



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.22.8

SEPTEMBER 3, 2025

## EFFECTIVE DATE

(09-03-2025)

## PURPOSE

- (1) This transmits revised IRM 8.22.8, Collection Due Process Liability Issues and Relief from Liability.

## MATERIAL CHANGES

- (1) Added IRM 8.22.8.1.6, Related Resources section, including:
  - The Taxpayer Bill of Rights (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 additional information about the TBOR, see *Taxpayer Bill of Rights*
  - 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
- (2) IRM 8.22.8.3, When Liability is Raised
  - At (8) split paragraph to include an expansion on the concept of an opportunity to challenge the underlying liability, creating a new paragraph (9).
  - Paragraph (9) renumbered to paragraph (10) and included additional letter h. example of not a prior opportunity - Letter CP15 and CP215, Civil Penalty Notice
  - Added paragraph (11) regarding discussing substance of the precluded issue in determination or decision letter
- (3) Editorial changes made throughout document including updating links and removing all naked links

## EFFECT ON OTHER DOCUMENTS

IRM 8.22.8 dated May 26, 2023, is superseded.

## AUDIENCE

Appeals Hearing Officers, Appeals Account Resolution Specialists and Appeals Team Managers

Steven M. Martin  
Director, Operations Support



8.22.8

Liability Issues and Relief from Liability

## Table of Contents

8.22.8.1 Program Scope and Objectives

8.22.8.1.1 Background

8.22.8.1.2 Authority

8.22.8.1.3 Roles and Responsibilities

8.22.8.1.4 Program Management and Review

8.22.8.1.5 Terms and Acronyms

8.22.8.1.6 Related Resources

8.22.8.2 Full Paid

8.22.8.3 When Liability is Raised

8.22.8.4 Issues Precluded from CDP Under IRC 6330(c)(4)

8.22.8.5 At Issue, Precluded, or Precluded but Considered Outside of CDP

8.22.8.5.1 Referring a Liability Issue

8.22.8.6 Tax Returns

8.22.8.6.1 Self-Filed Return

8.22.8.6.1.1 Audit of the Taxpayer's Self-filed Return

8.22.8.6.2 ASFR/SFR

8.22.8.6.3 BMF 6020(b) Assessments

8.22.8.7 Math Error

8.22.8.8 Innocent Spouse (IS)

8.22.8.8.1 Processing IS Claim Form 8857

8.22.8.8.2 CCISO Processing of IS Claim Related to CDP Case

8.22.8.8.3 Appeals Processing of IS Claim Related to CDP Case

8.22.8.8.4 Mirrored Modules

8.22.8.8.5 Withdrawal of CDP While IS Claim is Pending

8.22.8.9 Earned Income Tax Credit (EITC)

8.22.8.10 Penalties

8.22.8.10.1 Trust Fund Recovery Penalty (TFRP)

8.22.8.10.1.1 TFRP and a Pending Form 843 Claim

8.22.8.10.2 IRC 6673(a)(1) Tax Court Imposed Penalty

8.22.8.10.3 IRC 6700/6701 Penalties

8.22.8.10.4 IRC 6702(a) and 6702(b) Frivolous Return/Submission and IRC 6682 Questionable W-4 Penalties

8.22.8.10.5 IRC 6707 or 6707A Disclosure Penalties

8.22.8.10.6 Reasonable Cause Penalty Abatement

8.22.8.11 Interest Abatement

- 
- 8.22.8.12 Doubt as to Liability (DATL) Offers
  - 8.22.8.13 TEFRA Partnerships
  - 8.22.8.14 Son of Boss (SOB)
    - 8.22.8.14.1 Identifying SOB Cases
    - 8.22.8.14.2 SOB Liability Challenge
    - 8.22.8.14.3 Conduct of the Hearing
    - 8.22.8.14.4 Approval of Case Decisions
    - 8.22.8.14.5 Claims for Penalty Abatement
  - 8.22.8.15 Qualified Offers
  - 8.22.8.16 Identity Theft and Return Preparer Misconduct (RPM)
    - 8.22.8.16.1 Forged Signature or Signed Under Duress
  - 8.22.8.17 CSEDs, ASEDs and Overpayments of a Non-CDP Tax Liability
    - 8.22.8.17.1 Overpayment of a Non-CDP Tax Liability
    - 8.22.8.17.2 Net Operating Loss and Carryover Adjustments

Exhibits

- 8.22.8-1 Liability in CDP Action Table

8.22.8.1 (09-03-2025) <b>Program Scope and Objectives</b>	<ul style="list-style-type: none"> <li>(1) Purpose: This section provides guidance to Appeals Technical Employees (ATEs) for liability issues and relief from liability in Collection Due Process (CDP), Equivalent Hearing (EH), and retained jurisdiction cases.</li> <li>(2) Audience: The primary users of this IRM section are ATEs and Appeals Team Managers (ATMs) handling CDP, EH, and retained jurisdiction cases.</li> <li>(3) Policy Owner: Director, Operations Support.</li> <li>(4) Program Owner: Director, Policy, Planning, Quality, and Analysis (PPQ&amp;A).</li> <li>(5) Contact Information: Appeals employees should follow established procedures on <i>How to Contact an Analyst</i>. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM Section.</li> </ul>
8.22.8.1.1 (08-26-2020) <b>Background</b>	<ul style="list-style-type: none"> <li>(1) The IRS Restructuring and Reform Act of 1998 (RRA '98) created CDP appeal rights, and with them, the ability for taxpayers to contest their liability under certain circumstances.</li> </ul>
8.22.8.1.2 (08-26-2020) <b>Authority</b>	<ul style="list-style-type: none"> <li>(1) IRC 6320 and 6330 and Treas. Regs. 301.6320-1 and 301.6330-1 are the primary sources of authority. Further, IRC 7803(a)(3) and 7803(e) apply to Appeals employees' interactions with taxpayers.</li> </ul>
8.22.8.1.3 (08-26-2020) <b>Roles and Responsibilities</b>	<ul style="list-style-type: none"> <li>(1) The Policy analyst shown on the Product Catalog page as the originator is the assigned author of this IRM.</li> </ul>
8.22.8.1.4 (09-03-2025) <b>Program Management and Review</b>	<ul style="list-style-type: none"> <li>(1) PPQ&amp;A provides trend and data analyses and detailed summary reports for Appeals.</li> </ul>
8.22.8.1.5 (08-26-2020) <b>Terms and Acronyms</b>	<ul style="list-style-type: none"> <li>(1) See IRM Exhibit 8.22.4-3, Common Terms and Acronyms Used in Collection Due Process, for such common terms and their definitions.</li> </ul>
8.22.8.1.6 (09-03-2025) <b>Related Resources</b>	<ul style="list-style-type: none"> <li>(1) The TBOR lists several rights, many of which 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 additional information about the TBOR, see <i>Taxpayer Bill of Rights</i></li> <li>(2) In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals will work collaboratively with 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.</li> </ul>
8.22.8.2 (11-08-2013) <b>Full Paid</b>	<ul style="list-style-type: none"> <li>(1) If the CDP liability is fully paid, the taxpayer may not raise a liability issue other than innocent spouse or interest abatement. If the taxpayer is not raising either of these issues, request a withdrawal.</li> </ul>

- (2) If the taxpayer declines to withdraw, conduct a hearing and issue a determination noting the taxpayer could not raise a liability issue and there is no issue regarding lien and/or levy.
- (3) If the taxpayer asks about raising liability outside of the CDP process, provide and discuss:
  - Pub 3598, What You Should Know About the Audit Reconsideration Process; or
  - Pub 556 Examination of Returns, Appeal Rights, and Claims for Refund.

### 8.22.8.3 (09-03-2025)

#### When Liability is Raised

- (1) IRC 6320(c) and IRC 6330(c)(2)(B) provide that a taxpayer may challenge the underlying liability in a CDP hearing if the taxpayer did not either:
  - Receive a Statutory Notice of Deficiency (SNOD), or
  - Have a prior opportunity to dispute the tax liability.

See Exhibit 8.22.8-1

- (2) “Receive a SNOD” means receipt in time to petition Tax Court for a redetermination of the deficiency. You are responsible for confirming if the taxpayer received the SNOD.

How to Confirm Receipt of a SNOD	
Ask the taxpayer	<ul style="list-style-type: none"> <li>• What was your address on the date the SNOD was mailed?</li> <li>• Did you receive a copy of a notice for [tax period(s)]?</li> <li>• Do you have a copy of the notice mailed to you for [tax period(s)]? If the answer is yes, obtain a copy.</li> </ul>
Other evidence	<ul style="list-style-type: none"> <li>• Postal Form 3849 confirms the taxpayer signed for, or refused delivery of, the notice.</li> <li>• Correspondence from the taxpayer acknowledging receipt of a SNOD.</li> </ul>

- (3) If the SNOD for the subject tax period(s) is not in the CDP file, request a copy of the notice using the Integrated Data Retrieval System (IDRS) Command Code ESTAB. If the file is not received in 21 days, request a special search by using the Shared Team of Administrative & Redaction Support (STARS) request portal. To do so, take the following steps:
  1. Access the request portal drop-down menu and select “ATE”
  2. Once on the second ATE drop-down menu, select “Special Search request for Service Center Files”
  3. For further instructions, follow the STARS user guide, located on the STARS request portal site
- (4) Consider the evidence and determine whether the taxpayer received the SNOD.

If you...	Then...
Confirm the taxpayer received, signed for or refused delivery	Liability cannot be raised in the CDP
Can't confirm the taxpayer's receipt of the SNOD	Liability can be raised in the CDP

- (5) If you determine the SNOD was not properly mailed to the last known address by certified or registered mail, and the taxpayer did not receive the SNOD in time to petition Tax Court, the assessment is invalid and must be abated.
- (6) If the taxpayer signed a waiver form agreeing to the assessment, the taxpayer is precluded from challenging the underlying liability for the specific tax and periods listed on the form. This includes an accepted Offer in Compromise (OIC) that defaulted after acceptance. See IRM 8.6.4.3, Settlement of Related Cases, for special Appeals agreement forms. Examples of general IRS waiver forms include:
  - Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment
  - Form 4549, Report of Income Tax Examination Changes
  - Form 14764, ESRP Response

**Note:** A taxpayer's signature on Form 2751, Proposed Assessment of Trust Fund Recovery Penalty, alone does not preclude a taxpayer from raising Trust Fund Recovery Penalty (TFRP) liability in CDP. The preclusive event under IRC 6330(c)(2)(B) is the taxpayer's receipt of Letter 1153, Proposed Trust Fund Recovery Penalty Notification, not his/her signature on Form 2751. This is because Form 2751 is not considered a closing agreement under IRC 7121.

**Note:** If the taxpayer challenges the liability based on an allegation that they signed the agreement under duress, request supporting documentation for the duress argument to determine whether the taxpayer may challenge the liability. See *Hall v. Commissioner*, T.C. Memo. 2013-93.

- (7) If the taxpayer denies receipt of the SNOD, and you are unable to confirm receipt, secure a copy of the SNOD, and either the Postal Service Form 3877 or the IRS Certified Mailing List. See IRM 8.22.5.4.2.1.1, Statutory Notice of Deficiency (SNOD).
- (8) Examples of prior opportunity to dispute the tax liability are:
  - a. Taxpayer participated in an Appeals hearing for the same tax periods in CDP, concluded prior to the current CDP hearing.
  - b. Taxpayer received a prior CDP lien or levy notice for the same tax and period.
  - c. Audit reconsideration conducted with Exam prior to the CDP hearing if the taxpayer was offered the opportunity for a conference with Appeals to dispute the results of the reconsideration.
  - d. IRS filed a proof of claim in a bankruptcy proceeding involving the tax liability on a CDP notice. Consult with Area Counsel to ensure it constituted a prior opportunity.
  - e. Suit to reduce judgment or foreclose a tax lien involving the tax liability on a CDP notice.

- (9) Prior correspondence from the IRS may constitute an opportunity to challenge the underlying liability. The correspondence (notice, letter, etc.) must clearly and affirmatively indicate that this correspondence is the taxpayer's opportunity to have a dispute heard by the Independent Office of Appeals. Letters and notices merely mentioning the word "appeal" may not rise to this level. Common letters are shown below,; however, this list is not all inclusive. Conduct adequate research of the specific liability source and origin, secure a copy of the letter issued to the taxpayer and provide a copy, as needed, to the taxpayer. It is important to hold and document a discussion with the taxpayer or their representative, if possible during the hearing. Informing a taxpayer of your review and asking questions during the process is part of keeping the taxpayer informed and results in a better taxpayer experience. Common letters taxpayers receive offering a hearing with Appeals include:

- Letter 105-C, Claim Disallowed
- Letter 950, 30 Day Letter - Straight Deficiency, for a proposed employment tax assessment
- Letter 955, 30 Day Letter - Straight Deficiencies of Both Deficiencies and Overpayments, for a proposed excise tax assessment
- Letter 1085, 30 Day Letter Proposed IRC 6020(b) Assessment
- Letter 1125, Transmittal of Preparer Penalty Report, for a proposed return preparer penalty assessment
- Letter 1153, Proposed Trust Fund Recovery Penalty Notification
- Letter 227-J, Employer Shared Responsibility Payment (ESRP) Acknowledgment Closing Letter. Although this letter does not offer a hearing with Appeals, it acknowledges receipt of signed agreement, Form 14764, which precludes the taxpayer from challenging the liability. See IRM 8.22.8.3 above.
- Letter 227-L, Revised ESRP Calculated
- Letter 5040-J, Preliminary ESRP - Second Notice

**Note:** Use the process in IRM 8.22.8.3 above to confirm receipt.

- (10) Examples of "not a prior opportunity" to dispute the tax liability are:
- a. Receipt of a 30-day letter in deficiency cases; the statute requires receipt of a SNOD.
  - b. Audit Reconsideration conducted with Exam prior to the CDP hearing if the taxpayer was not offered the opportunity for a conference with Appeals to dispute the results.
  - c. A separate Appeals conference held concurrently with the CDP hearing.
  - d. Accrued interest and penalties that were not at issue in a notice of deficiency or in a prior hearing.
  - e. The opportunity to file an amended return.
  - f. Receipt of a math error or clerical error notice under IRC 6213(b)(1).
  - g. The taxpayer had the opportunity to pay the tax and file a claim for refund but did not do so.
  - h. Letter CP15 and CP215, Civil Penalty Notice
- (11) At the conclusion of the CDP hearing, the substance (e.g., exclusion of expenses, inclusion of unreported income, disallowance of credits) of the precluded issue is not discussed in the attachment to the determination or decision letter.



8.22.8.4

(08-26-2020)

## Issues Precluded from CDP Under IRC 6330(c)(4)

- (1) IRC 6320(c) and IRC 6330(c)(4) may be the basis for precluding liability and non-liability issues from a CDP hearing. An issue is precluded if it was:
  - a. Raised and considered in a previous Appeals hearing or judicial proceeding; and
  - b. The taxpayer participated meaningfully in the hearing or proceeding.
- (2) The table below provides examples:

<b>Precluded</b>	<ul style="list-style-type: none"><li>• The taxpayer requested innocent spouse relief and meaningfully participated in a prior Appeals hearing for the same tax and periods.</li><li>• The taxpayer participated in a judicial proceeding that resulted in District Court reducing the tax and periods on a CDP notice to judgement.</li><li>• The taxpayer did not object to the IRS proof of claim for unpaid taxes in a chapter 11 or 13 bankruptcy.</li><li>• A court determined or affirmed Appeals' determination that the written supervisory approval was given for the assessment of any penalty subject to IRC 6751(b) in a proceeding in which the taxpayer meaningfully participated.</li><li>• Appeals determined in a previous hearing in which the taxpayer meaningfully participated that written supervisory approval was given for the assessment of any penalty subject to IRC 6751(b).</li><li>• Appeals determined in a prior CDP hearing in which the taxpayer meaningfully participated that the notice of deficiency or Letter 1153 was properly issued within the assessment statute of limitations.</li><li>• The taxpayer was the subject of a criminal tax case, resulting in a restitution order. The amount of the court- ordered restitution cannot be challenged in CDP.</li></ul> <p><b>Exception: Interest and penalty additions under 6201(a)(4) may be challenged in CDP, depending on circumstances. See IRM 8.22.6.9.1.</b></p>
<b>Not precluded</b>	<ul style="list-style-type: none"><li>• The taxpayer requested interest abatement but the request was lost and Appeals never considered the issue.</li><li>• Taxpayer received a preliminary determination letter from Cincinnati Centralized Innocent Spouse Operations (CCISO) but did not request an Appeals review of the denial of innocent spouse relief.</li></ul>

8.22.8.5

(11-08-2013)

## At Issue, Precluded, or Precluded but Considered Outside of CDP

- (1) A liability issue raised in a CDP hearing is either:
  - At issue,
  - Precluded, or
  - Precluded but considered outside of CDP.
- (2) **At issue:** When liability is at issue in CDP, a separate work unit number (WUNO) is created when the issue is considered by an Appeals Officer (AO). See the table below to determine when a liability is considered by an AO.

- (3) **Precluded:** Document how you determined liability is precluded in the attachment to the determination or decision letter under “Issues Raised.”
- (4) **Precluded but considered outside of CDP:** If a taxpayer provides evidence of eligibility for reducing a liability, and the liability is precluded, you may request ATM approval to consider the issue under Delegation Order 8-8 outside of the CDP hearing if it is prudent to do so. In such a case, document the taxpayer’s eligibility for reducing a liability and submit it for ATM approval as per IRM 8.22.8.5.1, Referring a Liability Issue.
- (5) If the precluded liability is an audit assessment, it is generally quicker for the taxpayer to request an audit reconsideration from the designated Campus location. Provide the taxpayer with Publication 3598, What You Should Know About the Audit Reconsideration Process, which explains the audit reconsideration process and provides the Campus addresses. Proceed with the hearing if a liability will remain for the CDP periods even if the taxpayer is successful in audit reconsideration. If the potential reduction will affect the collection alternatives the taxpayer qualifies for, you may suspend the CDP hearing until the reconsideration is complete.

8.22.8.5.1  
(05-16-2023)

#### Referring a Liability Issue

- (1) Use the table below to determine whether a liability should be referred for consideration:

Issue	Case Type	Feature Code	Worked By
Innocent Spouse after CCISO makes preliminary determination	I	SD, DP	Exam AO
Income Tax or other Exam-related issue	I	DP	Exam AO
Doubt as to Liability (DATL) OIC: TFRP liability	OIC	LI, DP	Collection AO
DATLOIC: Non-TFRP liability	OIC	LI, DP	Exam AO
Penalties (reasonable cause) <ul style="list-style-type: none"> <li>• Failure to File</li> <li>• Failure to Pay</li> <li>• Deposit Penalties</li> </ul>	PENAP	DP	Collection AO
Estimated Tax Penalty (Exception in IRC 6654(e) or 6655(f))	PENAP	DP	Collection AO

Issue	Case Type	Feature Code	Worked By
Penalties <ul style="list-style-type: none"> <li>• 6038(b)</li> <li>• 6038A(d)</li> <li>• 6038B(c)</li> <li>• 6038C(c)</li> <li>• 6038D</li> <li>• 6039E</li> <li>• 6039F</li> <li>• 6039G</li> <li>• 6652(f)</li> <li>• 6677(a)</li> <li>• 6677(b)</li> <li>• 6679</li> <li>• 6689</li> <li>• 6712</li> </ul>	PENAP	DP	Exam AO
Penalties: <ul style="list-style-type: none"> <li>• 6700 and 6700A</li> <li>• 6701</li> <li>• 6702(a)</li> <li>• 6702(b)</li> <li>• 6707</li> </ul>	6700, 6701, 6702, 6707, 6707A	DP	Collection or Exam AO
Penalties <ul style="list-style-type: none"> <li>• 6035</li> <li>• 6046</li> <li>• 6048</li> </ul>	OTHPEN	DP	Exam AO
Interest abatement	INT	DP	Collection or Exam AO
Payroll liabilities assessed under IRC 6020(b) procedures	EMPL	DP	Collection AO
Trust Fund Recovery Penalty	TFRP	DP	Collection AO

(2) Referring a liability issue for Exam AO consideration requires ATM approval. After securing approval, request a separate WUNO for the liability issue by providing Account and Processing Support (APS) with the:

- Case Summary Card noted "Please create a [case type] WUNO with feature code = [see table above] and Notes - XREF (WUNO of the related CDP)"
- Date you determined the issue was raised. APS uses this date for the REQAPPL.

(3) Generate Form 30/40 for the new WUNO and forward it to the ATM with the:

- Administrative file including the reason(s) the taxpayer alleges the liability should be changed
- Taxpayer documentation
- Case Activity Record (CAR)
- Case Summary Card

(4) The ATM uses local procedures to determine the Exam AO group that will work the issue, notes the assignment on Form 30/40, and forwards the case to APS.

- (5) If the outcome of the liability issue could significantly affect the CDP hearing, suspend the CDP using Case Activity Record & Automated Timekeeping System (CARATS) codes SU/PI. If the CDP is suspended, update the status code to either:
  - E/AP: Inactive, waiting another AO (same office)
  - E/APO: Inactive, waiting another AO (outside office)
- (6) The Exam AO ATM assigns the new WUNO upon receipt.
- (7) The Exam AO considers the issue with the goal of finishing within 120 days of receipt. The Collection AO may contact the Exam AO for a status report after 90 days. After 120 days, the Collection AO may ask their ATM to contact the Exam AO ATM.

**Note:** The Exam AO is acting as a consultant when making a determination on the liability.

- (8) The Exam AO must input MS, not AC/FR, when submitting the case to the ATM.
- (9) The Exam AO submits the following forms to their ATM for approval when finished with their determination:
  - Form 30-40, Transfer Form
  - Form 5402, Appeals Transmittal and Case Memo
  - Form 3210, Document Transmittal
  - Form 3870, Request for Adjustment, if the Exam AO determines that an adjustment to the liability is warranted
  - Appeals Case Memorandum (ACM) as an attachment to the CAR so the decision can be incorporated into the CDP decision and attachment
- (10) The agreed/unagreed closing code generally used for the liability issue will be used on Form 5402. Form 5402 is signed by the Exam AO ATM but no Appeals Team Case Manager Approval (ACAP) date is applied. The ATM sends the case to APS for reassignment back to the originator.
- (11) At the conclusion of the CDP, the substance of the precluded issue is not discussed in the attachment to the determination or decision letter.

8.22.8.6  
(08-09-2017)  
**Tax Returns**

- (1) The subsections below describe processes for considering return-related liability issues in CDP, such as self-filed, Automated Substitute for Return (ASFR) / Substitute for Return (SFR), and 6020(b) returns.

8.22.8.6.1  
(08-09-2017)  
**Self-Filed Return**

- (1) If a taxpayer disputes the liability on a self-filed return, provide a deadline of at least 21 calendar days to file an amended return with you. If the taxpayer already filed the amended return, secure a copy.
- (2) An amended return filed in a CDP includes new information that Exam has not had an opportunity to consider. The amended return must be considered first by the appropriate Service Center.
- (3) Monitor IDRS for Transaction Code (TC) 971 codes that reflect receipt and disposition of the amended return.

- (4) If the amended return is not accepted in full, open a separate WUNO for an AO to consider the liability.
- (5) If the taxpayer fails to amend the return after disputing the liability, note in the attachment to the determination or decision letter that the taxpayer was given an opportunity to raise the liability but failed to do so.
- (6) Determine if it is appropriate to suspend the CDP hearing on a case-by-case basis. Suspend the case at management's discretion if the amended return will affect resolution of the CDP. If the item(s) being amended have no bearing on a collection alternative or other subjects at issue, then it is not necessary to suspend the CDP hearing.

8.22.8.6.1.1  
(08-26-2020)

#### Audit of the Taxpayer's Self-filed Return

- (1) A CDP tax period may be under audit when a CDP request is made or an amended return submitted in CDP may result in an audit. When this occurs, suspend the CDP hearing using CARATS action code SU/PI, pending the results.
- (2) The Appeals ATM will contact the Exam group manager to advise the liability is at issue in CDP.
- (3) Advise the taxpayer the liability dispute is considered first by Exam and the CDP hearing will be suspended pending the results of the audit.
- (4) If Exam accepts the return as filed, address any other issues in the CDP hearing.
- (5) If taxpayer's return is not accepted as filed, Exam issues an audit report on Form 4549 per the table below:

Exam Issues Form 4549	
And...	Then...
The taxpayer agrees to it	The determination letter will say "the taxpayer filed their own return. The liability issue was raised and resolved."
The taxpayer does not agree to it	Refer to (6), below.

- (6) If the taxpayer does not agree to Form 4549, Exam will issue a 30-day letter. See the table below:

Exam issues a 30-day Letter	
And...	Then...

Exam issues a 30-day Letter	
The taxpayer requests an appeal in response.	<p>Coordinate the liability issue with an Exam AO and apply a DP feature code to both of the WUNOs.</p> <p>If the taxpayer and Exam AO <b>agree</b> on liability, or if the taxpayer disagrees but the Exam AO finds the liability to be less than reported on the self-filed return:</p> <ul style="list-style-type: none"> <li>• The Collection AO adopts the Exam AO's liability determination in the CDP hearing.</li> <li>• If there is unpaid assessed tax, the Collection AO contacts the taxpayer to address collection of the unpaid assessed tax and any other issues in the CDP hearing.</li> <li>• The determination letter must state Appeals determination of liability. If applicable, the letter should state whether Appeals abated any portion of the original assessment. If the taxpayer agreed that the liability was greater than reported on the self-filed return, the determination letter should state although Appeals found an increase in liability in excess of the amount shown on the self-filed return, the CDP hearing is only about collection of the original assessment based on the return. The determination letter must also comment on collection of the unpaid tax from the original assessment and any other issues raised.</li> </ul> <p>If the taxpayer and the Exam AO <b>disagree</b> on the liability, and the liability is greater than shown on the self-filed return:</p> <ul style="list-style-type: none"> <li>• Exam AO issues a SNOD.</li> <li>• The Collection AO adopts in the CDP hearing the Exam AO's liability determination but advises the taxpayer to dispute the deficiency amount by petitioning from the SNOD.</li> <li>• If the taxpayer does not file a timely petition from the SNOD, proceed with CDP hearing.</li> <li>• If the taxpayer timely petitions from the SNOD, keep the CDP cases suspended until the decision of the Tax Court is final.</li> <li>• If there is unpaid tax based on the original assessment (regardless of whether the taxpayer files a timely petition from the SNOD), the Collection AO contacts the taxpayer to address collection of the unpaid assessed tax and any other issues raised in the CDP hearing.</li> <li>• If the liability determination is by Appeals, the determination letter must state Appeals's determination of liability, and although Appeals found an increase in liability in excess of the amount shown on the self-filed return, the CDP hearing is only about collection of the original assessment based on the return. The determination letter must also comment on collection of the unpaid tax from the original assessment and on any other issues raised.</li> <li>• If the liability determination is based on the final Tax Court decision, the determination letter will state that the issue was raised in CDP but that the Tax Court made a final determination of the liability prior to the CDP determination. If the Tax Court found the deficiency to be an amount greater than original assessment, the determination letter will state that although the Tax Court found an increase in liability in excess of the amount shown on the self-filed return, the CDP hearing is only about collection of the original assessment based on the return. The determination letter will also address collection of the unpaid tax based on the original assessment and any other issues raised in the CDP hearing.</li> </ul>

Exam issues a 30-day Letter	
The taxpayer does not agree to the 30 day letter and does not request an Appeals hearing	<p>Exam issues a SNOD offering the taxpayer the right to petition Tax Court.</p> <ul style="list-style-type: none"> <li>• If the taxpayer does not receive the SNOD, or does not file a timely petition from the SNOD, refer the liability issue for an Exam AO determination using procedures in IRM 8.22.8.5.1 to determine whether the taxpayer's return should be fully accepted to reduce the CDP liability.</li> <li>• If the taxpayer files a timely petition, keep the CDP case suspended until the decision of the Tax Court is final. The determination letter will state that the issue was raised in CDP but that the Tax Court made a final determination of the liability prior to the CDP determination.</li> <li>• If there is unpaid tax based on the original assessment (regardless of whether the taxpayer files a timely petition from the SNOD), the Collection AO contacts the taxpayer to address collection of the unpaid assessed tax and any other issues raised in the CDP hearing.</li> <li>• If the liability determination is by Appeals, the determination letter must state Appeals determination of liability, and although Appeals found an increase in liability in excess of the amount shown on the self-filed return, the CDP hearing is only about collection of the original assessment based on the return. The determination letter must also comment on collection of the unpaid tax from the original assessment and on any other issues raised.</li> <li>• If the liability determination is based on the final Tax Court decision, the determination letter will state that the issue was raised in CDP but that the Tax Court made a final determination of the liability prior to the CDP determination. If the Tax Court found the deficiency to be an amount greater than original assessment, the determination letter will state that although the Tax Court found an increase in liability in excess of the amount shown on the self-filed return, the CDP hearing is only about collection of the original assessment based on the return. The determination letter will also address collection of the unpaid tax based on the original assessment and any other issues raised in the CDP hearing.</li> </ul>

**Note:** Neither the 30-day letter nor the SNOD constitutes a prior opportunity to dispute liability because the proposed deficiency amount is not subject to the CDP hearing.

8.22.8.6.2  
(08-09-2017)  
**ASFR/SFR**

- (1) If the taxpayer disputes an ASFR/SFR liability, give the taxpayer 21 calendar days to file a return with you to replace the IRS-prepared return. Attempt to secure all unfiled returns for processing, including non-CDP ASFR/SFR liabilities.
- (2) If the taxpayer fails to file a valid return, note in the attachment to the determination or decision letter that the taxpayer was given an opportunity to raise the liability issue but failed to do so.

**Note:** If the taxpayer had a prior opportunity to contest the liability and did not do so, the attachment should instead say "a challenge to the liability was precluded but the taxpayer was given an opportunity **outside** of CDP to amend the ASFR/SFR return and did not do so."

- (3) On receipt of a valid return from the taxpayer:
  - a. Date stamp it with the Appeals "received date."



- b. Complete the ASFR/SFR Cover Sheet found in Appeals Generator of Letters and Forms (APGolf) under CDP.
- c. Prepare Form 3210 with your phone number and a statement in the "Remarks" section that Appeals is sending the return(s) for expedite processing.
- d. Mail the return, ASFR/SFR Cover Sheet and Form 3210 to the ASFR Recon Team:

Internal Revenue Service  
 ASFR Operation Stop 654  
 1040 Waverly Avenue  
 Holtsville, NY 11742-9013

- (4) The ASFR Recon Team:
  - a. ESTABs the original ASFR/SFR, if necessary.
  - b. Processes the return and makes adjustments to the account.
- (5) Monitor IDRS for the adjustment. If the adjustment fails to post within 90 days from the mailing of your request to ASFR Recon Team, request a status update from the ASFR Contact found on the *Appeals CDP webpage* under "Resources." To avoid prohibited ex parte communications, limit your inquiry to timeliness and processing issues.
- (6) If a liability remains after the taxpayer's return is adjusted, address any other issues in the CDP hearing.
- (7) The table below summarizes whether an ASFR/SFR liability is considered in or outside of CDP:

If...	Then consider the liability...
the taxpayer received an earlier CDP lien or levy notice and files a valid return	outside of CDP
the taxpayer received the SNOD and files a valid return	outside of CDP
the taxpayer says they did not receive the SNOD or does not recall	in CDP

8.22.8.6.3  
 (08-09-2017)  
**BMF 6020(b)**  
**Assessments**

- (1) Taxpayers may raise 6020(b) liability in a CDP hearing if they did not receive Letter 1085, 30 Day Letter Proposed IRC 6020(B) Assessment, or otherwise have an opportunity to contest the tax liability. This letter is not sent by certified mail.
  - Ask the taxpayer if they received Letter 1085. The taxpayer's assertions regarding receipt may determine whether liability may be raised.
  - Check Appeals Centralized Database System (ACDS) to see if the taxpayer requested an Appeals hearing in response to either letter.



- Check Integrated Collection System (ICS) to see if the taxpayer acknowledged receipt of the letter to the revenue officer.
- (2) Once you confirm if the taxpayer received Letter 1085, see the table below:

	Did the taxpayer receive Letter 1085?
Yes	<ul style="list-style-type: none"> <li>• Document how you determined liability was precluded in your attachment to the determination or decision letter</li> <li>• Advise the taxpayer to file their own return directly with the appropriate campus</li> </ul>
No	<ul style="list-style-type: none"> <li>• Give the taxpayer 21 calendar days to file their own tax return with you</li> <li>• If taxpayer files their own return, consider the liability in CDP</li> <li>• If the taxpayer fails to file, the merits of the liability are not properly raised per Treas. Reg. 301.6320-1(f)(2) Q&amp;A-F3 and 301.6330-1(f)(2) Q&amp;A-F3. Note the opportunity offered to address liability in the attachment to the determination or decision letter</li> </ul>

8.22.8.7  
(08-26-2020)  
**Math Error**

- (1) A taxpayer may dispute a math error liability in a CDP hearing. A math error is a mistake on a tax return corrected by the IRS during processing. IRM 21.5.4.3, General Math Error Procedures Overview, lists when the IRS may summarily assess a deficiency resulting from the mathematical or clerical error.
- (2) A notice of deficiency is not initially required for math error liabilities. A notice of math error is generally issued notifying the taxpayer that an amount of tax in excess of that shown on the return is due and must identify the alleged error.
- (3) The notice of math error is not considered a notice of deficiency and a taxpayer who receives one cannot petition Tax Court.
- (4) The taxpayer may request abatement of the math error liability within 60 days of the notice of math error and the IRS must abate the liability.
- (5) If the IRS does not abate the math error liability after the taxpayer's timely request, then the assessment is invalid. Address this invalid assessment as part of the Legal and Administrative (L&A) review.
- (6) Reassessment of the tax with respect to the abatement is subject to the deficiency procedure. If a petition is timely filed, the Tax Court has jurisdiction to redetermine the deficiency.
- (7) If a tax liability was incorrectly assessed under math error procedures instead of SNOD, the assessment is invalid and needs to be abated. Your notice of determination should reflect the facts that support this determination. Do not sustain collection.

8.22.8.8  
(08-26-2020)  
**Innocent Spouse (IS)**

- (1) A taxpayer may always raise IS in a CDP hearing unless the issue was previously:
  - Heard by Appeals and a final determination letter was issued, or

- Considered by Compliance and a final determination was issued in a SNOD or final determination letter prior to the IRS's receipt of the CDP request, or
  - Decided by the Tax Court.
- (2) To make an IS claim, taxpayers must submit Form 8857, Request for Innocent Spouse Relief, or a document containing similar information.
- (3) The Collection Statute Expiration Date (CSED) is suspended from the date an IS claim is filed until:
- a. It is withdrawn,
  - b. A Form 870-IS, Waiver of Collection Restrictions in Innocent Spouse Cases, is filed, plus 60 days,
  - c. Expiration of the 90 calendar day period after the date notice of the IRS's final determination is mailed, plus 60 days, if there is no petition, or
  - d. The Tax Court decision becomes final, plus 60 additional days,
- Note:** This CSED suspension is, for the most part concurrent with the CDP CSED suspension.
- (4) CCISO investigates IS claims raised in CDP.
- (5) CCISO's input of TC 971 AC 65 starts the IRC 6015(e)(2) statute suspension and APS's input of TC 972 AC 65 ends it. The dates of the TC 520 and TC 521 are unaffected.

8.22.8.8.1  
(09-03-2025)  
**Processing IS Claim  
Form 8857**

- (1) Collection transmits the original Form 8857 accompanying a CDP request to CCISO within 10 business days of receipt and provides a copy to Appeals with the CDP referral. If you receive a Form 8857, which Collection did not send to CCISO, or which was filed with Appeals after a CDP hearing request:
- a. Date stamp it or ensure it was date stamped by Collection.
  - b. Request input of feature codes SD and DP to the CDP WUNO if the CDP is filed by the requesting spouse (RS) only or if the CDP request is jointly filed. Do not enter SD on the non-requesting spouse (NRS) account.
  - c. Send the Form 8857, within 10 business days of receipt, on Form 3210 marked "EXPEDITE - CDP CASE" for a preliminary CCISO determination, to:

IRS-Cincinnati Centralized Innocent Spouse Operation

Attn: CDP Coordinator, Stop 840 F

7940 Kentucky Dr

Florence, KY 41042

**Note:** You may fax or EEFax Form 8857 to CCISO at 855-233-8558 if there are no supporting documents, (e.g., no return file). The request must be marked "Expedite-CDP case."

- d. Include the return file if it is already in your possession. Otherwise, CCISO requests the return file.

- (2) Notify the taxpayer by phone or letter that CCISO will investigate the IS claim, contact both the RS and NRS, and share its preliminary determination. If the IS claim is not resolved in CCISO, the claim is returned to Appeals for a final determination in CDP.
- (3) CCISO inputs TC 971 AC 65 on receipt of the request. Verify CCISO input TC 971 AC 65 and then:
  - a. Suspend the CDP in ACDS with SU/PI using the date Form 8857 was sent to CCISO. Update the status code to E/OTH.
  - b. Monitor the case via command code ISTSR. The status of the case is reflected in ISTSR with the Stage Tracking Indicators found in IRM Exhibit 2.3.77-3, Stage Data.
- (4) If the CDP hearing request was joint, the hearing may proceed for the NRS. However, the final determination may not be made until the IS claim has been considered. The collection potential from the RS may affect the viability of a proposed collection alternative.
- (5) If you discover an IS claim is pending in CCISO, the IS claim must be considered in CDP even if the taxpayer's request for CDP made no mention of the IS issue.

#### 8.22.8.8.2

(09-03-2025)

#### CCISO Processing of IS Claim Related to CDP Case

- (1) If the RS submitted a processable claim, CCISO makes a preliminary determination and sends notification to each spouse.
- (2) CCISO sends the preliminary determination letter to:
  - a. Advise the RS and NRS of their right to request a hearing. The NRS has appeal rights in the case of a full or partial allowance for the RS.
  - b. Provide a Form 12509, Innocent Spouse Statement of Disagreement, to both spouses for their completion and return within 30 days.

**Note:** Because the preliminary determination letter is sent to the taxpayers, there are no prohibited ex parte communications between CCISO and Appeals.
- (3) Chief Counsel recommended Appeals include an explanation of Tax Court rights with every IS determination, even if CCISO determined relief should be fully allowed or the case is agreed. As a result, CCISO:
  - Does not issue a final determination letter on fully allowed CDP/IS cases
  - Does not adjust accounts based on its preliminary determination
  - Sends all administrative files to the Cincinnati Campus Appeals office
- (4) If CCISO inadvertently issued a final determination letter, suspend the CDP hearing using CARATS code SU/PI until after the expiration of the period for the taxpayer to petition for a judicial review of the IS determination. If the taxpayer:
  - a. **Petitions:** the CDP remains in suspense until the Tax Court decision becomes final.
  - b. **Does not petition:** Send the administrative file on Form 3210 to Fresno Campus APS, who will establish and assign an INNSP WUNO to an AO.

8.22.8.8.3  
(09-03-2025)

**Appeals Processing of  
IS Claim Related to CDP  
Case**

- (1) Following receipt of the administrative IS file from CCISO, Fresno Campus APS will:
  1. Card a separate INNSP WUNO
  2. Cross reference the INNSP WUNO to the CDP WUNO
  3. Add a feature code "DP" to the INNSP WUNO
  4. Forward the INNSP case to an ATM for assignment to an Exam AO
- (2) The Exam AO works the IS claim following IRM 8.7.12, Appeals Innocent Spouse Case Procedures. When finished, the Exam AO will:
  1. Prepare Form 5402, Appeals Transmittal and Case Memo, with instructions to APS regarding all required account adjustments and Innocent Spouse Tracking System (ISTS) updates. The Exam AO will use closing code 03 (for agreed) or 05 (for unagreed) on Form 5402
 

**Note:** The Exam AO ATM does **not** input an ACAP date for the INNSP WUNO since it will be closed with the CDP by the Collection AO
  2. Include instructions on the Form 5402 for APS to request that CCISO mirror the accounts if the Exam AO fully allows a claim that was previously denied in full
  3. Prepare an ACM as an attachment to the CAR so the decision can be incorporated into the CDP decision and attachment
  4. Attempt to secure the RS agreement on Form 870-IS on all agreed cases for which partial or full relief is granted
  5. Use CARATS action code MS, not AC/FR, when transferring the INNSP case to the Collection AO
  6. Prepare Form 30/40 to transfer the INNSP case through APS to the Collection AO
- (3) The Collection AO will, upon receipt of the INNSP case:
  1. Input CARATS action code SU/TO to the CDP WUNO, using the date of receipt as the action date
  2. Issue a substantive contact letter to the taxpayer(s) within 30 days of receipt of the INNSP case

8.22.8.8.4  
(08-09-2017)

**Mirrored Modules**

- (1) CCISO mirrors accounts when its preliminary determination is to allow relief in full.
- (2) The CSEDs of the spouses generally differ at the conclusion of the CDP hearing because:
  - The 6015(e)(2) statute suspension applies only to the RS.
  - If the determination is unagreed and the CDP hearing was joint, the RS receives a CDP determination letter that provides 90 days to petition Tax Court for a review of the IS relief determination. The NRS receives a determination letter which provides 30 days to petition.
- (3) When an account needs mirroring, you must request APS update ACDS to ensure it reflects the same information as IDRS. The following updates are needed if the mirroring occurs after the date Collection or Appeals received Form 8857:

If...	ACDS	IDRS
Both spouses jointly requested the CDP hearing	<p><b>and all modules were mirrored, request APS:</b></p> <ul style="list-style-type: none"> <li>Update the CDP WUNO to Master File Tax (MFT) 31 for the primary spouse</li> <li>Create a separate CDP WUNO using MFT 31, under the social security number (SSN) for the secondary spouse</li> </ul> <p><b>and all CDP modules were not mirrored, request APS:</b></p> <ul style="list-style-type: none"> <li>establish two new CDP WUNOs, one under each spouse's SSN, using MFT 31, for the periods that were mirrored</li> <li>delete the mirrored periods from the original CDP WUNO</li> </ul>	<ul style="list-style-type: none"> <li>request input of TC 522 cc 76/77 to MFT 30 mirrored modules</li> </ul> <p><b>Note:</b> verify the mirroring process resulted in a TC 520 cc 76/77 to the MFT 31 module for each spouse</p>

If...	ACDS	IDRS
Only the primary spouse requested CDP	request APS: <ul style="list-style-type: none"> <li>Update the CDP WUNO from MFT 30 to MFT 31</li> </ul>	<ul style="list-style-type: none"> <li>request input of TC 522 cc 76/77 to MFT 30 module(s) that have been mirrored</li> <li>request input of TC 522 cc 76/77 to the MFT 31 module(s) for the secondary SSN if the TC 520 was mirrored to the secondary spouse's account</li> </ul>
Only the secondary spouse requested CDP	request APS: <ul style="list-style-type: none"> <li>Update the CDP WUNO from MFT 30 to MFT 31</li> </ul>	<ul style="list-style-type: none"> <li>input TC 522 cc 76/77 on MFT 30 module(s) that have been mirrored</li> <li>input TC 522 cc 76/77 to MFT 31 for the primary SSN, if TC 520 cc 76/77 was mirrored to the primary spouse's account</li> </ul>

8.22.8.8.5  
(08-26-2020)

**Withdrawal of CDP  
While IS Claim is  
Pending**

(1) A CDP request can be withdrawn up to the point the determination letter is issued. If a CDP/EH is withdrawn and:

- **CCISO has the claim:** Deliver or fax a copy of Form 12256, Withdrawal of Request for Collection Due Process or Equivalent Hearing, to CCISO within two business days. Remind CCISO to make the final determination on the claim. CCISO will not return the IS file to Appeals and no IS WUNO is established.
- **The Exam AO has the claim and has not made a decision:** Deliver or fax a copy of Form 12256 to the Exam AO within two business days. Advise the Exam AO to remove the "DP" feature code and to make the final determination, closing the case following normal IS procedures. Take the CDP case out of suspense using CARATS codes SU/TO and close the CDP using closing code 16.

- **The Exam AO returned a recommendation on the claim:** Close the CDP case as a withdrawal and close the IS case by issuing the letters below:

If...	Issue to RS	Issue to NRS
The IS claim is agreed	Letter 913, Agreed Cases - Closing, with a copy of the Form 870-IS	Letter 3289, Final Appeals Notice to Non-Requesting Spouse
The IS claim is unagreed	Letter 3288, Final Appeals Determination to Requesting Spouse	Letter 3289

8.22.8.9  
(08-26-2020)  
**Earned Income Tax Credit (EITC)**

- (1) Taxpayers may raise EITC liability in CDP if they did not receive a SNOD or otherwise have an opportunity to contest the tax liability.
- (2) When EITC is considered in CDP, add ACDS Feature Code "EI".
- (3) When a taxpayer is precluded from raising EITC in CDP, the issue may be considered outside of CDP. To do so:
  - a. Obtain ATM approval
  - b. Request APS card in as a separate EITC WUNO with a TYPE "I" and Feature Code "EI". This case will reference the CDP case.
  - c. Send the appropriate EITC closing letter **before** issuing the CDP Notice of Determination
  - d. In the CDP attachment, explain that while the taxpayer raised EITC, the issue was precluded and EITC liability was considered in a separate hearing
- (4) A project code is used to track information regarding the source of EITC cases. Identify the 4-digit project code from the following list and request that APS load it into the ACDS PROJCD field. The project codes are:

Project Code	Project Definition
0600	EITC Math Error
0601	EITC Informant Claim
0603	EITC Prisoners
0607	EITC Ineligible Other (1040X)
0608	Schedule C and EITC
0611	EITC Questionable Refund Program (QRP)
0642	EITC Miscellaneous Criminal Investigation (CI) Referrals
0652	Duplicate Use of TIN
0691	EITC Fraud

Project Code	Project Definition
0694	EITC Recertification

- (5) For more information on Project Codes, see IRM 4.19.14.4, Program Description.
- (6) When the EITC is denied, an EITC Recertification Indicator is automatically placed on the National Account Profile (NAP) - part of Master File. The recertification indicators, found on ENMOD and IMFOLE, are as follows:
  - a. 0 (or blank) - Recertification not required
  - b. 1 - Recertification Form 8862, Information To Claim Certain Credits After Disallowance, is required for the subsequent year
  - c. 2 - Credit denied for two years after the disallowed year
  - d. 3 - The taxpayer recertified after the two or 10-year ban expired. However, the two or 10-year ban is still in place for the banned years
  - e. 4 - Credit denied for 10 years after the disallowed year
  - f. 8 - Reserved
  - g. 9 - Set instead of '1' when TC 971 AC 156 posts and recertification Form 8862 will be required for the subsequent year
- (7) Once the EITC is denied for the following year (or years), taxpayers complete Form 8862, to recertify they are eligible to receive the EITC.
- (8) Upon closing, retain a copy of Form 8862 in the administrative file and verify Recertification Indicator 1, 2, 4 or 9 appears on IMFOLE or ENMOD (if not there, recertification is not an issue) and notate one of the following on Form 5402:
  - "Reverse Recertification Indicator, Input TC 971, AC 56"
  - "Do Not Reverse Recertification Indicator"
  - "Recertification Ban Was Not Imposed"
- (9) For more information on closing procedures, see IRM 8.20.7.27, EITC Recertification Program (Refundable Credits ACTC/CTC/AOTC/EIC).
- (1) The following subsections discuss CDP procedures for penalty issues in CDP. In working penalty issues, you'll often need to consult with other sections of IRM Part 8 including:

8.22.8.10  
(08-09-2017)  
**Penalties**

Appeals Penalty IRMs
IRM 8.11.1, Return Related Penalties in Appeals
IRM 8.11.3, Return Preparer Penalty Cases
IRM 8.11.4, Penalty Appeals (PENAP)
IRM 8.11.5, International Penalties
IRM 8.11.6, FBAR Penalties



Appeals Penalty IRMs
IRM 8.11.7, Abusive Transaction Penalties
IRM 8.11.8, Miscellaneous Penalties

8.22.8.10.1  
(08-26-2020)  
**Trust Fund Recovery  
Penalty (TFRP)**

(1) Taxpayers may raise TFRP liability in CDP if they did not have a prior opportunity to dispute the liability. Examples of a prior opportunity include the taxpayer:

- Receiving Letter 1153
- Filing Form 843, Claim For Refund and Request for Abatement, and Appeals issued a determination
- Receiving a notice of claim disallowance letter offering an opportunity to dispute the disallowance in Appeals
- Having a hearing with Appeals about the TFRP liability, Appeals issued a liability determination and the taxpayer meaningfully participated
- Filing a complaint or suit and the court decided the TFRP liability
- Receiving a prior CDP lien or levy hearing notice for the same tax and taxable period
- Challenging the TFRP liability in bankruptcy

(2) To determine if the taxpayer received Letter 1153:

- a. Ask if they received Letter 1153
- b. Review the corporate ICS history for documentation of personal delivery of Letter 1153
- c. If receipt is not confirmed, generate the "TP disputes TFRP civil penalty" form in APGolf to request a copy of the Letter 1153 and proof of receipt from Advisory. Ask them to check Automated Trust Fund Recovery (ATFR) program for documentation of personal delivery
- d. Email the completed form as an attachment to *CEASO ADVISORY CPM*.
- e. Civil Enforcement Advice and Support Operations (CEASO) sends the entire TFRP file if proof of receipt cannot be determined

**Note:** Return TFRP files promptly to CEASO at the conclusion of the case as they may be needed for a taxpayer's Form 843.

(3) If the taxpayer states a hearing was requested in response to Letter 1153, research ACDS to find the related case. If there is no record of a prior TFRP hearing for the subject periods, ask for proof of the timely request. If the taxpayer provides evidence of a timely filed protest that was not considered by Appeals, then the taxpayer must be allowed to raise TFRP liability in CDP.

**Note:** The IRS must abate an assessed TFRP where the taxpayer timely protested the proposed TFRP assessment, but the IRS mistakenly failed to provide the taxpayer with a pre-assessment Appeals hearing, as described in Rev. Proc. 2005-34, 2005-1 C.B. 1233, 2005-24 I.R.B. 1233 (June 13, 2005).

(4) If liability can be considered, see:

- IRM 5.7.3, Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP), for a discussion of willfulness and responsibility

- IRM 8.25.2.6.3, Hazards of Litigation Settlements, for a discussion of hazards

8.22.8.10.1.1  
(08-26-2020)  
**TFRP and a Pending  
Form 843 Claim**

- (1) A taxpayer may raise TFRP liability in a CDP submitted after filing a Form 843, with Advisory. If so, determine if Appeals can consider the TFRP liability in the CDP hearing.
- (2) If the issue is precluded, explain that Collection Advisory works the claim. If Advisory denies all or part of the taxpayer's formal claim, it will issue a Claim Disallowance Letter which provides appeal rights. If the taxpayer exercises those appeal rights, Appeals will consider the TFRP liability outside of CDP. See IRM 5.7.7, Payment Application and Refund Claims.
- (3) If the issue can be considered in the CDP hearing, tell the taxpayer:
  - a. Advisory works the claim, and if it issues a notice of claim disallowance, the notice starts the two year period for filing a refund suit in District Court. If Advisory does not make a determination within six months of receipt of the refund claim, the taxpayer may file suit
  - b. If Advisory accepts the claim, Appeals accepts Advisory's determination
  - c. If Advisory denies the claim, Appeals makes the final determination in CDP
  - d. When Appeals makes a determination on a TFRP liability in CDP, there are no additional administrative appeal rights

8.22.8.10.2  
(03-29-2012)  
**IRC 6673(a)(1) Tax Court  
Imposed Penalty**

- (1) Under IRC 6673(a)(1), the Tax Court may impose a penalty of up to \$25,000 against a taxpayer for:
  - Making frivolous arguments before the court
  - Filing a petition for delay
  - Unreasonably failing to pursue administrative remedies
- (2) If the Tax Court imposes an IRC 6673 penalty, the IRS assesses and collects it in the same manner as a tax. A notice of a right to a hearing must be given to the taxpayer when the IRS intends to collect the penalty.
- (3) If a taxpayer disputes an IRC 6673 liability:
  - a. Obtain a copy of the Tax Court decision or order imposing the penalty from the U.S. Tax Court home page at *US Tax Court*.
  - b. Confirm the penalty was properly assessed by reviewing IDRS
- (4) The penalty cannot be compromised under doubt as to liability as Treas. Reg. 301.7122-1(b)(1) states that doubt as to liability does not exist where a liability is established by a court decision or judgment.
- (5) Counsel generally recommends against compromise of the IRC 6673 penalty under doubt as to collectibility or effective tax administration grounds. The penalty is an important tool used by the Tax Court to deter frivolous litigation. However, compromise on doubt as to collectibility grounds may be appropriate if the taxpayer abandons frivolous arguments and comes into tax compliance.

8.22.8.10.3  
(09-23-2014)

## **IRC 6700/6701 Penalties**

- (1) IRC 6700(c) provides a penalty for promoting abusive tax shelters.
- (2) IRC 6701 provides a penalty for aiding and abetting understatement of tax liability.
- (3) A notice and demand letter is automatically generated upon assessment of these penalties:
  - Individual Master File (IMF): penalty is MFT 55 and CP 15 is issued
  - Business Master File (BMF): penalty is MFT 13 and CP 215 is issued
- (4) Notice and demand CP 15 and CP 215 provide specific procedures for requesting abatement and obtaining judicial review under IRC 6703(c). To contest the penalties and obtain a levy prohibition, the taxpayer must pay at least 15% of the penalty and file a claim for a refund within 30 days of the date of issuance of notice and demand. The taxpayer may then file a refund suit within 30 days after the claim is denied or within 30 days after the expiration of six months after the date the claim was filed.
- (5) These penalties may be raised in CDP because notices CP 15 and CP 215 are not a prior opportunity. See IRM 8.22.8.3(9)(g) above.
- (6) If the taxpayer disputes the liability, refer the liability issue to an Exam AO per IRM 8.22.8.5.1, Referring a Liability Issue.
- (7) If you determine the taxpayer **timely** took the actions in IRC 6703(c) to obtain judicial review, this subsection provides the IRS may not levy to collect the penalty until the final resolution of the proceeding the taxpayer initiated. If the CDP hearing involves a proposed levy and the taxpayer timely followed the procedures in IRC 6703(c), the CDP notice is valid. However, do not sustain the proposed levy, unless there has been a final resolution. Place the case in suspense pending the outcome of the litigation. See IRC 6703(c)(2).
- (8) If you determine that the taxpayer paid 15% of the penalty but the taxpayer denies a claim was filed after 15% was paid, check Pacer to verify the taxpayer did not file a suit. If the taxpayer filed suit, see paragraph (7) above.

8.22.8.10.4  
(08-26-2020)

## **IRC 6702(a) and 6702(b) Frivolous Return/Submission and IRC 6682 Questionable W-4 Penalties**

- (1) IRC 6702(a), IRC 6702(b), and IRC 6682 penalties do not generate a notice giving the taxpayer administrative appeal rights. Therefore, these penalties may be raised in CDP.
- (2) IRC 6682 allows the assessment of a \$500 civil penalty for furnishing a false Form W-4 if:
  - a. The statement made on the form results in less withholding than would have been if the form had been correctly completed, and
  - b. There was no reasonable basis for such a statement
- (3) IRC 6682 penalties are assessed using MFT 55 for the calendar year for which the false Form W-4 was signed.
  - Multiple penalties may be assessed on a given module, one for each false Form W-4
  - TC 240 with Reference Code 616 identifies a questionable W-4 penalty

- IRC 6682 authorizes abating the penalty if there was a reasonable basis for the taxpayer's Form W-4 when it was submitted. See IRM 5.19.11.11.3, Civil Penalty Abatements
- (4) IRC 6702(a) imposes a \$5,000 civil penalty against any person who files a return (not limited to income tax returns), if the purported return does not contain information on which the substantial correctness of the self-assessed determination of tax may be judged or contains information that on its face indicates that the self-assessment is substantially incorrect and:
- a. The return is based on a frivolous position as identified under 6702 listing of frivolous positions
  - b. The return is filed by a taxpayer with the desire to delay or impede the administration of federal tax laws
  - c. Is identified on TXMOD by TC 240 with reference code 666
- (5) IRC 6702(b) imposes a \$5,000 civil penalty against any person who submits a specified frivolous submission. A specified submission contains a position which the IRS has identified as frivolous under IRC 6702(c) or if the specified submission reflects a desire to delay or impede the administration of federal tax laws. See Notice 2010-33 . A specified frivolous submission may be identified by TC 240 with reference code 543.
- (6) There is no legal basis for abatement of IRC 6702 penalties due to reasonable cause. However, IRC 6702(d) provides the IRS may reduce a IRC 6702 penalty if it "determines that such reduction would promote compliance with and administration of the Federal tax laws."
- (7) Eligibility criteria for a one-time reduction of an unpaid IRC 6702 penalty liability are found in sections 4 and 5 of Rev. Proc. 2012-43 and further described in IRM 20.1.10.12.3, IRC 6702(d) Reduction of Frivolous Submission IRC 6702 Penalties. Eligibility for penalty reduction is fact-driven and not discretionary. The process starts with a taxpayer making an application for reduction of IRC 6702 penalties on Form 14402, Internal Revenue Code (IRC) Section 6702(d) Frivolous Return Submissions Penalty Reduction, and generally requires a minimal payment of \$250. See Rev. Proc. 2012-43 for the specific requirements.
- (8) If you receive Form 14402:
- a. Process any payment with a TC 670 and a secondary TC 570
  - b. Forward Form 14402 with a photocopy of the payment to the Frivolous Filer Unit, Ogden Campus, Stop 4390 on Form 3210
  - c. Write in the remarks section of Form 3210 that the 6702(d) issue was raised in Appeals in a CDP hearing. Request that a copy of the letter responding to the taxpayer be returned to you.
- (9) In response, Ogden will:
- Adjust the penalty if the taxpayer is eligible
  - Return a preliminary decision that the taxpayer's request is denied if the facts don't support reduction
- (10) If the taxpayer's request for penalty reduction was denied, the issue need not be referred to an AO since the decision is fact-driven and not discretionary. Review Ogden's decision to confirm the facts were properly applied as per Rev. Proc. 2012-43. Discuss the penalty determination in your closing letter.

- (11) A taxpayer may challenge an IRC 6682 or IRC 6702 penalty on the grounds that required approval was not obtained in accordance with IRC 6751(b)(1), which states that no penalty shall be assessed unless it is approved in writing by the immediate supervisor of the individual who made the initial determination to assert the penalty. A challenge based on IRC 6751(b)(1) is a challenge to whether procedural requirements for the making of the assessment were satisfied. As such, it is a verification issue under IRC 6330(c)(1), not a liability challenge under IRC 6330(c)(2)(B). For guidance of IRC 6751(b)(1) compliance of IRC 6702 penalties, see IRM 8.22.5.4.2.1.4, Frivolous Return/Submission.

8.22.8.10.5  
(08-26-2020)  
**IRC 6707 or 6707A  
Disclosure Penalties**

- (1) IRC 6707 provides a penalty for the failure to furnish information regarding a reportable transaction. IRC 6707A provides a penalty for the failure to include on any return or statement any information required to be disclosed under IRC 6011 regarding a reportable transaction.
- (2) A taxpayer may dispute a IRC 6707 and IRC 6707A penalty in CDP if the taxpayer did not have a prior opportunity to do so. If ACDS confirms Appeals conducted a prior IRC 6707 or IRC 6707A hearing for the same tax period, the taxpayer had a prior opportunity.
- (3) Appeals has no authority to rescind IRC 6707 or IRC 6707A on the grounds specified in IRC 6707(c) and 6707A(d) in CDP. When the taxpayer is permitted to raise the liability, Appeals may determine that the penalty does not apply or may propose a settlement based on hazards of litigation. Appeals may consider whether:
- The transaction involved is a reportable transaction other than a listed transaction
  - The transaction involved is a listed transaction
  - The person is subject to, and complied with, the reporting requirements of IRC 6011
  - The applicable statute of limitations bars assessment of the penalty
- (4) The “Small Business Jobs Act (SBJA) of 2010” amended the IRC 6707A penalty calculation retroactively for penalties assessed after December 31, 2006. The Abusive Transactions Unit in Ogden reviewed the calculation of the IRC 6707A penalty and made adjustments where appropriate. A taxpayer who can’t raise liability in a CDP hearing because of prior opportunity is still able to contest the amount of the recalculation, except where the penalty has been recalculated to the minimum amount allowed under SBJA 2010, which is \$10,000 for businesses and \$5,000 for individuals.
- (5) IRC 6707 and IRC 6707A penalties are Appeals Coordinated Issues. When the taxpayer is able to raise liability as a CDP issue, a new WUNO is created for this liability issue as per IRM 8.22.8.5.1, Referring a Liability Issue. The Exam AO obtains the concurrence of Technical Specialist for 6707/ 6707A penalties before returning the case to the Collection AO. Technical Specialists are found at *TG locator*

8.22.8.10.6  
(08-26-2020)

**Reasonable Cause  
Penalty Abatement**

- (1) Taxpayers may raise reasonable cause penalty abatement in a CDP hearing if they did not have a prior opportunity to do so. The table below gives examples of when penalty appeal (PENAP) is an issue in CDP:

If Letter 105C or 854C was...	And the taxpayer...	And...	Is PENAP a CDP issue?
issued	requested a PENAP hearing	CDP hearing is pending in Appeals	Yes. Associate the PENAP appeal with the CDP appeal.
	received the letter but did not request PENAP hearing during the 60-day appeal period that expired before the taxpayer requested the CDP hearing	raises PENAP in CDP	No. When the taxpayer received the letter and the 60-day period to appeal the abatement/claim denial expired before the taxpayer requested CDP, that constitutes a prior opportunity.
	requests CDP hearing during the 60-day appeal period after letter was issued	raises PENAP in CDP	Yes. The taxpayer did not have a prior opportunity as the CDP and letter periods overlap.
not issued	did not previously challenge penalty	raises PENAP in CDP	Yes.

- (2) To raise PENAP in CDP, the taxpayer must provide a written statement identifying the:
- Tax period(s)
  - Type of tax
  - Specific penalties disputed
  - Grounds for reasonable cause abatement
- (3) If the taxpayer's CDP request includes a general statement about penalties, (e.g., "penalties should be abated"), ask for specific information in support of the dispute as described above. If the taxpayer fails to provide the requested information, note in the attachment to the determination or decision letter that penalty abatement was not considered because the taxpayer declined to provide requested information.
- (4) For a discussion of reasonable cause criteria, see:
- IRM 20.1.1.3.2, Reasonable Cause
  - IRM 8.11.1.2.7.1, Reasonable Cause
- (5) When PENAP is a CDP issue, a separate PENAP WUNO is **not** created. The PENAP is addressed in the determination or decision letter attachment.
- (6) When PENAP is precluded from CDP, it may be considered outside of CDP. To do so:
- a. Obtain ATM approval



- b. Request APS card in as a separate PENAP WUNO
  - c. May be assigned to another Appeals employee at ATM discretion
  - d. Send the appropriate penalty appeal closing letter **before** issuing the CDP Notice of Determination
  - e. In the CDP determination or decision attachment, explain that while the taxpayer raised penalty appeal, the issue was precluded and penalty liability was considered in a separate Penalty hearing
- (7) Prepare one of the forms below for APS to input your decision regarding each of the disputed penalties and tax period(s):
- Form 5402 when penalty was considered outside of CDP under a separate PENAP WUNO
  - Form 3870 when penalty was considered in CDP
- (8) Use blocking series 96X (penalty abatement refusal) for the TC 290 (-0-) transaction. This prevents a later abatement of a penalty sustained by Appeals.

8.22.8.11  
(09-03-2025)  
**Interest Abatement**

- (1) An interest abatement request is not a challenge to the existence or amount of the underlying tax liability. IRC 6330(c)(2)(B), Prior Opportunity, does not apply in determining whether Appeals can consider interest abatement in CDP. A taxpayer may raise interest abatement in a CDP hearing unless the issue was previously:
- a. Heard by Appeals, meaning that the taxpayer must have both participated meaningfully in the Appeals proceeding and that a final determination letter was issued, or
  - b. Decided by the Tax Court
- (2) A taxpayer may raise interest abatement even if the CDP liability has been paid or a disputed lien released.
- (3) If Appeals is considering an interest abatement claim at the same time a CDP request is made, forward the interest abatement claim to the Collection AO assigned to the CDP hearing.
- (4) To raise interest abatement in CDP, the taxpayer must provide a written statement that identifies:
- The type of tax involved,
  - When the taxpayer was first notified by the IRS in writing about the deficiency or payment,
  - The specific period for which abatement of interest is requested,
  - The circumstances of the case, and
  - The reason(s) why the taxpayer believes that failure to abate interest would result in grossly unfair treatment.
- (5) If the taxpayer's CDP request includes a general statement about interest, such as "interest should be abated," ask them to provide the information described above. If the taxpayer fails to do so, note in the attachment to the determination or decision letter that interest abatement was not considered because the taxpayer failed to provide requested information.

- (6) When the taxpayer submits a properly perfected request for interest abatement, provide APS with a copy of the CDP case summary card requesting:
  - a. A separate ABINT WUNO with feature code "DP" and the Note-"XREF (WUNO of related CDP)"
  - b. Identify the date you determined interest abatement was at issue; APS uses this date for the REQAPPL field
- (7) Interest on employment, excise, and other taxes that are not subject to deficiency procedures do not qualify for abatement under IRC 6404(e). However, the IRS has authority to abate interest under IRC 6404(a) if it is:
  - a. Excessive in amount,
  - b. Assessed after the expiration of the applicable period of limitations, or
  - c. Erroneously or illegally assessed.
- (8) A request for an abatement of interest under IRC 6404(e)(1) relating to IRS delays for assessing exam-sourced liabilities should be referred to an Exam AO to evaluate the actions of the examiner (and possibly a prior AO) regarding alleged delays in assessing the tax and penalty and whether the amount of time taken for certain actions related to the assessment of the liability was reasonable.
- (9) APS has a Complex Interest Team that can assist with complex or restricted interest computations. You may request interest computation assistance following the procedures in IRM 8.22.7.8.1, Interim Adjustments. Instead of preparing a Form 3870, prepare the ACDS Update Form in APGolf.
- (10) Additional guidance on interest abatement is found at:
  - IRC 6404
  - IRC 7508A(a)(2) ,if the taxpayer was affected by a Presidentially-declared disaster or a terroristic or military action
  - Treas. Reg. 301.6404-2 for examples of when the IRS might abate or reduce interest
  - IRM 8.7.7.18, Abatement of Interest Claims

8.22.8.12  
(08-09-2017)  
**Doubt as to Liability  
(DATL) Offers**

- (1) For guidance on working DATL OICs, see IRM 8.22.7.10.7, Doubt as to Liability (DATL) OIC.

8.22.8.13  
(10-01-2012)  
**TEFRA Partnerships**

- (1) Taxpayers who are partners in TEFRA entities may not challenge the treatment of partnership items in a CDP hearing, because IRC 6221 requires that the tax treatment of any partnership item be determined at the partnership level. Because CDP is a partner-level proceeding, a taxpayer may not challenge the underlying liability regarding the tax treatment of partnership items in a CDP proceeding even if the taxpayer never actually received a Final Partnership Administrative Adjustment (FPAA) that was properly addressed and mailed. If a taxpayer attempts to challenge the underlying liability by disputing the tax treatment of a partnership item, he should be advised that section 6221 precludes challenge to any deficiency attributable to a partnership item that was determined under the TEFRA partnership procedures, either through final adjudication by a court or default of the FPAA.



**Note:** Section 6221 does not preclude a taxpayer from challenging non-partnership aspects of their tax liability. Accordingly, section 6330(c)(2)(B) would apply if the taxpayer in fact received a statutory notice of deficiency or otherwise had the opportunity to dispute non-partnership aspects of the taxpayer's liability.

(2) Partners also are precluded under the judicial doctrine of res judicata from challenging the treatment of partnership items. Res judicata prohibits the relitigation of claims that were, or could have been, the subject of a previous court proceeding. Res judicata bars the relitigation of claims that were raised, or could have been raised by the same parties or those with whom they are in privity in prior proceedings. After an FPAA is mailed to the Tax Matters Partner (TMP) and notice partners, IRC 6226(a) allows the TMP 90 days to file a petition for a readjustment of partnership items with the Tax Court, the U.S. Court of Federal Claims, or the U.S. District Court in which the partnership's principal place of business is located. If the TMP does not file a petition, any notice partner or a 5% group of non-notice partners (group owning in the aggregate 5% or more of the interest in partnership profits) may file a petition with any of these courts within 60 days after the close of the 90-day period. Regardless of which partner files the petition, IRC 6226(c) provides that:

- a. Each person who was a partner in the partnership at any time during the year being litigated is treated as a party to such action.
- b. The court having jurisdiction of the case allows such persons to participate in the action.
- c. Because IRC 6223(g) and (h) requires a TMP and any pass-thru partner (generally a partnership, estate, trust or S corporation) to forward a copy of the FPAA to any non-notice partner, who is not entitled to notice from the IRS, a partner's claim that they never received notice of the FPAA generally must be rejected. IRC 6230(f) further provides that the failure of the TMP or pass-thru partner to provide any notice or perform any action required under the TEFRA procedures on behalf of a partner does not affect the applicability of any proceeding or adjustment to such partners. In other words, notice to the partner's agent (TMP or pass-thru partner) constitutes notice to the partner as a matter of law.

**Note:** Because all partners are treated as a party to the action, if a partnership action is filed in response to an FPAA, res judicata applies to bar any partner from challenging, in CDP, any item that could have been raised in the partnership-level proceeding, regardless of whether the issue was in fact raised in the proceeding. Res judicata applies even if the taxpayer alleges that the TMP, or the pass-thru partner, did not notify the taxpayer of the partnership level proceeding or settlement of the proceeding.

(3) For partnership tax years ending after August 5, 1997, the applicability of penalties is determined at the partnership level. For the same reasons as described above, an individual partner may be precluded from challenging a partnership-level penalty determination in CDP. Individual partners may, however, assert partner-level penalty defenses, including partner-level reasonable cause, even if they received a notice of computational adjustment giving them an opportunity to file a refund claim within six months after the IRS mailed the computation to the taxpayer. This is true even if the partnership-level penalty determination was included in a settlement of partnership-level issues agreement, a defaulted FPAA, or a partnership-level federal court decision.

**Note:** For partnership tax years ending before August 6, 1997, the applicability of penalties is determined at the partner-level through a notice of deficiency, which represents a section 6330(c)(2)(B) “opportunity;” moreover, penalties included in a Form 870-L or Form 870-L(AD) settlement agreement are considered to have been resolved with finality.

- (4) When a taxpayer claims that they did not receive proper notification of the adjustment, review the case file for the following indications of proper notification:
  - A notice of FPAA was issued;
  - Settlements entered into by investors by signing waivers, closing agreements, or settlement agreements;
  - Investors who filed bankruptcy petitions presumably received a notice of deficiency, even for a TEFRA year, because their partnership items would have been converted to non-partnership items due to the bankruptcy filing.
- (5) A taxpayer cannot contest erroneous mathematical computations applying the determined partnership items to the taxpayer’s return, including interest computations, if the taxpayer received a notice of computational adjustment that offers the taxpayer an administrative opportunity to address any mathematical errors and the administrative opportunity lapsed before issuance of the CDP notice. The IRS started providing such an administrative opportunity with Letter 4735, Notice of Computational Adjustment, starting on January 1, 2012. If the notice of computational adjustment was issued prior to this date, the taxpayer may raise this issue at the CDP hearing.
- (6) If the taxpayer was issued and received a notice of deficiency relating to the partnership items adjustments, the taxpayer may not dispute issues that were or could have been raised in that deficiency proceeding.
- (7) Taxpayers can raise interest abatement as part of a TEFRA-related CDP hearing. Abatement of interest is not a liability issue under section 6330(c)(2)(B). However, if the taxpayer previously sought IRC 6404(e) relief from Appeals, section 6330(c)(4) prevents the taxpayer from obtaining a determination by Appeals in the CDP hearing, unless he did not meaningfully participate in the prior Appeals proceeding. Generally, Appeals does not grant abatement of interest under IRC 6404(e) in a TEFRA-related CDP case without special circumstances. Where abatement appears warranted, discuss the issue with the Appeals TEFRA Technical Specialist.
- (8) For additional information see IRM 8.19.8, Collection Cases.

8.22.8.14  
(08-09-2017)  
**Son of Boss (SOB)**

- (1) The IRS determined that SOB transactions, described in Notice 2000-44, 2000-2 C.B. 255 are abusive and were designed, marketed, and undertaken solely to create tax benefits unintended by any reasonable interpretation of the tax laws. The IRS believes that it would prevail in litigation on the merits of these transactions and that the imposition of penalties would be upheld. For efficient tax administration reasons, the IRS offered taxpayers an opportunity to resolve their civil tax liabilities under the SOB settlement initiative described in Announcement 2004-46, 2004-21 I.R.B. 964, to avoid litigation.
- (2) Taxpayers who elected to participate in the SOB settlement initiative were sent a closing agreement under IRC 7121 and were expected to full pay upon submission of the signed Form 906, Closing Agreement on Final Determination Covering Specific Matters, to the Revenue Agent within 30 days. Those

taxpayers who indicated they could not pay the liability in full were required to submit complete financial statements and to agree to other financial arrangements, acceptable to the IRS, before the IRS would execute the closing agreement. Taxpayers were considered to be ineligible to participate in this initiative if an agreement regarding an acceptable financial arrangement was not reached. Taxpayers participating in the SOB settlement initiative were eligible for certain tax benefits and penalty relief.

- (3) Eligible taxpayers had until June 21, 2004, to elect to participate in the settlement initiative. For taxpayers who were either ineligible, or who failed to elect and settle their cases under the settlement initiative, Announcement 2004-46, 2004-21 I.R.B. 964 was clear there would be no administrative Appeals consideration in SOB cases. For all taxpayers ineligible or not participating in the settlement initiative, the IRS developed the cases, disallowed all tax benefits and attributes claimed from the SOB transaction, including out-of-pocket costs and fees, determined appropriate penalties, including those under section 6662 or section 6663, and issued a Notice of Deficiency or Notice of Final Partnership Administrative Adjustment, as appropriate. The unresolved cases were to be treated as designated for litigation.

8.22.8.14.1  
(08-09-2017)  
**Identifying SOB Cases**

- (1) Collection identified these cases by writing "Son of BOSS non-participant" on the CDP referral form.
- (2) Based on the referral, APS identifies these cases on ACDS with "SOB" in Location Field 8 and "Son of BOSS Tax Shelter" in the Notes field.
- (3) An additional way to identify SOB cases is to ask the taxpayer for an explanation of liabilities that exceed \$1,000,000.
- (4) If you discover a CDP case involving an SOB liability that is not identified as SOB in ACDS, request that APS input "SOB" to Loc field 8 and "Son of BOSS" Tax Shelter in the Notes field.

8.22.8.14.2  
(08-09-2017)  
**SOB Liability Challenge**

- (1) When a taxpayer seeks to challenge an SOB liability in a CDP, determine if the liability challenge is precluded:
  - IRM 8.22.8.3, When Liability is Raised,
  - IRM 8.22.8.13, TEFRA Partnerships
- (2) Once you've confirmed the SOB liability may be challenged, follow the Step Table below:

Step	Action
1	<b>Secure documentation from the taxpayer to support the liability dispute.</b>
2	Request ATM approval for creating a new WUNO.

Step	Action
1	<b>Secure documentation from the taxpayer to support the liability dispute.</b>
3	Provide APS with: <ul style="list-style-type: none"> <li>• a copy of the CDP case summary card noted at the top "Create a separate WUNO with feature code "DP" and with the Note-"XREF (WUNO of related CDP)",</li> <li>• the correct case Type according to the issue.</li> <li>• the date Appeals determined the SOB liability is eligible for consideration in the CDP hearing.</li> <li>• a request that APS enter the notation "SOB" in the LOC 8 field and the notation "Son of BOSS Tax Shelter" in the NOTE field of the newly created WUNO.</li> <li>• a request that APS input feature code "DP" to the original CDP case.</li> </ul>

- (3) APS creates and returns the new WUNO within three work days of the request.

8.22.8.14.3  
(08-26-2020)

#### Conduct of the Hearing

- (1) The Collection AO's ATM arranges for the assignment of the Type "I", "ABINT" or "PENAP" case to an Exam AO according to local procedures.
- (2) SOB transactions are an Appeals Coordinated Issue requiring the review and concurrence of Technical Specialist in the decision. The Exam AO considering the SOB liability issue:
  - Makes a referral to the SOB Technical Specialist
  - Consults with the Technical Specialist throughout the consideration
  - Obtains the concurrence of the Technical Specialist prior to discussing the settlement of tax, penalty and/or interest with the taxpayer
- (3) Once the SOB issue is concluded, the Exam AO submits the following to their ATM for approval:
  - Form 30/40 transfer form
  - Form 5402
  - Form 3210
  - Any adjustment documents, if applicable
  - An ACM as an attachment to the CAR so the decision can be incorporated into the CDP decision and attachment
- (4) Upon receipt of the decision from the Exam AO, the Collection AO schedules the CDP hearing to consider any other relevant CDP issues the taxpayer raised. The Exam AO's decision concerning the underlying liability is adopted in the CDP determination or decision letter.
- (5) A request for spousal relief from an SOB assessment is considered under CDP following IRM 8.22.8.8.1, Processing IS Claim Form 8857.

8.22.8.14.4  
(08-26-2020)  
**Approval of Case  
Decisions**

- (1) The Chief, Appeals, has sole approval authority on the settlement of the SOB liability when the liability is not precluded from CDP. The closure-ready administrative file for an SOB case, where any part of the liability is at issue, whether the liability has been changed or not, must be forwarded for approval to Chief, Appeals. Decisions in IS cases where the taxpayer seeks relief from an SOB liability also require Chief, Appeals approval.
- (2) If there is a significant issue not addressed in the ACM which requires explanation, the ATM prepares a briefing paper to explain the basis for Appeals's recommended settlement. The ATM sends the following documents to the Area Director to coordinate with the Senior Operations Advisor for the Director, Specialized Examination Programs & Referrals, to obtain the approval of Chief, Appeals,:
  - 5402
  - ACMand Closing Letter
  - CAR
  - Briefing Paper, if applicable
  - Original case file or a complete copy of the case file
- (3) These documents are forwarded for review with no fewer than 30 days remaining before any court-mandated response date if the case is docketed and has been remanded for a supplemental notice of determination.
- (4) The case is returned to the originating ATM and the Collection AO closes the CDP on receipt of Form 5402 and the closing letter, signed by Chief, Appeals, using general CDP closing procedures.
- (5) Review and approval of Chief, Appeals is not required when:
  - The SOB liability was precluded under IRC 6330(c)(2)(B)
  - The underlying liability of tax, penalty and interest in an SOB case was not at issue
  - The taxpayer withdraws a CDP hearing request

**Example:** The taxpayer submitted a DATC OIC. Since collectibility, and not liability; is at issue, approval of Chief, Appeals, is not required.
- (6) After approval, the ATM provides a copy of Form 5402 and the ACM to the Area Director.

8.22.8.14.5  
(10-01-2012)  
**Claims for Penalty  
Abatement**

- (1) For guidance concerning claims for penalty abatement from non-participants, where the resulting balance due is based on an audit or an amended return filed by the taxpayer, see IRM 8.22.8.13, TEFRA Partnership. Appeals considers requests for abatement of the asserted penalty because "the taxpayer filed a qualified amended return under Treas. Reg. 1.6664-2(c)(3)(i)(A) before being contacted by the IRS."
- (2) Contact the Appeals Technical Specialist for SOB with questions concerning Appeals SOB procedures.

8.22.8.15  
(10-01-2012)  
**Qualified Offers**

- (1) A qualified offer is a proposal by the taxpayer to settle a tax liability dispute. If the government does not accept the offer within 90 days, and the taxpayer meets the other requirements of IRC 7430, it must receive a judgment in excess of the amount the taxpayer offered to settle the case or pay reasonable administrative and litigation costs. IRC 7430(c)(4)(E).
- (2) A qualified offer is a settlement offer, not an OIC.
- (3) A taxpayer's proposal must meet the requirements in IRC 7430(g) to constitute a qualified offer. The taxpayer is considered a "prevailing party" if a court determines the taxpayer's liability is equal to or less than the amount offered to settle in a valid qualified offer.
- (4) A taxpayer may submit a qualified offer during a CDP hearing if:
  - a. The CDP request was timely.
  - b. The taxpayer is not precluded from contesting the liability by IRC 6330(c)(2)(B), 6330(c)(4) or 6320(c). Unless the underlying liability is at issue in the CDP hearing, the taxpayer may not recover administrative costs under IRC 7430 and thus a qualified offer would have no effect.
- (5) Consider the qualified offer within 90 days as the offer is deemed rejected by statute if the IRS does not respond within 90 days or the time period stated in the offer. The time period for the IRS's response, as stated in the offer, must be 90 days or more for the offer to be a qualified offer.
- (6) Appeals does not have to formally reject a qualified offer and does not have to justify an affirmative or default rejection in the determination or decision letter attachment.
- (7) For procedures for evaluating and responding to qualified offers, see:
  - IRM 8.7.15.2.3, Appeals Involvement in Docketed IRC 7430 Cases
  - Office of Chief Counsel Notice, CC-2010-007

8.22.8.16  
(08-09-2017)  
**Identity Theft and Return  
Preparer Misconduct  
(RPM)**

- (1) A taxpayer may dispute a liability by claiming their identity was stolen or that their return preparer engaged in misconduct. See the table below for a definition of these two issues and how to handle them:

Issue	Definition	See IRM
ID theft	Using a victim's SSN to: <ul style="list-style-type: none"> <li>• Obtain employment, resulting in what appears to be unreported income under the victim's SSN. May not come to the victim's attention until they receive IRS correspondence on the unreported income.</li> <li>• File a false federal income tax return to generate a fraudulent refund. Unaware of the fraud, the IRS reverses the fraudulent credits and withholding claimed on the false return, and assesses a liability against the victim.</li> </ul>	IRM 8.6.5, Identity Theft Procedures



Issue	Definition	See IRM
Return Preparer Misconduct	<p>The preparer changes the return without the taxpayer's knowledge and diverts the fraudulent refund into the preparer's personal account. This may be done with:</p> <ul style="list-style-type: none"> <li>• Inflated personal or business expenses;</li> <li>• False deductions;</li> <li>• Unallowable credits;</li> <li>• Excessive exemptions; or</li> <li>• Fraudulent tax credits, such as the EITC</li> </ul>	IRM 8.7.18, Return Preparer Misconduct Cases

8.22.8.16.1  
(08-26-2020)  
**Forged Signature or Signed Under Duress**

- (1) If liability is disputed on the basis that the taxpayer's signature was forged, or the return was signed under duress, determine if the taxpayer is alleging an identity theft issue or a spousal defense.
- (2) If the taxpayer claims not to have filed the return, and does not know who signed it, or does know who signed the return but that person is not the taxpayer's spouse, follow identity theft procedures in IRM 8.6.5.6, ID Theft Raised in Docketed Cases.
- (3) If the taxpayer claims not to be liable because a spouse forged his/her signature, or was forced to sign under duress, then follow IS procedures in IRM 8.22.8.8, Innocent Spouse (IS).

**Note:** It is possible for identity theft to be committed by a former spouse. If the taxpayer indicates the return was filed using his/her SSN by an ex-spouse, then treat the matter as ID theft.

**Example:** Two taxpayers divorced in 2016. Your taxpayer requested a CDP hearing in response to a Final Notice for tax year 2017 and claims she is not liable. During the hearing, she states that she had no filing requirement in 2017 and did not file a return. She informs you her former husband filed the return and forged her signature. Treat this as identity theft, not an IS referral.

8.22.8.17  
(08-09-2017)  
**CSEDs, ASEDs and Overpayments of a Non-CDP Tax Liability**

- (1) The following issues are not liability issues and thus, not precluded under 6330(c)(2)(B) "prior opportunity"
  - A claim that the CSED expired
  - A claim that the Assessment Statute Expiration Date (ASED) expired before the assessment was made
  - A claim that there is an overpayment credit from another period available
  - A claim that payments were improperly applied

8.22.8.17.1  
(09-23-2014)  
**Overpayment of a Non-CDP Tax Liability**

- (1) A non-CDP tax period may be considered if it does not involve an evaluation of the merits of the liability. The availability of an overpayment from a non-CDP period as a source of payment of the unpaid tax for the CDP period may be raised as a relevant issue under IRC 6330(c)(2)(A).
- (2) Appeals must consider the following non-CDP overpayments if raised by the taxpayer because they are relevant to the collection of the CDP period.

- Whether the IRS correctly rejected the taxpayer's claim for refund for a non-CDP period because the claim was made after the expiration of the period of limitation in IRC 6511 or, if a timely claim was made because the time period for filing a refund suit has expired (IRC 6514).
- The availability of an overpayment from a non-CDP period when transcripts show an overpayment is available for offset to the CDP period
- Whether an overpayment was properly applied to a non-CDP period instead of a CDP period.

IF	AND	THEN
The taxpayer submitted an amended return to the IRS for a non-CDP tax period.	IRS reviewed and accepted the amended return. IDRS shows a pending adjustment that will create a refund that will satisfy the CDP liability.	Appeals considers this a relevant CDP issue.
The taxpayer submitted an amended return to Appeals for a non-CDP tax period.	The IRS has not reviewed the amended return or determined the availability of a claimed credit or refund.	Appeals would not consider the amended return a relevant CDP issue. <b>Note:</b> Appeals may choose to hold open the CDP hearing to permit the IRS to make a determination if the IRS will do so within a reasonable period of time.

- (3) Consideration of these relevant issues relating to non-CDP periods are not liability issues, and therefore, may not be precluded under IRC 6330(c)(2)(B). However, if the issue has been previously considered by Appeals or a court, IRC 6330(c)(4) preclusion may apply.

8.22.8.17.2  
(09-23-2014)

#### Net Operating Loss and Carryover Adjustments

- (1) Appeals must consider the availability of an adjustment (as opposed to an overpayment), such as a net operating loss and credit carryovers arising with respect to non-CDP periods, if such adjustment impacts the determination of the reportable tax due for the tax period that is the subject of the CDP hearing.

**Note:** "Credit carryover" in this context relates to business credits allowed by IRC 38 and "credit" means a tax credit or amount subtracted from tax owed rather than a "credit" to the taxpayer's account that reduces the amount of unpaid tax.



**Exhibit 8.22.8-1 (09-23-2014)**
**Liability in CDP Action Table**

Step	Action
1	IRC 6330(c)(2)(B) provides that a taxpayer may challenge the existence or amount of the underlying tax liability for any tax period in the hearing if the person did not receive a statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute the liability. A taxpayer who did not receive a notice of deficiency or any other opportunity to dispute the underlying tax liability for a taxable year may challenge the liability reported due on a tax return during the CDP hearing. See <b>Montgomery v. Commissioner</b> , 122 T.C. 1 (2004).
A	Is the balance due from a self-assessed return? Yes___ No___
B	<b>If YES:</b> <ul style="list-style-type: none"> <li>• Verify notice and demand for payment was sent to the taxpayer in accordance with IRC 6303 with IDRS command code TXMOD transcripts. IRM 8.22.5.4.2.2, Notice and Demand Properly Issued.</li> <li>• If the taxpayer disputes the liability on a self-filed return, provide a deadline of at least 21 calendar days for an amended return to be filed. See IRM 8.22.8.6.1(1).</li> <li>• If the taxpayer fails to amend the return after disputing the liability, note the opportunity offered in the attachment to the determination or decision letter.</li> </ul> <b>Note:</b> There is no statute of limitations for requesting an abatement but there is a Refund Statute Expiration Date for credits and refunds.
C	<b>If NO</b> , see (2) below.
2	IRC 6320(c) and 6330(c)(2)(B) provide that a taxpayer may challenge the underlying liability in a CDP hearing if the taxpayer did not: <ul style="list-style-type: none"> <li>• Receive a notice of deficiency, or</li> <li>• Sign a consent to assessment, or</li> <li>• Have a prior opportunity to dispute the tax liability.</li> </ul>
A	Is the balance due from a notice of deficiency? Yes___ No___
B	<b>If YES</b> , ask the taxpayer if they received the SNOD and document their response. <ul style="list-style-type: none"> <li>• If they acknowledge receipt, ask for a copy of the SNOD.</li> <li>• If they deny receipt, ask what the taxpayer's address was on the date the SNOD was mailed.</li> </ul>
C	If the taxpayer denies, or cannot recall receipt, the taxpayer has alleged an irregularity. Review: <ul style="list-style-type: none"> <li>• Copies of the SNOD.</li> <li>• Proof of mailing, such as Postal Form 3849, 3877 and Certified Mailing list.</li> <li>• Go to <i>USPS</i> and use the track and confirm to see whether the SNOD was received by the taxpayer.</li> <li>• Print tracking and verify confirmation for the file and document the results in CAR.</li> </ul>

**Exhibit 8.22.8-1 (Cont. 1) (09-23-2014)****Liability in CDP Action Table**

D	<p>If <b>NO</b>, did the taxpayer sign a consent, meaning a form which waives the taxpayer's right to a deficiency notice and precludes the taxpayer from raising the liability for the specific tax and periods on the consent? Check TXMOD for a TC 300 with a disposal code:</p> <ul style="list-style-type: none"> <li>• 03 = agreement reached before issuance of the 30-day letter</li> <li>• 04 = agreement reached after issuance of 30-day letter</li> <li>• 09 = agreement reached after issuance of a SNOD</li> </ul>
E	If TXMOD indicates the taxpayer signed a consent and the taxpayer admits to it, document your CAR. If TXMOD indicates the taxpayer signed a consent but the taxpayer denies it, the taxpayer has alleged an irregularity. See (F) below.
F	Order the tax return as it may have the consent Form 870, or Form 4549.
G	<b>If no consent Form 870</b> , go to (H) below.
H	Did the taxpayer have a prior opportunity to dispute the tax liability? Prior opportunity means an opportunity for a conference with Appeals before or after assessment of the liability. The taxpayer must have received a letter offering a hearing with Appeals or have participated in such a hearing to bar the underlying tax liability in the subsequent CDP hearing. Certain judicial proceedings also provide the taxpayer with a prior opportunity. To confirm a prior opportunity, see (I-M) below.
I	Check ACDS to see if the taxpayer was in Appeals for the tax year in question.
J	<p>Check TXMOD for:</p> <ul style="list-style-type: none"> <li>• a TC 582 on a CDP levy case</li> <li>• a TC 971 AC 069 on a CDP lien case</li> </ul> <p>If the taxpayer received a prior CDP levy or lien notice for the same tax and period, the taxpayer had a prior opportunity.</p>
K	<p>Check TXMOD for:</p> <ul style="list-style-type: none"> <li>• TC 520 CC 60-67</li> <li>• TC 520 CC 83, 85-89</li> </ul> <p>to determine if taxpayer filed bankruptcy for the tax year in question. If found, check with Counsel to see if this constituted a prior opportunity.</p>
L	<p>Check TXMOD for:</p> <ul style="list-style-type: none"> <li>• TC 520 CC 70, 75, 78, 79, 80, 81, 84</li> <li>• TC 520 CC 80</li> </ul> <p>to determine if the Department of Justice filed a suit.</p>
M	Check TXMOD for TC 520, Closing Code 82 to determine if the taxpayer filed a refund suit involving a divisible tax (e.g., employment or certain excise taxes, IRC 6700, 6701, 6672 penalties).
N	Check to see if taxpayer has been to Tax Court for the underlying liability. A docket inquiry can be made at the U.S. Tax Court website linked <i>here</i> .
O	<p>Prior opportunities where deficiency procedures do not apply include:</p> <ul style="list-style-type: none"> <li>• <b>TFRP</b>: Letter 1153 may be issued by regular mail or hand-delivered.</li> <li>• <b>IRC 6707A</b>: Letter 4143, 30-Day Letter for Section 6707A Penalty, is issued by regular mail offering the taxpayer the right to contest the hearing in Appeals.</li> <li>• <b>IRC 6702(a), 6702(b) and 6682</b>: the assessment process provides no prior opportunity to contest the penalty in Appeals. See IRM 8.22.8.10.4.</li> </ul>