-A, following the summary of tax liability, the following sentence is inserted:

“Assessment of this deficiency has been made against you under the provisions of Internal Revenue laws applicable to jeopardy assessments.”

Note: In a transferee notice of liability, replace the word “deficiency” with the word “liability” in the above paragraph.

- (8) If the amount of the jeopardy assessment is **less** than the amount of the deficiency (or transferee liability) asserted in the notice, follow the procedures discussed below:
- Use Letter 901, Letter 894, Letter 3424, or Letter 531-J , if applicable) and select the appropriate opening paragraph.
 - Include a waiver form with the notice, if needed. Form 4089 or Form 4089-B, **Notice of Deficiency-Waiver**, or Form 870 can be used.
 - It is recommended that a summary of jeopardy assessments be shown on Form 4089, Form 4089-A, or a continuation sheet attached to these forms. See the following example.

Summary of Jeopardy Assessments

Summary of assessments made under the provisions of the Internal Revenue laws applicable to jeopardy assessments made on ____ (date) for tax years 2018 and 2019.

<u>Period</u>	<u>Tax</u>	<u>Penalties</u>
01/01/18 – 12/31/18	\$141,901.00	\$93,135.00
01/01/19 – 12/31/19	\$920,065.00	\$734,563.00

- (9) When computing the deficiency on any case in which a jeopardy assessment has been made, do not take the jeopardy assessment into account. This means that the amount of deficiency shown on the letter, Form 4089, Form 4089-A, Form 870 (if prepared) and Form 5278 is not reduced by the jeopardy assessment. (When determining the tax liability per return, or as previously adjusted on Form 5278, jeopardy assessments should not be considered.)
- (10) If it is determined before the notice is issued that the deficiency for any year is either greater or less than the corresponding jeopardy assessment, the notice should reflect such determined deficiency. If any part of the jeopardy assessment is determined to be in excess of the statutory deficiency, Form 5403, *Appeals Closing Record*, reflecting the overassessment to be abated should be processed by APS. If all or any part of such excess has been paid, no refund should be made until the case is closed.

8.17.4.24
(09-27-2013)
**Notice of Deficiency
Involving Termination
Assessment under IRC
6851 (Termination of
Taxable Period)**

- (1) A notice of deficiency for a termination assessment case must be issued within 60 calendar days after the later of:
- The due date of the return (including extensions), or
 - The date the taxpayer filed the return.
- (2) If the notice of deficiency is not issued within the 60 calendar day period, the termination assessment is invalid, but the notice of deficiency remains valid.

8.17 Settlement Computations and Statutory Notices of Deficiency

- (3) A termination assessment is made when the taxable year of a taxpayer has not ended, or when the taxable year has ended but the due date for filing the return, or the due date as extended, has not arrived (IRC 6851). Termination assessments may only be made for income tax liabilities. Such assessments may not be made once the date for filing a full year return has passed.
 - a. At the end of the full tax year, the taxpayer is required to file a full year return.
- (4) When a taxpayer subject to a termination assessment files the full year return, the return will be examined and the correct tax liability determined by the Compliance function.
 - a. When the tax reflected on the full year's return filed by the taxpayer equals the termination assessment, and an examination of the full year's return results in no additional tax or overassessment, a notice of deficiency will not be issued.
 - b. If the amount determined to be the correct liability is **greater** than the amount shown on the return, a notice of deficiency will be issued in an amount reflecting the difference between the amount shown on the return and the amount determined to be the correct liability.
- (5) If the taxpayer does not file a full year return on or before the proper due date, the Compliance function will follow "substitute for return" procedures and a notice of deficiency will be issued. The starting point for adjustments will be zero. Since no return was filed by the taxpayer, the notice of deficiency will be issued in an amount determined to be the correct tax liability for the year.
- (6) The taxpayer may protest the notice to Appeals. In some cases, it is possible for Appeals to receive the case prior to issuance of the notice of deficiency. In these cases, Appeals will issue the notice of deficiency.
- (7) The letter and forms to use for a notice of deficiency when there has been a termination assessment are shown below:
 - a. Letter 894 or Letter 901 is used. No special language is required on the letter to indicate that there has been a termination assessment.
 - b. Form 4089 is prepared, or Form 4089-A and waiver Form 870.
 - c. Include language on a continuation page to Form 4089 or Form 4089-A notifying the taxpayer of the termination assessment and the amount. See suggested language to use below:

Pursuant to section 6851 of the Internal Revenue Code, your taxable year of _____ was terminated on _____, and an assessment was made against you for the income tax considered to be due from you for the taxable period beginning _____ and ending _____, in the amount of _____.

The termination of your taxable year and the assessment made against you on _____ are not taken into consideration in determining the deficiency for the taxable year ended _____, as shown above. Rather, the income tax liability shown by you on the return filed by you for the full taxable year ending _____, is taken into consideration in arriving at the statutory deficiency in income tax shown in this notice, as detailed on the accompanying schedules.

Any portion of the amount collected at the time of termination of your taxable year, which is reflected as a credit balance on your Federal income tax account for the taxable year ended _____, will be taken into consideration in arriving at the net amount of tax due after final determination of your income tax liability pursuant to this notice of deficiency.

- (8) The deficiency is computed without taking the termination assessment into account. This means that the amount of deficiency shown on the letter, Form 4089 (or Form 4089-A and Form 870), and Form 5278 is not reduced by the termination assessment. (When determining the tax liability per return, or as previously adjusted on Form 5278, termination assessments should not be considered.)
- (9) The statutory deficiency may be an amount greater or less than the termination assessment. If any part of the termination assessment is determined to be in excess of the statutory deficiency, then a Form 5403 reflecting the overassessment to be abated will be processed by APS when the case is closed. If all or any part of such excess has been paid, no refund should be made until the case is closed.

8.17.4.25
(09-09-2025)
**Notices of Deficiency
Involving Conversion of
Form 1120-S to Form
1120**

- (1) Issue the notice of deficiency letter for total liability less liability assessed on Form 1120-S, **U.S. Income Tax Return for an S Corporation**, return.
- (2) Show this deficiency on Form 4089 (or, if prepared, Form 4089-A and Form 870) and on Form 5278.
- (3) Explain on Form 4089 (or, if prepared, Form 4089-A or a continuation page) the reason for the non-recognition of the Form 1120-S. This procedure may be omitted if the reason for the non-recognition is adequately explained elsewhere in the notice, such as on Form 886-A, **Explanation of Items**.
- (4) Use Form 1120-S income as the starting point.
- (5) Explain the adjustments and prepare the supporting schedules in the usual manner.

8.17.4.26
(09-27-2013)
**Tip Income Cases and
FICA Tax Informational
Notice**

- (1) The Tax Court does not have jurisdiction over FICA taxes on tip income and the 50 percent addition to the tax ("penalty") under IRC 6652(b). Therefore, should it be necessary to issue a notice of deficiency, the additional FICA taxes on unreported tip income and the applicable IRC 6652 penalty must be assessed before issuing the notice.
- (2) Procedures:
 - a. The income tax due on unreported tip income is computed by including the unreported tip income as an adjustment to taxable income in the notice of deficiency on Form 5278.
 - b. Compute the FICA taxes due on the unreported tip income and the penalty under IRC 6652(b).
 - c. Instruct the ATE that the FICA taxes and IRC 6652(b) penalty on the unreported tip income must be assessed before the notice of deficiency is issued.

8.17 Settlement Computations and Statutory Notices of Deficiency

- (3) A tip income and FICA tax informational notice may be sent to the taxpayer with the notice of deficiency when the taxpayer's tip income is adjusted, and FICA taxes and penalties are assessed. The informational notice informs the taxpayer that a separate notification will be (or has been) sent from the campus for the FICA tax and penalty assessments. The informational notice should reduce the taxpayer's confusion about receiving two separate bills, one for the income taxes and another for the FICA taxes and penalty.
- (4) The informational notice is not part of the notice of deficiency. Therefore, the following actions must be taken when an informational notice is sent with the notice of deficiency.
 - a. The informational notice must be labeled "For Informational Purposes Only."
 - b. The informational notice must be on a separate page. It should not be attached to any part of the notice of deficiency.
 - c. Use the specific language shown in the exhibit to prepare the informational notice. See Exhibit 8.17.4-5, **Tip Income and FICA Tax Informational Notice**.

8.17.4.27
(09-27-2013)

Accumulated Earnings Tax IRC 534 Notification

- (1) IRC 534(b) provides that the IRS may notify taxpayers if a proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by IRC 531. The ATE is responsible for notifying the taxpayer, where necessary, in cases under their jurisdiction. Letter 572, *Proposal to Issue a Notice of Deficiency for Excess Accumulated Earnings Under IRC Section 531*, is the notification letter sent to the taxpayer and by certified or registered mail.
 - a. Issue the notification so that sufficient time exists, prior to the expiration of the statutory period of limitations, for the filing and adequate consideration of the taxpayer's statement.
 - b. Usually, a notice of deficiency is not issued by the Area Director or Appeals office before the 60-day period (or 90-day period if an additional 30-day period is granted) for filing a statement under 26 CFR 1.534-2(d)(2) expires, unless the statutory period of limitations is due to expire, or other compelling reasons exist.
 - c. If a jeopardy assessment has been made, the subsequent notice of deficiency serves as the IRC 534(b) notification and the taxpayer's statement may be included in their petition to the Tax Court.
- (2) IRC 534(c) allows the taxpayer at least 30 days to submit a statement in response to the notification. The taxpayer submits the original and two copies of the statement. Upon receipt, attach the original to the return of the earliest years in which the issue was raised, place two copies in the administrative file. One copy remains in the administrative file and the other copy is for future association with Counsel's legal file.
- (3) See IRM 4.10.13, *Certain Technical Issues*, for additional information and procedural instructions for accumulated earnings tax cases.
- (4) See IRM 4.8.9.18.1, *Accumulated Earnings Tax, IRC 531*, for additional information about preparing notices with accumulated earnings tax under IRC 531.

- 8.17.4.28
(09-27-2013)
Notices of Deficiency for Special Types of Taxpayers
- (1) Some cases have special procedures that apply because of the taxpayer involved. When preparing notices on cases involving these types of taxpayers, follow the normal procedures detailed above as well as the procedures found in the appropriate subsection below.
 - (2) This subsection details the specialized procedures required for notices of deficiency on cases involving the following:
 - Innocent Spouse - New Name and/or Address
 - Fiduciary Relationships/Deceased Taxpayer
 - Divorced or Separated Taxpayer
 - Notice Issued to Only One Spouse
 - Consolidated Returns (Affiliated Companies)
 - Tax Required to be Withheld at Source (Form 1042)
 - Penalty Only Notice of Deficiency
 - Open Criminal Case
 - Notice of Final Partnership Administrative Adjustment (FPAA)
 - Open TEFRA Proceeding and Non-TEFRA issues adjusted
- 8.17.4.28.1
(09-27-2013)
Innocent Spouse - New Name and/or Address
- (1) If Form 8857, *Request for Innocent Spouse Relief*, has been filed and shows a new name or address for the requesting spouse, the new name or address cannot be disclosed to the non-requesting spouse.
 - (2) The ATE must inform the TCS that a Form 8857 has been filed and provide the new name or address.
 - (3) See IRM 8.17.4.28.3, **Divorced or Separated Taxpayers**, paragraph (5) for an example of how to address the notice of deficiency in a case where a Form 8857 with a new name has been filed.
 - (4) See IRM 8.7.12.11 , *Notice of Deficiency with IRC 6015 Relief Determination*, and its related subsections, for additional information and procedures when preparing notices of deficiency for cases where innocent spouse relief is requested.
- 8.17.4.28.2
(09-09-2025)
Fiduciary Relationships/Deceased Taxpayer
- (1) A fiduciary is a person to whom property or power is entrusted, for the benefit of another. A fiduciary for income tax purposes is a person who holds in trust an estate to which another has the beneficial title, or in which another has a beneficial interest, or receives and controls income of another. This relationship occurs most often in cases involving:
 - a. A deceased taxpayer, or
 - b. Legal disability - In situations where a taxpayer has been deemed disabled and unable to take care of his/her own affairs.
 - (2) Form 56, *Notice Concerning Fiduciary Relationship*, is used by an individual to notify the IRS of a fiduciary relationship. Other legal documents establishing fiduciary relationships can be substituted for the Form 56.
 - (3) When a taxpayer is deceased or under a legal disability, and the IRS has not been notified of a fiduciary relationship, an attempt should be made by the ATE to obtain the name of the fiduciary as long as there is sufficient time remaining on the statutory period of limitations. Once the name is obtained, the fiduciary should be asked to give notice in accordance with the existing Internal Revenue laws (e.g., IRC 6903).

8.17 Settlement Computations and Statutory Notices of Deficiency

Note: If a fiduciary relationship is known, the ATE must include the fiduciary information with the notice of deficiency work request sent to TCS. (The fiduciary may give notice that the fiduciary capacity has terminated or has been revoked. Form 56 provides a section for such notifications.)

- (4) If the IRS has been notified as to the existence of a fiduciary relationship, a notice of deficiency must be mailed to the fiduciary's mailing address. Sample formats are discussed below:

- **Deceased taxpayer:**

John Pelican, Deceased,
Richard Robin, Executor
(Richard Robin's address)

- **Legal Disability:**

John Sparrow,
Howard Dove (*Enter proper title of fiduciary*)
(Howard Dove's address)

- (5) If the name of the fiduciary cannot be obtained, or if there is not sufficient time remaining on the statutory period of limitations, address the notice of deficiency for a deceased taxpayer as follows:

John Dove, Deceased
(John Dove's address)

- (6) When a fiduciary relationship cannot be established on a case involving a taxpayer under legal disability, address the notice of deficiency as follows:

John Dove,
(John Dove's address)

8.17.4.28.2.1
(09-27-2013)

Deceased Taxpayer, Joint Return Filed

- (1) If one spouse has died since the joint return was filed, address the notice of deficiency, as discussed in the paragraphs below.

- (2) If the IRS has not been notified as to the existence of a fiduciary relationship, a single joint notice of deficiency is addressed as follows:

John Dove, Deceased,
and Mary Dove
(John and Mary Dove's last known address)

- (3) If the IRS has been notified as to the existence of a fiduciary relationship, duplicate original joint notices of deficiency must be prepared, addressed as follows:

John Dove, Deceased,
Richard Robin, Executor
and Mary Dove
(Richard Robin's address)

and

John Dove, Deceased,
Richard Robin, Executor

and Mary Dove
(Mary Dove's last known address)

- (4) "Surviving Spouse" may also be added after the name (Mary Dove in the above examples).

8.17.4.28.3
(09-27-2013)
**Divorced or Separated
Taxpayers**

- (1) In the case of a joint return, if the IRS has been notified by either spouse that separate residences have been established, then instead of the single joint notice, duplicate originals of the joint notice will be sent by certified mail to each spouse at the last known address.
- (2) Each notice will carry only the address of the spouse to whom the notice is sent. It is very important not to disclose the new addresses of the spouses to each other. The duplicate notices should be addressed as shown below:

John Dove and
Mary Dove
(John Dove's last known address)

and

John Dove and
Mary Dove
(Mary Dove's last known address)

Note: The name in the above examples can also be shown as John and Mary Dove.

- (3) If a spouse's surname has changed, address that individual as follows on all letters, schedules and attachments: Alice Owl, formerly known as Alice Swan. The name can also be shown as follows: Alice Owl (formerly known as Swan). The "formerly known as Alice Swan" or "formerly known as Swan" will be deleted on the mailing envelope.

Note: Do not disclose a spouse's new surname if that name was obtained from Form 8857, *Request for Innocent Spouse Relief*, or if the spouse requests that the new name not be disclosed.

- (4) In the following example, a notice of deficiency is being prepared for the 2020 return of Alice and John Swan. Alice Swan has remarried and changed her name to Alice Owl. (The new name was not obtained from Form 56 - No Form 8857 has been filed.) Duplicate original notices of deficiency are required for 2020 as shown below:

One letter and one Form 4089 (or Form 4089-A and Form 870) addressed as follows:

John Swan and
Alice Owl, formerly known as Alice Swan
(John Swan's last known address)

and

One letter and one Form 4089 (or Form 4089-A and Form 870) addressed as follows:

John Swan and
Alice Owl, formerly known as Alice Swan
(Alice Owl's last known address)

8.17 Settlement Computations and Statutory Notices of Deficiency

- (5) In the following example, a notice of deficiency is being prepared for the 2020 return of Alice and John Swan. Alice Swan has remarried and changed her name to Alice Owl. The IRS is aware of the wife's new name because it is shown on the Form 8857 that was filed. Therefore, the wife's new name should not appear on any letters or forms being sent to the husband. Duplicate original notices of deficiency are required for 2020 as shown below:

One letter and one Form 4089 (or Form 4089-A and Form 870) addressed as follows:

John Swan and
Alice Swan
(John Swan's last known address)
and

One letter and one Form 4089 (or Form 4089-A and Form 870) addressed as follows:

John Swan and
Alice Jones, formerly known as Alice Swan
(Alice Jones' last known address)

- (6) The necessary number of photocopies may be made of the remaining parts of the notice (Form 5278, explanation of adjustments, etc.) and associated with the separately typed notice of deficiency and waiver. Make sure that if there is a new name for one spouse obtained from Form 8857 that this name is not disclosed to the non-requesting spouse on any of these schedules. Also, the new address of one spouse should not be shown on any copies of these schedules sent to the other spouse.
- (7) Statements attached to duplicate original notices will be computer generated originals, typed originals, or photocopies.

8.17.4.28.4
(09-27-2013)

Notice Issued to Only One Spouse

- (1) Under certain circumstances, a notice of deficiency will be issued to only one spouse for a married filing joint return. Examples of this include, but are not limited to:
- When only one spouse signs a statute extension, or
 - When only one spouse signs a waiver agreeing to the additional tax deficiency.

Note: If a notice of deficiency is being issued to only one spouse because the other spouse has been granted full relief for the liability under IRC 6015 (innocent spouse relief), follow the information and procedures listed in IRM 8.7.12.11, *Notice of Deficiency with IRC 6015 Relief Determination*, and its related subsections rather than those listed below.

- (2) If a notice of deficiency will be issued to only one spouse for a married filing joint return, prepare the notice letter as follows:
- Use the names of both spouses on the notice letter.
 - Use the address of the spouse to whom the notice is being sent.
 - Use the primary social security number (SSN) as shown on the return.
 - The salutation will be directed only to the spouse to whom the notice is being sent.

- (3) The Form 4089 will reflect only the name, address and SSN of the spouse to whom the notice is being sent.
- (4) Prepare Form 5278 as follows:
 - a. Use the names of both spouses on Form 5278.
 - b. Use the primary SSN as shown on the return.
- (5) **Example:** John and Jane Dove timely file a joint return for 2020 reflecting John's SSN as the primary. The 2020 return was examined and a deficiency of \$5,000.00 is proposed. The taxpayers filed a protest for an Appeals hearing. John Dove signed a waiver in Appeals. Jane Dove did not sign a waiver and does not agree to the tax. Consequently, an MFT 31 assessment is made for John Dove and a notice of deficiency must be issued to Jane Dove.
 - a. The notice of deficiency includes Letter 894 , which is addressed to both John and Jane Dove, with Jane Dove's address. John's SSN is reflected on the letter. The salutation for the letter is "Dear Jane Dove:"
 - b. The Form 4089 waiver is addressed to Jane Dove only and, therefore, it reflects only Jane Dove's address and SSN.
 - c. The Form 5278 is also addressed to both John and Jane Dove. John's SSN is reflected on the form.

8.17.4.28.5
(09-09-2025)
**Issuing a Notice of
Deficiency Involving
Consolidated Returns
(Affiliated Companies)**

- (1) Letter 901 is used for notices issued to consolidated corporations. In these cases, the taxpayer is determined to be the parent company and its subsidiaries or affiliates.
- (2) It is recommended that the letter be addressed to the taxpayer in a manner similar to "ABCD Corporation and Subsidiaries," "ABCD Corporation and Affiliated Companies," or "ABCD Corporation and Affiliates."
 - a. The return can be used as a guide to determine the name to use on the notice letter.
 - b. If the name on the return differs slightly from year to year, Form 872, **Consent to Extend the Time to Assess Tax**, and Form 2848 are valid legal documents that can be used to help determine the proper name to use.
 - c. Although it is important that the notice be as accurate as possible, use of "and Subsidiaries" rather than "and Affiliated Companies," and vice versa, will not make the notice invalid.
- (3) Letter 901 is a letter on APGolf:
 - a. APGolf should be used to generate Letter 901.
 - b. Selectable paragraph 1 is used for liabilities involving affiliated companies. Choosing the first selectable paragraph will generate an opening paragraph for Letter 901 as follows:

"You and your affiliated companies owe additional tax or other amounts, or both, for the tax years shown above. This letter is your Notice of Deficiency as we're required by law to send you. The enclosed statement shows how we figured the deficiency."
 - c. Selectable paragraph 2 is used for liabilities not involving affiliated companies for cases, such as corporate, estate, gift, certain excise taxes, and withholding of tax at the source.

8.17 Settlement Computations and Statutory Notices of Deficiency

- (4) Form 4089 or Form 4089-A should contain the name and address of the taxpayer, and a summary of tax liability for each year. It must also contain an annotation that states, "Affiliations Statement Attached."
 - a. Use the same name on the Form 4089 or Form 4089-A as that used on the letter. (ABCD Corporation and Subsidiaries, for example.)
- (5) Prepare an affiliations statement listing the names of the parent and subsidiaries, and the years each was affiliated with the consolidated group.
 - a. The following paragraph must be included on the affiliations statement:

"The tax liability of (name of parent company) and each subsidiary company named above is stated as provided for by regulations prescribed under section 1502 of the Internal Revenue Code. The deficiencies shown will be assessed severally against each corporation named above in accordance with regulations under section 1502 of the Internal Revenue Code."
- (6) Form 5278 should list all companies with proposed adjustments.
 - a. Next to each company, show the total adjustment attributable to that company. Do this for each year included in the notice.
 - b. If there is insufficient room on Form 5278 to list all the companies, annotate "See Schedule 1A attached" on the first line under "Adjustment to Income," and for each year provide an aggregate total of all the companies' adjustments to income.
 - c. Using Form 4549-B, **Report of Income Tax Examination Changes**, or similar schedule, list all the companies and the total adjustment proposed against each. Label this schedule as Schedule 1A. The total of all the adjustments listed on this schedule should equal the aggregate total described in (b) above.

Note: Instead of using "Schedule 1A" to reference the schedule that lists all the companies, and the total adjustment proposed against each, any schedule or exhibit number may be used for the schedule discussed in (b) and (c).
 - d. It is preferable that Form 5278 and Form 4549-B list all companies with proposed adjustments, as discussed above. However, if it is impractical, the adjustments do not have to be listed by entity as this will not invalidate the notice.
- (7) List separately any automatic adjustments not attributable to any particular company. List them on the second line under "Adjustment to Income" on Form 5278.
- (8) The explanation of adjustment schedule (Schedule 2) should provide a detailed explanation for each issue proposed against the companies listed on Form 4549-B. Check to make sure the total of the issues listed for each company equals the adjustment amount shown on Schedule 1A for that company.
- (9) See Exhibit 8.17.4-6, **Affiliated Companies Statements, Computations, and Explanations**. This exhibit is an example of the Affiliations Statement, Form 5278, Form 4549-B, and explanations of adjustment schedules discussed above.

8.17.4.28.6
(09-09-2025)
Tax Required to be Withheld at Source (Form 1042)

- (1) Form 1042 is the annual taxable return used to report tax withheld on U.S. source income paid to foreign persons, including non-resident aliens, foreign partnerships, foreign corporations, foreign estates, and foreign trusts.
- (2) Adjustments to Form 1042 are subject to deficiency procedures. Statutory notice of deficiency procedures also apply to the failure to deposit penalty (IRC 6656) as it relates to Form 1042. See IRM 20.1.4.11.4, *Deficiency Procedures Form 1042*, for additional information.
- (3) Notice of deficiency letter:
 - a. Use Letter 901 for the notice. Letter 901 is available on APGolf.
 - b. A notice of deficiency issued for a Form 1042 requires Letter 901 with a general opening paragraph.
 - c. Generate Letter 901 and choose selectable paragraph 2 in APGolf. This selectable paragraph is for liabilities not involving affiliated companies. This selection is appropriate to use for cases involving withholding of tax at the source.
 - d. In the "Tax Type" field on the letter, enter "Withholding of Income Tax at Source."
 - e. In the Form number field, enter "Form 1042."
- (4) The rest of the notice is prepared as usual - prepare Form 4089 (or Form 4089-A and Form 870), Form 5278, explanations of adjustment, etc.

8.17.4.28.7
(09-09-2025)
Penalty Only Notice of Deficiency

- (1) A statutory notice of deficiency may be issued only for penalties subject to deficiency procedures. The determination of whether a penalty will be subject to a statutory notice of deficiency procedure depends on whether the underlying tax is subject to deficiency procedures. See IRM 8.17.4.17, **Including Penalties/ Additions to Tax in the Notice of Deficiency**, for additional information on penalties subject to deficiency procedures.
- (2) If it is determined that a penalty is subject to notice of deficiency procedures, a "penalty only" notice of deficiency can be issued just for the penalty in certain circumstances. See examples below:
- (3) **Example 1:** A notice of deficiency can be issued for a penalty when the underlying tax subject to deficiency procedures has been assessed and, therefore, can't be included in the notice of deficiency.
 - a. Form 5278 should be prepared and include the assessed tax on line 19 - the "Total tax shown on return or as previously adjusted" line. That way the Form 5278 will correctly show that there is no tax to include in the notice of deficiency.
 - b. A penalty computation based on the assessed tax must be included in the notice.
 - c. Any payments applied towards the assessed tax are not shown in the notice of deficiency prepared for the penalty.
- (4) **Example 2:** A penalty only notice of deficiency can also be issued if the adjustments resulted in no tax but, a penalty is applicable (for example, due to a loss or credit carryback).

8.17 Settlement Computations and Statutory Notices of Deficiency

8.17.4.28.8
(09-09-2025)

Open Criminal Case

- (1) When preparing a notice of deficiency involving open criminal aspects, Letter 894 may be used. Choosing the applicable selectable paragraph in APGolf modifies Letter 894 as follows:
 - a. After the opening paragraph of the letter, a new paragraph is added that reads: "Neither this notice, nor any action we take related to this notice, affects any potential criminal sanctions."
 - b. The two paragraphs entitled "If you agree with the Notice of Deficiency," and "If we don't hear from you" should be deleted. The first deleted paragraph reads as follows: "If you agree with our determination, sign the enclosed waiver form and return it to us at the address on top of this page. Sending this now can help limit the accumulation of interest." The second deleted paragraph reads: "If you decide not to sign and return the waiver, and you don't file a timely petition with the Tax Court, we'll assess and bill you for the deficiency after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States.)"
- (2) Letter 531-D, for notices of deficiency involving open criminal cases, may be used instead of Letter 894. No modifications are needed to the Letter 531-D.
 - a. Letter 531-D is not on ACDS, but a fillable Letter 531-D may be found on the Publishing Catalog website.
- (3) No waiver or other form permitting the taxpayer to agree to a deficiency should be prepared. Therefore, do not include Form 4089 or Form 870 with the notice. Form 4089-A is prepared instead for a notice of deficiency prepared for an active criminal case.
- (4) Area Counsel's written approval of the notice of deficiency is required prior to issuance. See IRM 8.17.4.31, **Counsel Review of Notices**.

8.17.4.28.9
(09-27-2013)

Notice of Final Partnership Administrative Adjustment (FPAA)

- (1) Notice of deficiency procedures are generally not used in TEFRA cases.
- (2) If any partner in a TEFRA partnership does not agree to the settlement, Appeals will prepare the notice of FPAA.
- (3) The FPAA is similar to a notice of deficiency; however, it contains only partnership adjustments rather than a tax deficiency. See IRM 8.19, *Appeals Pass-Through Entity Handbook*, for complete instructions on the preparation of the FPAA.

Note: Refer to IRM 8.19.14, *Bipartisan Budget Act of 2015 Procedures*, for guidance on Bipartisan Budget Act (BBA) Notice of Proposed Partnership Adjustment (NOPPA) and Notice of Final Partnership Adjustment (FPA).

8.17.4.28.10
(09-27-2013)

Open TEFRA Proceeding and Non-TEFRA issues adjusted

- (1) When preparing a notice of deficiency for a case with an open TEFRA proceeding, the notice of deficiency for non-TEFRA items is issued at the investor level and shows the deficiency in tax and penalties attributable only to the non-TEFRA adjustments.
 - a. *Munro* computations (*Munro v. Commissioner*, 92 T.C. 71 (1989)) are used, except when the returns involved are determined to be overshadowed.

- b. See IRM 8.19, **Appeals Pass-Through Entity Handbook**, for information on *Munro* computations and oversheltered returns.

8.17.4.29
(09-27-2013)
Tax Returns not Available

- (1) The following includes instructions for preparing notices of deficiency when the original return is not available.

8.17.4.29.1
(05-10-2017)
Notice of Deficiency When the Original Tax Return is not Available

- (1) An examination can be conducted on a copy of a taxpayer's return or with a BRTVU or RTVUE print.
- (2) If it becomes necessary for Appeals to issue a notice of deficiency, the original return must be requisitioned through STARS. The ATE is responsible for requesting that STARS order the original return.
- (3) If a statute is imminent, it may be necessary to issue a notice of deficiency based on copies of returns or BRTVU/RTVUE prints. If so, obtain a transcript to verify taxable income and tax per return.

8.17.4.29.2
(09-27-2013)
Asserting the Civil Fraud Penalty When the Tax Return is not Available

- (1) If the fraud penalty is asserted on a copy of a return, immediate attempts must be made by the ATE to secure the original tax return. Such attempts need to be documented and made part of the case file.
- (2) See IRM 4.8.9.21, *Electronically Filed Returns Where the Civil Fraud is Asserted*, for information about electronic returns.

8.17.4.30
(09-09-2025)
TCS Returns Notice to the ATE

- (1) TCSs must upload all final tax computations into ACDS.
Note: When the case is closed in ACDS, the TCS and ATE will receive an automated system generated email notification that the case has been completed and closed.
- (2) TCSs have been encouraged to use the RGS generated paragraph schedules for statutory notices of deficiency when appropriate. Since these files are in a PDF format, if the ATE needs to make a change to the language for those cases, the Form 3608 will need to be re-submitted to the designated ATCTM in order for the TCS to make the revision/correction.

8.17.4.31
(09-09-2025)
Counsel Review of Notices

- (1) Counsel's review is needed prior to issuing the notice on the following cases:
 - a. Any case where there is a substantial risk that a court may invalidate a regulation, revenue procedure, or revenue ruling;
 - b. Any case which contains an issue which the IRS has yet to successfully litigate and has lost in one or more circuits, and the National Office has not announced a uniform position;
 - c. Any case in which Appeals proposes to eliminate the fraud penalty or reduce the Chief Counsel's computation of the criminal adjustment for cases in which Counsel has recommended prosecution;
 - d. Any case involving a novel or unique issue;
 - e. Any case involving a substantial risk of an attorney's fee award against the government;
 - f. Any case in which the government has the burden of proof, including all fraud cases;

8.17 Settlement Computations and Statutory Notices of Deficiency

- g. Any case involving the allocation of income and deductions among taxpayers (IRC 482);
 - h. Any case in which the IRS proposes to impose the accumulated earnings tax (IRC 531);
 - i. Any case in which the notice is drafted in terms of alternative positions;
 - j. Any case related to a docketed case;
 - k. Any case involving information obtained from a grand jury proceeding under Rule 6(e)(3)(C)(i) of Federal Rules of Criminal Procedure;
 - l. Final adverse letters on issues subject to declaratory judgment procedures described in IRC 7428 or IRC 7476;
 - m. Any notice asserting the economic substance doctrine under IRC 7701(o), Clarification of Economic Substance Doctrine, and the related penalty under IRC 6662(b)(6), Imposition of Accuracy-related Penalty on Underpayments, and IRC 6662(i), Increase in Penalty in Case of Non-disclosed Non-economic Substance Transactions;
 - n. Any case involving post-jeopardy assessment;
 - o. Any case involving a micro-captive insurance arrangement. This includes cases in which the taxpayer has made an election under IRC 831(b) and may involve an election under IRC 953(d) as well (if the captive insurance company is a foreign entity); or
 - p. Any other case in which, in the judgment of Appeals, Counsel review would be appropriate and helpful.
- (2) If the ATE determines Counsel will review the proposed notice of deficiency, they will send the administrative file to APS, who will send it to Counsel. The ATE should ensure the administrative file that will be sent to Counsel contains the following:
- a. Approved Form 5402, **Appeals Transmittal and Case Memo**, marked for Counsel concurrence and either a completed but unsigned statutory notice or a draft of paragraphs to be included in the statutory notice.
 - b. All returns and documents which were in the case file when it was received in the Appeals office.
 - c. Copies of all correspondence received or sent while the case was in Appeals.
- (3) If there is no on-site APS unit, the ATE may send (or deliver) the administrative file directly to Counsel.
- a. If the ATE sends or delivers the file directly to Counsel and not through APS, the ATE must ensure that the ACTION Code SNDC is entered on ACDS with a TODATE (the date the file is sent to Counsel).
 - b. To request this update be made by APS, the ATE must submit request using the *Appeals Shared Program Hub - Home (SharePoint.com)*. On this site, the ATE should scroll down to the APS - Case Update Requests (Appeals Only) section to add their case update request. The site then notifies ATEs that their request has been assigned, completed and/or rejected, and allows ATEs to monitor and follow-up on their open requests.

8.17.4.31.1
(09-09-2025)
**Cases Returned by
Counsel - Concurrence
Approved**

- (1) When the administrative file is returned to APS with Counsel's approval, APS will return the file to the ATE for preparation of the statutory notice and signature:
 - a. The approving Appeals official signs the notice in pen and ink, on behalf of the Commissioner of Internal Revenue.

Note: Copies of the notice letter, which are used for the originals, or duplicate originals should have a handwritten signature and not a facsimile or reproduced signature. However, electronic signatures are acceptable, if they meet the requirements specified in IRM 8.6.4.10, **Electronic Signature Use on Appeals Letters and Documents**. For more information, please see IRM 10.10.1.3.1, **Requirements for Legally Binding Electronic Signatures**.
- (2) If the administrative file is returned directly to the ATE with Counsel's approval, follow the procedures below:
 - a. If Counsel sends the file back to the ATE without going through APS, and an ACTION code SNDC and a TODATE is on ACDS, the ATE must ensure that the FROMDATE (date the administrative file was returned by Counsel) is entered on ACDS.
 - b. To request this update be made by APS, the ATE must submit request using the *Appeals Shared Programs Hub - Home (sharepoint.com)*. On this site, the ATE should scroll down to the *APS-Case Update Requests (Appeals Only)* section to add their case update request. The site then notifies ATE that their request has been assigned, completed and/or rejected, and allows ATE to monitor and follow-up on their open requests.

8.17.4.31.2
(09-09-2025)
**Cases Returned by
Counsel - Without
Concurrence**

- (1) Occasionally, a case referred to Counsel for consideration of the issuance of a notice of deficiency, Employee Plan (EP) or Exempt Organization (EO) adverse determination letter, or for concurrence in the removal of a fraud penalty, is returned to Appeals with a memorandum stating the reason for withholding concurrence.
- (2) If the administrative file is returned directly to the ATE by Counsel:
 - a. If Counsel sends the file back to the ATE without going through APS, and an ACTION code SNDC and a TODATE is on ACDS, the ATE must ensure that the FROMDATE (date the administrative file was returned by Counsel) is entered on ACDS.
 - b. To request this update be made by APS, the ATE must submit request using the *Appeals Shared Programs Hub - Home (sharepoint.com)*. On this site, the ATE should scroll down to the *APS-Case Update Requests (Appeals Only)* section to add their case update request. The site then notifies ATEs that their request has been assigned, completed and/or rejected, and allows ATEs to monitor and follow-up on their open requests.

When the Appeals Area Director and the Associate Area Counsel cannot agree on the actions recommended in Counsel's advice, the matter is resolved by the Director of the Appeals Operating Unit (e.g., Director, Examination Appeals or Collection Appeals) after consideration of the advice and the Deputy Area Counsel.

8.17 Settlement Computations and Statutory Notices of Deficiency

8.17.4.32
(09-09-2025)

Statutory Notice Mailed to Invalid Address

- (1) A statutory notice can be considered invalid if it is not sent to the taxpayer's last known address. See IRM 8.2.2, *Statutory Notice of Deficiency Cases*, for information on handling a case where the notice of deficiency was mailed to an invalid address and returned as undeliverable.

Note: If there is any doubt as to what the taxpayer's last known address is, additional duplicate original notices of deficiency should be sent to each potential last known address.

- (2) The statute in the case is the normal or extended statute that existed before the notice of deficiency was issued. Take the following steps depending on whether the statute is open or not:
 - a. If open, Appeals issues a new notice of deficiency, unless the ATE determines the returned notice was sent to the taxpayer's last known address.
 - b. If not open, Form 3999, **Statute Expiration Report**, must be prepared.

Note: A notice of deficiency sent to an address other than the "last known address" is NOT valid. Therefore, an assessment may not be made as a default assessment. (In some cases, a protective assessment may be requested by Counsel until it can be determined if the notice of deficiency was mailed to the proper address.) The statute for the taxpayer with the invalid notice of deficiency is the normal or extended statute (before the notice of deficiency was issued). If the statute is still open, a new notice of deficiency must be issued to the last known address. If the statute is not open, follow established procedures for preparing Form 3999.

8.17.4.33
(11-09-2007)

Payments Received After the Notice is Issued

- (1) Under IRC 6603 and Rev. Proc. 2005-18, a remittance made in response to a proposed liability, or after the issuance of a notice of deficiency, will be posted as a payment of tax, unless specifically designated as a deposit by the taxpayer.
- (2) Post-statutory notice of deficiency remittances will not deprive the Tax Court of jurisdiction. Remittances made prior to the notice may deprive the Tax Court of jurisdiction. (See section 4.02 of Rev. Proc. 2005-18). In order to preserve the right to petition the Tax Court, a pre-notice remittance must be posted as an "advance payment." Interest will continue to accrue on accrued interest. In order to stop the running of any further interest, a taxpayer must make a remittance sufficient to cover all accrued interest as of the date of remittance as well as the entire amount of the underlying tax.
- (3) If a taxpayer proposes to make an advance payment of the entire deficiency in a pre-90-day income, certain excise tax, estate or gift tax case after the IRS proposes a liability, advise the taxpayer that assessment prior to issuance of a notice of deficiency precludes the notice and the Tax Court jurisdiction. If the IRS receives a full payment remittance, and has not received an explanation of the foregoing, promptly contact the taxpayer to explain the impact upon the statutory notice.
- (4) When an advance payment is received after agreement is tentatively reached, but before review and approval of the determination, a new agreement form reflecting receipt of the payment is not necessary. If Form 5402 is prepared before receipt of the payment, the ATE should revise it to reflect the receipt

and process the remittance. See IRM 8.20.6.2.1, *IRC 6603 Deposits, Undesignated Remittances and Conversion of Cash Bonds Under Revenue Procedure 2005-18*.

- (5) In 90-day cases, do not assess liability for advance payments made after the issuance of the notice of deficiency unless specifically requested. An assessment will not deprive the taxpayer who files a petition of the Tax Court jurisdiction. The assessment is usually not made until the case is closed, unless there is a large deficiency.

8.17.4.34 (05-10-2017) **Actions and Disposition Once Notice of Deficiency is Issued**

- (1) There are several actions that can occur once a notice of deficiency is issued. The following is a list of the potential actions and the IRM citations where additional information on each can be found:
 - a. Notice of Deficiency (Appeals) is rescinded under Rev. Proc. 98-54. See IRM 8.2.2.5, *Statutory Notice of Deficiency Rescinded Under Rev. Proc. 98-54*.
 - b. Notice of Deficiency is returned undeliverable or unclaimed. See IRM 8.17.4.32, **Statutory Notice Mailed to Invalid Address**.
 - c. Taxpayer agrees during 90 (150) day period. See IRM 8.2.2.6, *Statutory Notice of Deficiency Disposition and Closing*.
 - d. Notice of Deficiency is reconsidered during suspense period. See IRM 8.2.2.4.3, *Reconsideration of Appeals Issued Statutory Notice of Deficiency during Suspense Period*.
 - e. Taxpayers file the Tax Court petition or complaint with U.S. District Court or the U.S. Court of Federal Claims during the suspense period. See IRM 8.4.1, *Procedures for Processing and Settling Docketed Cases*.
- (2) Disposition of a notice of deficiency occurs in one of the following ways:
 - Taxpayer agrees to the deficiency within the 90-day (150-day) period by signing the appropriate agreement form;
 - Taxpayer fails to file the petition with the Tax Court within the prescribed period and the deficiency is assessable by default;
 - Taxpayer files a timely petition and the case becomes docketed in the Tax Court.

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Exhibit 8.17.4-1 (09-27-2013)

Identification of Tax Years in Notice- Additional Examples

Identification of Tax Years in Notice - Additional Examples

(1) If an individual return covers the income for either a calendar or fiscal year to the date of death of the individual in the year, the beginning and closing dates of the period should be stated. For example:

tax year January 1, 20----, to April 15, 20----, or

tax year March 1, 20----, to October 10, 20----,

(2) If a fiduciary return covers the income of an estate for the period starting on the date in which the estate came into existence through the end of the calendar or fiscal year in which such date falls, the beginning and closing dates of the period should be stated (this includes estates created when a person is deemed disabled). For example:

tax year April 16, 20----, to December 31, 20----, or

tax year October 11, 20----, to February 28, 20----,

(3) In the case of the first return of a corporation, or the final return of a corporation, the beginning and closing date of the period covered by the return should be stated; for example:

tax year March 5, 20----, to December 31, 20----, if the corporation came into existence in a calendar year:

tax year April 10, 20----, to November 30, 20----, if the corporation came into existence in a fiscal year:

tax year January 1, 20----, to October 31, 20----, if the corporation's existence ended in a calendar year:

tax year February 1, 20----, to August 25, 20----, if the corporation's existence ended in a fiscal year.

(4) If a return is for a period of less than 12 months due to change in accounting period, the taxable year should be stated as:

tax year March 1, 20----, to December 31, 20----, where a change from a fiscal year basis to a calendar year basis is involved, or

tax year January 1, 20----, to April 30, 20----, where a change is made from a calendar year basis to a fiscal year basis.

8.17 Settlement Computations and Statutory Notices of Deficiency

Exhibit 8.17.4-1 (Cont. 1) (09-27-2013)

Identification of Tax Years in Notice- Additional Examples

(5) If a separate return, due to the creation or termination of an affiliated status, is filed by a corporation covering a period of a year, the beginning and closing date of the period during which the corporation was not affiliated should be designated, for example:

tax year January 1, 20---, to April 25, 20---, for a period prior to affiliation, or

tax year October 16, 20---, to December 31, 20---, for a period following termination of an affiliation.

Exhibit 8.17.4-2 (11-09-2007)

Notice of Deficiency - Partnership Adjustments

John Cardinal

Schedule 2

Explanation of Adjustments

a) Partnership Net Income – XYZ Company

It is determined that your distributive share of the net income from the partnership known as XYZ Company is \$135,000.00, rather than the \$100,000.00 shown on your tax return. See Exhibit A for details. Accordingly, your taxable income is increased \$35,000.00 for the year ended December 31, 2022.

b) Partnership Capital Gain Income – XYZ Company

It is determined that your distributive share of capital gain income from the partnership known as XYZ Company is \$30,000.00, rather than the \$10,000.00 shown on your tax return. See Exhibit A for details. Accordingly, your taxable income is increased \$20,000.00 for the year ended December 31, 2022.

Notice of Deficiency - Partnership Adjustments (Cont 1)

John Cardinal

Exhibit A

XYZ Company Partnership

It is determined from examination of the books and records of the partnership known as XYZ Company that your share of distributive income for the taxable year ended December 31, 2022, is \$135,000.00 and your distributive share of capital gain net income is \$30,000.00, based on the following adjustments to the XYZ Company partnership:

Ordinary net income per partnership return	200,000.00
Adjustments to return:	
(1) Business promotion expenses	15,000.00
(2) Travel expenses	25,000.00
(3) Interest expense	30,000.00
	<u>70,000.00</u>
Ordinary income as determined	270,000.00
Ownership percentage	.50
Distributive share of partnership income	135,000.00
Partnership income claimed on your return	<u>100,000.00</u>
Increase to ordinary income	35,000.00
	=====

8.17 Settlement Computations and Statutory Notices of Deficiency

Exhibit 8.17.4-2 (Cont. 1) (11-09-2007)
Notice of Deficiency - Partnership Adjustments

Ordinary net income per partnership return	200,000.00
Capital gain net income per partnership return	20,000.00
(4) Sale of business	40,000.00
Capital gain net income as determined	60,000.00
Ownership percentage	<u>.50</u>
Distributive share of capital gain net income	30,000.00
Capital gain net income claimed on your return	<u>10,000.00</u>
Increase to capital gain net income	20,000.00
	=====

Explanation of Partnership Adjustments

(1) It is determined that the deduction of \$27,000.00 shown on the XYZ Company partnership return as business promotion expenses is reduced by \$15,000.00 because it has not been shown that more than \$12,000.00 was for an ordinary and necessary business expense, or was expended for the purpose designated. Also, the substantiation requirements of section 274 of the Internal Revenue Code have not been met. Accordingly, income is increased \$15,000.00 for the tax year ended December 31, 2022.

(2) It is determined that the deduction of \$45,000.00 shown on the XYZ Company partnership return as travel expenses is reduced by \$25,000.00 because it has not been shown that more than \$20,000.00 was for an ordinary and necessary business expense, or was expended for the purpose designated. Accordingly, income is increased \$25,000.00 for the tax year ended December 31, 2022.

(3) It is determined that the deduction of \$40,000.00 shown on the XYZ Company partnership return as interest expense is reduced by \$30,000.00 because it has not been established that any amount greater than \$10,000.00 was paid during the tax year ended December 31, 2022. Accordingly, income is increased \$30,000.00 for the tax year ended December 31, 2022.

(4) It is determined that the long term capital loss of \$50,000.00 reported on the XYZ Company partnership return is allowable in the amount of \$10,000.00. It has not been established that any amount greater than \$10,000.00 is a deductible capital loss under the provisions of the Internal Revenue Code. Accordingly, income is increased \$40,000.00 for the tax year ended December 31, 2022.

Exhibit 8.17.4-3 (09-27-2013)
Claim Invitation Letter

<p>Internal Revenue Service</p> <p>Independent Office of Appeals (Address)</p> <p>Date:</p> <p>JOHN Q CROW 111 MAIN STREET ANYTOWN, USA 00000-0000</p>	<p>Department of the Treasury</p> <p>Person to Contact: Appeals Officer's name Employee ID</p> <p>Refer Reply to: AP:XX:XX:XX</p> <p>In Re: Income Tax</p> <p>SSN/EIN Number: XXX-XX-XXXX</p> <p>Tax Period(s) Ended: 12/31/XXXX</p>
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Dear Mr. Crow:

We are sending you a Notice of Deficiency of *(kind of tax)* for the *(year/period)* ended *(date)*. We are also considering your returns for the *(year/period)* ended *(date)* for which we have tentatively determined *(an overassessment/overassessments)* of *\$(amount)* for *(year)*; *\$(amount)* for *(year)*; (etc.)

The amount of a tax refund resulting from an overassessment is affected by the amount of any outstanding tax deficiency. We will, therefore, withhold making the overassessment(s) until any such *(deficiency has/deficiencies have)* been determined. However, since the time in which we may allow refund claims for *(this overassessment/these overassessments)* may expire before we can process your claim, we suggest you protect your rights by immediately filing *(a refund claim/refund claims)* for the *(year(s)/ (period(s))* under consideration.

Blank forms are enclosed for this purpose. You should file a separate form for each *(year/period)*, and you may use the information contained in *(the enclosed examination report/the enclosed Revenue Agent's report/this letter)* as grounds for your claim. **(Note to Tax Computation Specialist: The "blank forms" mentioned in the letter are the claim forms (Form 1040-X, Form 1120-X, or Form 843). Give reasons for the overassessment unless they are given in an enclosed statement or report.)**

When you send us your claim(s), please enclose the copy of this letter. It will help us identify your account. If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

8.17 Settlement Computations and Statutory Notices of Deficiency

Exhibit 8.17.4-3 (Cont. 1) (09-27-2013)

Claim Invitation Letter

Sincerely,
(Name)
Appeals Officer

Enclosures:
Blank Forms
Copy of Letter
Report

Exhibit 8.17.4-4 (09-27-2013)

Notice of Deficiency Letter 894 with IRC section 6651(a)(2)

<p>Department of the Treasury Internal Revenue Service</p> <p>Independent Office of Appeals</p> <p>Date:</p> <p>JOHN Q DOVE 1234 MAIN STREET ANYTOWN, CA 90000-1111</p>	<p>Letter Number: 894</p> <p>Person to Contact: Appeals Officer's name Employee ID Tel: (XXX) XXX-XXXX Fax: (XXX) XXX-XXXX</p> <p>Refer Reply to: AP:XX:XX:XX</p> <p>In Re: Income Tax</p> <p>SSN/EIN Number: XXX-XX-XXXX</p> <p>Last Day to File a Petition with the United States Tax Court:</p>
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Certified Mail

Notice of Deficiency

Tax Year(s) Ended	Tax	Penalties or Additions to Tax
		IRC 6651(a)(1) IRC 6651(a)(2)
December 31, 2019	\$5,000.00	\$1,125.00 *

* The IRC 6651(a)(2) addition to the tax is a penalty of 0.5 percent of the unpaid tax liability that will be added to the tax for each month, or fraction thereof, of nonpayment, up to a maximum of 25 percent, based upon the liability shown on the section 6020(b) return, or the final determined liability, if less.

8.17 Settlement Computations and Statutory Notices of Deficiency

Exhibit 8.17.4-5 (11-09-2007)

Tip Income and FICA Tax Informational Notice

FOR INFORMATIONAL PURPOSES ONLY

The adjustment to your income contained in this report has increased your FICA tax (social security tax plus medicare tax) liability. Therefore, we have assessed (or will assess) the FICA tax and the applicable penalty in the amounts shown below.

A separate notification should have been (or will be) sent to you on the FICA tax and penalty assessment from the Campus of the Internal Revenue Service.

Please note that the FICA tax and penalty assessments from the Campus of the Internal Revenue Service are not part of the deficiency shown in the attached Notice of Deficiency and may not be contested in the U.S. Tax Court.

Unreported Tip Income subject to FICA (Social Security)	\$ _____	
Social Security Tax Rate	x _____	
Increase in Social Security Tax		+ _____
Unreported Tip Income subject to Medicare	\$ _____	
Medicare Tax Rate	x _____	
Increase in Medicare Tax		+ _____
50% penalty for failure to report tips in accordance with IRC 6652(b)		+ _____
Total Amount Due		= _____

If you wish to make a payment at this time, you must specify the amount of the payment that is for the FICA tax and/or the penalty.

Exhibit 8.17.4-6 (11-09-2007)
Affiliated Companies Statements, Computations, and Explanations
Attachment to Form 4089-A: Affiliations Statement

ABCD Corporation and Subsidiaries EIN: XX-XXXXXXX
Tax Years : 9/30/2020, 9/30/2021

Attachment to Form 4089-A: Affiliations Statement

Years Affiliated

Name of Corporation	9/30/2020	9/30/2021
<u>Parent Company:</u>		
ABCD Corporation	X	X
<u>Subsidiary Companies:</u>		
Agate Company, Inc.	X	X
Alum Properties, Inc.	X	
Bismuth Company, Inc.	X	
Calcite, Inc.	X	X
Copper, Inc.		X
Diamond Corporation	X	
Dolomite Company		X
Emerald Company	X	X

The tax liability of ABCD Company and each subsidiary company named above is stated as provided for by regulations prescribed under Section 1502 of the Internal Revenue Code. The deficiencies shown will be assessed severally against each corporation named above in accordance with regulations under section 1502 of the Internal Revenue Code.

This is a Form 5278 for ABCD Corporation and Subsidiaries for the tax years September 30, 2020, and September 30, 2021. It depicts how to prepare a notice of deficiency when there is a parent company and several subsidiary companies.

Line 7 contains two Adjustments to Income - one on line a and one on line b. The adjustment on line a is entitled See Schedule 1A Attached in the amounts of \$19,577,754 for 2020 and \$30,870,631 for 2021. The adjustment on line b is entitled Environmental Tax Deduction in the amounts of a decrease of \$11,746 for 2020 and a decrease of \$13,086 for 2021.

Line 8 shows Total Adjustments of \$19,566,008 for 2020 and \$30,857,545 for 2021.

Line 9 is Taxable Income per Return as filed in the amounts of \$526,753,789 for 2020 and \$491,929,507 for 2021.

8.17 Settlement Computations and Statutory Notices of Deficiency

Exhibit 8.17.4-6 (Cont. 1) (11-09-2007)

Affiliated Companies Statements, Computations, and Explanations

Line 10 is Taxable Income as Revised in the amounts of \$546,319,797 for 2020 and \$522,787,052 for 2021.

Tax on the Taxable Income as Revised is shown in Line 11 in the amounts of \$185,748,731 for 2020 and \$177,747,598 for 2021.

There are no credits to apply against the tax. However, there are additional tax liabilities for environmental tax in the amounts of \$25,890 for 2020 and \$35,780 for 2021.

The Total Corrected Tax Liability is the Tax amount plus the additional tax liability for the environmental tax. Therefore, Line 18 shows Total Corrected Tax Liability totaling \$185,774,621 for 2020 and \$156,965,789 for 2021.

The Total Tax per Return is shown on Line 19 and totals \$156,059,719 for 2020 and \$156,965,789 for 2021.

There are no adjustment amounts on Line 20 for increases (decreases) to EIC, ACTC, and Fuel Credits.

Therefore, the difference between the amounts on Line 18 and the amounts on Line 19 equals the Deficiency-Increase in Tax amount on Line 21. The amounts are \$29,714,902 for 2020 and \$20,817,589 for 2021.

Since there are no Prepayment Credit Adjustments on Line 22, the Balance Due shown on Line 23 is the same as the Deficiency amounts shown on Line 21.

Schedule 1A Adjustments on Form 4549B

Department of the Treasury - Internal Revenue Service
INCOME TAX EXAMINATION CHANGES

Name of Taxpayer ABCD Corporation and Subsidiaries	SSN or EIN XX-XXXXXXX
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Adjustments to Income	<u>9/30/2020</u>	<u>9/30/2021</u>
<u>Parent Company:</u>		
1 ABCD Corporation	8,392,200	18,017,604
<u>Subsidiary Companies:</u>		
2 Agate Company, Inc.	8,815,355	8,445,249
3 Alum, Inc.	2,370,199	
4 Copper, Inc.		4,407,778

Exhibit 8.17.4-6 (Cont. 2) (11-09-2007)

Affiliated Companies Statements, Computations, and Explanations

Total Adjustments This Page	19,577,754	30,870,631
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Schedule 1B Adjustments on Form 4549B

ABCD Corporation and Subsidiaries	Schedule 1B
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1 ABCD Corporation		
	<u>9/30/2020</u>	<u>9/30/2021</u>
Interest Expense	4,828,678.00	4,400,901.00
Depreciation Expense	<u>3,563,522.00</u>	<u>13,616,703.00</u>
Total to Line 1 - F 4549-B	8,392,200.00	18,017,604.00
	=====	=====
<u>Subsidiary Companies:</u>		
2 Agate Company, Inc.		
Entertainment Expense	8,815,355.00	8,445,249.00
3 Alum, Inc.		
Interest Income	2,370,199.00	
4 Copper, Inc.		
Depreciation Expense		4,407,778.00

Explanation of Adjustments
Schedule 1B Adjustments

8.17 Settlement Computations and Statutory Notices of Deficiency

Exhibit 8.17.4-6 (Cont. 3) (11-09-2007)

Affiliated Companies Statements, Computations, and Explanations

Explanation of Adjustments

ABCD CORPORATION (Parent)

Interest Expense

It is determined that you are entitled to a deduction for interest expense in the amount of \$3,000,000.00 rather than \$7,828,678.00 as claimed on your return for tax year ended September 30, 2020, and \$1,000,000.00 rather than \$5,400,901.00 as claimed on your return for tax year ended September 30, 2021. Accordingly, taxable income is increased \$4,828,678.00 for tax year ended September 30, 2020, and \$4,400,901.00 for tax year ended September 30, 2021.

Depreciation Expense

It is determined that the depreciation of \$3,563,522.00 for tax year ended September 30, 2020, and \$13,616,703.00 for tax year ended September 30, 2021, is not allowed because it has not been established that the property was used in a trade or business or in the production of income. Accordingly, taxable income is increased \$3,563,522.00 for tax year ended September 30, 2020, and \$13,616,703.00 for tax year ended September 30, 2021.

AGATE COMPANY, INC.

Entertainment Expense

It is determined that the deductions of \$8,815,355.00 for tax year ended September 30, 2020, and \$8,445,249.00 for tax year ended September 30, 2021, shown on your returns as entertainment expense are not allowed because it has not been established that they were for ordinary and necessary business expenses or were expended for the purposes designated. Accordingly, taxable income is increased \$8,815,355.00 for tax year ended September 30, 2020, and \$8,445,249.00 for tax year ended September 30, 2021.

ALUM, INC.

Interest Income

It is determined that you received interest income totaling \$2,370,199.00 for tax year ended September 30, 2020, that was not reported on your income tax return. Accordingly, taxable income is increased \$2,370,199.00.

COOPER, INC.

Depreciation Expense

It is determined that the depreciation of \$4,407,778.00 for tax year ended September 30, 2021, is not allowed because it has not been established that the property was used in a trade or business or in the production of income. Accordingly, taxable income is increased \$4,407,778.00.

Line 7b. of Form 5278 : ENVIRONMENTAL TAX DEDUCTION

It is determined that your environmental tax deduction is \$25,890.00 rather than \$14,144.00 as shown on your return for tax year ended September 30, 2020, and \$35,780.00 rather than \$22,694.00 as shown on your return for tax year ended September 30, 2021. Accordingly, taxable income is decreased by \$11,746.00 and \$13,086.00 for the respective tax years ended September 30, 2020, and September 30, 2021. See Schedule 3 for a computation.

Line 17a. of Form 5278: ENVIRONMENTAL TAX

Exhibit 8.17.4-6 (Cont. 4) (11-09-2007)

Affiliated Companies Statements, Computations, and Explanations

Explanation of Adjustments

It is determined that your environmental tax is \$25,890.00 rather than \$14,144.00 as shown on your return for the tax year ended September 30, 2020, and \$35,780.00 rather than \$22,694.00 as shown on your return for the tax year ended September 30, 2021. Accordingly, tax is increased by \$11,746.00 and \$13,086.00 for the respective tax years ended September 30, 2020, and September 30, 2021. See Schedule 3 for a computation.

