



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.21.3

AUGUST 31, 2018

EFFECTIVE DATE

(08-31-2018)

PURPOSE

- (1) This transmits revised Internal Revenue Manual (IRM) 8.21.3, *Appeals Technical Employees Statute Responsibility*.

MATERIAL CHANGES

- (1) This IRM section was revised to incorporate Interim Guidance Memorandum AP-08-0418-0006, *Initial Conference for Liability, Penalty Appeals and Innocent Spouse Cases*.
- (2) Changed throughout this IRM section the term “Appeals hearing officer” to the term Appeals Technical Employee or (ATE).
- (3) Added new IRM 8.21.3.1, *Program Scope and Objectives*, and related sections containing internal control information required by IRM 1.11.2, *Internal Revenue Manual (IRM) Process*. As a result, all other IRM sections were renumbered.
- (4) Minor editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references have been reviewed and updated.
- (5) References to the following consent forms were removed:
 - Form 872-I, *Consent to Extend the Time to Assess Tax As Well as Tax Attributable to Items of a Partnership*. Obsolete as of October 29, 2009.
 - Form 872-IA, *Special Consent to Extend the Time to Assess Tax As Well As Tax Attributable to Items of a Partnership*. Obsolete as of October 29, 2009.
 - Form 872-Q, *Notice of Termination of Special Consent to Extend the time to Assess Tax Attributes to Items of an S Corporation*. Obsolete as of April 11, 2008.
 - Form 872-R, *Special Consent to Extend the Time to Assess Tax Attributable to Items of an S Corporation*. Obsolete as of April 11, 2008.
 - Form 872-S, *Consent to Extend the Time to Assess Tax Attributable to Items of an S Corporation*. Obsolete as of April 11, 2008.
- (6) Incorporated Servicewide Memorandum from Deputy Commissioner for Services and Enforcement, *Revision of Policy for Use of Fax in Taxpayer Submissions*, dated November 19, 2015.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.21.3, **Appeals Technical Employees Statute Responsibility**, dated August 28, 2014 and incorporates Internal Guidance AP-08-0418-0006, **Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases**. Incorporated Servicewide Memorandum from Deputy Commissioner for Services and Enforcement, **Revision of Policy for Use of Fax in Taxpayer Submissions**, dated November 19, 2015.

AUDIENCE

Appeals Technical Employees

Anita M. Hill
Director, Case and Policy Support

8.21.3

Appeals Technical Employees Statute Responsibility

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8.21.3.1
(08-31-2018)
Program Scope and Objectives

- (1) *Purpose* - This IRM section provides procedures and guidance to Appeals Technical Employees (ATEs) for protecting assessment statutes and for preparing and processing consents on all cases assigned. This IRM follows the guidelines established in IRM 25.6.22, *Extension of Assessment Statute of Limitations By Consent*, when preparing consent forms.
- (2) *Audience* - Appeals Technical Employees (ATEs).
- (3) *Policy Owner* - Appeals Policy is under Director, Case and Operations Support.
- (4) *Program Owner* - Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization.
- (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.

8.21.3.1.1
(08-31-2018)
Background

- (1) This IRM section provides procedures for extending the assessment statute of limitations by consent agreement. It serves as a supplemental guidance for Appeals Technical employees and follows the established procedures outlined in IRM 25.6.22, *Statute of Limitations, Extension of Assessment Statute of Limitations by Consent*, which is the primary guidance for all IRS employees.

8.21.3.1.2
(08-31-2018)
Authority

- (1) Appeals is the Internal Revenue Service's dispute resolution forum.
- (2) The Commissioner granted authority to Appeals Team Managers, Appeals Team Case Leaders, Appeals Officers, and Settlement Officers to execute agreements to extend the period of limitations on assessments or collection and to accept Form 900, *Tax Collection Waiver*. See Delegation Order 25-2 (Rev. 2) (formerly DO-25-2 and DO-42, Rev. 28), IRM 1.2.52, *Servicewide Policies and Authorities, Delegation of Authority for Special Topics Activities*.
- (3) Appeals accomplishes its mission by considering protested and Tax Court cases, holding conferences, and negotiating settlements in a manner which ensures Appeals employee act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. IRC 7803(a)(3). See also Pub 5170, *Taxpayer Bill of Rights*.

8.21.3.1.3
(08-31-2018)
Responsibilities

- (1) The Director, Case and Operations Support (COS) is the executive responsible for designing, developing, delivering, and monitoring short and long range tax administration policies, programs, strategies, and objectives for the Appeals organization.
- (2) The Director, Policy, is responsible for providing technical and procedural guidance to Appeals employees, establishing and maintaining policies and standard procedures for Appeals work streams.
- (3) The Policy Analyst shown on the Product Catalog page as the originator is the assigned author of this IRM.

8.21.3.1.4
(08-31-2018)
Program Reports

- (1) Planning, Quality, and Analysis (PQA) provide trends and data analyses and detailed summary reports for Appeals.

8.21.3.1.5
(08-31-2018)

Terms and Acronyms

- (1) See IRM 8.1.1-1 Exhibit, *Common Terms Used in Appeals*, for common terms and definitions used in IRM Part 8. Terms listed in the exhibit are not included in the table.
- (2) The table lists commonly used acronyms and their definitions:

Acronym	Definitions
SVS	Statute Validation System
PEAS	Processing Employee Automated System
SND	Statutory Notice Of Deficiency
CSED	Collection Statute Expiration Date
FICA	Federal Insurance Contributions Act
FPAF	Final Partnership Administrative Adjustment

8.21.3.1.6
(08-31-2018)

Related Resources

- (1) This IRM is the primary source of guidance on this program. The following table lists additional sources of guidance. Together, this material forms the operating rules and responsibilities for this program.

Source	Title	Guidance On
IRM 25.6.22	Statute of Limitations, Extension of Assessment Statute of Limitations by Consent	Preparing and securing extensions of the period of time for assessment.
IRC 6501(c)(4)	Extension of time to Assess Tax	Extension by agreement.
IRC 6901(d)	Extension of time to assess tax against a transferee	Extension by agreement.

8.21.3.2
(08-31-2018)

General Guidelines for Appeals Technical Employees

- (1) Appeals Technical Employee (ATE) is defined in Exhibit 8.1.1-1 and applies to an Appeals Officer, Settlement Officer, and an Account Resolution Specialist who hold Appeals hearings, conferences, or otherwise resolve open cases in Appeals.
- (2) ATEs are responsible for protecting assessment statutes and monitoring collection statutes on all cases assigned to them. Their responsibilities are to:
 - a. Monitor statutes on non-docketed cases they send to Counsel.
 - b. Verify suspended statutes to ensure they fit the suspension criteria.
 - c. Ensure the accurate statute is reflected on Appeals Centralized Database System (ACDS). When an ACDS statute update, modification or change

is needed, use the Statute Validation Tracking System (SVS) in ACDS to update, modify or change the statute critical data field.

Statute Critical Data Fields	
(1)	Tax Period
(2)	Statute Date
(3)	Statute Code

Note: Generally, this procedure won't apply to collection statute expiration dates (CSEDs). See IRM 8.22.4.2.3, *Statute Responsibility in CDP*, for guidance.

- (3) If an ATE is out of the office, absent a factor outside the employee's control, such as an emergency, the employee must notify the Appeals Team Manager (ATM) of any action needed to protect a short statute in his/her absence.

8.21.3.2.1 (08-31-2018) New Receipts and Transfers

- (1) Appeals will not accept a proposed deficiency case if the number of days remaining on the Assessment Statute Expiration Date (ASED) for a new receipt is less than 365 days, with exceptions for estate tax cases and certain excise tax cases as shown below:
 - a. Appeals will not accept an estate tax case for assessment if less than 270 days remain on the ASED. See also IRM 8.21.3.2.3.2.
 - b. Appeals will not accept a case for an IRC 6206 assessment on excessive claims if less than 270 days remain on the ASED. See also IRM 8.21.3.2.3.22.
- (2) Appeals can return a case to Compliance for consideration if the taxpayer raises a new issue, new argument, or provides information not previously considered by Compliance during the appeals process providing there are at least 210 days remaining on the ASED at the time the case is received by Compliance. 180 days must remain on the ASED for Appeals to accept the case back from Compliance after their consideration of the new issue, new argument or new information.

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

- (3) Within 45 calendar days of receipt of a newly assigned and/or transferred case (i.e., date of CR/NR), the ATE will complete the statute verification. **The statute verification time frame shall not be extended beyond 45 days.** For TEFRA key cases, this guidance shall extend the statute verification time frame provided in IRM 8.21.6.2.2, **Appeals Technical Employees (ATE) Statute Responsibility for TEFRA Key Cases**, to 45 calendar days for field ATEs only. The five (5) workday time frame for validation by the TEFRA ATE, done prior to assignment of the case to a field ATE, shall remain in effect. The ATE must review the file to validate that all statute dates are correctly shown on ACDS. This includes the verification of the original statute, as well as validation of all extensions. Verifying the statute date in ACDS signifies that the ATE has reviewed the available source documents, IDRS, and completed any necessary research. If the ATE determines that the statute date reflected on ACDS is not correct and changes are necessary, the ATE must update the

statute critical data fields using the Statute Validation System (SVS). See IRM 8.21.3.2.1.1.

- (4) Because many cases are transferred due to workload considerations, additional consideration is necessary with respect to special consents. If the preliminary review indicates one or more statutes are extended using a special consent Form 872-A, **Special Consent to Extend the Time to Assess Tax**, Form 872-O, **Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items**, or mail Form 872-U, *Change of IRS Address to Submit Notice of Termination of Special Consent to Extend the Time to Assess Tax*, to the taxpayer. See also IRM 8.21.3.2.3.20.
- (5) An entry in the Case Activity Record (CAR) is automatically made by the SVS when a statute validation has been completed. A sub-action code entry of "VA", with the date of validation, is added to the CAR for every workunit in the case. The "VA" entry on the CAR will indicate that the ATE has verified the statute date on ACDS. Any further explanations or unusual circumstances should be documented in the CAR.
- (6) If the statute date shown on ACDS is incorrect, the ATE will use the "Validations" link at the bottom of the Case Summary Card screen to access the SVS menu. Select **ATE-Statute** from the list to proceed to the SVS screen and make the necessary updates to the statute date or statute code.
- (7) If assigned a docketed case, the ATE must review the following documents to verify that the non-petitioning spouse (NPS) and all non-petitioned years (NPY) are assessed:
 - a. Form 5403, **Appeals Closing Record**, with a noted DLN and 23C date.
 - b. TXMOD, IMFOL, or BMFOL showing the assessment.
- (8) ATEs should request a transcript every six months on any tax period with an ACDS statute code "SUB" to determine if a return was filed by the taxpayer. The filing of a return starts the running of a live statute from the date the return is received. See also IRM 25.6.1.9.4.5, *Substitute for Return (SFR)*.
- (9) ATEs are responsible for monitoring their time sheets and monthly statute lists to ensure all statute updates, modifications and changes are correctly updated on ACDS and are noted correctly in the Validation Tracking Log (VTL).

Note: See IRM 8.2.1.4, *Receipt of New Assignment by an Appeals Technical Employee (ATE)*, for additional information.

8.21.3.2.1.1
(08-28-2014)
**Procedures to Update
Statutes on ACDS**

- (1) All changes to the statute critical data fields (tax period, statute date, and statute code) may be made from the SVS screen. Once the changes are entered and the validation is submitted, the return is updated on ACDS and a log entry is made in the Validation Tracking Log.
- (2) If the tax period also requires an update to the AIMS database or any other system as a result of the updated statute critical data field, submit a request to the Processing Team Manager (PTM) for the AIMS update via the SVS. Select the appropriate office and PTM from the drop-down list in the SVS system to submit the request to the Appeals Processing Employee Automated System (PEAS) inbox.

- a. If you don't receive confirmation of the AIMS update within five (5) business days, contact the PTM who received the original update request for resolution.

- (3) If there's doubt as to the correct statute date, enter the earliest date determined. Immediately correct ACDS using SVS, if a change is required.

8.21.3.2.2 (08-31-2018) **Monthly Statute Report for ATEs**

- (1) Generate a monthly 180-day Statute Report from ACDS on your inventory of cases and do the following:
 - a. Annotate the list by the 5th business day of the month with appropriate status/actions to be taken and submit it to the ATM; and
 - b. Include the date consents were solicited, received and updated on ACDS.
- (2) Notify your ATM of any previously submitted cases appearing on the list with 45 days or less remaining on the statutory period. In these instances, the ATM will follow-up with the PTM to confirm the case will timely close.
- (3) Notify your ATM if any case appears on the 180-day Statute Report that was submitted for closing within the past 60 days.

8.21.3.2.3 (08-28-2014) **Protecting the Statute**

- (1) Determine whether a statute requires protection to ensure the statutory period for assessment doesn't expire. The statute is protected by the following actions:
 - a. Assessing the appropriate deficiency or overassessment on an agreed case.
 - b. Securing a consent to extend the statute of limitations.
 - c. Issuing a Statutory Notice of Deficiency (SND).
- (2) Consider seeking advice from Counsel when unusual or complex consent and/or statute questions arise.
- (3) Once you determine that a consent is needed, every effort should be made to obtain at least a six-month extension of the statutory period.
- (4) If the taxpayer requests an extension period that is shorter than needed to complete the appeal and other administrative actions, Appeals is not compelled to agree to such period.
- (5) Both the taxpayer and Appeals have the right to determine what they will agree to in the consent.

8.21.3.2.3.1 (08-31-2018) **Protecting Statutes, General Guidelines**

- (1) Generally cases are received with ample time left on the statute to resolve the issues and close the case. Initiate statute protection when it is determined that resolution of the case may not occur within the specified time frame.
- (2) The protection can be initiated at any time; however, when there are at least 150 days left on the statute and you determine that no settlement will be reached, you **must** protect the statute by securing a consent or initiating preparation of a SND.
- (3) Below are time-frames to follow for protecting statutes:

Time Remaining on ASED	Actions Required
150 days or more	<p>Solicit a consent from the taxpayer(s) and authorized representative (if applicable) no later than 150 days before the statutory period expires.</p> <ol style="list-style-type: none"> Use Letter 967, <i>Consent Extending Period of Limitation Transmittal</i>, to solicit the consent and include required enclosures; Ask the taxpayer to sign and return 2 copies of the signed consent form within 2 weeks from the date of Letter 967; and Document the consent solicitation activity with ACDS CARATS action and sub-action code CO-CS.
Between 120 days and 150 days	<p>Follow-up must be made within 30 days, but it's strongly recommended to follow up 2 weeks after the date of Letter 967 to ensure receipt of the consent before the time remaining on the ASED reaches 120 days.</p> <ol style="list-style-type: none"> Use Letter 928-A, <i>Statute of Limitation Consent Follow-Up for Appeals</i>, to follow up with the taxpayer; and Document this and other related consent activity with ACDS CARATS action and sub-action code SW-CW.
120 days	<p>If 30 days elapse after mailing Letter 967 and only 120 days remain on the statute with no consent secured,</p> <ol style="list-style-type: none"> Consult with your ATM to determine whether to continue working on the case or to initiate preparation of a SND; and Obtain your ATM's written permission to keep a case with less than 120 days remaining on the ASED.
90 days	<p>If 90 days remain on the statute and no consent is received, immediately initiate preparation of SND.</p> <ol style="list-style-type: none"> Notify by secure email the ATM, PTM, and Appeals Tax Computation Team Manager (ATCTM) that the case is being submitted for SND preparation; and Withdraw the work request by immediately notifying the ATCTM if a consent is received while the case is with the Tax Computation Specialist (TCS) for preparation of a SND.

8.21.3.2.3.2
(08-31-2018)
**Protecting Statutes on
Estate Tax Cases**

- (1) Statute dates on estate tax cases can't be extended by consent under any circumstance, so the time to consider and resolve an estate tax case may be very limited. Appeals won't accept an estate tax case if less than 270 days remain on the ASED.
- (2) You must consult with the ATM on any estate tax case that has only 120 days remaining on the statute. Written permission from your ATM is required to keep a case beyond the 120-day guideline. Under these guidelines, you might need to prepare a SND even though Appeals consideration is just getting underway. Granting permission doesn't address the performance aspects of the employee's critical elements.
- (3) Follow the time frames below. However, if a settlement is imminent, discuss with your ATM whether to allow more time in order to proceed to preparing a settlement computation, rather than preparing a SND.
 - a. Initiate preparation of the SND when no settlement is reached and only 90 days remain on the statute.

- b. Notify your ATM, ATCTM, and the PTM by secure email that the case is being submitted for SND preparation with only 90 days remaining on the statute.

8.21.3.2.3.3
(08-31-2018)
Consent Processing

- (1) Follow the guidelines established in IRM 25.6.22, *Extension of Assessment Statute of Limitations By Consent*, when preparing consent forms. Refer to Delegation Order 25-2 (Rev. 2) in IRM 1.2.52.3, **Delegation Order 25-2 (Rev. 2)(formerly DO-25-2 and DO-42, Rev. 28)**, for delegated officials authorized to sign the consent form. The table below lists some of the IRM sections to assist you in determining the proper consent form and language to use for specific cases.

IRM Section	Guidance
IRM 25.6.22.5	Preparation of Consent Forms - General Procedures
IRM 25.6.22.6	Preparation of Consents for Specific Entities and Taxes
IRM 25.6.22.7	Open-ended Consents
IRM 25.6.22.8	Restricted consents

- (2) If income tax and other taxes are involved, indicate each type of tax in the "kind of tax" portion of the consent form.

Example: One of the issues on a Form 1040 may involve an individual retirement account (IRA) that could give rise to a Chapter 43 excise tax. If the "kind of tax" line of the consent is completed only for "income tax," the statutory period for assessing any Chapter 43 excise tax deficiency might expire, barring the assessment. Thus, in this example, the "kind of tax" on the consent form should read "income and excise."

- (3) When soliciting a consent from the taxpayer, make certain that the consent form contains the notification required by IRC 6501(c)(4)(B) and...
 - a. Mail or present to the taxpayer a completed and dated Letter 967 along with the properly completed consent form that contains the notice of taxpayers' rights **AND** provide Publication 1035, *Extending the Tax Assessment Period*; and
 - b. Mail or present copies of the same documents to the properly authorized representative, if the taxpayer is represented.

Note: IRC Section 6501(c)(4)(B) requires that these procedures be followed **EACH** time the taxpayer is requested to extend the period of limitations.

- c. Document this activity on ACDS by selecting the ACDS CARATS action and sub-action code **CO-CS** at the time the consent is mailed or presented to the taxpayer (and representative, if applicable).

Note: Be sure to specifically record on ACDS that copies of the documents were provided to the representative, if the taxpayer is represented.

- (4) Section 3201(d) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) requires the Service, whenever practicable, to send any notice related to a joint return separately to each individual filing a joint return.

See IRM 25.6.22.3.1 , **Separate Notification of Each Spouse**. If you can verify that both spouses live at the same address, it's acceptable to send only one consent form and Letter 967.

- (5) To verify that both spouses live at the same address, you must verify (either by phone or in person) during the first contact that the last known mailing address is still correct for each spouse.
 - a. One consent form signed by both spouses or two consent forms signed by each spouse is sufficient verification that both spouses received notice of their rights.
 - b. If you receive a consent form with only one spouse's signature, it can't be determined with certainty that the other spouse received the required notice of their rights. In this case, you must contact the non-signing spouse to determine why there was only one signature on the consent form. Obtain a correct address, and send a separate consent form and Letter 967 (with Publication 1035) to the spouse who didn't sign the consent form.
 - c. If you can't verify that both spouses live at the same address, you must send the consent form and Letter 967 (with Publication 1035) separately to each individual filing a joint return.
- (6) When Appeals receives a valid signed consent from the taxpayer or authorized representative, the ATE (assigned to the case) or other delegated individual will execute the consent by signing and dating the consent. Update the statute on ACDS using the Statute Validation menu. See IRM 8.21.3.2.1.1 for procedures for updating statutes in ACDS. Select the ACDS CARATS action and sub-action code **CO-CR** at the time the valid signed consent is received from the taxpayer or authorized representative.
- (7) If taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the consent by fax, the IRS can accept by fax, the following:
 - Consents to assess additional tax (Forms 4549, 870, and others) of any amount;
 - Taxpayer closing agreements involving any amount of tax; and
 - Consents to extend the time to assess tax (Forms 872, SS-10, and others).

See IRM 25.6.22.5.1, *Fax Signatures*, for additional information.

Caution: This guidance does not extend to the use of faxed, or other electronically generated, signatures by Service personnel.

- (8) Account and Processing Support (APS) will update the statute on AIMS within 5 business days of receipt of the update request.
- (9) If the statute is not updated on AIMS within 5 business days of the notification, you are responsible for contacting the PTM for resolution.
- (10) Take the following steps after executing a consent form to extend the statute:
 - a. Prepare Letter 968 and send it to the taxpayer and the authorized representative with a copy of the executed consent.
 - b. Attach a copy of the executed consent to each affected tax return.

Note: It is no longer a requirement to attach Letter 967 to each affected return since the taxpayers' notice of rights is located directly above the signature lines of the consent form. However the letter must be attached if the Power of Attorney signs the consent on behalf of the taxpayer(s).

- c. When the designated individual shown on the Power of Attorney signs the consent form on behalf of the taxpayers, attach a copy of the Letter 967 that was mailed to the taxpayer to the return(s), along with the executed consent form, as this will verify that the taxpayer was provided their rights.
 - d. Document the CAR that the executed consent form, Letter 968, and Publication 1035 were sent to the taxpayer and representative (if applicable).
- (11) Consents pertaining to returns (including dummy returns where the original return wasn't available) under the control and jurisdiction of Appeals are prepared, executed, and accepted in duplicate. Attach the original executed consent to the reverse side of the front page of the latest year's return. Attach copies of the executed consent to the reverse side of the front page of the return of the other years covered in the consent.

Note: When the original executed consent must be forwarded to another office to be affixed to the return, retain a copy of the consent for use in the event the original is not received by the addressee.

- (12) If required consents aren't obtainable or the consents aren't acceptable, Appeals issues a SND for taxes and/or penalties subject to a petition to the United States Tax Court and takes necessary action(s) to protect the Government's interests for all other taxes. See IRM 8.7.1, *Guidelines for Cases with Special Issues*, for information about cases involving criminal prosecution.
- (13) Never alter the extension date on the consent form. Prepare new consents, if the date is in error or needs to be changed.
- (14) When prepayment credits are overstated, determine whether a different statutory period of limitation applies to such credits and take action to protect the Government's interest. When claimed prepayment credits are understated and expiration of the statutory period of limitation is imminent, invite the taxpayer, in writing, to file a claim for refund to protect his or her interests.
- (15) Scrutinize the signed consent form for any unauthorized alterations, and inform your ATM of such unauthorized alterations.
- (16) Follow all of the above procedures each time a consent is solicited.

8.21.3.2.3.4
(08-31-2018)

- (1) The following table contains a list of consent forms for extending or terminating statutes of limitations:

Consent Forms

Form Number	Description
Form SS-10	Consent to Extend the Time to Assess Employment Taxes
Form 872	Consent to Extend the Time to Assess Tax
Form 872-A	Special Consent to Extend the Time to Assess Tax

Form Number	Description
Form 872-AP	Consent to Extend the Time on Assessment of IRC Section 6695A Penalty
Form 872-B	Consent to Extend the Time to Assess Miscellaneous Excise Taxes
Form 872-D	Consent to Extend the Time on Assessment of Tax Return Preparer Penalty
Form 872-EC	Consent to Extend the Time on Assessment - Section 6676 Erroneous Claim for Refund or Credit Penalty
Form 872-F	Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership That Have Converted Under Section 6231(b) of the Internal Revenue Code
Form 872-N	Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items
Form 872-O	Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items
Form 872-P	Consent to Extend the Time to Assess Tax Attributable to Partnership Items
Form 872-T	Notice of Termination of Special Consent to Extend the Time to Assess Tax.
Form 872-U	Change of IRS Address to Submit Notice of Termination of Special Consent to Extend the Time to Assess Tax
Form 977	Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary
Form 900	Tax Collection Waiver
Form 2750	Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty
Form 9247	Agreement to Extend the Time to File a Civil Action for Refund by Partner with Respect to Partner's Partnership Items
Form 9248	Agreement to Extend the Time to File a Petition for Adjustment by the Tax Matters Partner with Respect to Partnership Items

8.21.3.2.3.5
(08-14-2007)
Consents in Gift Tax Cases

- (1) In each gift tax case in which a husband and wife elect to split their gifts pursuant to IRC 2513, prepare two sets of consent agreements in duplicate for each taxable year using Form 872 or Form 872-A. Prepare one set for the husband as donor with the wife as consenting spouse, and another set for the wife as donor with the husband as consenting spouse. The signature of both spouses must appear on all the forms.

8.21.3.2.3.6
(08-31-2018)
Consents When Cases Are Transferred to Counsel

- (1) When jurisdiction of a case is transferred to Counsel, then Counsel becomes responsible for controlling the statute on any returns in the file or for any returns requisitioned. Prominently reflect that Counsel now has control of the statutes in the remarks section of Form 2828, *Transmittal Memorandum*, or in Item 11 of the Form 5402, *Appeals Transmittal and Case Memo*. Counsel may request that Appeals execute the consents that they secure.

8.21.3.2.3.7
(08-31-2018)
Cases Where a Consent Is Not Necessary

- (1) If you determine that a consent isn't necessary,

- a. Complete Form 10495, *Memorandum Re Statute*, when at least 120 days remain on the statute and no statute protection is necessary.
- b. Secure your ATM's counter signature.
- c. Attach a copy of the Form 10495 to each affected tax return.
- d. Update the ACDS statute code to "10495" and remove the actual statute date, using the Statute Validation Systems (SVS) Menu.
- e. Refer to IRM 8.21.3.2.1.1 for procedures for updating statutes on ACDS.

Note: Form 10495 isn't required if the ACDS STATUTE DATE field is blank and the STATCODE field contains the appropriate code.

8.21.3.2.3.8 (08-31-2018) **Consent to Extend Collection Period of Limitation**

- (1) IRC 6502 provides that the length of period for collection after assessment of a tax liability is generally ten years. IRM 5.1.19, *Field Collection Procedures, Collection Statute Expiration*, provides the reasons for Collection Statute Expiration Date (CSED) suspensions.
- (2) The Restructuring and Reform Act of 1998 (RRA 98), enacted on July 22, 1998, amended IRC 6502(a) to eliminate the Service's authority to extend the collection statute of limitations by agreement for requests made after December 31, 1999. Any extension of the collection period already in effect on December 31, 1999, expires on the later of the last day of the 10-year collection period in IRC 6502(a) or December 31, 2002. There is an exception for extensions relating to the acceptance of an installment agreement. Refer to IRM 5.14.2, *Installment Agreements, Partial Payment Installment Agreements and the Collection Statute Expiration Date (CSED)*.
- (3) Delegation Order No. 25-2 delegates the authority to execute agreements to extend the period of limitations on assessment or collection and to accept Form 900, *Tax Collection Waiver*. Refer to IRM 1.2.52.3. If Appeals secures an extension of the statutory period for collection using Form 900, prepare the form in accordance with IRM Part 5, *Collecting Process*.
- (4) ATEs should document their Case Activity Record of imminent CSEDs. Refer to IRM 8.21.5, *Collection Statutes*.

8.21.3.2.3.9 (08-28-2014) **Consents Where the Sole Issue is Restricted Interest**

- (1) Appeals considers cases where the taxpayer doesn't agree to a potential deficiency or overassessment even though, as a result of carrybacks, there's no deficiency or overassessment. In such instances assessment of restricted interest may have to be made.
- (2) Assess restricted interest on potential deficiencies (before allowance of carrybacks) within the period of limitations applicable to the tax even though the deficiency in tax was eliminated by the carryback.
- (3) If you can't obtain a consent or if the consent secured isn't acceptable, complete Form 2285, *Concurrent Determinations of Deficiencies (Increases in Tax) and Overassessments (Decreases in Tax) in Cases Involving Restricted Interest Provisions of the Internal Revenue Code*, and a Form 5403. Generally, the TCS employee prepares Form 2285. See IRM 8.17.6.4, *Preparation of Form 2285*.
- (4) Forward the case to the appropriate APS office for computation and assessment of the restricted interest.

8.21.3.2.3.10
(08-31-2018)
**Consents for Tax
Exempt Organization
Cases**

- (1) **Unrelated Business Income Tax** — Unrelated business income tax under IRC 511 is reported on Form 990-T, *Exempt Organization Business Income Tax Return*. The period of limitations on assessment of unrelated business income tax begins when the tax exempt organization files the information return (Form 990-PF, **Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation**, Form 990, **Return of Organization Exempt From Income Tax**, or Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*) or on the due date of such information return, whichever date is later. If the period of limitations on assessment is expiring, secure the necessary consents from the tax exempt organization on Form 872.
- (2) **Income Tax on Revoked Organizations** — An organization whose tax exempt status under IRC 501(a) is revoked is subject to income tax under IRC 11, unless it's a trust subject to tax under IRC 641. The period of limitations on assessment of income tax generally begins when the tax exempt organization files the information return (Form 990-PF, Form 990, or Form 990-EZ) or on the due date of the information return, whichever date is later. IRC 6501(g)(2). If the period of limitations on assessment is expiring, secure the necessary consents from the tax exempt organization on Form 872.
- (3) **Chapter 41 and Chapter 42 Excise Taxes** — Acts (or failures to act) that are subject to excise taxes under Chapter 41 and Chapter 42 are reported by the tax-exempt organization (or Section 4947(a) trust), and by the managers, self-dealers, disqualified persons, donors, donor advisors, and related persons, on Form 4720, *Return of Certain Excise Taxes under Chapters 41 and 42 of the Internal Revenue Code*. The period of limitations on assessment of Chapter 41 and Chapter 42 excise taxes against the tax-exempt organization (or section 4947(a) trust), and the managers, self-dealers and other applicable persons, generally begins when the tax-exempt organization (or section 4947(a) trust) files the information return Form 990-PF, Form 990, Form 990-EZ or Form 5227) for the period when the act (or failure to act) occurred, or when such information return is due, whichever is later, IRC 6501(l). If the period of limitations on assessment is expiring, secure the necessary consents on Form 872 from each of the tax-exempt organizations (or section 4947(a) trust), and the managers, self-dealers and other application persons.
- (4) See IRM 7.27.30.11, **Period of Limitations**, for more details and instructions regarding the completion of Form 872.

8.21.3.2.3.11
(08-31-2018)
Multiple-Year Consents

- (1) When multiple years exist and all are extended to the same date, use one consent Form 872 or Form 872-A, executed in duplicate. If the extension is restricted to one or more issues, use a multiple-year consent only when the same restriction applies to all tax years.
- (2) Securely attach the original executed consent to the return of the latest year involved. Attach a copy of the executed consent to the returns for each of the other years covered by the consent.

8.21.3.2.3.12
(08-31-2018)
**Parent-Subsidiary
Corporation Consents
(Non-Consolidated)**

- (1) Use one Form 872, Form 872-A, Form 872-B, or Form SS-10 to obtain a consent for a parent corporation and all of its subsidiaries. See IRM 25.6.22.6.2.3, **Parent and Subsidiary Corporations**, for additional guidance on the preparation of consents in Parent-Subsidiary Corporate settings.

- (2) Securely attach the original executed consent to the parent corporation's latest return and copies of the executed consent to each additional return of the parent and to the returns of the subsidiary corporations.
- (3) Rather than attaching copies of the executed consent to each additional return of the parent and the returns of the subsidiary corporations, you can attach a statement to each one showing the following:
 - a. Name
 - b. Address
 - c. Identification number of the parent corporation
 - d. Office in which the return of the parent corporation was filed
 - e. Year(s) or period(s) involved
 - f. Period of extension agreed to in the consent

8.21.3.2.3.13
(08-31-2018)
Consolidated Returns

- (1) For consolidated income tax returns, one consent suffices to cover all companies included in the consolidated income tax return.
- (2) Generally the parent (or substitute agent), acting as agent for the group, executes Form 872 or Form 872-A covering Chapter 1 Income Taxes. This authority of the parent (or substitute agent) does not extend to taxes outside Chapter 1 Income Taxes such as excise taxes, employment taxes, or withholding taxes on foreign parties (IRC 1441 and IRC 1442; Treas. Reg. section 1.1502-77B(a)(3)(ii)) [effective for consolidated return years beginning on or after June 28, 2002 and before April 1, 2015 - the current regulation is 1.1502-77, effective for consolidated return years beginning on or after April 1, 2015.]
- (3) A determination of a consolidated group is done on a year-by-year basis and only the parent or the agent for that consolidated return year can sign the consent with respect to that consolidated year. See IRM 25.6.22 for additional guidance on preparation of consents in consolidated settings.

8.21.3.2.3.14
(08-14-2007)
Dissolved Corporation Consents

- (1) Generally, approval from Area Counsel must be obtained before securing consents from the dissolved corporation. See IRM 25.6.22, for detailed information concerning this issue.

8.21.3.2.3.15
(08-31-2018)
Consents for Non-fraudulent Delinquent Returns in Willful Failure to File Cases

- (1) The period of limitations on civil liability starts from the date of delinquent filing in a case involving willful failure to file provided the delinquent return is non-fraudulent. This applies even if circumstances surrounding initial non-filing are sufficient to support the fraud penalty.
- (2) If the period of limitations is about to expire and criminal prosecution is pending, **do not** take action to secure consents without the concurrence of Counsel. See IRM 8.7, *Technical and Procedural Guidelines*.

8.21.3.2.3.16
(08-31-2018)
Consent Restricted to Certain Issues

- (1) IRM 25.6.22.8, **Restricted Consents**, provides details concerning restricted consents, including the taxpayers rights, issues not subject to restrictions, restrictive statements, etc.
- (2) When a restricted consent is secured on a case, all future consents for that case must contain the same restrictions.

8.21.3.2.3.17
(08-31-2018)

**Form 872-A, Special
Consent to Extend the
Time to Assess Tax**

- (1) See IRM 25.6.22.7.1, **Special Consent to Extend the Time to Assess Tax**, for details concerning Special Consents Form 872-A and the procedures to follow when there is a termination of the Special Consent.
- (2) A Form 872-T sent by Appeals may only be signed by the Operating Unit Director or his/her delegate, Appeals Team Manager or Appeals Team Case Leader.
- (3) In Letter 968, inform the taxpayer that a Form 872-T (used to terminate Form 872-A) may be requested from the Appeals Technical Employee.
- (4) Form 872 is accepted in place of Form 872-A, if the taxpayer prefers Form 872. Form 872-A is requested only at the time Form 872 is normally requested and may be used as a renewal consent if Form 872 was previously executed. Cases involving Form 872-A receive the same priority of attention and expeditious consideration as those involving Form 872.
- (5) Termination of Form 872-A by the taxpayer is rare. For special rules concerning the termination of a special consent on an accumulated earnings tax case or a personal holding company tax case, see IRM 25.6.22.7.1.8, **Accumulated Earnings Tax**, and IRM 25.6.22.7.1.9, **Personal Holding Company Tax**.
- (6) For Joint Committee cases involving Form 872-A, see IRM 8.7.9, *Joint Committee Cases*.

8.21.3.2.3.18
(08-31-2018)

**Consents For
Employment Tax Cases**

- (1) Use Form SS-10, to extend the period for assessment of taxes imposed by the Federal Insurance Contributions Act (FICA) including FICA tax on tip income **(with exceptions - see IRM 25.6.22.6.10.2)**, Federal Unemployment Tax Act, the Railroad Retirement Tax Act, and Code provisions relating to withholding of income tax on wages at the source.
- (2) See IRM 25.6.22.6.10, **Employment Taxes**, for information concerning consents on employment tax cases, including employee share of FICA, FICA on tips and trust fund recovery penalty cases.

8.21.3.2.3.19
(08-31-2018)

**Consents in Civil Fraud
and/or IRC Section
6501(e) Cases**

- (1) The general instructions for consents (see above) also apply to cases where the civil fraud penalty is asserted, i.e., the Appeals Technical Employee generally asks the taxpayer to execute a consent prior to the expiration of the three year period under IRC 6501(a) or the six year period under IRC 6501(e), if applicable. If the civil fraud penalty isn't asserted and the case is solely open under IRC 6501(e), consider obtaining a consent prior to the expiration of the six year period.
- (2) Language restricting the consent may be added to the consent form. For example, "This consent is subject to the applicability of IRC section 6501(e)."
- (3) See IRM 25.6.22.6.17, *Special Situations*, for additional information on consents involving civil fraud cases and cases involving the 25% omission of income provisions of IRC 6501(e).

8.21.3.2.3.20
(08-31-2018)
**Notifying Taxpayer of
Change of IRS Address
for Termination of
Special Consents**

- (1) Open-ended consents provide an address that the taxpayer must use when mailing or hand carrying a notice of termination of consent. The following table lists open-ended consent forms and their corresponding termination of open-ended consent forms:

Open-ended Consent Forms	Termination of Open-ended Consent Forms
Form 872-A	Form 872-T
Form 872-O	Form 872-N

- (2) Each open-ended consent also tells the taxpayer the address shown on the consent form can be superseded by the address shown on a Form 872-U. Use Form 872-U to notify taxpayers who previously executed an open-ended special consent when one of the following situations occurs:
- Their case is received from Compliance.
 - Their case is transferred to an ATE who is working at a location other than the one shown on the consent form.
 - There is a change in the location or mailing address of the Appeals office working the case.
- (3) The following identifies who sends Form 872-U to notify the taxpayer and authorized representative (if applicable) of a change in the IRS address for terminating an open-ended consent:
- Cases coming to Appeals from Compliance with an open-ended consent:** The ATE assigned to the case sends Form 872-U to notify the taxpayer of the address change.
 - Change in ATE's location:** The receiving ATE sends Form 872-U to notify the taxpayer of the address change.
 - Change in office address:** The ATE assigned to the case sends Form 872-U to notify the taxpayer of the address change.

Note: Generally, APS runs a statute report showing all the cases in that office that are extended by one of the open-ended consent forms listed in IRM 8.21.3.2.3.20(1).

- (4) Refer to IRM 25.6.22.7 for additional guidance on open-ended consents.

8.21.3.2.3.21
(04-20-2012)
**Consents in Flow
Through Entity Cases**

- (1) See IRM 8.21.6, *Statute Information on TEFRA Cases*.

8.21.3.2.3.22
(08-31-2018)
**Excise Statute of
Limitation on Paid
Claims Assessed under
IRC 6206**

- (1) The statute of limitations can't be extended to make an assessment on excessive claims under IRC 6206 for claims filed under IRC 6416(a)(4), IRC 6420, IRC 6421, and IRC 6427. Refer to IRM 8.7.10, **Excise Tax Cases and IRA Adjustments**, for additional guidance on Excise Tax Cases.
- (2) The time period for making assessments of tax under IRC 6206 can't be extended.

- (3) Appeals will accept pre-assessed IRC 6206 cases with at least 270 days remaining on the statute.
- (4) Cases with less than 270 days remaining on the statute will be returned to Compliance for assessment.

8.21.3.2.4
(08-31-2018)
Statutory Notices

- (1) ATEs are responsible for ensuring that the Statutory Notice of Deficiency (SND) issued by Appeals, as well as the Final Partnership Administrative Adjustment (FPAA) on TEFRA key cases, is timely prepared and issued. The decision to issue a SND must be approved by the ATM.
- (2) To ensure the statute is protected, a case must have at least 90 days remaining on the statute before it's submitted for preparation of a SND.
- (3) If a SND is returned undeliverable, APS notifies the ATE assigned to the case. The ATE immediately reviews the file to ensure that the proper address was used in the notice.
- (4) If the last known address was used in the notice, the ATE initials, dates and immediately returns the notice to APS, and no further action is needed.
- (5) If the last known address was not used in the notice and the ATE determines that the notice must be re-mailed or re-issued, the ATE will advise APS of the actions to take.
- (6) When a SND is forwarded to Counsel for review, statute control responsibility remains with the ATE assigned the case even though Counsel has the case in its possession and was advised of the short statute.

8.21.3.2.5
(08-31-2018)
**Physical Inventory
Validation**

- (1) On an annual basis, all ATEs and their ATMs conduct a physical inventory and statute verification of all returns in their inventory by comparing an inventory listing generated from ACDS against their actual inventory. Annotations are made to the listing and any changes that the ATE can't make are returned to APS for update of ACDS. See IRM 8.10.3, *Appeals Inventory Validation Process*.

8.21.3.2.6
(08-31-2018)
**Jeopardy and
Termination
Assessments**

- (1) Ensure that the procedural dates concerning jeopardy and termination assessments are met, as provided in IRM 8.7.1.6, *Jeopardy and Termination Assessments Cases*.

8.21.3.2.7
(08-31-2018)
Closings

- (1) Ensure there are at least 120 days remaining on the statute when a case is submitted to the ATM for review and closing. See IRM 8.21.3.2.3.2 for special rules concerning Estate Tax cases where settlement discussions break down after ATM permission is granted to keep the case open beyond the 120 day date.
- (2) Written permission from the ATM is required to keep a case beyond the 120-day guideline. Granting permission doesn't address the performance aspects of the employee's Critical Elements.